

# UTAH STATE BULLETIN

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

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

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

Division of Administrative Rules, Salt Lake City 84114

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# TABLE OF CONTENTS

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## 1. SPECIAL NOTICES

Governor, Administration: Governor's Executive Order 2008-0010: Wildland Fire Management.....	1
Health, Health Care Financing, Coverage and Reimbursement Policy: Notice for November Medicaid Rate Changes .....	2
Health, Health Care Financing, Coverage and Reimbursement Policy: Medicaid Crossover Reimbursement Limits .....	2

## 2. NOTICES OF PROPOSED RULES

### Commerce

Occupational and Professional Licensing	
No. 31966 (Amendment): R156-55d. Utah Construction Trades Licensing Act Burglar Alarm Licensing Rule .....	4
No. 31975 (Amendment): R156-64. Deception Detection Examiners Licensing Act Rule .....	6
No. 31967 (Amendment): R156-71-202. Naturopathic Physician Formulary .....	8

### Governor

Economic Development	
No. 31981 (New Rule): R357-4. Government Procurement Private Proposal Program.....	10

### Health

Administration	
No. 31980 (New Rule): R380-70. Standards for Electronic Exchange of Clinical Health Information .....	12

### Labor Commission

Adjudication	
No. 31991 (Amendment): R602-1-5. Official Record .....	14
No. 31986 (New Rule): R602-4. Procedures for Termination of Temporary Total Disability Compensation Pursuant to Reemployment Under Section 34A-2-410.5.....	15

### Natural Resources

Wildlife Resources	
No. 31960 (New Rule): R657-61. Valuation of Real Property Interests for Purposes of Acquisition or Disposal .....	17

### Public Safety

Highway Patrol	
No. 31987 (Amendment): R714-158. Vehicle Safety Inspection Program Requirements .....	18

TABLE OF CONTENTS

---

No. 31989 (Amendment): R714-200. Standards for Vehicle Lights and Illuminating Devices .....21

No. 31988 (Amendment): R714-240. Standards and Specifications for Child Restraint Devices and Safety Belts .....22

Peace Officer Standards and Training  
No. 31990 (New Rule): R728-503. Utah Minimum Standards for All Emergency Pursuit Policies to be Adopted by Public Agencies that Operate Authorized Emergency Pursuit Vehicles.....23

Transportation  
Administration  
No. 31961 (Amendment): R907-64. Longitudinal and Wireless Access to Interstate Highway Rights-of-Way for Installation of Telecommunications Facilities .....25

Workforce Services  
Unemployment Insurance  
No. 31973 (Amendment): R994-202. Employing Units.....28

No. 31970 (Amendment): R994-403-114c. Claimant's Obligation to Prove Weekly Eligibility .....30

No. 31974 (Amendment): R994-405-3. Professional Employment Organizations (PEO).....31

No. 31971 (Amendment): R994-406-401. Claimant Fraud.....32

**3. NOTICES OF CHANGES IN PROPOSED RULES**

Commerce  
Occupational and Professional Licensing  
No. 31425: R156-17b. Pharmacy Practice Act Rule.....35

**4. NOTICES OF 120-DAY (EMERGENCY) RULES**

Commerce  
Real Estate  
No. 31968: R162-211. Adjusted License Terms.....41

Health  
Children's Health Insurance Program  
No. 31977: R382-10. Eligibility .....42

Health Care Financing, Coverage and Reimbursement Policy  
No. 31976: R414-308. Application, Eligibility Determinations and Improper Medical Assistance.....44

No. 31978: R414-310-13. Application Procedure .....47

No. 31979: R414-320-15. Effective Date of Enrollment and Enrollment Period .....49

**5. FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION**

Administrative Services

Finance

No. 31982: R25-8. Overtime Meal Allowance ..... 51

Transportation

Administration

No. 31962: R907-64. Longitudinal and Wireless Access to Interstate Highway  
Rights-of-Way for Installation of Telecommunications Facilities ..... 51

No. 31965: R907-65. Compensation Schedule for Longitudinal Access to  
Interstate Highway Rights-of-Way for Installation of Telecommunications Facilities..... 52

No. 31963: R907-67. Debarment of Contractors from Work on Department  
Projects -- Reasons ..... 52

**6. NOTICES OF FIVE-YEAR REVIEW EXTENSIONS ..... 54**

**7. NOTICES OF RULE EFFECTIVE DATES ..... 55**

**8. RULES INDEX ..... 57**



# SPECIAL NOTICES

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## Governor's Executive Order 2008-0010: Wildland Fire Management

### EXECUTIVE ORDER

#### Wildland Fire Management

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

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

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

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

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

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

It is found, determined and declared that a "State of Emergency" exists statewide due to the threat to public safety, property, natural resources and the environment for thirty days, effective as of October 10, 2008, requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

**IN TESTIMONY, WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 10th day of October 2008

(State Seal)

**Jon M. Huntsman**  
Governor

**ATTEST:**

**Gary R. Herbert**  
Lieutenant Governor

2008/0010

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**Health**  
**Health Care Financing, Coverage and Reimbursement Policy**  
**Notice for November Medicaid Rate Changes**

Effective November 1, 2008, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. No significant reimbursement change to impacted providers is expected. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>. A copy of the changes may also be obtained through local health departments.

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**Health**  
**Health Care Financing, Coverage and Reimbursement Policy**  
**Medicaid Crossover Reimbursement Limits**

The Division of Health Care Financing is submitting changes to the Medicaid State Plan, Attachment 4.19-B, 08-015-UT -- Crossover Reimbursement Limits. This change is as a result of legislative budget reduction mandates.

Reimbursement for crossover claims will be limited to the Medicaid fee schedule for the following types of services: nursing homes, ambulatory surgical centers, kidney dialysis, pharmacy, medical transportation, specialized nursing, and QMB Only Services. These services are in addition to services already reimbursed under this methodology.

There is estimated to be an annual fiscal impact reduction of approximately \$7,020,000.

This proposed change, if approved, becomes effective on November 1, 2008.

*The proposed changes are pending Centers for Medicare and Medicaid Services approval. A copy of the changes may be obtained from Craig Devashrayee (801-538-6641), or by writing the Technical Writing Unit, Utah Department of Health, P.O. Box 143102, Salt Lake City, UT 84114-3102. Comments are welcome at the same address. Copies of the changes are also available at local county health department offices.*

**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 September 16, 2008, 12:00 a.m., and October 1, 2008, 11:59 p.m. are included in this, the October 15, 2008, 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 November 14, 2008. 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 63G-3-302 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 February 12, 2009, 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 63G-3-301; 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.**

**Commerce, Occupational and  
Professional Licensing  
R156-55d  
Utah Construction Trades Licensing Act  
Burglar Alarm Licensing Rule**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 31966  
FILED: 09/25/2008, 08:53

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division and the Alarm System Security and Licensing Board are proposing amendments to this rule as a result of the governing statute, Title 58, Chapter 55, being amended by S.B. 295 during the 2008 Legislative Session. The proposed amendments are also clarifying experience requirements and criminal history background checks. (DAR NOTE: S.B. 295 (2008) is found at Chapter 377, Laws of Utah 2008, and was effective 05/05/2008.)

**SUMMARY OF THE RULE OR CHANGE:** In Section R156-55d-102, updated the definition of "individual employed" and added a definition for "employee". In Section R156-55d-302a, amendments are made to clarify acceptable photo identification that is to be submitted with an application for licensure. In Section R156-55d-302c, amendments are made to clarify that work experience for the qualifying agent of an alarm company has to be obtained legally and under the supervision of the applicant's employer and that no more than 2,000 hours of work experience can be claimed in a 12-month period. Also added that the work experience must have been obtained within the past 10 years. In Section R156-55d-302d, amendments to this section add retake information for applicants who fail an examination. Section R156-55d-304 was amended to update current Division procedures with respect to an applicant's criminal background check. In Subsection R156-55d-603(4), an outdated provision is being deleted.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 58-55-101 and 58-55-308, and Subsections 58-1-106(1)(a), 58-1-202(1)(a), 58-55-302(3)(k), 58-55-302(3)(l), and 58-55-302(4)

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$100 to reprint the rule once the proposed amendments are made effective. Costs incurred will be absorbed in the Division's current budget.
- ❖ **LOCAL GOVERNMENTS:** The proposed amendments do not apply to local governments. The proposed amendments only apply to licensed burglar alarm companies and burglar alarm company agents and applicants for licensure in those classifications.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** The proposed amendments only apply to licensed burglar alarm companies and burglar alarm company agents and applicants for licensure in those classifications. It should be noted that a burglar alarm company may qualify as a "small business". The Division does not anticipate any costs or savings to the regulated industry or other individuals as a result of the proposed amendments. Licensed burglar alarm companies should already be deducting state and federal taxes from their employees' pay and covering their employees with worker's compensation and unemployment insurances. It should be noted the vast majority of persons seeking licensure as a burglar alarm company agent have current work experience. However, there would be an unknown financial impact on individuals who would be unable to become licensed as a burglar alarm company agent due to their work experience being older than 10 years.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendments only apply to licensed burglar alarm companies and burglar alarm company agents and applicants for licensure in those classifications. The Division does not anticipate any costs or savings to the regulated industry or other individuals as a result of the proposed amendments. Licensed burglar alarm companies should already be deducting state and federal taxes from their employees' pay and covering their employees with worker's compensation and unemployment insurances. It should be noted the vast majority of persons seeking licensure as a burglar alarm company agent have current work experience. However, there would be an unknown financial impact on individuals who would be unable to become licensed as a burglar alarm company agent due to their work experience being older than 10 years.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule filing clarifies definitions, as well as the requirements for applicant identification, experience and examination. The filing also limits acceptable experience to that earned within the last 10 years and places limitations on how frequently an applicant may take a required examination. These substantive changes could potentially pose some costs in time or money to applicants if their experience is more than 10 years old or if they fail the test repeatedly. However, that cost is difficult to estimate. No other fiscal impact to businesses is anticipated from this filing. Francine A. Giani, Executive Director

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
Dennis Meservy at the above address, by phone at 801-530-6375, by FAX at 801-530-6511, or by Internet E-mail at dmeservy@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 11/14/2008

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 10/29/2008 at 9:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2008

AUTHORIZED BY: F. David Stanley, Director

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-55d. Utah Construction Trades Licensing Act Burglar Alarm Licensing Rule.**  
**R156-55d-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapters 1 and 55, or this rule:

(1) "Individual employed", as used in Subsection 58-55-102(2), means an individual who ~~has an agreement with an alarm business or company to perform alarm systems business activities under the direct supervision or control of the alarm business or company and for whose alarm system business activities the alarm company is legally liable and who is an employee of a licensed burglar alarm company and who has or could have access to knowledge of specific applications.~~

(2) "Employee", as used in Subsections 58-55-102(14) and R156-55d-102(1), means an individual providing labor services for compensation who has federal and state taxes withheld and worker's compensation and unemployment insurance provided by the individual's employer.

(3) "Knowledge of specific applications", as used in Subsection R156-55d-102(1), means obtaining specific information about any premises which is protected or is to be protected by an alarm system. This knowledge is gained through access to records, on-site visits or otherwise gathered through working for an alarm business or company.

(4) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(1), in Section R156-55d-502.

**R156-55d-302a. Qualifications for Licensure - Application Requirements.**

(1) An application for licensure as an alarm company shall include:

(a) a record of criminal history or certification of no record of criminal history with respect to the applicant's qualifying agent, issued by the Bureau of Criminal Identification, Utah Department of Public Safety;

(b) two fingerprint cards containing:

(i) the fingerprints of the applicant's qualifying agent;

(ii) the fingerprints of each of the applicant's officers, directors, shareholders owning more than 5% of the stock of the company, partners, and proprietors; and

(iii) the fingerprints of each of the applicant's management personnel who will have responsibility for any of the company's operations as an alarm company within the state;

(c) a fee established in accordance with Section 63J-1-303 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and the Bureau of Criminal Identification, Utah Department of Public Safety, for each individual for whom fingerprints are required under Subsection (1)(b); and

(d) a copy of ~~the driver license or Utah identification card~~ a current photo identification for each individual for whom fingerprints are required under Subsection (1)(b). Acceptable photo identification shall include:

(i) a driver license issued by a state of the United States of America or Washington, District of Columbia; or

(ii) an identification card issued by the state of Utah.

(2) An application for license as an alarm company agent shall include:

(a) a record of criminal history or certification of no record of criminal history with respect to the applicant, issued by the Bureau of Criminal Identification, Utah Department of Public Safety;

(b) two fingerprint cards containing the fingerprints of the applicant;

(c) a fee established in accordance with Section 63J-1-303 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and the Bureau of Criminal Identification, Utah Department of Public Safety, regarding the applicant; and

(d) a copy of ~~the driver license or Utah identification card~~ a current photo identification for the applicant. Acceptable identification shall include:

(i) a driver license issued by a state of the United States of America or Washington, District of Columbia; or

(ii) an identification card issued by the state of Utah.

**R156-55d-302c. Qualifications for Licensure - Experience Requirements.**

In accordance with Subsections 58-1-203(1) and 58-1-301(3) the experience requirements for an alarm company applicant's qualifying agent in Subsection 58-55-302(3)(k)(i) are ~~defined, clarified, or established in that an individual to be approved as a qualifying agent of an alarm company shall~~ established as follows:

(1) an applicant shall have within the past ten years:

(a) ~~have~~ not less than 6,000 hours of experience in a ~~lawfully operated~~ alarm company business of which not less than 2,000 hours shall have been in a ~~management~~ managerial, supervisory, or ~~administration~~ administrative position; or

(b) ~~have~~ not less than 6,000 hours of experience in a ~~lawfully operated~~ alarm company business combined with not less than 2,000 hours of ~~management~~ managerial, supervisory, or administrative experience in a lawfully ~~and competently~~ operated construction company[-];

(2) all experience under Subsection (1) shall be under the immediate supervision of the applicant's employer as defined in Subsection 58-55-102(20);

(3) all experience must be obtained while lawfully engaged as an alarm company agent and working for a lawfully operated burglar alarm company;

(4) 2,000 hours of work experience constitutes one year (12 months) of work experience;

(5) an applicant may claim no more than 2,000 hours of work experience in any 12 month period; and

(6) no credit shall be given for experience obtained illegally.

**R156-55d-302d. Qualifications for Licensure - Examination Requirements.**

In accordance with Subsections 58-1-203(1) and 58-1-301(3), the examination requirements for an alarm company applicant's qualifying agent in Subsection 58-55-302(3)(k)(i)(C) are defined, clarified, or established in that an individual to be approved as a qualifying agent of an alarm company shall:

(1) pass the Utah Burglar Alarm Law and Rule Examination with a score of not less than 75%;~~and~~

(2) pass the Burglar Alarm Qualifier Examination with a score of not less than 75%; and

(3) an applicant for licensure who fails an examination may retake the failed examination as follows:

(a) no sooner than 30 days following any failure, up to three failures; and

(b) no sooner than six months following any failure thereafter.

**R156-55d-304. Renewal Requirement - Demonstration of Clear Criminal History.**

(1) In accordance with Subsections 58-1-203(1), 58-1-308(3)(b), and 58-55-302(4), there is created as a requirement for renewal or reinstatement of any license of an alarm company or alarm company agent a demonstration of clear criminal history for each alarm company qualifying agent and for each alarm company agent.

(2) ~~[Each application for renewal or reinstatement of a license of an alarm company shall be accompanied by a record of criminal history or certification of no record of criminal history with respect to the alarm company's qualifying agent, issued by the Bureau of Criminal Identification, Utah Department of Public Safety within 120 days prior to submission of the application for renewal or reinstatement to the Division]~~The criminal history background check shall be performed by the Division and is not required to be submitted by the applicant.

(3) ~~[Each application for renewal or reinstatement of a license of an alarm company agent shall be accompanied by a record of criminal history or certification of no record of criminal history with respect to the alarm company agent, issued by the Bureau of Criminal Identification, Utah Department of Public Safety within 120 days prior to submission of the application for renewal or reinstatement to the Division]~~If the criminal background check discloses the applicant has a criminal history, the Division shall evaluate the criminal history in accordance with Sections 58-55-302 and R156-5d-302f to determine appropriate licensure action.

**R156-55d-603. Operating Standards - Alarm Installer.**

In accordance with Subsection 58-55-308(1), the operating standards for the installer of an alarm system include the following:

(1) An alarm agent must be fully trained in the installation of an alarm system in accordance with the National Burglar and Fire Alarm Association (NBFAA) level one certification or equivalent training requirements prior to the alarm agent installing any alarm system in any residence, business, or public building within the state.

(2) An alarm agent upon receiving initial licensure may work under the direct supervision of an alarm agent who has level one certification for a period of six months from the time of initial licensure without being required to hold a level one certificate.

(3) An alarm agent shall carry evidence of the NBFAA level one certification or equivalent training with him at all times.[]

~~—(4) An alarm agent holding licensure under Title 58, Chapter 55 shall have until June 30, 2001 to comply with the NBFAA level one certification or equivalent training requirement.]~~

**KEY: licensing, alarm company, burglar alarms**

**Date of Enactment or Last Substantive Amendment: [~~October 18, 2005~~]2008**

**Notice of Continuation: June 28, 2005**

**Authorizing, and Implemented or Interpreted Law: 58-55-101; 58-1-106(1)(a); 58-1-202(1)(a); 58-55-302(3)(k); 58-55-302(3)(l); 58-55-302(4); 58-55-308**

◆ ————— ◆

## Commerce, Occupational and Professional Licensing

# R156-64

## Deception Detection Examiners Licensing Act Rule

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 31975

FILED: 09/30/2008, 07:45

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Deception Detection Examiners Board are proposing amendments to the rule as a result of the governing statute, Title 58, Chapter 64, being amended in H.B. 375 which was passed during the 2008 General Session of the Legislature. The proposed amendments add a definition of supervision and clarify additional qualifications for licensure regarding criminal background checks for applicants for licensure and for licensed individuals at renewal/reinstatement time. (DAR NOTE: H.B. 375 (2008) is found at Chapter 211, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: In Section R156-64-102, alphabetized the definitions and added a definition for "supervision". In Section R156-64-201, added the word "to". In Section R156-64-302a, updated requirements for a deception detection examiner and deception detection intern to provide that an applicant for licensure needs to submit two fingerprint cards to the Division in addition to a fee which has been established to check the records of the Federal Bureau of Investigation and Bureau of Criminal Identification of the Utah Department of Public Safety. Section R156-64-305 is a new section that clarifies that licensed deception detection examiners will have a criminal history background check completed by the Division as a condition of renewal or reinstatement of licensure.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-64-101 and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

## ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The Division of Occupational and Professional Licensing will incur minimal costs of approximately \$100 to reprint the rule once the proposed amendments are made effective. Any costs incurred by the Division will be absorbed in the current budget. The Division anticipates minimal impact to the Bureau of Criminal Identification as a result of this license classification now requiring criminal background checks. The Division anticipates only an increase of approximately two new applicants per year. However, it should be noted that this impact was previously considered by the Legislature in the passage of H.B. 375 during the 2008 General Session.

❖ **LOCAL GOVERNMENTS:** Most applications for licensure as either a deception detection examiner or deception detection intern are received from individuals working for local governments. If a local government pays the application licensing fees of an applicant, an additional \$35 will now be required for the criminal history background check per applicant. However, it should be noted that this impact was previously considered by the Legislature in the passage of H.B. 375 during the 2008 General Session. It should also be noted that the Division only receives approximately two new applications for licensure on a yearly basis for this license classification.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** These proposed amendments only apply to licensed deception detection examiners and applicants for licensure as either a deception detection examiner or a deception detection intern. The Division does not anticipate costs or savings to small businesses as a result of these proposed amendments since small businesses usually do not pay licensing fees for deception detection examiners or interns. An applicant for licensure as either a deception detection examiner or deception detection intern will now pay an additional \$35 for the required criminal history background check. However, it should be noted that this impact was previously considered by the Legislature in the passage of H.B. 375 during the 2008 General Session. It should also be noted that the Division only receives approximately two new applications for licensure on a yearly basis for this license classification, thus resulting in an aggregate cost impact of \$70.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** These proposed amendments only apply to licensed deception detection examiners and applicants for licensure as either a deception detection examiner or a deception detection intern. An applicant for licensure as either a deception detection examiner or deception detection intern will now pay an additional \$35 for the required criminal history background check. However, it should be noted that this impact was previously considered by the Legislature in the passage of H.B. 375 during the 2008 General Session.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No fiscal impact to businesses is anticipated with this rule filing beyond those already addressed in the passage of H.B. 375 during the 2008 Legislative Session, which provided that the Division of Occupational and Professional Licensing could charge a fee equal to the cost of a criminal background check on applicants

conducted by the Federal Bureau of Investigation (FBI) and the Utah Bureau of Criminal Identification. Francine A. Giani, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 11/14/2008

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 10/29/2008 at 11:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 250 (second floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2008

AUTHORIZED BY: F. David Stanley, Director

**R156. Commerce, Occupational and Professional Licensing.  
R156-64. Deception Detection Examiners Licensing Act Rule.  
R156-64-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 64, as used in Title 58, Chapters 1 and 64 or this rule:

(1) "Clinical testing" means a deception detection examination which is not intended to supplement and assist in a criminal investigation.

(2) "Comparison question" means a nonrelevant test question used for comparison against a relevant test question in a deception detection examination.

(3) "Deception detection case file" means written records of a polygraph exam including:

- (a) case information;
- (b) examinee information;
- (c) a list of all questions used during the examination;
- (d) copies of all charts recorded during the examination; and
- (e) either the audio or video recording of the examination.

(4) "Experienced deception detection examiner" means a deception detection examiner who has completed over 250 deception detection examinations and has been licensed or certified by the United States Government for three years or more.

(6) "Irrelevant and relevant testing" means a deception detection examination which consists of relevant questions, interspersed with irrelevant questions, and does not include any type of comparison questions.

(~~5~~6) "Irrelevant question" means a question of neutral impact, which does not relate to a matter under inquiry, in a deception detection examination.

(7) "Post conviction sex offender testing" means testing of sex offenders and includes:

(a) sexual history testing to determine if the examinee is accurately reporting all sexual offenses prior to a conviction;

(b) maintenance testing to determine if the examinee is complying with the conditions of probation or parole; and

(c) specific issue examinations.

(~~12~~8) "Pre-employment exam" means a deception detection screening examination administered as part of a pre-employment background investigation.

(~~8~~9) "Qualified continuing professional education" means continuing education that meets the standards set forth in Section R156-64-304.

(~~9~~10) "Relevant question" means a question which relates directly to a matter under inquiry in a deception detection examination.

(~~10~~11) "Screening exam" means a multiple issue deception detection examination administered to determine the examinee's truthfulness concerning more than one narrowly defined issue.

(~~11~~12) "Specific issue/single issue examination" means a deception detection examination administered to determine the examinee's truthfulness concerning one narrowly defined issue.

(13) "Supervision" means general supervision as established in Subsection R156-1-102a(4)(c).

(~~13~~14) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 64, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-64-502.

#### **R156-64-201. Education Peer Committee created - Membership - Duties.**

(1) In accordance with Subsection 58-1-203(1)(f), there is created the Deception Detection Education Peer Committee.

(a) The duties and responsibilities of the Deception Detection Education Peer Committee are to conduct an oral interview on behalf of the Board to evaluate the deception detection intern's performance and make a recommendation to the Board to:

(i) approve the application; or

(ii) deny the application but extend the intern period.

(b) The composition of the Deception Detection Education Peer Committee shall be three deception detection examiners licensed in Utah who are not members of the Deception Detection Examiners Licensing Board.

#### **R156-64-302a. Qualifications for Licensure - Application Requirements.**

~~In accordance with Subsections 58-64-302(1)(c) and 58-64-302(2)(e), each applicant shall provide the following:~~

~~(1) a certification issued by the Bureau of Criminal Identification, Utah Department of Public Safety concerning the applicant's criminal history, unless the applicant is a peace officer as defined in Title 53, Chapter 13, in good standing, in which case a certification is not required. (1) Pursuant to Section 58-64-302, an application for licensure as a deception detection examiner shall be accompanied by:~~

~~(a) two fingerprint cards for the applicant; and~~

~~(b) a fee established in accordance with Section 63J-1-303 equal to the cost of conducting a check of records of:~~

~~(i) the Federal Bureau of Investigation; and~~

~~(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety.~~

~~(2) Pursuant to Section 58-64-302, an application for licensure as a deception detection intern shall be accompanied by:~~

~~(a) two fingerprint cards for the applicant; and~~

~~(b) a fee established in accordance with Section 63J-1-303 equal to the cost of conducting a check of records of:~~

~~(i) the Federal Bureau of Investigation; and~~

~~(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety.~~

#### **R156-64-305. Demonstration of Clear Criminal History for Licensees as Renewal Requirement.**

~~(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), an applicant shall demonstrate a clear criminal history as a condition of renewal or reinstatement of license issued under Title 58, Chapter 64 in the classification of deception detection examiner.~~

~~(2) A criminal history background check shall be performed by the Division and is not required to be submitted by the applicant.~~

~~(3) If the criminal background check discloses a criminal background, the Division shall evaluate the criminal history in accordance with Section R156-1-302 to determine appropriate licensure action.~~

**KEY: licensing, deception detection examiner, deception detection intern**

**Date of Enactment or Last Substantive Amendment: ~~December 24, 2007~~2008**

**Notice of Continuation: April 9, 2007**

**Authorizing, and Implemented or Interpreted Law: 58-64-101; 58-1-106(1)(a); 58-1-202(1)(a)**

## Commerce, Occupational and Professional Licensing **R156-71-202** Naturopathic Physician Formulary

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 31967

FILED: 09/25/2008, 08:59

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division found that an approved naturopathic physician formulary item had inadvertently been omitted from the approved listing. Therefore, this rule filing is adding "vaccines" to the approved formulary listing.

SUMMARY OF THE RULE OR CHANGE: Vaccines are being added to the naturopathic physician formulary listing.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-71-101 and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

## ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The Division will incur minimal costs of approximately \$50 to reprint the rule once the proposed amendment is made effective. Any costs incurred will be absorbed in the Division's current budget.
- ❖ LOCAL GOVERNMENTS: The proposed amendment does not apply to local governments. The proposed amendment only applies to licensed naturopathic physicians and applicants for licensure as a naturopathic physician.
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The proposed amendment to the naturopathic physician formulary will create a possible savings for the public and insurance carriers. Patients who presently see a naturopathic physician requesting specific types of medications may not be able to receive the required prescription. The patient currently has to schedule another visit with a prescribing practitioner. Each office visit to a prescribing practitioner is about \$100 for each patient. If the naturopathic physician can prescribe the medication needed at the initial office visit, the result would be a reduction in duplication of services, thus reducing costs for the patients and insurance carriers. There is no way for the Division to determine how many patients are seen by naturopathic physicians versus other types of prescribing practitioners. It should be noted that a licensed naturopathic physician office may qualify as a small business if such a naturopathic physician owns or works in a small clinic.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendment to the naturopathic physician formulary will create a possible savings for the public and insurance carriers. Patients who presently see a naturopathic physician requesting specific types of medications may not be able to receive the required prescription. The patient currently has to schedule another visit with a prescribing practitioner. Each office visit to a prescribing practitioner is about \$100 for each patient. If the naturopathic physician can prescribe the medication needed at the initial office visit, the result would be a reduction in duplication of services, thus reducing costs for the patients and insurance carriers. There is no way for the Division to determine how many patients are seen by naturopathic physicians versus other types of prescribing practitioners.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing amends the naturopathic formulary to include "vaccines" which were inadvertently left out of a prior amendment to the formulary. No fiscal impact to businesses is anticipated beyond those addressed in the rule summary. Francine A. Giani, Executive Director

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

COMMERCE  
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:

Sally Stewart at the above address, by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at SStewart@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 11/14/2008

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 10/16/2008 at 9:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 464 (fourth floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2008

AUTHORIZED BY: F. David Stanley, Director

**R156. Commerce, Occupational and Professional Licensing.****R156-71. Naturopathic Physician Practice Act Rule.****R156-71-202. Naturopathic Physician Formulary.**

(1) In accordance with Subsections 58-71-102(8), 58-71-102(12)(a) and 58-71-202, the naturopathic physician formulary which consists of noncontrolled substance legend medications deemed appropriate for the primary health care of patients within the scope of practice of naturopathic physicians, the prescription of which is approved by the Division in collaboration with the Naturopathic Formulary Advisory Peer Committee, consists of the following legend drugs, listed by category, with reference numbers identified in the American Hospital Formulary Service (AHFS), published by the American Society of Health System Pharmacists, 2006 edition:

- 4:00 Antihistamines
- 8:08 Anthelmintics
- 8:12 Antibacterials, oral forms only
- 8:14 Antifungals, oral and topical forms
- 8:18 Antivirals limited to oral and topical dosage forms, excluding:
  - 8:18:08 Antiretrovirals
  - 8:18:20 Interferons
  - 8:18:24 Monoclonal Antibodies
  - 8:18:32 Nucleosides and Nucleotides
  - 8:30:04 Amebicides
  - 8:30:92 Miscellaneous Antiprotozoals excluding those whose primary indication is the treatment of infection in immunosuppressed patients (i.e. Pentamidine and Trimetrexate)
- 8:36 Urinary anti-infectives
- 12:12:08:12 Selective Beta 2 Adrenergic Agonists
- 12:12:12 Alpha and Beta Adrenergic Agonists
- 12:16 Sympatholytic (Adrenergic Blocking) Agents, limited to ergot derivatives
- 12:20 Skeletal Muscle Relaxants, excluding scheduled medications
- 20:24 Hemorrhologic Agents
- 24:04:08 Cardiotonic agents - limited to Digoxin
- 24:06 Antilipemic Agents
- 24:08 Hypotensive Agents - limited to oral dosage forms
- 24:20 Alpha Adrenergic Blocking Agents

24:24 Beta Adrenergic Blocking Agents - limited to oral dosage forms

24:28 Calcium Channel Blocking Agents - limited to oral dosage forms

24:32 Renin-Angiotensive-Aldosterone System Inhibitors - limited to oral dosage forms

28:08 Analgesics and Antipyretics, excluding scheduled medications

28:16.04.20 Selective-Serotonin Reuptake Inhibitors

28:16.04.24 Serotonin Modulators

28:16.04.28 Tricyclics and Other Norepinephrine-Reuptake Inhibitors

40:00 Electrolytic, caloric, and water balance

40:28 Diuretics

44:00 Enzymes, limited to digestive and proteolytic

52:08 Corticosteroids (oral, topical, and injectable), Anti-Inflammatory Agents except Ophthalmologic Preparations, and DMARDS

52:16 Local Anesthetics

56:22 Antiemetics

56:28 H2 Blockers, Anti-ulcer agents and Acid Suppressants

68:12 Contraceptives, except implants and injections

68:16.04 Estrogen

68:20.02 Alpha-Glucosidase Inhibitors

68:20.08 Insulins and Biguanides

68:20.20 Sulfonylureas

68:24 Parathyroid

68:32 Progestin

68:36.04 Thyroid agents, including thyroid of glandular extract

80:12 Vaccines

88:28 Multivitamin preparations

92:00 Antigout, and Bone-Resorption Inhibitors, limited to Raloxifene, and botulinum toxin type A, limited to superficial injections

(2) In addition, amino acids, minerals, oxygen and silver nitrate, although not listed in Subsection (1), are approved for primary health care.

(3) New categories or classes of drugs will need to be approved as part of the formulary prior to prescribing/administering.

(4) The licensed naturopathic physician has the responsibility to be knowledgeable about the medication being prescribed or administered.

**KEY: licensing, naturopaths, naturopathic physician**

**Date of Enactment or Last Substantive Amendment: [July 8, ]2008**

**Notice of Continuation: January 8, 2007**

**Authorizing, and Implemented or Interpreted Law: 58-71-101; 58-1-106(1)(a); 58-1-202(1)(a)**

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**Governor, Economic Development**  
**R357-4**  
**Government Procurement Private**  
**Proposal Program**

## NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE No.: 31981

FILED: 09/30/2008, 18:34

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of the rule is to specify which portions of an initial proposal are public and which portions of an initial proposal are private records. The rule also outlines when a fee may be refunded and provides process timing requirements.

**SUMMARY OF THE RULE OR CHANGE:** The rule specifies which portions of an initial proposal are public and which portions are protected under the Government Records Management Act, as required by Section 63M-1-2403. The rule also sets forth conditions under which a portion of the fee due with an initial proposal may be refunded. The rule also sets forth time requirements for various steps within the proposal application review process.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsections 63M-1-2403(2)(c), 63M-1-2405(5), 63M-1-2406(1)(b), 63M-1-2408(1)(h)(i), 63M-1-2409(3)(f), and 63M-1-2410(3)(i)

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** It is anticipated that detailed proposals will be accepted for projects which provide a cost savings over the cost of current state services. Consequently, these projects will result in a net savings to the state budget.

❖ **LOCAL GOVERNMENTS:** The government procurement private proposal program does not directly impact local government budgets.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** The government procurement private proposal program provides more opportunities for small businesses to compete for current state services. Small businesses proposals which are accepted will generate additional business and revenue for the company.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Compliance costs include the fee associated with any entity which chooses to submit an initial proposal.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Businesses whose detailed proposals are accepted will have the fiscal benefit of the additional business with the state. Jason P. Perry, Executive Director

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

GOVERNOR  
ECONOMIC DEVELOPMENT  
324 S State  
5th Floor  
SALT LAKE CITY UT 84111, or  
at the Division of Administrative Rules.



DIRECT QUESTIONS REGARDING THIS RULE TO:

Michael Sullivan at the above address, by phone at 801-538-8811, by FAX at 801-538-8888, or by Internet E-mail at mgsullivan@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 11/14/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2008

AUTHORIZED BY: Jason Perry, Executive Director

**R357. Governor, Economic Development.**

**R357-4. Government Procurement Private Proposal Program.**

**R357-4-1. Purpose.**

The purpose of the administrative rule is to describe the required procedures for submission, review and processing of an initial proposal, fee, and a detailed proposal, and the preparation of a project agreement.

**R357-4-2. Authority.**

(1) These administrative rules are made pursuant to authority granted under 63M-1-2403(2)(c), 63M-1-2405(5), 63M-1-2406(1)(b), 63M-1-2408(1)(h)(i), 63M-1-2409(3)(f), and 63M-1-2410(3)(i).

**R357-4-3. Definitions.**

(1) Terms in these rules are used as defined in UCA 63M-1-2402.

**R357-4-4. Initial and Detailed Proposal -- Protected and Public Portions.**

(1) An initial proposal submitted to the Committee in accordance with UCA 63M-1-2405 is a protected record under UCA 63G-2-305, and shall be protected from all public disclosure during initial review by the Committee, the Governor's Office of Planning and Budget, the affected department and any directly affected state entity or school district.

(2) If the Committee determines to move forward with a project beyond the initial review, the following portions of an initial proposal shall be made public once the chief procurement officer initiates a procurement process in accordance with UCA 63G-6-408.5:

- (a) conceptual description of the project;
- (b) description of the economic benefit of the project to the state and the affected department;
- (c) information concerning the products, services, and supplies currently being provided by the state, that are similar to the project;
- (d) Notwithstanding the portions of an initial proposal that may be made public under this subsection, all proprietary information provided in an initial and detailed proposal shall remain a protected record under UCA 63G-2-305.

(3) Portions of an initial proposal not excepted in subsection (2) shall remain a protected record under UCA 63G-2-305. Protected portions include but are not limited to:

- (a) Trade secrets as defined in UCA 13-24-2;

(b) Commercial information or non-individual financial information satisfying the requirements of UCA 63G-2-305; and

(c) Other information submitted by a private entity and not excepted in subsection (2) that, if disclosed prior to the execution of a project agreement, would adversely affect the financial interest or bargaining position of the public entity in accordance with UCA 13-24-2.

(4) A private entity requesting protection from public disclosure under this rule must satisfy the requirements of Title 63G, Chapter 2, Government Records Access and Management Act upon submission of the initial proposal or the detailed proposal, including the statement of business confidentiality required by UCA 63G-2-309.

**R357-4-5. Initial Proposal - Fee.**

(1) A private entity submitting an initial proposal shall pay a fee when the initial proposal is submitted.

(2) The amount of the fee shall be based on one percent of the project cost estimate submitted with an initial proposal. The minimum fee shall be \$5,000 and the maximum fee shall be \$50,000.

(3) Forty percent of the fee shall be allocated to reviewing the private entity's initial proposal and shall be non-refundable.

(4) Thirty percent of the fee shall be allocated to reviewing a detailed proposal and shall be refunded if for any reason the Committee does not review the private entity's detailed proposal.

(5) Thirty percent of the fee shall be allocated to preparing a project agreement and shall be refunded if for any reason the director does not prepare a project agreement for the private entity.

**R357-4-6. Process and Time Requirements.**

(1) A private entity may submit an initial proposal for a project to the Committee at any time. Within 30 days after receipt, the Committee shall review the initial proposal and determine, in its sole discretion, whether to move forward with a project in accordance with UCA 63M-1-2406. If the Committee determines to move forward with the project, the Committee shall immediately submit a copy of the initial proposal to any affected department, directly affected state entity, school district and the Governor's Office of Planning and Budget.

(2) Within 30 days from receipt of the initial proposal, an affected department shall provide the Committee with any comment, suggestion or modification to the initial proposal or the project. The affected department shall include any comment, suggestion or modification from any directly affected state entity or school district that receives a copy of the proposal in accordance with Section 63M-1-2406(4).

(3) Within 30 days from receipt of the initial proposal, the Governor's Office of Planning and Budget shall prepare an economic feasibility report containing the information required by Section 63M-1-2406(3)(b).

(4) Within 30 days from the receipt of the comments, suggestions or modification from the affected department and the economic feasibility report, the Committee shall determine, in its sole discretion, whether to move forward with a project to the detailed proposal stage. If the Committee determines to move forward with the project, the Committee shall immediately submit a copy of the initial proposal, including any comment, suggestion or modification adopted by the Committee and incorporated into the initial proposal, to the chief procurement officer and the Executive Appropriations Committee, in accordance with Section 63M-1-

2406(5), with any protected portions of the initial proposal clearly identified.

(5) The chief procurement officer shall take action under 63G-6-408.5 to initiate and complete a procurement process within 60 days from the receipt of the initial proposal, in compliance with Title 63G, Chapter 56, Utah Procurement Code.

(6) The chief procurement officer shall review each detailed proposal submitted pursuant to such procurement process and submit each detailed proposal that complies with UCA 63M-1-2408(1) to the Committee for review and to the Governor's Office of Planning and Budget for the purpose of updating the economic feasibility report.

(7) Within 30 days from receipt of the updated economic feasibility report, the Committee shall determine, in its sole discretion, whether to approve the detailed proposal. If approved by the Committee, the board shall determine whether to approve the detailed proposal as soon as reasonably practicable.

(8) The affected department, directly affected state entity or school district may dispute the detailed proposal and submit any comment, suggestion or modification to the Committee and the Governor's Office of Planning and Budget within 15 days following the board's final decision. Within 15 days, the Governor's Office of Planning and Budget shall determine whether to proceed with a project agreement.

(9) If an appropriation or alternative funding is necessary for a project that is the subject of a detailed proposal, the Committee shall work with the office to submit, within 30 days following the board's final decision, a report requesting funding to the Governor's Office of Planning and Budget and the Executive Appropriations Committee detailing the position of the board, the affected department, directly affected state entity and the school district, as applicable. The filing of such report shall not interfere with the execution of the project agreement.

(10) Within 30 days from board and, if applicable, Governor's Office of Planning and Budget, approval of a detailed proposal, the director and the private entity shall, in good faith and in consultation with the affected department and a directly affected state entity or school district, prepare, negotiate and enter into a project agreement in accordance with Section 63M-1-2410.

(11) The review, processing and, if applicable, procurement of an initial proposal, a detailed proposal or a project agreement under this rule shall be subject to such time modification as the Committee may deem to be necessary to accommodate the specific needs of each project or to be in the best interests of the state.

**KEY: procurement, purchasing, Private Proposal Program**  
**Date of Enactment of Last Substantive Amendment: 2008**  
**Authorizing, and Implemented or Interpreted Law: 63M-1-2403(2)(c); 63M-1-2405(5); 63M-1-2406(1)(b); 63M-1-2408(1)(h)(i); 63M-1-2409(3)(f); and 63M-1-2410(3)(i)**

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 Health, Administration

## R380-70

### Standards for Electronic Exchange of Clinical Health Information

#### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE No.: 31980

FILED: 09/30/2008, 17:37

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to adopt a clinical exchange standard for laboratory results.

SUMMARY OF THE RULE OR CHANGE: A provider that chooses to electronically exchange laboratory results with another provider will be required to use the standard adopted in this rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-37 and 26-1-30

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Clinical Laboratory Results, Version 2.0

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Setting a statewide standard for exchanging information between the state public health laboratory with private providers and the state epidemiology program will impose front-end costs for those state entities that choose to participate. Costs are estimated to be from \$5,000 to \$50,000 per entity. Long-term savings due to standardization will be evaluated by those entities before they choose to proceed.

❖ LOCAL GOVERNMENTS: Setting a statewide standard for exchanging information between the local public health laboratories with private providers and the state epidemiology program will impose front-end costs for those local entities that choose to participate. Costs are estimated to be from \$5,000 to \$50,000 per entity. Long-term savings due to standardization will be evaluated by those entities before they choose to proceed.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Patients will benefit from the statewide electronic clinical information exchange without additional costs to their service. Timely, accurate, and comprehensive medical information for a patient at the point of care will reduce medical errors and improve quality of care. Setting a statewide standard for exchanging information between the laboratories and other providers will impose front-end costs for those entities that choose to participate. Costs are estimated to be from \$5,000 to \$50,000 per entity. Long-term savings due to standardization will be evaluated by those entities before they choose to proceed.

COMPLIANCE COSTS FOR AFFECTED PERSONS: To comply with the standards adopted by this rule, the affected persons and organizations will need to incorporate the new standards into their current electronic communication programs. Many organizations in Utah have already used the proposed standard -- Clinical Laboratory Results Version 2.0. Therefore, the costs for the initial adoption will vary among organizations from \$5,000 where the standard is in place to \$50,000 or more where the standard is not used. However, to adopt a statewide standard for electronic exchanges of

laboratory results will save the resources for participating organizations in the future to program proprietary communication applications.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The standard adopted by this rule for electronic exchange of laboratory results was developed over a period of three years with broad participation from the major laboratory systems, major hospital systems and other interested parties, including the Utah Health Information Network. This consensus process has sought to minimize fiscal impact. David N. Sundwall, MD, Executive Director

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

HEALTH  
ADMINISTRATION  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY UT 84116-3231, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Wu Xu at the above address, by phone at 801-538-7072, by FAX at 801-538-9346, or by Internet E-mail at wxu@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 11/17/2008

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 11/06/2008 at 9:00 AM, Utah Department of Health, Cannon Health Building, Room 114, 288 N 1460 W, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 01/05/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

## **R380. Health, Administration.**

### **R380-70. Standards for Electronic Exchange of Clinical Health Information.**

#### **R380-70-1. Purpose and Authority.**

This rule governs electronic information exchanges between health care providers, laboratories, and third party payers. It is authorized by Sections 26-1-30 and 26-1-37.

#### **R380-70-2. Definitions.**

The terms defined in Utah Code 26-1-37 apply to this rule and the standards adopted by this rule. In addition, the following terms apply to this rule and the standards adopted by this rule:

- (1) "Clinical health information" means data gathered on patients regarding episodes of clinical health care.
- (2) "Clinical laboratory" means a laboratory that performs laboratory testing on humans (except research) in the U.S.
- (3) "Health care provider" has the same meaning as used in Utah Code Section 26-1-37 and includes an entity, such as a clinic,

employer, or other business arrangement, where an individual licensed under Title 58, Occupations and Professions, provides health care.

### **R380-70-3. Terms Used in Standards.**

Some terms used in this rule and the standards adopted by this rule are nationally recognized terms within the clinical data exchange community. The following are provided as an aid to the reader:

- (1) Health care information codes
  - (a) "ASA Codes" are the codes contained in the ASA Relative Value Guide developed and maintained by the American Society of Anesthesiologists to describe anesthesia services and related modifiers.
  - (b) "CDT Codes" are the Current Dental Terminology prescribed by the American Dental Association.
  - (c) "CPT Codes" means the Current Procedural Terminology, published by the American Medical Association.
  - (d) "HCPCS" are CMS's Common Procedure Coding System, a coding system that describes products, supplies, procedures and health professional services and includes, the American Medical Association's Current Procedural Terminology codes, alphanumeric codes, and related modifiers. HCPCS codes are:
    - (i) "HCPCS Level I Codes" are the CPT codes and modifiers for professional services and procedures.
    - (ii) "HCPCS Level II Codes" are national alphanumeric codes and modifiers for health care products and supplies, and codes for professional services not included in the AMA's CPT codes.
    - (e) "ICD-CM Codes" are the diagnosis and procedure codes in the International Classification of Diseases, clinical modifications published by the U.S. Department of Health and Human Services.
    - (f) "LOINC" means Logical Observation Identifiers Names and Codes. It is a set of universal codes and names to identify laboratory and other clinical observations developed by the Regenstrief Institute.
    - (g) "NDC" means the National Drug Codes of the Food and Drug Administration.
    - (h) "SNOMED" means Systematized Nomenclature of Medicine maintained and distributed by the International Health Terminology Standards Development Organisation. It is a systematically organized computer processable collection of medical terminology.
  - (2) Electronic Data Interchange Standards
    - (a) "ASC X12N" are standard formats developed by the Accredited Standards Committee X12N Insurance Subcommittee of the American National Standards Institute and the ASC X12N implementation guides either as promulgated or as modified by another federally registered SDO;
    - (b) "HL7" are electronic data interchange standard formats developed by Health Level 7, which is a standards development organization accredited by the American National Standards Institute. The HL7 standard is usually modified into specific implementation guides by a separate standards development organization;
    - (c) "NCPDP" are standard formats for the transfer of data to and from the pharmacy services sector of the healthcare industry. It is developed by the National Council on Prescription Drug Program, which is a standards development organization accredited by the American National Standards Institute.

**R380-70-4. Electronic Exchange Requirements.**

(1) A health care provider or third party payer that exchanges information electronically with another health care provider or third party payer must comply with the provisions of this rule.

(2) A person required to report information to the Utah Department of Health and that submits its report electronically shall submit the report in accordance with the provisions of this rule.

(3) A health care provider or third party payer may reject electronically transmitted clinical information if it is not transmitted in accordance with this rule.

**R380-70-5. Exemptions.**

(1) This rule does not govern the exchange of information that is not conducted electronically or for which no standard has been established in this rule.

(2) This rule does not apply to the exchange of clinical health information among affiliates, as provided in 26-1-37, within a health care system.

(3) Nothing in this rule requires a health care provider or third party payer to use a specific telecommunications network for the exchange of clinical health information.

**R380-70-6. Electronic Data Interchange Standards.**

Standards incorporated by reference in this rule are available for public inspection at the department during normal business hours or at <http://health.utah.gov/phi/rule/>.

(1) A health care provider, a clinical laboratory, or third-party payer that electronically exchanges clinical laboratory results with another health care provider, a clinical laboratory, or third-party payer must comply with Clinical Laboratory Results v2.0, which is incorporated by reference.

**R380-70-7. Standards Recommendations.**

A party that recommends standards to the Department, shall seek guidance and work with national standard setting entities, such as the American National Standards Institute ASC X12, Health Level 7, and the National Council on Prescription Drug Program, that deal with the particular subject matter.

**KEY: standards, clinical health information exchange**  
**Date of Enactment or Last Substantive Amendment: 2008**  
**Authorizing, Implemented, or Interpreted Law: 26-1-30; 26-1-37**

◆ ————— ◆

**Labor Commission, Adjudication**  
**R602-1-5**  
**Official Record**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 31991

FILED: 10/01/2008, 16:57

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the proposed amendment is to avoid confusion or disputes regarding the official record in cases adjudicated by

the Commission's Adjudication Division by explicitly designating the Adjudication Division's audio recording as the only official hearing record in such cases.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment adds Section R602-1-5 which is the provision that the Adjudication Division's audio recordings of hearings are the only official record of those hearings.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 34A-1-302 and 63G-4-102 et seq.

## ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Labor Commission anticipates no cost or savings to the state budget. The proposed amendment reflects current practice and will not increase or reduce the Commission's costs of administering the workers' compensation and occupational disease programs. With respect to the state's participation in the workers' compensation system as an employer, the amendment represents no change from existing practice and will not increase or decrease the state's workers' compensation expenses.

❖ LOCAL GOVERNMENTS: The Labor Commission anticipates no cost or savings to local governments. With respect to local governments' participation in the workers' compensation system as an employer, the amendment represents no change from existing practice and will not increase or decrease local governments' workers' compensation expenses.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The Labor Commission anticipates no cost or savings to small businesses. The amendment represents no change from existing practice and will not increase or decrease small businesses' workers compensation costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Under both existing practice and the proposed amendment, the Commission maintains the official hearing record. While the proposed amendment explicitly designates the Commission's recording as the official hearing record, it does not impose any obligations or expenses on the parties to such proceedings. Consequently, the amendment imposes no compliance costs on affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendment does not change actual practice with respect to the official record of the Commission's adjudicative proceedings. For that reason, the proposed amendments will have no fiscal impact on businesses. Sherrie Hayashi, Commissioner

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

LABOR COMMISSION

ADJUDICATION

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:

Richard M. Lajeunesse at the above address, by phone at 801-536-7928, by FAX at 801-530-6333, or by Internet E-mail at rlajeunesse@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 11/14/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2008

AUTHORIZED BY: Sherrie Hayashi, Commissioner

**R602. Labor Commission, Adjudication.****R602-1. General Provisions.****R602-1-5. Official Record.**

As contemplated by Section 34A-1-302(3) the only official record of any formal or informal hearing conducted by the Division is the audio recording kept by the administrative law judge during the hearing. Any recording or record kept of a formal or informal hearing other than that kept by the administrative law judge shall not be used for any purpose requiring an official record of the proceedings as contemplate by Section 34A-1-302(3).

**KEY:** witness fees, time, administrative procedures, filing deadlines

**Date of Enactment or Last Substantive Amendment:** [~~January 2, 2004~~]2008

**Notice of Continuation:** August 15, 2007

**Authorizing, and Implemented or Interpreted Law:** 34A-1-302; 63G-4-102 et seq.



Labor Commission, Adjudication  
**R602-4**  
 Procedures for Termination of  
 Temporary Total Disability  
 Compensation Pursuant to  
 Reemployment Under Section 34A-2-  
 410.5

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 31986

FILED: 10/01/2008, 13:25

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule implements H.B. 384, effective 07/01/2008, which added Section 34A-2-410.5 to the Utah Workers' Compensation Act. Section 34A-2-410.5 requires the Labor Commission to accept and adjudicate employer and insurance company requests to terminate or reduce temporary disability compensation payments in cases of alleged employee

misconduct. (DAR NOTE: H.B. 384 (2008) is found at Chapter 349, Laws of Utah 2008, and was effective 07/01/2008.)

SUMMARY OF THE RULE OR CHANGE: The rule defines terms and establishes the process by which employers or insurance carriers can institute proceedings to request permission to terminate or reduce temporary disability compensation. The rule establishes alternative methods by which the employer or insurance carrier can notify the injured worker of proceedings to terminate or reduce benefits. The rule also establishes standards for discovery, hearings, and decisions. In particular, the rule implements Section 34A-2-410.5's requirement that administrative law judges issue decisions in these cases within 45 days after the employer or insurance carrier has filed its request with the Labor Commission. (DAR NOTE: A corresponding 120-day (emergency) rule was published in the July 15, 2008, issue of the Bulletin under DAR No. 31643 and was effective 07/01/2008.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 34A-1-104(1) et seq. and Section 34A-2-410.5

## ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This rule implements a new Section 34A-2-410.5 that allow employers and insurance carriers to request Labor Commission permission to reduce or terminate temporary disability benefits in cases of employee misconduct. The Labor Commission believes there will be a relatively small number of these requests and that the costs of adjudicating them can be absorbed with existing resources and without any impact on the state budget.

❖ LOCAL GOVERNMENTS: Section 34A-2-410.5 permits, but does not require, local governments in their capacity as employers to request permission in cases of employee misconduct to terminate or reduce temporary disability compensation otherwise payable to the employee. By providing simplified procedures for adjudicating such requests, the Labor Commission anticipates that this rule will reduce costs that local governments would otherwise incur if more formal procedures were applied to these proceedings.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Section 34A-2-410.5 permits, but does not require, small businesses to request permission in cases of employee misconduct to terminate or reduce temporary disability compensation otherwise payable to the employees. By providing simplified procedures for adjudicating such requests, the Labor Commission anticipates that this rule will reduce costs that small businesses would otherwise incur if more formal procedures were applied to these proceedings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule establishes simple, expedited procedures for filing and adjudicating employer/insurance carrier requests to terminate or reduce temporary disability compensation payments in cases of employee misconduct. By eliminating or modifying the procedural and evidentiary standards that would otherwise apply, the Labor Commission anticipates that compliance costs such as personnel and attorney expenses will be reduced.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Section 34A-2-410.5 of the Utah Workers' Compensation Act, and this rule implementing that statutory provision, provide businesses with a practical means to reduce or terminate temporary disability payments to workers who are unemployed due to work-related misconduct. While businesses will incur some costs in proving that such benefit payments should be reduced or terminated, I anticipate that the procedures established by this rule will allow the Commission to resolve these cases fairly and efficiently. However, at this time it is uncertain whether businesses will experience a net fiscal benefit from this new procedure. Sherrie Hayashi, Commissioner

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

LABOR COMMISSION  
ADJUDICATION  
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:

Richard M. Lajeunesse at the above address, by phone at 801-536-7928, by FAX at 801-530-6333, or by Internet E-mail at rlajeunesse@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 11/14/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2008

AUTHORIZED BY: Sherrie Hayashi, Commissioner

**R602. Labor Commission, Adjudication.**

**R602-4. Procedures for Termination of Temporary Total Disability Compensation Pursuant to Reemployment Under Section 34A-2-410.5.**

**R602-4-1. Purpose, Authority and Scope.**

Section 34A-2-410.5 allows an employer or its insurance carrier ("employer" hereafter) to request Labor Commission permission to reduce or terminate an employee's temporary disability compensation. Under authority of section 34A-2-410.5(7), the Commission establishes these rules to govern the adjudication of such requests. This rule supersedes the provisions of R602-2, R602-3, and R602-5 as to any actions brought pursuant to section 34A-2-410.5.

**R602-4-2. Commission Permission Required.**

An employer shall not terminate or reduce an employee's temporary disability compensation pursuant to section 34A-2-410.5 prior to issuance of a final order by the Commission ordering the reduction or termination.

**R602-4-3. Mediation.**

Prior to filing a request to terminate or reduce temporary disability compensation pursuant to section 34A-2-410.5, the parties are

encouraged to request assistance from the Mediation Unit of the Commission's Industrial Accidents Division.

**R602-4-4. Pleadings and Discovery.**

A. Definitions.

1. "Application" means an Application for Hearing for Termination or Reduction of Compensation (Adjudication Form 402), all supporting documents, proof of service and Notice of Request for Termination or Reduction of Compensation (Adjudication Form 404) which together constitute the request for agency action regarding termination or reduction of benefits pursuant to Section 34A-2-410.5.

2. "Supporting medical documentation" means any medical provider's report or treatment note that addresses the employee's medical condition or functional restrictions.

3. "Supporting documents" means supporting medical documentation. Persons with Knowledge List (Adjudication Form 403), any documents related to reasons for the requested termination or reduction, and any documents describing the employee's work duties.

4. "Proof of Service" means any of the following: 1) the employee's signed and dated acceptance of service of the Application and all supporting documents; 2) a certificate of service of the Application and all supporting documents signed by the employer or insurer's counsel and accompanied by a return receipt signed by the employee; or 3) a return of service showing personal service of the Application and all supporting documents on the employee according to Utah Rule of Civil Procedure 4(d)(1).

5. "persons with Knowledge List" (Adjudication Form 403) means a party's list of all persons who have material knowledge regarding the reasons for the request to terminate or reduce compensation. The list must specify the full name of the person, a summary of the knowledge possessed by the person, and a statement whether the party will produce the person as a witness at hearing.

6. "Notice of Request for Termination or Reduction of Compensation" means Adjudication Form 404.

7. "Petitioner" means the employer who has filed an Application for Hearing.

8. "Respondent" means the employee against whom the Application for Hearing was filed.

B. Application for Hearing.

1. An employer may request Commission approval to terminate or reduce an employee's temporary disability compensation under section 34A-2-410.5 by filing an Application with the Commission's Adjudication Division.

2. An Application is not deemed filed with the Division until the employer submits a completed Application with all required documentation.

C. Discovery.

1. At least 15 days prior to a hearing on an Application, each party shall mail or otherwise serve on the opposing party a list of all witnesses that party will produce at the hearing. Because it is presumed that the employee will appear at the hearing, the employee is not required to list himself or herself on the list. The employer will also mail to or otherwise serve on the employee a copy of all exhibits the employer intends to submit at the hearing.

2. Testimony of witnesses and exhibits not disclosed as required by this Rule shall not be admitted into evidence at the hearing. A party's failure to subpoena or otherwise produce an individual previously identified by that party as an intended witness may give rise to an inference that the individual's testimony would have been adverse to the party failing to produce the witness.

3. Other than disclosures required by this rule and voluntary exchanges of information, the parties may not engage in any other discovery procedures.

4. Subpoenas may be used only to compel attendance of witnesses at hearing, and not for obtaining documents or compelling attendance at depositions. All subpoenas shall be signed by an administrative law judge.

D. Defaults and Motions.

1. Defaults in proceedings under Section 34A-2-410.5 shall only be issued at the time of hearing based on nonattendance of a party at the hearing.

2. Motions will only be considered at the time of hearing.

E. Hearings.

1. Scheduling and Notice.

A hearing will be held within 30 days after an Application is filed with the Commission's Adjudication Division. The Division will send notice of hearings by regular mail to the addresses of the employer and employee set forth on the Application. A party must immediately notify the Division of any change or correction to the addresses listed on the Application. The Division will also mail notice to the address of any party's attorney as disclosed on the Application or by an Appearance of counsel filed with the Division. Notice by the Division to a party's attorney is considered notice to the party itself.

2. Hearings.

Each hearing pursuant to section 34A-2-410.5 shall be conducted by an administrative law judge as a formal evidentiary hearing. The evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted thereafter. After hearing, the administrative law judge shall issue a decision within 45 days from the date the Application was filed.

F. Motions for Review.

Commission review of an administrative law judge's decision is subject to the provisions of section 63G-4-301, section 34A-1-1-303, and R602.1(M).

**KEY: workers' compensation, administrative procedures, hearings, settlements**

**Date of Enactment or Last Substantive Amendment: 2008**

**Authorizing, and Implemented or Interpreted Law: 34A-1-104(1) et seq; 34A-2-410.5**



**Natural Resources, Wildlife Resources**  
**R657-61**  
**Valuation of Real Property Interests for**  
**Purposes of Acquisition or Disposal**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 31960

FILED: 09/18/2008, 09:50

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being created pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the Use of Division Lands rule.

SUMMARY OF THE RULE OR CHANGE: The proposed rule: 1) sets guidelines for the division to follow when acquiring property; and 2) allows the division to obtain a professional estimation of value when acquiring or disposing real estate.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-21-1

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: These amendments provide requirements and restrictions on the acquisition of Division of Wildlife Resources' (DWR) lands. This rule follows guidelines currently being used by DWR and therefore, DWR determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget.

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

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule provides guidelines and restrictions for the acquiring and disposing of DWR's lands. Therefore, these amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule sets the guidelines and restrictions for acquiring and disposing of DWR's lands. DWR determines that there are no additional compliance costs associated with this amendment.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Staci Coons at the above address, by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 11/14/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2008

AUTHORIZED BY: James F Karpowitz, Director

**R657. Natural Resources, Wildlife Resources.****R657-61. Valuation of Real Property Interests for Purposes of Acquisition or Disposal.****R657-61-1. Purpose and Authority.**

(1) Pursuant to Utah Code Sections 63-34-21, 23-14-8, and Section 23-21-1, this rule defines the process by which the value of real property is determined for purposes of acquisition or disposal by the Division.

**R657-61-2. Definitions.**

(1) For purposes of this rule:

(a) "Appraisal" means an independent analysis, opinion, or conclusion relating to the nature, quality, value, or utility of specified interests in, or aspects of, an identified parcel of real property, and conducted by a state registered, licensed or certified appraiser.

(b) "Value" means as an opinion on the worth of an identified parcel of real property or interest therein at a specific time and may be comprised of one or more of the following values, as commonly understood within the real estate and appraisal services business communities: assessed value, insurable value, use value, investment value, going-concern value, business enterprise value, market value, and public interest value.

**R657-61-3. Obtaining an Opinion of Value.**

(1) When purchasing or disposing real property interests, the Division shall obtain a written opinion on the value of the property interest in the form of either an appraisal or a real estate broker's estimate of value.

(a) The division will keep and maintain the written opinion of value in its real property acquisition and disposal files.

(2) An appraisal or real estate broker's estimate of value is not required under the following circumstances:

(a) The market value of the subject property interest is less than One-Hundred Thousand Dollars (\$100,000), as estimated by the Division;

(b) The asking price for the property interest is considerably below prevailing market conditions, as estimated by the Division;

(c) The asking price for the property interest is reasonable based upon prevailing market conditions, but the Division will lose the opportunity to purchase the property if time is taken to conduct an appraisal or acquire a real estate broker's estimate of value prior to making an offer;

(d) An appraisal has been conducted on the subject property interest within the past twelve months;

(e) The real property interest is a gift, contribution, or donation to the division; or

(f) The real property interest is a right-of-way, lease, or other less-than-fee interest that is not perpetual.

(2) A written opinion of value may be rendered by:

(a) a state registered, licensed, or certified appraiser conducting an appraisal for the Division; or

(b) a real estate broker or sales agent rendering an opinion of value in accordance with Utah Code Section 61-2b-3(2).

(3) When values other than market value are considered in addition to or in place of an appraisal rendered by a state registered, licensed, or certified appraiser; or are considered in addition to, or in place of, an opinion of value rendered by a real estate broker or sales agent acting in accordance with Utah Code Section 61-2b-3(2); the Division shall create and keep a memo-to-file describing:

(a) the Division's consideration of said value(s);

(b) the Division's rationale in said consideration relative to the proposed price and other terms of the purchase, sale, or exchange; and

(c) the acquisition or disposal decision made by the Division.

**R657-61-4. Congruency in Value.**

(1) Based on the written opinion of value, the Division shall consider and weigh the various economic and social values associated with the real property in an effort to maintain a level of congruency between the compensation for the property and its values.

**KEY: wildlife, land sales, property values**

**Date of Enactment or Last Substantive Amendment: 2008**

**Authorizing, and Implemented or Interpreted Law: 23-21-1**



Public Safety, Highway Patrol  
**R714-158**  
 Vehicle Safety Inspection Program  
 Requirements

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 31987

FILED: 10/01/2008, 13:50

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to update the rule to meet further on-line program updates and spell out some specifics on already existing requirements.

SUMMARY OF THE RULE OR CHANGE: These amendments lay out the new ATV requirements that apply to ATV stations. In addition, they spell out some information for the stations where some confusion has been seen.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53-8-204(5)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no cost because the changes are simply clarifying some existing requirements and adding the details of the new ATV inspection process.

❖ LOCAL GOVERNMENTS: There will be no cost to local government because the changes are simply clarifying some of the already existing requirements and adding the details of the new ATV inspection process.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There will be no cost to small businesses because the changes are simply clarifying some of the already existing requirements and adding the details of the new ATV inspection process.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no cost because the changes are simply clarifying some of the



already existing requirements and adding the details of the new ATV inspection process.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendments will have no significant fiscal impact on businesses and are designed to clarify prior requirements. In addition, there will be new requirements dealing with ATV's, which will have a positive impact on businesses by expanding new business operations. Scott Duncan, Commissioner

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

PUBLIC SAFETY  
HIGHWAY PATROL  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY UT 84119-5994, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Joseph Vasquez at the above address, by phone at 801-965-4889, by FAX at 801-322-1817, or by Internet E-mail at jvasquez@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 11/14/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2008

AUTHORIZED BY: Lance Davenport, Superintendent

#### **R714. Public Safety, Highway Patrol.**

#### **R714-158. Vehicle Safety Inspection Program Requirements.**

##### **R714-158-3. Definitions.**

As used in this rule:

(1) "Agency Action" means a written warning, suspension or revocation applied against~~of~~ a certification or license.

(2) "Certificate" means the certificate of inspection given when a vehicle fails or meets the requirements of the inspection program.

(3) "Certification" means the authority given to an inspector by the department to conduct safety inspections.

(4) "Commercial motor vehicle" means any vehicle, machine, tractor, trailer or semi-trailer, propelled or drawn by mechanized power upon the highway in transportation of passengers or property, or any combination thereof. It does not include implements of husbandry.

(5) "Department" means the Utah Department of Public Safety.

(6) "Fleet station" means a station licensed by the department and capable of conducting safety inspections of commercial motor vehicles, provided the fleet owns a minimum of twenty-five vehicles.

(7) "Inspector" means a person employed by a station licensed to conduct safety inspections.

(8) "License" means the authority given to a station by the department to conduct safety inspections.

(9) "Notice of agency action" means a written notice that the department intends to suspend or revoke a certification or license.

(10) "Re-inspection" means an inspection of previously rejected items that is completed within fifteen days of the original inspection.

An inspection that is completed outside of the fifteen days is considered a new inspection, which all vehicle components are required to be inspected.

(1~~0~~)1) "Station" means a business, including public garages, service stations, and repair shops licensed by the department to conduct safety inspections.

(1~~1~~)2) "Sticker" means the sticker intended to be placed on the windshield or side wing window of a vehicle which has met the requirements of the inspection program. On trailers they should be placed on either of the two front corners where they can easily be seen.

(1~~2~~)3) "Utah Interactive (UI)" means the company that has contracted with the State Of Utah for the setup and facilitation of the web-based inspection program.

##### **R714-158-4. Station License.**

A. Application for a license as a station can be made on forms provided by the department's Safety Inspection Section, 5500 West Amelia Earhart Drive, Suite 360, Salt Lake City, Utah 84116.

(1) A \$1,000 surety bond or garage keepers insurance is required for all stations except fleet stations and publicly owned stations.

(2) A \$100 station application fee is required.

(3) A \$25 annual license fee is required for all stations except publicly owned stations.

(4) A \$100 fee is required to renew a license that has been suspended or revoked.

(5) A \$100 fee is required for a station name and/or address change.

B. Upon receiving an application for a license, the department will assign an investigator to inspect the place of business to determine if the applicant meets the requirements of this rule. This includes that the application is filled out completely and in addition to providing a list of all the station's certified inspectors.

C. An applicant for a license shall meet the building and equipment requirements set forth in the "Vehicle Inspection Manual" prior to approval and throughout their certification.

D. Upon approval, the license will be issued to the applicant and shall be displayed in a prominent location at the address shown on the license.

E. Licenses are not transferable. A change in the ownership, name, or location of a station requires a new application, bond, and license.

~~[F. The \$1,000 surety bond will be forfeited in the event a station fails to observe the provisions of Section R714-158-5 of this rule.~~

~~—G]E.~~ All new stations upon making application will be required to enroll in the web-based inspection program through Utah Interactive. All of the station's inspections will have to be completed on-line.

~~[H]G.~~ An agency action against a station using only paper certificates will require, after reinstatement, that the station's inspections be conducted on the on-line program.

##### **R714-158-5. Inspector Certification.**

A. An applicant for certification as an inspector shall:

(1) obtain training in accordance with the requirements of Section R714-158-6 of this rule;

(2) pay a \$10 non-refundable processing fee;

(3) be at least eighteen years of age; and

(4) have a valid drivers license.

B. Certification is valid for five years and expires on the month, day, and year shown on the certificate.

C. Certification can be renewed up to ~~six~~two months before the expiration date.

(1) A \$100 fee is required to process a return to the safety inspection program in the event of a suspension or revocation of certification.

D. A \$20 fee is required to replace a lost/missing inspector certification card.

#### **R714-158-6. Inspector Training and Testing.**

A. Inspector applicants shall obtain training, reference materials, and instructions from the department prior to certification.

B. The department may contract with educational institutions to provide training, re-training, or testing.

(1) Every educational institution will be required to have the same tools that each station is required to have for each individual vehicle type that they will be instructing.

C. An inspector seeking re-certification of his/her safety inspection authority shall do one of the following options:

(1) Option #1- Participate in the full 16 hour Safety Inspection Training Course and pass the final test.

(2) Option #2- Participate in either an on-line, or "CD" formatted recertification training program, and pass the quizzes.

D. An inspector whose certification has expired for more than one (1) year is required to re-take the 16 hour certification.

E. Every student that takes the 16 hour certification course, is required to attend all sixteen hours of the course, regardless of what vehicle type they are applying for. If they miss any portion of the course, they will be required to make up that missed portion before being allowed to take the certification test.

F. If an educational institute offers a motorcycle only course, then the student must attend the entire portion of that course that is covered under the curriculum set forth by the department before being allowed to take the certification test.

#### **R714-158-7. General Safety Inspection Program Requirements.**

A. Inspections shall be conducted honestly and thoroughly. Any attempt to coerce customers, or to sell unneeded parts or repairs is prohibited.

(1) Repairs or adjustments may not be made to a vehicle without prior approval of the customer.

(a) Any part that is replaced as a result of an inspection must be returned to the customer.

(b) If a part cannot be returned, it must be shown to the customer.

(c) The customer is under no obligation to have a vehicle repaired at the station. Repairs may be made at any business selected by the customer.

(2) A current set of inspection records, including the plate brake test records, shall be retained at each station or record keeping office.

(a) The records shall be retained for a minimum of twelve months.

(b) When requested, records shall be made available for inspection by the department.

(3) Reports required by the department shall be submitted to the department prior to every third order of inspection supplies.

(a) Reports submitted to the department shall be legible and in sequence.

(b) Certificates and stickers shall be filled out ~~[on both sides]~~ completely to include the name and address of the registered owner. They must be completed on the same date that the vehicle inspection was conducted.

(4) Each station in the safety inspection program shall maintain an adequate supply of certificates, stickers, and other inspection supplies.

(a) Certificates, stickers, and other inspection supplies shall be safeguarded against loss or theft.

(b) Missing or stolen certificates or stickers shall be immediately reported to the department.

(5) No certificate or sticker shall be issued without making a proper inspection, or issued to any vehicle that does not meet safety inspection requirements.

(6) An inspector may conduct inspections, print certificates, issue certificates, and attach stickers to vehicles only at the location designated on the license.

(7) Inspectors will not be added to a station on the Admin Console, without a member of the station's management first contacting our office. This management contact may be done in person, by phone or on a station's letterhead with an official signature.

~~(7)~~ (8) Certificates, stickers, or other inspection supplies, may not be sold or transferred from one station to another.

~~(8)~~ (9) Each station must be open for a least eight ~~[consecutive]~~ hours during the normal business day. Stations may close on holidays, Saturdays and Sundays.

(a) At least one inspector must be on duty at each station during business hours.

#### **R714-158-9. Certificates, Stickers, and Inspection Reports.**

A. Paper Certificates ~~[(HP-SI-29)]~~ will be issued in books of twenty-five for ATV's and fifty for Passenger/Light Truck.

(1) A maximum of ten books of certificates and twenty books of stickers may be purchased on one order.

(2) Each on-line station may be allowed to purchase a maximum of two books of certificates that are only to be used as a backup to the on-line program when the system is down.

~~(2)~~ (3) All orders shall be paid by check, except as authorized by the department.

~~(3)~~ (4) Unused certificates or stickers, if less than two years old and in quantities of ten or more, may be returned to the department for reimbursement or exchange.

~~(4)~~ (5) Returned certificates and stickers must be in the original book and sequence.

~~(5)~~ (6) Utah Interactive is responsible for billing the on-line stations for all completed on-line certificates each month.

~~(6)~~ (7) Each on-line station shall submit a full payment for each monthly bill received from UI.

~~(7) Each on-line station may purchase a maximum of two books of certificates, to be only used as a backup to the on-line program.~~ (8) Entering a safety inspection certificate number into an outside agency computer system for the purpose of printing a certificate is prohibited.

(9) All 'ATV' inspections shall be conducted on a department approved ATV paper certificate, or on the on-line program under the 'ATV' vehicle type.

B. Certificates, stickers, and inspection reports, shall be completed and issued as set forth in the "Vehicle Inspection Manual."

#### **R714-158-11. Grounds for Denial, Suspension, or Revocation of License or Certification.**

A license or certification may be denied, suspended, or revoked for either of the following reasons:

(1) violation of state laws or rules applicable to vehicle inspections.

(2) conviction of any crime involving moral turpitude.

(3) Providing any false information on a station or inspector application.

(3)4 A station that transfers ownership while serving a suspension/revocation period, shall serve the full period of the suspension/revocation before reinstatement of certification or approval as a new inspection station will be made.

(4)5 An on-line station that is more than 60 days delinquent on their balance with Utah Interactive, ~~will be suspended~~ may have an agency action filed against them until their full payment is received by Utah Interactive.

**KEY: motor vehicle safety, inspections**

**Date of Enactment or Last Substantive Amendment:** ~~December 28, 2007~~ 2008

**Notice of Continuation:** November 6, 2007

**Authorizing, and Implemented or Interpreted Law:** 53-8-201; 53-8-203; 63G-4~~6b~~



## Public Safety, Highway Patrol R714-200 Standards for Vehicle Lights and Illuminating Devices

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 31989

FILED: 10/01/2008, 13:59

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the five-year review process, some incorrect statutory citations were discovered. The amendment also includes the process of submitting equipment approval.

SUMMARY OF THE RULE OR CHANGE: This filing corrects statutory citations, which include the wording now contained in the statute. In addition, the simple process that citizens must follow for requesting after market equipment approval has been added.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53-8-204(5)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no cost to the state budget, as the changes are simply adding in a process and correcting statutory citations.

❖ LOCAL GOVERNMENTS: There will be no cost to local government, as the changes are simply adding in a process and correcting statutory citations.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There will be no cost to small businesses, as the changes are simply adding in a process and correcting statutory citations.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no cost, as the changes are simply adding in a process and correcting statutory citations.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses. Scott Duncan, Commissioner

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

PUBLIC SAFETY  
HIGHWAY PATROL  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY UT 84119-5994, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Joseph Vasquez at the above address, by phone at 801-965-4889, by FAX at 801-322-1817, or by Internet E-mail at jvasquez@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 11/14/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2008

AUTHORIZED BY: Lance Davenport, Superintendent

### **R714. Public Safety, Highway Patrol.**

#### **R714-200. Standards for Vehicle Lights and Illuminating Devices.**

##### **R714-200-1. Purpose.**

Section 41-6a-~~142~~1620 requires that the Department [to adopt standards] shall approve or disapprove any [for vehicle ]light[s]ing [and illuminating-]device[s-] or other safety equipment, component or assembly of a type for which approval is specifically required.[to ensure that they meet certain specifications and that they are installed and function consistently with the requirements of other states and with regulations of the United States Department of Transportation. The purpose of this rule is to adopt such standards.] The standards shall conform as nearly as practical to Federal Motor Vehicle Safety Standards and Regulations.

##### **R714-200-2. Authority.**

This rule is authorized by Sections 41-6a-1~~47~~601 and 41-6a-1~~42~~620, and Subsection 53-1-106(1)(a).

##### **R714-200-4. Miscellaneous Light Restrictions.**

A. Alternately flashing lights described in Sections 41-6a-1~~32~~616 and 41-6a-1~~40-10~~302 may not be used on any vehicle other than a school bus or authorized emergency vehicle.

B. No vehicle, except an authorized emergency vehicle, may use rotating lights as described in Subsection 41-6a-1~~32(e)~~616(4).

C. No vehicle, except a police vehicle, may use rotating blue lights or flashing blue lights as described in Section 41-6a-1~~32~~616.

##### **R714-200-5. Process of Requesting Equipment Approval.**

A. Upon receiving a written request, the Department shall review the equipment to ensure that it meets Federal Motor Vehicle Safety Standards.

B. After reviewing the equipment, the Department shall issue a written response, explaining the reason for approval or denial of the requested equipment.

**KEY: lights, motor vehicle safety**

**Date of Enactment or Last Substantive Amendment:** ~~May 5, 1998~~ **2008**

**Notice of Continuation:** November 6, 2007

**Authorizing, and Implemented or Interpreted Law:** 41-6-117; 41-6-142; 53-1-106(1)(a)

## Public Safety, Highway Patrol

# R714-240

## Standards and Specifications for Child Restraint Devices and Safety Belts

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 31988

FILED: 10/01/2008, 13:55

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the five-year review process, some incorrect statutory citations were discovered.

SUMMARY OF THE RULE OR CHANGE: This filing corrects statutory citations, which include the wording now contained in the statute.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53-8-204(5)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 49 CFR 571.213 (2006 edition)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no cost to the state budget because the changes are simply correcting statutory citations.

❖ LOCAL GOVERNMENTS: There will be no cost to the local government because the changes are simply correcting statutory citations.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There will be no cost to the small businesses because the changes are simply correcting statutory citations.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no cost because the changes are simply correcting statutory citations.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses. Scott Duncan, Commissioner

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

PUBLIC SAFETY  
HIGHWAY PATROL  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY UT 84119-5994, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Joseph Vasquez at the above address, by phone at 801-965-4889, by FAX at 801-322-1817, or by Internet E-mail at jvasquez@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 11/14/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2008

AUTHORIZED BY: Lance Davenport, Superintendent

### R714. Public Safety, Highway Patrol.

#### R714-240. Standards and Specifications for Child Restraint Devices and Safety Belts.

##### R714-240-1. Purpose.

Subsection ~~41-6-148.20(2)~~ states that a driver transporting a child in a motor vehicle shall provide for the protection of that child by using a child restraint device or safety belt approved by the commissioner of public safety. ~~41-6a-1803(1)(b)(c)~~ states that the operator of a motor vehicle operated on a highway shall provide for the protection of each person younger than five years of age by using a child restraint device to restrain each person in the manner prescribed by the manufacturer of the device and provide for the protection of each person five years of age up to 16 years of age by using an appropriate child restraint device to restrain each person in the manner prescribed by the manufacturer of the device or securing, or causing to be secured, a properly adjusted and fastened safety belt. The purpose of this rule is to adopt the standards and specifications that a child restraint device and safety belt must meet in order to be approved by the commissioner of public safety.

##### R714-240-2. Authority.

This rule is authorized by Subsection ~~41-6-148.20(2)~~ ~~53-1-106(1)(a)~~.

##### R714-240-3. Federal Standards and Specifications Adopted and Incorporated by Reference.

The type of child restraint device and safety belt approved by the commissioner of public safety for use in Utah is a child restraint device and safety belt which meet the standards and specifications set forth in 49 CFR 571.213 (~~1999~~ **2006** edition). The standards and specifications in such federal regulation are adopted for use in Utah and such federal regulation is incorporated into this rule by this reference.

**KEY: seat belts, motor vehicle safety**

**Date of Enactment or Last Substantive Amendment:** ~~May 5, 1998~~ **2008**

**Notice of Continuation: November 27, 2007**

**Authorizing, and Implemented or Interpreted Law: 41-6a-  
[48.20(2)]1803(1)(b)(c)**

◆ ————— ◆

**Public Safety, Peace Officer Standards  
and Training  
R728-503**

**Utah Minimum Standards for All  
Emergency Pursuit Policies to be  
Adopted by Public Agencies that  
Operate Authorized Emergency Pursuit  
Vehicles**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 31990

FILED: 10/01/2008, 16:03

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to comply with Subsection 41-6a-212(5) that requires the Department of Public Safety to provide minimum standards for all emergency vehicle pursuits.

**SUMMARY OF THE RULE OR CHANGE:** The rule outlines the minimum standards for a emergency vehicle pursuit. The rule defines pursuits and provides a policy that may be adopted by agencies.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 41-6a-212(5)

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** The initiation of this rule will not fiscally impact the state budget because the state already has a pursuit policy in place that does not conflict with this minimum policy.

❖ **LOCAL GOVERNMENTS:** The initiation of this rule will not fiscally impact local governments because local governments that do not have a policy may adopt this policy as a standard for their department. Agencies also have the option of having a more stringent standard than this minimum policy.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** There will not be a fiscal impact on small businesses. This rule is geared toward minimum standards for law enforcement agencies. Small businesses and other persons will not be affected by the initiation of this rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This rule provides a minimum policy for pursuits for law enforcement agencies; if an agency does not have a policy, this rule may be adopted as the policy. Agencies that have stricter standards may keep those standards. Agencies that have more lenient standards will need to adopt portions or all of this rule to comply.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There would be no fiscal impact to the Department of Public Safety or other governmental agencies and businesses with the new administrative rule for minimum emergency vehicle pursuit policy. Scott Duncan, Commissioner

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

PUBLIC SAFETY  
PEACE OFFICER STANDARDS AND TRAINING  
410 W 9800 S  
SANDY UT 84070, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Steve Winward at the above address, by phone at 801-256-2326, by FAX at 801-256-0600, or by Internet E-mail at swinward@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 11/17/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 11/25/2008

AUTHORIZED BY: Scott T Duncan, Commissioner

**R728. Public Safety, Peace Officers Standards and Training. R728-503. Utah Minimum Standards for All Emergency Pursuit Policies to be Adopted by Public Agencies that Operate Authorized Emergency Pursuit Vehicles.**

**R728-503-1. Authority.**

(1) This rule establishes minimum standards for all emergency pursuit policies to be adopted by public agencies authorized to operate authorized emergency pursuit vehicles.

(2) This rule is authorized by Subsection 41-6a-212(5).

**R728-503-2. Definitions.**

(1) Terms in this rule are defined in Section 41-6a-102.

(2) In addition:

(a) "agency emergency pursuit policy" means the written principles by which a Utah individual public agency that operates authorized emergency pursuit vehicles is guided in the management of its affairs concerning whether to, and how to, engage and disengage in the pursuit of a suspect by vehicle.

(b) "authorized emergency pursuit vehicle" means law enforcement vehicle, either marked or unmarked, properly equipped with audible sirens and visual lights owned and operated by a public agency.

(c) "back-up unit" means each authorized emergency pursuit vehicle assisting the primary unit.

(d) "balance test" means that a law enforcement officer shall act as a reasonably prudent emergency vehicle operator in like circumstances while making an ongoing decision process to analyze the risk of initiating, continuing, and terminating pursuit given the following considerations:

(i) the need to apprehend a fugitive who presents a danger to others because the serious and violent nature of the crime for which the fugitive is sought or because the fugitive's driving presents a threat to the public safety that may outweigh the risks that a pursuit poses to others; and

(ii) the need to avoid pursuit if the threat of public or officer safety is greater than the need for immediately apprehending the suspect.

(e) "boxing-in" means a technique designed to stop a violator's vehicle by surrounding it with authorized emergency pursuit vehicles and then slowing all vehicles to a stop.

(f) "channelization" means a technique where objects are placed in the anticipated or actual path of a pursued vehicle which tend to alter the vehicle's intended direction of travel.

(g) "intervention techniques" means specific operational tactics including immobilization, channelization, ramming, boxing-in, roadblock procedures, tire deflation devices (spike strips, etc.) which are intended to disable fleeing vehicles or otherwise prevent further flight or escape.

(h) "paralleling" means participating in the pursuit by proceeding in the same direction and maintaining approximately the same speed while traveling on an alternate street or highway that parallels the pursuit route.

(i) "primary unit" means the authorized emergency pursuit vehicle that initiates a pursuit or assumes control of the pursuit as the lead vehicle or the first authorized emergency pursuit vehicle immediately behind the fleeing suspect.

(j) "supervisor" means a law enforcement officer who, by virtue of rank or assignment, is responsible for the direction or supervision of the activities of other law enforcement officers.

#### **R728-503-3. Purpose.**

(1)(a) The purpose of this rule is to provide minimum standards, below which, the individualized law enforcement agency emergency pursuit policy may not legally go.

(b) It is not the intent nor legal purpose of these minimum standards to be exhaustive or all inclusive on this subject.

(2) As law enforcement officers consider the balance test, these minimum standards assist in training as well as providing a threshold for the law enforcement officer while analyzing the balance test in actual field situations.

(3)(a) The department establishes these minimum standards to assist each agency develop its own agency emergency pursuit policy.

(b) While implementing and revising an agency emergency pursuit policy, each agency shall use these minimum standards as a starting point and then individualize its agency emergency pursuit policy as needed.

#### **R728-503-4. Initiating Pursuit Policy.**

(1) Each law enforcement officer shall consider the balance test prior to engaging in an emergency vehicle pursuit.

(2) Each law enforcement officer in an authorized emergency pursuit vehicle may initiate a vehicular pursuit when the suspect exhibits the intention to avoid apprehension by refusing to stop when properly directed to do so.

(3) In deciding whether to initiate pursuit, the law enforcement officer may take into consideration:

(a) road, weather, and environmental conditions;

(b) population density and vehicular and pedestrian traffic;

(c) the relative performance capabilities of the pursuit vehicle and driver and the suspect vehicle being pursued;

(d) the seriousness of the offense;

(e) likelihood of pursuit resulting in apprehension;

(f) familiarity with the area and road; and

(g) any other pertinent factors.

#### **R728-503-5. Pursuit Operations Policy.**

(1) When initiating pursuit, each authorized emergency pursuit vehicle shall activate appropriate warning equipment including an audible signal or visual signal visible to the front of the pursuing vehicle.

(2) When initiating pursuit and when reasonably possible during the pursuit the law enforcement officer shall notify communications of:

(a) the location, direction, and speed of the pursuit;

(b) the description of the pursued vehicle including suspects and occupants; and

(c) the reason for the pursuit.

(3) When reasonably possible the law enforcement officer shall keep communications updated on the pursuit.

(4) When reasonably possible, communications personnel shall:

(a) notify any available agency supervisor of the pursuit;

(b) clear the radio channel of non-emergency traffic; and

(c) relay necessary information to other law enforcement officers and jurisdictions.

(5) When reasonably possible, units and supervisors involved in the pursuit shall use a single statewide or regional radio channel that communications may restrict to pursuit communications.

(6) Unless circumstances dictate otherwise, a pursuit shall consist of no more than two police vehicles, a primary and a back-up unit. All other personnel shall stay clear of the pursuit unless instructed to participate by a supervisor. No unit shall pass another unit involved in the pursuit unless specifically requested to do so or it is otherwise considered necessary.

(7) The primary unit shall become back-up when the pursued vehicle comes under air surveillance, if available, or when another unit is assigned primary responsibility.

#### **R728-503-6. Supervisory Responsibilities.**

(1) As with any critical law enforcement incident, it may not be necessary for the supervisor to be present in order to begin exercising management and control of the pursuit.

(2) When reasonably possible, the supervisor shall not actually be engaged in the pursuit itself.

(3) Each supervisor shall consider the balance test prior to authorizing the pursuit or its continuance.

(4) When reasonably possible each supervisor shall:

(a) monitor incoming information;

(b) coordinate and direct activities;

(c) appropriately limit the number of pursuing units; and

(d) ensure notification of law enforcement agencies into whose jurisdiction the pursuit is likely to enter.

(5) A supervisor shall have the discretion to terminate the pursuit.

**R728-503-7. Pursuit Tactics.**

(1) When reasonably possible, authorized emergency pursuit vehicles having the most prominent markings and emergency lights shall be used to pursue, particularly as the primary unit. When a pursuit is initiated by an unmarked patrol unit, such unit shall relinquish the pursuit to a marked patrol unit as soon as practical.

(2) Intervention techniques shall be used only when it is possible to do so safely and when the law enforcement officers using them have received training in their use.

(3) There shall be no paralleling the pursuit route.

(4) Motorcycles may be used for pursuit in exigent circumstances and when weather and related conditions allow. They shall relinquish the pursuit to a marked patrol unit as soon as practical.

(5) Roadblocks may not be used unless the circumstances would warrant the use of deadly force.

(a) When reasonably possible, roadblocks shall only be created with a supervisor's approval.

(b) When a roadblock is created, law enforcement officers shall:

(i) allow for reasonable stopping distance;

(ii) place the roadblock in a position that is reasonably visible;

(iii) reasonably ensure the safety of non-involved pedestrians and motorists; and

(iv) not place themselves or their vehicle in a position to jeopardize their own safety.

(6) Decisions to discharge firearms at or from a moving vehicle shall be governed by the law enforcement agency's use of force policy and are prohibited when they present an unreasonable risk to others. These decisions shall first be authorized when reasonably possible by a supervisor.

(7) When the pursued vehicle is stopped, law enforcement officers shall use appropriate officer safety tactics and shall be aware of the necessity to utilize only reasonable and necessary force to take suspects into custody.

**R728-503-8. Interjurisdictional Pursuits.**

(1) Chapter 77-9, the Uniform Act on Fresh Pursuit, governs Rule R728-503-8 as applicable.

(2) The primary unit shall notify communications when it is likely that a pursuit will continue into a neighboring jurisdiction or across the county or state line.

(3) When possible, the supervisor shall authorize inter-jurisdictional pursuit.

(4) When a pursuit enters another jurisdiction, the action of law enforcement officers shall be governed by the policy of the law enforcement officers' own agency, specific inter-local agreements and state law as applicable.

(5) Pursuit into a bordering state shall comply with the law of both states and any applicable inter-jurisdictional agreements.

**R728-503-9. Termination of Pursuit.**

(1) The supervisor or the primary unit in absence of a supervisor shall continually re-evaluate the balance test to assess the pursuit situation.

(a) The supervisor may order the termination of a pursuit at any time.

(b) The primary unit may terminate the pursuit at any time.

(2) A pursuit may be terminated under the following conditions:

(a) the suspect's identity has been determined and future apprehension is likely;

(b) air support is available to track the suspect;

(c) weather or traffic conditions substantially increase the danger of the pursuit beyond the necessity of apprehending the suspect;

(d) the distance between the suspect and pursuing vehicles makes further pursuit futile;

(e) immediate apprehension is not necessary to protect the public or law enforcement officers;

(f) the law enforcement officer is unfamiliar with the area and is unable to accurately communicate location and direction of pursuit; and

(g) the pursuit proceeds the wrong way on a limited access road, for example an interstate highway.

(3) Termination of pursuit shall include deactivating the audible siren and visual light equipment, pulling the vehicle to the side of the road, and stopping.

**R728-503-10. Training.**

(1) Law enforcement officers who drive emergency authorized pursuit vehicles shall receive initial minimum tactical pursuit training and initial training defined in Rule R728-503.

(2) Pursuit training shall include details concerning the balance test and its application as to initiating and terminating pursuits.

(3) Ongoing annual policy and procedure and case law review shall be required for law enforcement officers to assure they are knowledgeable with their own individual agencies emergency pursuit policy.

**KEY: pursuit, emergency vehicles, policy**

**Date of Enactment or Last Substantive Amendment: 2008**

**Authorizing, and Implemented or Interpreted Law: 41-6a-212(5)**



Transportation, Administration  
**R907-64**  
 Longitudinal and Wireless Access to  
 Interstate Highway Rights-of-Way for  
 Installation of Telecommunications  
 Facilities

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 31961

FILED: 09/18/2008, 16:23

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule change is to update the rule to include recent code renumbering and to eliminate redundant language.

SUMMARY OF THE RULE OR CHANGE: The rule change updates the code section and also changes the number of days before negotiation from 5 to 10 days.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 72-1-2-1 and 72-6-116

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: No costs or savings are anticipated with this rule change. No new requirements were created with this rule change that impact the state budget.
- ❖ LOCAL GOVERNMENTS: No costs or savings are anticipated with this rule change that impact local government.
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: No costs or savings are anticipated with this rule change. No new requirements were created with this rule change that impacts small businesses or persons other than businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule was updated to reflect changes in the Utah Code.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact on businesses is anticipated with this rule. John Njord, Executive Director

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

TRANSPORTATION  
ADMINISTRATION  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY UT 84119-5998, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Maureen Short at the above address, by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at maureenshort@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 11/14/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2008

AUTHORIZED BY: John R. Njord, Executive Director

**R907. Transportation, Administration.**

**R907-64. Longitudinal and Wireless Access to Interstate Highway Rights-of-Way for Installation of Telecommunications Facilities.**

**R907-64-5. Limitations and Conditions.**

(1) Longitudinal and wireless access of Telecommunication Facilities shall be permitted only as approved by the Executive Director or designee in accordance with the criteria and procedures set forth in this rule.

(2) Occupancy by longitudinal access or wireless access shall comply with, and produce no significant compromise of, the following factors:

- (a) highway safety requirements of federal and state law;
- (b) written policy and agreements adopted by the Department;
- (c) safe use of highways in the Interstate System by the traveling public;

(d) prudent use and management of the Interstate System and its rights-of-way;

- (e) highway design;
- (f) highway construction;
- (g) highway operational and/or technical capacity;
- (h) highway maintenance or stability;
- (i) future expansion of the Interstate System;
- (j) physical environmental features; and
- (k) physical capacity of the right-of-way to accommodate longitudinal access.

(3) In the interest of safety and preservation of the highway facility and pavement structure, the placement, installation, maintenance, repair, use, operation, replacement and removal of Telecommunications Facilities with longitudinal access or wireless access to the Right-of-way of the Interstate System shall be accommodated only when in compliance with the "MANUAL FOR ACCOMMODATION OF UTILITIES AND THE CONTROL AND PROTECTION OF STATE HIGHWAY RIGHTS OF WAY," as adopted by rule (Rule 930-6), and with 23 CFR 645 (1997), Subpart B, "Accommodation of Utilities."

(a) The location of all Telecommunication Facilities, whether above ground or below ground installations, including towers, pedestals, poles and boxes, within the highway right-of-way of the Interstate System shall be as set forth in the permit and/or the negotiated agreement between the Telecommunications Facility Provider and the Department. Telecommunications Facilities shall avoid: (a) use of through traffic roadways, lanes and ramps for construction, inspection, testing or maintenance activities; (b) placement of facilities within the median strip; (c) placement of facilities in a non-uniform alignment; (d) placement of facilities in places other than at or adjacent to the Right-of-way line and beyond the recovery or clear zone area; or (e) placement of facilities within the clear zone of through-traffic roadways, lanes or ramps. The Executive Director or designee is authorized to grant variances from the Manual and guidelines on a case-by-case basis. Variances will not be granted if, in the opinion of the Executive Director or designee, they create unacceptable risks ~~or~~ significant compromise of any factor listed in Subsection R907-64-5(2) of this rule.

(4) The Department may consider financial and technical qualifications of telecommunication facility providers, and specify insurance requirements for contractors authorized to enter Interstate System rights-of-way to construct, install, inspect, test, maintain or repair Telecommunication Facilities with longitudinal access or wireless access. During each period that the Department authorizes longitudinal access or wireless access for construction and installation, the Department may require approved Telecommunication Facility Providers to install Telecommunication Facilities into the same general location on the Interstate System; coordinate their planning and work; install in a joint trench; and equitably share costs.

(5) The Department shall manage and administer access to rights-of-way of the Interstate System in compliance with 47 U.S.C. 253 [(4999)]2005.

**R907-64-6. Compensation.**

(1) The Department shall require compensation from a Telecommunication Facility Provider under the provisions of Section 72-7-108 for longitudinal access or other use within the Right-of-way of the Interstate System consistent with the rate schedule adopted by the Department through rulemaking.



(2) Until the rate schedule has been formally adopted pursuant to Title [63]63G, Chapter [46a]3, Utah Administrative Rulemaking Act, all agreements are subject to modification to comply with the rate schedule.

#### **R907-64-7. Permits and Agreements.**

(1) In accordance with 23 CFR 645 [(4997)](2005), subpart B, "Accommodations of Utilities," the Utah Code Section 72-6-116 "Regulation of Utilities-Relocation of Utilities," and Rule R930-6, which is described in the Department's "Manual for Accommodation of Utilities and the Control and Protection of State Highway Rights of Way," a Telecommunication Facility Provider shall be required to complete and sign an agreement with the Department prior to obtaining a permit for construction or installation of Telecommunication Facilities in the Right-of-way. Based on the statements of interest, if any, received by the Department in response to its advertisements of intent to consider opening highway segments in the Interstate System for construction and installation of Telecommunication Facilities, as provided for in Subsections R907-64-8(3) and (4) of this rule, the Department shall determine within 30 days of the deadline for the receipt of such statements of interest, whether to open such segments for such use. If the Department decides to open such segments of the Interstate System for construction and installation of Telecommunication Facilities, it shall notify each Telecommunication Facility Provider which filed a statement of interest of such decision in writing and direct them to file with the Office of the Deputy Director an application, as modified by the Department from time to time, for a permit for longitudinal access or wireless access on rights-of-way in the Interstate System. The Department shall also specify the deadline for the filing of such permit applications.

(2) The Department will review each permit application within 30 working days following receipt thereof, in accordance with the criteria set forth in this rule. The review process will begin only when the Telecommunication Facility Provider(s) submits a complete permit application, including all documentation, as required in the "Manual for Accommodation of Utilities and the Control and Protection of State Highway Rights-of-Way," Rule R930-6. No later than the end of the 30 working day review period, the Department will either: (a) issue to the Telecommunications Facility Provider a written notice that the permit application is accepted for the negotiation of an agreement for the construction and installation of Telecommunication Facilities in the right-of-way segment, or (b) issue to the Telecommunication Facility Provider a written denial of the permit application, together with the specific reasons why the permit application was not approved, based on the criteria set forth in this rule. If the Telecommunication Facility Provider's permit application has been accepted for negotiation of an agreement, the Department shall commence such negotiations not later than [five]ten working days after the date of such notice of acceptance and shall proceed in a diligent manner to favorably conclude such negotiations, to execute the Department's standard form agreement with negotiated modifications necessary to accommodate the unique needs of each project, and to issue a permit for the construction and installation of Telecommunication Facilities in the right-of-way segment.

(3) Each agreement and permit shall comply with the contracting requirements listed or incorporated herein and authorize longitudinal access or wireless access only for the shorter of: (a) the time period requested by the Telecommunications Facility Provider, or (b) 30 years. [~~Telecommunication Facility Providers shall be given every reasonable opportunity to renew any and all agreements and permits following the expiration of the term, provided that new mutually~~

~~acceptable agreements are entered into between the Department and the Telecommunication Facility Providers.]~~

(4) No permit shall be issued prior to an agreement having been reached between the Department and Telecommunication Facility Providers. Failure of the parties to reach agreement shall cause longitudinal access to be denied and no permit shall be issued.

#### **R907-64-8. Limited, Periodic Opportunities for Installation for Longitudinal Access.**

(1) In order to minimize adverse impacts to rights-of-way and related highway facilities and pavement structures within the Interstate System and to avoid significant compromise of the safe, efficient and convenient use of the Interstate System for the traveling public, advertising for longitudinal access for constructing and installing Telecommunication Facilities in any particular segment of such Rights-of-Way shall be limited in frequency to once every 18 months, except that the Executive Director or designee may permit construction and installation of Telecommunications Facilities with longitudinal access more frequently than once every 18 months, based on factors in Section 64-5(2) of this rule.

(2) the 18 month period shall begin on the date of the Department's formal notice of intent to open access to any highway segment in the Interstate System which has been noticed.

(3) When exercising the discretion to permit construction and installation of Telecommunications Facilities with longitudinal access to the Interstate System, the Executive Director or his or her designee shall consider all factors relevant to the Department's policy with respect to utility accommodations as expressed in this rule, including the safe, effective, efficient use of highways in the Interstate System by the traveling public, impacts on the Interstate System's operational capacity, and prudent economic management of the Interstate System. The Department may perform capacity surveys of the Interstate System rights-of-way to assure that longitudinal access is feasible prior to opening any segment of the Interstate System to longitudinal access for new or additional Telecommunication Facilities.

(4) The Department will advertise intent to consider opening highway segments in the Interstate System to provide opportunities for constructing and installing Telecommunications Facilities for longitudinal access and wireless access, by one or more of the following means; provided, however, that Telecommunication Facility Providers who have been granted a certificate of convenience and necessity by the Public Service Commission of Utah shall be given actual notice by mail:

(a) Publication of the intent notice for not less than five consecutive days in a newspaper of national circulation;

(b) Publication of the intent notice for not less than five consecutive days in a newspaper of statewide circulation;

(c) Publication of notices of the intent in the calendar or other regular publications of the Department and/or those of other state agencies or Departments; or

(d) Press or news releases from the Department to newspapers, magazines, periodicals, or telecommunications industry publications.

(5) Advertisements and notices of intent to consider opening highway segments for constructing and installing Telecommunications Facilities in Interstate System highway rights-of-way whether for longitudinal access or wireless access, shall contain all of the following:

(a) A description of the segment or segments of the Interstate System for which longitudinal access for the installation and construction of Telecommunications Facilities are proposed;

(b) A deadline that is not less than 30 days from the first date of publication or release of an advertisement or notice of intent to consider

opening, as described above in Subsection (3), for the filing of statements of interest with the office of the Deputy Director by Telecommunications Facility Providers regarding their interest in installing and constructing Telecommunications Facilities in one or more specified highway segments of the Interstate System; and

(c) The required contents of the statements of interest, to be filed in response to the advertisements or notices, shall include the identity of the interested party, the financial and technical qualifications of the interested party, and any other information specified by the Department in the advertisement or notice.

(6) Statements of interest received by the Department shall be processed in accordance with the requirements set forth herein. Based on its review of the statements of interest received, the Department will notify those Telecommunication Providers who submitted statements of interest of its intent to open one or more of the highway segments advertised within 30 days. This notice will include instructions to initiate the permitting process as specified in "Manual for Accommodation of Utilities and the Control and Protection of State Highway Rights-of-Way," (Rule R930-6).

(7) The Department may enter into negotiations with one or more of the interested parties filing Statements of Interest toward the execution of an agreement or agreements and permits required under Section R907-64-7 above. After executing an agreement and permit, each telecommunication facility provider shall file them with the office of ~~the Deputy Director~~ Right of Way.

#### **R907-64-9. Removal and Relocation.**

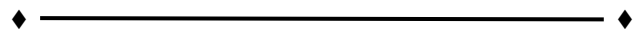
Pursuant to Subsection 72-7-108~~(e)(v);(7)(c)~~ the Department shall require the removal and/or relocation of Telecommunication Facilities located on the Interstate System when highway changes are required to provide for the free and safe flow of traffic at the Telecommunication Facility Provider's expense. If prudent management of the interstate highway rights-of-way demand, The Department may require removal and/or relocation of such Telecommunication Facilities upon expiration or earlier termination of the permit or other agreements at the Telecommunication Facility Provider's expense, in accordance with applicable law.

#### **KEY: right-of-way, interstate highway system**

**Date of Enactment or Last Substantive Amendment:** ~~August 17, 1999~~ 2008

**Notice of Continuation:** January 5, 2004

**Authorizing, and Implemented or Interpreted Law:** 72-1-201; 72-6-116



## Workforce Services, Unemployment Insurance **R994-202** Employing Units

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 31973

FILED: 09/29/2008, 14:17

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This nonsubstantive change is to reflect legislative changes.

**SUMMARY OF THE RULE OR CHANGE:** H.B. 159 in the 2008 General Session changed the provisions regarding Professional Employer Organizations. These proposed amendments are being made to reflect those legislative changes. (DAR NOTE: H.B. 159 (2008) is found at Chapter 318, Laws of Utah 2008, and was effective 05/05/2008.)

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 35A-1-104 and Subsections 35A-1-104(4) and 35A-4-502(1)(b)

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** This is a federally-funded program and there will be no costs or savings to the state budget. There are no changes in this proposed amendment except those that reflect the legislation.

❖ **LOCAL GOVERNMENTS:** This is a federally-funded program and there will be no costs or savings to any local government. There are no changes in this proposed amendment except those that reflect the legislation.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** This is a federally-funded program and there will be no costs or savings to any small business or other persons. There are no changes in this proposed amendment except those that reflect the legislation.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This is a federally-funded program and there will be no compliance costs for any affected persons. There are no changes in this proposed amendment except those that reflect the legislation.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate. Kristen Cox, Executive Director

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

WORKFORCE SERVICES  
UNEMPLOYMENT INSURANCE  
140 E 300 S  
SALT LAKE CITY UT 84111-2333, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at [spixton@utah.gov](mailto:spixton@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 11/14/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2008

AUTHORIZED BY: Kristen Cox, Executive Director

**R994. Workforce Services, Unemployment Insurance.**

**R994-202. Employing Units.**

**R994-202-102. Temporary Help Company.**

(1) "Temporary help services" means services consisting of an organization:

- (a) recruiting and hiring its own employees;
- (b) finding other organizations that need the services of those employees;
- (c) assigning those employees to perform work at or services for the other organizations to support or supplement the other organizations' workforces;
- (d) providing assistance in special work situations such as employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects with a definite ending date; and
- (e) customarily attempting to reassign the employees to other organizations when they finish each assignment by a definite ending date.

(2) A company that provides all or substantially all of the client company's regular workers with no restrictions or limitation on the duration of employment, is not the employing unit for those workers and, therefore, the client company is considered the employing unit subject to all of the provisions of the Employment Security Act as an employer, unless the company is ~~registered~~ licensed as a Professional Employer Organization (PEO) pursuant to the provisions of Section ~~[58-59-101]~~ 31A-40-101 through 402 et seq.

(3) Individuals and services exempt under the Act based on the nature of service or due to a specific exemption continue to be exempt if the individual is an employee of the temporary help services company or the services are rendered by an employee of the temporary help services company.

**R994-202-106. Professional Employer Organizations (PEO).**

(1) Definitions.

(a) "Agent" means an individual or organization authorized to act on behalf of an employer.

(b) "Client" or "client company" means a person or entity that enters into a professional employer agreement with a PEO.

(c) ~~["Employment agreement" means a written contract between the PEO and each individual hired to provide services to a client.]~~ "Co-employment relationship" means a relationship that is intended to be ongoing rather than temporary or project specific and whose rights, obligations and responsibilities of an employer are allocated pursuant to the professional employer agreement or Chapter 40 of the PEO Licensing Act.

(d) "Organization" means any individual, partnership, corporation, limited liability company, association, or any other form of legally recognized entity.

(e) "Professional employer agreement" means a written contract by and between a client and a PEO that provides for the co-employment of a covered employee.

(f) "Professional employer organization" or "PEO" means any organization engaged in the business of providing professional

employer services. "Employee leasing company" and "Employee staffing company" ~~are~~ terms also used to describe a PEO.

(g) "Professional employer services" means the service of entering into a co-employment relationship under which all or a majority of the employees who provide a service to a client, or division or work unit of a client, are considered employees ~~[with a client]~~ as defined in the PEO ~~[Registration]~~ Licensing Act, Section ~~[58-59-101]~~ 31A-40-101 et seq.

(h) "Covered employee" means an individual is a covered employee of a PEO if the individual is co-employed pursuant to a professional employer agreement subject to chapter 31A-40-203.

(2) Before the employer is considered to be a PEO, it must comply with the requirements of Sections ~~[58-59-101]~~ 31A-40-101 through ~~[58-59-503]~~ 31A-40-402 of the Utah Code. In the absence of such compliance, the Department may choose to hold each "client company" as the employing unit.

(3) A PEO that fails to qualify as an employer under Sections ~~[58-59-101]~~ 31A-40-101 through ~~[58-59-501]~~ 31A-40-402 of the PEO ~~[Registration]~~ Licensing Act and as an employing unit under 35A-4-202(1), is considered to be the agent of the client company. The client's workers are not the employees of the agent. The client company remains the employer of its workers for all purposes of the Employment Security Act. An employee not covered by a professional employment agreement ~~[or employment agreement]~~ remains the employee of the client company.

(4) Individuals and services exempt under the Act based on the nature of service or due to a specific exemption continue to be exempt if the individual is an employee of a PEO or the services are rendered by an employee of a PEO. The exemptions for domestic and agricultural services contained in Section 35A-4-205 are taken into consideration for the PEO's clients in the aggregate, and not on an individual client basis.

(5) A PEO cannot elect reimbursable coverage even if the client company could independently qualify as a reimbursable employer.

(6) Reporting Requirements.

(a) Any entity conducting business as a PEO must register with the Department and complete all forms and reports required by the Department. ~~[Licensing penalties for f]~~ Failure to file reports or pay contributions timely will result in the Department treating the client as a new employer without experience rating, unless the client is otherwise eligible for experience rating, beginning on the day the PEO failure occurred, ~~[are]~~ as outlined in Section ~~[58-59-501]~~ 31A-40-210 ~~[et. seq.]~~ of the PEO ~~[Registration]~~ Licensing Act:

(b) Within 30 days of the effective date of a contract with a client, a PEO must submit to the Department the following information:

- (i) the effective date of the contract;
- (ii) the client's name and address;
- (iii) the client's Federal Employer Identification Number (FEIN) if registered with the IRS, and the client's Employer's Utah Registration Number if previously registered with this Department; and

(iv) the client's principal business activity.

(c) Within 30 days of the termination of a contract with a client, a PEO must submit to the Department the following information:

- (i) the effective date of contract termination;
- (ii) the client's name and address; and
- (iii) the client's FEIN if registered with the IRS, and the client's Employer's Utah Registration Number if previously registered with this Department.

(7) The Department may directly contact a PEO or its clients in order to conduct investigations, audits and otherwise obtain information necessary for the administration of the Employment Security Act as permitted by Section 35A-4-312.

(8) The rules pertaining to "payrolling" in R994-202-104 do not apply to a PEO that is in compliance with the PEO ~~[Registration]~~Licensing Act, Sections ~~[58-59-101]~~31A-40-101 through ~~[58-59-501]~~31A-40-402.

**KEY: unemployment compensation, employment**

**Date of Enactment or Last Substantive Amendment:** ~~[July 1, 2007]~~2008

**Notice of Continuation:** May 20, 2008

**Authorizing, and Implemented or Interpreted Law:** 35A-4-202(1)



Workforce Services, Unemployment  
Insurance  
**R994-403-114c**  
Claimant's Obligation to Prove Weekly  
Eligibility

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 31970

FILED: 09/29/2008, 13:39

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to require notification of incarceration.

**SUMMARY OF THE RULE OR CHANGE:** The Department has had several claims where weekly claims are filed by or on behalf of claimants who are in jail. Because the claimant is not eligible, when the Department learns of the incarceration, the Department establishes an overpayment. Claimants have defended against the overpayment by saying they did not file the weekly claims. The Court of Appeals overturned an overpayment under these circumstances. The Department believes the claimant either filed the weekly claims himself or herself or asked someone to do it for the claimant. Because benefits are issued on a debit card, it is difficult to prove who made the claims or spent the money. If a claimant is required to notify us of his or her incarceration, the Department will immediately stop all unemployment benefits.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 35A-1-104 and Subsections 35A-1-104(4) and 35A-4-502(1)(b)

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** This is a federally-funded program and there will be no costs or savings to the state budget.
- ❖ **LOCAL GOVERNMENTS:** This is a federally-funded program and there will be no costs or savings to any local government.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** This is a federally-funded program and there will be no costs or savings to any small business or other persons. Because the Department always established these claims as fraud prior to the Court of Appeals case, there will be no savings to employers.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This is a federally-funded program and there will be no costs or savings to any affected persons as there are no fees associated with this program or this change.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employers contribution tax rate. Kristen Cox, Executive Director

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

WORKFORCE SERVICES  
UNEMPLOYMENT INSURANCE  
140 E 300 S  
SALT LAKE CITY UT 84111-2333, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 11/14/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2008

AUTHORIZED BY: Kristen Cox, Executive Director

**R994. Workforce Services, Unemployment Insurance.**

**R994-403. Claim for Benefits.**

**R994-403-114c. Claimant's Obligation to Prove Weekly Eligibility.**

The claimant:

- (1) has the burden of proving that he or she is able, available, and actively seeking full-time work;
- (2) must report any information that might affect eligibility;
- (3) must provide any information requested by the Department which is required to establish eligibility; ~~and~~
- (4) must keep a detailed record of the employers contacted, as well as other activities that are likely to result in employment for each week benefits are claimed; and
- (5) must immediately notify the Department if the claimant is incarcerated.

**KEY:** filing deadlines, registration, student eligibility, unemployment compensation  
**Date of Enactment or Last Substantive Amendment:** ~~November 15, 2007~~ 2008  
**Notice of Continuation:** June 26, 2007  
**Authorizing, and Implemented or Interpreted Law:** 35A-4-403(1)

◆ ————— ◆

## Workforce Services, Unemployment Insurance

### R994-405-3

## Professional Employment Organizations (PEO)

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 31974

FILED: 09/29/2008, 15:27

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this nonsubstantive change is to reflect changes in legislation.

**SUMMARY OF THE RULE OR CHANGE:** H.B. 159 in the 2008 General Session changed the provisions regarding Professional Employer Organizations (PEO). These proposed amendments are being made to reflect those legislative changes. (DAR NOTE: H.B. 159 (2008) is found at Chapter 318, Laws of Utah 2008, and was effective 05/05/2008.)

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 35A-1-104 and Subsections 35A-1-104(4) and 35A-4-502(1)(b)

#### ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** This is a federally-funded program and there will be no costs or savings to the state budget. There are no changes in this proposed amendment except those that reflect the legislation.
- ❖ **LOCAL GOVERNMENTS:** This is a federally-funded program and there will be no costs or savings to any local government. There are no changes in this proposed amendment except those that reflect the legislation.
- ❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** This is a federally-funded program and there will be no costs or savings to any small business or other persons. There are no changes in this proposed amendment except those that reflect the legislation.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This is a federally-funded program and there will be no compliance costs associated with this change. There are no changes in this proposed amendment except those that reflect the legislation.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no compliance costs

associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employer's contribution tax rate. Kristen Cox, Executive Director

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

WORKFORCE SERVICES  
 UNEMPLOYMENT INSURANCE  
 140 E 300 S  
 SALT LAKE CITY UT 84111-2333, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 11/14/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2008

AUTHORIZED BY: Kristen Cox, Executive Director

#### **R994. Workforce Services, Unemployment Insurance.**

##### **R994-405. Ineligibility for Benefits.**

##### **R994-405-3. Professional ~~Employment~~Employer Organizations (PEO).**

(1) PEO is defined in R994-202-106 and must be ~~registered~~ licensed pursuant to Sections ~~[58-59-101]~~ 31A-40-301 through 306 et seq. PEOs are also known as employee leasing companies and staff leasing companies. PEOs are treated differently from a THC because the assignments are usually not of a temporary nature.

(2) When a client company contracts with a PEO, the PEO becomes the employer of the client company's employees. Because the client company is no longer the employer, a job separation has occurred. The job separation is a reduction of force and the client company is not eligible for relief of charges.

(3) When the contract between a PEO and a client company ends, a separation occurs. Regardless of the circumstances or which entity is the moving party, the affected employees are considered separated due to a reduction of force, and the PEO is not eligible for relief of charges. Any offers of work extended to affected employees subsequent to the termination of the contract shall be considered offers of new work and shall be adjudicated in accordance with 35A-4-405(3) and R994-405-301 et seq.

(4) If the contract between the client company and the PEO remains in effect and the claimant's assignment with the client company ends, the PEO, or the client company acting on the PEO's behalf, must provide written notice to the claimant instructing the claimant to contact the PEO within a reasonable time for a new assignment. A reasonable time to contact the PEO is generally considered to be two working days after the assignment ends. The written notice must be provided to the claimant when the assignment

ends and must be provided even if the PEO has a contract with the claimant requiring the claimant to contact the PEO when an assignment ends.

(5) If the PEO or client company does not provide written notice as referenced in paragraph (4) of this section, unemployment benefits will be determined based on the reason the assignment with the client company ended.

(6) If the PEO provides the notice referenced in paragraph (4) of this section and the claimant contacts the PEO as instructed and:

(a) refuses a new work assignment that is similar to the claimant's previous assignments with the PEO, the job separation is a quit. The duties, wages, hours, and conditions of the new assignment will be considered in determining if the new assignment is similar to the previous assignments.

(b) refuses a new work assignment that is substantially different from the claimant's previous assignments, the job separation is a layoff and an offer of new work.

(c) the PEO has no new assignments, the job separation is a layoff.

(7) If the PEO does not intend to offer the claimant another assignment the PEO should not provide the written notice referenced in paragraph (4) of this section at the time of separation. If no notice is provided, the separation will be determined based on the reason for the separation from the client company.

(8) If the claimant does not contact the PEO after receiving notice given pursuant to paragraph (4) of this section, the job separation is a quit.

**KEY: unemployment compensation, employment, employee's rights, employee termination**

**Date of Enactment or Last Substantive Amendment:** ~~November 15, 2007~~ **2008**

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

**Authorizing, and Implemented or Interpreted Law:** 35A-4-502(1)(b); 35A-1-104(4); 35A-4-405



**Workforce Services, Unemployment  
 Insurance  
 R994-406-401  
 Claimant Fraud**

**NOTICE OF PROPOSED RULE  
 (Amendment)  
 DAR FILE NO.: 31971  
 FILED: 09/29/2008, 13:49**

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to require notification of incarceration.

**SUMMARY OF THE RULE OR CHANGE:** The Department has had several claims where weekly claims are filed by or on behalf of claimants who are in jail. Because the claimant is not eligible, when the Department learns of the incarceration we establish an overpayment. Claimants have defended against the overpayment by saying they did not file the weekly claims.

The Court of Appeals overturned an overpayment under these circumstances. The Department believes the claimant either filed the weekly claims himself or herself or asked someone to do it for the claimant. Because benefits are issued on a debit card, it is difficult to prove who made the claims or spent the money. If a claimant is required to notify us of his or her incarceration, the Department will immediately stop all unemployment benefits. If the claimant does not notify the Department, it will result in a fraud overpayment. Claimants can send written notice, call collect, or have someone else notify us. Incarceration will be verified prior to stopping benefits.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 35A-1-104 and Subsections 35A-1-104(4) and 35A-4-502(1)(b)

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** This is a federally-funded program and there will be no costs or savings to the state budget.
- ❖ **LOCAL GOVERNMENTS:** This is a federally-funded program and there will be no costs or savings to any local government.
- ❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** This is a federally-funded program and there will be no costs or savings to any small business or other persons. Because the Department always established these claims as fraud prior to the Court of Appeals case, there will be no savings to employers.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This is a federally-funded program and there will be no costs or savings to any affected persons. There are no fees associated with this rule change. Incarcerated claimants can call the Department collect.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employers contribution tax rate. Kristen Cox, Executive Director

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

**WORKFORCE SERVICES  
 UNEMPLOYMENT INSURANCE  
 140 E 300 S  
 SALT LAKE CITY UT 84111-2333, or  
 at the Division of Administrative Rules.**

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 11/14/2008.**

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2008

AUTHORIZED BY: Kristen Cox, Executive Director

**R994. Workforce Services, Unemployment Insurance.**  
**R994-406. Fraud, Fault and Nonfault Overpayments.**  
**R994-406-401. Claimant Fraud.**

(1) All three elements of fraud must be proved to establish an intentional misrepresentation sufficient to constitute fraud. See section 35A-4-405(5). The three elements are:

(a) Materiality.

(i) Materiality is established when a claimant makes false statements or fails to provide accurate information for the purpose of obtaining:

(A) any benefit payment to which the claimant is not entitled, or

(B) waiting week credit which results in a benefit payment to which the claimant is not entitled.

(ii) A benefit payment received by fraud may include an amount as small as one dollar over the amount a claimant was entitled to receive.

(b) Knowledge.

A claimant must have known or should have known the information submitted to the Department was incorrect or that he or she failed to provide information required by the Department. The claimant does NOT have to know that the information will result in a denial of benefits or a reduction of the benefit amount. Knowledge can also be established when a claimant recklessly makes representations knowing he or she has insufficient information upon which to base such representations. A claimant has an obligation to read material provided by the Department and to ask a Department representative if he or she has a question about what information to report.

(c) Willfulness.

Willfulness is established when a claimant files claims or other documents containing false statements, responses or deliberate omissions. If a claimant delegates the responsibility to personally provide information or allows access to his or her Personal

Identification Number (PIN) so that someone else may file a claim, the claimant is responsible for the information provided or omitted by the other person, even if the claimant had no advance knowledge that the information provided was false or important information was omitted. The claimant is responsible for securing the debit card issued by the Department (EPPICard or card). Securing the card means that the card and the PIN are never kept together, the card is kept in a secure location, and the PIN is not known by anyone but the claimant. If a claimant loses his or her card, the claimant must report the loss of the card to the Department and change his or her PIN immediately even if the claimant is not currently filing weekly claims for benefits. If the claimant fails to report the loss of the card and change the PIN immediately, or fails to secure the card, the claimant will be liable for claims made and money removed from the card.

(2) The Department relies primarily on information provided by the claimant when paying unemployment insurance benefits. Fraud penalties do not apply if the overpayment was the result of an inadvertent error. Fraud requires a willful misrepresentation or concealment of information for the purpose of obtaining unemployment benefits.

(3) The absence of an admission or direct proof of intent to defraud does not prevent a finding of fraud.

(4) A claimant is required, under R994-403-114c, to immediately notify the Department if the claimant is incarcerated. Upon notification, the Department will stop all unemployment benefits to the claimant until the claimant notifies the Department of his or her release from incarceration. If a claimant fails to notify the Department of his or her incarceration, any claims made during the incarceration period will be considered fraudulent.

**KEY: overpayments, unemployment compensation**

**Date of Enactment or Last Substantive Amendment:** ~~[July 26, 2006]~~ **2008**

**Notice of Continuation:** May 22, 2007

**Authorizing, and Implemented or Interpreted Law:** 35A-4-406(2); 35A-4-406(3); 35A-4-406(4); 35A-4-406(5)

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**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 November 14, 2008. At its option, the agency may hold public hearings.

From the end of the waiting period through February 12, 2009, 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 Section 63G-3-303; and 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.**



**Commerce, Occupational and  
Professional Licensing  
R156-17b  
Pharmacy Practice Act Rule**

**NOTICE OF CHANGE IN PROPOSED RULE**

DAR File No.: 31425  
Filed: 09/25/2008, 14:13

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Following a public rule hearing and further review by the Division and State Board of Pharmacy, additional amendments are being proposed.

**SUMMARY OF THE RULE OR CHANGE:** In Subsection R156-17b-102(40), deleted the second sentence in the definition for "wholesaler" as it is redundant. In Subsection R156-17b-615(3)(b)(iii), added that a publicly traded corporation does not need to provide the social security number and date of birth for its corporate officers. In Subsection R156-17b-615(12), added the term "for human use". In Subsection R156-17b-615 (12)(a)(x), added the National Drug Code (NDC) number. Deleted Subsection R156-17b-615(13) with respect to an electronic system in its entirety and renumbered remaining paragraphs. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the June 1, 2008, issue of the Utah State Bulletin, on page 49. 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 amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

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

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** No additional costs are anticipated as a result of these additional proposed amendments beyond those previously identified in the original proposed rule filing.
- ❖ **LOCAL GOVERNMENTS:** The proposed amendments do not apply to local governments. The proposed amendments only apply to license classifications regulated under Title 58, Chapter 17b, and this rule.
- ❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** The proposed amendments only apply to license classifications regulated in Title 58, Chapter 17b. No additional costs or savings are anticipated for small businesses and persons other than businesses as a result of these additional proposed amendments beyond those previously identified in the original proposed rule filing.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendments only apply to license classifications regulated in Title 58, Chapter 17b. No additional costs are anticipated for

affected persons as a result of these additional proposed amendments beyond those previously identified in the original proposed rule filing.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No fiscal impact to businesses is anticipated from this change in proposed rule beyond those indicated in the original filing. Francine A. Giani, Executive Director

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 11/14/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2008

AUTHORIZED BY: F. David Stanley, Director

**R156. Commerce, Occupational and Professional Licensing.  
R156-17b. Pharmacy Practice Act Rule.  
R156-17b-102. Definitions.**

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

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

(2) "Analytical laboratory":

(a) means a facility in possession of prescription drugs for the purpose of analysis; and

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

(3) "Authorized distributor of record" means a pharmaceutical wholesaler with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drugs. An ongoing relationship is deemed to exist between such pharmaceutical wholesaler and a manufacturer, as defined in Section 1504 of the Internal Revenue Code, when the pharmaceutical wholesaler has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship, and the pharmaceutical wholesaler is listed on the manufacturer's current list of authorized distributors of record.

(4) "Authorized personnel" means any person who is a part of the pharmacy staff who participates in the operational processes of the pharmacy and contributes to the natural flow of pharmaceutical care.

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

(6) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of the prescription drugs to a group of chain pharmacies that have the same common ownership and control.

(7) "Co-licensed partner or product" means an instance where two or more parties have the right to engage in the manufacturing and/or marketing of a prescription drug, consistent with FDA's implementation of the Prescription Drug Marketing Act.

(8) "Cooperative pharmacy warehouse" means a physical location for drugs that acts as a central warehouse and is owned, operated or affiliated with a group purchasing organization (GPO) or pharmacy buying cooperative and distributes those drugs exclusively to its members.

(9) "Counterfeit prescription drug" has the meaning given that term in 21 USC 321(g)(2), including any amendments thereto.

(10) "Counterfeiting" means engaging in activities that create a counterfeit prescription drug.

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

(12) "Drop shipment" means the sale of a prescription drug to a pharmaceutical wholesaler by the manufacturer of the drug; by the manufacturer's co-licensed product partner, third party logistics provider, or exclusive distributor; or by an authorized distributor of record that purchased the product directly from the manufacturer or from one of these entities; whereby:

(a) the pharmaceutical wholesale distributor takes title to but not physical possession of such prescription drug;

(b) the pharmaceutical wholesale distributor invoices the pharmacy, pharmacy warehouse, or other person authorized by law to dispense to administer such drug; and

(c) the pharmacy, pharmacy warehouse, or other person authorized by law to dispense or administer such drug receives delivery of the prescription drug directly from the manufacturer; from the co-licensed product partner, third party logistics provider, or exclusive distributor; or from an authorized distributor of record that purchases the product directly from the manufacturer or from one of these entities.

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

(14) "Drugs", as used in this rule, means drugs or devices.

(15) "FDA" means the United States Food and Drug Administration and any successor agency.

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

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

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

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

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

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

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

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

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

(c) "Rx only".

(20) "Maintenance medications" means medications the patient takes on an ongoing basis.

(21) "Manufacturer's exclusive distributor" means an entity that contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the drug's sale or disposition. Such manufacturer's exclusive distributor must be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

(22) "MPJE" means the Multistate Jurisprudence Examination.

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

(24) "NAPLEX" means North American Pharmacy Licensing Examination.

(25) "Normal distribution channel" means a chain of custody for a prescription drug that goes directly, by drop shipment as defined in Subsection (12), or via intracompany transfer from a manufacturer; or from the manufacturer's co-licensed partner, third-party logistics provider, or the exclusive distributor to:

(a) a pharmacy or other designated persons authorized under this chapter to dispense or administer prescription drugs to a patient;

(b) a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control;

(c) a cooperative pharmacy warehouse to a pharmacy that is a member of the pharmacy buying cooperative or GPO to a patient;

(d) an authorized distributor of record, and then to either a pharmacy or other designated persons authorized under this chapter to dispense or administer such drug for use by a patient;

(e) an authorized distributor of record, and then to a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control; or

(f) an authorized distributor of record to another authorized distributor of record to a licensed pharmaceutical facility or a

licensed healthcare practitioner authorized under this chapter to dispense or administer such drug for use by a patient.

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

(27) "Pedigree" means a document or electronic file containing information that records each distribution of any given prescription drug.

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

(29) "PTCB" means the Pharmacy Technician Certification Board.

(30) "Qualified continuing education", as used in this rule, means continuing education that meets the standards set forth in Section R156-17b-309.

(31) "Refill" means to fill again.

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

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

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

(35) "Third party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other similar services on behalf of a manufacturer, but does not take title to the prescription drug or have any authoritative control over the prescription drug's sale. Such third party logistics provider must be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

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

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

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

(39) "USP-NF" means the United States Pharmacopeia-National Formulary (USP 31-NF 26), 2008 edition, which is official from May 1, 2008 through Supplement 2, dated December 1, 2007, which is hereby adopted and incorporated by reference.

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

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

(a) intracompany sales or transfers;

(b) the sale, purchase, distribution, trade, or other transfer of a prescription drug for emergency medical reasons, as defined under 21 CFR 203.3(m), including any amendments thereto;

(c) the sale, purchase, or trade of a drug pursuant to a prescription;

(d) the distribution of drug samples;

(e) the return or transfer of prescription drugs to the original manufacturer, original wholesale distributor, reverse distributor, or a third party returns processor;

(f) the sale, purchase, distribution, trade, or transfer of a prescription drug from one authorized distributor of record to one additional authorized distributor of record during a time period for which there is documentation from the manufacturer that the manufacturer is able to supply a prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had until that time been exclusively in the normal distribution channel;

(g) the sale, purchase or exchange of blood or blood components for transfusions;

(h) the sale, transfer, merger or consolidation of all or part of the business of a pharmacy;

(i) delivery of a prescription drug by a common carrier; or

(j) other transactions excluded from the definition of "wholesale distribution" under 21 CFR 203.3 (cc), including any amendments thereto.

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**R156-17b-615. Operating Standards - Class C Pharmacy - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer in Utah.**

In accordance with Subsections 58-17b-102(48) and 58-17b-601(1), the operating standards for Class C pharmacies designated as pharmaceutical wholesaler/distributor and pharmaceutical manufacturer licensees includes the following:

(1) Every pharmaceutical wholesaler or manufacturer that engages in the wholesale distribution and manufacturing of drugs or medical devices located in this state shall be licensed by the Division. A separate license shall be obtained ~~for~~for each separate location engaged in the distribution or manufacturing of prescription drugs. Business names cannot be identical to the name used by another unrelated wholesaler licensed to purchase drugs and devices in Utah.

(2) Manufacturers distributing only their own FDA-approved prescription drugs or co-licensed product shall satisfy this requirement by registering their establishment with the Federal Food and Drug Administration pursuant to 21 CFR Part 207 and submitting the information required by 21 CFR Part 205, including any amendments thereto, to the Division.

(3) An applicant for licensure as a pharmaceutical wholesale distributor must provide the following minimum information:

(a) All trade or business names used by the licensee (including "doing business as" and "formerly known as");

(b) Name of the owner and operator of the license as follows:

(i) if a person, the name, business address, social security number and date of birth;

(ii) if a partnership, the name, business address, and social security number and date of birth of each partner, and the partnership's federal employer identification number;

(iii) if a corporation, the name, business address, social security number and date of birth, and title of each corporate officer and director, the corporate names, the name of the state of incorporation, federal employer identification number, and the name of the parent company, if any, but if a publically traded corporation, the social security number and date of birth for each corporate officer shall not be required;

(iv) if a sole proprietorship, the full name, business address, social security number and date of birth of the sole proprietor and the name and federal employer identification number of the business entity;

(v) if a limited liability company, the name of each member, social security number of each member, the name of each manager, the name of the limited liability company and federal employer identification number, and the name of the state in which the limited liability company was organized; and

(c) any other relevant information required by the Division.

(4) The licensed facility need not be under the supervision of a licensed pharmacist, but shall be under the supervision of a designated representative who meets the following criteria:

(a) is at least 21 years of age;

(b) has been employed full time for at least three years in a pharmacy or with a pharmaceutical wholesaler in a capacity related to the dispensing and distribution of, and recordkeeping related to prescription drugs;

(c) is employed by the applicant full time in a managerial level position;

(d) is actively involved in and aware of the actual daily operation of the pharmaceutical wholesale distribution;

(e) is physically present at the facility during regular business hours, except when the absence of the designated representative is authorized, including but not limited to, sick leave and vacation leave; and

(f) is serving in the capacity of a designated representative for only one licensee at a time.

(5) The licensee shall provide the name, business address, and telephone number of a person to serve as the designated representative for each facility of the pharmaceutical wholesaler that engages in the distribution of drugs or devices.

(6) Each facility that engages in pharmaceutical wholesale distribution and manufacturing facilities must undergo an inspection by the Division for the purposes of inspecting the pharmaceutical wholesale distribution or manufacturing operation prior to initial licensure and periodically thereafter with a schedule to be determined by the Division.

(7) All pharmaceutical wholesalers and manufacturer must publicly display or have readily available all licenses and the most recent inspection report administered by the Division.

(8) In accordance with Section 58-17b-307, the Division shall require a criminal background check of the applicant, including but not limited to all key personnel involved in the operation of the pharmaceutical wholesaler or manufacturer, including the most senior person responsible for facility operation, purchasing, and inventory control and the person they report to in order to determine if an applicant or others associated with the ownership, management, or operations of the pharmaceutical wholesaler or manufacturer have committed criminal acts that would constitute grounds for denial of licensure.

(9) All Class C pharmacies shall:

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

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

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

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

(e) be maintained in a clean and orderly condition; and

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

(10) Each facility used for wholesale drug distribution or manufacturing of prescription drugs shall:

(a) be secure from unauthorized entry;

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

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

(d) be well lighted on the outside perimeter;

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

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

(11) Each facility shall provide the storage of prescription drugs, prescription drug precursors, and prescription drug devices in accordance with the following:

(a) all prescription drugs and prescription drug precursors shall be stored at appropriate temperature, humidity and other conditions in accordance with labeling of such prescription drugs or prescription drug precursors or with requirements in the USP-NF;

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

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

(12) Each person who is engaged in pharmaceutical wholesale distribution of prescription drugs for human use that leave, or have ever left, the normal distribution channel shall, before each pharmaceutical wholesale distribution of such drug, provide a pedigree to the person who receives such drug. A retail pharmacy or pharmacy warehouse shall comply with the requirements of this section only if the pharmacy engages in pharmaceutical wholesale distribution of prescription drugs. The pedigree shall:

(a) include all necessary identifying information concerning each sale in the chain of distribution of the product from the manufacturer, through acquisition and sale by any pharmaceutical wholesaler, until sale to a pharmacy or other person dispensing or administering the prescription drug. At a minimum, the necessary chain of distribution information shall include:

- (i) name, address, telephone number, and if available, the email address of each owner of the prescription drug, and each pharmaceutical wholesaler of the prescription drug;
- (ii) name and address of each location from which the product was shipped, if different from the owner's;
- (iii) transaction dates;
- (iv) name of the prescription drug;
- (v) dosage form and strength of the prescription drug;
- (vi) size of the container;
- (vii) number of containers;
- (viii) lot number of the prescription drug; ~~and~~
- (ix) name of the manufacturer of the finished dose form; and
- (x) National Drug Code (NDC) number.

(b) be maintained by the purchaser and the pharmaceutical wholesaler for five years from the date of sale or transfer and be available for inspection or use upon a request of an authorized officer of the law.]

~~(13) The board shall not require use of an electronic system to identify, validate, track or trace a pedigree for a person or entity licensed by the Division to possess, distribute, supply, dispense or administer prescription drugs for use by patients, pharmacies, healthcare practitioners, facilities, pharmaceutical wholesale distributors, and manufacturers, until such time as FDA develops and implements standards for the identification, validation, authentication, and tracking and tracing of prescription drugs. Upon implementation of FDA's standards, those federal standards shall supersede any state standards for an electronic pedigree.]~~

~~(14)13~~ Each facility shall comply with the following requirements:

(a) in general, each person who is engaged in pharmaceutical wholesale distribution of prescription drugs shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of the prescription drugs. These records shall include pedigrees for all prescription drugs that leave the normal distribution channel;

(b) upon receipt, each outside shipping container containing prescription drugs, prescription drug precursors, or prescription drug devices shall be visibly examined for identity and to prevent the acceptance of prescription drugs, prescription drug precursors, or prescription drug devices that are contaminated, reveal damage to the containers or are otherwise unfit for distribution:

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

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

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

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

(ii) returns of expired, damaged, recalled, or otherwise non-saleable prescription drugs shall be distributed by the receiving pharmaceutical wholesale distributor only to the original manufacturer or a third party returns processor that is licensed as a pharmaceutical wholesale distributor under this chapter;

(iii) returns or exchanges of prescription drugs (saleable or otherwise), including any redistribution by a receiving pharmaceutical wholesaler, shall not be subject to the pedigree requirements, so long as they are exempt from the pedigree requirement under the FDA's Prescription Drug Marketing Act guidance or regulations; and

(d) licensee under this Act and pharmacies or other persons authorized by law to dispense or administer prescription drugs for use by a patient shall be accountable for administering their returns process and ensuring that all aspects of their operation are secure and do not permit the entry of adulterated and counterfeit prescription drugs.

~~(15)14~~ A manufacturer or pharmaceutical wholesaler shall furnish prescription drugs only to a person licensed by the Division or to another appropriate state licensing authority to possess, dispense or administer such drugs for use by a patient.

~~(16)15~~ Prescription drugs furnished by a manufacturer or pharmaceutical wholesaler shall be delivered only to the business address of a person described in Subsection R156-17b-615(15)4, or to the premises listed on the license, or to an authorized person or agent of the licensee at the premises of the manufacturer or pharmaceutical wholesaler if the identity and authority of the authorized agent is properly established.

~~(17)16~~ Each facility shall establish and maintain records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and prescription drug precursors and shall make inventories of prescription drugs and prescription drug precursors and required records available for inspection by authorized representatives of the federal, state and local law enforcement agencies in accordance with the following:

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

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

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

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

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

(f) required records shall be made available for inspection during regular business hours to authorized representatives of federal, state and local law enforcement authorities and such records shall be maintained for a period of two years following disposition of the products; and

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

(~~18~~17) Each facility shall establish, maintain and adhere to written policies and procedures which shall be followed for the receipt, security, storage, inventory, manufacturing, distribution or other disposal of prescription drugs or prescription drug precursors, including policies and procedures for identifying, recording and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. In addition, the policies shall include the following:

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

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

(i) any action initiated at the request of the FDA or other federal, state or local law enforcement or other authorized administrative or regulatory agency;

(ii) any voluntary action to remove defective or potentially defective drugs from the market; or

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

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

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

(e) a procedure for providing for documentation of the disposition of outdated, adulterated or otherwise unsafe prescription drugs or prescription drug precursors and the maintenance of that documentation available for inspection by authorized federal, state

or local authorities for a period of five years after disposition of the product;

(f) a procedure for identifying, investigating and reporting significant drug inventory discrepancies (involving counterfeit drugs suspected of being counterfeit, contraband, or suspect of being contraband) and reporting of such discrepancies within three (3) business days to the Division and/or appropriate federal or state agency upon discovery of such discrepancies; and

(g) a procedure for reporting criminal or suspected criminal activities involving the inventory of drugs and devices to the Division, FDA and if applicable, Drug Enforcement Administration (DEA), within three (3) business days.

(~~19~~18) Each facility shall establish, maintain and make available for inspection by authorized federal, state and local law enforcement authorities, lists of all officers, directors, managers and other persons in charge which lists shall include a description of their duties and a summary of their background and qualifications.

(~~20~~19) Each facility shall comply with laws including:

(a) operating within applicable federal, state and local laws and regulations;

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

(c) obtaining a controlled substance license from the Division and registering with the Drug Enforcement Administration (DEA) if they engage in distribution or manufacturing of controlled substances and shall comply with all federal, state and local regulations applicable to the distribution or manufacturing of controlled substances.

(~~21~~20) Each facility shall be subject to and shall abide by applicable federal, state and local laws that relate to the salvaging or reprocessing of prescription drug products.

(~~22~~21) A person who is engaged in the wholesale distribution or manufacturing of prescription drugs but does not have a facility located within Utah in which prescription drugs are located, stored, distributed or manufactured is exempt from Utah licensure as a Class C pharmacy, if said person is currently licensed and in good standing in each state of the United States in which that person has a facility engaged in distribution or manufacturing of prescription drugs entered into interstate commerce.

**KEY: pharmacists, licensing, pharmacies**

**Date of Enactment or Last Substantive Amendment: 2008**

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

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

## NOTICES OF 120-DAY (EMERGENCY) RULES

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An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a PROPOSED RULE, a 120-DAY RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the 120-DAY RULE including the name of a contact person, justification for filing a 120-DAY RULE, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (. . . .) indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A 120-DAY RULE is effective for 120 days or until it is superseded by a permanent rule.

Because 120-DAY RULES are effective immediately, the law does not require a public comment period. However, when an agency files a 120-DAY RULE, it usually files a PROPOSED RULE at the same time, to make the requirements permanent. Comment may be made on the proposed rule. Emergency or 120-DAY RULES are governed by Section 63G-3-304; and Section R15-4-8.

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### Commerce, Real Estate **R162-211** Adjusted License Terms

#### NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE No.: 31968  
FILED: 09/25/2008, 09:14

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Congress passed the SAFE Mortgage License Act, which became effective on 07/30/2008. It includes significant changes to state-issued mortgage licenses. Utah needs to start adjusting its terms of licensure from a two-year rolling renewal to a one-year calendar renewal. Without this rule, the Division will continue issuing two-year licenses that will likely need to be adjusted part way through the term of licensure. This rule will allow the Division to issue licenses that comply with the Congressional mandate, as well as recognize the full terms of licensure received with a license.

**SUMMARY OF THE RULE OR CHANGE:** The rule transitions all licensees onto a one-year calendar license renewal cycle by adjusting terms of licensure to be more or less than two years, in accordance with the authority granted under Subsection 61-2c-205(1). By taking 27 months to transition, the Division will be causing the least amount of impact on mortgage licensees. Most existing and many new licensees will be granted a license term beyond 2 years, while some new licensees will be granted a license between 12 and 24 months, rather than a full 24 months.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 61-2c-205(1)(b)

#### ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There will be minimal costs to the state budget since the fee amounts will not be changed. Most licensees will gain a slightly extended term of licensure for no additional fee, while others will experience a shortened term of licensure for the same fee cost.
- ❖ **LOCAL GOVERNMENTS:** Local governments will experience no cost or savings to implement this act because they do not pay mortgage licensing fees.
- ❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Small mortgage companies should recognize a cost savings, since the average licensee will gain a slightly longer term of licensure than is currently granted for the existing fee.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be minimal compliance costs since the average licensee will see an extension of a term of licensure without any additional fee.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No fiscal impact to businesses is anticipated by this rule filing beyond those addressed by Congress in passing the SAFE Mortgage Licensing Act, and as indicated in the rule summary. Francine Giani, Executive Director

**EMERGENCY RULE REASON AND JUSTIFICATION:** REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

As stated above, Congress passed legislation that requires an annual renewal. Every two-year rolling license the Division issues currently will be in violation of the Congressional act when the license expires in two years. The Division needs to stop issuing licenses with the pretense they will be good for two years.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mark Steinagel at the above address, by phone at 801-530-6744, by FAX at 801-530-6749, or by Internet E-mail at msteinagel@utah.gov

THIS RULE IS EFFECTIVE ON: 10/01/2008

AUTHORIZED BY: Mark Steinagel, Director

**R162. Commerce, Real Estate.**

**R162-211. Adjusted License Terms.**

**R162-211-1. Adjusted License Terms to Comply with Nationwide Mortgage Licensing System.**

(1) Notwithstanding other provisions in Title R162, Rules R162-201 through R162-210, licensing terms for a license issued under the authority of Title 61, Chapter 2c, and rules made by the Division shall be adjusted according to the following schedule:

(a)(i) An applicant for license renewal whose license expires between January 1, 2008, and December 31, 2008, and who applies for and qualifies for renewal under Title 61, Chapter 2c, and rules made by the Division shall be issued a license for a term that expires December 31, 2010.

(ii) The Division shall issue a new license with the updated expiration date to a licensee who renewed a mortgage license during 2008 prior to the enactment of this rule.

(b)(i) An applicant for license renewal whose license expires between January 1, 2009, and November 30, 2009, shall be granted a license extension in accordance with Subsection (2) for a term that expires December 31, 2009.

(ii) An applicant for license renewal whose license expires December 31, 2009, shall comply with the procedures for licensure under Title 61, Chapter 2c, and rules made by the Division including registration with the Nationwide Mortgage Licensing System and Registry.

(c) An applicant for licensure who applies for licensure between January 1, 2009, and December 31, 2009, and who qualifies for licensure under Title 61, Chapter 2c, and rules made by the Division shall be issued a license for a term that expires December 31, 2010.

(d) An applicant for licensure who applies for licensure between January 1, 2010, and December 31, 2010, shall comply with the procedures for licensure under Title 61, Chapter 2c, and rules made by the Division including registration with the Nationwide Mortgage Licensing System and Registry.

(2)(a) An applicant for license extension under Subsection (1)(b) shall be granted an extension if the applicant:

(i) completes the continuing education required for license renewal under R162-208; and

(ii) completes an application for extension provided by the Division.

(b) If permitted under federal and state law in effect at the time of renewal, the Division may permit a licensee who complies with Subsection (2)(a)(i) to apply the same courses used at the time of license extension to the licensee's December 31, 2009, license renewal.

(c) An applicant for license extension will not be required to pay a renewal or extension fee.

(d) A licensee who fails to complete an application for license extension under Subsections (2)(a)(ii) shall be subject to expiration and reinstatement procedures established in Section 61-2c-205.

**KEY: mortgage renewal license term**

**Date of Enactment or Last Substantive Amendment: October 1, 2008**

**Authorizing, and Implemented or Interpreted Law: 61-2c-205(1)(b)**



Health, Children's Health Insurance  
Program  
**R382-10**  
Eligibility

**NOTICE OF 120-DAY (EMERGENCY) RULE**

DAR FILE NO.: 31977

FILED: 09/30/2008, 17:05

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to modify criteria and deadlines for the Department to receive Children's Health Insurance Program (CHIP) applications and verifications in accordance with the new four-day work schedule.

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies when the Department must receive CHIP applications and verifications in accordance with longer office hours and the new four-day work schedule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-40-103

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Department does not expect costs or savings to result from this change as it only implements the new four-day work schedule.

❖ LOCAL GOVERNMENTS: This change does not impact local governments as they do not determine eligibility nor receive monies from CHIP recipients.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no costs or savings for other persons and small businesses because they do not accept or process CHIP applications.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change does not exclude a person from CHIP eligibility, nor does it change the services or benefits that a person may receive.



COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is necessary to conform to the Working 4 Utah initiative and should not have a negative fiscal impact. David N. Sundwall, MD, Executive Director

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

This change is necessary to comply with the "Working 4 Utah" initiative set forth by the governor.

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

HEALTH  
CHILDREN'S HEALTH INSURANCE PROGRAM  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY UT 84116-3231, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
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

THIS RULE IS EFFECTIVE ON: 10/01/2008

AUTHORIZED BY: David N. Sundwall, Executive Director

### **R382. Health, Children's Health Insurance Program.**

#### **R382-10. Eligibility.**

##### **R382-10-5. Verification and Information Exchange.**

(1) The applicant and enrollee upon renewal must provide verification of eligibility factors as requested by the agency.

(a) The agency will provide the enrollee a written request of the needed verifications.

(b) The enrollee has at least 10 calendar days from the date the agency gives or mails the verification request to the enrollee to provide verifications.

(c) The due date for returning verifications, forms or information requested by the agency is ~~[5:00 p.m.]~~ the close of business on the date the agency sets as the due date in a written request to the enrollee, but not less than 10 calendar days from the date such request is given to or mailed to the enrollee.

(d) The agency allows additional time to provide verifications if the enrollee requests additional time by the due date. The agency will set a new due date that is at least 10 calendar days from the date the enrollee asks for more time to provide the verifications or forms.

(e) If an enrollee has not provided required verifications by the due date, and has not contacted the agency to ask for more time to provide verifications, agency denies the application, renewal, or ends eligibility.

(2) The Department may release information concerning applicants and enrollees and their households to other state and federal agencies to determine eligibility for other public assistance programs.

(3) The Department must release information to the Title IV-D agency and Social Security Administration to determine benefits.

(4) The Department may verify information by exchanging information with other public agencies as described in 42 CFR 435.945, 435.948, 435.952, 435.955, and 435.960.

#### **R382-10-18. Effective Date of Enrollment and Renewal.**

(1) The effective date of CHIP enrollment is the date a completed and signed application is received at a local office by ~~[5:00 p.m.]~~ the close of business on a business day. This applies to paper applications delivered in person or by mail, paper applications sent via facsimile transmission, and electronic applications sent via the internet. If a local office receives an application after ~~[5:00 p.m. of]~~ the close of business on a business day, the effective date of CHIP enrollment is the next business day.

(2) The effective date of CHIP enrollment for applications delivered to an outreach location is as follows:

(a) If the application is delivered at a time when the outreach staff is working at that location, the effective date of enrollment is the date the outreach staff receives the application.

(b) If the application is delivered on a non-business day or at a time when the outreach office is closed, ~~[including being closed for weekends or holidays,]~~ the effective date of enrollment is the last business day that a staff person from the state agency was available to receive or pick up applications from the location.

(3) The Department may allow a grace enrollment period beginning no earlier than four days before the date a completed and signed application is received by the Department. The Department shall not pay for any services received before the effective enrollment date.

(4) For a family who has a child enrolled in CHIP and who adds a newborn or adopted child, the effective date of enrollment is the date of birth or adoption if the family requests the coverage within 30 days of the birth or adoption. If the request is made more than 30 days after the birth or adoption, enrollment in CHIP will be effective beginning the date of report, except as otherwise provided in R382-10-18(1).

(5) The effective date of enrollment for a renewal is the first day of the month after the renewal month, if the renewal process is completed by the end of the renewal month, or by the last day of the month immediately following the renewal month, and the child continues to be eligible.

(6) If the renewal process is not completed by the end of the renewal month, the case will be closed unless the enrollee has good cause for not completing the renewal process on time. Good cause includes a medical emergency, death of an immediate family member, or natural disaster, or other similar occurrence.

(7) The Department may require an interview with the parent, child, or adult who has assumed responsibility for the care or supervision of a child, or other authorized representative as part of the renewal process.

#### **KEY: children's health benefits**

**Date of Enactment or Last Substantive Amendment: October 1, 2008**

**Notice of Continuation: May 19, 2008**

**Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-40**

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**Health, Health Care Financing,  
Coverage and Reimbursement Policy**  
**R414-308**  
**Application, Eligibility Determinations  
and Improper Medical Assistance**

**NOTICE OF 120-DAY (EMERGENCY) RULE**

DAR FILE NO.: 31976  
FILED: 09/30/2008, 16:48

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to modify rules regarding the due date for applications, verifications and other information to conform to the state's four-day work week.

**SUMMARY OF THE RULE OR CHANGE:** This change updates the time and dates that the Department must receive applications, verifications and other information to conform to the state's four-day work week and longer office hours on business days.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-18-3

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** The Department does not expect costs or savings to result from this change as it only implements the new four-day work schedule.
- ❖ **LOCAL GOVERNMENTS:** This change does not impact local governments because they do not determine eligibility nor receive monies collected as spenddowns from Medicaid recipients.
- ❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** The Department does not expect costs or savings for other persons and small businesses because they do not accept or process Medicaid applications.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs because this change does not require a person to pay more for coverage under Medicaid, nor does it change the services or benefits that a person may receive.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule is necessary to conform to the "Working 4 Utah" initiative and should not have a negative fiscal impact. David N. Sundwall, MD, Executive Director

**EMERGENCY RULE REASON AND JUSTIFICATION:** REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

This change is necessary to comply with the "Working 4 Utah" initiative set forth by the governor.

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:

Kimi McNutt at the above address, by phone at 801-538-6381, by FAX at 801-538-6099, or by Internet E-mail at KMCNUTT@utah.gov

THIS RULE IS EFFECTIVE ON: 10/01/2008

AUTHORIZED BY: David N. Sundwall, Executive Director

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-308. Application, Eligibility Determinations and Improper Medical Assistance.****R414-308-3. Application and Signature.**

(1) An individual may apply for medical assistance by completing and signing any Department-approved application form for Medicaid, Qualified Medicare Beneficiaries, Specified Low-Income Medicare Beneficiaries, or Qualified Individuals assistance and delivering it to the agency. If available, an individual may complete an on-line application for medical assistance and send it electronically to the agency.

(a) If an applicant cannot write, the applicant must make his mark on the application form and have at least one witness to the signature.

(b) For on-line applications, the individual must either send the agency an original signature on a printed signature page, or if available on-line, submit an electronic signature that conforms with state law for electronic signatures.

(c) A representative may apply on behalf of an individual. A representative may be a legal guardian, a person holding a power of attorney, a representative payee or other responsible person acting on behalf of the individual. In this case, the agency may send notices, requests and forms to both the individual and the individual's representative, or to just the individual's representative.

(d) If the Division of Child and Family Services (DCFS) has custody of a child and the child is placed in foster care, DCFS completes the application. DCFS determines eligibility for the child pursuant to a written agreement with the Department. DCFS also determines eligibility for children placed under a subsidized adoption agreement.

(e) An authorized representative may apply for the individual if unusual circumstances or death prevent an individual from applying on his own. The individual must sign the application form if possible. If the individual cannot sign the application, the representative must sign the application. The agency may assign someone to act as the authorized representative when the individual requires help to apply and is unable to appoint a representative.

(2) The date of application is determined as follows:

(a) The application date is the date the agency receives a completed, signed application at a local office by ~~[5:00 p.m.]~~ the close of business on a business day. This applies to paper applications delivered in person or by mail, paper applications sent via facsimile transmission, and electronic applications sent via the Internet.

(b) ~~[If a local office receives an]~~ For applications delivered to the agency by facsimile, Internet, or to an office dropbox after ~~[5:00 p.m.]~~ the close of business of a business day, or on a non-business day, the date of application is the next business day.

(c) The application date for applications delivered to an outreach location is as follows:

(i) If the application is delivered at a time when the outreach staff is working at that location, the date of application is the date the outreach staff receives the application.

(ii) If the application is delivered on a non-business day or at a time when the outreach office is closed, ~~[including being closed for weekends or holidays,]~~ the date of application is the last business day that a staff person from the state agency was available to receive or pick up applications from that location.

(d) The due date for verifications needed to complete an application and determine eligibility is ~~[5:00 p.m.]~~ the close of business on the last day of the application period.

(3) The agency accepts a signed application sent via facsimile as a valid application and does not require it to be signed again.

(4) If an applicant submits an unsigned, completed application form to the agency, the agency will notify the applicant that he or she must sign the application within 30 days of the application date. The agency will send a signature page to the applicant within 10 days for the client to sign and return.

(a) If the agency receives a signature page signed by the applicant within 30 days of receiving the completed application, the original application date is retained.

(b) If the agency does not receive a signed signature page within 30 days of when it received the completed application, the application is void and the agency will send a denial notice to the applicant. The previous application date will not be protected.

(c) If the agency receives a signed signature page during the 30 days immediately after the denial notice is mailed, the agency will contact the applicant to ask if the applicant wants to reapply for medical assistance. If the applicant wants to reapply, the agency may use the previous completed application form, but the application date will be the date the agency received the signed signature page according to the same provisions in R414-308-3(2).

(d) If the agency receives a signed signature page more than 30 days after the denial notice is sent, the applicant will need to reapply. The original application date is not retained.

(5) If an application is not complete, but it is signed by the applicant, the eligibility worker will ask the applicant to complete the application. If the client completes and returns the application within 30 days of the date the agency received the application, the agency will determine eligibility based on the original application date. If the client does not complete the application within 30 days, the original application date is not retained and the agency denies the application.

#### **R414-308-4. Verification of Eligibility and Information Exchange.**

(1) Medical assistance applicants and recipients must verify all eligibility factors requested by the agency to establish or to redetermine eligibility. Medical assistance applicants and recipients must provide identifying information that the agency needs to meet the requirements of 42 CFR 435.945, 435.948, 435.952, 435.955, and 435.960.

(a) The agency will provide the client a written request of the needed verifications.

(b) The client has at least 10 calendar days from the date the agency gives or mails the verification request to the client to provide verifications.

(c) The due date for returning verifications, forms or information requested by the agency is ~~[5:00 p.m.]~~ the close of business on the date the agency sets as the due date in a written request to the client, but not less than 10 calendar days from the date such request is given to or mailed to the client.

(d) The agency allows additional time to provide verifications if the client requests additional time by the due date. The agency will set a new due date that is at least 10 days from the date the client asks for more time to provide the verifications, forms or information.

(e) If a client has not provided required verifications by the due date, and has not contacted the agency to ask for more time to provide verifications, the agency denies the application, re-certification, or ends eligibility.

(f) If the agency receives all necessary verifications during the 30 days after denying an application for lack of verifications, the date the agency receives all the verifications is the new application date. If the agency receives verifications more than 30 days after the application has been denied, the client will need to reapply for medical assistance.

(2) The agency must receive verification of an individual's income, both unearned and earned. To be eligible under Section 1902(a)(10)(A)(ii)(XIII), the Medicaid Work Incentive program, the agency may require proof such as paycheck stubs showing deductions of FICA tax; self-employment tax filing documents; or for newly self-employed individuals who have not filed tax forms yet, a written business plan and verification of gross receipts and business expenses, to verify that the income is earned income.

#### **R414-308-6. Eligibility Period and Re-Certification.**

(1) The eligibility period begins on the effective date of eligibility as defined in R414-306-4, which may be after the first day of a month, subject to the following requirements.

(a) If a client must pay a spenddown, the agency completes the eligibility process and grants eligibility when the agency receives the required payment or proof of incurred medical expenses equal to the required payment for the month or months, including partial months, for which the client wants medical assistance.

(b) If a client must pay a Medicaid Work Incentive premium, the agency completes the eligibility process and grants eligibility when the agency receives the required payment for the month or months, including partial months, for which the client wants medical assistance.

(c) If a client must pay an asset co-payment for prenatal coverage, the agency completes the eligibility process and grants eligibility when the agency receives the required payment for the period of prenatal coverage.

(d) The client must make the payment or provide proof of medical expenses, if applicable, within 30 calendar days from the mailing date of the notice that tells the client the amount owed.

(e) For ongoing months of eligibility, the client has until ~~[5:00 p.m.]~~ the close of business of the 10th day of the month after the benefit month to meet the spenddown or pay the Medicaid Work incentive premium. If the 10th day of the month is a ~~[weekend or holiday]~~ non-business day, the client has until ~~[5:00 p.m.]~~ the close of business on the first business day after the 10th to meet the spenddown or pay the premium.

(f) Residents who reside in a long-term care facility and who owe a cost-of-care contribution to the medical facility must pay the medical

facility directly. The resident may use unpaid past medical bills, or current incurred medical bills other than the charges from the medical facility, to meet some or all of the cost-of-care contribution subject to the limitations in R414-304-9. The resident must pay any cost-of-care contribution not met with allowable medical bills to the medical facility. An unpaid cost-of-care contribution is not allowed as a medical bill to reduce the amount the client owes the facility.

(g) No eligibility exists in a month for which the client fails to meet a required spenddown or fails to pay a required Medicaid Work Incentive premium. Eligibility for the Prenatal program does not exist when the client fails to pay a required asset co-payment for the Prenatal program.

(2) The eligibility period ends on:

(a) the last day of the re-certification month;

(b) the last day of the month in which the recipient asks the agency to discontinue eligibility;

(c) the last day of the month the agency determines the individual is no longer eligible;

(d) for the Prenatal program, the last day of the month that is at least 60 days after the date the pregnancy ends, except that for Prenatal coverage for emergency services only, eligibility ends the last day of the month in which the pregnancy ends; or

(e) the date the individual dies.

(3) Recipients must re-certify eligibility for medical assistance at least once every 12 months. The agency may require recipients to re-certify eligibility more frequently when the agency:

(a) receives information about changes in a recipient's circumstances that may affect the recipient's eligibility;

(b) has information about anticipated changes in a recipient's circumstances that may affect eligibility; or

(c) knows the recipient has fluctuating income.

(4) To receive medical assistance without interruption, a recipient must complete the re-certification process by ~~5:00 p.m.~~ the close of business on the date printed on the re-certification form. The client must also provide verifications by the due date specified by the agency and must continue to meet all eligibility criteria, including meeting a spenddown or paying a Medicaid Work Incentive premium if one is owed.

(a) If the recipient does not complete the re-certification process on time, eligibility ends on the last day of the re-certification month.

(b) If the recipient does not complete the re-certification process on time, but completes the recertification including providing verifications by ~~5:00 p.m.~~ the close of business on the last business day of the month after the review month, the agency will determine whether the recipient continues to meet all eligibility criteria.

(i) The agency will reinstate benefits effective the beginning of the month after the re-certification month if the recipient continues to meet all eligibility criteria and meets any spenddown or pays the Medicaid Work Incentive premium, if applicable, within 30 days. Otherwise, the recipient remains ineligible for medical assistance.

(ii) If the recipient does not complete the re-certification process before ~~5:00 p.m.~~ the close of business of the last business day of the month following the re-certification month, eligibility will not be reinstated. The recipient will have to reapply for medical assistance.

(c) If the recipient does not meet the spenddown or pay the Medicaid Work Incentive premium on time, then eligibility ends effective the last day of the re-certification month and the recipient will have to reapply.

(5) For individuals selected for coverage under the Qualified Individuals Program, eligibility extends through the end of the calendar

year if the individual continues to meet eligibility criteria and the program still exists.

#### **R414-308-7. Change Reporting and Benefit Changes.**

(1) A client must report to the agency reportable changes in the client's circumstances. Reportable changes are defined in R414-301-2.

(a) The due date for reporting changes is ~~5:00 p.m.~~ the close of business on the 10th calendar day after the client learns of the change.

(b) When the change is receipt of income from a new source, or an increase in income the client receives, the due date for reporting the income change is ~~5:00 p.m.~~ the close of business on the day that is ten calendar days after the date the client receives such income.

(c) The due date for providing verifications of changes is ~~5:00 p.m.~~ the close of business on the date the agency sets as the due date in a written notice to the client.

(2) The agency may receive information from credible sources other than the client such as computer income matches, and from anonymous citizen reports. If the agency receives information from sources other than the client that may affect the client's eligibility, the agency will verify the information as needed depending on the source of information before using the information to change the client's eligibility for medical assistance. Information from citizen reports must always be verified by other reliable proofs.

(3) The date of report is the date the client reports the change to the agency by ~~5:00 p.m.~~ the close of business on a business day by phone, by mail, by fax transmission or in person, or the date the agency receives the information from another source.

(4) If the agency needs verification of the reported change from the client, the agency requests it in writing and provides at least ten calendar days for the client to respond.

(5) A client who provides change reports, forms or verifications by ~~5:00 p.m.~~ the close of business on the due date has provided the information on time.

(6)(a) If the reported information causes an increase in a client's benefits and the agency requests verification, the increase in benefits is effective the first day of the month following:

(i) the date of the report if the agency receives verifications within ten days of the request; or

(ii) the date the verifications are received if verifications are received more than ten days after the date of the request.

(b) The agency cannot increase benefits if the agency does not receive requested verifications.

(7) If the reported information causes a decrease in the client's benefits, the agency makes changes as follows:

(a) If the agency has sufficient information to adjust benefits, the change is effective the first day of the month after the month in which the agency sends proper notice of the decrease, regardless of whether verifications have been received.

(b) If the agency does not have sufficient information to adjust benefits, the agency requests verifications from the client. The due date is at least 10 days from the date of the request.

(i) Upon receiving the verifications, the agency adjusts benefits effective the first day of the month following the month in which the agency can send proper notice.

(ii) If the verifications are not returned on time, the agency discontinues benefits for the affected individuals effective the end of the month in which the agency can send proper notice.

(8) Any time the agency requests verifications to determine or redetermine eligibility for an individual or a household, the agency may discontinue benefits if all required factors of eligibility are not verified

by the due date. If a change does not affect all household members and verifications are not provided, the agency discontinues benefits only for the individual or individuals affected by the change.

(9) If a client fails to timely report a change or return verifications or forms by the due date, the client must repay all services and benefits paid by the Department for which the client was ineligible.

(10) If a due date falls on a ~~[weekend or holiday]~~non-business day, the due date will be ~~[5:00 p.m.]~~the close of business on the first business day immediately after the due date.

#### **R414-308-8. Case Closure and Redetermination.**

(1) The agency terminates medical assistance upon recipient request or if the agency determines the recipient is no longer eligible.

(2) To maintain ongoing eligibility, a recipient must complete the re-certification process as provided in R414-308-6. Failure to complete the re-certification process makes the recipient ineligible.

(3) Before terminating a recipient's medical assistance, the agency will decide if the client is eligible for any other available medical assistance provided under Medicaid, the Medicare Cost-Sharing programs, the Primary Care Network and the UPP program. Children will be referred to the Children's Health Insurance Program when applicable.

(a) The agency does not require a recipient to complete a new application, but may request more information from the recipient to complete the redetermination for other medical assistance programs. If the recipient does not provide the necessary information by the close of business on the due date, the recipient's medical assistance ends.

(b) When redetermining eligibility for other programs, the agency cannot enroll an individual in a medical assistance program that is not in an open enrollment period, unless that program allows a person who becomes ineligible for Medicaid to enroll during a period when enrollments are stopped. An open enrollment period is a time when the agency accepts applications. Open enrollment applies only to the Primary Care Network, the UPP Program and the Children's Health Insurance Program.

**KEY:** public assistance programs, application, eligibility, Medicaid

**Date of Enactment or Last Substantive Amendment:** October 1, 2008

**Notice of Continuation:** January 31, 2008

**Authorizing, and Implemented or Interpreted Law:** 26-18

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## Health, Health Care Financing, Coverage and Reimbursement Policy

# R414-310-13

### Application Procedure

#### NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 31978  
FILED: 09/30/2008, 17:09

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to modify criteria and deadlines for

the Department to receive Primary Care Network (PCN) applications and verifications in accordance with the new four-day work schedule.

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies when the Department must receive PCN applications and verifications in accordance with longer office hours and the new four-day work schedule.

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

#### ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The Department does not expect costs or savings to result from this change as it only implements the new four-day work schedule.

❖ **LOCAL GOVERNMENTS:** This change does not impact local governments as they do not determine eligibility nor receive monies from PCN recipients.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** There are no costs or savings for other persons and small businesses because they do not accept or process PCN applications.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change does not exclude a person from PCN eligibility, nor does it change the services or benefits that a person may receive.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is necessary to conform to the Working 4 Utah initiative and should not have a negative fiscal impact. David N. Sundwall, MD, Executive Director

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

This change is necessary to comply with the "Working 4 Utah" initiative set forth by the governor.

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

THIS RULE IS EFFECTIVE ON: 10/01/2008

AUTHORIZED BY: David N. Sundwall, Executive Director

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-310. Medicaid Primary Care Network Demonstration Waiver.****R414-310-13. Application Procedure.**

(1) The Department adopts 42 CFR 435.907 and 435.908, 2004 ed., which are incorporated by reference. The Department shall maintain case records as defined in R414-308-8.

(2) The applicant must complete and sign a written application or complete an application on-line via the Internet to enroll in the Primary Care Network program.

(a) The Department accepts any Department-approved application form for medical assistance programs offered by the state as an application for the Primary Care Network program. The local office eligibility worker may require the applicant to provide additional information that was not asked for on the form the applicant completed, and may require the applicant to sign a signature page from a hardcopy medical application form.

(b) If an applicant cannot write, he must make his mark on the application form and have at least one witness to the signature. A legal guardian or a person with power of attorney may sign the application form for the applicant.

(c) An authorized representative may apply for the applicant if unusual circumstances prevent the individual from completing the application process himself. The applicant must sign the application form if possible.

(3) The application date is the date the agency receives a signed application form at a local office by ~~[5:00 p.m.]~~ the close of business on a business day. This applies to paper applications delivered in person or by mail, paper applications sent via facsimile transmission, and electronic applications sent via the internet. If a local office receives an application after ~~[5:00 p.m.]~~ the close of business on a business day, the date of application is the next business day.

(4) The application date for applications delivered to an outreach location is as follows:

(a) If the application is delivered at a time when the outreach staff is working at that location, the date of application is the date the outreach staff receives the application.

(b) If the application is delivered on a non-business day or at a time when the outreach office is closed, ~~[including being closed for weekends or holidays,]~~ the date of application is the last business day that a staff person from the state agency was available to receive or pick up applications from the location.

(5) The due date for verifications needed to complete an application and determine eligibility is ~~[5:00 p.m.]~~ the close of business on the last day of the application period.

(6) If an applicant has a legal guardian, a person with a power of attorney, or an authorized representative, the local office shall send decision notices, requests for information, and forms that must be completed to both the individual and the individual's representative, or to just the representative if requested or if determined appropriate.

(7) The Department shall reinstate a medical case without requiring a new application if the case was closed in error.

(8) The Department shall continue enrollment without requiring a new application if the case was closed for failure to complete a recertification or comply with a request for information or verification:

(a) if the enrollee complies before the effective date of the case closure or by the end of the month immediately following the month the case was closed; and

(b) the individual continues to meet all eligibility requirements.

(9) An applicant may withdraw an application for the Primary Care Network program any time before the Department completes an eligibility decision on the application.

(10) The applicant shall pay an annual enrollment fee to enroll in the Primary Care Network Program once the local office has determined that the individual meets the eligibility criteria for enrollment.

(a) Coverage does not begin until the Department receives the enrollment fee.

(b) The enrollment fee covers both the individual and the individual's spouse if the spouse is also eligible for enrollment in the Primary Care Network Program.

(c) The enrollment fee is required at application and at each recertification.

(d) The enrollment fee must be paid to the local office in cash, or by check or money order made out to the Department of Health or to the Department of Workforce Services.

(e) The enrollment fee for an individual or married couple receiving General Assistance from the Department of Workforce Services is \$15. The enrollment fee for an individual or couple who does not receive General Assistance but whose countable income is less than 50 percent of the federal poverty guideline applicable their household size is \$25. The enrollment fee for any other individual or married couple is \$50.

(f) The Department may refund the enrollment fee if it decides the person was ineligible for the program; however, the Department may retain the enrollment fee to the extent that the individual owes any overpayment of benefits that were paid in error on behalf of the individual by the Department.

(11) If an eligible household requests enrollment for a spouse, the application date for the spouse is the date of the request. A new application form is not required; however, the household shall provide the information necessary to determine eligibility for the spouse, including information about access to creditable health insurance, including Medicare Part A or B, student health insurance, and the VA Health Care System.

(a) Coverage or benefits for the spouse will be allowed from the date of request or the date an application is received through the end of the current certification period.

(b) A new enrollment fee is not required to add a spouse during the current certification period.

(c) A new income test is not required to add the spouse for the months remaining in the current certification period.

(d) A spouse may be added only if the Department has not stopped enrollment under section R414-310-16.

(e) Income of the spouse will be considered and payment of the enrollment fee will be required at the next scheduled recertification.

**KEY: Medicaid, primary care, covered-at-work, demonstration Date of Enactment or Last Substantive Amendment: October 1, 2008**

**Notice of Continuation: June 13, 2007**

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



Health, Health Care Financing,  
Coverage and Reimbursement Policy  
**R414-320-15**  
Effective Date of Enrollment and  
Enrollment Period

**NOTICE OF 120-DAY (EMERGENCY) RULE**

DAR FILE NO.: 31979  
FILED: 09/30/2008, 17:13

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to modify criteria and deadlines for the Department to receive applications and verifications for Utah's Premium Partnership for Health Insurance (UPP), in accordance with the new four-day work schedule.

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies when the state must receive UPP applications and verifications in accordance with longer office hours and the new four-day work schedule.

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

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The Department does not expect costs or savings to result from this change as it only implements the new four-day work schedule.
- ❖ LOCAL GOVERNMENTS: This change does not impact local governments as they do not determine eligibility nor receive monies from UPP recipients.
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no costs or savings for other persons and small businesses because they do not accept or process UPP applications.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change does not exclude a person from UPP eligibility, nor does it change the services or benefits that a person may receive.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is necessary to conform to the Working 4 Utah initiative and should not have a negative fiscal impact. David N. Sundwall, MD, Executive Director

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

This change is necessary to comply with the "Working 4 Utah" initiative set forth by the governor.

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

THIS RULE IS EFFECTIVE ON: 10/01/2008

AUTHORIZED BY: David N. Sundwall, Executive Director

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

**R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver.**

**R414-320-15. Effective Date of Enrollment and Enrollment Period.**

(1) The effective date of enrollment is the day that a completed and signed application [~~or an on-line application~~] is received [by the] at a local office by the close of business on a business day [and the applicant meets all eligibility criteria. ~~The effective date for applications submitted by fax and online is the date of the electronic transmission. The Department shall not provide any benefits before the effective enrollment date.~~] This applies to paper applications delivered in person or by mail, paper applications sent via facsimile transmission, and electronic applications sent via the internet. If a local office receives an application after the close of business on a business day, the effective date of UPP enrollment is the next business day.

(2) The application date for applications delivered to an outreach location is as follows:

(a) If the application is delivered at a time when the outreach staff is working at that location, the date of application is the date the outreach staff receives the application.

(b) If the application is delivered on a non-business day or at a time when the outreach office is closed, the date of application is the last business day that a staff person from the state agency was available to receive or pick up applications from the location.

(3) The due date for verifications needed to complete an application and determine eligibility is the close of business on the last day of the application period.

~~(2)~~<sup>4</sup> The effective date of enrollment cannot be before the month in which the applicant pays a premium for the employer-sponsored health insurance and is determined as follows:

(a) The effective date of enrollment is the date an application is received and the person is found eligible, if the applicant enrolls in and pays the first premium for the employer-sponsored health insurance in the application month.

(b) If the applicant will not pay a premium for the employer-sponsored health insurance in the application month, the effective date of enrollment is the first day of the month in which the applicant pays a premium for the employer-sponsored health insurance. The applicant must enroll in the employer-sponsored health insurance no later than 30 days from the day on which the Department of Workforce Services sends the applicant written notice that he meets the qualifications for UPP.

(c) If the applicant does not enroll in the employer-sponsored health insurance within 30 days from the day on which the Department of Workforce Services sends the applicant written notice that he meets the qualifications for UPP, the application shall be denied and the individual will have to reapply during another open enrollment period.

([3]5) The effective date of enrollment for a newborn or newly adopted child is the date the newborn or newly adopted child is enrolled in the employer-sponsored health insurance if the family requests the coverage within 30 days of the birth or adoption. If the request is more than 30 days after the birth or adoption, enrollment is effective the date of report.

([4]6) The effective date of re-enrollment for a recertification is the first day of the month after the recertification month, if the recertification is completed as described in R414-320-13.

([5]7) If the enrollee does not complete the recertification as described in R414-320-13, and the enrollee does not have good cause for missing the deadline, the case will remain closed and the individual may reapply during another open enrollment period.

([6]8) An individual found eligible shall be eligible from the effective date through the end of the first month of eligibility and for the following 12 months. If the enrollee completes the redetermination process in accordance with R414-320-13 and continues to be eligible, the recertification period will be for an additional 12 months beginning the month following the recertification month. Eligibility could end before the end of a 12-month certification period for any of the following reasons:

- (a) The individual turns age 65;
- (b) The individual becomes entitled to receive Medicare, or becomes covered by Veterans Administration Health Insurance;
- (c) The individual dies;
- (d) The individual moves out of state or cannot be located;
- (e) The individual enters a public institution or an Institute for Mental Disease.

([7]9) If an adult enrollee discontinues enrollment in employer-sponsored insurance coverage, eligibility ends. If the enrollment in employer-sponsored insurance is discontinued involuntarily and the

individual notifies the local office within 10 calendar days of when the insurance ends, the individual may switch to the PCN program for the remainder of the certification period.

([8]10) A child enrollee may discontinue employer-sponsored health insurance and move to direct coverage under the Children's Health Insurance Program at any time during the certification period without any waiting period.

([9]11) An individual enrolled in the Primary Care Network or the Children's Health Insurance Program who enrolls in an employer-sponsored plan may switch to the UPP program if the individual reports to the local office within 10 calendar days of enrolling in an employer-sponsored plan and before coverage on the employer-sponsored plan begins.

([10]12) If a UPP case closes for any reason, other than to become covered by another Medicaid program or the Children's Health Insurance Program, and remains closed for one or more calendar months, the individual must submit a new application to the local office during an open enrollment period to reapply. The individual must meet all the requirements of a new applicant.

([11]13) If a UPP case closes because the enrollee is eligible for another Medicaid program or the Children's Health Insurance Program, the individual may reenroll if there is no break in coverage between the programs, even if the State has stopped enrollment under R414-320-15.

(a) If the individual's 12-month certification period has not ended, the individual may reenroll for the remainder of that certification period. The individual is not required to complete a new application or have a new income eligibility determination.

(b) If the 12-month certification period from the prior enrollment has ended, the individual may still reenroll. However, the individual must complete a new application and meet eligibility and income guidelines for the new certification period.

(c) If there is a break in coverage of one or more calendar months between programs, the individual must reapply during an open enrollment period.

**KEY: Medicaid, PCN, CHIP**

**Date of Enactment or Last Substantive Amendment: October 1, 2008**

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

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**End of the Notices of 120-Day (Emergency) 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 Section 63G-3-305.

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## Administrative Services, Finance **R25-8** Overtime Meal Allowance

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

DAR FILE No.: 31982  
FILED: 10/01/2008, 08:45

### **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 enacted under the authority of Subsection 63A-3-103(1), which authorizes the Division of Finance to define fiscal procedures relating to the approval and allocation of funds. This rule details under what conditions funds may be allocated for meal allowance.

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 Division of Finance has not received any written comments 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: A division review determined that this rule should be continued because it is authorized by statute. The rule sets the requirements for paying a meal allowance to a state employee. No opposing comments have been received.

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

ADMINISTRATIVE SERVICES  
FINANCE  
Room 2110 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:  
Marilee Richins at the above address, by phone at 801-538-3450, by FAX at 801-538-3244, or by Internet E-mail at MPRICHINS@utah.gov

AUTHORIZED BY: Kimberly K Hood, Executive Director

EFFECTIVE: 10/01/2008



## Transportation, Administration **R907-64** Longitudinal and Wireless Access to Interstate Highway Rights-of-Way for Installation of Telecommunications Facilities

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

DAR FILE No.: 31962  
FILED: 09/18/2008, 16:32

### **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under Section 72-7-108. The Utah Department of Transportation (UDOT) is given the responsibility to manage and control highway right-of-ways. The ability to control telecommunications in the right-of-ways is part of UDOT's responsibility.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during and since the last five-year review of 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 allows the Department to better control what transpires within the state's highway right-of-ways. Therefore, this rule should be continued.

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

TRANSPORTATION  
ADMINISTRATION  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY UT 84119-5998, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Maureen Short at the above address, by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at maureenshort@utah.gov

AUTHORIZED BY: John R. Njord, Executive Director

EFFECTIVE: 09/18/2008

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 in order to maintain orderly installation of telecommunications equipment. Therefore, this rule should be continued.

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

TRANSPORTATION  
ADMINISTRATION  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY UT 84119-5998, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Maureen Short at the above address, by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at maureenshort@utah.gov

AUTHORIZED BY: John R. Njord, Executive Director

EFFECTIVE: 09/22/2008



Transportation, Administration  
**R907-65**  
Compensation Schedule for  
Longitudinal Access to Interstate  
Highway Rights-of-Way for Installation  
of Telecommunications Facilities

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

DAR FILE NO.: 31965  
FILED: 09/22/2008, 16:55

**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 enacted under Sections 72-1-201 and 72-6-116. The statute requires the Utah Department of Transportation (UDOT) to control utilities in highway right of ways. The rule outlines how UDOT will regulate utilities within the UDOT right-of-way as required by statute.

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



Transportation, Administration  
**R907-67**  
Debarment of Contractors from Work  
on Department Projects -- Reasons

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

DAR FILE NO.: 31963  
FILED: 09/18/2008, 17:06

**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: This rule is implemented under Section 72-1-201. Section 72-1-201 gives the Department authority to maintain and control who works on the state's highways. Rule R907-67 allows the Department to keep the best qualified contractors working on the highways.

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 in connection with 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 helps the Department maintain the highest quality and integrity of the contractors who work on the state's highways, by being able to debar any contractor who has shown fraud and misrepresentation. Being able to debar protects the resources of the State of Utah. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
TRANSPORTATION  
ADMINISTRATION  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY UT 84119-5998, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Maureen Short at the above address, by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at maureenshort@utah.gov

AUTHORIZED BY: John R. Njord, Executive Director

EFFECTIVE: 09/18/2008



**End of the Five-Year Notices of Review and Statements of Continuation Section**

## NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

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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 (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules. The extension permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed extensions for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date. The five-year review extension is governed by Subsection 63G-3-305(4) and (5).

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### Administrative Services

#### Purchasing and General Services

No. 31983: R33-6. Modification and Termination of Contracts for Supplies and Services.

ENACTED OR LAST REVIEWED: 10/03/2003 (No. 26680, 5YR, filed 10/03/2003 at 4:04 p.m., published 11/01/2003).

EXTENDED DUE DATE: 01/31/2009

No. 31984: R33-7. Cost Principles.

ENACTED OR LAST REVIEWED: 10/03/2003 (No. 26681, 5YR, filed 10/03/2003 at 4:14 p.m., published 11/01/2003).

EXTENDED DUE DATE: 01/31/2009

No. 31985: R33-9. Insurance Procurement.

ENACTED OR LAST REVIEWED: 10/03/2003 (No. 26679, 5YR, filed 10/03/2003 at 3:58 p.m., published 11/01/2003).

EXTENDED DUE DATE: 01/31/2009

**End of the Notices of Five-Year Review Extensions 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 63G-3-301(9).

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### Abbreviations

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

### Agriculture and Food

#### Regulatory Services

No. 31380 (R&R): R70-530. Food Protection.  
Published: June 1, 2008  
Effective: September 25, 2008

### Commerce

#### Administration

No. 31138 (AMD): R151-46b. Department of  
Commerce Administrative Procedures Act Rules.  
Published: May 1, 2008  
Effective: September 22, 2008

No. 31138 (CPR): R151-46b. Department of  
Commerce Administrative Procedures Act Rules.  
Published: August 15, 2008  
Effective: September 22, 2008

#### Occupational and Professional Licensing

No. 31763 (AMD): R156-26a. Certified Public  
Accountant Licensing Act Rule.  
Published: August 15, 2008  
Effective: September 23, 2008

### Health

#### Health Care Financing, Coverage and Reimbursement Policy

No. 31789 (AMD): R414-1-5. Incorporations by  
Reference.  
Published: August 15, 2008  
Effective: October 1, 2008

#### Health Systems Improvement, Primary Care and Rural Health

No. 31779 (AMD): R434-100. Physician Visa Waivers.  
Published: August 15, 2008  
Effective: September 30, 2008

### Human Resource Management

#### Administration

No. 31782 (AMD): R477-6-4. Salary.  
Published: August 15, 2008  
Effective: September 22, 2008

No. 31788 (AMD): R477-7. Leave.  
Published: August 15, 2008  
Effective: September 22, 2008

No. 31784 (AMD): R477-8. Working Conditions.  
Published: August 15, 2008  
Effective: September 22, 2008

### Human Services

#### Child and Family Services

No. 31741 (AMD): R512-41. Qualifying Adoptive  
Families and Adoption Placement.  
Published: August 15, 2008  
Effective: September 23, 2008

No. 31742 (AMD): R512-43. Adoption Assistance.  
Published: August 15, 2008  
Effective: September 23, 2008

### Public Safety

#### Driver License

No. 31738 (AMD): R708-41-3. Definitions.  
Published: August 15, 2008  
Effective: September 23, 2008

#### Fire Marshal

No. 31787 (AMD): R710-9. Rules Pursuant to the Utah  
Fire Prevention Law.  
Published: August 15, 2008  
Effective: September 23, 2008

#### Highway Patrol

No. 31754 (AMD): R714-500. Chemical Analysis  
Standards and Training.  
Published: August 15, 2008  
Effective: October 15, 2008

## NOTICES OF RULE EFFECTIVE DATES

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### Peace Officer Standards and Training

No. 31739 (AMD): R728-409. Refusal, Suspension, or Revocation of Peace Officer Certification.  
Published: August 15, 2008  
Effective: October 1, 2008

### Workforce Services

#### Employment Development

No. 31714 (AMD): R986-200-240. Additional Payments Available Under Certain Circumstances.  
Published: August 1, 2008  
Effective: September 29, 2008

No. 31776 (AMD): R986-500-505. Time Limits for AA.  
Published: August 15, 2008  
Effective: September 29, 2008

#### Unemployment Insurance

No. 31712 (AMD): R994-401-203. Retirement or Disability Retirement Income.  
Published: August 1, 2008  
Effective: September 29, 2008  
No. 31711 (AMD): R994-404-101. Claimants Who Qualify for an Adjustment to the Base Period.  
Published: August 1, 2008  
Effective: September 29, 2008

**End of the Notices of Rule Effective Dates Section**

# 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, 2008, including notices of effective date received through October 1, 2008, the effective dates of which are no later than October 15, 2008. 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
<b>Administrative Services</b>					
<u>Administration</u>					
R13-1	Public Petitions for Declaratory Orders	31342	NSC	05/05/2008	Not Printed
R13-1	Public Petitions for Declaratory Orders	31936	5YR	09/10/2008	2008-19/78
R13-2	Access to Records	31343	NSC	05/05/2008	Not Printed
<u>Administrative Rules</u>					
R15-1	Administrative Rule Hearings	31143	NSC	05/05/2008	Not Printed
R15-2	Public Petitioning for Rulemaking	31144	NSC	05/05/2008	Not Printed
R15-3	Definitional Clarification of Administrative Rule	31145	NSC	05/05/2008	Not Printed
R15-4	Administrative Rulemaking Procedures	31146	NSC	05/05/2008	Not Printed
R15-5	Administrative Rules Adjudicative Proceedings	31147	NSC	05/05/2008	Not Printed
<u>Archives</u>					
R17-5	Definitions for Rules in Title R17	31702	NSC	08/20/2008	Not Printed

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R17-5	Definitions for Rules in Title R17	31553	NEW	08/20/2008	2008-13/2
R17-6	Records Storage and Disposal at the State Records Center	31554	NEW	08/20/2008	2008-13/2
R17-7	Archival Records Care and Access at the State Archives	31555	NEW	08/20/2008	2008-13/3
R17-8	Application of Microfilm Standards	31556	NEW	08/20/2008	2008-13/5
R17-8-2	Micrographic Standards	31703	NSC	08/20/2008	Not Printed
<u>Facilities Construction and Management</u>					
R23-2	Procurement of Architect-Engineer Services	31098	AMD	07/14/2008	2008-8/2
R23-13	State of Utah Parking Rules for Facilities Managed by the Division of Facilities Construction and Management	31063	5YR	03/17/2008	2008-8/50
R23-14	Management of Roofs on State Buildings	31064	5YR	03/17/2008	2008-8/50
R23-22	General Procedures For Acquisition and Selling of Real Property	31607	EMR	06/25/2008	2008-14/120
R23-22	General Procedures For Acquisition and Selling of Real Property	31606	NEW	09/11/2008	2008-14/3
R23-22	General Procedures For Acquisition and Selling of Real Property	31799	NSC	10/01/2008	Not Printed
<u>Finance</u>					
R25-2	Finance Adjudicative Proceedings	31318	NSC	05/05/2008	Not Printed
R25-5	Payment of Per Diem to Boards	31317	5YR	04/29/2008	2008-10/143
R25-6	Relocation Reimbursement	31316	5YR	04/29/2008	2008-10/143
R25-7	Travel-Related Reimbursements for State Employees	31319	5YR	04/29/2008	2008-10/144
R25-7	Travel-Related Reimbursements for State Employees	31320	AMD	07/01/2008	2008-10/4
R25-8	Meal Allowance	31321	AMD	07/01/2008	2008-10/7
R25-8	Overtime Meal Allowance	31982	5YR	10/01/2008	2008-20/52
R25-14	Payment of Attorneys' Fees in Death Penalty Cases	31363	EMR	05/05/2008	2008-10/140
R25-14	Payment of Attorneys' Fees in Death Penalty Cases	31527	AMD	08/19/2008	2008-13/5
R25-14	Payment of Attorneys' Fees in Death Penalty Cases	31775	NSC	10/01/2008	Not Printed
<u>Fleet Operations</u>					
R27-2-1	Informal Proceedings	31408	NSC	08/18/2008	Not Printed
R27-3	Vehicle Use Standards	31137	AMD	06/17/2008	2008-9/3
R27-4	Vehicle Replacement and Expansion of State Fleet	30618	AMD	03/06/2008	2007-22/9
R27-4	Vehicle Replacement and Expansion of State Fleet	31411	NSC	08/18/2008	Not Printed
R27-5-2	Items Tracked in the Fleet Information System	31419	NSC	08/18/2008	Not Printed
R27-6	Fuel Dispensing Program	31420	NSC	08/18/2008	Not Printed
R27-7-1	Authority	31421	NSC	08/18/2008	Not Printed
R27-8-1	Authority	31422	NSC	08/18/2008	Not Printed
<u>Fleet Operations, Surplus Property</u>					
R28-3	Utah State Agency for Surplus Property Adjudicative Proceedings	31117	5YR	04/04/2008	2008-9/52
<u>Purchasing and General Services</u>					
R33-1	Utah State Procurement Rules Definitions	31477	NSC	06/18/2008	Not Printed
R33-2-101	Delegation of Authority of the Chief Procurement Officer	31478	NSC	06/18/2008	Not Printed
R33-3	Source Selection and Contract Formation	31479	NSC	06/18/2008	Not Printed
R33-3-4	Sole Source Procurement	31475	AMD	08/01/2008	2008-12/3



CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R33-4	Specifications	31480	NSC	06/18/2008	Not Printed
R33-5	Construction and Architect-Engineer Selection	31481	NSC	06/18/2008	Not Printed
R33-5-250	Design-Build or Turnkey: Use	31476	AMD	08/01/2008	2008-12/4
R33-7	Cost Principles	31482	NSC	06/18/2008	Not Printed
R33-8-101	Quality Assurance, Inspection, and Testing	31483	NSC	06/18/2008	Not Printed
<u>Records Committee</u>					
R35-1	State Records Committee Appeal Hearing Procedures	31560	NSC	08/19/2008	Not Printed
R35-1a	State Records Committee Definitions	31561	NSC	08/19/2008	Not Printed
R35-2	Declining Appeal Hearings	31567	NSC	08/19/2008	Not Printed
R35-2-2	Declining Requests for Hearings	31938	NSC	10/01/2008	Not Printed
R35-3	Prehearing Conferences	31568	NSC	08/19/2008	Not Printed
R35-4	Compliance with State Records Committee Decisions and Orders	31569	NSC	08/19/2008	Not Printed
R35-5-1	Authority and Purpose	31570	NSC	08/19/2008	Not Printed
R35-6-1	Authority and Purpose	31571	NSC	08/19/2008	Not Printed
<u>Risk Management</u>					
R37-2	Risk Management State Workers' Compensation Insurance Administration	31347	AMD	06/23/2008	2008-10/8
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	31150	R&R	07/01/2008	2008-9/5
<b>Agriculture and Food</b>					
<u>Administration</u>					
R51-5	Grazing Advisory Boards	31471	REP	07/22/2008	2008-12/5
<u>Conservation and Resource Management</u>					
R64-2	Utah Conservation Commission Electronic Meetings	31079	NEW	06/03/2008	2008-8/4
<u>Marketing and Development</u>					
R65-2	Utah Cherry Marketing Order	31007	5YR	02/15/2008	2008-5/38
R65-5	Utah Red Tart and Sour Cherry Marketing Order	31008	5YR	02/15/2008	2008-5/38
<u>Plant Industry</u>					
R68-3-2	Registration of Products	31491	AMD	07/25/2008	2008-12/6
R68-5	Grain Inspection	31006	5YR	02/15/2008	2008-5/39
R68-7	Utah Pesticide Control Act	30611	AMD	01/07/2008	2007-22/11
R68-8-2	Noxious Weed Seeds and Weed Seed Restrictions	31127	AMD	07/02/2008	2008-9/7
R68-9	Utah Noxious Weed Act	31544	5YR	06/09/2008	2008-13/147
R68-9	Utah Noxious Weed Act	31128	AMD	07/02/2008	2008-9/8
R68-14	Quarantine Pertaining to Gypsy Moth - Lymantria Dispar	31125	5YR	04/04/2008	2008-9/52
R68-16	Utah Quarantine Pertaining to Pine Shoot Beetle, Tomicus Piniperda	31543	5YR	06/09/2008	2008-13/147
R68-16	Quarantine Pertaining to Pine Shoot Beetle, Tomicus piniperda	31126	AMD	07/02/2008	2008-9/11
R68-17	Quarantine Pertaining to Necrotic Strain of the Potato Virus Y	31009	REP	04/11/2008	2008-5/4
<u>Regulatory Services</u>					
R70-530	Food Protection	31380	R&R	09/25/2008	2008-11/2
R70-560	Cottage Food Production Operations	31430	AMD	07/25/2008	2008-11/47

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>Alcoholic Beverage Control</b>					
<u>Administration</u>					
R81-1-2	Definitions	31254	AMD	06/27/2008	2008-10/10
R81-1-9	Liquor Dispensing Systems	31273	AMD	06/27/2008	2008-10/11
R81-1-10	Wine Dispensing	31275	AMD	06/27/2008	2008-10/13
R81-1-11	Multiple-Licensed Facility Storage and Service	31279	AMD	06/27/2008	2008-10/14
R81-1-11	Multiple-Licensed Facility Storage and Service	31630	NSC	08/25/2008	Not Printed
R81-1-26	Criminal History Background Checks	31289	AMD	06/27/2008	2008-10/16
R81-1-27	Label Approvals	31640	AMD	09/01/2008	2008-14/5
R81-3-1	Definitions	31291	AMD	06/27/2008	2008-10/18
R81-3-9	Promotion and Listing of Products	31328	AMD	06/27/2008	2008-10/19
R81-3-13	Operational Restrictions	31329	AMD	06/27/2008	2008-10/20
R81-3-14	Type 5 Package Agencies	31330	AMD	06/27/2008	2008-10/21
R81-4C	Limited Restaurant Licenses	31154	NSC	05/01/2008	Not Printed
R81-4C	Limited Restaurant Licenses	31780	5YR	07/31/2008	2008-16/66
R81-4D	On-Premise Banquet License	31155	NSC	05/01/2008	Not Printed
R81-4D	On-Premise Banquet License	31785	5YR	07/31/2008	2008-16/66
R81-4D-1	Licensing	31336	AMD	07/30/2008	2008-10/22
R81-4D-2	Application	31338	AMD	07/30/2008	2008-10/24
R81-5-11	Price Lists	31287	AMD	06/27/2008	2008-10/25
R81-7-1	Application Guidelines	31332	AMD	06/27/2008	2008-10/26
R81-10	Off-Premise Beer Retailers	31334	NEW	06/27/2008	2008-10/27
R81-10B	Temporary Special Event Beer Permits	31786	5YR	07/31/2008	2008-16/67
<b>Auditor</b>					
<u>Administration</u>					
R123-3-1	Definitions	31257	NSC	05/05/2008	Not Printed
R123-3-2	Designation	31260	NSC	05/05/2008	Not Printed
R123-3-3	Adjudicative Proceedings	31261	NSC	05/05/2008	Not Printed
R123-4-1	Authority	31262	NSC	05/05/2008	Not Printed
R123-4-2	Definitions	31263	NSC	05/05/2008	Not Printed
R123-4-5	Intervention	31265	NSC	05/05/2008	Not Printed
R123-4-6	Petition Review and Disposition	31266	NSC	05/05/2008	Not Printed
R123-4-7	Administrative Review	31267	NSC	05/05/2008	Not Printed
<b>Capitol Preservation Board (State)</b>					
<u>Administration</u>					
R131-1	Procurement of Architectural and Engineering Services	30591	AMD	02/29/2008	2007-21/11
R131-4	Procurement of Construction	30590	R&R	02/29/2008	2007-21/13
<b>Career Service Review Board</b>					
<u>Administration</u>					
R137-1-2	Definitions	31934	EMR	10/02/2008	2008-19/75
R137-2	Government Records Access and Management Act	31473	5YR	05/21/2008	2008-12/50

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>Commerce</b>					
<u>Administration</u>					
R151-2	Government Records Access and Management Act Rule	31345	NSC	05/05/2008	Not Printed
R151-2-4	Forms	31385	AMD	07/08/2008	2008-11/49
R151-3-1	Authority and Purpose	31346	NSC	05/05/2008	Not Printed
R151-14-3	Adjudicative Proceedings	31354	NSC	05/05/2008	Not Printed
R151-35-3	Adjudicative Proceedings	31355	NSC	05/05/2008	Not Printed
R151-46b	Department of Commerce Administrative Procedures Act Rules	31138	CPR	09/22/2008	2008-16/53
R151-46b	Department of Commerce Administrative Procedures Act Rules	31138	AMD	09/22/2008	2008-9/12
<u>Consumer Protection</u>					
R152-1	Utah Division of Consumer Protection: "Buyer Beware List"	31184	NSC	05/05/2008	Not Printed
R152-11	Utah Consumer Sales Practices Act Rules	31213	NSC	05/05/2008	Not Printed
R152-15-2	Filing Requirements. Filing Fees	31214	NSC	05/05/2008	Not Printed
R152-20	New Motor Vehicle Warranties Rules	31215	NSC	05/05/2008	Not Printed
R152-22-9	Grounds for Denial, Suspension or Revocation Procedure	31216	NSC	05/05/2008	Not Printed
R152-23-1	Authority	31217	NSC	05/05/2008	Not Printed
R152-34-10	Rules Relating to Suspension, Termination or Refusal to Register under Section 13-34-111	31218	NSC	05/05/2008	Not Printed
<u>Corporations and Commercial Code</u>					
R154-10	Utah Digital Signatures Act Rules	30642	REP	03/03/2008	2007-22/16
R154-100	Utah Administrative Procedures Act Rules	31993	5YR	10/02/2008	Not Printed
<u>Occupational and Professional Licensing</u>					
R156-1	General Rules of the Division of Occupational and Professional Licensing	31288	AMD	06/23/2008	2008-10/30
R156-1-102a	Global Definitions of Levels of Supervision	30655	AMD	01/08/2008	2007-23/3
R156-3a-303	Qualifications for Licensure - Examination Requirements	30935	AMD	03/27/2008	2008-4/5
R156-5a	Podiatric Physician Licensing Act Rules	32002	5YR	10/07/2008	Not Printed
R156-11a	Barber, Cosmetologist/Barber, Esthetician, Electrology, and Nail Technician Licensing Act Rule	30953	AMD	04/10/2008	2008-5/5
R156-11a-601	Standards for Accreditation	31174	NSC	05/05/2008	Not Printed
R156-22-305	Inactive Status	31175	NSC	05/05/2008	Not Printed
R156-26a	Certified Public Accountant Licensing Act Rules	30715	AMD	03/31/2008	2007-23/4
R156-26a	Certified Public Accountant Licensing Act Rules	30715	CPR	03/31/2008	2008-4/35
R156-26a	Certified Public Accountant Licensing Act Rule	31763	AMD	09/23/2008	2008-16/5
R156-28	Veterinary Practice Act Rules	31396	AMD	07/10/2008	2008-11/56
R156-31b	Nurse Practice Act Rules	31094	5YR	04/01/2008	2008-8/51
R156-31b	Nurse Practice Act Rules	31156	AMD	06/23/2008	2008-10/34
R156-31b	Nurse Practice Act Rule	31615	AMD	08/25/2008	2008-14/15
R156-31b-102	Definitions	31603	NSC	08/25/2008	Not Printed
R156-37	Utah Controlled Substances Act Rules	31423	AMD	09/09/2008	2008-11/62
R156-37	Utah Controlled Substances Act Rules	31423	CPR	09/09/2008	2008-15/84
R156-38a	Residence Lien Restriction and Lien Recovery Fund Rules	30654	AMD	01/07/2008	2007-23/14

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R156-38a-105a	Adjudicative Proceedings	31176	NSC	05/05/2008	Not Printed
R156-38b-703	SCR Record Classification	31177	NSC	05/05/2008	Not Printed
R156-40-302e	Qualifications for Temporary License as a TRS - Supervision Required	31178	NSC	05/05/2008	Not Printed
R156-41	Speech-Language Pathology and Audiology Licensing Act Rules	31397	AMD	07/14/2008	2008-11/65
R156-46b	Division Utah Administrative Procedures Act Rules	31179	NSC	05/05/2008	Not Printed
R156-47b	Massage Therapy Practice Act Rules	30853	AMD	02/21/2008	2008-2/4
R156-49	Dietitian Certification Act Rules	31073	5YR	03/24/2008	2008-8/52
R156-49	Dietitian Certification Act Rules	31180	NSC	05/05/2008	Not Printed
R156-53	Landscape Architect Licensing Act Rules	31074	5YR	03/24/2008	2008-8/52
R156-55a	Utah Construction Trades Licensing Act Rule	30892	AMD	03/11/2008	2008-3/3
R156-55a	Utah Construction Trades Licensing Act Rule	31292	AMD	06/24/2008	2008-10/42
R156-55a-102	Definitions	31616	NSC	08/25/2008	Not Printed
R156-55d	Utah Construction Trades Licensing Act Burglar Alarm Licensing Rules	31181	NSC	05/05/2008	Not Printed
R156-55d	Utah Construction Trades Licensing Act Burglar Alarm Licensing Rules	31588	NSC	08/25/2008	Not Printed
R156-56	Utah Uniform Building Standard Act Rules	30574	AMD	01/01/2008	2007-21/38
R156-56	Utah Uniform Building Standard Act Rules	31139	AMD	07/01/2008	2008-9/23
R156-56-420	Administration of Building Code Training Fund	30573	AMD	01/01/2008	2007-21/57
R156-56-701	Specific Editions of Uniform Building Standards	31142	AMD	07/01/2008	2008-9/30
R156-56-801	Statewide Amendments to the IBC	31626	NSC	07/01/2008	Not Printed
R156-61	Psychologist Licensing Act Rules	30915	CPR	05/08/2008	2008-7/55
R156-61	Psychologist Licensing Act Rules	30915	AMD	05/08/2008	2008-3/6
R156-63	Security Personnel Licensing Act Rule	31182	NSC	05/05/2008	Not Printed
R156-67	Utah Medical Practice Act Rules	31183	NSC	05/05/2008	Not Printed
R156-68	Utah Osteopathic Medical Practice Act Rules	31083	5YR	03/27/2008	2008-8/53
R156-68	Utah Osteopathic Medical Practice Act Rules	31185	NSC	05/05/2008	Not Printed
R156-69	Dentist and Dental Hygienist Practice Act Rules	31136	AMD	06/09/2008	2008-9/35
R156-71	Naturopathic Physician Practice Act Rules	30854	AMD	07/08/2008	2008-2/6
R156-71	Naturopathic Physician Practice Act Rules	30854	CPR	07/08/2008	2008-11/121
R156-74	Certified Court Reporters Licensing Act Rules	31516	AMD	07/22/2008	2008-12/7
R156-76	Professional Geologist Licensing Act Rules	30694	AMD	01/08/2008	2007-23/17
R156-78A	Prelitigation Panel Review Rules	31055	NSC	03/26/2008	Not Printed
<u>Real Estate</u>					
R162-2-2	Licensing Procedure	31003	AMD	04/07/2008	2008-5/7
R162-3	License Status Change	31456	AMD	07/30/2008	2008-12/8
R162-8-4	School Conduct and Standards of Practice	31001	AMD	04/07/2008	2008-5/10
R162-9	Continuing Education	31277	AMD	06/23/2008	2008-10/48
R162-10	Administrative Procedures	31429	NSC	08/18/2008	Not Printed
R162-12	Utah Housing Opportunity Restricted Account	31000	NEW	04/07/2008	2008-5/11
R162-109	Administrative Proceedings	31427	NSC	08/18/2008	Not Printed
R162-207	License Renewal	31457	AMD	07/30/2008	2008-12/10
R162-207-6	Determining Fitness for Renewal	31002	AMD	04/07/2008	2008-5/12
R162-208	Continuing Education	31278	AMD	06/23/2008	2008-10/50
R162-209	Administrative Proceedings	31428	NSC	08/18/2008	Not Printed

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R162-210-4	Rules of Conduct for Certified Schools	31004	AMD	04/07/2008	2008-5/13
R162-211	Adjusted License Terms	31968	EMR	10/01/2008	2008-20/42
<u>Securities</u>					
R164-31	Administrative Fines	31541	NEW	08/26/2008	2008-13/8
<b>Community and Culture</b>					
<u>Home Energy Assistance Target (HEAT)</u>					
R195-1	Energy Assistance: General Provisions	31331	NSC	05/05/2008	Not Printed
<u>Housing and Community Development</u>					
R199-8	Permanent Community Impact Fund Board Review and Approval of Applications for Funding Assistance	30451	AMD	01/01/2008	2007-19/6
<u>History</u>					
R212-4	Archaeological Permits	31290	R&R	06/25/2008	2008-10/52
<u>Indian Affairs</u>					
R230-1	Native American Grave Protection and Repatriation	30912	AMD	07/16/2008	2008-3/12
R230-1	Native American Grave Protection and Repatriation	30912	CPR	07/16/2008	2008-11/122
<b>Corrections</b>					
<u>Administration</u>					
R251-103	Undercover Roles of Offenders	31995	5YR	10/02/2008	Not Printed
R251-105	Applicant Qualifications for Employment with Department of Corrections	31996	5YR	10/02/2008	Not Printed
R251-112	Americans With Disabilities Act Implementation and Complaint Process	30713	AMD	03/11/2008	2007-23/19
R251-114	Offender Long-Term Health Care - Notice	30803	NEW	03/11/2008	2008-1/6
R251-304	Contract Procedures	30952	5YR	02/05/2008	2008-5/39
R251-304	Contract Procedures	30980	AMD	05/20/2008	2008-5/15
<b>Crime Victim Reparations</b>					
<u>Administration</u>					
R270-1	Award and Reparation Standards	31322	NSC	05/05/2008	Not Printed
R270-1-11	Collateral Source	30593	AMD	01/02/2008	2007-22/33
R270-1-22	Sexual Assault Forensic Examinations	31013	AMD	05/19/2008	2008-6/3
R270-1-23	Loss of Support Awards	31504	AMD	07/28/2008	2008-12/12
R270-1-24	Rent Awards	31529	AMD	08/11/2008	2008-13/8
R270-2	Crime Victim Reparations Adjudicative Proceedings	31323	NSC	05/05/2008	Not Printed
R270-4	Government Records Access and Management Act	31324	NSC	05/05/2008	Not Printed
<b>Education</b>					
<u>Administration</u>					
R277-104	USOE ADA Compliant Procedure	31517	5YR	06/02/2008	2008-12/50
R277-106	Utah Professional Practices Advisory Commission Appointment Process	31951	5YR	09/15/2008	2008-19/78
R277-109	One-time Signing Bonuses	31439	NEW	07/08/2008	2008-11/67
R277-110	Legislative Supplemental Salary Adjustment	31572	AMD	08/07/2008	2008-13/9
R277-113	One-time Performance-based Compensation Program	31440	NEW	07/08/2008	2008-11/69
R277-116-1	USOE Internal Audit Procedure	31573	AMD	08/07/2008	2008-13/11

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R277-419	Pupil Accounting	31574	AMD	08/07/2008	2008-13/12
R277-423	Delivery of Flow Through Money	30845	AMD	02/07/2008	2008-1/8
R277-436	Gang Prevention and Intervention Programs in the Schools	31518	5YR	06/02/2008	2008-12/51
R277-437	Student Enrollment Options	31575	R&R	08/07/2008	2008-13/16
R277-451	The State School Building Program	31576	REP	08/07/2008	2008-13/19
R277-460	Distribution of Substance Abuse Prevention Account	31519	5YR	06/02/2008	2008-12/51
R277-469	Instructional Materials Commission Operating Procedures	30781	AMD	01/22/2008	2007-24/4
R277-469	Instructional Materials Commission Operating Procedures	31035	5YR	03/03/2008	2008-7/62
R277-469	Instructional Materials Commission Operating Procedures	31577	AMD	08/07/2008	2008-13/21
R277-470-7	Timelines - Charter School Starting Date	30846	AMD	02/07/2008	2008-1/9
R277-471	Oversight of School Inspections	31441	AMD	07/08/2008	2008-11/70
R277-483	Persistently Dangerous Schools	31036	5YR	03/03/2008	2008-7/62
R277-484	Data Standards	31005	AMD	04/11/2008	2008-5/17
R277-484	Data Standards	31520	5YR	06/02/2008	2008-12/52
R277-485	Loss of Enrollment	31037	5YR	03/03/2008	2008-7/63
R277-488	Critical Languages Pilot Program	31442	AMD	07/08/2008	2008-11/72
R277-490	Beverly Taylor Sorenson Elementary Arts Learning Program	31443	NEW	07/08/2008	2008-11/74
R277-492	Utah Science Technology and Research Initiative (USTAR) Centers Program	31578	NEW	08/07/2008	2008-13/25
R277-502	Educator Licensing and Data Retention	30944	AMD	03/24/2008	2008-4/6
R277-502-6	Educator Licensing and Data Retention	31579	AMD	08/07/2008	2008-13/27
R277-504	Early Childhood, Elementary, Secondary, Special Education (K-12), Communication Disorders, Speech-Language Pathologist and Speech-Language Technician, and Special Education (Birth-Age 5) Certification	31444	AMD	07/08/2008	2008-11/77
R277-508	Employment of Substitute Teachers	31038	5YR	03/03/2008	2008-7/63
R277-515-3	Educator as a Role Model of Civic and Societal Responsibility	30976	NSC	02/27/2008	Not Printed
R277-515-4	Educator Responsibility for Maintaining a Safe Learning Environment and Educational Standards	31580	AMD	08/07/2008	2008-13/28
R277-518	Applied Technology Education Licenses	30878	5YR	01/08/2008	2008-3/72
R277-525	Special Educator Stipends	31445	NEW	07/08/2008	2008-11/82
R277-526	Paraeducator to Teacher Scholarship Program	31581	NEW	08/07/2008	2008-13/29
R277-600	Student Transportation Standards and Procedures	30879	5YR	01/08/2008	2008-3/72
R277-605	Coaching Standards and Athletic Clinics	30880	5YR	01/08/2008	2008-3/73
R277-606	Grants to Purchase or Retrofit Clean School Buses	31582	NEW	08/07/2008	2008-13/31
R277-609	Standards for School District Discipline Plans	30847	AMD	02/07/2008	2008-1/10
R277-609-5	Parent/Guardian Notification and Court Referral	30958	NSC	02/29/2008	Not Printed
R277-610	Released-Time Classes for Religious Instruction	30881	5YR	01/08/2008	2008-3/73
R277-700	The Elementary and Secondary School Core Curriculum	30882	5YR	01/08/2008	2008-3/74
R277-702	Procedures for the Utah General Educational Development Certificate	30883	5YR	01/08/2008	2008-3/74
R277-703-6	Funding Provisions	30977	NSC	02/27/2008	Not Printed
R277-709	Education Programs Serving Youth in Custody	30884	5YR	01/08/2008	2008-3/75

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R277-710	International Baccalaureate Programs	31583	NEW	08/07/2008	2008-13/32
R277-718	Utah Career Teaching Scholarship Program	30885	5YR	01/08/2008	2008-3/75
R277-719	Standards for Selling Foods Outside of the Reimbursable Meal in Schools	30848	NEW	02/07/2008	2008-1/12
R277-721	Deadline for CACFP Sponsor Participation in Food Distribution Program	30886	5YR	01/08/2008	2008-3/76
R277-721	Deadline for CACFP Sponsor Participation in Food Distribution Program	31014	REP	04/21/2008	2008-6/5
R277-722	Withholding Payments and Commodities in the CACFP	30887	5YR	01/08/2008	2008-3/76
R277-722	Withholding Payments and Commodities in the CACFP	31015	REP	04/21/2008	2008-6/6
R277-730	Alternative High School Curriculum	30888	5YR	01/08/2008	2008-3/77
R277-746	Driver Education Programs for Utah Schools	31039	5YR	03/03/2008	2008-7/64
R277-747	Private School Student Driver Education	31040	5YR	03/03/2008	2008-7/64
R277-751	Special Education Extended School Year	31041	5YR	03/03/2008	2008-7/65
<u>Rehabilitation</u>					
R280-200	Rehabilitation	31042	5YR	03/03/2008	2008-7/65
<b>Environmental Quality</b>					
<u>Administration</u>					
R305-3	Emergency Meetings	30766	REP	02/15/2008	2007-24/6
R305-3	Emergency Meeting (5YR EXTENSION)	30506	NSC	02/15/2008	Not Printed
<u>Air Quality</u>					
R307-101	General Requirements	30697	AMD	02/08/2008	2007-23/21
R307-101	General Requirements	30959	5YR	02/08/2008	2008-5/40
R307-102	General Requirements: Broadly Applicable Requirements	30960	5YR	02/08/2008	2008-5/40
R307-102	General Requirements: Broadly Applicable Requirements	31462	NSC	06/18/2008	Not Printed
R307-103	Administrative Procedures	31461	NSC	06/18/2008	Not Printed
R307-103-2	Initial Proceedings	31809	NSC	10/01/2008	Not Printed
R307-107	General Requirements: Unavoidable Breakdown	31927	5YR	09/04/2008	2008-19/79
R307-107	General Requirements: Unavoidable Breakdown (5YR EXTENSION)	31426	NSC	09/04/2008	Not Printed
R307-115	General Conformity	30698	AMD	02/08/2008	2007-23/28
R307-115	General Conformity	30961	5YR	02/08/2008	2008-5/41
R307-121	General Requirements: Clean Fuel Vehicle Tax Credits	31389	AMD	08/07/2008	2008-11/87
R307-121-3	Procedures for OEM Vehicles	30889	NSC	01/30/2008	Not Printed
R307-150-4	Sulfur Dioxide Milestone Inventory Requirements	31558	AMD	09/04/2008	2008-13/35
R307-170	Continuous Emission Monitoring Program	30962	5YR	02/08/2008	2008-5/41
R307-170-7	Performance Specification Audits	30699	AMD	02/08/2008	2007-23/29
R307-202	Emission Standards: General Burning	30963	5YR	02/08/2008	2008-5/42
R307-203	Emission Standards: Sulfur Content of Fuels	30964	5YR	02/08/2008	2008-5/43
R307-214	National Emission Standards for Hazardous Air Pollutants	30895	5YR	01/11/2008	2008-3/77
R307-214	National Emission Standards for Hazardous Air Pollutants	30430	AMD	01/11/2008	2007-19/12
R307-215	Acid Rain Requirements	30700	REP	02/08/2008	2007-23/31
R307-220	Emission Standards: Plan for Designated Facilities	30965	5YR	02/08/2008	2008-5/43

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R307-221	Emission Standards: Emission Controls for Existing Municipal Solid Waste Landfills	30701	AMD	02/08/2008	2007-23/32
R307-221	Emission Standards: Emission Controls for Existing Municipal Solid Waste Landfills	30966	5YR	02/08/2008	2008-5/44
R307-221-2	Definitions and References	30832	NSC	02/08/2008	Not Printed
R307-222	Emission Standards: Existing Incinerators for Hospital, Medical, Infectious Waste	30967	5YR	02/08/2008	2008-5/44
R307-222	Emission Standards: Existing Incinerators for Hospital, Medical, Infectious Waste	30702	AMD	02/08/2008	2007-23/36
R307-222-1	Purpose and Applicability	30833	NSC	02/08/2008	Not Printed
R307-223	Existing Incinerators for Hospital, Medical, Infectious Waste	30703	AMD	02/08/2008	2007-23/38
R307-223	Emission Standards: Existing Small Municipal Waste Combustion Units	30968	5YR	02/08/2008	2008-5/45
R307-224	Mercury Emission Standards: Coal-Fired Electric Generating Units	30969	5YR	02/08/2008	2008-5/45
R307-224-2	Emission Guidelines and Compliance Times for Coal-Fired Electric Generating Units	30704	AMD	02/08/2008	2007-23/39
R307-250	Western Backstop Sulfur Dioxide Trading Program	30970	5YR	02/08/2008	2008-5/46
R307-302-3	No-Burn Periods for Fine Particulate	31388	AMD	08/07/2008	2008-11/91
R307-310	Salt Lake County: Trading of Emission Budgets for Transportation Conformity	30971	5YR	02/08/2008	2008-5/46
R307-310-2	Definitions	30705	AMD	02/08/2008	2007-23/40
R307-401-14	Used Oil Fuel Burned for Energy Recovery	30709	AMD	02/08/2008	2007-23/42
R307-405	Permits: Major Sources in Attainment or Unclassified Areas (PSD)	30431	AMD	01/11/2008	2007-19/15
R307-417	Acid Rain Sources	30706	AMD	02/08/2008	2007-23/43
R307-801	Asbestos	30707	AMD	02/08/2008	2007-23/45
R307-801	Asbestos	30972	5YR	02/08/2008	2008-5/47
R307-840	Lead-Based Paint Accreditation, Certification and Work Practice Standards	30708	AMD	02/08/2008	2007-23/48
R307-840	Lead-Based Paint Accreditation, Certification and Work Practice Standards	30973	5YR	02/08/2008	2008-5/47
<u>Drinking Water</u>					
R309-352	Capacity Development Program	31157	5YR	04/18/2008	2008-10/144
R309-515-6	Ground Water - Wells	31710	AMD	09/10/2008	2008-15/28
R309-515-6	Ground Water - Wells	31709	AMD	09/10/2008	2008-15/26
<u>Environmental Response and Remediation</u>					
R311-200	Underground Storage Tanks: Definitions	31486	NSC	06/18/2008	Not Printed
R311-200	Underground Storage Tanks: Definitions	31495	AMD	08/18/2008	2008-12/13
R311-201	Underground Storage Tanks: Certification Programs	31487	NSC	06/18/2008	Not Printed
R311-203	Underground Storage Tanks: Notification, New Installations, Registration Fees, and Testing Requirements	31496	AMD	08/18/2008	2008-12/16
R311-206-3	Requirements for Issuance of Certificates of Compliance	31497	AMD	08/18/2008	2008-12/19
R311-210	Administrative Procedures for Underground Storage Tank Act Adjudicative Proceedings	31488	NSC	06/18/2008	Not Printed
R311-401-2	Utah Hazardous Substances Priority List	30567	AMD	01/02/2008	2007-21/59
<u>Radiation Control</u>					
R313-12-1	Authority	31170	NSC	05/05/2008	Not Printed
R313-12-111	Submission of Electronic Copies	30774	AMD	04/11/2008	2007-24/8
R313-12-111	Submission of Electronic Copies	30774	CPR	04/11/2008	2008-5/34
R313-15	Standards for Protection Against Radiation	30865	AMD	03/17/2008	2008-2/10



CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R313-17	Administrative Procedures	31171	NSC	05/05/2008	Not Printed
<u>Solid and Hazardous Waste</u>					
R315-2	General Requirements - Identification and Listing of Hazardous Waste	31377	NSC	05/05/2008	Not Printed
R315-3	Application and Permit Procedures for Hazardous Waste Treatment, Storage, and Disposal Facilities	31065	NSC	04/11/2008	Not Printed
R315-12	Administrative Procedures	31376	NSC	05/05/2008	Not Printed
R315-15-1	Applicability, Prohibitions, and Definitions	30907	AMD	03/13/2008	2008-3/16
R315-15-10	Liability/Financial Requirements	30908	AMD	03/13/2008	2008-3/19
R315-15-11	Closure	30909	AMD	03/13/2008	2008-3/21
R315-15-12	Reclamation Surety	30910	AMD	03/13/2008	2008-3/23
R315-15-17	Wording of Financial Assurance Mechanisms	30911	AMD	03/13/2008	2008-3/29
R315-301	Solid Waste Authority, Definitions, and General Requirements	30990	5YR	02/14/2008	2008-5/48
R315-302	Solid Waste Facility Location Standards, General Facility Requirements, and Closure Requirements	30986	5YR	02/14/2008	2008-5/49
R315-303	Landfilling Standards	30992	5YR	02/14/2008	2008-5/49
R315-305	Class IV and VI Landfill Requirements	30991	5YR	02/14/2008	2008-5/50
R315-306	Incinerator Standards	30985	5YR	02/14/2008	2008-5/51
R315-307	Landtreatment Disposal Standards	30993	5YR	02/14/2008	2008-5/51
R315-308	Ground Water Monitoring Requirements	30995	5YR	02/14/2008	2008-5/52
R315-309	Financial Assurance	30994	5YR	02/14/2008	2008-5/52
R315-310	Permit Requirements for Solid Waste Facilities	30996	5YR	02/14/2008	2008-5/53
R315-311	Permit Approval For Solid Waste Disposal, Waste Tire Storage, Energy Recovery, And Incinerator Facilities	30983	5YR	02/14/2008	2008-5/53
R315-311-2	Permit Modification, Renewal, or Termination	31381	NSC	08/18/2008	Not Printed
R315-312	Recycling and Composting Facility Standards	30997	5YR	02/14/2008	2008-5/54
R315-313	Transfer Stations and Drop Box Facilities	30998	5YR	02/14/2008	2008-5/54
R315-314	Facility Standards for Piles Used for Storage and Treatment	30999	5YR	02/14/2008	2008-5/55
R315-315	Special Waste Requirements	30989	5YR	02/14/2008	2008-5/55
R315-316	Infectious Waste Requirements	30988	5YR	02/14/2008	2008-5/56
R315-317	Other Processes, Variances, Violations, and Petition for Rule Change	30984	5YR	02/14/2008	2008-5/57
R315-317-3	Violations, Orders, and Hearings	31382	NSC	08/18/2008	Not Printed
R315-318	Permit by Rule	30987	5YR	02/14/2008	2008-5/57
<u>Water Quality</u>					
R317-1-4	Utilization and Isolation of Domestic Wastewater Treatment Works Effluent	30639	AMD	02/04/2008	2007-22/52
R317-3-11	Land Application of Wastewater Effluents	30638	AMD	02/04/2008	2007-22/57
R317-8	Utah Pollutant Discharge Elimination System (UPDES)	31584	AMD	09/10/2008	2008-13/47
R317-9	Administrative Procedures	30948	5YR	02/01/2008	2008-4/42
R317-13	Approvals and Permits for a Water Reuse Project	30637	NEW	02/04/2008	2007-22/61
R317-14	Approval in Change in Point of Discharge of POTW	30636	NEW	02/04/2008	2007-22/62
R317-101	Utah Wastewater Project Assistance Program	31103	5YR	04/02/2008	2008-9/53

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>Financial Institutions</b>					
<u>Administration</u>					
R331-20	Designation of Adjudicative Proceedings as Informal	31256	NSC	05/05/2008	Not Printed
R331-20	Designation of Adjudicative Proceedings as Informal	31891	5YR	08/25/2008	2008-18/69
R331-21	Rule Governing Establishment of and Participation in Collective Investment Funds by Trust Companies	31892	5YR	08/25/2008	2008-18/69
R331-22-1	Authority, Scope, and Purpose	31315	NSC	05/05/2008	Not Printed
R331-24	Accounting for Accrued Uncollected Income by Banks and Industrial Loan Corporations	31893	5YR	08/25/2008	2008-18/70
<b>Governor</b>					
<u>Economic Development</u>					
R357-2	Rural Broadband Service Fund	30788	NEW	01/30/2008	2007-24/9
R357-2-7	Ranking and Approval of Applications	30859	NSC	01/30/2008	Not Printed
R357-3	Refundable Economic Development Tax Credit	31153	NEW	06/18/2008	2008-9/37
<b>Health</b>					
<u>Administration</u>					
R380-1	Petitions for Department Declaratory Orders	31281	NSC	05/05/2008	Not Printed
R380-5	Petitions for Declaratory Orders on Orders Issued by Committees	31282	NSC	05/05/2008	Not Printed
R380-10	Informal Adjudicative Proceedings	31283	NSC	05/05/2008	Not Printed
R380-20	Government Records Access and Management	31284	NSC	05/05/2008	Not Printed
R380-100	Americans with Disabilities Act Grievance Procedures	31285	NSC	05/05/2008	Not Printed
R380-200	Patient Safety Sentinel Event Reporting	31286	NSC	05/05/2008	Not Printed
R380-210-6	Penalties	31280	NSC	05/05/2008	Not Printed
R380-250	HIPAA Privacy Rule Implementation	31455	5YR	05/19/2008	2008-12/52
<u>Children's Health Insurance Program</u>					
R382-1	Benefits and Administration	31503	5YR	05/30/2008	2008-12/53
R382-10	Eligibility	31454	5YR	05/19/2008	2008-12/53
R382-10	Eligibility	31357	AMD	07/01/2008	2008-10/55
R382-10	Eligibility	31977	EMR	10/01/2008	2008-20/43
<u>Epidemiology and Laboratory Services, Epidemiology</u>					
R386-702-12	Official References	31099	AMD	06/11/2008	2008-8/5
<u>Epidemiology and Laboratory Services, Environmental Services</u>					
R392-100-2	Incorporation by Reference	31446	AMD	07/17/2008	2008-11/95
R392-302	Design, Construction, and Operation of Public Pools	31097	AMD	05/22/2008	2008-8/6
R392-502	Hotel, Motel and Resort Sanitation	31494	AMD	07/22/2008	2008-12/20
R392-700	Indoor Tanning Bed Sanitation	30612	NEW	05/16/2008	2007-22/65
R392-700	Indoor Tanning Bed Sanitation	30612	CPR	05/16/2008	2008-7/58
<u>Community and Family Health Services, Immunization</u>					
R396-100	Immunization Rule for Students (5YR EXTENSION)	31173	NSC	07/25/2008	Not Printed
R396-100	Immunization Rule for Students	31753	5YR	07/25/2008	2008-16/67
R396-100-3	Required Immunizations	31100	AMD	07/29/2008	2008-8/14

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>Community and Family Health Services, Children with Special Health Care Needs</u>					
R398-1	Newborn Screening	31350	AMD	06/25/2008	2008-10/60
R398-1	Newborn Screening	31627	NSC	08/25/2008	Not Printed
R398-2	Newborn Hearing Screening	31651	5YR	07/02/2008	2008-15/86
R398-5	Birth Defects Reporting	31070	AMD	07/03/2008	2008-8/16
R398-20	Early Intervention	31783	5YR	07/31/2008	2008-16/68
<u>Health Care Financing</u>					
R410-14	Administrative Hearing Procedures	31550	NSC	08/19/2008	Not Printed
R410-14-17	Agency Review	30981	EMR	02/15/2008	2008-5/36
R410-14-17	Agency Review	31129	AMD	06/09/2008	2008-9/38
<u>Health Care Financing, Coverage and Reimbursement Policy</u>					
R414-1-5	State Plan	31359	AMD	07/01/2008	2008-10/64
R414-1-5	State Plan	31506	AMD	08/04/2008	2008-12/22
R414-1-5	Incorporations by Reference	31789	AMD	10/01/2008	2008-16/9
R414-1-16	Confidentiality	31771	NSC	10/01/2008	Not Printed
R414-5	Reduction in Hospital Payments	31424	5YR	05/13/2008	2008-11/125
R414-6	Reduction in Certain Targeted Case Management Services	31169	5YR	04/21/2008	2008-10/145
R414-6	Reduction in Certain Targeted Case Management Services	31493	AMD	07/22/2008	2008-12/23
R414-21	Physical and Occupational Therapy	30653	R&R	01/10/2008	2007-23/50
R414-27	Medicare Nursing Home Certification	30920	5YR	01/17/2008	2008-4/42
R414-27	Medicare Nursing Home Certification	31046	NSC	03/25/2008	Not Printed
R414-27	Medicare Nursing Home Certification	31360	AMD	07/01/2008	2008-10/65
R414-40	Nursing Service	31135	R&R	06/23/2008	2008-9/39
R414-51	Dental, Orthodontia	31452	5YR	05/19/2008	2008-12/53
R414-52	Optometry Services	30775	AMD	02/01/2008	2007-24/12
R414-52	Optometry Services	31453	5YR	05/19/2008	2008-12/54
R414-53	Eyeglasses Services	30776	AMD	02/01/2008	2007-24/13
R414-53	Eyeglasses Services	31528	5YR	06/05/2008	2008-13/148
R414-54	Speech-Language Pathology Services	31644	R&R	10/02/2008	2008-14/46
R414-55	Medicaid Policy for Hospital Emergency Department Copayment Procedures	31737	5YR	07/18/2008	2008-16/69
R414-58-1	Authority and Purpose	31772	NSC	10/01/2008	Not Printed
R414-59	Audiology-Hearing Services	31645	R&R	10/02/2008	2008-14/47
R414-70	Medical Supplies, Durable Medical Equipment, and Prosthetic Devices	31505	R&R	08/04/2008	2008-12/24
R414-71	Medical Supplies -- Parenteral, Enteral, and IV Therapy	30378	AMD	03/31/2008	2007-18/40
R414-71	Medical Supplies - Parenteral, Enteral, and IV Therapy	30378	CPR	03/31/2008	2008-3/66
R414-71	Medical Supplies - Parenteral, Enteral, and IV Therapy	31507	REP	08/04/2008	2008-12/28
R414-301	Medicaid General Provisions	30936	5YR	01/31/2008	2008-4/43
R414-301-6	Hearings	31773	NSC	10/01/2008	Not Printed
R414-302	Eligibility Requirements	30921	5YR	01/25/2008	2008-4/43
R414-303	Coverage Groups	30925	5YR	01/25/2008	2008-4/44
R414-304	Income and Budgeting	30924	5YR	01/25/2008	2008-4/44
R414-304	Income and Budgeting	30652	AMD	01/28/2008	2007-23/54
R414-304	Income and Budgeting	31622	AMD	09/01/2008	2008-14/49

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R414-305	Resources	30937	5YR	01/31/2008	2008-4/45
R414-305	Resources	30945	AMD	04/01/2008	2008-4/9
R414-306	Program Benefits	30922	5YR	01/25/2008	2008-4/45
R414-308	Application, Eligibility Determinations and Improper Medical Assistance	30938	5YR	01/31/2008	2008-4/46
R414-308	Application, Eligibility Determinations and Improper Medical Assistance	31976	EMR	10/01/2008	2008-20/45
R414-308-7	Change Reporting and Benefit Changes	30927	AMD	04/01/2008	2008-4/16
R414-310	Medicaid Primary Care Network Demonstration Waiver	31356	AMD	07/01/2008	2008-10/66
R414-310-13	Application Procedure	31978	EMR	10/01/2008	2008-20/48
R414-320	Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver	31358	AMD	07/01/2008	2008-10/68
R414-320-15	Effective Date of Enrollment and Enrollment Period	31979	EMR	10/01/2008	2008-20/50
R414-501-5	General Provisions	31774	NSC	10/01/2008	Not Printed
R414-504	Nursing Facility Payments	31362	AMD	07/01/2008	2008-10/71
R414-508	Requirements for Transfer of Bed Licenses	31361	NEW	07/01/2008	2008-10/78
R414-510	Intermediate Care Facility for Individuals with Mental Retardation Transition Program	30917	AMD	03/10/2008	2008-3/30
<u>Health Systems Improvement, Emergency Medical Services</u>					
R426-5-3	Trauma Center Categorization Guidelines	31068	AMD	06/04/2008	2008-8/17
R426-6	Emergency Medical Services Competitive Grants Program Rules	30758	AMD	02/07/2008	2007-24/14
R426-7-3	Prehospital Data Set	31069	AMD	07/31/2008	2008-8/18
R426-8-4	Application and Award Formula	31096	AMD	06/05/2008	2008-8/22
R426-15-203	Vehicle Supply Requirements	30954	AMD	06/24/2008	2008-5/19
<u>Center for Health Data, Health Care Statistics</u>					
R428-11	Health Data Authority Ambulatory Surgical Data Reporting Rule	31167	5YR	04/21/2008	2008-10/146
R428-11	Health Data Authority Ambulatory Surgical Data Reporting Rule (5YR EXTENSION)	31021	NSC	04/21/2008	Not Printed
R428-13	Health Data Authority, Audit and Reporting of HMO Performance Measures	31168	5YR	04/21/2008	2008-10/146
R428-13	Health Data Authority, Audit and Reporting of HMO Performance Measures (5YR EXTENSION)	31022	NSC	04/21/2008	Not Printed
R428-13-4	Submission of Performance Measures	30956	AMD	05/16/2008	2008-5/25
<u>Health Systems Improvement, Child Care Licensing</u>					
R430-4	General Certificate Provisions	31537	5YR	06/06/2008	2008-13/148
R430-50	Residential Certificate Child Care Standards	31538	5YR	06/06/2008	2008-13/149
R430-50	Residential Certificate Child Care	31056	CPR	09/01/2008	2008-13/119
R430-50	Residential Certificate Child Care Standards	31056	R&R	09/01/2008	2008-7/4
R430-60	Hourly Child Care Center	31539	5YR	06/06/2008	2008-13/149
R430-90	Licensed Family Child Care	31540	5YR	06/06/2008	2008-13/150
R430-90	Licensed Family Child Care	31057	CPR	09/01/2008	2008-13/129
R430-90	Licensed Family Child Care	31057	R&R	09/01/2008	2008-7/16
<u>Health Systems Improvement, Licensing</u>					
R432-16	Hospice Inpatient Facility Construction	30975	5YR	02/11/2008	2008-5/58
R432-35	Background Screening	31489	5YR	05/27/2008	2008-12/54
<u>Health Systems Improvement, Primary Care and Rural Health</u>					
R434-100	Physician Visa Waivers	31779	AMD	09/30/2008	2008-16/13

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>Epidemiology and Laboratory Services, Laboratory Services</u>					
R438-13	Rules for the Certification of Institutions to Obtain Impounded Animals in the State of Utah	31717	5YR	07/16/2008	2008-16/69
<b>Human Resource Management</b>					
<u>Administration</u>					
R477-1	Definitions	31186	AMD	07/01/2008	2008-10/79
R477-2	Administration	31187	AMD	07/01/2008	2008-10/84
R477-3	Classification	31188	AMD	07/01/2008	2008-10/87
R477-4	Filling Positions	31189	AMD	07/01/2008	2008-10/88
R477-5	Employee Status and Probation	31190	AMD	07/01/2008	2008-10/90
R477-6	Compensation	31191	AMD	07/01/2008	2008-10/91
R477-6-4	Salary	31782	AMD	09/22/2008	2008-16/14
R477-7	Leave	31192	AMD	07/01/2008	2008-10/95
R477-7	Leave	31788	AMD	09/22/2008	2008-16/16
R477-8	Working Conditions	31193	AMD	07/01/2008	2008-10/101
R477-8	Working Conditions	31784	AMD	09/22/2008	2008-16/19
R477-8-5	Overtime	30778	AMD	01/22/2008	2007-24/16
R477-9	Employee Conduct	31194	AMD	07/01/2008	2008-10/104
R477-10	Employee Development	31195	AMD	07/01/2008	2008-10/106
R477-11	Discipline	31209	AMD	07/01/2008	2008-10/108
R477-12	Separations	31210	AMD	07/01/2008	2008-10/110
R477-13	Volunteer Programs	31211	NSC	06/19/2008	Not Printed
R477-14	Substance Abuse and Drug-Free Workplace	31621	AMD	08/21/2008	2008-14/51
R477-15	Unlawful Harassment Policy and Procedure	31208	AMD	07/01/2008	2008-10/112
<b>Human Services</b>					
<u>Administration</u>					
R495-810	Government Records Access and Management Act	31368	NSC	05/05/2008	Not Printed
R495-861	Requirements for Local Discretionary Social Services Block Grant Funds	30773	AMD	01/30/2008	2007-24/18
R495-876	Provider Code of Conduct	31629	AMD	08/26/2008	2008-14/53
R495-878	Department of Human Services Civil Rights Complaint Procedure	31367	NSC	05/05/2008	Not Printed
R495-878	Department of Human Services Civil Rights Complaint Procedure	31067	AMD	06/13/2008	2008-8/23
R495-879	Parental Support for Children in Care	31465	NSC	06/18/2008	Not Printed
R495-881	Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule Implementation	31484	5YR	05/27/2008	2008-12/55
R495-881	Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule Implementation	31485	AMD	07/23/2008	2008-12/30
<u>Administration, Administrative Services, Licensing</u>					
R501-16	Intermediate Secure Treatment Programs for Minors	31017	5YR	02/22/2008	2008-6/25
R501-17	Adult Foster Care	31026	5YR	02/27/2008	2008-6/25
<u>Aging and Adult Services</u>					
R510-105	"Out and About" Homebound Transportation Assistance Fund Rules	31027	5YR	02/27/2008	2008-6/26
R510-110-5	Monitoring by the State Division of Aging and Adult Services	31378	NSC	05/05/2008	Not Printed
R510-200-3	Local LTCO Program Administrative Standards	31379	NSC	05/05/2008	Not Printed

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>Child and Family Services</u>					
R512-1-5	Out-of-Home Care Services	31721	NSC	10/01/2008	Not Printed
R512-20	Protective Payee for Recipients of Cash Assistance from the Department of Workforce Services (5YR EXTENSION)	30720	NSC	01/07/2008	Not Printed
R512-20	Protective Payee for Recipients of Cash Assistance from the Department of Workforce Services	30716	REP	01/07/2008	2007-23/58
R512-31-3	Notice to Foster Parents	31722	NSC	10/01/2008	Not Printed
R512-32-1	Definitions	31723	NSC	10/01/2008	Not Printed
R512-41	Qualifying Adoptive Families and Adoption Placement	31741	AMD	09/23/2008	2008-16/21
R512-41	Qualifying Adoptive Families and Adoption Placement	31724	NSC	10/01/2008	Not Printed
R512-42	Adoption by Relatives	31725	NSC	10/01/2008	Not Printed
R512-43	Adoption Assistance	31742	AMD	09/23/2008	2008-16/24
R512-50	Fee Collection for Clients Served by Pre-School Day Treatment Contract (5YR EXTENSION)	30721	NSC	01/07/2008	Not Printed
R512-50	Fee Collection for Clients Served by Pre-School Day Treatment Contract	30718	REP	01/07/2008	2007-23/60
R512-51-1	Purpose and Authority	31726	NSC	10/01/2008	Not Printed
R512-75-1	Introductory Provisions	31727	NSC	10/01/2008	Not Printed
R512-100	Home Based Services	31856	5YR	08/20/2008	2008-18/70
R512-200	Child Protective Services, Intake Services	31857	5YR	08/20/2008	2008-18/71
R512-201	Child Protective Services, Investigation Services	31858	5YR	08/20/2008	2008-18/71
R512-202	Child Protective Services, General Allegation Categories	31859	5YR	08/20/2008	2008-18/72
R512-202-2	Categories	31728	NSC	10/01/2008	Not Printed
R512-204	Child Protective Services, New Caseworker Training	31043	NEW	05/08/2008	2008-7/31
R512-300	Out-of-Home Services	31860	5YR	08/20/2008	2008-18/72
R512-300	Out-of-Home Services	31729	NSC	10/01/2008	Not Printed
R512-301	Out of Home Services, Responsibilities Pertaining to a Parent or Guardian	31861	5YR	08/20/2008	2008-18/73
R512-301	Out of Home Services, Responsibilities Pertaining to a Parent or Guardian	31730	NSC	10/01/2008	Not Printed
R512-302	Out of Home Services, Responsibilities Pertaining to an Out of Home Caregiver	31862	5YR	08/20/2008	2008-18/73
R512-302	Out of Home Services, Responsibilities Pertaining to an Out of Home Caregiver	31731	NSC	10/01/2008	Not Printed
R512-305	Out of Home Services, Transition to Adult Living Services	31863	5YR	08/20/2008	2008-18/74
R512-308	Out of Home Services, Guardianship Services and Placements	31733	NSC	10/01/2008	Not Printed
R512-500	Kinship Services	31589	EMR	06/18/2008	2008-14/123
R512-500	Kinship Services	31864	5YR	08/20/2008	2008-18/74
R512-500	Kinship Services	31590	R&R	08/21/2008	2008-14/57
<u>Substance Abuse and Mental Health</u>					
R523-1	Procedures (5YR EXTENSION)	30767	NSC	03/31/2008	Not Printed
R523-1	Procedures	31089	5YR	03/31/2008	2008-8/53
R523-22-9	Redress Procedures for Programs or Instructors	31352	NSC	05/05/2008	Not Printed
R523-23-9	Alcohol Training and Education Seminar Provider Standards	31166	AMD	07/14/2008	2008-10/114
R523-23-13	Procedure for Denial, Suspension, or Revocation	31351	NSC	05/05/2008	Not Printed

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R523-24-7	Approved Curriculum	31164	AMD	07/14/2008	2008-10/116
R523-24-9	Alcohol Training and Education Seminar Provider Standards	31165	AMD	07/14/2008	2008-10/117
R523-24-13	Procedure for Denial, Suspension, or Revocation	31353	NSC	05/05/2008	Not Printed
<u>Substance Abuse and Mental Health, State Hospital</u>					
R525-2	Patient Rights	31450	5YR	05/19/2008	2008-12/55
R525-3	Medication Treatment of Patients	31449	5YR	05/19/2008	2008-12/56
R525-4	Visitors	31447	5YR	05/19/2008	2008-12/56
R525-5	Background Checks	31448	5YR	05/19/2008	2008-12/57
R525-6	Prohibited Items and Devices	31031	NEW	05/01/2008	2008-6/7
R525-6	Prohibited Items and Devices (EXPIRED - Legislative Nonreauthorization)	31348	NSC	05/01/2008	Not Printed
R525-7	Complaints/Suggestions/Concerns	31451	5YR	05/19/2008	2008-12/57
<u>Recovery Services</u>					
R527-3	Definitions	31432	NSC	08/18/2008	Not Printed
R527-34	Non-IV-A Services	31151	AMD	06/09/2008	2008-9/43
R527-39	Applicant/Recipient Cooperation	30891	5YR	01/10/2008	2008-3/78
R527-39-2	Request for Review	31498	NSC	06/18/2008	Not Printed
R527-56	In-Kind support	30939	5YR	01/31/2008	2008-4/46
R527-56	In-Kind Support	31134	AMD	06/09/2008	2008-9/44
R527-200	Administrative Procedures	31409	NSC	08/18/2008	Not Printed
R527-201	Medical Support Services	31542	NSC	08/19/2008	Not Printed
R527-231	Review and Adjustment of Child Support Order	31061	AMD	05/15/2008	2008-7/32
R527-255	Substantial Change in Circumstances	31562	AMD	08/13/2008	2008-13/82
R527-257	Enforcing Child Support When the Obligor is Incarcerated	31133	REP	06/09/2008	2008-9/45
R527-258	Enforcing Child Support When the Obligor is an Ex-Prisoner or in a Treatment Program	31054	AMD	05/14/2008	2008-7/33
R527-260	Driver License Suspension for Failure to Pay Support	31152	NEW	07/01/2008	2008-9/46
R527-300	Income Withholding	31158	AMD	09/04/2008	2008-10/118
R527-301	Non-IV-D Income Withholding	31867	5YR	08/21/2008	2008-18/75
R527-302	Income Withholding Fees	31160	5YR	04/21/2008	2008-10/147
R527-302	Income Withholding Fees	31163	AMD	06/25/2008	2008-10/120
R527-302	Income Withholding Fees	31792	NSC	10/01/2008	Not Printed
R527-305	High-Volume, Automated Administrative Enforcement in Interstate Child Support Cases	30978	5YR	02/12/2008	2008-5/58
R527-305	High-Volume, Automated Administrative Enforcement in Interstate Child Support Cases	31025	AMD	04/21/2008	2008-6/8
R527-430	Administrative Notice of Lien-Levy Procedures	30905	5YR	01/14/2008	2008-3/78
R527-475	State Tax Refund Intercept	31161	5YR	04/21/2008	2008-10/147
R527-475	State Tax Refund Intercept	31162	AMD	06/25/2008	2008-10/121
R527-475-1	Purpose and Authority	31808	NSC	10/01/2008	Not Printed
R527-550	Assessment	31563	NSC	08/19/2008	Not Printed
R527-601-1	Documentation of Income	31384	NSC	08/18/2008	Not Printed
R527-920	Mandatory Disbursement to Oblgee through Electronic Funds Transfer	31159	NEW	06/27/2008	2008-10/122
R527-928	Lost Checks	30982	AMD	04/07/2008	2008-5/26
<u>Services for People with Disabilities</u>					
R539-1-8	Non-Waiver Services for People with Brain Injury	30926	EMR	01/28/2008	2008-4/38

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R539-1-8	Non-Waiver Services for People with Brain Injury	30877	AMD	04/01/2008	2008-3/32
R539-9	Supported Employment Pilot Program	31084	AMD	05/22/2008	2008-8/26
R539-15	Time-Limited Respite Care Program	31594	EMR	07/01/2008	2008-14/126
R539-15	Time-Limited Respite Care Program	31593	NEW	08/21/2008	2008-14/60
<b>Insurance</b>					
<u>Administration</u>					
R590-91	Credit Life Insurance and Credit Accident and Health Insurance	31059	AMD	05/29/2008	2008-7/35
R590-94	Rule Permitting Smoker/Nonsmoker Mortality Tables for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits	31132	5YR	04/09/2008	2008-9/53
R590-102	Insurance Department Fee Payment Rule	31652	AMD	09/11/2008	2008-15/31
R590-121-5	Rule	31765	NSC	10/01/2008	Not Printed
R590-131	Accident and Health Coordination of Benefits Rule	31062	AMD	10/02/2008	2008-7/37
R590-131	Accident and Health Coordination of Benefits Rule	31062	CPR	10/02/2008	2008-13/141
R590-151	Records Access Rule	31766	NSC	10/01/2008	Not Printed
R590-154	Unfair Marketing Practices Rule	31131	5YR	04/09/2008	2008-9/54
R590-157	Surplus Lines Insurance Premium Tax and Stamping Fee	30890	5YR	01/10/2008	2008-3/79
R590-164	Uniform Health Billing Rule	31030	AMD	05/08/2008	2008-6/10
R590-164	Uniform Health Billing Rule	31551	AMD	08/26/2008	2008-13/83
R590-167-11	Individual, Small Employer, and Group Health Benefit Plan Rule	30462	CPR	05/20/2008	2008-3/68
R590-167-11	Actuarial Certification and Additional Filing Requirements	30462	AMD	05/20/2008	2007-20/23
R590-167-12	Records	31697	NSC	10/01/2008	Not Printed
R590-175	Basic Health Care Plan Rule	30508	AMD	02/08/2008	2007-20/24
R590-176	Health Benefit Plan Enrollment	31716	AMD	09/09/2008	2008-15/40
R590-186	Bail Bond Surety Business	31767	5YR	07/29/2008	2008-16/70
R590-187	Assessment of Title Insurance Agencies and Title Insurers for Costs Related to Regulation of Title Insurance	31769	5YR	07/29/2008	2008-16/70
R590-191	Unfair Life Insurance Claims Settlement Practices Rule	31077	AMD	05/29/2008	2008-8/27
R590-218	Permitted Language for Reservation of Discretion Clauses	30897	5YR	01/11/2008	2008-3/80
R590-219	Credit Scoring	31525	5YR	06/04/2008	2008-13/150
R590-222	Viatical Settlements	31523	5YR	06/02/2008	2008-12/58
R590-222	Viatical Settlements	31500	AMD	08/04/2008	2008-12/36
R590-223	Rule to Recognize the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits	31552	5YR	06/12/2008	2008-13/151
R590-238	Captive Insurance Companies	31649	AMD	08/25/2008	2008-14/61
R590-243	Commercial Motor Vehicle Insurance Coverage	30490	NEW	01/11/2008	2007-20/28
R590-246	Professional Employer Organization (PEO) License Application Rule	31653	NEW	09/11/2008	2008-15/42
R590-247	Universal Individual Health Insurance Application Rule	31335	NEW	06/30/2008	2008-10/124
R590-250	PEO Assurance Organization Designation	31647	NEW	08/25/2008	2008-14/63
R590-251	Preneed Life Insurance Minimum Standards for Determining Reserve Liabilities and Nonforfeiture Values Rule.	31641	NEW	08/25/2008	2008-14/64



CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>Title and Escrow Commission</u>					
R592-7	Title Insurance Continuing Education Program	31337	NEW	07/14/2008	2008-10/125
R592-8	Application Process for an Attorney Exemption for Title Agency Licensing	31339	NEW	07/14/2008	2008-10/126
R592-9	Title Insurance Recovery, Education, and Research Fund Assessment Rule	31341	NEW	07/14/2008	2008-10/128
<b>Judicial Conduct Commission</b>					
<u>Administration</u>					
R595-3-5	Subpoena Power	31605	NSC	08/25/2008	Not Printed
<b>Labor Commission</b>					
<u>Administration</u>					
R600-1	Declaratory Orders	31232	5YR	04/28/2008	2008-10/148
R600-1	Declaratory Orders	31237	NSC	05/05/2008	Not Printed
R600-2-1	Business Hours	31778	EMR	08/04/2008	2008-16/64
R600-2-1	Business Hours	31705	AMD	09/09/2008	2008-15/43
<u>Adjudication</u>					
R602-1	General Provisions	31250	NSC	05/05/2008	Not Printed
R602-2-1	Pleadings and Discovery	31236	NSC	05/05/2008	Not Printed
R602-2-4	Attorney Fees	30811	AMD	02/07/2008	2008-1/14
R602-3	Procedure and Standards for Approval of Assignment of Benefits	31238	NSC	05/05/2008	Not Printed
R602-3-3	Procedure for Requesting Approval	30810	AMD	02/07/2008	2008-1/16
R602-4	Procedures for Termination of Temporary Total Disability Compensation Pursuant to Reemployment under Section 34A-2-410.5	31643	EMR	07/01/2008	2008-14/127
<u>Antidiscrimination and Labor, Antidiscrimination</u>					
R606-1	Antidiscrimination	31241	NSC	05/05/2008	Not Printed
R606-2	Pre-Employment Inquiry Guide	31242	NSC	05/05/2008	Not Printed
<u>Antidiscrimination and Labor, Fair Housing</u>					
R608-1	Utah Fair Housing Rules	31240	NSC	05/05/2008	Not Printed
<u>Antidiscrimination and Labor, Labor</u>					
R610-1	Minimum Wage, Clarify Tip Credit, and Enforcement	31247	NSC	05/05/2008	Not Printed
R610-1-4	Tips, Gratuities, and Commissions	31149	AMD	06/13/2008	2008-9/48
R610-2	Employment of Minors	31245	NSC	05/05/2008	Not Printed
R610-2-6	Filing Procedure and Commencement of Agency Action	30942	AMD	03/24/2008	2008-4/19
R610-3	Filing, Investigation, and Resolution of Wage Claims	31243	NSC	05/05/2008	Not Printed
R610-3-4	Filing Procedure and Commencement of Agency Action	30876	EMR	01/03/2008	2008-3/70
R610-3-4	Filing Procedure and Commencement of Agency Action	30941	AMD	03/24/2008	2008-4/20
R610-3-10	Attorney Fees	31148	AMD	06/13/2008	2008-9/50
R610-4	Employment Agency Licensing	31239	NSC	05/05/2008	Not Printed
R610-4	Employment Agency Licensing	31438	REP	07/08/2008	2008-11/101
<u>Industrial Accidents</u>					
R612-1	Workers' Compensation Rules - Procedures	31235	NSC	05/05/2008	Not Printed
R612-2	Workers' Compensation Rules-Health Care Providers	31234	5YR	04/28/2008	2008-10/148
R612-2-5	Regulation of Medical Practitioner Fees	31333	AMD	07/01/2008	2008-10/130

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R612-3	Workers' Compensation Rules - Self Insurance	31230	5YR	04/28/2008	2008-10/149
R612-4-2	Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund	30594	AMD	01/01/2008	2007-22/76
R612-5	Employee Leasing Company Workers' Compensation Insurance Policy Endorsements	31229	5YR	04/28/2008	2008-10/149
R612-7	Impairment Ratings for Industrial Injuries and Diseases	31231	5YR	04/28/2008	2008-10/150
R612-9-1	Authority	31251	NSC	05/05/2008	Not Printed
R612-10	HIV, Hepatitis B and C Testing and Reporting for Emergency Medical Services Providers	31252	NSC	05/05/2008	Not Printed
R612-11	Prohibition of Direct Payments by Insured Employer	31565	NEW	08/11/2008	2008-13/85
R612-11	Prohibition of Direct Payments by Insured Employer	31734	NSC	08/11/2008	Not Printed
R612-12	Reporting Requirements for Workers' Compensation Coverage Waivers	31564	NEW	08/11/2008	2008-13/86
R612-12-2	Designation as Informal Proceedings	31735	NSC	08/11/2008	Not Printed
<u>Occupational Safety and Health</u>					
R614-1	General Provisions	31244	NSC	05/05/2008	Not Printed
R614-1-4	Incorporation of Federal Standards	31102	AMD	05/22/2008	2008-8/30
R614-3-1	Authority, Method of Adoption, and Effective Date	31248	NSC	05/05/2008	Not Printed
<u>Safety</u>					
R616-1	Coal, Gilsonite, or other Hydrocarbon Mining Certification	31233	5YR	04/28/2008	2008-10/150
R616-1	Coal, Gilsonite, or other Hydrocarbon Mining Certification	31249	NSC	05/05/2008	Not Printed
R616-2	Boiler and Pressure Vessel Rules	31246	NSC	05/05/2008	Not Printed
R616-3	Elevator Rules	31253	NSC	05/05/2008	Not Printed
R616-3-3	Safety Codes for Elevators	30943	AMD	03/24/2008	2008-4/21
<b>Lieutenant Governor</b>					
<u>Administration</u>					
R622-1	Adjudicative Proceedings	31844	5YR	08/19/2008	2008-18/75
<b>Money Management Council</b>					
<u>Administration</u>					
R628-18	Conditions and Procedures for Use of Interest Rate Contracts	31587	NSC	08/25/2008	Not Printed
<b>Natural Resources</b>					
<u>Administration</u>					
R634-1	Americans With Disabilities Complaint Procedure	30923	5YR	01/25/2008	2008-4/47
R634-1	Americans with Disabilities Complaint Procedure (5YR EXTENSION)	30875	NSC	01/25/2008	Not Printed
<u>Geological Survey</u>					
R638-2-6	Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Active Solar Thermal	30902	AMD	03/10/2008	2008-3/35
<u>Oil, Gas and Mining Board</u>					
R641-100	General Provisions	31196	NSC	05/05/2008	Not Printed
R641-104-100	Pleadings Enumerated	31197	NSC	05/05/2008	Not Printed
R641-112	Rulemaking	31198	NSC	05/05/2008	Not Printed
R641-114	Exhaustion of Administrative Remedies	31199	NSC	05/05/2008	Not Printed
R641-115	Deadline for Judicial Review	31200	NSC	05/05/2008	Not Printed

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R641-116	Judicial Review of Formal Adjudicative Proceedings	31201	NSC	05/05/2008	Not Printed
<u>Oil, Gas and Mining: Administration</u>					
R642-100	Records of the Division and Board of Oil, Gas and Mining	31202	NSC	05/05/2008	Not Printed
R642-200	Applicability	31203	NSC	05/05/2008	Not Printed
R642-200	Applicability	31755	5YR	07/28/2008	2008-16/71
<u>Oil, Gas and Mining: Coal</u>					
R645-100-200	Definitions	30932	AMD	03/26/2008	2008-4/23
R645-100-500	Petition to Initiate Rulemaking	31204	NSC	05/05/2008	Not Printed
R645-101	Restrictions on State Employees	31756	5YR	07/28/2008	2008-16/71
R645-102	Exemption for Coal Extraction Incidental to Government-Financed Highway or Other Construction	31509	5YR	06/02/2008	2008-12/58
R645-104	Protection of Employees	31757	5YR	07/28/2008	2008-16/72
R645-300-100	Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions	30934	AMD	03/26/2008	2008-4/24
R645-301	Coal Mine Permitting: Permit Application Requirements	30933	AMD	03/26/2008	2008-4/25
R645-401	Inspection and Enforcement: Civil Penalties	31758	5YR	07/28/2008	2008-16/72
<u>Oil, Gas and Mining: Non-Coal</u>					
R647-1	Minerals Regulatory Program	31510	5YR	06/02/2008	2008-12/59
R647-1-106	Definitions	31205	NSC	05/05/2008	Not Printed
R647-2	Exploration	31511	5YR	06/02/2008	2008-12/59
R647-3	Small Mining Operations	31512	5YR	06/02/2008	2008-12/60
R647-4	Large Mining Operations	31513	5YR	06/02/2008	2008-12/60
R647-5	Administrative Procedures	31206	NSC	05/05/2008	Not Printed
R647-5	Administrative Procedures	31514	5YR	06/02/2008	2008-12/61
R647-6	Inspection and Enforcement: Division Authority and Procedures	31759	5YR	07/28/2008	2008-16/73
R647-7	Inspection and Enforcement: Civil Penalties	31760	5YR	07/28/2008	2008-16/73
R647-8	Inspection and Enforcement: Individual Civil Penalties	31761	5YR	07/28/2008	2008-16/74
<u>Oil, Gas and Mining: Oil and Gas</u>					
R649-6	Gas Processing and Waste Crude Oil Treatment	31762	5YR	07/28/2008	2008-16/74
R649-10-3	Commencement of Informal Adjudicative Proceedings	31207	NSC	05/05/2008	Not Printed
<u>Parks and Recreation</u>					
R651-205-17	Cutler Reservoir	30900	AMD	03/10/2008	2008-3/36
R651-301	State Recreation Fiscal Assistance Programs	30899	AMD	03/10/2008	2008-3/37
R651-407	Off-Highway Vehicle Advisory Council	31690	5YR	07/07/2008	2008-15/87
R651-408	Off-Highway Vehicle Education Curriculum Standards	31691	5YR	07/07/2008	2008-15/87
R651-601	Definitions as Used in These Rules	31661	5YR	07/07/2008	2008-15/88
R651-602	Aircraft and Powerless Flight	31662	5YR	07/07/2008	2008-15/88
R651-603	Animals	31663	5YR	07/07/2008	2008-15/89
R651-604	Audio Devices	31664	5YR	07/07/2008	2008-15/89
R651-605	Begging and Soliciting	31665	5YR	07/07/2008	2008-15/90
R651-606	Camping	31666	5YR	07/07/2008	2008-15/90
R651-607	Disorderly Conduct	31667	5YR	07/07/2008	2008-15/91

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R651-608	Events of Special Uses	31668	5YR	07/07/2008	2008-15/91
R651-609	Explosives and Fireworks	31669	5YR	07/07/2008	2008-15/92
R651-610	Expulsion	31670	5YR	07/07/2008	2008-15/92
R651-611	Fee Schedule	30621	AMD	01/01/2008	2007-22/80
R651-611	Fee Schedule	30898	AMD	03/10/2008	2008-3/39
R651-611	Fee Schedule	31599	AMD	08/21/2008	2008-14/66
R651-612	Firearms, Traps and Other Weapons	31012	NSC	03/10/2008	Not Printed
R651-612	Firearms, Traps and Other Weapons	30901	AMD	03/10/2008	2008-3/42
R651-612	Firearms, Traps and Other Weapons	31671	5YR	07/07/2008	2008-15/93
R651-613	Fires	31672	5YR	07/07/2008	2008-15/93
R651-614	Fishing, Hunting and Trapping	31673	5YR	07/07/2008	2008-15/94
R651-615	Motor Vehicle Use	31674	5YR	07/07/2008	2008-15/94
R651-616	Organized Sports	31675	5YR	07/07/2008	2008-15/95
R651-617	Permit Violation	31676	5YR	07/07/2008	2008-15/95
R651-617	Permit Violation	31602	AMD	08/21/2008	2008-14/68
R651-618	Picnicking	31677	5YR	07/07/2008	2008-15/96
R651-619	Possession of Alcoholic Beverages or Controlled Substances	31678	5YR	07/07/2008	2008-15/96
R651-620	Protection of Resources Park System Property	31679	5YR	07/07/2008	2008-15/97
R651-621	Reports of Injury or Damage	31680	5YR	07/07/2008	2008-15/97
R651-622	Rock Climbing	31681	5YR	07/07/2008	2008-15/98
R651-623	Sale or Distribution of Printed Material	31682	5YR	07/07/2008	2008-15/98
R651-624	Sanitation	31683	5YR	07/07/2008	2008-15/99
R651-625	Shirts and Shoes	31684	5YR	07/07/2008	2008-15/99
R651-626	Skating, Skateboards and Motorized Transportation Devices	31660	5YR	07/07/2008	2008-15/100
R651-627	Swimming	31685	5YR	07/07/2008	2008-15/100
R651-628	Trails and Walks	31686	5YR	07/07/2008	2008-15/101
R651-629	Unattended Property	31687	5YR	07/07/2008	2008-15/101
R651-630	Unsupervised Children	31601	5YR	06/20/2008	2008-14/142
R651-631	Winter Sports	31688	5YR	07/07/2008	2008-15/102
R651-632	Enforcement	31689	5YR	07/07/2008	2008-15/102
<u>Forestry, Fire and State Lands</u>					
R652-6	Government Records Access and Management	31259	NSC	05/05/2008	Not Printed
R652-7	Public Petitions for Declaratory Orders	31268	NSC	05/05/2008	Not Printed
R652-7	Public Petitions for Declaratory Orders	31895	5YR	08/26/2008	2008-18/76
R652-8	Adjudicative Proceedings	31269	NSC	05/05/2008	Not Printed
R652-9-100	Authority	31110	NSC	05/01/2008	Not Printed
R652-30-500	Application Procedures	31270	NSC	05/05/2008	Not Printed
R652-60-1000	Records	31271	NSC	05/05/2008	Not Printed
R652-90-300	Initiation of Planning Process	31706	AMD	09/10/2008	2008-15/44
R652-110	Off-Highway Vehicle Designations	31896	5YR	08/26/2008	2008-18/76
R652-120	Wildland Fire	31112	NSC	05/01/2008	Not Printed
R652-121	Wildland Fire Suppression Fund	31108	NSC	05/01/2008	Not Printed
R652-122-100	Authority	31109	NSC	05/01/2008	Not Printed
R652-123	Exemptions to Wildland Fire Suppression Fund	31111	NSC	05/01/2008	Not Printed

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>Water Resources</u>					
R653-2	Financial Assistance from the Board of Water Resources	30855	NEW	02/25/2008	2008-2/20
R653-2	Financial Assistance from the Board of Water Resources	30940	NSC	02/25/2008	Not Printed
<u>Water Rights</u>					
R655-4	Water Well Drillers	31694	AMD	09/10/2008	2008-15/45
R655-4-5	Well Driller Disciplinary Procedures	31812	NSC	10/01/2008	Not Printed
R655-5	Maps Submitted to the Division of Water Rights	31130	5YR	04/08/2008	2008-9/54
R655-7	Administrative Procedures for Notifying the State Engineer of Sewage Effluent Use or Change in the Point of Discharge for Sewage Effluent	30947	5YR	02/01/2008	2008-4/47
R655-14	Administrative Procedures for Enforcement Proceedings Before the Division of Water Rights	31431	AMD	07/08/2008	2008-11/104
<u>Wildlife Resources</u>					
R657-2	Adjudicative Proceedings	31219	NSC	05/05/2008	Not Printed
R657-3	Collection, Importation, Transportation, and Possession of Zoological Animals	31047	5YR	03/11/2008	2008-7/65
R657-3	Collection, Importation, Transportation, and Possession of Zoological Animals	31220	NSC	05/05/2008	Not Printed
R657-3	Collection, Importation, Transportation, and Possession of Zoological Animals	31053	AMD	05/08/2008	2008-7/45
R657-5	Taking Big Game	30829	AMD	02/07/2008	2008-1/18
R657-6	Taking Upland Game	31609	AMD	08/21/2008	2008-14/69
R657-12	Hunting and Fishing Accommodations for Disabled People	30777	AMD	01/22/2008	2007-24/19
R657-12-1	Purpose and Authority	31221	NSC	05/05/2008	Not Printed
R657-13	Taking Fish and Crayfish	30676	AMD	01/07/2008	2007-23/61
R657-13-3	Fishing License Requirements and Free Fishing Day	31048	AMD	05/08/2008	2008-7/47
R657-13-4	Fishing Contests	30904	AMD	03/10/2008	2008-3/43
R657-16	Aquaculture and Fish Stocking	31611	AMD	08/21/2008	2008-14/70
R657-19	Taking Nongame Mammals	31807	5YR	08/12/2008	2008-17/77
R657-22-1	Purpose and Authority	31222	NSC	05/05/2008	Not Printed
R657-23	Utah Hunter Education Program	30828	AMD	02/07/2008	2008-1/25
R657-23	Utah Hunter Education Program	31613	AMD	08/21/2008	2008-14/73
R657-23-5	Hunter Education Instructor Training	30955	AMD	04/07/2008	2008-5/31
R657-26	Adjudicative Proceedings for a License, Permit or Certificate of Registration	31223	NSC	05/05/2008	Not Printed
R657-27-11	Revocation of License Agent Authorization	31224	NSC	05/05/2008	Not Printed
R657-29	Government Records Access Management Act	31225	NSC	05/05/2008	Not Printed
R657-33	Taking Bear	30906	AMD	03/10/2008	2008-3/44
R657-34	Procedures for Confirmation of Ordinances on Hunting Closures	31398	5YR	05/08/2008	2008-11/125
R657-37	Cooperative Wildlife Management Units for Big Game or Turkey	31401	5YR	05/08/2008	2008-11/126
R657-42	Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents	31400	5YR	05/08/2008	2008-11/126
R657-42-8	Accepted Payment of Fees	31049	AMD	05/08/2008	2008-7/48
R657-45	Wildlife License, Permit, and Certificate of Registration Forms	31399	5YR	05/08/2008	2008-11/127
R657-45-2	Information Listed on the License, Permit, and Certificate of Registration Forms	31050	AMD	05/08/2008	2008-7/49

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R657-48-7	Wildlife Species of Concern Designation Process	31226	NSC	05/05/2008	Not Printed
R657-52-6	Certificate of Registration Renewal	31227	NSC	05/05/2008	Not Printed
R657-53	Amphibian and Reptile Collection, Importation, Transportation and Possession	31228	NSC	05/05/2008	Not Printed
R657-53	Amphibian and Reptile Collection, Importation, Transportation, and Possession	31051	AMD	05/08/2008	2008-7/50
R657-53	Amphibian and Reptile Collection, Importation, Transportation, and Possession	31508	5YR	06/02/2008	2008-12/61
R657-55	Wildlife Convention Permits	31608	AMD	08/21/2008	2008-14/75
R657-57	Division Variance Rule	31610	NEW	08/21/2008	2008-14/77
R657-58	Fishing Contests and Clinics	30903	NEW	03/10/2008	2008-3/47
R657-58	Fishing Contests and Clinics	31052	NSC	03/26/2008	Not Printed
R657-59	Private Fish Ponds	31625	EMR	06/27/2008	2008-14/129
R657-59	Private Fish Ponds	31612	NEW	08/21/2008	2008-14/80
R657-59	Private Fish Ponds	31806	NSC	10/01/2008	Not Printed
R657-60	Aquatic Invasive Species Interdiction	31624	EMR	06/27/2008	2008-14/137
R657-60	Aquatic Invasive Species Interdiction	31805	EMR	08/13/2008	2008-17/73
R657-60	Aquatic Invasive Species Interdiction	31623	NEW	08/21/2008	2008-14/88
R657-60	Aquatic Invasive Species Interdiction.	32004	EMR	10/10/2008	Not Printed

**Pardons (Board Of)**

Administration

R671-312	Commutation Hearings for Death Penalty Cases	31827	5YR	08/14/2008	2008-17/77
R671-403	Restitution	30949	5YR	02/04/2008	2008-5/59
R671-509	Progress Violation Reports	31656	5YR	07/03/2008	2008-15/103
R671-510	Evidence for Issuance of Warrants	31658	5YR	07/03/2008	2008-15/103
R671-512	Execution of the Warrant	31657	5YR	07/03/2008	2008-15/103
R671-513	Expedited Determination on Parolee Challenge to Probable Cause	31821	5YR	08/14/2008	2008-17/78
R671-514	Waiver and Pleas of Guilt	31654	5YR	07/03/2008	2008-15/104
R671-515	Timeliness of Parole Revocation Hearings	31659	5YR	07/03/2008	2008-15/104
R671-516	Parole Revocation Hearings	31655	5YR	07/03/2008	2008-15/105
R671-517	Evidentiary Hearings and Proceedings	31823	5YR	08/14/2008	2008-17/78
R671-518	Conduct of Proceedings When a Criminal Charge Results in Conviction	31822	5YR	08/14/2008	2008-17/79
R671-519	Proceedings When Criminal Charges Result in Acquittal	31826	5YR	08/14/2008	2008-17/79
R671-520	Treatment of Confidential Testimony	31825	5YR	08/14/2008	2008-17/79
R671-522	Continuances Due to Pending Criminal Charges	31824	5YR	08/14/2008	2008-17/80

**Professional Practices Advisory Commission**

Administration

R686-100	Professional Practices Advisory Commission, Rules of Procedure: Complaints and Hearings	30951	5YR	02/04/2008	2008-5/59
R686-101	Alcohol Related Offenses	31521	5YR	06/02/2008	2008-12/62
R686-102	Drug Related Offenses	31522	5YR	06/02/2008	2008-12/62
R686-103	Professional Practices and Conduct for Utah Educators	31016	REP	04/21/2008	2008-6/12

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>Public Safety</b>					
<u>Driver License</u>					
R708-2	Commercial Driver Training Schools	31545	R&R	08/08/2008	2008-13/87
R708-2-25	Grounds for Revocation, Probation or Refusal to Issue or Renew Instructor License, Operator License, or School License Authority	31105	NSC	05/05/2008	Not Printed
R708-3-2	Classified License System	31106	NSC	05/05/2008	Not Printed
R708-10	Adjudicative Proceedings For Driver License Actions Involving Alcohol and Drugs	31436	AMD	07/08/2008	2008-11/116
R708-14	Pedestrian Vehicle Rule	31107	NSC	05/05/2008	Not Printed
R708-16	Application and Requirements for Authorization to Operate a Pedestrian Vehicle Authority	31437	AMD	07/08/2008	2008-11/117
R708-16-3	Commercial Driver License Administrative Proceedings	31592	NSC	08/25/2008	Not Printed
R708-18-1	Motorcycle Rider Training Schools	31113	NSC	05/05/2008	Not Printed
R708-22	Certificate of Course Completion	31114	NSC	05/05/2008	Not Printed
R708-30	Revocation	31790	5YR	08/01/2008	2008-16/75
R708-30-10	Medical Waivers for Intrastate Commercial Driving Privileges	31435	AMD	07/11/2008	2008-11/118
R708-30-14	Adjudicative Proceedings For Driver License Offenses Not Involving Alcohol or Drug Actions Purpose	31115	NSC	05/05/2008	Not Printed
R708-34	Refusal to Certify, Grounds for Cancellation, Suspension, or Probation of a Tester's Certification	31116	NSC	05/05/2008	Not Printed
R708-35	Anatomical Gift	31118	NSC	05/05/2008	Not Printed
R708-36-1	Definitions	31119	NSC	05/05/2008	Not Printed
R708-37-11	Procedures	31120	NSC	05/05/2008	Not Printed
R708-38	YES or NO Notification	31124	NSC	05/01/2008	Not Printed
R708-41-3	Procedures	31738	AMD	09/23/2008	2008-16/29
R708-42-4	Procedures	31121	NSC	05/05/2008	Not Printed
R708-43	Procedures	31122	NSC	05/05/2008	Not Printed
R708-44-4	Procedures	31123	NSC	05/05/2008	Not Printed
<u>Fire Marshal</u>					
R710-1-4	Certificates of Registration	31076	AMD	05/23/2008	2008-8/31
R710-1-9	Adjudicative Proceedings	31743	NSC	10/01/2008	Not Printed
R710-2-4	Indoor Sales	30918	AMD	03/10/2008	2008-3/50
R710-2-7	Importer, Wholesaler, Display or Special Effects Operator Licenses	31078	AMD	05/23/2008	2008-8/34
R710-2-8	Adjudicative Proceedings	31744	NSC	10/01/2008	Not Printed
R710-3-7	Adjudicative Proceedings	31745	NSC	10/01/2008	Not Printed
R710-4-7	Adjudicative Proceedings	31746	NSC	10/01/2008	Not Printed
R710-5	Automatic Fire Sprinkler System Inspecting and Testing	31088	5YR	03/28/2008	2008-8/54
R710-5-1	Adoption, Title, Purpose, and Prohibitions	30896	AMD	03/10/2008	2008-3/51
R710-5-3	Certificates of Registration	31080	AMD	05/23/2008	2008-8/35
R710-5-7	Adjudicative Proceedings	31747	NSC	10/01/2008	Not Printed
R710-6	Liquefied Petroleum Gas Rules	30862	AMD	02/21/2008	2008-2/22
R710-6-4	LP Gas Certificates	31082	AMD	05/23/2008	2008-8/37
R710-6-5	Adjudicative Proceedings	31748	NSC	10/01/2008	Not Printed
R710-7	Concerns Servicing Automatic Fire Suppression Systems	31085	AMD	05/23/2008	2008-8/40
R710-7-7	Adjudicative Proceedings	31749	NSC	10/01/2008	Not Printed

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R710-8-7	Adjudicative Proceedings	31750	NSC	10/01/2008	Not Printed
R710-9	Rules Pursuant to the Utah Fire Prevention Law	31787	AMD	09/23/2008	2008-16/30
R710-9-6	Amendments and Additions	30919	AMD	03/10/2008	2008-3/52
R710-10	Rules Pursuant to Fire Service Training, Education, and Certification	30894	AMD	03/10/2008	2008-3/56
R710-10	Rules Pursuant to Fire Service Training, Education, and Certification	31472	AMD	07/23/2008	2008-12/42
R710-10-11	Adjudicative Proceedings	31751	NSC	10/01/2008	Not Printed
R710-11-3	Certificates of Registration	31086	AMD	05/23/2008	2008-8/42
R710-11-7	Adjudicative Proceedings	31752	NSC	10/01/2008	Not Printed
R710-12	Hazardous Materials Training and Certification	30893	NEW	03/10/2008	2008-3/58
R710-12-4	Training	31087	AMD	05/23/2008	2008-8/44
<u>Highway Patrol</u>					
R714-500	Chemical Analysis Standards and Training	31754	AMD	10/15/2008	2008-16/31
<u>Criminal Investigations and Technical Services, Criminal Identification</u>					
R722-300	Concealed Firearm Permit Rule (5YR EXTENSION)	30928	NSC	05/01/2008	Not Printed
R722-300	Concealed Firearm Permit Rule (EXPIRED - Legislative Nonreauthorization)	31349	NSC	05/01/2008	Not Printed
R722-320	Undercover Identification (5YR EXTENSION)	30929	NSC	05/14/2008	Not Printed
R722-320	Undercover Identification	31434	5YR	05/14/2008	2008-11/127
R722-340	Emergency Vehicles (5YR EXTENSION)	30930	NSC	05/14/2008	Not Printed
R722-340	Emergency Vehicles	31433	5YR	05/14/2008	2008-11/128
<u>Peace Officer Standards and Training</u>					
R728-101	Public Petitions For Declaratory Rulings	31719	NSC	10/01/2008	Not Printed
R728-205-4	Procedures	31720	NSC	10/01/2008	Not Printed
R728-409	Refusal, Suspension, or Revocation of Peace Officer Certification	31739	AMD	10/01/2008	2008-16/36
R728-501	Career Development Courses	31648	5YR	07/01/2008	2008-14/142
<b>Public Service Commission</b>					
<u>Administration</u>					
R746-100	Practice and Procedure Governing Formal Hearings	31373	NSC	05/05/2008	Not Printed
R746-101-4	Petition Review and Disposition	31372	NSC	05/05/2008	Not Printed
R746-110	Uncontested Matters to be Adjudicated Informally	31369	NSC	05/05/2008	Not Printed
R746-110	Uncontested Matters to be Adjudicated Informally	31620	5YR	06/24/2008	2008-14/143
R746-210	Utility Service Rules Applicable Only to Electric Utilities	31617	5YR	06/24/2008	2008-14/143
R746-240	Telecommunication Service Rules	31619	5YR	06/24/2008	2008-14/144
R746-330	Rules for Water and Sewer Utilities Operating in Utah	31044	5YR	03/07/2008	2008-7/66
R746-331	Determination of Exemption of Mutual Water Corporations	31095	5YR	04/01/2008	2008-8/55
R746-332	Depreciation Rates for Water Utilities	31091	5YR	04/01/2008	2008-8/55
R746-340	Service Quality for Telecommunications Corporations	31618	5YR	06/24/2008	2008-14/144
R746-342	Rule on One-Way Paging	31092	5YR	04/01/2008	2008-8/56
R746-344	Filing Requirements for Telephone Corporations with Less than 5,000 Access Line Subscribers	31797	5YR	08/07/2008	2008-17/80
R746-345	Pole Attachments	31798	5YR	08/07/2008	2008-17/81



CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R746-347	Extended Area Service (EAS)	31045	5YR	03/07/2008	2008-7/66
R746-349	Competitive Entry and Reporting Requirements	31628	AMD	08/25/2008	2008-14/91
R746-349-3	Filing Requirements	31374	NSC	05/05/2008	Not Printed
R746-349-7	Informal adjudication of certain CLEC merger and acquisition transactions	31781	NSC	10/01/2008	Not Printed
R746-360-4	Application of Fund Surcharges to Customer Billings	31704	AMD	10/01/2008	2008-15/71
R746-400-7	Confidentiality	31371	NSC	05/05/2008	Not Printed
R746-402	Rules Governing Reports of Accidents by Electric, Gas, Telephone, and Water Utilities	31093	5YR	04/01/2008	2008-8/56
R746-404	Regulation of Promotional Programs of Electric and Gas Public Utilities	31795	5YR	08/07/2008	2008-17/81
R746-405	Filing of Tariffs for Gas, Electric, Telephone, and Water Utilities	31101	5YR	04/01/2008	2008-8/57
R746-406	Advertising by Electric and Gas Utilities	31796	5YR	08/07/2008	2008-17/82
R746-440	Significant Energy Resource Solicitation	31072	NSC	04/11/2008	Not Printed
R746-500	Americans With Disabilities Act Complaint Procedure	31370	NSC	05/05/2008	Not Printed
R746-500	Americans With Disabilities Act Complaint Procedure	31791	5YR	08/04/2008	2008-17/82
R746-510	Funding for Speech and Hearing Impaired Certified Interpreter Training	31375	NSC	05/05/2008	Not Printed
R746-600	Postretirement Benefits other than Pensions	31949	5YR	09/15/2008	2008-19/81
R746-800	Working 4 Utah Operations	31642	NEW	08/25/2008	2008-14/95

**Regents (Board Of)**

Administration

R765-134	Informal Adjudicative Procedures Under the Utah Administrative Procedures Act	31325	NSC	05/05/2008	Not Printed
R765-134-5	Procedures for Informal Adjudicative Proceedings	31631	NSC	08/25/2008	Not Printed
R765-136	Language Proficiency in the Utah System of Higher Education	31326	NSC	05/05/2008	Not Printed
R765-136	Language Proficiency in the Utah System of Higher Education	31490	5YR	05/27/2008	2008-12/63
R765-254	Secure Area Hearing Rooms	31492	5YR	05/27/2008	2008-12/63
R765-555	Policy on Colleges and Universities Providing Facilities, Goods and Services in Competition with Private Enterprise (5YR EXTENSION)	31104	NSC	06/02/2008	Not Printed
R765-555	Policy on Colleges and Universities Providing Facilities, Goods and Services in Competition with Private Enterprise	31515	5YR	06/02/2008	2008-12/64
R765-605	Utah Centennial Opportunity Program for Education	31402	5YR	05/09/2008	2008-11/128
R765-606	Utah Leveraging Educational Assistance Partnership Program	31405	5YR	05/09/2008	2008-11/129
R765-607	Utah Higher Education Tuition Assistance Program	30957	5YR	02/08/2008	2008-5/60
R765-993	Records Access and Management	31327	NSC	05/05/2008	Not Printed

College of Eastern Utah

R767-1	Government Records Access and Management Act	31410	NSC	08/18/2008	Not Printed
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Salt Lake Community College

R784-1	Government Records Access and Management Act Rules	31344	NSC	05/05/2008	Not Printed
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University of Utah, Administration

R805-1	Operating Regulations for Bicycles, Skateboards and Scooters	31695	5YR	07/11/2008	2008-15/105
R805-2	Government Records Access and Management Act Procedures	31340	NSC	05/05/2008	Not Printed

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R805-2	Government Records Access and Management Act Procedures	31718	5YR	07/17/2008	2008-16/75
<u>University of Utah, Parking and Transportation Services</u>					
R810-1	University of Utah Parking Regulations	30712	AMD	03/06/2008	2007-23/65
R810-2	Parking Meters	30722	AMD	03/06/2008	2007-23/67
R810-3	Visitor Parking	30727	REP	03/06/2008	2007-24/21
R810-4	Registration Policies	30728	REP	03/06/2008	2007-24/22
R810-5	Permit Types, Eligibility and Designated Parking Areas	30779	AMD	03/06/2008	2007-24/23
R810-6	Permit Prices and Refunds	30809	AMD	03/06/2008	2008-1/26
R810-7	Nonresidents and Out-of-State Plates	30831	REP	03/06/2008	2008-1/27
R810-8	Vendor Regulations	30834	AMD	03/06/2008	2008-1/28
R810-9	Contractors and Their Employees	30836	AMD	03/06/2008	2008-1/29
R810-10	Enforcement System	30839	AMD	03/06/2008	2008-1/30
R810-11	Appeals System	30840	AMD	03/06/2008	2008-1/31
R810-12	Bicycles, Skateboards and Other Toy Vehicles	30843	NEW	03/06/2008	2008-1/32
<b>School and Institutional Trust Lands</b>					
<u>Administration</u>					
R850-3	Applicant Qualifications, Application Forms, and Application Processing	31526	NSC	08/19/2008	Not Printed
<b>Sports Authority (Utah)</b>					
<u>Pete Suazo Utah Athletic Commission</u>					
R859-1	Pete Suazo Utah Athletic Commission Act Rule	31028	AMD	05/01/2008	2008-6/15
R859-1-102	Definitions	31172	NSC	06/18/2008	Not Printed
R859-1-302	Renewal Cycle - Procedure	31029	AMD	05/01/2008	2008-6/16
R859-1-501	Promoter's Responsibility in Arranging Contests - Permit Fee, Bond, Restrictions	31566	AMD	09/01/2008	2008-13/106
R859-1-506	Drug Tests	31585	AMD	09/01/2008	2008-13/108
R859-1-509	Weighing-In	31586	AMD	09/01/2008	2008-13/109
<b>Tax Commission</b>					
<u>Administration</u>					
R861-1A-1	Administrative Procedures Pursuant to Utah Code Ann. Section 59-1-210	31535	AMD	08/18/2008	2008-13/110
R861-1A-3	Division and Prehearing Conferences Pursuant to Utah Code Ann. Section 59-1-210	31536	AMD	08/18/2008	2008-13/111
R861-1A-13	Requests for Accommodation and Grievance Procedures Pursuant to Utah Code Ann. Section 63-46a 3(2), 28 CFR 35.107 1992 edition, and 42 USC 12201	31386	NSC	08/18/2008	Not Printed
R861-1A-16	Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207	31633	AMD	09/09/2008	2008-14/96
R861-1A-20	Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-2-1007, 59-7-517, 59-10-532, 9-10-533, 59-10-535, 59-12-114, 59-13-210, 63-46b-3, 63-46b-14	30688	AMD	01/11/2008	2007-23/68
R861-1A-22	Petitions for Commencement of Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501, and 63-46b-3	31394	NSC	08/18/2008	Not Printed
R861-1A-23	Designation of Adjudicative Proceedings Pursuant to Utah Code Ann. Section 63-46b-4	31634	AMD	09/09/2008	2008-14/98
R861-1A-24	Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.5, 63-46b-8, and 63-46b-10	30589	AMD	01/11/2008	2007-21/69

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R861-1A-24	Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-502.5, 63-46b-8 and 63-46b-10	31395	NSC	08/18/2008	Not Printed
R861-1A-26	Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63-46b-6 and 63-46b-11	30717	AMD	01/11/2008	2007-23/69
R861-1A-26	Procedures for Formal Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-501 and 63-46b 6 through 63-46b-11	31635	AMD	09/09/2008	2008-14/99
R861-1A-27	Discovery Pursuant to Utah Code Ann. Section 63-46b-7	31638	AMD	09/09/2008	2008-14/101
R861-1A-28	Evidence in Adjudicative Proceedings Pursuant to Utah Code Ann. Sections 59-1-210, 76-8-502, 76-8-503, 63-46b-8	31403	NSC	08/18/2008	Not Printed
R861-1A-29	Decisions, Orders and Reconsideration Pursuant to Utah Code Ann. Section 63-46b-13	31404	NSC	08/18/2008	Not Printed
R861-1A-30	Ex Parte Communications Pursuant to Utah Code Ann. Sections 63-46b-5 and 63-46b-8	31406	NSC	08/18/2008	Not Printed
R861-1A-31	Declaratory Orders Pursuant to Utah Code Ann. Section 63-46b-21	31407	NSC	08/18/2008	Not Printed
R861-1A-32	Mediation Process Pursuant to Utah Code Section 63-46b-1	31412	NSC	08/18/2008	Not Printed
R861-1A-40	Waiver of Requirement to Post Security Prior to Judicial Review Pursuant to Utah Code Ann. Section 59-1-611	30838	AMD	02/25/2008	2008-1/32
R861-1A-42	Waiver of Penalty and Interest for Reasonable Cause Pursuant to Utah Code Ann. Section 59-1-401	30835	AMD	02/25/2008	2008-1/33
R861-1A-43	Electronic Meetings Pursuant to Utah Code Ann. Section 52-4-207	30780	AMD	01/25/2008	2007-24/24
<u>Auditing</u>					
R865-6F-8	Allocation and Apportionment of Net Income (Uniform Division of Income for Tax Purposes Act) Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321	31632	AMD	09/09/2008	2008-14/102
R865-6F-28	Enterprise Zone Corporate Franchise Tax Credits Pursuant to Utah Code Ann. Sections 9-2-401 through 9-2-415	30913	AMD	03/14/2008	2008-3/61
R865-6F-35	S Corporation Determination of Tax Pursuant to Utah Code Ann. Section 59-7-703	31534	AMD	08/18/2008	2008-13/112
R865-6F-37	Disclosure of Reportable Transactions and Material Advisor List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309	30842	AMD	02/25/2008	2008-1/35
R865-9I-4	Equitable Adjustments Pursuant to Utah Code Ann. Section 59-10-115	31458	AMD	08/14/2008	2008-12/43
R865-9I-6	Returns by Husband and Wife when one is a Resident and the other is a Nonresident Pursuant to Utah Code Ann. Section 59-10-119	31530	AMD	08/18/2008	2008-13/113
R865-9I-11	Share of a Nonresident Estate or Trust, or Its Beneficiaries In State Taxable Income Pursuant to Utah Code Ann. Section 59-10-207	31459	AMD	08/14/2008	2008-12/44
R865-9I-12	Fiduciary Adjustment Pursuant to Utah Code Ann. Section 59-10-210	31460	AMD	08/14/2008	2008-12/45
R865-9I-13	Nonresident's Share of Partnership or Limited Liability Company Income Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, and 59-10-303	31463	AMD	08/14/2008	2008-12/45
R865-9I-37	Enterprise Zone Individual Income Tax Credits Pursuant to Utah Code Ann. Sections 63-38f-401 through 63-38f-414	30916	AMD	03/14/2008	2008-3/63
R865-9I-37	Enterprise Zone Individual Income Tax Credits Pursuant to Utah Code Ann. Sections 63-38f-401 through 63-38f-414	31413	NSC	08/18/2008	Not Printed

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R865-9I-39	Subtraction from Federal Taxable Income for a Dependent Child With a Disability or an Adult With a Disability Pursuant to Utah Code Ann. Sections 59-10-114 and 59-10-501	31464	AMD	08/14/2008	2008-12/46
R865-9I-41	Historic Preservation Tax Credits Pursuant to Utah Code Ann. Section 59-10-108.5	31639	NSC	08/25/2008	Not Printed
R865-9I-42	Order of Credits Applied Against Utah Individual Income Tax Due Pursuant to Utah Code Ann. Sections 59-6-102, 59-13-202, Title 59, Chapter 10, and 63-38f-413	31414	NSC	08/18/2008	Not Printed
R865-9I-46	Medical Savings Account Tax Deduction Pursuant to Utah Code Ann. Sections 31A-32a-106 and 59-10-114	31415	NSC	08/18/2008	Not Printed
R865-9I-48	Adoption Expenses Deduction Pursuant to Utah Code Ann. Section 59-10-114	31466	AMD	08/14/2008	2008-12/47
R865-9I-49	Higher Education Savings Incentive Program Tax Deduction Pursuant to Utah Code Ann. Sections 53B-8a-112 and 59-10-114	31416	NSC	08/18/2008	Not Printed
R865-9I-50	Addition to Adjusted Gross Income for Interest Earned on Bonds, Notes, and Other Evidences of Indebtedness Pursuant to Utah Code Ann. Section 59-10-114	31532	AMD	08/18/2008	2008-13/114
R865-9I-52	Subtractions for Health Care Insurance and For Premiums For Long-Term Care Insurance Pursuant to Utah Code Ann. Section 59-100-114	31470	AMD	08/14/2008	2008-12/48
R865-9I-53	Disclosure of Reportable Transactions and Material Advisor List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309	30849	AMD	02/25/2008	2008-1/36
R865-19S-94	Tips, Gratuities, and Cover Charges Pursuant to Utah Code Ann. Section 59-12-103	31531	AMD	08/18/2008	2008-13/115
R865-19S-99	Sales and Use Taxes on Vehicles Purchased in Another State Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104(26), (28)	31272	NSC	06/23/2008	Not Printed
R865-19S-105	Procedures for Refund of Sales and Use Taxes Paid on Food Donated to a Qualified Emergency Food Agency Pursuant to Utah Code Ann. Section 59-12-902	31258	AMD	07/01/2008	2008-10/132
R865-19S-121	Sales and Use Tax Exemptions for Certain Purchases by a Mining Facility Pursuant to Utah Code Ann. Section 59-12-104	30841	AMD	02/25/2008	2008-1/37
R865-20T-13	Calculation of Tax on Moist Snuff Pursuant to Utah Code Ann. Section 59-14-302	31533	AMD	08/18/2008	2008-13/116
<u>Motor Vehicle</u>					
R873-22M-34	Rule for Denial of Personalized License Plate Requests Pursuant to Utah Code Ann. Sections 41-1a-104 and 41-1a-411	30844	AMD	02/25/2008	2008-1/38
R873-22M-41	Issuance of Salvage Certificate in Certain Circumstances Pursuant to Utah Code Ann. Section 41-1a-1005	31264	AMD	06/27/2008	2008-10/133
<u>Motor Vehicle Enforcement</u>					
R877-23V-19	Disclosure of Vehicles Initially Delivered for Sale in a Country Other than the United States Pursuant to Utah Code Ann. Section 41-1a-712	31255	AMD	06/27/2008	2008-10/135
<u>Property Tax</u>					
R884-24P-38	Nonoperating Railroad Properties Pursuant to Utah Code Ann. Section 59-2-201(4)	31418	NSC	08/18/2008	Not Printed
R884-24P-62	Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201	30931	AMD	03/28/2008	2008-4/30
R884-24P-62	Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201	31274	NSC	06/23/2008	Not Printed

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>Transportation</b>					
<u>Administration</u>					
R907-64	Longitudinal and Wireless Access to Interstate Highway Rights-of-Way for Installation of Telecommunications Facilities	31962	5YR	09/18/2008	2008-20/52
R907-65	Compensation Schedule for Longitudinal Access to Interstate Highway Rights-of-Way for Installation of Telecommunications Facilities	31965	5YR	09/22/2008	2008-20/53
R907-67	Debarment of Contractors from Work on Department Projects -- Reasons	31963	5YR	09/18/2008	2008-20/53
<u>Motor Carrier</u>					
R909-1-1	Adoption of Federal Regulations	30783	AMD	02/15/2008	2007-24/25
R909-19	Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operations and Certification	30785	AMD	02/12/2008	2007-24/26
R909-75	Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Wastes	31090	AMD	05/27/2008	2008-8/45
<u>Motor Carrier, Ports of Entry</u>					
R912-14	Changes in Utah's Oversize/Overweight Permit Program - Semitrailer Exceeding 48 Feet Length	31794	5YR	08/07/2008	2008-17/83
<u>Operations, Maintenance</u>					
R918-4	Using Volunteer Groups for the Adopt-a-Highway Program (5YR EXTENSION)	31693	NSC	08/25/2008	Not Printed
R918-4	Using Volunteer Groups for the Adopt-A-Highway Program	31890	5YR	08/25/2008	2008-18/77
<u>Preconstruction</u>					
R930-5	Establishment and Regulation of At-Grade Railroad Crossings	31066	AMD	06/10/2008	2008-8/46
<b>Transportation Commission</b>					
<u>Administration</u>					
R940-1	Establishment of Toll Rates	31810	NSC	10/01/2008	Not Printed
<b>Treasurer</b>					
<u>Unclaimed Property</u>					
R966-1-2	Proof Requirements and Bonds	30596	AMD	01/07/2008	2007-22/87
<b>Workforce Services</b>					
<u>Employment Development</u>					
R986-200	Family Employment Program	31032	AMD	05/01/2008	2008-6/18
R986-200-214	Assistance for Specified Relatives	30864	AMD	02/26/2008	2008-2/25
R986-200-240	Additional Payments Available Under Certain Circumstances	31365	AMD	07/02/2008	2008-10/135
R986-200-240	Additional Payments Available Under Certain Circumstances	31714	AMD	09/29/2008	2008-15/78
R986-300-303	Eligibility, Income Standards, and Amount of Assistance	31060	AMD	05/20/2008	2008-7/52
R986-400-406	Failure to Comply with the Requirements of an Employment Plan	31034	AMD	05/01/2008	2008-6/20
R986-500-505	Time Limits for AA	31776	AMD	09/29/2008	2008-16/50
R986-700	Child Care Assistance	31033	AMD	05/01/2008	2008-6/21
R986-700	Child Care Assistance	31364	AMD	07/02/2008	2008-10/136
R986-700-752	Definitions	31499	NSC	07/02/2008	Not Printed

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>Unemployment Insurance</u>					
R994-106-106	Non-Monetary Eligibility Determination	31075	AMD	05/30/2008	2008-8/48
R994-201	Definition of Terms in Employment Security Act	31467	5YR	05/20/2008	2008-12/64
R994-202	Employing Units	31468	5YR	05/20/2008	2008-12/65
R994-208	Wages	31469	5YR	05/20/2008	2008-12/65
R994-306	Charging Benefit Costs to Employers	31547	5YR	06/10/2008	2008-13/151
R994-307	Social Costs -- Relief of Charges	31548	5YR	06/10/2008	2008-13/152
R994-315	Centralized New Hire Registry Reporting	31549	5YR	06/10/2008	2008-13/152
R994-401-203	Retirement or Disability Retirement Income	31712	AMD	09/29/2008	2008-15/79
R994-403-110c	Able and Available - General Definition	31777	NSC	10/01/2008	Not Printed
R994-404-101	Claimants Who Qualify for an Adjustment to the Base Period	31711	AMD	09/29/2008	2008-15/81
R994-508	Appeal Procedures	30771	AMD	02/15/2008	2007-24/30
R994-508	Appeal Procedures	31546	5YR	06/10/2008	2008-13/153
R994-508-117	Failure to Participate in the Hearing and Reopening the Hearing After the Hearing Has Been Concluded	31020	NSC	03/11/2008	Not Printed
R994-508-118	What Constitutes Grounds to Reopen a Hearing	31071	NSC	04/14/2008	Not Printed

**RULES INDEX - BY KEYWORD (SUBJECT)**

**ABBREVIATIONS**

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

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>acceptable documentation</u>					
Public Safety, Driver License	31738	R708-41-3	AMD	09/23/2008	2008-16/29
<u>access</u>					
Crime Victim Reparations, Administration	31324	R270-4	NSC	05/05/2008	Not Printed
<u>access to information</u>					
Administrative Services, Administration	31343	R13-2	NSC	05/05/2008	Not Printed
Administrative Services, Archives	31553	R17-5	NEW	08/20/2008	2008-13/2
	31702	R17-5	NSC	08/20/2008	Not Printed
	31554	R17-6	NEW	08/20/2008	2008-13/2
	31555	R17-7	NEW	08/20/2008	2008-13/3
	31556	R17-8	NEW	08/20/2008	2008-13/5
	31703	R17-8-2	NSC	08/20/2008	Not Printed

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>accidents</u></b>					
Administrative Services, Fleet Operations	31421	R27-7-1	NSC	08/18/2008	Not Printed
<b><u>accountants</u></b>					
Commerce, Occupational and Professional Licensing	30715	R156-26a	AMD	03/31/2008	2007-23/4
	31763	R156-26a	AMD	09/23/2008	2008-16/5
	30715	R156-26a	CPR	03/31/2008	2008-4/35
<b><u>accreditation</u></b>					
Education, Administration	31444	R277-504	AMD	07/08/2008	2008-11/77
<b><u>acid rain</u></b>					
Environmental Quality, Air Quality	30700	R307-215	REP	02/08/2008	2007-23/31
	30706	R307-417	AMD	02/08/2008	2007-23/43
<b><u>acquit</u></b>					
Pardons (Board Of), Administration	31826	R671-519	5YR	08/14/2008	2008-17/79
<b><u>adjudicative procedures</u></b>					
Regents (Board Of), Administration	31325	R765-134	NSC	05/05/2008	Not Printed
	31631	R765-134-5	NSC	08/25/2008	Not Printed
<b><u>adjudicative proceedings</u></b>					
Commerce, Administration	31138	R151-46b	CPR	09/22/2008	2008-16/53
	31138	R151-46b	AMD	09/22/2008	2008-9/12
Natural Resources, Forestry, Fire and State Lands	31269	R652-8	NSC	05/05/2008	Not Printed
Public Safety, Driver License	31107	R708-14	NSC	05/05/2008	Not Printed
	31118	R708-35	NSC	05/05/2008	Not Printed
<b><u>administrative fines</u></b>					
Commerce, Securities	31541	R164-31	NEW	08/26/2008	2008-13/8
<b><u>administrative law</u></b>					
Administrative Services, Administrative Rules	31143	R15-1	NSC	05/05/2008	Not Printed
	31144	R15-2	NSC	05/05/2008	Not Printed
	31145	R15-3	NSC	05/05/2008	Not Printed
	31146	R15-4	NSC	05/05/2008	Not Printed
	31147	R15-5	NSC	05/05/2008	Not Printed
Human Services, Recovery Services	31409	R527-200	NSC	08/18/2008	Not Printed
	31133	R527-257	REP	06/09/2008	2008-9/45
	31054	R527-258	AMD	05/14/2008	2008-7/33
<b><u>administrative penalties</u></b>					
Natural Resources, Water Rights	31431	R655-14	AMD	07/08/2008	2008-11/104
<b><u>administrative procedures</u></b>					
Administrative Services, Administration	31342	R13-1	NSC	05/05/2008	Not Printed
	31936	R13-1	5YR	09/10/2008	2008-19/78
Administrative Services, Administrative Rules	31147	R15-5	NSC	05/05/2008	Not Printed
Administrative Services, Fleet Operations	31408	R27-2-1	NSC	08/18/2008	Not Printed

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
Auditor, Administration	31257	R123-3-1	NSC	05/05/2008	Not Printed
	31260	R123-3-2	NSC	05/05/2008	Not Printed
	31261	R123-3-3	NSC	05/05/2008	Not Printed
	31138	R151-46b	CPR	09/22/2008	2008-16/53
	31138	R151-46b	AMD	09/22/2008	2008-9/12
Commerce, Occupational and Professional Licensing	31179	R156-46b	NSC	05/05/2008	Not Printed
Crime Victim Reparations, Administration	31323	R270-2	NSC	05/05/2008	Not Printed
Environmental Quality, Air Quality	31461	R307-103	NSC	06/18/2008	Not Printed
	31809	R307-103-2	NSC	10/01/2008	Not Printed
Environmental Quality, Radiation Control	31171	R313-17	NSC	05/05/2008	Not Printed
Environmental Quality, Water Quality	30948	R317-9	5YR	02/01/2008	2008-4/42
Health, Administration	31281	R380-1	NSC	05/05/2008	Not Printed
	31282	R380-5	NSC	05/05/2008	Not Printed
	31283	R380-10	NSC	05/05/2008	Not Printed
	31188	R477-3	AMD	07/01/2008	2008-10/87
	31210	R477-12	AMD	07/01/2008	2008-10/110
	31208	R477-15	AMD	07/01/2008	2008-10/112
Labor Commission, Adjudication	31250	R602-1	NSC	05/05/2008	Not Printed
	31236	R602-2-1	NSC	05/05/2008	Not Printed
	30811	R602-2-4	AMD	02/07/2008	2008-1/14
	31238	R602-3	NSC	05/05/2008	Not Printed
	30810	R602-3-3	AMD	02/07/2008	2008-1/16
	31643	R602-4	EMR	07/01/2008	2008-14/127
Labor Commission, Industrial Accidents	31235	R612-1	NSC	05/05/2008	Not Printed
	31252	R612-10	NSC	05/05/2008	Not Printed
	31565	R612-11	NEW	08/11/2008	2008-13/85
	31734	R612-11	NSC	08/11/2008	Not Printed
	31564	R612-12	NEW	08/11/2008	2008-13/86
	31735	R612-12-2	NSC	08/11/2008	Not Printed
Lieutenant Governor, Administration	31844	R622-1	5YR	08/19/2008	2008-18/75
Natural Resources, Oil, Gas and Mining Board	31196	R641-100	NSC	05/05/2008	Not Printed
	31197	R641-104-100	NSC	05/05/2008	Not Printed
	31198	R641-112	NSC	05/05/2008	Not Printed
	31199	R641-114	NSC	05/05/2008	Not Printed
	31200	R641-115	NSC	05/05/2008	Not Printed
	31201	R641-116	NSC	05/05/2008	Not Printed
Natural Resources, Forestry, Fire and State Lands	31268	R652-7	NSC	05/05/2008	Not Printed
	31895	R652-7	5YR	08/26/2008	2008-18/76
	31269	R652-8	NSC	05/05/2008	Not Printed
	31110	R652-9-100	NSC	05/01/2008	Not Printed
	31270	R652-30-500	NSC	05/05/2008	Not Printed
	31112	R652-120	NSC	05/01/2008	Not Printed
	31108	R652-121	NSC	05/01/2008	Not Printed
	31111	R652-123	NSC	05/01/2008	Not Printed



<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
Natural Resources, Wildlife Resources	31219	R657-2	NSC	05/05/2008	Not Printed
School and Institutional Trust Lands, Administration	31526	R850-3	NSC	08/19/2008	Not Printed
<b><u>administrative proceedings</u></b>					
Commerce, Corporations and Commercial Code	31993	R154-100	5YR	10/02/2008	Not Printed
Public Safety, Driver License	31114	R708-22	NSC	05/05/2008	Not Printed
<b><u>administrative responsibility</u></b>					
Human Resource Management, Administration	31187	R477-2	AMD	07/01/2008	2008-10/84
<b><u>administrative rules</u></b>					
Human Resource Management, Administration	31211	R477-13	NSC	06/19/2008	Not Printed
<b><u>adopt-a-highway</u></b>					
Transportation, Operations, Maintenance	31693	R918-4	NSC	08/25/2008	Not Printed
	31890	R918-4	5YR	08/25/2008	2008-18/77
<b><u>adoption</u></b>					
Human Services, Child and Family Services	31724	R512-41	NSC	10/01/2008	Not Printed
	31741	R512-41	AMD	09/23/2008	2008-16/21
	31725	R512-42	NSC	10/01/2008	Not Printed
	31742	R512-43	AMD	09/23/2008	2008-16/24
	31726	R512-51-1	NSC	10/01/2008	Not Printed
<b><u>adoption assistance</u></b>					
Workforce Services, Employment Development	31776	R986-500-505	AMD	09/29/2008	2008-16/50
<b><u>adult education</u></b>					
Education, Administration	30883	R277-702	5YR	01/08/2008	2008-3/74
<b><u>advertising</u></b>					
Commerce, Consumer Protection	31213	R152-11	NSC	05/05/2008	Not Printed
Public Service Commission, Administration	31796	R746-406	5YR	08/07/2008	2008-17/82
<b><u>agriculture association</u></b>					
Agriculture and Food, Administration	31471	R51-5	REP	07/22/2008	2008-12/5
<b><u>air pollution</u></b>					
Environmental Quality, Air Quality	30697	R307-101	AMD	02/08/2008	2007-23/21
	30959	R307-101	5YR	02/08/2008	2008-5/40
	30960	R307-102	5YR	02/08/2008	2008-5/40
	31462	R307-102	NSC	06/18/2008	Not Printed
	31461	R307-103	NSC	06/18/2008	Not Printed
	31809	R307-103-2	NSC	10/01/2008	Not Printed
	31927	R307-107	5YR	09/04/2008	2008-19/79
	31426	R307-107	NSC	09/04/2008	Not Printed
	30698	R307-115	AMD	02/08/2008	2007-23/28
	30961	R307-115	5YR	02/08/2008	2008-5/41
	31389	R307-121	AMD	08/07/2008	2008-11/87
	30889	R307-121-3	NSC	01/30/2008	Not Printed

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
	31558	R307-150-4	AMD	09/04/2008	2008-13/35
	30962	R307-170	5YR	02/08/2008	2008-5/41
	30699	R307-170-7	AMD	02/08/2008	2007-23/29
	30963	R307-202	5YR	02/08/2008	2008-5/42
	30964	R307-203	5YR	02/08/2008	2008-5/43
	30430	R307-214	AMD	01/11/2008	2007-19/12
	30895	R307-214	5YR	01/11/2008	2008-3/77
	30965	R307-220	5YR	02/08/2008	2008-5/43
	30701	R307-221	AMD	02/08/2008	2007-23/32
	30966	R307-221	5YR	02/08/2008	2008-5/44
	30832	R307-221-2	NSC	02/08/2008	Not Printed
	30702	R307-222	AMD	02/08/2008	2007-23/36
	30967	R307-222	5YR	02/08/2008	2008-5/44
	30833	R307-222-1	NSC	02/08/2008	Not Printed
	30703	R307-223	AMD	02/08/2008	2007-23/38
	30968	R307-223	5YR	02/08/2008	2008-5/45
	30969	R307-224	5YR	02/08/2008	2008-5/45
	30704	R307-224-2	AMD	02/08/2008	2007-23/39
	30970	R307-250	5YR	02/08/2008	2008-5/46
	31388	R307-302-3	AMD	08/07/2008	2008-11/91
	30971	R307-310	5YR	02/08/2008	2008-5/46
	30705	R307-310-2	AMD	02/08/2008	2007-23/40
	30709	R307-401-14	AMD	02/08/2008	2007-23/42
	30431	R307-405	AMD	01/11/2008	2007-19/15
	30972	R307-801	5YR	02/08/2008	2008-5/47
	30707	R307-801	AMD	02/08/2008	2007-23/45
	30973	R307-840	5YR	02/08/2008	2008-5/47
	30708	R307-840	AMD	02/08/2008	2007-23/48
<b><u>air quality</u></b>					
Environmental Quality, Air Quality	30700	R307-215	REP	02/08/2008	2007-23/31
	30706	R307-417	AMD	02/08/2008	2007-23/43
<b><u>air travel</u></b>					
Administrative Services, Finance	31319	R25-7	5YR	04/29/2008	2008-10/144
	31320	R25-7	AMD	07/01/2008	2008-10/4
<b><u>aircraft</u></b>					
Tax Commission, Motor Vehicle	30844	R873-22M-34	AMD	02/25/2008	2008-1/38
	31264	R873-22M-41	AMD	06/27/2008	2008-10/133
<b><u>alarm company</u></b>					
Commerce, Occupational and Professional Licensing	31181	R156-55d	NSC	05/05/2008	Not Printed
	31588	R156-55d	NSC	08/25/2008	Not Printed
<b><u>alcohol</u></b>					
Public Safety, Highway Patrol	31754	R714-500	AMD	10/15/2008	2008-16/31

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>alcoholic beverages</u></b>					
Alcoholic Beverage Control, Administration	31254	R81-1-2	AMD	06/27/2008	2008-10/10
	31273	R81-1-9	AMD	06/27/2008	2008-10/11
	31275	R81-1-10	AMD	06/27/2008	2008-10/13
	31279	R81-1-11	AMD	06/27/2008	2008-10/14
	31630	R81-1-11	NSC	08/25/2008	Not Printed
	31289	R81-1-26	AMD	06/27/2008	2008-10/16
	31640	R81-1-27	AMD	09/01/2008	2008-14/5
	31291	R81-3-1	AMD	06/27/2008	2008-10/18
	31328	R81-3-9	AMD	06/27/2008	2008-10/19
	31329	R81-3-13	AMD	06/27/2008	2008-10/20
	31330	R81-3-14	AMD	06/27/2008	2008-10/21
	31154	R81-4C	NSC	05/01/2008	Not Printed
	31780	R81-4C	5YR	07/31/2008	2008-16/66
	31155	R81-4D	NSC	05/01/2008	Not Printed
	31785	R81-4D	5YR	07/31/2008	2008-16/66
	31336	R81-4D-1	AMD	07/30/2008	2008-10/22
	31338	R81-4D-2	AMD	07/30/2008	2008-10/24
	31287	R81-5-11	AMD	06/27/2008	2008-10/25
	31332	R81-7-1	AMD	06/27/2008	2008-10/26
	31334	R81-10	NEW	06/27/2008	2008-10/27
	31786	R81-10B	5YR	07/31/2008	2008-16/67
<b><u>allegation</u></b>					
Pardons (Board Of), Administration	31654	R671-514	5YR	07/03/2008	2008-15/104
<b><u>allowance</u></b>					
Administrative Services, Finance	31321	R25-8	AMD	07/01/2008	2008-10/7
	31982	R25-8	5YR	10/01/2008	2008-20/52
<b><u>alternative fuels</u></b>					
Environmental Quality, Air Quality	31389	R307-121	AMD	08/07/2008	2008-11/87
	30889	R307-121-3	NSC	01/30/2008	Not Printed
<b><u>alternative school</u></b>					
Education, Administration	30888	R277-730	5YR	01/08/2008	2008-3/77
<b><u>Americans with Disabilities Act 1992</u></b>					
Human Services, Administration	31367	R495-878	NSC	05/05/2008	Not Printed
	31067	R495-878	AMD	06/13/2008	2008-8/23
<b><u>amphibians</u></b>					
Natural Resources, Wildlife Resources	31051	R657-53	AMD	05/08/2008	2008-7/50
	31228	R657-53	NSC	05/05/2008	Not Printed
	31508	R657-53	5YR	06/02/2008	2008-12/61
<b><u>anatomical gift</u></b>					
Public Safety, Driver License	31124	R708-38	NSC	05/01/2008	Not Printed

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>ancient human remains</u></b> Community and Culture, History	31290	R212-4	R&R	06/25/2008	2008-10/52
<b><u>animal protection</u></b> Natural Resources, Wildlife Resources	31047	R657-3	5YR	03/11/2008	2008-7/65
	31053	R657-3	AMD	05/08/2008	2008-7/45
<b><u>animal protections</u></b> Natural Resources, Wildlife Resources	31220	R657-3	NSC	05/05/2008	Not Printed
<b><u>animals</u></b> Health, Epidemiology and Laboratory Services, Laboratory Services	31717	R438-13	5YR	07/16/2008	2008-16/69
<b><u>appellate procedures</u></b> Administrative Services, Administration	31342	R13-1	NSC	05/05/2008	Not Printed
	31936	R13-1	5YR	09/10/2008	2008-19/78
Administrative Services, Fleet Operations	31408	R27-2-1	NSC	08/18/2008	Not Printed
Administrative Services, Fleet Operations, Surplus Property	31117	R28-3	5YR	04/04/2008	2008-9/52
Auditor, Administration	31257	R123-3-1	NSC	05/05/2008	Not Printed
	31260	R123-3-2	NSC	05/05/2008	Not Printed
	31261	R123-3-3	NSC	05/05/2008	Not Printed
	31323	R270-2	NSC	05/05/2008	Not Printed
Workforce Services, Unemployment Insurance	30771	R994-508	AMD	02/15/2008	2007-24/30
	31546	R994-508	5YR	06/10/2008	2008-13/153
	31020	R994-508-117	NSC	03/11/2008	Not Printed
	31071	R994-508-118	NSC	04/14/2008	Not Printed
<b><u>application</u></b> Health, Health Care Financing, Coverage and Reimbursement Policy	30938	R414-308	5YR	01/31/2008	2008-4/46
	31976	R414-308	EMR	10/01/2008	2008-20/45
	30927	R414-308-7	AMD	04/01/2008	2008-4/16
<b><u>applications</u></b> Natural Resources, Water Rights	31130	R655-5	5YR	04/08/2008	2008-9/54
<b><u>applied technology education</u></b> Education, Administration	30878	R277-518	5YR	01/08/2008	2008-3/72
<b><u>appraisals</u></b> Tax Commission, Property Tax	31418	R884-24P-38	NSC	08/18/2008	Not Printed
	31274	R884-24P-62	NSC	06/23/2008	Not Printed
	30931	R884-24P-62	AMD	03/28/2008	2008-4/30
<b><u>approval orders</u></b> Environmental Quality, Air Quality	30709	R307-401-14	AMD	02/08/2008	2007-23/42
<b><u>aquaculture</u></b> Natural Resources, Wildlife Resources	31611	R657-16	AMD	08/21/2008	2008-14/70
	31806	R657-59	NSC	10/01/2008	Not Printed
	31625	R657-59	EMR	06/27/2008	2008-14/129

<u>KEYWORD AGENCY</u>	<u>FILE NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE DATE</u>	<u>BULLETIN ISSUE/PAGE</u>
<b><u>ARC</u></b>					
Administrative Services, Fleet Operations	31421	R27-7-1	NSC	08/18/2008	Not Printed
<b><u>archaeology</u></b>					
Community and Culture, History	31290	R212-4	R&R	06/25/2008	2008-10/52
<b><u>architects</u></b>					
Administrative Services, Facilities Construction and Management	31098	R23-2	AMD	07/14/2008	2008-8/2
Capitol Preservation Board (State), Administration	30591	R131-1	AMD	02/29/2008	2007-21/11
Commerce, Occupational and Professional Licensing	30935	R156-3a-303	AMD	03/27/2008	2008-4/5
<b><u>arts program</u></b>					
Education, Administration	31443	R277-490	NEW	07/08/2008	2008-11/74
<b><u>asbestos</u></b>					
Environmental Quality, Air Quality	30972	R307-801	5YR	02/08/2008	2008-5/47
	30707	R307-801	AMD	02/08/2008	2007-23/45
<b><u>asbestos hazard emergency response</u></b>					
Environmental Quality, Air Quality	30972	R307-801	5YR	02/08/2008	2008-5/47
	30707	R307-801	AMD	02/08/2008	2007-23/45
<b><u>assistance</u></b>					
Natural Resources, Parks and Recreation	30899	R651-301	AMD	03/10/2008	2008-3/37
<b><u>assisted living facilities</u></b>					
Public Safety, Fire Marshal	31745	R710-3-7	NSC	10/01/2008	Not Printed
<b><u>assurance organization designation</u></b>					
Insurance, Administration	31647	R590-250	NEW	08/25/2008	2008-14/63
<b><u>attorney exemption application process</u></b>					
Insurance, Title and Escrow Commission	31339	R592-8	NEW	07/14/2008	2008-10/126
<b><u>attorneys</u></b>					
Administrative Services, Finance	31527	R25-14	AMD	08/19/2008	2008-13/5
	31363	R25-14	EMR	05/05/2008	2008-10/140
	31775	R25-14	NSC	10/01/2008	Not Printed
<b><u>audiology</u></b>					
Commerce, Occupational and Professional Licensing	31397	R156-41	AMD	07/14/2008	2008-11/65
Health, Health Care Financing, Coverage and Reimbursement Policy	31645	R414-59	R&R	10/02/2008	2008-14/47
<b><u>auditing</u></b>					
Auditor, Administration	31257	R123-3-1	NSC	05/05/2008	Not Printed
	31260	R123-3-2	NSC	05/05/2008	Not Printed
	31261	R123-3-3	NSC	05/05/2008	Not Printed
<b><u>automatic fire sprinklers</u></b>					
Public Safety, Fire Marshal	31088	R710-5	5YR	03/28/2008	2008-8/54
	30896	R710-5-1	AMD	03/10/2008	2008-3/51
	31080	R710-5-3	AMD	05/23/2008	2008-8/35

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	31747	R710-5-7	NSC	10/01/2008	Not Printed
<b><u>automobile repair</u></b>					
Commerce, Consumer Protection	31215	R152-20	NSC	05/05/2008	Not Printed
<b><u>automobiles</u></b>					
Commerce, Administration	31354	R151-14-3	NSC	05/05/2008	Not Printed
Commerce, Consumer Protection	31215	R152-20	NSC	05/05/2008	Not Printed
<b><u>background checks</u></b>					
Human Services, Substance Abuse and Mental Health, State Hospital	31448	R525-5	5YR	05/19/2008	2008-12/57
<b><u>bait and switch</u></b>					
Commerce, Consumer Protection	31213	R152-11	NSC	05/05/2008	Not Printed
<b><u>banks and banking</u></b>					
Human Services, Recovery Services	30982	R527-928	AMD	04/07/2008	2008-5/26
<b><u>bear</u></b>					
Natural Resources, Wildlife Resources	30906	R657-33	AMD	03/10/2008	2008-3/44
<b><u>bed allocations</u></b>					
Human Services, Substance Abuse and Mental Health	31089	R523-1	5YR	03/31/2008	2008-8/53
	30767	R523-1	NSC	03/31/2008	Not Printed
<b><u>benefits</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	30921	R414-302	5YR	01/25/2008	2008-4/43
Labor Commission, Industrial Accidents	31230	R612-3	5YR	04/28/2008	2008-10/149
Workforce Services, Unemployment Insurance	31712	R994-401-203	AMD	09/29/2008	2008-15/79
<b><u>bicycles</u></b>					
Regents (Board Of), University of Utah, Administration	31695	R805-1	5YR	07/11/2008	2008-15/105
<b><u>big game seasons</u></b>					
Natural Resources, Wildlife Resources	30829	R657-5	AMD	02/07/2008	2008-1/18
<b><u>birds</u></b>					
Natural Resources, Wildlife Resources	31609	R657-6	AMD	08/21/2008	2008-14/69
<b><u>birth defect reporting</u></b>					
Health, Community and Family Health Services, Children with Special Health Care Needs	31070	R398-5	AMD	07/03/2008	2008-8/16
<b><u>birth defects</u></b>					
Health, Community and Family Health Services, Children with Special Health Care Needs	31070	R398-5	AMD	07/03/2008	2008-8/16
<b><u>board meetings</u></b>					
Environmental Quality, Administration	30506	R305-3	NSC	02/15/2008	Not Printed
	30766	R305-3	REP	02/15/2008	2007-24/6
<b><u>boards</u></b>					
Administrative Services, Finance	31317	R25-5	5YR	04/29/2008	2008-10/143

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>boating</u></b> Natural Resources, Parks and Recreation	30900	R651-205-17	AMD	03/10/2008	2008-3/36
<b><u>boilers</u></b> Labor Commission, Safety	31246	R616-2	NSC	05/05/2008	Not Printed
<b><u>bonds</u></b> Money Management Council, Administration	31587	R628-18	NSC	08/25/2008	Not Printed
Treasurer, Unclaimed Property	30596	R966-1-2	AMD	01/07/2008	2007-22/87
<b><u>boxing</u></b> Sports Authority (Utah), Pete Suazo Utah Athletic Commission	31028	R859-1	AMD	05/01/2008	2008-6/15
	31172	R859-1-102	NSC	06/18/2008	Not Printed
	31029	R859-1-302	AMD	05/01/2008	2008-6/16
	31566	R859-1-501	AMD	09/01/2008	2008-13/106
	31585	R859-1-506	AMD	09/01/2008	2008-13/108
	31586	R859-1-509	AMD	09/01/2008	2008-13/109
<b><u>breakdown</u></b> Environmental Quality, Air Quality	31426	R307-107	NSC	09/04/2008	Not Printed
<b><u>breakdowns</u></b> Environmental Quality, Air Quality	31927	R307-107	5YR	09/04/2008	2008-19/79
<b><u>breaks</u></b> Human Resource Management, Administration	31193	R477-8	AMD	07/01/2008	2008-10/101
	31784	R477-8	AMD	09/22/2008	2008-16/19
	30778	R477-8-5	AMD	01/22/2008	2007-24/16
<b><u>breath testing</u></b> Public Safety, Highway Patrol	31754	R714-500	AMD	10/15/2008	2008-16/31
<b><u>brine shrimp</u></b> Natural Resources, Wildlife Resources	31227	R657-52-6	NSC	05/05/2008	Not Printed
<b><u>broadband</u></b> Governor, Economic Development	30788	R357-2	NEW	01/30/2008	2007-24/9
	30859	R357-2-7	NSC	01/30/2008	Not Printed
<b><u>budgeting</u></b> Health, Health Care Financing, Coverage and Reimbursement Policy	30652	R414-304	AMD	01/28/2008	2007-23/54
	30924	R414-304	5YR	01/25/2008	2008-4/44
	31622	R414-304	AMD	09/01/2008	2008-14/49
<b><u>building codes</u></b> Commerce, Occupational and Professional Licensing	30574	R156-56	AMD	01/01/2008	2007-21/38
	31139	R156-56	AMD	07/01/2008	2008-9/23
	30573	R156-56-420	AMD	01/01/2008	2007-21/57
	31142	R156-56-701	AMD	07/01/2008	2008-9/30
	31626	R156-56-801	NSC	07/01/2008	Not Printed

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>building inspection</u></b>					
Commerce, Occupational and Professional Licensing	30574	R156-56	AMD	01/01/2008	2007-21/38
	31139	R156-56	AMD	07/01/2008	2008-9/23
	30573	R156-56-420	AMD	01/01/2008	2007-21/57
	31142	R156-56-701	AMD	07/01/2008	2008-9/30
	31626	R156-56-801	NSC	07/01/2008	Not Printed
<b><u>burglar alarms</u></b>					
Commerce, Occupational and Professional Licensing	31181	R156-55d	NSC	05/05/2008	Not Printed
	31588	R156-55d	NSC	08/25/2008	Not Printed
<b><u>burns</u></b>					
Natural Resources, Forestry, Fire and State Lands	31112	R652-120	NSC	05/01/2008	Not Printed
<b><u>capacity development</u></b>					
Environmental Quality, Drinking Water	31157	R309-352	5YR	04/18/2008	2008-10/144
<b><u>capital punishment</u></b>					
Administrative Services, Finance	31527	R25-14	AMD	08/19/2008	2008-13/5
	31775	R25-14	NSC	10/01/2008	Not Printed
	31363	R25-14	EMR	05/05/2008	2008-10/140
Pardons (Board Of), Administration	31827	R671-312	5YR	08/14/2008	2008-17/77
<b><u>capitol preservation</u></b>					
Capitol Preservation Board (State), Administration	30591	R131-1	AMD	02/29/2008	2007-21/11
<b><u>captive insurance</u></b>					
Insurance, Administration	31649	R590-238	AMD	08/25/2008	2008-14/61
<b><u>career development courses</u></b>					
Public Safety, Peace Officer Standards and Training	31648	R728-501	5YR	07/01/2008	2008-14/142
<b><u>career education</u></b>					
Education, Administration	30885	R277-718	5YR	01/08/2008	2008-3/75
<b><u>case management</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	31169	R414-6	5YR	04/21/2008	2008-10/145
	31493	R414-6	AMD	07/22/2008	2008-12/23
<b><u>caseworker training</u></b>					
Human Services, Child and Family Services	31043	R512-204	NEW	05/08/2008	2008-7/31
<b><u>CERCLA</u></b>					
Environmental Quality, Environmental Response and Remediation	30567	R311-401-2	AMD	01/02/2008	2007-21/59
<b><u>certification</u></b>					
Labor Commission, Safety	31253	R616-3	NSC	05/05/2008	Not Printed
<b><u>certificate of registration</u></b>					
Natural Resources, Wildlife Resources	31399	R657-45	5YR	05/08/2008	2008-11/127
	31050	R657-45-2	AMD	05/08/2008	2008-7/49



<u>KEYWORD AGENCY</u>	<u>FILE NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE DATE</u>	<u>BULLETIN ISSUE/PAGE</u>
<b><u>certification</u></b>					
Labor Commission, Safety	31233	R616-1	5YR	04/28/2008	2008-10/150
	31249	R616-1	NSC	05/05/2008	Not Printed
	31246	R616-2	NSC	05/05/2008	Not Printed
	30943	R616-3-3	AMD	03/24/2008	2008-4/21
Public Safety, Peace Officer Standards and Training	31739	R728-409	AMD	10/01/2008	2008-16/36
<b><u>certification of instructors</u></b>					
Human Services, Substance Abuse and Mental Health	31352	R523-22-9	NSC	05/05/2008	Not Printed
<b><u>certifications</u></b>					
Transportation, Motor Carrier	30785	R909-19	AMD	02/12/2008	2007-24/26
<b><u>charities</u></b>					
Commerce, Consumer Protection	31216	R152-22-9	NSC	05/05/2008	Not Printed
Tax Commission, Auditing	31531	R865-19S-94	AMD	08/18/2008	2008-13/115
	31272	R865-19S-99	NSC	06/23/2008	Not Printed
	31258	R865-19S-105	AMD	07/01/2008	2008-10/132
	30841	R865-19S-121	AMD	02/25/2008	2008-1/37
<b><u>charter schools</u></b>					
Education, Administration	30846	R277-470-7	AMD	02/07/2008	2008-1/9
<b><u>child abuse</u></b>					
Human Services, Child and Family Services	30720	R512-20	NSC	01/07/2008	Not Printed
	30716	R512-20	REP	01/07/2008	2007-23/58
	31857	R512-200	5YR	08/20/2008	2008-18/71
	31858	R512-201	5YR	08/20/2008	2008-18/71
	31859	R512-202	5YR	08/20/2008	2008-18/72
	31728	R512-202-2	NSC	10/01/2008	Not Printed
	31043	R512-204	NEW	05/08/2008	2008-7/31
	31860	R512-300	5YR	08/20/2008	2008-18/72
	31729	R512-300	NSC	10/01/2008	Not Printed
	31861	R512-301	5YR	08/20/2008	2008-18/73
	31730	R512-301	NSC	10/01/2008	Not Printed
<b><u>child care</u></b>					
Health, Health Systems Improvement, Child Care Licensing	31057	R430-90	R&R	09/01/2008	2008-7/16
Workforce Services, Employment Development	31364	R986-700	AMD	07/02/2008	2008-10/136
	31033	R986-700	AMD	05/01/2008	2008-6/21
	31499	R986-700-752	NSC	07/02/2008	Not Printed
<b><u>child care facilities</u></b>					
Health, Health Systems Improvement, Child Care Licensing	31537	R430-4	5YR	06/06/2008	2008-13/148
	31538	R430-50	5YR	06/06/2008	2008-13/149
	31056	R430-50	CPR	09/01/2008	2008-13/119
	31056	R430-50	R&R	09/01/2008	2008-7/4

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	31539	R430-60	5YR	06/06/2008	2008-13/149
	31540	R430-90	5YR	06/06/2008	2008-13/150
	31057	R430-90	CPR	09/01/2008	2008-13/129
	31057	R430-90	R&R	09/01/2008	2008-7/16
<b><u>child support</u></b>					
Human Services, Administration	31465	R495-879	NSC	06/18/2008	Not Printed
Human Services, Recovery Services	31432	R527-3	NSC	08/18/2008	Not Printed
	31151	R527-34	AMD	06/09/2008	2008-9/43
	30891	R527-39	5YR	01/10/2008	2008-3/78
	31498	R527-39-2	NSC	06/18/2008	Not Printed
	30939	R527-56	5YR	01/31/2008	2008-4/46
	31134	R527-56	AMD	06/09/2008	2008-9/44
	31409	R527-200	NSC	08/18/2008	Not Printed
	31542	R527-201	NSC	08/19/2008	Not Printed
	31061	R527-231	AMD	05/15/2008	2008-7/32
	31562	R527-255	AMD	08/13/2008	2008-13/82
	31133	R527-257	REP	06/09/2008	2008-9/45
	31054	R527-258	AMD	05/14/2008	2008-7/33
	31152	R527-260	NEW	07/01/2008	2008-9/46
	31158	R527-300	AMD	09/04/2008	2008-10/118
	31867	R527-301	5YR	08/21/2008	2008-18/75
	31163	R527-302	AMD	06/25/2008	2008-10/120
	31792	R527-302	NSC	10/01/2008	Not Printed
	30978	R527-305	5YR	02/12/2008	2008-5/58
	31025	R527-305	AMD	04/21/2008	2008-6/8
	30905	R527-430	5YR	01/14/2008	2008-3/78
	31161	R527-475	5YR	04/21/2008	2008-10/147
	31162	R527-475	AMD	06/25/2008	2008-10/121
	31808	R527-475-1	NSC	10/01/2008	Not Printed
	31563	R527-550	NSC	08/19/2008	Not Printed
	31384	R527-601-1	NSC	08/18/2008	Not Printed
	31159	R527-920	NEW	06/27/2008	2008-10/122
<b><u>child welfare</u></b>					
Human Services, Child and Family Services	31721	R512-1-5	NSC	10/01/2008	Not Printed
	30720	R512-20	NSC	01/07/2008	Not Printed
	30716	R512-20	REP	01/07/2008	2007-23/58
	31722	R512-31-3	NSC	10/01/2008	Not Printed
	31723	R512-32-1	NSC	10/01/2008	Not Printed
	31724	R512-41	NSC	10/01/2008	Not Printed
	31741	R512-41	AMD	09/23/2008	2008-16/21
	31742	R512-43	AMD	09/23/2008	2008-16/24
	31856	R512-100	5YR	08/20/2008	2008-18/70
	31857	R512-200	5YR	08/20/2008	2008-18/71
	31858	R512-201	5YR	08/20/2008	2008-18/71

<u>KEYWORD AGENCY</u>	<u>FILE NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE DATE</u>	<u>BULLETIN ISSUE/PAGE</u>
	31859	R512-202	5YR	08/20/2008	2008-18/72
	31728	R512-202-2	NSC	10/01/2008	Not Printed
	31043	R512-204	NEW	05/08/2008	2008-7/31
	31860	R512-300	5YR	08/20/2008	2008-18/72
	31729	R512-300	NSC	10/01/2008	Not Printed
	31861	R512-301	5YR	08/20/2008	2008-18/73
	31730	R512-301	NSC	10/01/2008	Not Printed
	31862	R512-302	5YR	08/20/2008	2008-18/73
	31731	R512-302	NSC	10/01/2008	Not Printed
	31863	R512-305	5YR	08/20/2008	2008-18/74
	31864	R512-500	5YR	08/20/2008	2008-18/74
	31590	R512-500	R&R	08/21/2008	2008-14/57
	31589	R512-500	EMR	06/18/2008	2008-14/123
<b><u>children's health benefits</u></b>					
Health, Children's Health Insurance Program	31503	R382-1	5YR	05/30/2008	2008-12/53
	31357	R382-10	AMD	07/01/2008	2008-10/55
	31977	R382-10	EMR	10/01/2008	2008-20/43
	31454	R382-10	5YR	05/19/2008	2008-12/53
<b><u>childs support</u></b>					
Human Services, Recovery Services	31160	R527-302	5YR	04/21/2008	2008-10/147
<b><u>CHIP</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	31358	R414-320	AMD	07/01/2008	2008-10/68
	31979	R414-320-15	EMR	10/01/2008	2008-20/50
<b><u>chronically ill</u></b>					
Corrections, Administration	30803	R251-114	NEW	03/11/2008	2008-1/6
<b><u>citation monitoring service</u></b>					
Public Safety, Driver License	31123	R708-44-4	NSC	05/05/2008	Not Printed
<b><u>civil rights</u></b>					
Natural Resources, Administration	30875	R634-1	NSC	01/25/2008	Not Printed
	30923	R634-1	5YR	01/25/2008	2008-4/47
<b><u>Civil Rights Act 1964</u></b>					
Human Services, Administration	31367	R495-878	NSC	05/05/2008	Not Printed
	31067	R495-878	AMD	06/13/2008	2008-8/23
<b><u>Class I area</u></b>					
Environmental Quality, Air Quality	30431	R307-405	AMD	01/11/2008	2007-19/15
<b><u>classified license</u></b>					
Public Safety, Driver License	31436	R708-10	AMD	07/08/2008	2008-11/116
<b><u>client rights</u></b>					
Community and Culture, Home Energy Assistance Target (HEAT)	31331	R195-1	NSC	05/05/2008	Not Printed
Health, Health Care Financing, Coverage and Reimbursement Policy	30936	R414-301	5YR	01/31/2008	2008-4/43

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>client's rights</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	31773	R414-301-6	NSC	10/01/2008	Not Printed
<b><u>coal mines</u></b>					
Natural Resources, Oil, Gas and Mining; Coal	30932	R645-100-200	AMD	03/26/2008	2008-4/23
	31204	R645-100-500	NSC	05/05/2008	Not Printed
	31756	R645-101	5YR	07/28/2008	2008-16/71
	31509	R645-102	5YR	06/02/2008	2008-12/58
	31757	R645-104	5YR	07/28/2008	2008-16/72
	30934	R645-300-100	AMD	03/26/2008	2008-4/24
	30933	R645-301	AMD	03/26/2008	2008-4/25
	31758	R645-401	5YR	07/28/2008	2008-16/72
<b><u>colleges</u></b>					
Regents (Board Of), Administration	31325	R765-134	NSC	05/05/2008	Not Printed
	31631	R765-134-5	NSC	08/25/2008	Not Printed
	31515	R765-555	5YR	06/02/2008	2008-12/64
	31104	R765-555	NSC	06/02/2008	Not Printed
	31327	R765-993	NSC	05/05/2008	Not Printed
<b><u>commerce</u></b>					
Commerce, Corporations and Commercial Code	30642	R154-10	REP	03/03/2008	2007-22/16
<b><u>commercial motor vehicle insurance</u></b>					
Insurance, Administration	30490	R590-243	NEW	01/11/2008	2007-20/28
<b><u>commercialization</u></b>					
Natural Resources, Wildlife Resources	31227	R657-52-6	NSC	05/05/2008	Not Printed
<b><u>communicable diseases</u></b>					
Health, Epidemiology and Laboratory Services, Epidemiology	31099	R386-702-12	AMD	06/11/2008	2008-8/5
<b><u>complaint procedures</u></b>					
Corrections, Administration	30713	R251-112	AMD	03/11/2008	2007-23/19
<b><u>complaints</u></b>					
Education, Administration	31517	R277-104	5YR	06/02/2008	2008-12/50
Human Services, Substance Abuse and Mental Health, State Hospital	31451	R525-7	5YR	05/19/2008	2008-12/57
Public Service Commission, Administration	31370	R746-500	NSC	05/05/2008	Not Printed
	31791	R746-500	5YR	08/04/2008	2008-17/82
<b><u>concealed firearm permit</u></b>					
Public Safety, Criminal Investigations and Technical Services, Criminal Identification	31349	R722-300	NSC	05/01/2008	Not Printed
	30928	R722-300	NSC	05/01/2008	Not Printed
<b><u>concerns</u></b>					
Human Services, Substance Abuse and Mental Health, State Hospital	31451	R525-7	5YR	05/19/2008	2008-12/57

<u>KEYWORD AGENCY</u>	<u>FILE NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE DATE</u>	<u>BULLETIN ISSUE/PAGE</u>
<b><u>conduct</u></b> Professional Practices Advisory Commission, Administration	30951	R686-100	5YR	02/04/2008	2008-5/59
<b><u>confidential testimony</u></b> Pardons (Board Of), Administration	31825	R671-520	5YR	08/14/2008	2008-17/79
<b><u>confidentiality of information</u></b> Administrative Services, Administration	31343	R13-2	NSC	05/05/2008	Not Printed
Community and Culture, Home Energy Assistance Target (HEAT)	31331	R195-1	NSC	05/05/2008	Not Printed
Environmental Quality, Air Quality	30960	R307-102	5YR	02/08/2008	2008-5/40
	31462	R307-102	NSC	06/18/2008	Not Printed
Human Resource Management, Administration	31187	R477-2	AMD	07/01/2008	2008-10/84
Regents (Board Of), College of Eastern Utah	31410	R767-1	NSC	08/18/2008	Not Printed
<b><u>conflict of interest</u></b> Human Resource Management, Administration	31194	R477-9	AMD	07/01/2008	2008-10/104
<b><u>consumer hearing panel</u></b> Human Services, Child and Family Services	31727	R512-75-1	NSC	10/01/2008	Not Printed
<b><u>consumer protection</u></b> Commerce, Consumer Protection	31184	R152-1	NSC	05/05/2008	Not Printed
	31213	R152-11	NSC	05/05/2008	Not Printed
	31214	R152-15-2	NSC	05/05/2008	Not Printed
	31215	R152-20	NSC	05/05/2008	Not Printed
	31216	R152-22-9	NSC	05/05/2008	Not Printed
	31217	R152-23-1	NSC	05/05/2008	Not Printed
<b><u>contamination</u></b> Environmental Quality, Radiation Control	30865	R313-15	AMD	03/17/2008	2008-2/10
<b><u>contests</u></b> Sports Authority (Utah), Pete Suazo Utah Athletic Commission	31172	R859-1-102	NSC	06/18/2008	Not Printed
	31566	R859-1-501	AMD	09/01/2008	2008-13/106
<b><u>continuing</u></b> Pardons (Board Of), Administration	31824	R671-522	5YR	08/14/2008	2008-17/80
<b><u>continuing education</u></b> Commerce, Real Estate	31277	R162-9	AMD	06/23/2008	2008-10/48
<b><u>continuing professional education</u></b> Commerce, Occupational and Professional Licensing	30715	R156-26a	AMD	03/31/2008	2007-23/4
	30715	R156-26a	CPR	03/31/2008	2008-4/35
	31763	R156-26a	AMD	09/23/2008	2008-16/5
<b><u>continuous monitoring</u></b> Environmental Quality, Air Quality	30962	R307-170	5YR	02/08/2008	2008-5/41
	30699	R307-170-7	AMD	02/08/2008	2007-23/29

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>contractors</u></b>					
Commerce, Occupational and Professional Licensing	30654	R156-38a	AMD	01/07/2008	2007-23/14
	31176	R156-38a-105a	NSC	05/05/2008	Not Printed
	31292	R156-55a	AMD	06/24/2008	2008-10/42
	30892	R156-55a	AMD	03/11/2008	2008-3/3
	31616	R156-55a-102	NSC	08/25/2008	Not Printed
	30574	R156-56	AMD	01/01/2008	2007-21/38
	31139	R156-56	AMD	07/01/2008	2008-9/23
	30573	R156-56-420	AMD	01/01/2008	2007-21/57
	31142	R156-56-701	AMD	07/01/2008	2008-9/30
	31626	R156-56-801	NSC	07/01/2008	Not Printed
Transportation, Administration	31963	R907-67	5YR	09/18/2008	2008-20/53
<b><u>contracts</u></b>					
Capitol Preservation Board (State), Administration	30590	R131-4	R&R	02/29/2008	2007-21/13
	30952	R251-304	5YR	02/05/2008	2008-5/39
	30980	R251-304	AMD	05/20/2008	2008-5/15
	31587	R628-18	NSC	08/25/2008	Not Printed
<b><u>controlled substances</u></b>					
Commerce, Occupational and Professional Licensing	31423	R156-37	AMD	09/09/2008	2008-11/62
	31423	R156-37	CPR	09/09/2008	2008-15/84
<b><u>convictions</u></b>					
Pardons (Board Of), Administration	31822	R671-518	5YR	08/14/2008	2008-17/79
<b><u>cooperative agreement</u></b>					
Natural Resources, Forestry, Fire and State Lands	31109	R652-122-100	NSC	05/01/2008	Not Printed
<b><u>cooperative wildlife management unit</u></b>					
Natural Resources, Wildlife Resources	31401	R657-37	5YR	05/08/2008	2008-11/126
<b><u>corrections</u></b>					
Corrections, Administration	31995	R251-103	5YR	10/02/2008	Not Printed
	31996	R251-105	5YR	10/02/2008	Not Printed
	30952	R251-304	5YR	02/05/2008	2008-5/39
	30980	R251-304	AMD	05/20/2008	2008-5/15
<b><u>cosmetologists/barbers</u></b>					
Commerce, Occupational and Professional Licensing	30953	R156-11a	AMD	04/10/2008	2008-5/5
	31174	R156-11a-601	NSC	05/05/2008	Not Printed
<b><u>costs</u></b>					
Administrative Services, Finance	31316	R25-6	5YR	04/29/2008	2008-10/143
Financial Institutions, Administration	31315	R331-22-1	NSC	05/05/2008	Not Printed
<b><u>cottage foods</u></b>					
Agriculture and Food, Regulatory Services	31430	R70-560	AMD	07/25/2008	2008-11/47

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b><u>court reporting</u></b>					
Commerce, Occupational and Professional Licensing	31516	R156-74	AMD	07/22/2008	2008-12/7
<b><u>coverage groups</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	30925	R414-303	5YR	01/25/2008	2008-4/44
<b><u>covered-at-work</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	31356	R414-310	AMD	07/01/2008	2008-10/66
	31978	R414-310-13	EMR	10/01/2008	2008-20/48
<b><u>credit scoring</u></b>					
Insurance, Administration	31525	R590-219	5YR	06/04/2008	2008-13/150
<b><u>criminal background screening</u></b>					
Human Services, Child and Family Services	31726	R512-51-1	NSC	10/01/2008	Not Printed
<b><u>criminal charges</u></b>					
Pardons (Board Of), Administration	31822	R671-518	5YR	08/14/2008	2008-17/79
<b><u>criminal investigation</u></b>					
Public Safety, Criminal Investigations and Technical Services, Criminal Identification	31434	R722-320	5YR	05/14/2008	2008-11/127
	30929	R722-320	NSC	05/14/2008	Not Printed
<b><u>critical languages</u></b>					
Education, Administration	31442	R277-488	AMD	07/08/2008	2008-11/72
<b><u>cultural resources</u></b>					
Natural Resources, Forestry, Fire and State Lands	31271	R652-60-1000	NSC	05/05/2008	Not Printed
<b><u>curricula</u></b>					
Education, Administration	30882	R277-700	5YR	01/08/2008	2008-3/74
	30977	R277-703-6	NSC	02/27/2008	Not Printed
<b><u>custody of children</u></b>					
Human Services, Administration	31465	R495-879	NSC	06/18/2008	Not Printed
<b><u>data standards</u></b>					
Education, Administration	31520	R277-484	5YR	06/02/2008	2008-12/52
	31005	R277-484	AMD	04/11/2008	2008-5/17
<b><u>day care</u></b>					
Public Safety, Fire Marshal	31750	R710-8-7	NSC	10/01/2008	Not Printed
<b><u>deadlines</u></b>					
Education, Administration	31520	R277-484	5YR	06/02/2008	2008-12/52
	31005	R277-484	AMD	04/11/2008	2008-5/17
<b><u>declaratory orders</u></b>					
Auditor, Administration	31262	R123-4-1	NSC	05/05/2008	Not Printed
	31263	R123-4-2	NSC	05/05/2008	Not Printed
	31265	R123-4-5	NSC	05/05/2008	Not Printed
	31266	R123-4-6	NSC	05/05/2008	Not Printed

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	31267	R123-4-7	NSC	05/05/2008	Not Printed
	31281	R380-1	NSC	05/05/2008	Not Printed
	31282	R380-5	NSC	05/05/2008	Not Printed
	31232	R600-1	5YR	04/28/2008	2008-10/148
	31237	R600-1	NSC	05/05/2008	Not Printed
<b><u>definitions</u></b>					
Environmental Quality, Air Quality	30697	R307-101	AMD	02/08/2008	2007-23/21
	30959	R307-101	5YR	02/08/2008	2008-5/40
Environmental Quality, Radiation Control	31170	R313-12-1	NSC	05/05/2008	Not Printed
	30774	R313-12-111	AMD	04/11/2008	2007-24/8
	30774	R313-12-111	CPR	04/11/2008	2008-5/34
Human Resource Management, Administration	31186	R477-1	AMD	07/01/2008	2008-10/79
	31211	R477-13	NSC	06/19/2008	Not Printed
Workforce Services, Unemployment Insurance	31467	R994-201	5YR	05/20/2008	2008-12/64
<b><u>demonstration</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	31356	R414-310	AMD	07/01/2008	2008-10/66
	31978	R414-310-13	EMR	10/01/2008	2008-20/48
<b><u>dental</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	31452	R414-51	5YR	05/19/2008	2008-12/53
<b><u>dental hygienists</u></b>					
Commerce, Occupational and Professional Licensing	31136	R156-69	AMD	06/09/2008	2008-9/35
<b><u>dentists</u></b>					
Commerce, Occupational and Professional Licensing	31136	R156-69	AMD	06/09/2008	2008-9/35
<b><u>developmentally disabled</u></b>					
Commerce, Administration	31346	R151-3-1	NSC	05/05/2008	Not Printed
	31367	R495-878	NSC	05/05/2008	Not Printed
	31067	R495-878	AMD	06/13/2008	2008-8/23
	31535	R861-1A-1	AMD	08/18/2008	2008-13/110
	31536	R861-1A-3	AMD	08/18/2008	2008-13/111
	31386	R861-1A-13	NSC	08/18/2008	Not Printed
	31633	R861-1A-16	AMD	09/09/2008	2008-14/96
	30688	R861-1A-20	AMD	01/11/2008	2007-23/68
	31394	R861-1A-22	NSC	08/18/2008	Not Printed
	31634	R861-1A-23	AMD	09/09/2008	2008-14/98
	30589	R861-1A-24	AMD	01/11/2008	2007-21/69
	31395	R861-1A-24	NSC	08/18/2008	Not Printed
	30717	R861-1A-26	AMD	01/11/2008	2007-23/69
	31635	R861-1A-26	AMD	09/09/2008	2008-14/99
	31638	R861-1A-27	AMD	09/09/2008	2008-14/101
	31403	R861-1A-28	NSC	08/18/2008	Not Printed
	31404	R861-1A-29	NSC	08/18/2008	Not Printed



<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	31406	R861-1A-30	NSC	08/18/2008	Not Printed
	31407	R861-1A-31	NSC	08/18/2008	Not Printed
	31412	R861-1A-32	NSC	08/18/2008	Not Printed
	30838	R861-1A-40	AMD	02/25/2008	2008-1/32
	30835	R861-1A-42	AMD	02/25/2008	2008-1/33
	30780	R861-1A-43	AMD	01/25/2008	2007-24/24
<b><u>dietitians</u></b>					
Commerce, Occupational and Professional Licensing	31180	R156-49	NSC	05/05/2008	Not Printed
	31073	R156-49	5YR	03/24/2008	2008-8/52
<b><u>digital signature</u></b>					
Commerce, Corporations and Commercial Code	30642	R154-10	REP	03/03/2008	2007-22/16
<b><u>disabilities</u></b>					
Human Services, Services for People with Disabilities	30877	R539-1-8	AMD	04/01/2008	2008-3/32
	30926	R539-1-8	EMR	01/28/2008	2008-4/38
	31084	R539-9	AMD	05/22/2008	2008-8/26
	31593	R539-15	NEW	08/21/2008	2008-14/60
	31594	R539-15	EMR	07/01/2008	2008-14/126
<b><u>disability</u></b>					
Health, Community and Family Health Services, Children with Special Health Care Needs	31783	R398-20	5YR	07/31/2008	2008-16/68
<b><u>disabled persons</u></b>					
Corrections, Administration	30713	R251-112	AMD	03/11/2008	2007-23/19
	31517	R277-104	5YR	06/02/2008	2008-12/50
	31285	R380-100	NSC	05/05/2008	Not Printed
Natural Resources, Wildlife Resources	30777	R657-12	AMD	01/22/2008	2007-24/19
	31221	R657-12-1	NSC	05/05/2008	Not Printed
Public Service Commission, Administration	31370	R746-500	NSC	05/05/2008	Not Printed
	31791	R746-500	5YR	08/04/2008	2008-17/82
<b><u>disables</u></b>					
Human Services, Aging and Adult Services	31027	R510-105	5YR	02/27/2008	2008-6/26
<b><u>discharge</u></b>					
Environmental Quality, Water Quality	30636	R317-14	NEW	02/04/2008	2007-22/62
<b><u>discharge permits</u></b>					
Environmental Quality, Water Quality	31584	R317-8	AMD	09/10/2008	2008-13/47
<b><u>disciplinary actions</u></b>					
Education, Administration	30847	R277-609	AMD	02/07/2008	2008-1/10
	30958	R277-609-5	NSC	02/29/2008	Not Printed
	31521	R686-101	5YR	06/02/2008	2008-12/62
	31522	R686-102	5YR	06/02/2008	2008-12/62
	31016	R686-103	REP	04/21/2008	2008-6/12

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>disciplinary problems</u></b>					
Education, Administration	31518	R277-436	5YR	06/02/2008	2008-12/51
<b><u>discipline of employees</u></b>					
Human Resource Management, Administration	31209	R477-11	AMD	07/01/2008	2008-10/108
	31621	R477-14	AMD	08/21/2008	2008-14/51
<b><u>disclosure requirements</u></b>					
Tax Commission, Administration	31535	R861-1A-1	AMD	08/18/2008	2008-13/110
	31536	R861-1A-3	AMD	08/18/2008	2008-13/111
	31386	R861-1A-13	NSC	08/18/2008	Not Printed
	31633	R861-1A-16	AMD	09/09/2008	2008-14/96
	30688	R861-1A-20	AMD	01/11/2008	2007-23/68
	31394	R861-1A-22	NSC	08/18/2008	Not Printed
	31634	R861-1A-23	AMD	09/09/2008	2008-14/98
	30589	R861-1A-24	AMD	01/11/2008	2007-21/69
	31395	R861-1A-24	NSC	08/18/2008	Not Printed
	30717	R861-1A-26	AMD	01/11/2008	2007-23/69
	31635	R861-1A-26	AMD	09/09/2008	2008-14/99
	31638	R861-1A-27	AMD	09/09/2008	2008-14/101
	31403	R861-1A-28	NSC	08/18/2008	Not Printed
	31404	R861-1A-29	NSC	08/18/2008	Not Printed
	31406	R861-1A-30	NSC	08/18/2008	Not Printed
	31407	R861-1A-31	NSC	08/18/2008	Not Printed
	31412	R861-1A-32	NSC	08/18/2008	Not Printed
	30838	R861-1A-40	AMD	02/25/2008	2008-1/32
	30835	R861-1A-42	AMD	02/25/2008	2008-1/33
	30780	R861-1A-43	AMD	01/25/2008	2007-24/24
<b><u>discretion clauses</u></b>					
Insurance, Administration	30897	R590-218	5YR	01/11/2008	2008-3/80
<b><u>discrimination</u></b>					
Labor Commission, Antidiscrimination and Labor, Antidiscrimination	31241	R606-1	NSC	05/05/2008	Not Printed
	31242	R606-2	NSC	05/05/2008	Not Printed
Labor Commission, Antidiscrimination and Labor, Fair Housing	31240	R608-1	NSC	05/05/2008	Not Printed
<b><u>dismissal of employees</u></b>					
Human Resource Management, Administration	31209	R477-11	AMD	07/01/2008	2008-10/108
<b><u>disruptive students</u></b>					
Education, Administration	30958	R277-609-5	NSC	02/29/2008	Not Printed
<b><u>diversion programs</u></b>					
Commerce, Occupational and Professional Licensing	31288	R156-1	AMD	06/23/2008	2008-10/30
	30655	R156-1-102a	AMD	01/08/2008	2007-23/3

<u>KEYWORD AGENCY</u>	<u>FILE NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE DATE</u>	<u>BULLETIN ISSUE/PAGE</u>
<b><u>domestic violence</u></b>					
Human Services, Child and Family Services	31721	R512-1-5	NSC	10/01/2008	Not Printed
	31857	R512-200	5YR	08/20/2008	2008-18/71
	31858	R512-201	5YR	08/20/2008	2008-18/71
	31859	R512-202	5YR	08/20/2008	2008-18/72
	31728	R512-202-2	NSC	10/01/2008	Not Printed
	31860	R512-300	5YR	08/20/2008	2008-18/72
	31729	R512-300	NSC	10/01/2008	Not Printed
	31861	R512-301	5YR	08/20/2008	2008-18/73
	31730	R512-301	NSC	10/01/2008	Not Printed
<b><u>drinking water</u></b>					
Environmental Quality, Drinking Water	31157	R309-352	5YR	04/18/2008	2008-10/144
	31709	R309-515-6	AMD	09/10/2008	2008-15/26
	31710	R309-515-6	AMD	09/10/2008	2008-15/28
<b><u>driver address record</u></b>					
Public Safety, Driver License	31121	R708-42-4	NSC	05/05/2008	Not Printed
<b><u>driver education</u></b>					
Education, Administration	31039	R277-746	5YR	03/03/2008	2008-7/64
	31040	R277-747	5YR	03/03/2008	2008-7/64
Public Safety, Driver License	31545	R708-2	R&R	08/08/2008	2008-13/87
	31105	R708-2-25	NSC	05/05/2008	Not Printed
	31113	R708-18-1	NSC	05/05/2008	Not Printed
<b><u>driver license</u></b>					
Human Services, Recovery Services	31152	R527-260	NEW	07/01/2008	2008-9/46
Public Safety, Driver License	31119	R708-36-1	NSC	05/05/2008	Not Printed
	31123	R708-44-4	NSC	05/05/2008	Not Printed
<b><u>driver license verification</u></b>					
Public Safety, Driver License	31122	R708-43	NSC	05/05/2008	Not Printed
<b><u>driver training</u></b>					
Public Safety, Driver License	31120	R708-37-11	NSC	05/05/2008	Not Printed
<b><u>drug abuse</u></b>					
Human Resource Management, Administration	31621	R477-14	AMD	08/21/2008	2008-14/51
<b><u>drug/alcohol education</u></b>					
Human Resource Management, Administration	31621	R477-14	AMD	08/21/2008	2008-14/51
<b><u>dual employment</u></b>					
Human Resource Management, Administration	31193	R477-8	AMD	07/01/2008	2008-10/101
	31784	R477-8	AMD	09/22/2008	2008-16/19
	30778	R477-8-5	AMD	01/22/2008	2007-24/16
<b><u>due process</u></b>					
Human Services, Child and Family Services	31722	R512-31-3	NSC	10/01/2008	Not Printed

RULES INDEX

<u>KEYWORD AGENCY</u>	<u>FILE NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE DATE</u>	<u>BULLETIN ISSUE/PAGE</u>
Human Services, Substance Abuse and Mental Health	31089	R523-1	5YR	03/31/2008	2008-8/53
	30767	R523-1	NSC	03/31/2008	Not Printed
<b><u>DUI programs</u></b>					
Human Services, Substance Abuse and Mental Health	31352	R523-22-9	NSC	05/05/2008	Not Printed
<b><u>durable medical equipment</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	31505	R414-70	R&R	08/04/2008	2008-12/24
<b><u>early intervention</u></b>					
Health, Community and Family Health Services, Children with Special Health Care Needs	31783	R398-20	5YR	07/31/2008	2008-16/68
<b><u>economic development</u></b>					
Governor, Economic Development	31153	R357-3	NEW	06/18/2008	2008-9/37
<b><u>education</u></b>					
Commerce, Consumer Protection	31218	R152-34-10	NSC	05/05/2008	Not Printed
Education, Administration	30846	R277-470-7	AMD	02/07/2008	2008-1/9
	30884	R277-709	5YR	01/08/2008	2008-3/75
	30885	R277-718	5YR	01/08/2008	2008-3/75
	30888	R277-730	5YR	01/08/2008	2008-3/77
Health, Community and Family Health Services, Children with Special Health Care Needs	31783	R398-20	5YR	07/31/2008	2008-16/68
<b><u>education finance</u></b>					
Education, Administration	31574	R277-419	AMD	08/07/2008	2008-13/12
	30845	R277-423	AMD	02/07/2008	2008-1/8
	31576	R277-451	REP	08/07/2008	2008-13/19
<b><u>educational administration</u></b>					
Education, Administration	31573	R277-116-1	AMD	08/07/2008	2008-13/11
<b><u>educational facilities</u></b>					
Education, Administration	31576	R277-451	REP	08/07/2008	2008-13/19
	31441	R277-471	AMD	07/08/2008	2008-11/70
<b><u>educational policy</u></b>					
Regents (Board Of), Administration	31515	R765-555	5YR	06/02/2008	2008-12/64
	31104	R765-555	NSC	06/02/2008	Not Printed
<b><u>educational testing</u></b>					
Education, Administration	30883	R277-702	5YR	01/08/2008	2008-3/74
<b><u>educational tuition</u></b>					
Human Resource Management, Administration	31195	R477-10	AMD	07/01/2008	2008-10/106
<b><u>educator</u></b>					
Education, Administration	31572	R277-110	AMD	08/07/2008	2008-13/9
	30976	R277-515-3	NSC	02/27/2008	Not Printed
	31580	R277-515-4	AMD	08/07/2008	2008-13/28

<u>KEYWORD AGENCY</u>	<u>FILE NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE DATE</u>	<u>BULLETIN ISSUE/PAGE</u>
<b><u>educator licensing</u></b>					
Education, Administration	30944	R277-502	AMD	03/24/2008	2008-4/6
	31579	R277-502-6	AMD	08/07/2008	2008-13/27
	30878	R277-518	5YR	01/08/2008	2008-3/72
<b><u>educators</u></b>					
Professional Practices Advisory Commission, Administration	31016	R686-103	REP	04/21/2008	2008-6/12
<b><u>effluent standards</u></b>					
Environmental Quality, Water Quality	30639	R317-1-4	AMD	02/04/2008	2007-22/52
	30637	R317-13	NEW	02/04/2008	2007-22/61
<b><u>eldercare</u></b>					
Human Services, Aging and Adult Services	31378	R510-110-5	NSC	05/05/2008	Not Printed
<b><u>elderly</u></b>					
Human Services, Aging and Adult Services	31379	R510-200-3	NSC	05/05/2008	Not Printed
<b><u>electric generating unit</u></b>					
Environmental Quality, Air Quality	30965	R307-220	5YR	02/08/2008	2008-5/43
	30969	R307-224	5YR	02/08/2008	2008-5/45
	30704	R307-224-2	AMD	02/08/2008	2007-23/39
<b><u>electric utility industries</u></b>					
Public Service Commission, Administration	31617	R746-210	5YR	06/24/2008	2008-14/143
<b><u>electrologists</u></b>					
Commerce, Occupational and Professional Licensing	30953	R156-11a	AMD	04/10/2008	2008-5/5
	31174	R156-11a-601	NSC	05/05/2008	Not Printed
<b><u>electronic commerce</u></b>					
Commerce, Corporations and Commercial Code	30642	R154-10	REP	03/03/2008	2007-22/16
<b><u>electronic communication</u></b>					
Commerce, Corporations and Commercial Code	30642	R154-10	REP	03/03/2008	2007-22/16
<b><u>electronic funds transfer</u></b>					
Human Services, Recovery Services	31159	R527-920	NEW	06/27/2008	2008-10/122
<b><u>electronic meetings</u></b>					
Agriculture and Food, Conservation and Resource Management	31079	R64-2	NEW	06/03/2008	2008-8/4
<b><u>electronic preliminary lien filing</u></b>					
Commerce, Occupational and Professional Licensing	31177	R156-38b-703	NSC	05/05/2008	Not Printed
<b><u>elevators</u></b>					
Labor Commission, Safety	31253	R616-3	NSC	05/05/2008	Not Printed
	30943	R616-3-3	AMD	03/24/2008	2008-4/21
<b><u>eligibility</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	30938	R414-308	5YR	01/31/2008	2008-4/46
	31976	R414-308	EMR	10/01/2008	2008-20/45

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	30927	R414-308-7	AMD	04/01/2008	2008-4/16
Human Services, Child and Family Services	31721	R512-1-5	NSC	10/01/2008	Not Printed
	30721	R512-50	NSC	01/07/2008	Not Printed
	30718	R512-50	REP	01/07/2008	2007-23/60
<b><u>emergency medical services</u></b>					
Health, Health Systems Improvement, Emergency Medical Services	31068	R426-5-3	AMD	06/04/2008	2008-8/17
	30758	R426-6	AMD	02/07/2008	2007-24/14
	31069	R426-7-3	AMD	07/31/2008	2008-8/18
	31096	R426-8-4	AMD	06/05/2008	2008-8/22
	30954	R426-15-203	AMD	06/24/2008	2008-5/19
<b><u>emergency meetings</u></b>					
Environmental Quality, Administration	30506	R305-3	NSC	02/15/2008	Not Printed
	30766	R305-3	REP	02/15/2008	2007-24/6
<b><u>emergency vehicles</u></b>					
Public Safety, Criminal Investigations and Technical Services, Criminal Identification	30930	R722-340	NSC	05/14/2008	Not Printed
	31433	R722-340	5YR	05/14/2008	2008-11/128
<b><u>employee benefit plans</u></b>					
Human Resource Management, Administration	31191	R477-6	AMD	07/01/2008	2008-10/91
	31782	R477-6-4	AMD	09/22/2008	2008-16/14
<b><u>employee performance evaluations</u></b>					
Human Resource Management, Administration	31195	R477-10	AMD	07/01/2008	2008-10/106
<b><u>employee productivity</u></b>					
Human Resource Management, Administration	31195	R477-10	AMD	07/01/2008	2008-10/106
<b><u>employees' rights</u></b>					
Human Resource Management, Administration	31210	R477-12	AMD	07/01/2008	2008-10/110
<b><u>employer</u></b>					
Labor Commission, Industrial Accidents	31229	R612-5	5YR	04/28/2008	2008-10/149
<b><u>employment</u></b>					
Corrections, Administration	31996	R251-105	5YR	10/02/2008	Not Printed
	31189	R477-4	AMD	07/01/2008	2008-10/88
	31190	R477-5	AMD	07/01/2008	2008-10/90
Labor Commission, Antidiscrimination and Labor, Antidiscrimination	31241	R606-1	NSC	05/05/2008	Not Printed
	31242	R606-2	NSC	05/05/2008	Not Printed
Workforce Services, Unemployment Insurance	31468	R994-202	5YR	05/20/2008	2008-12/65
<b><u>employment agencies</u></b>					
Labor Commission, Antidiscrimination and Labor, Labor	31438	R610-4	REP	07/08/2008	2008-11/101
	31239	R610-4	NSC	05/05/2008	Not Printed

<u>KEYWORD AGENCY</u>	<u>FILE NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE DATE</u>	<u>BULLETIN ISSUE/PAGE</u>
<b><u>endangered species</u></b>					
Natural Resources, Forestry, Fire and State Lands	31112	R652-120	NSC	05/01/2008	Not Printed
<b><u>energy</u></b>					
Natural Resources, Geological Survey	30902	R638-2-6	AMD	03/10/2008	2008-3/35
<b><u>energy utility</u></b>					
Public Service Commission, Administration	31072	R746-440	NSC	04/11/2008	Not Printed
<b><u>enforcement</u></b>					
Natural Resources, Water Rights	31431	R655-14	AMD	07/08/2008	2008-11/104
<b><u>enforcement (administrative)</u></b>					
Lieutenant Governor, Administration	31844	R622-1	5YR	08/19/2008	2008-18/75
<b><u>engineers</u></b>					
Administrative Services, Facilities Construction and Management	31098	R23-2	AMD	07/14/2008	2008-8/2
Capitol Preservation Board (State), Administration	30591	R131-1	AMD	02/29/2008	2007-21/11
Commerce, Occupational and Professional Licensing	31175	R156-22-305	NSC	05/05/2008	Not Printed
<b><u>English proficiency</u></b>					
Regents (Board Of), Administration	31490	R765-136	5YR	05/27/2008	2008-12/63
	31326	R765-136	NSC	05/05/2008	Not Printed
<b><u>enrollment</u></b>					
Education, Administration	31037	R277-485	5YR	03/03/2008	2008-7/63
<b><u>enrollment options</u></b>					
Education, Administration	31575	R277-437	R&R	08/07/2008	2008-13/16
<b><u>enterprise zones</u></b>					
Tax Commission, Auditing	31458	R865-9I-4	AMD	08/14/2008	2008-12/43
	31530	R865-9I-6	AMD	08/18/2008	2008-13/113
	31459	R865-9I-11	AMD	08/14/2008	2008-12/44
	31460	R865-9I-12	AMD	08/14/2008	2008-12/45
	31463	R865-9I-13	AMD	08/14/2008	2008-12/45
	30916	R865-9I-37	AMD	03/14/2008	2008-3/63
	31413	R865-9I-37	NSC	08/18/2008	Not Printed
	31464	R865-9I-39	AMD	08/14/2008	2008-12/46
	31639	R865-9I-41	NSC	08/25/2008	Not Printed
	31414	R865-9I-42	NSC	08/18/2008	Not Printed
	31415	R865-9I-46	NSC	08/18/2008	Not Printed
	31466	R865-9I-48	AMD	08/14/2008	2008-12/47
	31416	R865-9I-49	NSC	08/18/2008	Not Printed
	31532	R865-9I-50	AMD	08/18/2008	2008-13/114
	31470	R865-9I-52	AMD	08/14/2008	2008-12/48
	30849	R865-9I-53	AMD	02/25/2008	2008-1/36
<b><u>environmental assessment</u></b>					
Natural Resources, Forestry, Fire and State Lands	31706	R652-90-300	AMD	09/10/2008	2008-15/44

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>environmental protection</u></b>					
Environmental Quality, Air Quality	30698	R307-115	AMD	02/08/2008	2007-23/28
	30961	R307-115	5YR	02/08/2008	2008-5/41
<b><u>essential facilities</u></b>					
Public Service Commission, Administration	31628	R746-349	AMD	08/25/2008	2008-14/91
	31374	R746-349-3	NSC	05/05/2008	Not Printed
	31781	R746-349-7	NSC	10/01/2008	Not Printed
<b><u>estheticians</u></b>					
Commerce, Occupational and Professional Licensing	30953	R156-11a	AMD	04/10/2008	2008-5/5
	31174	R156-11a-601	NSC	05/05/2008	Not Printed
<b><u>evidentiary</u></b>					
Pardons (Board Of), Administration	31823	R671-517	5YR	08/14/2008	2008-17/78
<b><u>exceptional children</u></b>					
Education, Administration	31041	R277-751	5YR	03/03/2008	2008-7/65
<b><u>excess emissions</u></b>					
Environmental Quality, Air Quality	31927	R307-107	5YR	09/04/2008	2008-19/79
	31426	R307-107	NSC	09/04/2008	Not Printed
<b><u>exemptions</u></b>					
Environmental Quality, Radiation Control	31170	R313-12-1	NSC	05/05/2008	Not Printed
	30774	R313-12-111	AMD	04/11/2008	2007-24/8
	30774	R313-12-111	CPR	04/11/2008	2008-5/34
<b><u>exemptions to wildland fire suppression fund</u></b>					
Natural Resources, Forestry, Fire and State Lands	31111	R652-123	NSC	05/01/2008	Not Printed
<b><u>expelled</u></b>					
Education, Administration	31036	R277-483	5YR	03/03/2008	2008-7/62
<b><u>extended area service</u></b>					
Public Service Commission, Administration	31045	R746-347	5YR	03/07/2008	2008-7/66
<b><u>extinguishers</u></b>					
Public Safety, Fire Marshal	31076	R710-1-4	AMD	05/23/2008	2008-8/31
	31743	R710-1-9	NSC	10/01/2008	Not Printed
<b><u>extracurricular activities</u></b>					
Education, Administration	30880	R277-605	5YR	01/08/2008	2008-3/73
<b><u>eyeglasses</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	30776	R414-53	AMD	02/01/2008	2007-24/13
	31528	R414-53	5YR	06/05/2008	2008-13/148
<b><u>facility notice</u></b>					
Corrections, Administration	30803	R251-114	NEW	03/11/2008	2008-1/6
<b><u>fair employment practices</u></b>					
Human Resource Management, Administration	31187	R477-2	AMD	07/01/2008	2008-10/84



<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	31189	R477-4	AMD	07/01/2008	2008-10/88
<b><u>fair housing</u></b>					
Labor Commission, Antidiscrimination and Labor, Fair Housing	31240	R608-1	NSC	05/05/2008	Not Printed
<b><u>family employment program</u></b>					
Workforce Services, Employment Development	31032	R986-200	AMD	05/01/2008	2008-6/18
	30864	R986-200-214	AMD	02/26/2008	2008-2/25
	31365	R986-200-240	AMD	07/02/2008	2008-10/135
	31714	R986-200-240	AMD	09/29/2008	2008-15/78
<b><u>fees</u></b>					
Administrative Services, Finance	31527	R25-14	AMD	08/19/2008	2008-13/5
	31775	R25-14	NSC	10/01/2008	Not Printed
	31363	R25-14	EMR	05/05/2008	2008-10/140
Environmental Quality, Environmental Response and Remediation	31496	R311-203	AMD	08/18/2008	2008-12/16
Human Services, Child and Family Services	30721	R512-50	NSC	01/07/2008	Not Printed
	30718	R512-50	REP	01/07/2008	2007-23/60
	31726	R512-51-1	NSC	10/01/2008	Not Printed
Human Services, Substance Abuse and Mental Health	31089	R523-1	5YR	03/31/2008	2008-8/53
	30767	R523-1	NSC	03/31/2008	Not Printed
Labor Commission, Industrial Accidents	31234	R612-2	5YR	04/28/2008	2008-10/148
	31333	R612-2-5	AMD	07/01/2008	2008-10/130
Natural Resources, Parks and Recreation	31670	R651-610	5YR	07/07/2008	2008-15/92
	30621	R651-611	AMD	01/01/2008	2007-22/80
	31599	R651-611	AMD	08/21/2008	2008-14/66
	30898	R651-611	AMD	03/10/2008	2008-3/39
Public Safety, Driver License	31113	R708-18-1	NSC	05/05/2008	Not Printed
<b><u>fertilizers</u></b>					
Agriculture and Food, Plant Industry	31491	R68-3-2	AMD	07/25/2008	2008-12/6
<b><u>filing</u></b>					
Public Service Commission, Administration	31642	R746-800	NEW	08/25/2008	2008-14/95
<b><u>filing deadlines</u></b>					
Labor Commission, Adjudication	31250	R602-1	NSC	05/05/2008	Not Printed
Labor Commission, Industrial Accidents	31235	R612-1	NSC	05/05/2008	Not Printed
Workforce Services, Unemployment Insurance	31777	R994-403-110c	NSC	10/01/2008	Not Printed
<b><u>filing requirements</u></b>					
Public Service Commission, Administration	31072	R746-440	NSC	04/11/2008	Not Printed
<b><u>finance</u></b>					
Administrative Services, Finance	31318	R25-2	NSC	05/05/2008	Not Printed
	31316	R25-6	5YR	04/29/2008	2008-10/143
	31321	R25-8	AMD	07/01/2008	2008-10/7
	31982	R25-8	5YR	10/01/2008	2008-20/52

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>financial aid</u></b>					
Regents (Board Of), Administration	31402	R765-605	5YR	05/09/2008	2008-11/128
	30957	R765-607	5YR	02/08/2008	2008-5/60
<b><u>financial disclosures</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	30652	R414-304	AMD	01/28/2008	2007-23/54
	31622	R414-304	AMD	09/01/2008	2008-14/49
	30924	R414-304	5YR	01/25/2008	2008-4/44
<b><u>financial institutions</u></b>					
Financial Institutions, Administration	31256	R331-20	NSC	05/05/2008	Not Printed
	31891	R331-20	5YR	08/25/2008	2008-18/69
	31892	R331-21	5YR	08/25/2008	2008-18/69
	31315	R331-22-1	NSC	05/05/2008	Not Printed
	31893	R331-24	5YR	08/25/2008	2008-18/70
<b><u>fire alarm systems</u></b>					
Public Safety, Fire Marshal	31086	R710-11-3	AMD	05/23/2008	2008-8/42
	31752	R710-11-7	NSC	10/01/2008	Not Printed
<b><u>fire marshal</u></b>					
Environmental Quality, Air Quality	30963	R307-202	5YR	02/08/2008	2008-5/42
<b><u>fire prevention</u></b>					
Public Safety, Fire Marshal	31076	R710-1-4	AMD	05/23/2008	2008-8/31
	31743	R710-1-9	NSC	10/01/2008	Not Printed
	31746	R710-4-7	NSC	10/01/2008	Not Printed
	31085	R710-7	AMD	05/23/2008	2008-8/40
	31749	R710-7-7	NSC	10/01/2008	Not Printed
	31750	R710-8-7	NSC	10/01/2008	Not Printed
	31787	R710-9	AMD	09/23/2008	2008-16/30
	30919	R710-9-6	AMD	03/10/2008	2008-3/52
<b><u>fire training</u></b>					
Public Safety, Fire Marshal	30894	R710-10	AMD	03/10/2008	2008-3/56
	31472	R710-10	AMD	07/23/2008	2008-12/42
	31751	R710-10-11	NSC	10/01/2008	Not Printed
<b><u>firearms</u></b>					
Natural Resources, Parks and Recreation	30901	R651-612	AMD	03/10/2008	2008-3/42
	31671	R651-612	5YR	07/07/2008	2008-15/93
<b><u>fireplaces</u></b>					
Environmental Quality, Air Quality	31388	R307-302-3	AMD	08/07/2008	2008-11/91
<b><u>fireworks</u></b>					
Public Safety, Fire Marshal	30918	R710-2-4	AMD	03/10/2008	2008-3/50
	31078	R710-2-7	AMD	05/23/2008	2008-8/34
	31744	R710-2-8	NSC	10/01/2008	Not Printed

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>fiscal</u></b> Natural Resources, Parks and Recreation	30899	R651-301	AMD	03/10/2008	2008-3/37
<b><u>fish</u></b> Natural Resources, Wildlife Resources	30676	R657-13	AMD	01/07/2008	2007-23/61
	31048	R657-13-3	AMD	05/08/2008	2008-7/47
	30904	R657-13-4	AMD	03/10/2008	2008-3/43
	31611	R657-16	AMD	08/21/2008	2008-14/70
	31610	R657-57	NEW	08/21/2008	2008-14/77
	30903	R657-58	NEW	03/10/2008	2008-3/47
	31052	R657-58	NSC	03/26/2008	Not Printed
	31612	R657-59	NEW	08/21/2008	2008-14/80
	31625	R657-59	EMR	06/27/2008	2008-14/129
	31806	R657-59	NSC	10/01/2008	Not Printed
	31623	R657-60	NEW	08/21/2008	2008-14/88
	31624	R657-60	EMR	06/27/2008	2008-14/137
	31805	R657-60	EMR	08/13/2008	2008-17/73
	32004	R657-60	EMR	10/10/2008	Not Printed
<b><u>fishing</u></b> Natural Resources, Wildlife Resources	30676	R657-13	AMD	01/07/2008	2007-23/61
	31048	R657-13-3	AMD	05/08/2008	2008-7/47
	30904	R657-13-4	AMD	03/10/2008	2008-3/43
	31610	R657-57	NEW	08/21/2008	2008-14/77
	30903	R657-58	NEW	03/10/2008	2008-3/47
	31052	R657-58	NSC	03/26/2008	Not Printed
	31612	R657-59	NEW	08/21/2008	2008-14/80
<b><u>fleet expansion</u></b> Administrative Services, Fleet Operations	30618	R27-4	AMD	03/06/2008	2007-22/9
	31411	R27-4	NSC	08/18/2008	Not Printed
<b><u>food aid programs</u></b> Education, Administration	30886	R277-721	5YR	01/08/2008	2008-3/76
	31014	R277-721	REP	04/21/2008	2008-6/5
	30887	R277-722	5YR	01/08/2008	2008-3/76
	31015	R277-722	REP	04/21/2008	2008-6/6
<b><u>food establishment registration</u></b> Agriculture and Food, Regulatory Services	31430	R70-560	AMD	07/25/2008	2008-11/47
<b><u>food safety</u></b> Agriculture and Food, Regulatory Services	31380	R70-530	R&R	09/25/2008	2008-11/2
	31430	R70-560	AMD	07/25/2008	2008-11/47
<b><u>food services</u></b> Health, Epidemiology and Laboratory Services, Environmental Services	31446	R392-100-2	AMD	07/17/2008	2008-11/95
<b><u>foods</u></b> Education, Administration	30848	R277-719	NEW	02/07/2008	2008-1/12

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>foster care</u></b>					
Human Services, Child and Family Services	31722	R512-31-3	NSC	10/01/2008	Not Printed
	31723	R512-32-1	NSC	10/01/2008	Not Printed
	31742	R512-43	AMD	09/23/2008	2008-16/24
	31726	R512-51-1	NSC	10/01/2008	Not Printed
	31863	R512-305	5YR	08/20/2008	2008-18/74
	31733	R512-308	NSC	10/01/2008	Not Printed
Human Services, Recovery Services	31563	R527-550	NSC	08/19/2008	Not Printed
<b><u>franchises</u></b>					
Commerce, Administration	31354	R151-14-3	NSC	05/05/2008	Not Printed
	31355	R151-35-3	NSC	05/05/2008	Not Printed
Commerce, Consumer Protection	31214	R152-15-2	NSC	05/05/2008	Not Printed
Tax Commission, Auditing	31632	R865-6F-8	AMD	09/09/2008	2008-14/102
	30913	R865-6F-28	AMD	03/14/2008	2008-3/61
	31534	R865-6F-35	AMD	08/18/2008	2008-13/112
	30842	R865-6F-37	AMD	02/25/2008	2008-1/35
<b><u>fraud</u></b>					
Human Services, Recovery Services	30982	R527-928	AMD	04/07/2008	2008-5/26
<b><u>free enterprise</u></b>					
Regents (Board Of), Administration	31104	R765-555	NSC	06/02/2008	Not Printed
<b><u>freedom of information</u></b>					
Administrative Services, Administration	31343	R13-2	NSC	05/05/2008	Not Printed
	31345	R151-2	NSC	05/05/2008	Not Printed
	31385	R151-2-4	AMD	07/08/2008	2008-11/49
Natural Resources, Wildlife Resources	31225	R657-29	NSC	05/05/2008	Not Printed
<b><u>fuel composition</u></b>					
Environmental Quality, Air Quality	30964	R307-203	5YR	02/08/2008	2008-5/43
<b><u>fuel dispensing</u></b>					
Administrative Services, Fleet Operations	31420	R27-6	NSC	08/18/2008	Not Printed
<b><u>fuel oil</u></b>					
Environmental Quality, Air Quality	30964	R307-203	5YR	02/08/2008	2008-5/43
<b><u>funding</u></b>					
Environmental Quality, Drinking Water	31157	R309-352	5YR	04/18/2008	2008-10/144
<b><u>game birds</u></b>					
Natural Resources, Wildlife Resources	31222	R657-22-1	NSC	05/05/2008	Not Printed
<b><u>game laws</u></b>					
Natural Resources, Wildlife Resources	30829	R657-5	AMD	02/07/2008	2008-1/18
	31609	R657-6	AMD	08/21/2008	2008-14/69
	31807	R657-19	5YR	08/12/2008	2008-17/77
	30828	R657-23	AMD	02/07/2008	2008-1/25
	31613	R657-23	AMD	08/21/2008	2008-14/73

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	30955	R657-23-5	AMD	04/07/2008	2008-5/31
	30906	R657-33	AMD	03/10/2008	2008-3/44
	31398	R657-34	5YR	05/08/2008	2008-11/125
<b><u>gangs</u></b>					
Education, Administration	31518	R277-436	5YR	06/02/2008	2008-12/51
<b><u>general assistance</u></b>					
Workforce Services, Employment Development	31034	R986-400-406	AMD	05/01/2008	2008-6/20
<b><u>general conformity</u></b>					
Environmental Quality, Air Quality	30698	R307-115	AMD	02/08/2008	2007-23/28
	30961	R307-115	5YR	02/08/2008	2008-5/41
<b><u>geology</u></b>					
Commerce, Occupational and Professional Licensing	30694	R156-76	AMD	01/08/2008	2007-23/17
<b><u>good cause</u></b>					
Pardons (Board Of), Administration	31659	R671-515	5YR	07/03/2008	2008-15/104
<b><u>government documents</u></b>					
Administrative Services, Records Committee	31560	R35-1	NSC	08/19/2008	Not Printed
	31561	R35-1a	NSC	08/19/2008	Not Printed
	31567	R35-2	NSC	08/19/2008	Not Printed
	31938	R35-2-2	NSC	10/01/2008	Not Printed
	31568	R35-3	NSC	08/19/2008	Not Printed
	31569	R35-4	NSC	08/19/2008	Not Printed
	31570	R35-5-1	NSC	08/19/2008	Not Printed
	31571	R35-6-1	NSC	08/19/2008	Not Printed
Commerce, Administration	31345	R151-2	NSC	05/05/2008	Not Printed
	31385	R151-2-4	AMD	07/08/2008	2008-11/49
	31284	R380-20	NSC	05/05/2008	Not Printed
	31368	R495-810	NSC	05/05/2008	Not Printed
Natural Resources, Forestry, Fire and State Lands	31259	R652-6	NSC	05/05/2008	Not Printed
Natural Resources, Wildlife Resources	31225	R657-29	NSC	05/05/2008	Not Printed
<b><u>government ethics</u></b>					
Human Resource Management, Administration	31194	R477-9	AMD	07/01/2008	2008-10/104
<b><u>government hearings</u></b>					
Administrative Services, Administrative Rules	31143	R15-1	NSC	05/05/2008	Not Printed
Administrative Services, Finance	31318	R25-2	NSC	05/05/2008	Not Printed
Commerce, Administration	31138	R151-46b	CPR	09/22/2008	2008-16/53
	31138	R151-46b	AMD	09/22/2008	2008-9/12
Commerce, Occupational and Professional Licensing	31179	R156-46b	NSC	05/05/2008	Not Printed
Financial Institutions, Administration	31256	R331-20	NSC	05/05/2008	Not Printed
	31891	R331-20	5YR	08/25/2008	2008-18/69
	31209	R477-11	AMD	07/01/2008	2008-10/108

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	30949	R671-403	5YR	02/04/2008	2008-5/59
	31373	R746-100	NSC	05/05/2008	Not Printed
	31372	R746-101-4	NSC	05/05/2008	Not Printed
<b><u>government purchasing</u></b>					
Administrative Services, Purchasing and General Services	31477	R33-1	NSC	06/18/2008	Not Printed
	31478	R33-2-101	NSC	06/18/2008	Not Printed
	31479	R33-3	NSC	06/18/2008	Not Printed
	31475	R33-3-4	AMD	08/01/2008	2008-12/3
	31480	R33-4	NSC	06/18/2008	Not Printed
	31481	R33-5	NSC	06/18/2008	Not Printed
	31476	R33-5-250	AMD	08/01/2008	2008-12/4
	31482	R33-7	NSC	06/18/2008	Not Printed
	31483	R33-8-101	NSC	06/18/2008	Not Printed
<b><u>government records</u></b>					
Crime Victim Reparations, Administration	31324	R270-4	NSC	05/05/2008	Not Printed
<b><u>governmental immunity act caps</u></b>					
Administrative Services, Risk Management	31150	R37-4	R&R	07/01/2008	2008-9/5
<b><u>graduation requirements</u></b>					
Education, Administration	30977	R277-703-6	NSC	02/27/2008	Not Printed
<b><u>GRAMA</u></b>					
Health, Administration	31284	R380-20	NSC	05/05/2008	Not Printed
Natural Resources, Forestry, Fire and State Lands	31259	R652-6	NSC	05/05/2008	Not Printed
Regents (Board Of), College of Eastern Utah	31410	R767-1	NSC	08/18/2008	Not Printed
Regents (Board Of), Salt Lake Community College	31344	R784-1	NSC	05/05/2008	Not Printed
Regents (Board Of), University of Utah, Administration	31340	R805-2	NSC	05/05/2008	Not Printed
	31718	R805-2	5YR	07/17/2008	2008-16/75
<b><u>grant</u></b>					
Education, Administration	31582	R277-606	NEW	08/07/2008	2008-13/31
<b><u>grants</u></b>					
Community and Culture, Housing and Community Development	30451	R199-8	AMD	01/01/2008	2007-19/6
Education, Administration	31443	R277-490	NEW	07/08/2008	2008-11/74
<b><u>grazing</u></b>					
Agriculture and Food, Administration	31471	R51-5	REP	07/22/2008	2008-12/5
<b><u>grievance procedures</u></b>					
Career Service Review Board, Administration	31934	R137-1-2	EMR	10/02/2008	2008-19/75
	31285	R380-100	NSC	05/05/2008	Not Printed
Human Services, Child and Family Services	31727	R512-75-1	NSC	10/01/2008	Not Printed
Tax Commission, Administration	31535	R861-1A-1	AMD	08/18/2008	2008-13/110
	31536	R861-1A-3	AMD	08/18/2008	2008-13/111

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	31386	R861-1A-13	NSC	08/18/2008	Not Printed
	31633	R861-1A-16	AMD	09/09/2008	2008-14/96
	30688	R861-1A-20	AMD	01/11/2008	2007-23/68
	31394	R861-1A-22	NSC	08/18/2008	Not Printed
	31634	R861-1A-23	AMD	09/09/2008	2008-14/98
	30589	R861-1A-24	AMD	01/11/2008	2007-21/69
	31395	R861-1A-24	NSC	08/18/2008	Not Printed
	30717	R861-1A-26	AMD	01/11/2008	2007-23/69
	31635	R861-1A-26	AMD	09/09/2008	2008-14/99
	31638	R861-1A-27	AMD	09/09/2008	2008-14/101
	31403	R861-1A-28	NSC	08/18/2008	Not Printed
	31404	R861-1A-29	NSC	08/18/2008	Not Printed
	31406	R861-1A-30	NSC	08/18/2008	Not Printed
	31407	R861-1A-31	NSC	08/18/2008	Not Printed
	31412	R861-1A-32	NSC	08/18/2008	Not Printed
	30838	R861-1A-40	AMD	02/25/2008	2008-1/32
	30835	R861-1A-42	AMD	02/25/2008	2008-1/33
	30780	R861-1A-43	AMD	01/25/2008	2007-24/24
<b><u>grievances</u></b>					
Human Resource Management, Administration	31188	R477-3	AMD	07/01/2008	2008-10/87
	31209	R477-11	AMD	07/01/2008	2008-10/108
	31210	R477-12	AMD	07/01/2008	2008-10/110
<b><u>guardianship</u></b>					
Human Services, Child and Family Services	31733	R512-308	NSC	10/01/2008	Not Printed
<b><u>habitat designation</u></b>					
Natural Resources, Wildlife Resources	31226	R657-48-7	NSC	05/05/2008	Not Printed
<b><u>halfway houses</u></b>					
Human Services, Recovery Services	31133	R527-257	REP	06/09/2008	2008-9/45
<b><u>Hatch Act</u></b>					
Human Resource Management, Administration	31194	R477-9	AMD	07/01/2008	2008-10/104
<b><u>hazardous air pollutant</u></b>					
Environmental Quality, Air Quality	30430	R307-214	AMD	01/11/2008	2007-19/12
	30895	R307-214	5YR	01/11/2008	2008-3/77
<b><u>hazardous materials</u></b>					
Public Safety, Fire Marshal	30893	R710-12	NEW	03/10/2008	2008-3/58
	31087	R710-12-4	AMD	05/23/2008	2008-8/44
<b><u>hazardous materials transportation</u></b>					
Transportation, Motor Carrier	31090	R909-75	AMD	05/27/2008	2008-8/45
<b><u>hazardous substances</u></b>					
Environmental Quality, Environmental Response and Remediation	31487	R311-201	NSC	06/18/2008	Not Printed
	31496	R311-203	AMD	08/18/2008	2008-12/16

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	31497	R311-206-3	AMD	08/18/2008	2008-12/19
Transportation, Motor Carrier	31090	R909-75	AMD	05/27/2008	2008-8/45
<b><u>hazardous substances priority list</u></b>					
Environmental Quality, Environmental Response and Remediation	30567	R311-401-2	AMD	01/02/2008	2007-21/59
<b><u>hazardous waste</u></b>					
Environmental Quality, Solid and Hazardous Waste	31377	R315-2	NSC	05/05/2008	Not Printed
	31065	R315-3	NSC	04/11/2008	Not Printed
	31376	R315-12	NSC	05/05/2008	Not Printed
	30907	R315-15-1	AMD	03/13/2008	2008-3/16
	30908	R315-15-10	AMD	03/13/2008	2008-3/19
	30909	R315-15-11	AMD	03/13/2008	2008-3/21
	30910	R315-15-12	AMD	03/13/2008	2008-3/23
	30911	R315-15-17	AMD	03/13/2008	2008-3/29
Transportation, Motor Carrier	31090	R909-75	AMD	05/27/2008	2008-8/45
<b><u>health</u></b>					
Health, Center for Health Data, Health Care Statistics	31167	R428-11	5YR	04/21/2008	2008-10/146
	31021	R428-11	NSC	04/21/2008	Not Printed
	31168	R428-13	5YR	04/21/2008	2008-10/146
	31022	R428-13	NSC	04/21/2008	Not Printed
	30956	R428-13-4	AMD	05/16/2008	2008-5/25
<b><u>health administration</u></b>					
Health, Administration	31283	R380-10	NSC	05/05/2008	Not Printed
<b><u>health care</u></b>					
Health, Community and Family Health Services, Children with Special Health Care Needs	31350	R398-1	AMD	06/25/2008	2008-10/60
	31627	R398-1	NSC	08/25/2008	Not Printed
<b><u>health care facilities</u></b>					
Health, Health Systems Improvement, Licensing	31489	R432-35	5YR	05/27/2008	2008-12/54
<b><u>health facilities</u></b>					
Health, Health Systems Improvement, Licensing	30975	R432-16	5YR	02/11/2008	2008-5/58
<b><u>health insurance</u></b>					
Human Services, Recovery Services	31542	R527-201	NSC	08/19/2008	Not Printed
Insurance, Administration	30462	R590-167-11	AMD	05/20/2008	2007-20/23
	30462	R590-167-11	CPR	05/20/2008	2008-3/68
	31697	R590-167-12	NSC	10/01/2008	Not Printed
	31716	R590-176	AMD	09/09/2008	2008-15/40
<b><u>health planning</u></b>					
Health, Center for Health Data, Health Care Statistics	31167	R428-11	5YR	04/21/2008	2008-10/146
	31021	R428-11	NSC	04/21/2008	Not Printed
	31168	R428-13	5YR	04/21/2008	2008-10/146



<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	31022	R428-13	NSC	04/21/2008	Not Printed
	30956	R428-13-4	AMD	05/16/2008	2008-5/25
<b><u>health policy</u></b>					
Health, Center for Health Data, Health Care Statistics	31021	R428-11	NSC	04/21/2008	Not Printed
	31168	R428-13	5YR	04/21/2008	2008-10/146
	31022	R428-13	NSC	04/21/2008	Not Printed
	30956	R428-13-4	AMD	05/16/2008	2008-5/25
<b><u>health spas</u></b>					
Commerce, Consumer Protection	31217	R152-23-1	NSC	05/05/2008	Not Printed
<b><u>hearing impaired</u></b>					
Public Service Commission, Administration	31375	R746-510	NSC	05/05/2008	Not Printed
<b><u>hearings</u></b>					
Community and Culture, Home Energy Assistance Target (HEAT)	31331	R195-1	NSC	05/05/2008	Not Printed
Environmental Quality, Air Quality	31461	R307-103	NSC	06/18/2008	Not Printed
	31809	R307-103-2	NSC	10/01/2008	Not Printed
Environmental Quality, Water Quality	30948	R317-9	5YR	02/01/2008	2008-4/42
Labor Commission, Adjudication	31236	R602-2-1	NSC	05/05/2008	Not Printed
	30811	R602-2-4	AMD	02/07/2008	2008-1/14
	31238	R602-3	NSC	05/05/2008	Not Printed
	30810	R602-3-3	AMD	02/07/2008	2008-1/16
	31643	R602-4	EMR	07/01/2008	2008-14/127
Pardons (Board Of), Administration	31821	R671-513	5YR	08/14/2008	2008-17/78
	31655	R671-516	5YR	07/03/2008	2008-15/105
	31823	R671-517	5YR	08/14/2008	2008-17/78
	31826	R671-519	5YR	08/14/2008	2008-17/79
	31825	R671-520	5YR	08/14/2008	2008-17/79
	31824	R671-522	5YR	08/14/2008	2008-17/80
	30951	R686-100	5YR	02/04/2008	2008-5/59
<b><u>higher education</u></b>					
Regents (Board Of), Administration	31325	R765-134	NSC	05/05/2008	Not Printed
	31631	R765-134-5	NSC	08/25/2008	Not Printed
	31490	R765-136	5YR	05/27/2008	2008-12/63
	31326	R765-136	NSC	05/05/2008	Not Printed
	31515	R765-555	5YR	06/02/2008	2008-12/64
	31104	R765-555	NSC	06/02/2008	Not Printed
	31402	R765-605	5YR	05/09/2008	2008-11/128
	30957	R765-607	5YR	02/08/2008	2008-5/60
	31327	R765-993	NSC	05/05/2008	Not Printed
Regents (Board Of), University of Utah, Administration	31340	R805-2	NSC	05/05/2008	Not Printed
	31718	R805-2	5YR	07/17/2008	2008-16/75
<b><u>higher education assistance</u></b>					
Regents (Board Of), Administration	31405	R765-606	5YR	05/09/2008	2008-11/129

RULES INDEX

<u>KEYWORD</u> AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b><u>highways</u></b>					
Transportation, Administration	31963	R907-67	5YR	09/18/2008	2008-20/53
Transportation, Operations, Maintenance	31693	R918-4	NSC	08/25/2008	Not Printed
	31890	R918-4	5YR	08/25/2008	2008-18/77
<b><u>HIPAA</u></b>					
Health, Administration	31455	R380-250	5YR	05/19/2008	2008-12/52
	31484	R495-881	5YR	05/27/2008	2008-12/55
	31485	R495-881	AMD	07/23/2008	2008-12/30
<b><u>hiring practices</u></b>					
Human Resource Management, Administration	31189	R477-4	AMD	07/01/2008	2008-10/88
<b><u>historic preservation</u></b>					
Tax Commission, Auditing	31632	R865-6F-8	AMD	09/09/2008	2008-14/102
	30913	R865-6F-28	AMD	03/14/2008	2008-3/61
	31534	R865-6F-35	AMD	08/18/2008	2008-13/112
	30842	R865-6F-37	AMD	02/25/2008	2008-1/35
	31458	R865-9I-4	AMD	08/14/2008	2008-12/43
	31530	R865-9I-6	AMD	08/18/2008	2008-13/113
	31459	R865-9I-11	AMD	08/14/2008	2008-12/44
	31460	R865-9I-12	AMD	08/14/2008	2008-12/45
	31463	R865-9I-13	AMD	08/14/2008	2008-12/45
	30916	R865-9I-37	AMD	03/14/2008	2008-3/63
	31413	R865-9I-37	NSC	08/18/2008	Not Printed
	31464	R865-9I-39	AMD	08/14/2008	2008-12/46
	31639	R865-9I-41	NSC	08/25/2008	Not Printed
	31414	R865-9I-42	NSC	08/18/2008	Not Printed
	31415	R865-9I-46	NSC	08/18/2008	Not Printed
	31466	R865-9I-48	AMD	08/14/2008	2008-12/47
	31416	R865-9I-49	NSC	08/18/2008	Not Printed
	31532	R865-9I-50	AMD	08/18/2008	2008-13/114
	31470	R865-9I-52	AMD	08/14/2008	2008-12/48
	30849	R865-9I-53	AMD	02/25/2008	2008-1/36
<b><u>holidays</u></b>					
Human Resource Management, Administration	31192	R477-7	AMD	07/01/2008	2008-10/95
	31788	R477-7	AMD	09/22/2008	2008-16/16
<b><u>hospital</u></b>					
Health, Administration	31286	R380-200	NSC	05/05/2008	Not Printed
	31280	R380-210-6	NSC	05/05/2008	Not Printed
Health, Health Care Financing, Coverage and Reimbursement Policy	31424	R414-5	5YR	05/13/2008	2008-11/125
<b><u>hospital policy</u></b>					
Health, Center for Health Data, Health Care Statistics	31167	R428-11	5YR	04/21/2008	2008-10/146

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>hospitals</u></b>					
Environmental Quality, Air Quality	30702	R307-222	AMD	02/08/2008	2007-23/36
	30967	R307-222	5YR	02/08/2008	2008-5/44
	30833	R307-222-1	NSC	02/08/2008	Not Printed
<b><u>hostile work environment</u></b>					
Human Resource Management, Administration	31208	R477-15	AMD	07/01/2008	2008-10/112
<b><u>HOT lanes</u></b>					
Transportation Commission, Administration	31810	R940-1	NSC	10/01/2008	Not Printed
<b><u>hotels</u></b>					
Health, Epidemiology and Laboratory Services, Environmental Services	31494	R392-502	AMD	07/22/2008	2008-12/20
<b><u>hours of business</u></b>					
Labor Commission, Administration	31705	R600-2-1	AMD	09/09/2008	2008-15/43
	31778	R600-2-1	EMR	08/04/2008	2008-16/64
<b><u>housing</u></b>					
Labor Commission, Antidiscrimination and Labor, Fair Housing	31240	R608-1	NSC	05/05/2008	Not Printed
<b><u>human services</u></b>					
Human Services, Administration, Administrative Services, Licensing	31017	R501-16	5YR	02/22/2008	2008-6/25
	31026	R501-17	5YR	02/27/2008	2008-6/25
Human Services, Services for People with Disabilities	30877	R539-1-8	AMD	04/01/2008	2008-3/32
	30926	R539-1-8	EMR	01/28/2008	2008-4/38
<b><u>hunter education</u></b>					
Natural Resources, Wildlife Resources	30828	R657-23	AMD	02/07/2008	2008-1/25
	31613	R657-23	AMD	08/21/2008	2008-14/73
	30955	R657-23-5	AMD	04/07/2008	2008-5/31
<b><u>hunting closures</u></b>					
Natural Resources, Wildlife Resources	31398	R657-34	5YR	05/08/2008	2008-11/125
<b><u>immunization</u></b>					
Health, Community and Family Health Services, Immunization	31753	R396-100	5YR	07/25/2008	2008-16/67
	31173	R396-100	NSC	07/25/2008	Not Printed
<b><u>immunizations</u></b>					
Health, Community and Family Health Services, Immunization	31100	R396-100-3	AMD	07/29/2008	2008-8/14
<b><u>impairment ratings</u></b>					
Labor Commission, Industrial Accidents	31231	R612-7	5YR	04/28/2008	2008-10/150
<b><u>implements of husbandry</u></b>					
Transportation, Motor Carrier	30783	R909-1-1	AMD	02/15/2008	2007-24/25
<b><u>import restrictions</u></b>					
Natural Resources, Wildlife Resources	31047	R657-3	5YR	03/11/2008	2008-7/65
	31053	R657-3	AMD	05/08/2008	2008-7/45

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	31220	R657-3	NSC	05/05/2008	Not Printed
	31051	R657-53	AMD	05/08/2008	2008-7/50
	31508	R657-53	5YR	06/02/2008	2008-12/61
	31228	R657-53	NSC	05/05/2008	Not Printed
<b><u>imputation</u></b>					
Public Service Commission, Administration	31628	R746-349	AMD	08/25/2008	2008-14/91
	31374	R746-349-3	NSC	05/05/2008	Not Printed
	31781	R746-349-7	NSC	10/01/2008	Not Printed
<b><u>in-service training</u></b>					
Public Safety, Peace Officer Standards and Training	31648	R728-501	5YR	07/01/2008	2008-14/142
<b><u>incident</u></b>					
Pardons (Board Of), Administration	31656	R671-509	5YR	07/03/2008	2008-15/103
<b><u>incidents</u></b>					
Administrative Services, Fleet Operations	31421	R27-7-1	NSC	08/18/2008	Not Printed
<b><u>incinerators</u></b>					
Environmental Quality, Air Quality	30965	R307-220	5YR	02/08/2008	2008-5/43
<b><u>income</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	30921	R414-302	5YR	01/25/2008	2008-4/43
	30925	R414-303	5YR	01/25/2008	2008-4/44
	30652	R414-304	AMD	01/28/2008	2007-23/54
	31622	R414-304	AMD	09/01/2008	2008-14/49
	30924	R414-304	5YR	01/25/2008	2008-4/44
Human Services, Recovery Services	31158	R527-300	AMD	09/04/2008	2008-10/118
<b><u>income distribution</u></b>					
Human Services, Child and Family Services	30720	R512-20	NSC	01/07/2008	Not Printed
	30716	R512-20	REP	01/07/2008	2007-23/58
<b><u>income tax</u></b>					
Tax Commission, Auditing	31458	R865-9I-4	AMD	08/14/2008	2008-12/43
	31530	R865-9I-6	AMD	08/18/2008	2008-13/113
	31459	R865-9I-11	AMD	08/14/2008	2008-12/44
	31460	R865-9I-12	AMD	08/14/2008	2008-12/45
	31463	R865-9I-13	AMD	08/14/2008	2008-12/45
	30916	R865-9I-37	AMD	03/14/2008	2008-3/63
	31413	R865-9I-37	NSC	08/18/2008	Not Printed
	31464	R865-9I-39	AMD	08/14/2008	2008-12/46
	31639	R865-9I-41	NSC	08/25/2008	Not Printed
	31414	R865-9I-42	NSC	08/18/2008	Not Printed
	31415	R865-9I-46	NSC	08/18/2008	Not Printed
	31466	R865-9I-48	AMD	08/14/2008	2008-12/47
	31416	R865-9I-49	NSC	08/18/2008	Not Printed
	31532	R865-9I-50	AMD	08/18/2008	2008-13/114
	31470	R865-9I-52	AMD	08/14/2008	2008-12/48

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	30849	R865-9I-53	AMD	02/25/2008	2008-1/36
<b><u>income withholding fees</u></b>					
Human Services, Recovery Services	31163	R527-302	AMD	06/25/2008	2008-10/120
	31792	R527-302	NSC	10/01/2008	Not Printed
	31160	R527-302	5YR	04/21/2008	2008-10/147
<b><u>independent foster care adolescent</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	30925	R414-303	5YR	01/25/2008	2008-4/44
<b><u>Indian affairs</u></b>					
Community and Culture, Indian Affairs	30912	R230-1	CPR	07/16/2008	2008-11/122
	30912	R230-1	AMD	07/16/2008	2008-3/12
<b><u>industrial waste</u></b>					
Environmental Quality, Water Quality	30639	R317-1-4	AMD	02/04/2008	2007-22/52
	30637	R317-13	NEW	02/04/2008	2007-22/61
<b><u>infectious waste</u></b>					
Environmental Quality, Air Quality	30702	R307-222	AMD	02/08/2008	2007-23/36
	30967	R307-222	5YR	02/08/2008	2008-5/44
	30833	R307-222-1	NSC	02/08/2008	Not Printed
<b><u>informal adjudicative proceedings</u></b>					
Labor Commission, Industrial Accidents	31251	R612-9-1	NSC	05/05/2008	Not Printed
<b><u>injury prevention</u></b>					
Health, Administration	31280	R380-210-6	NSC	05/05/2008	Not Printed
<b><u>inspections</u></b>					
Agriculture and Food, Plant Industry	31006	R68-5	5YR	02/15/2008	2008-5/39
	30611	R68-7	AMD	01/07/2008	2007-22/11
	31127	R68-8-2	AMD	07/02/2008	2008-9/7
Agriculture and Food, Regulatory Services	31380	R70-530	R&R	09/25/2008	2008-11/2
	31430	R70-560	AMD	07/25/2008	2008-11/47
Environmental Quality, Radiation Control	31170	R313-12-1	NSC	05/05/2008	Not Printed
	30774	R313-12-111	AMD	04/11/2008	2007-24/8
	30774	R313-12-111	CPR	04/11/2008	2008-5/34
<b><u>instructional materials</u></b>					
Education, Administration	30781	R277-469	AMD	01/22/2008	2007-24/4
	31035	R277-469	5YR	03/03/2008	2008-7/62
	31577	R277-469	AMD	08/07/2008	2008-13/21
<b><u>insurance</u></b>					
Human Resource Management, Administration	31191	R477-6	AMD	07/01/2008	2008-10/91
	31782	R477-6-4	AMD	09/22/2008	2008-16/14
	31766	R590-151	NSC	10/01/2008	Not Printed
	31131	R590-154	5YR	04/09/2008	2008-9/54
	30508	R590-175	AMD	02/08/2008	2007-20/24
	31767	R590-186	5YR	07/29/2008	2008-16/70

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	30897	R590-218	5YR	01/11/2008	2008-3/80
	31525	R590-219	5YR	06/04/2008	2008-13/150
	31523	R590-222	5YR	06/02/2008	2008-12/58
	31500	R590-222	AMD	08/04/2008	2008-12/36
	31647	R590-250	NEW	08/25/2008	2008-14/63
Labor Commission, Industrial Accidents	31229	R612-5	5YR	04/28/2008	2008-10/149
<b><u>insurance fee</u></b>					
Insurance, Administration	30890	R590-157	5YR	01/10/2008	2008-3/79
<b><u>insurance fees</u></b>					
Insurance, Administration	31652	R590-102	AMD	09/11/2008	2008-15/31
<b><u>insurance law</u></b>					
Insurance, Administration	31059	R590-91	AMD	05/29/2008	2008-7/35
	31132	R590-94	5YR	04/09/2008	2008-9/53
	31765	R590-121-5	NSC	10/01/2008	Not Printed
	31062	R590-131	AMD	10/02/2008	2008-7/37
	31062	R590-131	CPR	10/02/2008	2008-13/141
	31030	R590-164	AMD	05/08/2008	2008-6/10
	31551	R590-164	AMD	08/26/2008	2008-13/83
	31077	R590-191	AMD	05/29/2008	2008-8/27
<b><u>insurance reserves and nonforfeitures</u></b>					
Insurance, Administration	31552	R590-223	5YR	06/12/2008	2008-13/151
<b><u>interest rate swaps</u></b>					
Money Management Council, Administration	31587	R628-18	NSC	08/25/2008	Not Printed
<b><u>international baccalaureate</u></b>					
Education, Administration	31583	R277-710	NEW	08/07/2008	2008-13/32
<b><u>interpreters</u></b>					
Public Service Commission, Administration	31375	R746-510	NSC	05/05/2008	Not Printed
<b><u>interstate</u></b>					
Human Services, Recovery Services	30978	R527-305	5YR	02/12/2008	2008-5/58
	31025	R527-305	AMD	04/21/2008	2008-6/8
<b><u>interstate compacts</u></b>					
Workforce Services, Unemployment Insurance	31075	R994-106-106	AMD	05/30/2008	2008-8/48
<b><u>interstate highway systems</u></b>					
Transportation, Administration	31962	R907-64	5YR	09/18/2008	2008-20/52
	31965	R907-65	5YR	09/22/2008	2008-20/53
<b><u>intoxilyzer</u></b>					
Public Safety, Highway Patrol	31754	R714-500	AMD	10/15/2008	2008-16/31
<b><u>intrastate driver license waivers</u></b>					
Public Safety, Driver License	31116	R708-34	NSC	05/05/2008	Not Printed

<u>KEYWORD AGENCY</u>	<u>FILE NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE DATE</u>	<u>BULLETIN ISSUE/PAGE</u>
<b><u>inventories</u></b>					
Environmental Quality, Air Quality	31558	R307-150-4	AMD	09/04/2008	2008-13/35
<b><u>investigations</u></b>					
Public Safety, Peace Officer Standards and Training	31739	R728-409	AMD	10/01/2008	2008-16/36
<b><u>job creation</u></b>					
Governor, Economic Development	30788	R357-2	NEW	01/30/2008	2007-24/9
	30859	R357-2-7	NSC	01/30/2008	Not Printed
<b><u>job descriptions</u></b>					
Human Resource Management, Administration	31188	R477-3	AMD	07/01/2008	2008-10/87
<b><u>jobs</u></b>					
Governor, Economic Development	31153	R357-3	NEW	06/18/2008	2008-9/37
<b><u>Judicial Conduct Commission</u></b>					
Judicial Conduct Commission, Administration	31605	R595-3-5	NSC	08/25/2008	Not Printed
<b><u>juvenile courts</u></b>					
Education, Administration	30884	R277-709	5YR	01/08/2008	2008-3/75
<b><u>kinship</u></b>					
Human Services, Child and Family Services	31864	R512-500	5YR	08/20/2008	2008-18/74
	31590	R512-500	R&R	08/21/2008	2008-14/57
	31589	R512-500	EMR	06/18/2008	2008-14/123
<b><u>labor</u></b>					
Labor Commission, Antidiscrimination and Labor, Labor	31247	R610-1	NSC	05/05/2008	Not Printed
	31149	R610-1-4	AMD	06/13/2008	2008-9/48
	31245	R610-2	NSC	05/05/2008	Not Printed
	30942	R610-2-6	AMD	03/24/2008	2008-4/19
	31243	R610-3	NSC	05/05/2008	Not Printed
	30876	R610-3-4	EMR	01/03/2008	2008-3/70
	30941	R610-3-4	AMD	03/24/2008	2008-4/20
	31148	R610-3-10	AMD	06/13/2008	2008-9/50
Labor Commission, Safety	31233	R616-1	5YR	04/28/2008	2008-10/150
	31249	R616-1	NSC	05/05/2008	Not Printed
<b><u>labor commission</u></b>					
Labor Commission, Administration	31232	R600-1	5YR	04/28/2008	2008-10/148
	31237	R600-1	NSC	05/05/2008	Not Printed
	31705	R600-2-1	AMD	09/09/2008	2008-15/43
	31778	R600-2-1	EMR	08/04/2008	2008-16/64
<b><u>laboratories</u></b>					
Health, Epidemiology and Laboratory Services, Laboratory Services	31717	R438-13	5YR	07/16/2008	2008-16/69
<b><u>laboratory animals</u></b>					
Health, Epidemiology and Laboratory Services, Laboratory Services	31717	R438-13	5YR	07/16/2008	2008-16/69

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>land use</u></b>					
Natural Resources, Forestry, Fire and State Lands	31706	R652-90-300	AMD	09/10/2008	2008-15/44
	31896	R652-110	5YR	08/26/2008	2008-18/76
<b><u>landfills</u></b>					
Environmental Quality, Air Quality	30965	R307-220	5YR	02/08/2008	2008-5/43
<b><u>landscape architects</u></b>					
Commerce, Occupational and Professional Licensing	31074	R156-53	5YR	03/24/2008	2008-8/52
<b><u>language proficiency</u></b>					
Regents (Board Of), Administration	31490	R765-136	5YR	05/27/2008	2008-12/63
	31326	R765-136	NSC	05/05/2008	Not Printed
<b><u>law</u></b>					
Public Safety, Fire Marshal	31787	R710-9	AMD	09/23/2008	2008-16/30
	30919	R710-9-6	AMD	03/10/2008	2008-3/52
<b><u>law enforcement</u></b>					
Public Safety, Criminal Investigations and Technical Services, Criminal Identification	30929	R722-320	NSC	05/14/2008	Not Printed
	31434	R722-320	5YR	05/14/2008	2008-11/127
<b><u>law enforcement officers</u></b>					
Public Safety, Peace Officer Standards and Training	31719	R728-101	NSC	10/01/2008	Not Printed
	31739	R728-409	AMD	10/01/2008	2008-16/36
	31648	R728-501	5YR	07/01/2008	2008-14/142
<b><u>lead-based paint</u></b>					
Environmental Quality, Air Quality	30973	R307-840	5YR	02/08/2008	2008-5/47
	30708	R307-840	AMD	02/08/2008	2007-23/48
<b><u>LEAP</u></b>					
Regents (Board Of), Administration	31405	R765-606	5YR	05/09/2008	2008-11/129
<b><u>leases</u></b>					
Natural Resources, Forestry, Fire and State Lands	31270	R652-30-500	NSC	05/05/2008	Not Printed
	31896	R652-110	5YR	08/26/2008	2008-18/76
<b><u>leave benefits</u></b>					
Human Resource Management, Administration	31192	R477-7	AMD	07/01/2008	2008-10/95
	31788	R477-7	AMD	09/22/2008	2008-16/16
<b><u>liberties</u></b>					
Natural Resources, Administration	30875	R634-1	NSC	01/25/2008	Not Printed
	30923	R634-1	5YR	01/25/2008	2008-4/47
<b><u>license</u></b>					
Natural Resources, Wildlife Resources	31399	R657-45	5YR	05/08/2008	2008-11/127
	31050	R657-45-2	AMD	05/08/2008	2008-7/49



KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>license plates</b>					
Tax Commission, Motor Vehicle	30844	R873-22M-34	AMD	02/25/2008	2008-1/38
	31264	R873-22M-41	AMD	06/27/2008	2008-10/133
<b>licensing</b>					
Commerce, Occupational and Professional Licensing	31288	R156-1	AMD	06/23/2008	2008-10/30
	30655	R156-1-102a	AMD	01/08/2008	2007-23/3
	30935	R156-3a-303	AMD	03/27/2008	2008-4/5
	32002	R156-5a	5YR	10/07/2008	Not Printed
	30715	R156-26a	AMD	03/31/2008	2007-23/4
	30715	R156-26a	CPR	03/31/2008	2008-4/35
	31763	R156-26a	AMD	09/23/2008	2008-16/5
	31396	R156-28	AMD	07/10/2008	2008-11/56
	31156	R156-31b	AMD	06/23/2008	2008-10/34
	31615	R156-31b	AMD	08/25/2008	2008-14/15
	31094	R156-31b	5YR	04/01/2008	2008-8/51
	31603	R156-31b-102	NSC	08/25/2008	Not Printed
	31423	R156-37	AMD	09/09/2008	2008-11/62
	31423	R156-37	CPR	09/09/2008	2008-15/84
	30654	R156-38a	AMD	01/07/2008	2007-23/14
	31176	R156-38a-105a	NSC	05/05/2008	Not Printed
	31178	R156-40-302e	NSC	05/05/2008	Not Printed
	31397	R156-41	AMD	07/14/2008	2008-11/65
	30853	R156-47b	AMD	02/21/2008	2008-2/4
	31180	R156-49	NSC	05/05/2008	Not Printed
	31073	R156-49	5YR	03/24/2008	2008-8/52
	31074	R156-53	5YR	03/24/2008	2008-8/52
	31292	R156-55a	AMD	06/24/2008	2008-10/42
	30892	R156-55a	AMD	03/11/2008	2008-3/3
	31616	R156-55a-102	NSC	08/25/2008	Not Printed
	31181	R156-55d	NSC	05/05/2008	Not Printed
	31588	R156-55d	NSC	08/25/2008	Not Printed
	30574	R156-56	AMD	01/01/2008	2007-21/38
	31139	R156-56	AMD	07/01/2008	2008-9/23
	30573	R156-56-420	AMD	01/01/2008	2007-21/57
	31142	R156-56-701	AMD	07/01/2008	2008-9/30
	31626	R156-56-801	NSC	07/01/2008	Not Printed
	30915	R156-61	AMD	05/08/2008	2008-3/6
	30915	R156-61	CPR	05/08/2008	2008-7/55
	31182	R156-63	NSC	05/05/2008	Not Printed
	31183	R156-67	NSC	05/05/2008	Not Printed
31083	R156-68	5YR	03/27/2008	2008-8/53	
31185	R156-68	NSC	05/05/2008	Not Printed	
31136	R156-69	AMD	06/09/2008	2008-9/35	
30854	R156-71	CPR	07/08/2008	2008-11/121	

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	30854	R156-71	AMD	07/08/2008	2008-2/6
	31516	R156-74	AMD	07/22/2008	2008-12/7
	30694	R156-76	AMD	01/08/2008	2007-23/17
Human Services, Administration, Administrative Services, Licensing	31017	R501-16	5YR	02/22/2008	2008-6/25
	31026	R501-17	5YR	02/27/2008	2008-6/25
Labor Commission, Antidiscrimination and Labor, Labor	31438	R610-4	REP	07/08/2008	2008-11/101
	31239	R610-4	NSC	05/05/2008	Not Printed
Natural Resources, Water Rights	31694	R655-4	AMD	09/10/2008	2008-15/45
	31812	R655-4-5	NSC	10/01/2008	Not Printed
Natural Resources, Wildlife Resources	31224	R657-27-11	NSC	05/05/2008	Not Printed
Public Safety, Driver License	31436	R708-10	AMD	07/08/2008	2008-11/116
	31113	R708-18-1	NSC	05/05/2008	Not Printed
Sports Authority (Utah), Pete Suazo Utah Athletic Commission	31028	R859-1	AMD	05/01/2008	2008-6/15
	31172	R859-1-102	NSC	06/18/2008	Not Printed
	31029	R859-1-302	AMD	05/01/2008	2008-6/16
	31585	R859-1-506	AMD	09/01/2008	2008-13/108
	31586	R859-1-509	AMD	09/01/2008	2008-13/109
<b><u>liens</u></b>					
Commerce, Occupational and Professional Licensing	30654	R156-38a	AMD	01/07/2008	2007-23/14
	31176	R156-38a-105a	NSC	05/05/2008	Not Printed
<b><u>limitation on judgments</u></b>					
Administrative Services, Risk Management	31150	R37-4	R&R	07/01/2008	2008-9/5
<b><u>liquefied petroleum gas</u></b>					
Public Safety, Fire Marshal	30862	R710-6	AMD	02/21/2008	2008-2/22
	31082	R710-6-4	AMD	05/23/2008	2008-8/37
	31748	R710-6-5	NSC	10/01/2008	Not Printed
<b><u>loans</u></b>					
Environmental Quality, Water Quality	31103	R317-101	5YR	04/02/2008	2008-9/53
<b><u>LTCO</u></b>					
Human Services, Aging and Adult Services	31379	R510-200-3	NSC	05/05/2008	Not Printed
<b><u>MACT</u></b>					
Environmental Quality, Air Quality	30430	R307-214	AMD	01/11/2008	2007-19/12
	30895	R307-214	5YR	01/11/2008	2008-3/77
<b><u>management</u></b>					
Natural Resources, Forestry, Fire and State Lands	31706	R652-90-300	AMD	09/10/2008	2008-15/44
<b><u>maps</u></b>					
Natural Resources, Water Rights	31130	R655-5	5YR	04/08/2008	2008-9/54
<b><u>market trading program</u></b>					
Environmental Quality, Air Quality	30970	R307-250	5YR	02/08/2008	2008-5/46

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>marketing</u></b> Commerce, Consumer Protection	31214	R152-15-2	NSC	05/05/2008	Not Printed
<b><u>massage therapy</u></b> Commerce, Occupational and Professional Licensing	30853	R156-47b	AMD	02/21/2008	2008-2/4
<b><u>match requirement</u></b> Human Services, Administration	30773	R495-861	AMD	01/30/2008	2007-24/18
<b><u>Medicaid</u></b> Health, Health Care Financing, Coverage and Reimbursement Policy	31979	R414-320-15	EMR	10/01/2008	2008-20/50
<b><u>Medicaid</u></b> Health, Health Care Financing	31550	R410-14	NSC	08/19/2008	Not Printed
	30981	R410-14-17	EMR	02/15/2008	2008-5/36
	31129	R410-14-17	AMD	06/09/2008	2008-9/38
Health, Health Care Financing, Coverage and Reimbursement Policy	31359	R414-1-5	AMD	07/01/2008	2008-10/64
	31506	R414-1-5	AMD	08/04/2008	2008-12/22
	31789	R414-1-5	AMD	10/01/2008	2008-16/9
	31771	R414-1-16	NSC	10/01/2008	Not Printed
	31424	R414-5	5YR	05/13/2008	2008-11/125
	31169	R414-6	5YR	04/21/2008	2008-10/145
	31493	R414-6	AMD	07/22/2008	2008-12/23
	30653	R414-21	R&R	01/10/2008	2007-23/50
	31046	R414-27	NSC	03/25/2008	Not Printed
	30920	R414-27	5YR	01/17/2008	2008-4/42
	31360	R414-27	AMD	07/01/2008	2008-10/65
	31135	R414-40	R&R	06/23/2008	2008-9/39
	31452	R414-51	5YR	05/19/2008	2008-12/53
	30775	R414-52	AMD	02/01/2008	2007-24/12
	31453	R414-52	5YR	05/19/2008	2008-12/54
	30776	R414-53	AMD	02/01/2008	2007-24/13
	31528	R414-53	5YR	06/05/2008	2008-13/148
	31644	R414-54	R&R	10/02/2008	2008-14/46
	31737	R414-55	5YR	07/18/2008	2008-16/69
	31645	R414-59	R&R	10/02/2008	2008-14/47
	31505	R414-70	R&R	08/04/2008	2008-12/24
	30378	R414-71	CPR	03/31/2008	2008-3/66
	31507	R414-71	REP	08/04/2008	2008-12/28
	30378	R414-71	AMD	03/31/2008	2007-18/40
	30936	R414-301	5YR	01/31/2008	2008-4/43
	31773	R414-301-6	NSC	10/01/2008	Not Printed
	30937	R414-305	5YR	01/31/2008	2008-4/45
	30945	R414-305	AMD	04/01/2008	2008-4/9
	30938	R414-308	5YR	01/31/2008	2008-4/46
	31976	R414-308	EMR	10/01/2008	2008-20/45
	30927	R414-308-7	AMD	04/01/2008	2008-4/16

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	31356	R414-310	AMD	07/01/2008	2008-10/66
	31978	R414-310-13	EMR	10/01/2008	2008-20/48
	31358	R414-320	AMD	07/01/2008	2008-10/68
	31774	R414-501-5	NSC	10/01/2008	Not Printed
	31362	R414-504	AMD	07/01/2008	2008-10/71
	31361	R414-508	NEW	07/01/2008	2008-10/78
	30917	R414-510	AMD	03/10/2008	2008-3/30
Human Services, Recovery Services	31542	R527-201	NSC	08/19/2008	Not Printed
<b><u>medical incinerator</u></b>					
Environmental Quality, Air Quality	30702	R307-222	AMD	02/08/2008	2007-23/36
	30967	R307-222	5YR	02/08/2008	2008-5/44
	30833	R307-222-1	NSC	02/08/2008	Not Printed
<b><u>medical insurance</u></b>					
Sports Authority (Utah), Pete Suazo Utah Athletic Commission	31566	R859-1-501	AMD	09/01/2008	2008-13/106
<b><u>medical malpractice</u></b>					
Commerce, Occupational and Professional Licensing	31055	R156-78A	NSC	03/26/2008	Not Printed
<b><u>medical practitioner</u></b>					
Labor Commission, Industrial Accidents	31234	R612-2	5YR	04/28/2008	2008-10/148
	31333	R612-2-5	AMD	07/01/2008	2008-10/130
<b><u>medical supplies</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	31505	R414-70	R&R	08/04/2008	2008-12/24
<b><u>medical transportation</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	30922	R414-306	5YR	01/25/2008	2008-4/45
<b><u>medication treatment</u></b>					
Human Services, Substance Abuse and Mental Health, State Hospital	31449	R525-3	5YR	05/19/2008	2008-12/56
<b><u>mercury</u></b>					
Environmental Quality, Air Quality	30969	R307-224	5YR	02/08/2008	2008-5/45
	30704	R307-224-2	AMD	02/08/2008	2007-23/39
<b><u>minerals reclamation</u></b>					
Natural Resources, Oil, Gas and Mining; Non-Coal	31510	R647-1	5YR	06/02/2008	2008-12/59
	31205	R647-1-106	NSC	05/05/2008	Not Printed
	31511	R647-2	5YR	06/02/2008	2008-12/59
	31512	R647-3	5YR	06/02/2008	2008-12/60
	31513	R647-4	5YR	06/02/2008	2008-12/60
	31514	R647-5	5YR	06/02/2008	2008-12/61
	31206	R647-5	NSC	05/05/2008	Not Printed
	31759	R647-6	5YR	07/28/2008	2008-16/73
	31760	R647-7	5YR	07/28/2008	2008-16/73
	31761	R647-8	5YR	07/28/2008	2008-16/74

<u>KEYWORD AGENCY</u>	<u>FILE NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE DATE</u>	<u>BULLETIN ISSUE/PAGE</u>
<b><u>minimum standards</u></b>					
Natural Resources, Forestry, Fire and State Lands	31109	R652-122-100	NSC	05/01/2008	Not Printed
<b><u>mining</u></b>					
Labor Commission, Safety	31233	R616-1	5YR	04/28/2008	2008-10/150
	31249	R616-1	NSC	05/05/2008	Not Printed
<b><u>minors</u></b>					
Labor Commission, Antidiscrimination and Labor, Labor	31247	R610-1	NSC	05/05/2008	Not Printed
	31149	R610-1-4	AMD	06/13/2008	2008-9/48
	31245	R610-2	NSC	05/05/2008	Not Printed
	30942	R610-2-6	AMD	03/24/2008	2008-4/19
	31243	R610-3	NSC	05/05/2008	Not Printed
	30876	R610-3-4	EMR	01/03/2008	2008-3/70
	30941	R610-3-4	AMD	03/24/2008	2008-4/20
	31148	R610-3-10	AMD	06/13/2008	2008-9/50
<b><u>monitoring</u></b>					
Environmental Quality, Air Quality	30962	R307-170	5YR	02/08/2008	2008-5/41
	30699	R307-170-7	AMD	02/08/2008	2007-23/29
<b><u>mortgage renewal license term</u></b>					
Commerce, Real Estate	31968	R162-211	EMR	10/01/2008	2008-20/42
<b><u>motels</u></b>					
Health, Epidemiology and Laboratory Services, Environmental Services	31494	R392-502	AMD	07/22/2008	2008-12/20
<b><u>motor vehicle record</u></b>					
Public Safety, Driver License	31119	R708-36-1	NSC	05/05/2008	Not Printed
	31123	R708-44-4	NSC	05/05/2008	Not Printed
<b><u>motor vehicles</u></b>					
Commerce, Administration	31354	R151-14-3	NSC	05/05/2008	Not Printed
Commerce, Consumer Protection	31215	R152-20	NSC	05/05/2008	Not Printed
Environmental Quality, Air Quality	31389	R307-121	AMD	08/07/2008	2008-11/87
	30889	R307-121-3	NSC	01/30/2008	Not Printed
Tax Commission, Motor Vehicle	30844	R873-22M-34	AMD	02/25/2008	2008-1/38
	31264	R873-22M-41	AMD	06/27/2008	2008-10/133
Tax Commission, Motor Vehicle Enforcement	31255	R877-23V-19	AMD	06/27/2008	2008-10/135
<b><u>motorcycle rider training schools</u></b>					
Public Safety, Driver License	31790	R708-30	5YR	08/01/2008	2008-16/75
	31435	R708-30-10	AMD	07/11/2008	2008-11/118
	31115	R708-30-14	NSC	05/05/2008	Not Printed
<b><u>motorcycles</u></b>					
Commerce, Administration	31355	R151-35-3	NSC	05/05/2008	Not Printed
<b><u>municipal landfills</u></b>					
Environmental Quality, Air Quality	30701	R307-221	AMD	02/08/2008	2007-23/32

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	30966	R307-221	5YR	02/08/2008	2008-5/44
	30832	R307-221-2	NSC	02/08/2008	Not Printed
<b><u>municipal waste incinerator</u></b>					
Environmental Quality, Air Quality	30703	R307-223	AMD	02/08/2008	2007-23/38
	30968	R307-223	5YR	02/08/2008	2008-5/45
<b><u>mutual water corporations</u></b>					
Public Service Commission, Administration	31095	R746-331	5YR	04/01/2008	2008-8/55
<b><u>nail technicians</u></b>					
Commerce, Occupational and Professional Licensing	30953	R156-11a	AMD	04/10/2008	2008-5/5
	31174	R156-11a-601	NSC	05/05/2008	Not Printed
<b><u>Native American remains</u></b>					
Community and Culture, Indian Affairs	30912	R230-1	CPR	07/16/2008	2008-11/122
	30912	R230-1	AMD	07/16/2008	2008-3/12
<b><u>naturopathic physician</u></b>					
Commerce, Occupational and Professional Licensing	30854	R156-71	CPR	07/08/2008	2008-11/121
	30854	R156-71	AMD	07/08/2008	2008-2/6
<b><u>naturopaths</u></b>					
Commerce, Occupational and Professional Licensing	30854	R156-71	CPR	07/08/2008	2008-11/121
	30854	R156-71	AMD	07/08/2008	2008-2/6
<b><u>new hire registry</u></b>					
Workforce Services, Unemployment Insurance	31549	R994-315	5YR	06/10/2008	2008-13/152
<b><u>newborn screening</u></b>					
Health, Community and Family Health Services, Children with Special Health Care Needs	31350	R398-1	AMD	06/25/2008	2008-10/60
	31627	R398-1	NSC	08/25/2008	Not Printed
	31651	R398-2	5YR	07/02/2008	2008-15/86
<b><u>notice of commencement</u></b>					
Commerce, Occupational and Professional Licensing	31177	R156-38b-703	NSC	05/05/2008	Not Printed
<b><u>notice of completion</u></b>					
Commerce, Occupational and Professional Licensing	31177	R156-38b-703	NSC	05/05/2008	Not Printed
<b><u>nurses</u></b>					
Commerce, Occupational and Professional Licensing	31156	R156-31b	AMD	06/23/2008	2008-10/34
	31615	R156-31b	AMD	08/25/2008	2008-14/15
	31094	R156-31b	5YR	04/01/2008	2008-8/51
	31603	R156-31b-102	NSC	08/25/2008	Not Printed
<b><u>nutrition</u></b>					
Education, Administration	30848	R277-719	NEW	02/07/2008	2008-1/12

<u>KEYWORD AGENCY</u>	<u>FILE NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE DATE</u>	<u>BULLETIN ISSUE/PAGE</u>
<b><u>occupational licensing</u></b>					
Commerce, Occupational and Professional Licensing	31288	R156-1	AMD	06/23/2008	2008-10/30
	30655	R156-1-102a	AMD	01/08/2008	2007-23/3
	31179	R156-46b	NSC	05/05/2008	Not Printed
	31292	R156-55a	AMD	06/24/2008	2008-10/42
	30892	R156-55a	AMD	03/11/2008	2008-3/3
	31616	R156-55a-102	NSC	08/25/2008	Not Printed
<b><u>off road vehicles</u></b>					
Commerce, Administration	31355	R151-35-3	NSC	05/05/2008	Not Printed
<b><u>off-highway vehicles</u></b>					
Natural Resources, Parks and Recreation	31690	R651-407	5YR	07/07/2008	2008-15/87
	31691	R651-408	5YR	07/07/2008	2008-15/87
	31661	R651-601	5YR	07/07/2008	2008-15/88
<b><u>off-premise</u></b>					
Human Services, Substance Abuse and Mental Health	31164	R523-24-7	AMD	07/14/2008	2008-10/116
	31165	R523-24-9	AMD	07/14/2008	2008-10/117
	31353	R523-24-13	NSC	05/05/2008	Not Printed
<b><u>office hours</u></b>					
Public Service Commission, Administration	31642	R746-800	NEW	08/25/2008	2008-14/95
<b><u>oil and gas law</u></b>					
Natural Resources, Oil, Gas and Mining; Oil and Gas	31762	R649-6	5YR	07/28/2008	2008-16/74
	31207	R649-10-3	NSC	05/05/2008	Not Printed
<b><u>ombudsman</u></b>					
Human Services, Aging and Adult Services	31379	R510-200-3	NSC	05/05/2008	Not Printed
<b><u>one-time signing bonuses</u></b>					
Education, Administration	31439	R277-109	NEW	07/08/2008	2008-11/67
<b><u>open burning</u></b>					
Environmental Quality, Air Quality	30963	R307-202	5YR	02/08/2008	2008-5/42
<b><u>operating permits</u></b>					
Environmental Quality, Air Quality	30700	R307-215	REP	02/08/2008	2007-23/31
	30706	R307-417	AMD	02/08/2008	2007-23/43
<b><u>operator certification</u></b>					
Public Safety, Highway Patrol	31754	R714-500	AMD	10/15/2008	2008-16/31
<b><u>optometry</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	30775	R414-52	AMD	02/01/2008	2007-24/12
	31453	R414-52	5YR	05/19/2008	2008-12/54
<b><u>orders</u></b>					
Environmental Quality, Radiation Control	31171	R313-17	NSC	05/05/2008	Not Printed

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>organ transplants</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	31772	R414-58-1	NSC	10/01/2008	Not Printed
<b><u>orthodontia</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	31452	R414-51	5YR	05/19/2008	2008-12/53
<b><u>osteopathic physician</u></b>					
Commerce, Occupational and Professional Licensing	31083	R156-68	5YR	03/27/2008	2008-8/53
	31185	R156-68	NSC	05/05/2008	Not Printed
<b><u>osteopaths</u></b>					
Commerce, Occupational and Professional Licensing	31083	R156-68	5YR	03/27/2008	2008-8/53
	31185	R156-68	NSC	05/05/2008	Not Printed
<b><u>overtime</u></b>					
Human Resource Management, Administration	31193	R477-8	AMD	07/01/2008	2008-10/101
	31784	R477-8	AMD	09/22/2008	2008-16/19
	30778	R477-8-5	AMD	01/22/2008	2007-24/16
<b><u>paint</u></b>					
Environmental Quality, Air Quality	30973	R307-840	5YR	02/08/2008	2008-5/47
	30708	R307-840	AMD	02/08/2008	2007-23/48
<b><u>paraeducator</u></b>					
Education, Administration	31581	R277-526	NEW	08/07/2008	2008-13/29
<b><u>parking facilities</u></b>					
Administrative Services, Facilities Construction and Management	31063	R23-13	5YR	03/17/2008	2008-8/50
Regents (Board Of), University of Utah, Parking and Transportation Services	30712	R810-1	AMD	03/06/2008	2007-23/65
	30722	R810-2	AMD	03/06/2008	2007-23/67
	30727	R810-3	REP	03/06/2008	2007-24/21
	30728	R810-4	REP	03/06/2008	2007-24/22
	30779	R810-5	AMD	03/06/2008	2007-24/23
	30809	R810-6	AMD	03/06/2008	2008-1/26
	30831	R810-7	REP	03/06/2008	2008-1/27
	30834	R810-8	AMD	03/06/2008	2008-1/28
	30836	R810-9	AMD	03/06/2008	2008-1/29
	30839	R810-10	AMD	03/06/2008	2008-1/30
	30840	R810-11	AMD	03/06/2008	2008-1/31
	30843	R810-12	NEW	03/06/2008	2008-1/32
<b><u>parks</u></b>					
Natural Resources, Parks and Recreation	30900	R651-205-17	AMD	03/10/2008	2008-3/36
	31661	R651-601	5YR	07/07/2008	2008-15/88
	31662	R651-602	5YR	07/07/2008	2008-15/88
	31663	R651-603	5YR	07/07/2008	2008-15/89
	31664	R651-604	5YR	07/07/2008	2008-15/89
	31665	R651-605	5YR	07/07/2008	2008-15/90



KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
	31666	R651-606	5YR	07/07/2008	2008-15/90
	31667	R651-607	5YR	07/07/2008	2008-15/91
	31668	R651-608	5YR	07/07/2008	2008-15/91
	31669	R651-609	5YR	07/07/2008	2008-15/92
	31670	R651-610	5YR	07/07/2008	2008-15/92
	30621	R651-611	AMD	01/01/2008	2007-22/80
	31599	R651-611	AMD	08/21/2008	2008-14/66
	30898	R651-611	AMD	03/10/2008	2008-3/39
	31012	R651-612	NSC	03/10/2008	Not Printed
	30901	R651-612	AMD	03/10/2008	2008-3/42
	31671	R651-612	5YR	07/07/2008	2008-15/93
	31672	R651-613	5YR	07/07/2008	2008-15/93
	31673	R651-614	5YR	07/07/2008	2008-15/94
	31674	R651-615	5YR	07/07/2008	2008-15/94
	31675	R651-616	5YR	07/07/2008	2008-15/95
	31602	R651-617	AMD	08/21/2008	2008-14/68
	31676	R651-617	5YR	07/07/2008	2008-15/95
	31677	R651-618	5YR	07/07/2008	2008-15/96
	31678	R651-619	5YR	07/07/2008	2008-15/96
	31679	R651-620	5YR	07/07/2008	2008-15/97
	31680	R651-621	5YR	07/07/2008	2008-15/97
	31681	R651-622	5YR	07/07/2008	2008-15/98
	31682	R651-623	5YR	07/07/2008	2008-15/98
	31683	R651-624	5YR	07/07/2008	2008-15/99
	31684	R651-625	5YR	07/07/2008	2008-15/99
	31660	R651-626	5YR	07/07/2008	2008-15/100
	31685	R651-627	5YR	07/07/2008	2008-15/100
	31686	R651-628	5YR	07/07/2008	2008-15/101
	31687	R651-629	5YR	07/07/2008	2008-15/101
	31601	R651-630	5YR	06/20/2008	2008-14/142
	31688	R651-631	5YR	07/07/2008	2008-15/102
	31689	R651-632	5YR	07/07/2008	2008-15/102
<b>parole</b>					
Pardons (Board Of), Administration	30949	R671-403	5YR	02/04/2008	2008-5/59
	31656	R671-509	5YR	07/03/2008	2008-15/103
	31658	R671-510	5YR	07/03/2008	2008-15/103
	31657	R671-512	5YR	07/03/2008	2008-15/103
	31821	R671-513	5YR	08/14/2008	2008-17/78
	31654	R671-514	5YR	07/03/2008	2008-15/104
	31659	R671-515	5YR	07/03/2008	2008-15/104
	31655	R671-516	5YR	07/03/2008	2008-15/105
	31823	R671-517	5YR	08/14/2008	2008-17/78
	31822	R671-518	5YR	08/14/2008	2008-17/79
	31826	R671-519	5YR	08/14/2008	2008-17/79
	31825	R671-520	5YR	08/14/2008	2008-17/79

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	31824	R671-522	5YR	08/14/2008	2008-17/80
<b><u>parolees</u></b>					
Corrections, Administration	31995	R251-103	5YR	10/02/2008	Not Printed
<b><u>patient rights</u></b>					
Human Services, Substance Abuse and Mental Health, State Hospital	31450	R525-2	5YR	05/19/2008	2008-12/55
<b><u>patient safety</u></b>					
Health, Administration	31286	R380-200	NSC	05/05/2008	Not Printed
	31280	R380-210-6	NSC	05/05/2008	Not Printed
<b><u>paying standards</u></b>					
Public Service Commission, Administration	31092	R746-342	5YR	04/01/2008	2008-8/56
<b><u>PCN</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	31358	R414-320	AMD	07/01/2008	2008-10/68
	31979	R414-320-15	EMR	10/01/2008	2008-20/50
<b><u>peace officer</u></b>					
Public Safety, Peace Officer Standards and Training	31720	R728-205-4	NSC	10/01/2008	Not Printed
<b><u>pedestrian</u></b>					
Regents (Board Of), University of Utah, Administration	31695	R805-1	5YR	07/11/2008	2008-15/105
<b><u>peer review</u></b>					
Commerce, Occupational and Professional Licensing	30715	R156-26a	AMD	03/31/2008	2007-23/4
	30715	R156-26a	CPR	03/31/2008	2008-4/35
	31763	R156-26a	AMD	09/23/2008	2008-16/5
<b><u>penalties</u></b>					
Labor Commission, Industrial Accidents	31251	R612-9-1	NSC	05/05/2008	Not Printed
<b><u>per diem allowance</u></b>					
Administrative Services, Finance	31317	R25-5	5YR	04/29/2008	2008-10/143
<b><u>per diem allowances</u></b>					
Administrative Services, Finance	31319	R25-7	5YR	04/29/2008	2008-10/144
	31320	R25-7	AMD	07/01/2008	2008-10/4
<b><u>performance-based compensation program</u></b>					
Education, Administration	31440	R277-113	NEW	07/08/2008	2008-11/69
<b><u>permit</u></b>					
Natural Resources, Wildlife Resources	31399	R657-45	5YR	05/08/2008	2008-11/127
	31050	R657-45-2	AMD	05/08/2008	2008-7/49
<b><u>permits</u></b>					
Environmental Quality, Air Quality	30709	R307-401-14	AMD	02/08/2008	2007-23/42
Natural Resources, Forestry, Fire and State Lands	31896	R652-110	5YR	08/26/2008	2008-18/76
	31112	R652-120	NSC	05/01/2008	Not Printed
Natural Resources, Wildlife Resources	31400	R657-42	5YR	05/08/2008	2008-11/126

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	31049	R657-42-8	AMD	05/08/2008	2008-7/48
Transportation, Motor Carrier, Ports of Entry	31794	R912-14	5YR	08/07/2008	2008-17/83
<b><u>permitting authority</u></b>					
Environmental Quality, Air Quality	30700	R307-215	REP	02/08/2008	2007-23/31
	30706	R307-417	AMD	02/08/2008	2007-23/43
<b><u>persistently dangerous schools</u></b>					
Education, Administration	31036	R277-483	5YR	03/03/2008	2008-7/62
<b><u>personal property</u></b>					
Tax Commission, Property Tax	31418	R884-24P-38	NSC	08/18/2008	Not Printed
	31274	R884-24P-62	NSC	06/23/2008	Not Printed
	30931	R884-24P-62	AMD	03/28/2008	2008-4/30
<b><u>personnel management</u></b>					
Human Resource Management, Administration	31186	R477-1	AMD	07/01/2008	2008-10/79
	31190	R477-5	AMD	07/01/2008	2008-10/90
	31191	R477-6	AMD	07/01/2008	2008-10/91
	31782	R477-6-4	AMD	09/22/2008	2008-16/14
	31194	R477-9	AMD	07/01/2008	2008-10/104
	31211	R477-13	NSC	06/19/2008	Not Printed
	31621	R477-14	AMD	08/21/2008	2008-14/51
<b><u>petroleum</u></b>					
Environmental Quality, Environmental Response and Remediation	31486	R311-200	NSC	06/18/2008	Not Printed
	31495	R311-200	AMD	08/18/2008	2008-12/13
	31487	R311-201	NSC	06/18/2008	Not Printed
	31496	R311-203	AMD	08/18/2008	2008-12/16
	31497	R311-206-3	AMD	08/18/2008	2008-12/19
	31488	R311-210	NSC	06/18/2008	Not Printed
<b><u>physically handicapped persons</u></b>					
Commerce, Administration	31346	R151-3-1	NSC	05/05/2008	Not Printed
<b><u>physicians</u></b>					
Commerce, Occupational and Professional Licensing	31183	R156-67	NSC	05/05/2008	Not Printed
Health, Health Systems Improvement, Primary Care and Rural Health	31779	R434-100	AMD	09/30/2008	2008-16/13
<b><u>pleas</u></b>					
Pardons (Board Of), Administration	31654	R671-514	5YR	07/03/2008	2008-15/104
<b><u>PM10</u></b>					
Environmental Quality, Air Quality	30971	R307-310	5YR	02/08/2008	2008-5/46
	30705	R307-310-2	AMD	02/08/2008	2007-23/40
<b><u>podiatric physician</u></b>					
Commerce, Occupational and Professional Licensing	32002	R156-5a	5YR	10/07/2008	Not Printed

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>podiatrists</u></b> Commerce, Occupational and Professional Licensing	32002	R156-5a	5YR	10/07/2008	Not Printed
<b><u>point-system</u></b> Public Safety, Driver License	31106	R708-3-2	NSC	05/05/2008	Not Printed
<b><u>pools</u></b> Health, Epidemiology and Laboratory Services, Environmental Services	31097	R392-302	AMD	05/22/2008	2008-8/6
<b><u>position classifications</u></b> Human Resource Management, Administration	31188	R477-3	AMD	07/01/2008	2008-10/87
<b><u>post-conviction</u></b> Administrative Services, Finance	31527	R25-14	AMD	08/19/2008	2008-13/5
	31775	R25-14	NSC	10/01/2008	Not Printed
	31363	R25-14	EMR	05/05/2008	2008-10/140
<b><u>postsecondary proprietary school</u></b> Commerce, Consumer Protection	31218	R152-34-10	NSC	05/05/2008	Not Printed
<b><u>POTW</u></b> Environmental Quality, Water Quality	30636	R317-14	NEW	02/04/2008	2007-22/62
<b><u>powersport vehicles</u></b> Commerce, Administration	31355	R151-35-3	NSC	05/05/2008	Not Printed
<b><u>preenterprise</u></b> Regents (Board Of), Administration	31515	R765-555	5YR	06/02/2008	2008-12/64
<b><u>preliminary notice</u></b> Commerce, Occupational and Professional Licensing	31177	R156-38b-703	NSC	05/05/2008	Not Printed
<b><u>prelitigation</u></b> Commerce, Occupational and Professional Licensing	31055	R156-78A	NSC	03/26/2008	Not Printed
<b><u>preneed life insurance standards</u></b> Insurance, Administration	31641	R590-251	NEW	08/25/2008	2008-14/64
<b><u>primary care</u></b> Health, Health Care Financing, Coverage and Reimbursement Policy	31356	R414-310	AMD	07/01/2008	2008-10/66
	31978	R414-310-13	EMR	10/01/2008	2008-20/48
<b><u>prisons</u></b> Corrections, Administration	31996	R251-105	5YR	10/02/2008	Not Printed
<b><u>privacy</u></b> Health, Administration	31455	R380-250	5YR	05/19/2008	2008-12/52
	31484	R495-881	5YR	05/27/2008	2008-12/55
	31485	R495-881	AMD	07/23/2008	2008-12/30
Public Safety, Driver License	31119	R708-36-1	NSC	05/05/2008	Not Printed
<b><u>private schools</u></b> Education, Administration	31040	R277-747	5YR	03/03/2008	2008-7/64

<u>KEYWORD AGENCY</u>	<u>FILE NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE DATE</u>	<u>BULLETIN ISSUE/PAGE</u>
<b><u>private security officers</u></b>					
Commerce, Occupational and Professional Licensing	31182	R156-63	NSC	05/05/2008	Not Printed
<b><u>probable cause</u></b>					
Pardons (Board Of), Administration	31658	R671-510	5YR	07/03/2008	2008-15/103
<b><u>probationers</u></b>					
Corrections, Administration	31995	R251-103	5YR	10/02/2008	Not Printed
<b><u>procedures</u></b>					
Public Service Commission, Administration	31617	R746-210	5YR	06/24/2008	2008-14/143
	31619	R746-240	5YR	06/24/2008	2008-14/144
	31618	R746-340	5YR	06/24/2008	2008-14/144
<b><u>procurement</u></b>					
Administrative Services, Facilities Construction and Management	31098	R23-2	AMD	07/14/2008	2008-8/2
Capitol Preservation Board (State), Administration	30591	R131-1	AMD	02/29/2008	2007-21/11
	30590	R131-4	R&R	02/29/2008	2007-21/13
<b><u>professional</u></b>					
Education, Administration	30976	R277-515-3	NSC	02/27/2008	Not Printed
	31580	R277-515-4	AMD	08/07/2008	2008-13/28
<b><u>professional competency</u></b>					
Education, Administration	31951	R277-106	5YR	09/15/2008	2008-19/78
	30944	R277-502	AMD	03/24/2008	2008-4/6
	31579	R277-502-6	AMD	08/07/2008	2008-13/27
	31038	R277-508	5YR	03/03/2008	2008-7/63
<b><u>professional education</u></b>					
Education, Administration	31444	R277-504	AMD	07/08/2008	2008-11/77
	30878	R277-518	5YR	01/08/2008	2008-3/72
<b><u>professional employer organization licensing</u></b>					
Insurance, Administration	31653	R590-246	NEW	09/11/2008	2008-15/42
<b><u>professional engineers</u></b>					
Commerce, Occupational and Professional Licensing	31175	R156-22-305	NSC	05/05/2008	Not Printed
<b><u>professional geologists</u></b>					
Commerce, Occupational and Professional Licensing	30694	R156-76	AMD	01/08/2008	2007-23/17
<b><u>professional land surveyors</u></b>					
Commerce, Occupational and Professional Licensing	31175	R156-22-305	NSC	05/05/2008	Not Printed
<b><u>professional practices</u></b>					
Education, Administration	31951	R277-106	5YR	09/15/2008	2008-19/78
<b><u>program benefits</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	30922	R414-306	5YR	01/25/2008	2008-4/45

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>programs</u></b>					
Public Service Commission, Administration	31795	R746-404	5YR	08/07/2008	2008-17/81
<b><u>prohibited items and devices</u></b>					
Human Services, Substance Abuse and Mental Health	31089	R523-1	5YR	03/31/2008	2008-8/53
	30767	R523-1	NSC	03/31/2008	Not Printed
Human Services, Substance Abuse and Mental Health, State Hospital	31031	R525-6	NEW	05/01/2008	2008-6/7
<b><u>promotions</u></b>					
Agriculture and Food, Marketing and Development	31007	R65-2	5YR	02/15/2008	2008-5/38
	31008	R65-5	5YR	02/15/2008	2008-5/38
<b><u>proof</u></b>					
Natural Resources, Water Rights	31130	R655-5	5YR	04/08/2008	2008-9/54
<b><u>property claims</u></b>					
Treasurer, Unclaimed Property	30596	R966-1-2	AMD	01/07/2008	2007-22/87
<b><u>property tax</u></b>					
Tax Commission, Property Tax	31418	R884-24P-38	NSC	08/18/2008	Not Printed
	31274	R884-24P-62	NSC	06/23/2008	Not Printed
	30931	R884-24P-62	AMD	03/28/2008	2008-4/30
<b><u>property transactions</u></b>					
Administrative Services, Facilities Construction and Management	31799	R23-22	NSC	10/01/2008	Not Printed
	31607	R23-22	EMR	06/25/2008	2008-14/120
	31606	R23-22	NEW	09/11/2008	2008-14/3
<b><u>prosthetics</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	31505	R414-70	R&R	08/04/2008	2008-12/24
<b><u>provider conduct</u></b>					
Human Services, Administration	31629	R495-876	AMD	08/26/2008	2008-14/53
<b><u>PSD</u></b>					
Environmental Quality, Air Quality	30431	R307-405	AMD	01/11/2008	2007-19/15
<b><u>psychologists</u></b>					
Commerce, Occupational and Professional Licensing	30915	R156-61	AMD	05/08/2008	2008-3/6
	30915	R156-61	CPR	05/08/2008	2008-7/55
<b><u>public assistance overpayments</u></b>					
Human Services, Recovery Services	31563	R527-550	NSC	08/19/2008	Not Printed
<b><u>public assistance programs</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	30938	R414-308	5YR	01/31/2008	2008-4/46
	31976	R414-308	EMR	10/01/2008	2008-20/45
	30927	R414-308-7	AMD	04/01/2008	2008-4/16
Human Services, Recovery Services	30982	R527-928	AMD	04/07/2008	2008-5/26

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b><u>public buildings</u></b>					
Administrative Services, Facilities Construction and Management	31064	R23-14	5YR	03/17/2008	2008-8/50
Capitol Preservation Board (State), Administration	30590	R131-4	R&R	02/29/2008	2007-21/13
Public Safety, Fire Marshal	31746	R710-4-7	NSC	10/01/2008	Not Printed
<b><u>public comments</u></b>					
Environmental Quality, Radiation Control	31171	R313-17	NSC	05/05/2008	Not Printed
<b><u>public education</u></b>					
Education, Administration	31575	R277-437	R&R	08/07/2008	2008-13/16
<b><u>public finance</u></b>					
Money Management Council, Administration	31587	R628-18	NSC	08/25/2008	Not Printed
<b><u>public health</u></b>					
Health, Epidemiology and Laboratory Services, Environmental Services	31446	R392-100-2	AMD	07/17/2008	2008-11/95
	31494	R392-502	AMD	07/22/2008	2008-12/20
<b><u>public hearings</u></b>					
Environmental Quality, Radiation Control	31171	R313-17	NSC	05/05/2008	Not Printed
<b><u>public information</u></b>					
Administrative Services, Administration	31343	R13-2	NSC	05/05/2008	Not Printed
Administrative Services, Archives	31553	R17-5	NEW	08/20/2008	2008-13/2
	31702	R17-5	NSC	08/20/2008	Not Printed
	31554	R17-6	NEW	08/20/2008	2008-13/2
	31555	R17-7	NEW	08/20/2008	2008-13/3
	31556	R17-8	NEW	08/20/2008	2008-13/5
	31703	R17-8-2	NSC	08/20/2008	Not Printed
Human Resource Management, Administration	31187	R477-2	AMD	07/01/2008	2008-10/84
<b><u>public meetings</u></b>					
Natural Resources, Forestry, Fire and State Lands	31706	R652-90-300	AMD	09/10/2008	2008-15/44
<b><u>public petitions</u></b>					
Natural Resources, Forestry, Fire and State Lands	31268	R652-7	NSC	05/05/2008	Not Printed
	31895	R652-7	5YR	08/26/2008	2008-18/76
<b><u>public petitions declaratory rulings</u></b>					
Public Safety, Peace Officer Standards and Training	31719	R728-101	NSC	10/01/2008	Not Printed
<b><u>public records</u></b>					
Career Service Review Board, Administration	31473	R137-2	5YR	05/21/2008	2008-12/50
	31345	R151-2	NSC	05/05/2008	Not Printed
	31385	R151-2-4	AMD	07/08/2008	2008-11/49
	31284	R380-20	NSC	05/05/2008	Not Printed
Natural Resources, Oil, Gas and Mining; Administration	31202	R642-100	NSC	05/05/2008	Not Printed
	31203	R642-200	NSC	05/05/2008	Not Printed

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	31755	R642-200	5YR	07/28/2008	2008-16/71
Natural Resources, Forestry, Fire and State Lands	31259	R652-6	NSC	05/05/2008	Not Printed
Natural Resources, Wildlife Resources	31225	R657-29	NSC	05/05/2008	Not Printed
Regents (Board Of), College of Eastern Utah	31410	R767-1	NSC	08/18/2008	Not Printed
<b><u>public schools</u></b>					
Education, Administration	31518	R277-436	5YR	06/02/2008	2008-12/51
	31519	R277-460	5YR	06/02/2008	2008-12/51
	31443	R277-490	NEW	07/08/2008	2008-11/74
<b><u>public utilities</u></b>					
Public Service Commission, Administration	31373	R746-100	NSC	05/05/2008	Not Printed
	31372	R746-101-4	NSC	05/05/2008	Not Printed
	31369	R746-110	NSC	05/05/2008	Not Printed
	31620	R746-110	5YR	06/24/2008	2008-14/143
	31044	R746-330	5YR	03/07/2008	2008-7/66
	31095	R746-331	5YR	04/01/2008	2008-8/55
	31091	R746-332	5YR	04/01/2008	2008-8/55
	31092	R746-342	5YR	04/01/2008	2008-8/56
	31797	R746-344	5YR	08/07/2008	2008-17/80
	31798	R746-345	5YR	08/07/2008	2008-17/81
	31045	R746-347	5YR	03/07/2008	2008-7/66
	31628	R746-349	AMD	08/25/2008	2008-14/91
	31374	R746-349-3	NSC	05/05/2008	Not Printed
	31781	R746-349-7	NSC	10/01/2008	Not Printed
	31704	R746-360-4	AMD	10/01/2008	2008-15/71
	31371	R746-400-7	NSC	05/05/2008	Not Printed
	31093	R746-402	5YR	04/01/2008	2008-8/56
	31795	R746-404	5YR	08/07/2008	2008-17/81
	31101	R746-405	5YR	04/01/2008	2008-8/57
	31796	R746-406	5YR	08/07/2008	2008-17/82
	31949	R746-600	5YR	09/15/2008	2008-19/81
<b><u>purchase</u></b>					
Education, Administration	31582	R277-606	NEW	08/07/2008	2008-13/31
<b><u>quality improvement</u></b>					
Health, Administration	31286	R380-200	NSC	05/05/2008	Not Printed
	31280	R380-210-6	NSC	05/05/2008	Not Printed
<b><u>quarantine</u></b>					
Agriculture and Food, Plant Industry	31125	R68-14	5YR	04/04/2008	2008-9/52
	31543	R68-16	5YR	06/09/2008	2008-13/147
	31126	R68-16	AMD	07/02/2008	2008-9/11
	31009	R68-17	REP	04/11/2008	2008-5/4
Health, Epidemiology and Laboratory Services, Epidemiology	31099	R386-702-12	AMD	06/11/2008	2008-8/5



<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>rabbits</u></b>					
Natural Resources, Wildlife Resources	31609	R657-6	AMD	08/21/2008	2008-14/69
<b><u>rabies</u></b>					
Health, Epidemiology and Laboratory Services, Epidemiology	31099	R386-702-12	AMD	06/11/2008	2008-8/5
<b><u>radioactive material</u></b>					
Environmental Quality, Radiation Control	30865	R313-15	AMD	03/17/2008	2008-2/10
<b><u>railroads</u></b>					
Transportation, Preconstruction	31066	R930-5	AMD	06/10/2008	2008-8/46
<b><u>rates</u></b>					
Administrative Services, Finance	31317	R25-5	5YR	04/29/2008	2008-10/143
	31321	R25-8	AMD	07/01/2008	2008-10/7
	31982	R25-8	5YR	10/01/2008	2008-20/52
Labor Commission, Industrial Accidents	30594	R612-4-2	AMD	01/01/2008	2007-22/76
Public Service Commission, Administration	31949	R746-600	5YR	09/15/2008	2008-19/81
Workforce Services, Unemployment Insurance	31547	R994-306	5YR	06/10/2008	2008-13/151
	31548	R994-307	5YR	06/10/2008	2008-13/152
<b><u>real estate</u></b>					
Administrative Services, Facilities Construction and Management	31799	R23-22	NSC	10/01/2008	Not Printed
	31607	R23-22	EMR	06/25/2008	2008-14/120
	31606	R23-22	NEW	09/11/2008	2008-14/3
<b><u>real estate appraisals</u></b>					
Commerce, Real Estate	31427	R162-109	NSC	08/18/2008	Not Printed
<b><u>real estate business</u></b>					
Commerce, Real Estate	31003	R162-2-2	AMD	04/07/2008	2008-5/7
	31456	R162-3	AMD	07/30/2008	2008-12/8
	31001	R162-8-4	AMD	04/07/2008	2008-5/10
	31429	R162-10	NSC	08/18/2008	Not Printed
<b><u>reclamation</u></b>					
Natural Resources, Oil, Gas and Mining; Coal	30932	R645-100-200	AMD	03/26/2008	2008-4/23
	31204	R645-100-500	NSC	05/05/2008	Not Printed
	31756	R645-101	5YR	07/28/2008	2008-16/71
	31509	R645-102	5YR	06/02/2008	2008-12/58
	31757	R645-104	5YR	07/28/2008	2008-16/72
	30934	R645-300-100	AMD	03/26/2008	2008-4/24
	30933	R645-301	AMD	03/26/2008	2008-4/25
	31758	R645-401	5YR	07/28/2008	2008-16/72
<b><u>records</u></b>					
Regents (Board Of), University of Utah, Administration	31340	R805-2	NSC	05/05/2008	Not Printed
	31718	R805-2	5YR	07/17/2008	2008-16/75

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>records access</u></b>					
Career Service Review Board, Administration	31473	R137-2	5YR	05/21/2008	2008-12/50
	31327	R765-993	NSC	05/05/2008	Not Printed
Regents (Board Of), College of Eastern Utah	31410	R767-1	NSC	08/18/2008	Not Printed
<b><u>records appeal hearings</u></b>					
Administrative Services, Records Committee	31560	R35-1	NSC	08/19/2008	Not Printed
	31561	R35-1a	NSC	08/19/2008	Not Printed
	31567	R35-2	NSC	08/19/2008	Not Printed
	31938	R35-2-2	NSC	10/01/2008	Not Printed
	31568	R35-3	NSC	08/19/2008	Not Printed
	31570	R35-5-1	NSC	08/19/2008	Not Printed
	31571	R35-6-1	NSC	08/19/2008	Not Printed
<b><u>records appeal hearingss</u></b>					
Administrative Services, Records Committee	31569	R35-4	NSC	08/19/2008	Not Printed
<b><u>records management</u></b>					
Regents (Board Of), Administration	31327	R765-993	NSC	05/05/2008	Not Printed
<b><u>records retention</u></b>					
Administrative Services, Archives	31553	R17-5	NEW	08/20/2008	2008-13/2
	31702	R17-5	NSC	08/20/2008	Not Printed
	31554	R17-6	NEW	08/20/2008	2008-13/2
	31555	R17-7	NEW	08/20/2008	2008-13/3
	31556	R17-8	NEW	08/20/2008	2008-13/5
	31703	R17-8-2	NSC	08/20/2008	Not Printed
<b><u>recreation</u></b>					
Natural Resources, Parks and Recreation	30899	R651-301	AMD	03/10/2008	2008-3/37
<b><u>recreation therapy</u></b>					
Commerce, Occupational and Professional Licensing	31178	R156-40-302e	NSC	05/05/2008	Not Printed
<b><u>recreational therapy</u></b>					
Commerce, Occupational and Professional Licensing	31178	R156-40-302e	NSC	05/05/2008	Not Printed
<b><u>recreational vehicles</u></b>					
Commerce, Administration	31354	R151-14-3	NSC	05/05/2008	Not Printed
<b><u>refugee resettlement program</u></b>					
Workforce Services, Employment Development	31060	R986-300-303	AMD	05/20/2008	2008-7/52
<b><u>regionalization</u></b>					
Environmental Quality, Drinking Water	31157	R309-352	5YR	04/18/2008	2008-10/144
<b><u>registration</u></b>					
Commerce, Consumer Protection	31218	R152-34-10	NSC	05/05/2008	Not Printed
Workforce Services, Unemployment Insurance	31777	R994-403-110c	NSC	10/01/2008	Not Printed

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>rehabilitation</u></b> Education, Rehabilitation	31042	R280-200	5YR	03/03/2008	2008-7/65
<b><u>Rehabilitation Act 1973</u></b> Human Services, Administration	31367	R495-878	NSC	05/05/2008	Not Printed
	31067	R495-878	AMD	06/13/2008	2008-8/23
<b><u>reimbursements</u></b> Administrative Services, Finance	31316	R25-6	5YR	04/29/2008	2008-10/143
<b><u>religious activities</u></b> Tax Commission, Auditing	31531	R865-19S-94	AMD	08/18/2008	2008-13/115
	31272	R865-19S-99	NSC	06/23/2008	Not Printed
	31258	R865-19S-105	AMD	07/01/2008	2008-10/132
	30841	R865-19S-121	AMD	02/25/2008	2008-1/37
<b><u>religious education</u></b> Education, Administration	30881	R277-610	5YR	01/08/2008	2008-3/73
<b><u>relocation benefits</u></b> Administrative Services, Finance	31316	R25-6	5YR	04/29/2008	2008-10/143
<b><u>renewable</u></b> Natural Resources, Geological Survey	30902	R638-2-6	AMD	03/10/2008	2008-3/35
<b><u>repair</u></b> Administrative Services, Fleet Operations	31422	R27-8-1	NSC	08/18/2008	Not Printed
<b><u>reporting</u></b> Health, Health Systems Improvement, Emergency Medical Services	31068	R426-5-3	AMD	06/04/2008	2008-8/17
Labor Commission, Industrial Accidents	31252	R612-10	NSC	05/05/2008	Not Printed
	31565	R612-11	NEW	08/11/2008	2008-13/85
	31734	R612-11	NSC	08/11/2008	Not Printed
	31564	R612-12	NEW	08/11/2008	2008-13/86
	31735	R612-12-2	NSC	08/11/2008	Not Printed
<b><u>reports</u></b> Education, Administration	31520	R277-484	5YR	06/02/2008	2008-12/52
	31005	R277-484	AMD	04/11/2008	2008-5/17
Environmental Quality, Air Quality	31558	R307-150-4	AMD	09/04/2008	2008-13/35
Public Service Commission, Administration	31371	R746-400-7	NSC	05/05/2008	Not Printed
<b><u>reptiles</u></b> Natural Resources, Wildlife Resources	31051	R657-53	AMD	05/08/2008	2008-7/50
	31228	R657-53	NSC	05/05/2008	Not Printed
	31508	R657-53	5YR	06/02/2008	2008-12/61
<b><u>research</u></b> Education, Administration	31578	R277-492	NEW	08/07/2008	2008-13/25
<b><u>residency requirements</u></b> School and Institutional Trust Lands, Administration	31526	R850-3	NSC	08/19/2008	Not Printed

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>residential mortgage loan origination</u></b>					
Commerce, Real Estate	31457	R162-207	AMD	07/30/2008	2008-12/10
	31002	R162-207-6	AMD	04/07/2008	2008-5/12
	31278	R162-208	AMD	06/23/2008	2008-10/50
	31428	R162-209	NSC	08/18/2008	Not Printed
	31004	R162-210-4	AMD	04/07/2008	2008-5/13
<b><u>resorts</u></b>					
Health, Epidemiology and Laboratory Services, Environmental Services	31494	R392-502	AMD	07/22/2008	2008-12/20
<b><u>resource decision</u></b>					
Public Service Commission, Administration	31072	R746-440	NSC	04/11/2008	Not Printed
<b><u>restitution</u></b>					
Pardons (Board Of), Administration	30949	R671-403	5YR	02/04/2008	2008-5/59
<b><u>retirement</u></b>					
Human Resource Management, Administration	31210	R477-12	AMD	07/01/2008	2008-10/110
Public Safety, Peace Officer Standards and Training	31720	R728-205-4	NSC	10/01/2008	Not Printed
<b><u>retirement benefits</u></b>					
Public Service Commission, Administration	31949	R746-600	5YR	09/15/2008	2008-19/81
<b><u>retrofit</u></b>					
Education, Administration	31582	R277-606	NEW	08/07/2008	2008-13/31
<b><u>revocation</u></b>					
Pardons (Board Of), Administration	31655	R671-516	5YR	07/03/2008	2008-15/105
<b><u>right of petition</u></b>					
Natural Resources, Forestry, Fire and State Lands	31110	R652-9-100	NSC	05/01/2008	Not Printed
<b><u>right-of- way</u></b>					
Transportation, Administration	31965	R907-65	5YR	09/22/2008	2008-20/53
<b><u>right-of-way</u></b>					
Transportation, Administration	31962	R907-64	5YR	09/18/2008	2008-20/52
<b><u>risk management</u></b>					
Administrative Services, Risk Management	31347	R37-2	AMD	06/23/2008	2008-10/8
	31150	R37-4	R&R	07/01/2008	2008-9/5
<b><u>roads</u></b>					
Natural Resources, Forestry, Fire and State Lands	31896	R652-110	5YR	08/26/2008	2008-18/76
<b><u>roofs</u></b>					
Administrative Services, Facilities Construction and Management	31064	R23-14	5YR	03/17/2008	2008-8/50
<b><u>rules</u></b>					
Public Service Commission, Administration	31617	R746-210	5YR	06/24/2008	2008-14/143
<b><u>rules and procedures</u></b>					
Health, Administration	31281	R380-1	NSC	05/05/2008	Not Printed

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	31282	R380-5	NSC	05/05/2008	Not Printed
Health, Epidemiology and Laboratory Services, Epidemiology	31099	R386-702-12	AMD	06/11/2008	2008-8/5
Health, Community and Family Health Services, Immunization	31753	R396-100	5YR	07/25/2008	2008-16/67
	31173	R396-100	NSC	07/25/2008	Not Printed
	31100	R396-100-3	AMD	07/29/2008	2008-8/14
Human Resource Management, Administration	31186	R477-1	AMD	07/01/2008	2008-10/79
	31211	R477-13	NSC	06/19/2008	Not Printed
Natural Resources, Wildlife Resources	31224	R657-27-11	NSC	05/05/2008	Not Printed
Public Safety, Driver License	31545	R708-2	R&R	08/08/2008	2008-13/87
	31105	R708-2-25	NSC	05/05/2008	Not Printed
Public Safety, Peace Officer Standards and Training	31739	R728-409	AMD	10/01/2008	2008-16/36
Public Service Commission, Administration	31373	R746-100	NSC	05/05/2008	Not Printed
	31372	R746-101-4	NSC	05/05/2008	Not Printed
	31369	R746-110	NSC	05/05/2008	Not Printed
	31620	R746-110	5YR	06/24/2008	2008-14/143
	31091	R746-332	5YR	04/01/2008	2008-8/55
	31092	R746-342	5YR	04/01/2008	2008-8/56
	31797	R746-344	5YR	08/07/2008	2008-17/80
	31798	R746-345	5YR	08/07/2008	2008-17/81
	31371	R746-400-7	NSC	05/05/2008	Not Printed
	31093	R746-402	5YR	04/01/2008	2008-8/56
	31795	R746-404	5YR	08/07/2008	2008-17/81
	31101	R746-405	5YR	04/01/2008	2008-8/57
<b><u>Rural Broadband Service Fund</u></b>					
Governor, Economic Development	30788	R357-2	NEW	01/30/2008	2007-24/9
	30859	R357-2-7	NSC	01/30/2008	Not Printed
<b><u>rural economic development</u></b>					
Governor, Economic Development	30788	R357-2	NEW	01/30/2008	2007-24/9
	30859	R357-2-7	NSC	01/30/2008	Not Printed
<b><u>safety</u></b>					
Environmental Quality, Radiation Control	30865	R313-15	AMD	03/17/2008	2008-2/10
Labor Commission, Occupational Safety and Health	31244	R614-1	NSC	05/05/2008	Not Printed
	31102	R614-1-4	AMD	05/22/2008	2008-8/30
	31248	R614-3-1	NSC	05/05/2008	Not Printed
Labor Commission, Safety	31246	R616-2	NSC	05/05/2008	Not Printed
	31253	R616-3	NSC	05/05/2008	Not Printed
	30943	R616-3-3	AMD	03/24/2008	2008-4/21
Regents (Board Of), University of Utah, Administration	31695	R805-1	5YR	07/11/2008	2008-15/105
Transportation, Preconstruction	31066	R930-5	AMD	06/10/2008	2008-8/46
<b><u>safety regulations</u></b>					
Transportation, Motor Carrier	30785	R909-19	AMD	02/12/2008	2007-24/26
	31090	R909-75	AMD	05/27/2008	2008-8/45

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>salaries</u></b>					
Human Resource Management, Administration	31191	R477-6	AMD	07/01/2008	2008-10/91
	31782	R477-6-4	AMD	09/22/2008	2008-16/14
<b><u>salary adjustments</u></b>					
Education, Administration	31572	R277-110	AMD	08/07/2008	2008-13/9
<b><u>sales tax</u></b>					
Tax Commission, Auditing	31531	R865-19S-94	AMD	08/18/2008	2008-13/115
	31272	R865-19S-99	NSC	06/23/2008	Not Printed
	31258	R865-19S-105	AMD	07/01/2008	2008-10/132
	30841	R865-19S-121	AMD	02/25/2008	2008-1/37
<b><u>salons</u></b>					
Health, Epidemiology and Laboratory Services, Environmental Services	30612	R392-700	CPR	05/16/2008	2008-7/58
	30612	R392-700	NEW	05/16/2008	2007-22/65
<b><u>sanitation</u></b>					
Health, Epidemiology and Laboratory Services, Environmental Services	31446	R392-100-2	AMD	07/17/2008	2008-11/95
	30612	R392-700	CPR	05/16/2008	2008-7/58
	30612	R392-700	NEW	05/16/2008	2007-22/65
<b><u>scholarship</u></b>					
Education, Administration	31581	R277-526	NEW	08/07/2008	2008-13/29
<b><u>school bus</u></b>					
Education, Administration	31582	R277-606	NEW	08/07/2008	2008-13/31
<b><u>school buses</u></b>					
Education, Administration	30879	R277-600	5YR	01/08/2008	2008-3/72
<b><u>school choice</u></b>					
Education, Administration	31036	R277-483	5YR	03/03/2008	2008-7/62
<b><u>school enrollment</u></b>					
Education, Administration	31574	R277-419	AMD	08/07/2008	2008-13/12
<b><u>school personnel</u></b>					
Education, Administration	31038	R277-508	5YR	03/03/2008	2008-7/63
<b><u>school transportation</u></b>					
Education, Administration	30879	R277-600	5YR	01/08/2008	2008-3/72
<b><u>school year</u></b>					
Education, Administration	31041	R277-751	5YR	03/03/2008	2008-7/65
<b><u>schools</u></b>					
Education, Administration	30848	R277-719	NEW	02/07/2008	2008-1/12
Environmental Quality, Air Quality	30972	R307-801	5YR	02/08/2008	2008-5/47
	30707	R307-801	AMD	02/08/2008	2007-23/45
Public Safety, Driver License	31545	R708-2	R&R	08/08/2008	2008-13/87
	31105	R708-2-25	NSC	05/05/2008	Not Printed

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>science</u></b> Education, Administration	31578	R277-492	NEW	08/07/2008	2008-13/25
<b><u>secure area hearing rooms</u></b> Regents (Board Of), Administration	31492	R765-254	5YR	05/27/2008	2008-12/63
<b><u>secure areas</u></b> Human Services, Substance Abuse and Mental Health, State Hospital	31031	R525-6	NEW	05/01/2008	2008-6/7
<b><u>securities</u></b> Commerce, Securities	31541	R164-31	NEW	08/26/2008	2008-13/8
<b><u>securities regulation</u></b> Commerce, Securities	31541	R164-31	NEW	08/26/2008	2008-13/8
<b><u>security</u></b> Administrative Services, Facilities Construction and Management	31064	R23-14	5YR	03/17/2008	2008-8/50
<b><u>security guards</u></b> Commerce, Occupational and Professional Licensing	31182	R156-63	NSC	05/05/2008	Not Printed
<b><u>self insurance plans</u></b> Labor Commission, Industrial Accidents	31230	R612-3	5YR	04/28/2008	2008-10/149
<b><u>seminars</u></b> Human Services, Substance Abuse and Mental Health	31164	R523-24-7	AMD	07/14/2008	2008-10/116
	31165	R523-24-9	AMD	07/14/2008	2008-10/117
	31353	R523-24-13	NSC	05/05/2008	Not Printed
<b><u>seniors</u></b> Human Services, Aging and Adult Services	31027	R510-105	5YR	02/27/2008	2008-6/26
<b><u>sentinel event</u></b> Health, Administration	31286	R380-200	NSC	05/05/2008	Not Printed
<b><u>server training</u></b> Human Services, Substance Abuse and Mental Health	31166	R523-23-9	AMD	07/14/2008	2008-10/114
	31351	R523-23-13	NSC	05/05/2008	Not Printed
<b><u>settlements</u></b> Labor Commission, Adjudication	31236	R602-2-1	NSC	05/05/2008	Not Printed
	30811	R602-2-4	AMD	02/07/2008	2008-1/14
	31238	R602-3	NSC	05/05/2008	Not Printed
	30810	R602-3-3	AMD	02/07/2008	2008-1/16
	31643	R602-4	EMR	07/01/2008	2008-14/127
Labor Commission, Industrial Accidents	31252	R612-10	NSC	05/05/2008	Not Printed
	31565	R612-11	NEW	08/11/2008	2008-13/85
	31734	R612-11	NSC	08/11/2008	Not Printed
	31564	R612-12	NEW	08/11/2008	2008-13/86
	31735	R612-12-2	NSC	08/11/2008	Not Printed

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>sewage effluent use</u></b> Natural Resources, Water Rights	30947	R655-7	5YR	02/01/2008	2008-4/47
<b><u>sewage treatment</u></b> Environmental Quality, Water Quality	31103	R317-101	5YR	04/02/2008	2008-9/53
<b><u>sewerage</u></b> Public Service Commission, Administration	31044	R746-330	5YR	03/07/2008	2008-7/66
<b><u>shorthand reporter</u></b> Commerce, Occupational and Professional Licensing	31516	R156-74	AMD	07/22/2008	2008-12/7
<b><u>skills tests</u></b> Public Safety, Driver License	31120	R708-37-11	NSC	05/05/2008	Not Printed
<b><u>SLCC</u></b> Regents (Board Of), Salt Lake Community College	31344	R784-1	NSC	05/05/2008	Not Printed
<b><u>SLEAP</u></b> Regents (Board Of), Administration	31405	R765-606	5YR	05/09/2008	2008-11/129
<b><u>social security numbers</u></b> Human Services, Services for People with Disabilities	30877	R539-1-8	AMD	04/01/2008	2008-3/32
	30926	R539-1-8	EMR	01/28/2008	2008-4/38
<b><u>social services</u></b> Human Services, Administration	30773	R495-861	AMD	01/30/2008	2007-24/18
	31629	R495-876	AMD	08/26/2008	2008-14/53
Human Services, Child and Family Services	31721	R512-1-5	NSC	10/01/2008	Not Printed
	30721	R512-50	NSC	01/07/2008	Not Printed
	30718	R512-50	REP	01/07/2008	2007-23/60
	31857	R512-200	5YR	08/20/2008	2008-18/71
	31858	R512-201	5YR	08/20/2008	2008-18/71
	31859	R512-202	5YR	08/20/2008	2008-18/72
	31728	R512-202-2	NSC	10/01/2008	Not Printed
	31860	R512-300	5YR	08/20/2008	2008-18/72
	31729	R512-300	NSC	10/01/2008	Not Printed
	31861	R512-301	5YR	08/20/2008	2008-18/73
	31730	R512-301	NSC	10/01/2008	Not Printed
	31863	R512-305	5YR	08/20/2008	2008-18/74
<b><u>solar</u></b> Natural Resources, Geological Survey	30902	R638-2-6	AMD	03/10/2008	2008-3/35
<b><u>solicitations</u></b> Commerce, Consumer Protection	31216	R152-22-9	NSC	05/05/2008	Not Printed
<b><u>solid waste management</u></b> Environmental Quality, Solid and Hazardous Waste	30990	R315-301	5YR	02/14/2008	2008-5/48
	30986	R315-302	5YR	02/14/2008	2008-5/49



<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	30992	R315-303	5YR	02/14/2008	2008-5/49
	30991	R315-305	5YR	02/14/2008	2008-5/50
	30985	R315-306	5YR	02/14/2008	2008-5/51
	30993	R315-307	5YR	02/14/2008	2008-5/51
	30995	R315-308	5YR	02/14/2008	2008-5/52
	30994	R315-309	5YR	02/14/2008	2008-5/52
	30996	R315-310	5YR	02/14/2008	2008-5/53
	30983	R315-311	5YR	02/14/2008	2008-5/53
	31381	R315-311-2	NSC	08/18/2008	Not Printed
	30997	R315-312	5YR	02/14/2008	2008-5/54
	30998	R315-313	5YR	02/14/2008	2008-5/54
	30999	R315-314	5YR	02/14/2008	2008-5/55
	30989	R315-315	5YR	02/14/2008	2008-5/55
	30988	R315-316	5YR	02/14/2008	2008-5/56
	30984	R315-317	5YR	02/14/2008	2008-5/57
	31382	R315-317-3	NSC	08/18/2008	Not Printed
	30987	R315-318	5YR	02/14/2008	2008-5/57
<b><u>source development</u></b>					
Environmental Quality, Drinking Water	31709	R309-515-6	AMD	09/10/2008	2008-15/26
	31710	R309-515-6	AMD	09/10/2008	2008-15/28
<b><u>source maintenance</u></b>					
Environmental Quality, Drinking Water	31709	R309-515-6	AMD	09/10/2008	2008-15/26
	31710	R309-515-6	AMD	09/10/2008	2008-15/28
<b><u>spas</u></b>					
Health, Epidemiology and Laboratory Services, Environmental Services	31097	R392-302	AMD	05/22/2008	2008-8/6
<b><u>special educators</u></b>					
Education, Administration	31445	R277-525	NEW	07/08/2008	2008-11/82
<b><u>species of concern</u></b>					
Natural Resources, Wildlife Resources	31226	R657-48-7	NSC	05/05/2008	Not Printed
<b><u>speech impaired</u></b>					
Public Service Commission, Administration	31375	R746-510	NSC	05/05/2008	Not Printed
<b><u>speech-language pathology</u></b>					
Commerce, Occupational and Professional Licensing	31397	R156-41	AMD	07/14/2008	2008-11/65
<b><u>speech-language pathology services</u></b>					
Health, Health Care Financing, Coverage and Reimbursement Policy	31644	R414-54	R&R	10/02/2008	2008-14/46
<b><u>speed limits</u></b>					
Regents (Board Of), University of Utah, Administration	31695	R805-1	5YR	07/11/2008	2008-15/105
<b><u>standards</u></b>					
Education, Administration	30976	R277-515-3	NSC	02/27/2008	Not Printed
	31580	R277-515-4	AMD	08/07/2008	2008-13/28

RULES INDEX

<u>KEYWORD</u> AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b><u>state employees</u></b>					
Administrative Services, Finance	31317	R25-5	5YR	04/29/2008	2008-10/143
	31319	R25-7	5YR	04/29/2008	2008-10/144
	31320	R25-7	AMD	07/01/2008	2008-10/4
	31321	R25-8	AMD	07/01/2008	2008-10/7
	31982	R25-8	5YR	10/01/2008	2008-20/52
Human Resource Management, Administration	31190	R477-5	AMD	07/01/2008	2008-10/90
<b><u>state fleet information system</u></b>					
Administrative Services, Fleet Operations	31419	R27-5-2	NSC	08/18/2008	Not Printed
<b><u>state hospital</u></b>					
Human Services, Substance Abuse and Mental Health, State Hospital	31031	R525-6	NEW	05/01/2008	2008-6/7
<b><u>state lands</u></b>					
Community and Culture, Indian Affairs	30912	R230-1	CPR	07/16/2008	2008-11/122
	30912	R230-1	AMD	07/16/2008	2008-3/12
<b><u>state records committee</u></b>					
Administrative Services, Records Committee	31560	R35-1	NSC	08/19/2008	Not Printed
<b><u>State Records Committee</u></b>					
Administrative Services, Records Committee	31567	R35-2	NSC	08/19/2008	Not Printed
<b><u>state records committee</u></b>					
Administrative Services, Records Committee	31938	R35-2-2	NSC	10/01/2008	Not Printed
<b><u>State Records Committee</u></b>					
Administrative Services, Records Committee	31568	R35-3	NSC	08/19/2008	Not Printed
	31569	R35-4	NSC	08/19/2008	Not Printed
	31570	R35-5-1	NSC	08/19/2008	Not Printed
	31571	R35-6-1	NSC	08/19/2008	Not Printed
<b><u>State Records Comsittee</u></b>					
Administrative Services, Records Committee	31561	R35-1a	NSC	08/19/2008	Not Printed
<b><u>state vehicle use</u></b>					
Administrative Services, Fleet Operations	31137	R27-3	AMD	06/17/2008	2008-9/3
<b><u>stipends</u></b>					
Education, Administration	31445	R277-525	NEW	07/08/2008	2008-11/82
<b><u>stocks</u></b>					
Treasurer, Unclaimed Property	30596	R966-1-2	AMD	01/07/2008	2007-22/87
<b><u>stoves</u></b>					
Environmental Quality, Air Quality	31388	R307-302-3	AMD	08/07/2008	2008-11/91
<b><u>student</u></b>					
Education, Administration	31037	R277-485	5YR	03/03/2008	2008-7/63

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>student competency</u></b> Education, Administration	30883	R277-702	5YR	01/08/2008	2008-3/74
<b><u>student eligibility</u></b> Workforce Services, Unemployment Insurance	31777	R994-403-110c	NSC	10/01/2008	Not Printed
<b><u>student financial aid</u></b> Education, Administration	30885	R277-718	5YR	01/08/2008	2008-3/75
<b><u>students</u></b> Education, Administration	30884	R277-709	5YR	01/08/2008	2008-3/75
<b><u>students at risk</u></b> Education, Administration	31518	R277-436	5YR	06/02/2008	2008-12/51
<b><u>substance abuse</u></b> Human Services, Substance Abuse and Mental Health	31166	R523-23-9	AMD	07/14/2008	2008-10/114
	31351	R523-23-13	NSC	05/05/2008	Not Printed
<b><u>substance abuse prevention</u></b> Education, Administration	31519	R277-460	5YR	06/02/2008	2008-12/51
<b><u>suggestions</u></b> Human Services, Substance Abuse and Mental Health, State Hospital	31451	R525-7	5YR	05/19/2008	2008-12/57
<b><u>sulfur dioxide</u></b> Environmental Quality, Air Quality	30970	R307-250	5YR	02/08/2008	2008-5/46
<b><u>superfund</u></b> Environmental Quality, Environmental Response and Remediation	30567	R311-401-2	AMD	01/02/2008	2007-21/59
<b><u>supervision</u></b> Commerce, Occupational and Professional Licensing	31288	R156-1	AMD	06/23/2008	2008-10/30
	30655	R156-1-102a	AMD	01/08/2008	2007-23/3
<b><u>supported employment</u></b> Human Services, Services for People with Disabilities	31084	R539-9	AMD	05/22/2008	2008-8/26
<b><u>surplus property</u></b> Administrative Services, Fleet Operations, Surplus Property	31117	R28-3	5YR	04/04/2008	2008-9/52
<b><u>surveyors</u></b> Commerce, Occupational and Professional Licensing	31175	R156-22-305	NSC	05/05/2008	Not Printed
<b><u>suspension</u></b> Transportation, Administration	31963	R907-67	5YR	09/18/2008	2008-20/53
<b><u>suspensions</u></b> Natural Resources, Wildlife Resources	31223	R657-26	NSC	05/05/2008	Not Printed
<b><u>systems</u></b> Public Safety, Fire Marshal	31085	R710-7	AMD	05/23/2008	2008-8/40

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	31749	R710-7-7	NSC	10/01/2008	Not Printed
<b><u>tanning beds</u></b>					
Health, Epidemiology and Laboratory Services, Environmental Services	30612	R392-700	CPR	05/16/2008	2008-7/58
	30612	R392-700	NEW	05/16/2008	2007-22/65
<b><u>tariffs</u></b>					
Public Service Commission, Administration	31101	R746-405	5YR	04/01/2008	2008-8/57
<b><u>tax credit</u></b>					
Governor, Economic Development	31153	R357-3	NEW	06/18/2008	2008-9/37
<b><u>tax credits</u></b>					
Environmental Quality, Air Quality	31389	R307-121	AMD	08/07/2008	2008-11/87
	30889	R307-121-3	NSC	01/30/2008	Not Printed
Natural Resources, Geological Survey	30902	R638-2-6	AMD	03/10/2008	2008-3/35
<b><u>tax exemptions</u></b>					
Tax Commission, Auditing	31531	R865-19S-94	AMD	08/18/2008	2008-13/115
	31272	R865-19S-99	NSC	06/23/2008	Not Printed
	31258	R865-19S-105	AMD	07/01/2008	2008-10/132
	30841	R865-19S-121	AMD	02/25/2008	2008-1/37
<b><u>tax returns</u></b>					
Tax Commission, Auditing	31458	R865-9I-4	AMD	08/14/2008	2008-12/43
	31530	R865-9I-6	AMD	08/18/2008	2008-13/113
	31459	R865-9I-11	AMD	08/14/2008	2008-12/44
	31460	R865-9I-12	AMD	08/14/2008	2008-12/45
	31463	R865-9I-13	AMD	08/14/2008	2008-12/45
	30916	R865-9I-37	AMD	03/14/2008	2008-3/63
	31413	R865-9I-37	NSC	08/18/2008	Not Printed
	31464	R865-9I-39	AMD	08/14/2008	2008-12/46
	31639	R865-9I-41	NSC	08/25/2008	Not Printed
	31414	R865-9I-42	NSC	08/18/2008	Not Printed
	31415	R865-9I-46	NSC	08/18/2008	Not Printed
	31466	R865-9I-48	AMD	08/14/2008	2008-12/47
	31416	R865-9I-49	NSC	08/18/2008	Not Printed
	31532	R865-9I-50	AMD	08/18/2008	2008-13/114
	31470	R865-9I-52	AMD	08/14/2008	2008-12/48
	30849	R865-9I-53	AMD	02/25/2008	2008-1/36
<b><u>taxation</u></b>					
Tax Commission, Administration	31535	R861-1A-1	AMD	08/18/2008	2008-13/110
	31536	R861-1A-3	AMD	08/18/2008	2008-13/111
	31386	R861-1A-13	NSC	08/18/2008	Not Printed
	31633	R861-1A-16	AMD	09/09/2008	2008-14/96
	30688	R861-1A-20	AMD	01/11/2008	2007-23/68
	31394	R861-1A-22	NSC	08/18/2008	Not Printed
	31634	R861-1A-23	AMD	09/09/2008	2008-14/98
	30589	R861-1A-24	AMD	01/11/2008	2007-21/69

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	31395	R861-1A-24	NSC	08/18/2008	Not Printed
	30717	R861-1A-26	AMD	01/11/2008	2007-23/69
	31635	R861-1A-26	AMD	09/09/2008	2008-14/99
	31638	R861-1A-27	AMD	09/09/2008	2008-14/101
	31403	R861-1A-28	NSC	08/18/2008	Not Printed
	31404	R861-1A-29	NSC	08/18/2008	Not Printed
	31406	R861-1A-30	NSC	08/18/2008	Not Printed
	31407	R861-1A-31	NSC	08/18/2008	Not Printed
	31412	R861-1A-32	NSC	08/18/2008	Not Printed
	30838	R861-1A-40	AMD	02/25/2008	2008-1/32
	30835	R861-1A-42	AMD	02/25/2008	2008-1/33
	30780	R861-1A-43	AMD	01/25/2008	2007-24/24
Tax Commission, Auditing	31632	R865-6F-8	AMD	09/09/2008	2008-14/102
	30913	R865-6F-28	AMD	03/14/2008	2008-3/61
	31534	R865-6F-35	AMD	08/18/2008	2008-13/112
	30842	R865-6F-37	AMD	02/25/2008	2008-1/35
	31533	R865-20T-13	AMD	08/18/2008	2008-13/116
Tax Commission, Motor Vehicle	30844	R873-22M-34	AMD	02/25/2008	2008-1/38
	31264	R873-22M-41	AMD	06/27/2008	2008-10/133
Tax Commission, Motor Vehicle Enforcement	31255	R877-23V-19	AMD	06/27/2008	2008-10/135
Tax Commission, Property Tax	31418	R884-24P-38	NSC	08/18/2008	Not Printed
	31274	R884-24P-62	NSC	06/23/2008	Not Printed
	30931	R884-24P-62	AMD	03/28/2008	2008-4/30
<b><u>taxes</u></b>					
Human Services, Recovery Services	31162	R527-475	AMD	06/25/2008	2008-10/121
	31808	R527-475-1	NSC	10/01/2008	Not Printed
Insurance, Administration	30890	R590-157	5YR	01/10/2008	2008-3/79
<b><u>teacher licensing</u></b>					
Education, Administration	31444	R277-504	AMD	07/08/2008	2008-11/77
	30951	R686-100	5YR	02/04/2008	2008-5/59
<b><u>teachers</u></b>					
Education, Administration	31038	R277-508	5YR	03/03/2008	2008-7/63
	31521	R686-101	5YR	06/02/2008	2008-12/62
	31522	R686-102	5YR	06/02/2008	2008-12/62
<b><u>technology</u></b>					
Education, Administration	31578	R277-492	NEW	08/07/2008	2008-13/25
<b><u>telecommunications</u></b>					
Public Service Commission, Administration	31619	R746-240	5YR	06/24/2008	2008-14/144
	31618	R746-340	5YR	06/24/2008	2008-14/144
	31092	R746-342	5YR	04/01/2008	2008-8/56
	31797	R746-344	5YR	08/07/2008	2008-17/80
	31798	R746-345	5YR	08/07/2008	2008-17/81
	31045	R746-347	5YR	03/07/2008	2008-7/66

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	31628	R746-349	AMD	08/25/2008	2008-14/91
	31374	R746-349-3	NSC	05/05/2008	Not Printed
	31781	R746-349-7	NSC	10/01/2008	Not Printed
	31704	R746-360-4	AMD	10/01/2008	2008-15/71
<b><u>telecommuting</u></b>					
Human Resource Management, Administration	31193	R477-8	AMD	07/01/2008	2008-10/101
	31784	R477-8	AMD	09/22/2008	2008-16/19
	30778	R477-8-5	AMD	01/22/2008	2007-24/16
<b><u>telephone utility regulation</u></b>					
Public Service Commission, Administration	31798	R746-345	5YR	08/07/2008	2008-17/81
<b><u>telephone utility regulations</u></b>					
Public Service Commission, Administration	31618	R746-340	5YR	06/24/2008	2008-14/144
<b><u>telephones</u></b>					
Public Service Commission, Administration	31619	R746-240	5YR	06/24/2008	2008-14/144
<b><u>terminally ill</u></b>					
Corrections, Administration	30803	R251-114	NEW	03/11/2008	2008-1/6
<b><u>tickets</u></b>					
Administrative Services, Fleet Operations	31421	R27-7-1	NSC	08/18/2008	Not Printed
<b><u>time</u></b>					
Labor Commission, Adjudication	31250	R602-1	NSC	05/05/2008	Not Printed
Labor Commission, Antidiscrimination and Labor, Antidiscrimination	31241	R606-1	NSC	05/05/2008	Not Printed
	31242	R606-2	NSC	05/05/2008	Not Printed
Labor Commission, Antidiscrimination and Labor, Fair Housing	31240	R608-1	NSC	05/05/2008	Not Printed
Labor Commission, Antidiscrimination and Labor, Labor	31247	R610-1	NSC	05/05/2008	Not Printed
	31149	R610-1-4	AMD	06/13/2008	2008-9/48
	31245	R610-2	NSC	05/05/2008	Not Printed
	30942	R610-2-6	AMD	03/24/2008	2008-4/19
	31243	R610-3	NSC	05/05/2008	Not Printed
	30876	R610-3-4	EMR	01/03/2008	2008-3/70
	30941	R610-3-4	AMD	03/24/2008	2008-4/20
	31148	R610-3-10	AMD	06/13/2008	2008-9/50
Labor Commission, Industrial Accidents	31235	R612-1	NSC	05/05/2008	Not Printed
<b><u>timeliness</u></b>					
Pardons (Board Of), Administration	31659	R671-515	5YR	07/03/2008	2008-15/104
<b><u>title insurance</u></b>					
Insurance, Administration	31769	R590-187	5YR	07/29/2008	2008-16/70
<b><u>title insurance continuing education</u></b>					
Insurance, Title and Escrow Commission	31337	R592-7	NEW	07/14/2008	2008-10/125
<b><u>title recovery fund assessment</u></b>					
Insurance, Title and Escrow Commission	31341	R592-9	NEW	07/14/2008	2008-10/128

<u>KEYWORD AGENCY</u>	<u>FILE NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE DATE</u>	<u>BULLETIN ISSUE/PAGE</u>
<b><u>tobacco products</u></b>					
Tax Commission, Auditing	31533	R865-20T-13	AMD	08/18/2008	2008-13/116
<b><u>tolls</u></b>					
Transportation Commission, Administration	31810	R940-1	NSC	10/01/2008	Not Printed
<b><u>tollways</u></b>					
Transportation Commission, Administration	31810	R940-1	NSC	10/01/2008	Not Printed
<b><u>towing</u></b>					
Transportation, Motor Carrier	30785	R909-19	AMD	02/12/2008	2007-24/26
<b><u>traffic regulations</u></b>					
Public Safety, Driver License	31437	R708-16	AMD	07/08/2008	2008-11/117
	31592	R708-16-3	NSC	08/25/2008	Not Printed
<b><u>traffic violations</u></b>					
Public Safety, Driver License	31106	R708-3-2	NSC	05/05/2008	Not Printed
<b><u>training</u></b>					
Human Services, Substance Abuse and Mental Health	31164	R523-24-7	AMD	07/14/2008	2008-10/116
	31165	R523-24-9	AMD	07/14/2008	2008-10/117
	31353	R523-24-13	NSC	05/05/2008	Not Printed
Public Service Commission, Administration	31375	R746-510	NSC	05/05/2008	Not Printed
<b><u>training programs</u></b>					
Human Resource Management, Administration	31195	R477-10	AMD	07/01/2008	2008-10/106
<b><u>Transition to Adult Living</u></b>					
Human Services, Child and Family Services	31863	R512-305	5YR	08/20/2008	2008-18/74
<b><u>transportation</u></b>					
Administrative Services, Finance	31319	R25-7	5YR	04/29/2008	2008-10/144
	31320	R25-7	AMD	07/01/2008	2008-10/4
Human Services, Aging and Adult Services	31027	R510-105	5YR	02/27/2008	2008-6/26
Transportation, Administration	31963	R907-67	5YR	09/18/2008	2008-20/53
Transportation, Operations, Maintenance	31693	R918-4	NSC	08/25/2008	Not Printed
	31890	R918-4	5YR	08/25/2008	2008-18/77
Transportation, Preconstruction	31066	R930-5	AMD	06/10/2008	2008-8/46
Transportation Commission, Administration	31810	R940-1	NSC	10/01/2008	Not Printed
<b><u>transportation conformity</u></b>					
Environmental Quality, Air Quality	30971	R307-310	5YR	02/08/2008	2008-5/46
	30705	R307-310-2	AMD	02/08/2008	2007-23/40
<b><u>transportation law</u></b>					
Administrative Services, Facilities Construction and Management	31063	R23-13	5YR	03/17/2008	2008-8/50
<b><u>transportation safety</u></b>					
Transportation, Motor Carrier	30783	R909-1-1	AMD	02/15/2008	2007-24/25

RULES INDEX

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b><u>trauma</u></b> Health, Health Systems Improvement, Emergency Medical Services	31068	R426-5-3	AMD	06/04/2008	2008-8/17
<b><u>trespass</u></b> Natural Resources, Parks and Recreation	31679	R651-620	5YR	07/07/2008	2008-15/97
<b><u>trucking industries</u></b> Tax Commission, Auditing	31632	R865-6F-8	AMD	09/09/2008	2008-14/102
	30913	R865-6F-28	AMD	03/14/2008	2008-3/61
	31534	R865-6F-35	AMD	08/18/2008	2008-13/112
	30842	R865-6F-37	AMD	02/25/2008	2008-1/35
<b><u>trucks</u></b> Transportation, Motor Carrier	30783	R909-1-1	AMD	02/15/2008	2007-24/25
	30785	R909-19	AMD	02/12/2008	2007-24/26
Transportation, Motor Carrier, Ports of Entry	31794	R912-14	5YR	08/07/2008	2008-17/83
<b><u>trusts</u></b> Financial Institutions, Administration	31892	R331-21	5YR	08/25/2008	2008-18/69
<b><u>ultraviolet light safety</u></b> Health, Epidemiology and Laboratory Services, Environmental Services	30612	R392-700	CPR	05/16/2008	2008-7/58
	30612	R392-700	NEW	05/16/2008	2007-22/65
<b><u>unarmed combat</u></b> Sports Authority (Utah), Pete Suazo Utah Athletic Commission	31028	R859-1	AMD	05/01/2008	2008-6/15
	31029	R859-1-302	AMD	05/01/2008	2008-6/16
	31566	R859-1-501	AMD	09/01/2008	2008-13/106
	31585	R859-1-506	AMD	09/01/2008	2008-13/108
	31586	R859-1-509	AMD	09/01/2008	2008-13/109
<b><u>undercover identification</u></b> Public Safety, Criminal Investigations and Technical Services, Criminal Identification	30929	R722-320	NSC	05/14/2008	Not Printed
	31434	R722-320	5YR	05/14/2008	2008-11/127
<b><u>underground storage tanks</u></b> Environmental Quality, Environmental Response and Remediation	31486	R311-200	NSC	06/18/2008	Not Printed
	31495	R311-200	AMD	08/18/2008	2008-12/13
	31487	R311-201	NSC	06/18/2008	Not Printed
	31496	R311-203	AMD	08/18/2008	2008-12/16
	31497	R311-206-3	AMD	08/18/2008	2008-12/19
	31488	R311-210	NSC	06/18/2008	Not Printed
<b><u>underserved</u></b> Health, Health Systems Improvement, Primary Care and Rural Health	31779	R434-100	AMD	09/30/2008	2008-16/13
<b><u>unemployment compensation</u></b> Workforce Services, Unemployment Insurance	31075	R994-106-106	AMD	05/30/2008	2008-8/48
	31467	R994-201	5YR	05/20/2008	2008-12/64



<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	31468	R994-202	5YR	05/20/2008	2008-12/65
	31469	R994-208	5YR	05/20/2008	2008-12/65
	31547	R994-306	5YR	06/10/2008	2008-13/151
	31548	R994-307	5YR	06/10/2008	2008-13/152
	31712	R994-401-203	AMD	09/29/2008	2008-15/79
	31777	R994-403-110c	NSC	10/01/2008	Not Printed
	31711	R994-404-101	AMD	09/29/2008	2008-15/81
	30771	R994-508	AMD	02/15/2008	2007-24/30
	31546	R994-508	5YR	06/10/2008	2008-13/153
	31020	R994-508-117	NSC	03/11/2008	Not Printed
	31071	R994-508-118	NSC	04/14/2008	Not Printed
<b><u>uninsured employers</u></b>					
Labor Commission, Industrial Accidents	31251	R612-9-1	NSC	05/05/2008	Not Printed
<b><u>units</u></b>					
Environmental Quality, Radiation Control	31170	R313-12-1	NSC	05/05/2008	Not Printed
	30774	R313-12-111	AMD	04/11/2008	2007-24/8
	30774	R313-12-111	CPR	04/11/2008	2008-5/34
<b><u>universal individual health application</u></b>					
Insurance, Administration	31335	R590-247	NEW	06/30/2008	2008-10/124
<b><u>universal service</u></b>					
Public Service Commission, Administration	31704	R746-360-4	AMD	10/01/2008	2008-15/71
<b><u>used oil</u></b>					
Environmental Quality, Solid and Hazardous Waste	30907	R315-15-1	AMD	03/13/2008	2008-3/16
	30908	R315-15-10	AMD	03/13/2008	2008-3/19
	30909	R315-15-11	AMD	03/13/2008	2008-3/21
	30910	R315-15-12	AMD	03/13/2008	2008-3/23
	30911	R315-15-17	AMD	03/13/2008	2008-3/29
<b><u>USTAR</u></b>					
Education, Administration	31578	R277-492	NEW	08/07/2008	2008-13/25
<b><u>Utah Housing Opportunity Restricted Account</u></b>					
Commerce, Real Estate	31000	R162-12	NEW	04/07/2008	2008-5/11
<b><u>utilities</u></b>					
Public Service Commission, Administration	31642	R746-800	NEW	08/25/2008	2008-14/95
<b><u>utility regulation</u></b>					
Public Service Commission, Administration	31101	R746-405	5YR	04/01/2008	2008-8/57
<b><u>vacations</u></b>					
Human Resource Management, Administration	31192	R477-7	AMD	07/01/2008	2008-10/95
	31788	R477-7	AMD	09/22/2008	2008-16/16
<b><u>variances</u></b>					
Environmental Quality, Air Quality	30960	R307-102	5YR	02/08/2008	2008-5/40
	31462	R307-102	NSC	06/18/2008	Not Printed

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>vehicle maintenance</u></b>					
Administrative Services, Fleet Operations	31422	R27-8-1	NSC	08/18/2008	Not Printed
<b><u>vehicle replacement</u></b>					
Administrative Services, Fleet Operations	30618	R27-4	AMD	03/06/2008	2007-22/9
	31411	R27-4	NSC	08/18/2008	Not Printed
<b><u>vending machines</u></b>					
Education, Administration	30848	R277-719	NEW	02/07/2008	2008-1/12
<b><u>vendor approval</u></b>					
Administrative Services, Fleet Operations	31422	R27-8-1	NSC	08/18/2008	Not Printed
<b><u>veterinary medicine</u></b>					
Commerce, Occupational and Professional Licensing	31396	R156-28	AMD	07/10/2008	2008-11/56
<b><u>viatical</u></b>					
Insurance, Administration	31523	R590-222	5YR	06/02/2008	2008-12/58
	31500	R590-222	AMD	08/04/2008	2008-12/36
<b><u>victim compensation</u></b>					
Crime Victim Reparations, Administration	31322	R270-1	NSC	05/05/2008	Not Printed
	30593	R270-1-11	AMD	01/02/2008	2007-22/33
	31013	R270-1-22	AMD	05/19/2008	2008-6/3
	31504	R270-1-23	AMD	07/28/2008	2008-12/12
	31529	R270-1-24	AMD	08/11/2008	2008-13/8
<b><u>victims of crime</u></b>					
Crime Victim Reparations, Administration	31322	R270-1	NSC	05/05/2008	Not Printed
	31529	R270-1-24	AMD	08/11/2008	2008-13/8
<b><u>victims of crimes</u></b>					
Crime Victim Reparations, Administration	30593	R270-1-11	AMD	01/02/2008	2007-22/33
	31013	R270-1-22	AMD	05/19/2008	2008-6/3
	31504	R270-1-23	AMD	07/28/2008	2008-12/12
<b><u>violations</u></b>					
Natural Resources, Wildlife Resources	31223	R657-26	NSC	05/05/2008	Not Printed
<b><u>visitors</u></b>					
Human Services, Substance Abuse and Mental Health, State Hospital	31447	R525-4	5YR	05/19/2008	2008-12/56
<b><u>vocational education</u></b>					
Education, Rehabilitation	31042	R280-200	5YR	03/03/2008	2008-7/65
<b><u>wages</u></b>					
Human Services, Recovery Services	31158	R527-300	AMD	09/04/2008	2008-10/118
Labor Commission, Antidiscrimination and Labor, Labor	31247	R610-1	NSC	05/05/2008	Not Printed
	31149	R610-1-4	AMD	06/13/2008	2008-9/48
	31245	R610-2	NSC	05/05/2008	Not Printed
	30942	R610-2-6	AMD	03/24/2008	2008-4/19
	31243	R610-3	NSC	05/05/2008	Not Printed

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	30876	R610-3-4	EMR	01/03/2008	2008-3/70
	30941	R610-3-4	AMD	03/24/2008	2008-4/20
	31148	R610-3-10	AMD	06/13/2008	2008-9/50
Workforce Services, Unemployment Insurance	31469	R994-208	5YR	05/20/2008	2008-12/65
<b><u>waivers</u></b>					
Health, Health Systems Improvement, Primary Care and Rural Health	31779	R434-100	AMD	09/30/2008	2008-16/13
<b><u>warrants</u></b>					
Pardons (Board Of), Administration	31658	R671-510	5YR	07/03/2008	2008-15/103
	31657	R671-512	5YR	07/03/2008	2008-15/103
	31821	R671-513	5YR	08/14/2008	2008-17/78
<b><u>waste disposal</u></b>					
Environmental Quality, Radiation Control	30865	R313-15	AMD	03/17/2008	2008-2/10
Environmental Quality, Solid and Hazardous Waste	30990	R315-301	5YR	02/14/2008	2008-5/48
	30986	R315-302	5YR	02/14/2008	2008-5/49
	30992	R315-303	5YR	02/14/2008	2008-5/49
	30991	R315-305	5YR	02/14/2008	2008-5/50
	30985	R315-306	5YR	02/14/2008	2008-5/51
	30993	R315-307	5YR	02/14/2008	2008-5/51
	30995	R315-308	5YR	02/14/2008	2008-5/52
	30994	R315-309	5YR	02/14/2008	2008-5/52
	30996	R315-310	5YR	02/14/2008	2008-5/53
	30983	R315-311	5YR	02/14/2008	2008-5/53
	31381	R315-311-2	NSC	08/18/2008	Not Printed
	30997	R315-312	5YR	02/14/2008	2008-5/54
	30999	R315-314	5YR	02/14/2008	2008-5/55
	30989	R315-315	5YR	02/14/2008	2008-5/55
	30988	R315-316	5YR	02/14/2008	2008-5/56
	30984	R315-317	5YR	02/14/2008	2008-5/57
	31382	R315-317-3	NSC	08/18/2008	Not Printed
	30987	R315-318	5YR	02/14/2008	2008-5/57
Environmental Quality, Water Quality	30639	R317-1-4	AMD	02/04/2008	2007-22/52
	30637	R317-13	NEW	02/04/2008	2007-22/61
<b><u>waste to energy plant</u></b>					
Environmental Quality, Air Quality	30703	R307-223	AMD	02/08/2008	2007-23/38
	30968	R307-223	5YR	02/08/2008	2008-5/45
<b><u>wastewater</u></b>					
Environmental Quality, Water Quality	30638	R317-3-11	AMD	02/04/2008	2007-22/57
	30636	R317-14	NEW	02/04/2008	2007-22/62
	31103	R317-101	5YR	04/02/2008	2008-9/53
<b><u>water</u></b>					
Public Service Commission, Administration	31044	R746-330	5YR	03/07/2008	2008-7/66
	31095	R746-331	5YR	04/01/2008	2008-8/55

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	31091	R746-332	5YR	04/01/2008	2008-8/55
<b><u>water funding</u></b>					
Natural Resources, Water Resources	30855	R653-2	NEW	02/25/2008	2008-2/20
	30940	R653-2	NSC	02/25/2008	Not Printed
<b><u>water pollution</u></b>					
Environmental Quality, Water Quality	30639	R317-1-4	AMD	02/04/2008	2007-22/52
	30638	R317-3-11	AMD	02/04/2008	2007-22/57
	31584	R317-8	AMD	09/10/2008	2008-13/47
	30948	R317-9	5YR	02/01/2008	2008-4/42
	30637	R317-13	NEW	02/04/2008	2007-22/61
<b><u>water quality</u></b>					
Environmental Quality, Water Quality	30638	R317-3-11	AMD	02/04/2008	2007-22/57
	31103	R317-101	5YR	04/02/2008	2008-9/53
Public Service Commission, Administration	31044	R746-330	5YR	03/07/2008	2008-7/66
<b><u>water rights</u></b>					
Natural Resources, Water Rights	31694	R655-4	AMD	09/10/2008	2008-15/45
	31812	R655-4-5	NSC	10/01/2008	Not Printed
	31130	R655-5	5YR	04/08/2008	2008-9/54
	31431	R655-14	AMD	07/08/2008	2008-11/104
<b><u>waterslides</u></b>					
Health, Epidemiology and Laboratory Services, Environmental Services	31097	R392-302	AMD	05/22/2008	2008-8/6
<b><u>weapons</u></b>					
Human Services, Substance Abuse and Mental Health, State Hospital	31031	R525-6	NEW	05/01/2008	2008-6/7
	31348	R525-6	NSC	05/01/2008	Not Printed
Natural Resources, Parks and Recreation	31012	R651-612	NSC	03/10/2008	Not Printed
<b><u>weed control</u></b>					
Agriculture and Food, Plant Industry	31544	R68-9	5YR	06/09/2008	2008-13/147
	31128	R68-9	AMD	07/02/2008	2008-9/8
<b><u>welfare</u></b>					
Human Services, Recovery Services	31432	R527-3	NSC	08/18/2008	Not Printed
<b><u>well drilling</u></b>					
Natural Resources, Water Rights	31694	R655-4	AMD	09/10/2008	2008-15/45
	31812	R655-4-5	NSC	10/01/2008	Not Printed
<b><u>white-collar contests</u></b>					
Sports Authority (Utah), Pete Suazo Utah Athletic Commission	31028	R859-1	AMD	05/01/2008	2008-6/15
	31029	R859-1-302	AMD	05/01/2008	2008-6/16
	31585	R859-1-506	AMD	09/01/2008	2008-13/108
	31586	R859-1-509	AMD	09/01/2008	2008-13/109
<b><u>wildland fire fund</u></b>					
Natural Resources, Forestry, Fire and State Lands	31108	R652-121	NSC	05/01/2008	Not Printed

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>wildland urban interface</u></b> Natural Resources, Forestry, Fire and State Lands	31109	R652-122-100	NSC	05/01/2008	Not Printed
<b><u>wildlife</u></b> Natural Resources, Wildlife Resources	31219	R657-2	NSC	05/05/2008	Not Printed
	31047	R657-3	5YR	03/11/2008	2008-7/65
	31220	R657-3	NSC	05/05/2008	Not Printed
	31053	R657-3	AMD	05/08/2008	2008-7/45
	30829	R657-5	AMD	02/07/2008	2008-1/18
	31609	R657-6	AMD	08/21/2008	2008-14/69
	30777	R657-12	AMD	01/22/2008	2007-24/19
	31221	R657-12-1	NSC	05/05/2008	Not Printed
	30676	R657-13	AMD	01/07/2008	2007-23/61
	31048	R657-13-3	AMD	05/08/2008	2008-7/47
	30904	R657-13-4	AMD	03/10/2008	2008-3/43
	31611	R657-16	AMD	08/21/2008	2008-14/70
	31807	R657-19	5YR	08/12/2008	2008-17/77
	31222	R657-22-1	NSC	05/05/2008	Not Printed
	30828	R657-23	AMD	02/07/2008	2008-1/25
	31613	R657-23	AMD	08/21/2008	2008-14/73
	30955	R657-23-5	AMD	04/07/2008	2008-5/31
	31223	R657-26	NSC	05/05/2008	Not Printed
	31224	R657-27-11	NSC	05/05/2008	Not Printed
	30906	R657-33	AMD	03/10/2008	2008-3/44
	31398	R657-34	5YR	05/08/2008	2008-11/125
	31401	R657-37	5YR	05/08/2008	2008-11/126
	31400	R657-42	5YR	05/08/2008	2008-11/126
	31049	R657-42-8	AMD	05/08/2008	2008-7/48
	31051	R657-53	AMD	05/08/2008	2008-7/50
	31228	R657-53	NSC	05/05/2008	Not Printed
	31508	R657-53	5YR	06/02/2008	2008-12/61
	31608	R657-55	AMD	08/21/2008	2008-14/75
	31610	R657-57	NEW	08/21/2008	2008-14/77
	30903	R657-58	NEW	03/10/2008	2008-3/47
	31052	R657-58	NSC	03/26/2008	Not Printed
	31612	R657-59	NEW	08/21/2008	2008-14/80
	31806	R657-59	NSC	10/01/2008	Not Printed
	31625	R657-59	EMR	06/27/2008	2008-14/129
	31623	R657-60	NEW	08/21/2008	2008-14/88
	31805	R657-60	EMR	08/13/2008	2008-17/73
	31624	R657-60	EMR	06/27/2008	2008-14/137
	32004	R657-60	EMR	10/10/2008	Not Printed
<b><u>wildlife law</u></b> Natural Resources, Wildlife Resources	30777	R657-12	AMD	01/22/2008	2007-24/19
	31221	R657-12-1	NSC	05/05/2008	Not Printed

RULES INDEX

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
	30676	R657-13	AMD	01/07/2008	2007-23/61
	31048	R657-13-3	AMD	05/08/2008	2008-7/47
	30904	R657-13-4	AMD	03/10/2008	2008-3/43
	31222	R657-22-1	NSC	05/05/2008	Not Printed
	31224	R657-27-11	NSC	05/05/2008	Not Printed
	31610	R657-57	NEW	08/21/2008	2008-14/77
	30903	R657-58	NEW	03/10/2008	2008-3/47
	31052	R657-58	NSC	03/26/2008	Not Printed
	31612	R657-59	NEW	08/21/2008	2008-14/80
	31623	R657-60	NEW	08/21/2008	2008-14/88
	32004	R657-60	EMR	10/10/2008	Not Printed
	31624	R657-60	EMR	06/27/2008	2008-14/137
	31805	R657-60	EMR	08/13/2008	2008-17/73
<b><u>wildlife permits</u></b>					
Natural Resources, Wildlife Resources	31608	R657-55	AMD	08/21/2008	2008-14/75
<b><u>witness fees</u></b>					
Labor Commission, Adjudication	31250	R602-1	NSC	05/05/2008	Not Printed
<b><u>woodburning</u></b>					
Environmental Quality, Air Quality	31388	R307-302-3	AMD	08/07/2008	2008-11/91
<b><u>workers' compensation</u></b>					
Administrative Services, Risk Management	31347	R37-2	AMD	06/23/2008	2008-10/8
Labor Commission, Adjudication	31236	R602-2-1	NSC	05/05/2008	Not Printed
	30811	R602-2-4	AMD	02/07/2008	2008-1/14
	31238	R602-3	NSC	05/05/2008	Not Printed
	30810	R602-3-3	AMD	02/07/2008	2008-1/16
	31643	R602-4	EMR	07/01/2008	2008-14/127
Labor Commission, Industrial Accidents	31235	R612-1	NSC	05/05/2008	Not Printed
	31234	R612-2	5YR	04/28/2008	2008-10/148
	31333	R612-2-5	AMD	07/01/2008	2008-10/130
	31230	R612-3	5YR	04/28/2008	2008-10/149
	30594	R612-4-2	AMD	01/01/2008	2007-22/76
	31229	R612-5	5YR	04/28/2008	2008-10/149
	31231	R612-7	5YR	04/28/2008	2008-10/150
	31251	R612-9-1	NSC	05/05/2008	Not Printed
	31252	R612-10	NSC	05/05/2008	Not Printed
	31565	R612-11	NEW	08/11/2008	2008-13/85
	31734	R612-11	NSC	08/11/2008	Not Printed
	31564	R612-12	NEW	08/11/2008	2008-13/86
	31735	R612-12-2	NSC	08/11/2008	Not Printed
Workforce Services, Unemployment Insurance	31711	R994-404-101	AMD	09/29/2008	2008-15/81
<b><u>working toward employment</u></b>					
Workforce Services, Employment Development	31034	R986-400-406	AMD	05/01/2008	2008-6/20

<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>youth</u></b> Human Services, Administration, Administrative Services, Licensing	31017	R501-16	5YR	02/22/2008	2008-6/25
<b><u>youth corrections</u></b> Human Services, Recovery Services	31563	R527-550	NSC	08/19/2008	Not Printed
<b><u>zoological animals</u></b> Natural Resources, Wildlife Resources	31047	R657-3	5YR	03/11/2008	2008-7/65
	31220	R657-3	NSC	05/05/2008	Not Printed
	31053	R657-3	AMD	05/08/2008	2008-7/45