UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed December 2, 2008, 12:00 a.m. through December 15, 2008, 11:59 p.m.

Number 2009-1
January 1, 2009

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The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah State Government. The Department of Administrative Services, Division of Administrative Rules produces the *Bulletin* under authority of Section 63G-3-402, *Utah Code Annotated* 1953.

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

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

Division of Administrative Rules, Salt Lake City 84114

Printed in the United States of America

Library of Congress Cataloging-in-Publication Data

Utah state bulletin.
Semimonthly.
1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.
I. Utah. Office of Administrative Rules.

KFU440.A73S7
348.792'025--DDC 85-643197

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SPECIAL NOTICES

Alcoholic Beverage Control
Administration

2009 Alcoholic Beverage Control Commission Meeting Schedule

Public notice is hereby given of the proposed 2009 calendar year meeting schedule for the Utah Alcoholic Beverage Control Commission. The Commission meets monthly at the department's administrative office located at 1625 South 900 West in Salt Lake City, Utah. Meetings are normally held the fourth Wednesday of each month at 9:00 a.m. with the meetings in November and December held the third Wednesday at 9:00 a.m. to accommodate for the holiday season. Meeting dates and times are subject to change. ABC Commission meetings are open to the public.

To confirm meeting dates and times, contact Sharon Mackay at (801) 977-6801.

Health
Health Care Financing, Coverage and Reimbursement Policy

Notice for February 2009 Medicaid Rate Changes

Effective February 1, 2009, 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. It is not anticipated that these rate changes will have a substantial fiscal impact. All rate changes are posted to the web and can be viewed at: http://health.utah.gov/medicaid/stplan/bcrp.htm

End of the Special Notices Section

NOTICES OF
PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between December 2, 2008, 12:00 a.m., and December 15, 2008, 11:59 p.m. are included in this, the January 1, 2009, 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 February 2, 2009. 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 May 1, 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.

The Proposed Rules Begin on the Following Page.

Administrative Services, Administration
R13-3
Americans with Disabilities Act Grievance Procedures

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32204
FILED: 12/09/2008, 15:34

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As part of the five-year review process, the department asked the Division of Risk Management to review this rule and determine if changes were required. Risk Management responded with several changes. This amendment also makes wording changes to improve the structure and readability of the rule.

SUMMARY OF THE RULE OR CHANGE: In Section R13-3-2, the amendment updates the definitions of "disability", "major life activity", and "qualified individual with a disability". In Subsection R13-3-3(1), the amendment removes obsolete language pertaining to complaints made in 1992. This amendment reorders the language in Subsections R13-3-4(3) and R13-3-6(5) to make the rule read properly. In these subsections, one of the triggers for consultation is changed from "reclassification or reallocation in grade" to "reassignment to a different position".

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-1-105.5, Subsection 63G-3-201(3), and 28 CFR 35.107

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This amendment has no impact to the state budget. It clarifies and updates existing language. It does not change the complaint procedure, investigation procedure, or appeals procedure.

❖ LOCAL GOVERNMENTS: This amendment has no impact on local governments. The complaint procedure is available to individuals, not local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This amendment has no impact to small businesses or persons other than businesses. The amendment clarifies and updates existing language. It does not change the complaint procedure, investigation procedure, or appeals procedure.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment makes no change in compliance costs for affected persons. The amendment clarifies and updates existing language. It does not change the complaint procedure, investigation procedure, or appeals procedure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule has no impact on businesses. It provides a procedure for individuals to follow to file an ADA complaint. It does not substantively change the complaint procedure, or appeals procedure that individuals would use to pursue a complaint. Kimberly K. Hood, Executive Director

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

ADMINISTRATIVE SERVICES
ADMINISTRATION
Room 3120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Kenneth A. Hansen at the above address, by phone at 801-538-3777, by FAX at 801-538-1773, or by Internet E-mail at khansen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/02/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/09/2009

AUTHORIZED BY: Kimberly K Hood, Executive Director

R13. Administrative Services, Administration.
R13-3. Americans with Disabilities Act Grievance Procedures.
R13-3-2. Definitions.

(1) "ADA Coordinator" means the employee assigned by the executive director the responsibility for investigating and facilitating prompt and equitable resolution of complaints filed by qualified persons with disabilities.

(2) "Department" means the department of administrative services.

(3) "Director" means the head of the division of the department of administrative services affected by a complaint filed under this rule.

(4) "Disability" means, with respect to a qualified individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual compared to the average person in the general population, taking into account mitigating measure; a record of such an impairment; or being regarded as having such an impairment.

(5) "Executive Director" means the executive director of the department.

(6) "Major life activities" means activities that are of essential importance to daily life, [~~functions~~]such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(7) "Qualified Individual with a Disability" means an individual with a disability, who with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Department of Administrative Services. A "qualified individual with a disability" also includes an employee or applicant with an ADA-qualifying disability, who can perform the essential functions of his or her

actual or desired position, with or without a reasonable accommodation.

R13-3-3. Filing of Complaints.

(1) Any qualified individual with a disability may file a complaint within 60 days of the alleged noncompliance with the provisions Title II of the Americans with Disabilities Act of 1990 or the federal regulations promulgated thereunder. Complaints shall be filed within 60 days to assure prompt, effective assessment and consideration of the facts and to allow time to pursue other available remedies, if necessary. [~~However, any complaint alleging an act of discrimination occurring between January 26, 1992, and the effective date of this rule may be filed within 60 days of the effective date of this rule.~~]The filing of a complaint or of a subsequent appeal is authorization by the complainant to allow necessary parties to review all relevant information, including records classified as private or controlled under the Government Records Access and Management Act (Section 63G-2-101) and information otherwise protected by statute, rule, regulation, or other law.

(2) The complaint shall be filed with the ADA Coordinator in writing or in another accessible format suitable to the complainant.

(3) Each complaint shall:

(a) include the complainant's name and address;

(b) include the nature and extent of the individual's disability;

(c) describe the department's alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;

(d) describe the action and accommodation desired; and

(e) be signed by the complainant or by his legal representative.

(3) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

(4) If the complaint is not in writing, the ADA coordinator shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

R13-3-4. Investigation of Complaints.

(1) The ADA coordinator shall investigate complaints to the extent necessary to assure all relevant facts are collected and documented. This may include gathering all information listed in Subsection R13-3-3(3) of this rule if it is not made available by the complainant.

(2) The ADA coordinator may seek assistance from the Attorney General's staff, and the department's human resource and budget staff in determining what action, if any, should be taken on the complaint. The ADA coordinator may also consult with the director of the affected division in making a recommendation.

(3) The ADA coordinator shall consult with representatives from other state agencies that could be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General [~~Before~~]before making any recommendation that would:

____(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

____(b) require facility modifications; or

____(c) require reassignment to a different position[~~reclassification or reallocation in grade; the coordinator shall consult with representatives from other state agencies that could be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General~~].

R13-3-5. Recommendation and Decision.

(1) Within 15 working days after receiving the complaint, the ADA coordinator shall recommend to the director what action, if any, should be taken on the complaint. The recommendation shall be in writing or in another accessible format suitable to the complainant.

(2) If the ADA coordinator is unable to make a recommendation within the 15 working day period, he shall notify the complainant in writing or in another accessible format suitable to the complainant stating why the recommendation is delayed and what additional time is needed.

(3) The director may confer with the ADA coordinator and the complainant and may accept or modify the recommendation to resolve the cause of the complaint. The director shall decide within 15 working days. The director shall take all reasonable steps to implement his decision. The decision shall be in writing or in another accessible format suitable to the complainant.

R13-3-6. Appeals.

(1) The complainant may appeal the director's decision to the executive director within ten working days from the receipt of the decision.

(2) The appeal shall be in writing or in another accessible format reasonably suited to the complainant's ability.

(3) The executive director may name a designee to assist on the appeal. The ADA coordinator may not also be the executive director's designee for the appeal.

(4) The appeal shall describe in sufficient detail why the decision does not meet the complainant's needs without undue hardship to the department.

(5) The executive director or designee shall review the ADA coordinator's recommendation, the director's decision, and the points raised on appeal prior to reaching a decision. The executive director may direct additional investigation as necessary. The executive director shall consult with representatives from other state agencies that would be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General [~~Before~~]before making any decision that would:

____(a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

____(b) require facility modifications; or

____(c) require reassignment to a different position[~~reclassification or reallocation in grade; the executive director shall consult with representatives from other state agencies that would be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General~~].

(6) The executive director shall issue his decision within 15 working days after receiving the appeal. The decision shall be in writing or in another accessible format suitable to the complainant.

(7) If the executive director or his designee is unable to reach a decision within the 15 working day period, he shall notify the individual in writing or by another accessible format suitable to the complainant why the decision is being delayed and the additional time needed to reach a decision.

R13-3-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under:

(a) the [~~State~~]state Anti-Discrimination Complaint Procedures, Section 35A-5-107, and Section 67-19-32;

(b) the Federal ADA Complaint Procedures, 28 CFR 35.170 through 28 CFR 35.178; or

(c) any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: grievance procedures, disabled persons
Date of Enactment or Last Substantive Amendment: [~~1993~~]2009
Notice of Continuation: December 10, 2007
Authorizing, and Implemented or Interpreted Law: 63A-1-105.5; 63G-3-201(3); 28 CFR 35.107

♦ ♦

Administrative Services, Fleet Operations
R27-1-2
Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32189
FILED: 12/03/2008, 08:17

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change updates eight definitions and corrects references to Title 63.

SUMMARY OF THE RULE OR CHANGE: This amendment adds a definition for "Standard State Fleet Vehicle", "ACD Codes", "Driver Eligibility Board", "Drivers License Points", "Citizen Complaints", and "Moving Violation"; updates language regarding Commute and Take-home vehicles; and updates references to Title 63 that has recently been recodified (H.B. 63, 2008 General Session). (DAR NOTE: H.B. 63 (2008) is found at Chapter 382, Laws of Utah 2008, and was effective 05/05/2008.)

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This amendment adds six definitions and updates two others. There will be no fiscal impact on the state budget.

❖ LOCAL GOVERNMENTS: This amendment adds six definitions and updates two others. There will be no fiscal impact on local government.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This amendment adds six definitions and updates two others. There will be no fiscal impact on small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed changes in definitions will have no compliance cost for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses. Kimberly Hood, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Brian Fay at the above address, by phone at 801-538-3502, by FAX at 801-538-1773, or by Internet E-mail at bfay@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 02/02/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/09/2009

AUTHORIZED BY: Margaret Chambers, Director

R27. Administrative Services, Fleet Operations.
R27-1. Definitions.
R27-1-2. Definitions.

In addition to the terms defined in Section 63A-9-101, as used in Title 63A, Chapter 9, or these rules the following terms are defined.

(1) "Accident" means any occurrence, in which a state vehicle is involved in a mishap resulting in harm or injury to persons, or damage to property, regardless of total cost of treatments or repairs. It may also be referred to as an incident.

(2) "Accident Review Committee (ARC)" means the panel formed by each agency to review accidents in which agency employees are involved and make a determination as to whether or not said accidents were preventable.

(3) "ACD Codes" means the American Association of Motor Vehicle Administrators Code Dictionary Codes.

(4)[~~(3)~~] "Agency" has the same meaning as provided in Section 63A-9-101(1)(a),(b), and (c).

(5)[~~(4)~~] "Agency Motor Vehicle Policy (AMV)" means any policy written by an agency that covers any agency-specific needs involving the use of a state vehicle that are not addressed by state vehicle rules. Agencies shall not adopt policies that are less restrictive than the State vehicle rules.

(6)[~~(5)~~] "Alternative Fuel Vehicles (AFV)"means any vehicle designed and manufactured by an original equipment manufacturer or a converted vehicle designed to operate either on a dual-fuel, flexible-

fuel, or dedicated mode while using fuels other than gasoline or diesel. Examples of alternative fuel types are electricity, bio-diesel, fossil-fuel hybrids, compressed natural gas, propane, hydrogen, methanol, ethanol, and any other vehicle fuel source approved by the Federal government's Department of Energy (DOE). AFVs shall be identified and tracked in DFO's fleet information system.

(7)[~~(6)~~] "Authorized Driver" means any employee, as defined in Section [~~63-30d-102~~]63G-7-102, of an agency who has been identified by the agency in DFO's Fleet Information System as having the authority, within his or her scope of employment, to operate a state vehicle on the agency's behalf, who holds a valid driver license, and has completed the specific training and other criteria required by DFO, Risk Management or employing agency for the vehicle type that will be operated. An Authorized Driver may also be referred to as operator, employee or customer.

(8)[~~(7)~~] "Authorized Passenger" means any state employee acting within the scope of his or her employment, or any other person or animal whose transport is either necessary for the performance of the authorized driver's employment duties, or has been pre-approved by the appropriate department head to accompany an authorized driver.

(9)[~~(8)~~] "Capital only lease vehicle" means any vehicle with a lease designed to recover depreciation cost, (vehicle cost less salvage value spread over the estimated useful life of the vehicle, less the incremental cost of Alternative Fuel Configuration), plus overhead costs only. Capital only leases are subject to DFO approval.

(10) "Citizen Complaints" means complaints lodged by citizens through the DFO website.

(11)[~~(9)~~] "Commute Use" means an employee driving a state vehicle from the employee's place of business to the employee's place of residence[~~, until the start of the next business day for~~] more than five calendar days per month.

(12)[~~(10)~~] "Compressed Natural Gas Vehicle (CNG)" means any vehicle that may be fueled with compressed natural gas.

(13)[~~(11)~~] "Department" means the Department of Administrative Services.

(14)[~~(12)~~] "Division" has the same meaning as provided by Section 63A-9-101[~~(3)~~](4).

(15) "Driver Eligibility Board (DEB)" means the panel formed for the purpose of determining a state vehicle driving privileges.[~~(13) "Driving Privilege Review Board (DPRB)" means the panel formed for the purpose of reviewing Accident Review Committee (ARC) decisions regarding the suspension, withdrawal or revocation of the state vehicle driving privilege.~~]

(16) "Drivers License Points" means points placed on a drivers record by the Department of Motor Vehicles in response to driving violations.

(17)[~~(14)~~] "Emergency Vehicle" means any state vehicle which is primarily used for the purpose of providing law enforcement and public safety services as defined in Section[~~-53-12-102(3)(a) and (b)~~] 41-6a-102(3), or fire service, or emergency medical services.

(18)[~~(15)~~] "Expansion vehicle" means any vehicle purchased when an agency requires an additional vehicle in order to complete the duties assigned to the requesting agency and will increase the size of the state fleet. The purchase of an expansion vehicle requires legislative approval.

(19)[~~(16)~~] "Extreme Duty Vehicle" a designation used for preventive maintenance purposes, means, but is not limited to, emergency vehicles and vehicles driven primarily off-road.

(20)[~~(17)~~] "Feature" means any option or accessory that is available from the vehicle manufacturer.

(21)[~~(18)~~] "Fixed costs" means, for the purposes of this rule, costs including depreciation, overhead, licensing, betterment, insurance, and title costs, as well as registration fees.

(22)[~~(19)~~] "Fleet Vehicle Advisory Committee" means the panel formed for the purpose of advising DFO, after input from user agencies, as to the vehicle, included features, and equipment that will constitute the standard vehicle for each class in the fleet.

(23)[~~(20)~~] "FO number" means a vehicle specific number assigned to each state vehicle for tracking purposes.

(24)[~~(21)~~] "Fuel Network" means the state program that provides an infrastructure for fueling state vehicles.

(25)[~~(22)~~] "Full Service Lease" means a type of lease designed to recover depreciation costs, overhead costs and all variable costs.

(26)[~~(23)~~] "Heavy-duty Vehicle" means any motor vehicle having a gross vehicle weight range (GVWR) greater than 8,500 pounds. In addition to vehicles licensed for on road use, includes non-road vehicles, as defined in R27-1-2[~~(31)~~](30), with a GVWR greater than 8,500 pounds. Heavy-duty vehicles shall be tracked in DFO's fleet information system.

(27)[~~(24)~~] "Light-duty Vehicle" means any motor vehicle having a gross vehicle weight rating (GVWR) of 8,500 pounds or less. In addition to vehicles licensed for on road use, includes non-road vehicles, as defined in R27-1-2[~~(31)~~](30), with a GVWR of 8.500 pounds or less. Light-duty vehicles shall be tracked in DFO's fleet information system.

(28)[~~(25)~~] "Miscellaneous Equipment" means any equipment, enhancement or accessory that is installed on or in a motor vehicle by persons other than the original vehicle manufacturer, and other non-fleet related equipment. Includes, but is not limited to, light bars, 800 MHz radios, transits, surveying equipment, traffic counters, semaphores, and diagnostic related equipment. Miscellaneous Equipment shall be tracked in DFO's fleet information system.

(29)[~~(26)~~] "Motor Pool" generally, means any vehicle that is made available to agencies for lease on a short-term basis.

(30)[~~(27)~~] "Motor Vehicle" has the same meaning as provided by Section 63A-9-101(6)[~~(a) and (b)~~].

(31)[~~(28)~~] "Motor Vehicle Review Committee (MVRC)" means the panel formed to advise the Division of Fleet Operations (DFO), as required by Subsection 63A-9-301(1). The duties of the MVRC are as specified in Section 63A-9-302.

(32) "Moving Violation" means an infringement of the law while operating a moving vehicle.

(33)[~~(29)~~] "Non-Preventable Accident" means any occurrence involving an accident/incident in which everything that could have been reasonably done to prevent it was done and the accident/incident still occurred. Non-preventable accidents shall include vandalism of state vehicles being used to conduct state business.

(34)[~~(30)~~] "Non-road vehicle" means a vehicle, regardless of GVWR, that is not licensed for on-road use. Includes, but is not limited to, vehicles used principally for construction and other non-transportation purposes. Golf carts, farm tractors, snowmobiles, forklifts and boats are examples of vehicles in this category. Non-road vehicles shall be tracked in DFO's fleet information system.

(35)[~~(31)~~] "Other Equipment" means vehicles and equipment not specifically identified in other standard reporting categories.

(36)[~~(32)~~] "Personal Use" means the use of a state vehicle to conduct an employee's personal affairs, not related to state business.

(37)[~~(33)~~] "Preventable Accident" means any occurrence involving a state vehicle, which results in property damage and/or personal injury, regardless of who was injured, what property was damaged, to what extent, or where it occurred, in which the authorized

driver in question failed to do everything that could have reasonably been done to prevent it.

(a) Preventable accidents are not limited to collisions.

(b) As used in this rule, "preventable accidents" include, but are not limited to: damage to the interior of the state vehicle due to improperly locked doors, smoke or burn damage caused by smoking in the vehicle or lack of general care of the vehicles interior.

(38)[~~(34)~~] "Preventive Maintenance (PM)" means vehicle services that are conducted at regular time intervals to deter mechanical breakdowns, including, but not limited to, lube, oil and filter changes.

(39)[~~(35)~~] "Regular Duty Vehicle" a designation used for preventive maintenance purposes, means a vehicle that is driven primarily on paved roads under normal driving conditions.

(40)[~~(36)~~] "Replacement cycle" means the criteria established to determine when the replacement of a state vehicle is necessary. A replacement cycle has a time and mileage element, and is established according to vehicle type and use.

(41)[~~(37)~~] "Replacement vehicle" means a vehicle purchased to replace a state vehicle that has met replacement cycle criteria.

(42)[~~(38)~~] "Service Level Agreement (SLA)" means an agreement, signed annually, between an agency and DFO in which the agency agrees to follow all rules, policies and procedures published by DFO concerning the use of state vehicles. This document also clearly defines the level of service between DFO and agencies.

(43) "Standard State Fleet Vehicle" is the vehicle designated by DFO as the default replacement vehicle for the state.

(44)[~~(39)~~] "State of Utah Fuel Card" means a purchase card issued to vehicles by the fuel network program, to be used when purchasing fuel. Fluids and minor miscellaneous items that may also be purchased with the "State of Utah Fuel Card" cannot exceed the monthly monetary limits placed on such purchases by DFO/Fuel Network, unless otherwise authorized.

(45)[~~(41)~~] "State vehicle" for the purposes of this rule, has the same meaning as provided by Subsection 63A-9-101(7).

(46)[~~(40)~~] "Take-home vehicle" means a state vehicle assigned to be driven to and from an employee's place of residence and their assigned work location for more than five calendar days per month[~~ and the employee's use of the vehicle is a working condition benefit and not a taxable fringe benefit under the provisions of IRS bulletin 15-B~~].

(47)[~~(42)~~] "Unique Motorized Equipment" (UME) means high-cost vehicles and equipment such as trains; locomotives; airplanes; jets; mobile power stations and helicopters. Unique equipment shall be tracked in DFO's fleet information system.

(48)[~~(43)~~] "Variable costs" means costs including, but are not limited to fuel, oil, tires, services, repairs, maintenance and preventive maintenance.

(49)[~~(44)~~] "Vehicle Identification Number (VIN)" means the number issued by the vehicle manufacturer to identify the vehicle in the event of a theft; this number can be found on the driver's side of the dashboard below the windshield.

(50)[~~(45)~~] "Vendor" means any person offering sales or services for state vehicles, such as preventive maintenance or repair services.

KEY: definitions
Date of Enactment or Last Substantive Amendment: [~~January 10, 2005~~]2009
Notice of Continuation: January 30, 2006
Authorizing, and Implemented or Interpreted Law: 63A-9-401

♦ ♦

Agriculture and Food, Animal Industry
R58-17
Aquaculture and Aquatic Animal Health

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32199
FILED: 12/04/2008, 16:49

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule needs to be amended as a result of passage of H.B. 148 which specifically amended Sections 4-37-103 (private fish pond definition), 4-37-204 (stocking of fish in a private fish pond), 4-37-503 (membership of the Fish Health Policy Board), 23-13-2, 23-15-9, 23-19-1 (private pond definition), and 23-15-10 (private fish pond not required to obtain a certificate of registration). A few changes not related to H.B. 148 were also approved. These including fixing typos and updating the topics of quarantine, facility inspection, and aquatic invasive species. (DAR NOTE: H.B. 148 (2008) is found at Chapter 69, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: The rule was changed to eliminate the need for private fish pond owners to obtain a certificate of registration; to set requirements for stocking in private fish ponds; to change the membership of the Fish Health Policy Board; to set requirements for reporting fish stocking in private fish ponds; to specify screen requirements; and to provide minor updates.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 4, Chapter 37, and Title 23, Chapters 13 and 15

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no additional testing of fish done by the Fish Health Program as a result of this change. There are minor costs associated with producing receipt books for sales, but overall there is no additional cost to the state budget. There may be additional work by the Utah Division of Wildlife Resources in managing the private fish ponds.

❖ LOCAL GOVERNMENTS: Local government is not involved in fish health, so there is no cost associated.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Small business are not involved in fish health, so there is no cost associated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The private pond owner is required to prepare proper screening, but the cost associated with screening is not different from the previous version of the rule. The necessity for a certificate of registration is removed, thus the private pond owner will be spare this expense.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes were requested by the Utah Aquaculture Association. This association consists of fish farmers that are approved for sales to private fish pond owners. With the removal of certificate of registration for farmers in certain situations, these changes overall will save private pond owners money. Leonard Blackham, Commissioner

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

AGRICULTURE AND FOOD
ANIMAL INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY UT 84116-3034, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Kathleen Mathews, Terry Menlove, or Kent Hauck at the above address, by phone at 801-538-7103, 801-538-7162, or 801-538-7025, by FAX at 801-538-7126, 801-538-7169, or 801-538-7169, or by Internet E-mail at kmathews@utah.gov, tmenlove@utah.gov, or khauck@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 02/02/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/09/2009

AUTHORIZED BY: Leonard M. Blackham, Commissioner

R58. Agriculture and Food, Animal Industry.
R58-17. Aquaculture and Aquatic Animal Health.
R58-17-2. Definitions.

(A) The following terms are defined for this rule:

(1) "Aquaculture" means the controlled cultivation of aquatic animals. In this rule, the word "aquaculture" refers to commercial aquaculture.

(2)(a) "Aquaculture facility" means any tank, canal, raceway, pond, off-stream reservoir, fish processing plant or other structure used for aquaculture. "Aquaculture facility" does not include any public aquaculture facility, private fish pond or fee fishing facility, as defined in this rule.

(b) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain into different drainages, are considered separate aquaculture facilities regardless of ownership.

(3)(a) "Aquatic animal" means a member of any species of fish, mollusk, crustacean, or amphibian.

(b) "Aquatic animal" includes a gamete or egg of any species listed in definitions under Subsection R58-17-2(3)(a).

(4) "Blue Book" means a set of the most current standard procedures approved by the American Fisheries Society for inspecting the health of aquatic animals.

(5) "Brokers or fish brokering" refers to the activities of dealers, entities, individuals or companies that are in the business of buying, selling, exchanging or transferring live aquatic animals between approved or licensed facilities pursuant to R58-17-13(C) and R58-17-14 without being actively involved in the culture, rearing or growth of the animals. This includes a person or company who rears aquatic animals, but also buys and sells (brokers) additional aquatic animals without rearing them.

(6) "Certificate of Registration (COR)" means an official document which licenses facilities with the Department of Agriculture and Food or which licenses facilities and events with the Division of Wildlife Resources pursuant to R58-17-4. The purpose of the COR is to establish the legal description of the facility, the species of aquatic animals reared and to grant the authority to engage in the described activity.

(7) "Department" means the Department of Agriculture and Food with appropriate regulatory responsibility pursuant to R58-17-4(A)(1) in accordance with the provisions of Sections 4-2-2 and 4-37-104, Utah Code.

(8) "Disease History" means a record of all known pathogens that have historically affected aquatic animals reared at a facility that seeks health approval pursuant to R58-17-15(C)(2)(b).

(9) "Division" means the Division of Wildlife Resources in the Department of Natural Resources with the appropriate regulatory responsibility pursuant to R58-17-4(A)(2), R657-3, R657-16 in accordance with the provisions of Sections 23-14-1 and 4-37-105, Utah Code.

(10) "Egg only sources" refers to a separate category of salmonid fish health approval that allows for the purchase of "fish eggs only" from a facility pursuant to R58-17-15(B)(5) and (D)(1). This category makes the distinction between those pathogens that are vertically transmitted (from parent to offspring through the egg, i.e., Renibacterium salmoninarum (BKD), IHNV, IPNV, OMV, VHSV, SVCV, EHNV) and those horizontally transmitted (from one fish to another by contact or association, i.e., Aeromonas salmonicida, Asian tapeworm, Ceratomyxa shasta, Tetracapsuloides bryosalmonae (PKX), Myxobolus cerebralis (whirling disease), and Yersinia ruckeri).

(11) "Emergency prohibited pathogen" is a pathogen that causes high morbidity and high mortality, is exotic to Utah, and requires immediate action. These pathogens generally cannot be treated and shall be controlled through avoidance, eradication, and disinfection (see R58-17-20).

(12) "Emergency Response Procedures" are procedures established by the Fish Health Policy Board to be activated any time an emergency prohibited or prohibited pathogen is reported pursuant to R58-17-9 and R58-17-15(D)(6).

(13) "Emergency response team" means teams as defined by the Fish Health Policy Board responsible for developing and executing action plans to respond to and report findings of emergency prohibited or prohibited pathogens pursuant to R58-17-9, R58-17-10(A)(1) and R58-17-10(B)(1).

(14) "Entry Permit" means an official document issued by the Department which grants permission to the permit holder to import aquatic animals into Utah pursuant to R58-17-13. An entry permit is issued for up to 30 days and stipulates the species, size or age, weight and source of aquatic animals to be imported.

(15) "Facility disease history report" means a report of all known pathogens that have historically affected aquatic animals reared at a facility seeking approval pursuant to R58-17-15, subsections (B)(6), (C)(1)(a), and (C)(2)(b) and (d).

(16) "Fee fishing facility" means a body of water used for holding or rearing aquatic animals for the purpose of providing fishing for a fee or for pecuniary consideration or advantage pursuant to Section 4-37-103 and R58-17-18.

(17) "Fish health approved/health approval" means a system of procedures which allows an assessment of the disease history of a facility or population of aquatic animals and which grants a statistical assurance that neither "emergency prohibited" nor "prohibited" pathogens are present. The Department's and Division's responsibilities for granting health approval are delineated in R58-17-15. Health Approval status is granted to qualified COR holders in Utah and to aquatic animal sources inside and outside of Utah, all of which have satisfactorily completed health approval requirements pursuant to R58-17-15, and placed on the fish health approval list (R58-17-13(C)). Health approval of the source facility is necessary before a [~~COR holder may~~]purchase may be made from the source facility or before the source facility may sell, transfer, or broker aquatic animals in or into Utah pursuant to R58-17-14.

(18) "Fish Health Policy Board" means the board created pursuant to Amendment 4-37-503 and referred to in R58-17 as the "Board".

(19) "Fish processing plant" means a facility pursuant to R58-17-13(G) and (H), and R58-17-17 used for receiving whole dead, eviscerated fresh or frozen salmonids or other live and dead aquatic animals as approved on the COR for processing.

(20) "Five-year disease history" means a report of all known pathogens affecting each stock native to, propagated at, or imported to the originating facility. These stocks or the offspring of these stocks are subsequently moved to another facility that seeks health approval pursuant to R58-17-15 subsections (B)(6), (C)(1)(a), and (C)(2)(b) and (d). The report shall cover up to the previous five years.

(21) "Import/importation" means to bring live aquatic animals, by any means into the State of Utah from any location outside the state and to subsequently possess and use them for any purpose.

(22) "Institutional aquaculture" means aquaculture engaged in by any institution of higher learning, school, or other educational program.

(23) "OIE" means the Office International des Epizooties of the World Organization for Animal Health, an intergovernmental organization that was established in 1924 to promote world animal health. The OIE provides guidelines and standards for health regulations and diagnostic tests. The most recent manual of health standards for aquatic animals is used to inspect for aquatic animal pathogens, for which the Bluebook has not developed standards. Such pathogens include EHNV, WSSV, YHV, TSV, and IHHNV covered in R58-17-20.

(24) "Ornamental fish" means any species of aquatic animals that are reared or marketed for their beauty or exotic characteristics, rather than for consumptive or recreational use. Tropical fish, goldfish and koi are included in the category of ornamental fish. This does not include those species of aquatic animals listed as prohibited or controlled in Department of Natural Resources rule R657-3. Ornamental fish are not regulated under rules R58-17 or R657-3. If the Department or Division determines that an introduction of ornamental fish poses a disease risk for aquatic animals, then all requirements under this rule apply.

(25)(a) "Private fish pond" means a body of water where privately owned aquatic animals are propagated or kept for a private, non-commercial purpose.

(b) "Private fish pond" does not include any aquaculture facility or fee fishing facility.

(26) "Procedures for the Timely Reporting of Pathogens" means procedures established by the Board for the timely reporting of emergency prohibited, prohibited, or reportable pathogens from any source in Utah or from any out-of-state health approved source pursuant to R58-17-9 and R58-17-15(D)(5).

(27) "Prohibited pathogen" is a pathogen that can cause high morbidity or high mortality, may be endemic to Utah, and requires action in a reasonable time. Prohibited pathogens are generally very difficult or impossible to treat and can only be controlled through avoidance, eradication, and disinfection, etc (see R58-17-20).

(28)(a) "Public aquaculture facility" means a tank, canal, raceway, pond, off-stream reservoir, or other structure used for the controlled cultivation of aquatic animals by the Division, the U.S. Fish and Wildlife Service, or an institution of higher education.

(b) Structures that are separated by more than 1/2 mile, or structures that drain to or are modified to drain into different drainages, are considered separate public aquaculture facilities.

(29) "Public fishery resource" means aquatic animals produced in public aquaculture facilities, purchased or acquired for public fishery waters and sustained as wild and free ranging populations in the surface waters of the state.

(30) "Quarantine" means the restriction of movement of live or dead aquatic animals regardless of age and of all equipment and hauling trucks into or from an area designated by the Commissioner of Agriculture or State Veterinarian pursuant to R58-17-10 and Agricultural code 4-31-16 and 17.

(31) "Reportable pathogen" is a pathogen that generally is prevented using good management practices. Reportable pathogens are not prohibited in Utah but may be prohibited in some other states or countries (see R58-17-20). Inspections are not required for reportable pathogens, but positive findings must be reported to the Board.

(32) "Salmonid and non-salmonid" designate aquatic animals based on the range of optimal growth temperatures used in their culture. "Salmonid" means any species of aquatic animal that is of the order Salmoniformes and optimally lives in coldwater conditions. "Non-salmonid" means any species of aquatic animal that is not of the order Salmoniformes nor cultured in coldwater conditions. For purposes of R58-17, aquatic animals such as cool water fish, warm water fish, and crustaceans (shrimp, crayfish, and prawns) are classified as non-salmonids.

(33) "Source" means all rearing or holding locations during all of the life stages of an aquatic animal.

(34) "Unregulated pathogen" is a pathogen that is not regulated in Utah. Unregulated pathogens include all pathogens not classified as either emergency prohibited, prohibited, or reportable. Reporting of these pathogens to the Fish Health Policy Board is not required (see R58-17-20).

R58-17-3. Penalties.

Any violation of or failure to comply with any provision of this rule, R657-59 or R657-16 or any specific requirement contained in a certificate of registration or entry permit issued pursuant to this rule, R657-59 or R657-16 may be grounds for issuance of citations, levying of fines, revocation of the certificate of registration or denial of future certificates of registration pursuant to Subsections 4-2-2(1)(f) and 4-2-15(1), as determined by the Commissioner of Agriculture and Food and pursuant to Sections 23-19-9 and 23-13-11, as determined by the Director of the Division of Wildlife Resources.

R58-17-4. Certificate of Registration (COR) Required.

(A) Activities requiring a COR:

(1) A COR, issued by the Department, is required before a person may engage in the following activities within Utah:

(a) Operate an aquaculture facility.

(b) Operate a fee-fishing facility.

(c) Operate a fish processing plant.

(d) Broker aquatic animals.

(2) A COR, issued by the Division, is required for operation of the following activities within the State of Utah:

(a) public aquaculture facilities;.

(b) private fish ponds [~~(R657-16-10)~~]unless otherwise exempt from COR requirements under R657-59-3 and R657-59-7;

(c) institutional aquaculture facilities (R657-16-13);

(d) short term fishing events (R657-16-11);

(e) private stocking (R657-16-12);

(f) displays (R657-16-14).

(3) Entry permits shall be issued [~~only~~]to holders of current CORs for the activities named in this subsection and to private fish pond owners pursuant to R58-17-13 (J) and R657-59.

R58-17-5. Species Allowed.

(A) Pursuant to Division of Wildlife Resources[~~Department of Natural Resources~~] rules R657-3, R657-59, R657-16, and Utah Code sections 23-15-10 and 23-13-5, only those species authorized by the Division or the Wildlife Board [~~and listed on the COR~~]may be imported, possessed, or transported in conjunction with the authorized activity[~~- listed on the COR~~].

(B) Pursuant to 4-37-105(1), 4-37-201(3)(B) and 4-37-301(3)(B) the Department shall coordinate with the Division to determine which species the holder of a COR may propagate, possess, transport or sell.

(C) The Department will monitor sales receipts to insure that the species described on CORs, sales receipts, and entry permits issued by the Department are those authorized by the Division.

R58-17-6. Qualifying Waters.

(A) A private or public aquaculture facility, fee-fishing facility or private fish pond may not be developed on natural lakes, natural flowing streams, or reservoirs constructed on natural stream channels[~~. Other water, including canals, o~~]. Offstream reservoirs, and excavated ponds or raceways may be considered for use as an aquaculture or fee-fishing facility.

(B) During the COR application process, the Department shall coordinate with the Division to determine the suitability of the proposed site pursuant to R58-17-6(A), 4-37-111, 4-37-201(3) and 4-37-301(3).

R58-17-7. Screens Required.

(A) Screens or other devices that are designed to prevent the movement of fish into or out of an aquaculture facility, fee-fishing facility, public aquaculture facility, private fish pond, institutional aquaculture facility, short term fishing event or display must be placed at the inflow and outflow. The presence of adequate screening or other devices is a precondition to issuance or renewal of CORs pursuant to R58-17-4 and a precondition to delivery of aquatic animals to private fish ponds from health approved sources as provided in section 23-15-10 and R657-59-15.

(B) As part of the COR issuance process, the Department or the Division shall make site visits and determine the adequacy of screening.

(C) [~~During and following the COR application process, t~~]The Department or Division may inspect screening or other devices in their respective areas of responsibility to assure compliance with Subsections R58-17-7(A) and (B) and Section 23-15-10 and R657-59-15 during reasonable hours.

(D) It is the responsibility of the private fish pond owner or COR holder to report to the Department or Division, depending on which agency [~~issued the COR~~]has jurisdictional authority, all escapements of aquatic animals from facilities. This is to be done within 72 hours of the loss or knowledge of the loss. The report shall include facility names, date of loss, estimate of number of aquatic animals lost, names of the public water the aquatic animals escaped into, remedial actions taken, and plans for future remedial action. The COR holder and/or facility operator or private fish pond owner will bear all costs for remedial actions. The Department or Division shall notify all affected agencies and parties within two working days. The agency having responsibility may suspend all activities at the facility, including aquatic animal imports, transfers, sales, fishing, etc., until the investigation and remedial actions are completed.

R58-17-9. Reporting Fish Diseases.

Persons involved in aquaculture and being regulated by this rule, R657-59, or R657-16, having knowledge of the existence in the state of any of the diseases currently on the pathogen list, Subsection R58-17-15(D)(2), (3), and (4), shall report it to the Department, Fish Health Program or the Division, Aquatics Section. The Department or Division will follow the Procedures for the Timely Reporting of Pathogens and the Emergency Response Procedures established by the Board. All confirmed findings of pathogens pursuant to R58-17-15(D)(2), (3), and (4), determined from such incidents or from inspections or diagnostic work initiated by the Department or the Division, will be reported to the Board.

R58-17-10. Quarantine of Aquatic Animals and Premises.

(A) If evidence exists that the aquatic animals in any facility are infected with or have been exposed to pathogens listed in R58-17-15(D)(2) and (3), then [~~a~~]either quarantine or removal from the approval list (R58-17-2 (17), depending on the pathogen, may be imposed by the Commissioner of Agriculture or the State Veterinarian. [~~This~~]Any action other than a quarantine must[~~may~~] be [~~reviewed~~]approved by the Board[~~- for recommendations to the Department~~].

(1) Lifting of the quarantine imposed on a facility infected with or exposed to emergency or prohibited pathogens requires the creation and implementation of a biosecurity plan that specifies action to control the pathogen and includes testing requirements of all lots of fish to verify the absence of the pathogen. In addition, the Department may require decontamination of the facilities and equipment in accordance with current medical knowledge of the organism, the Blue Book, and guidelines set forth by the Emergency Response Team.

(2) If the Department has reasonable evidence that the contagion is still present pursuant to R58-17-11, then quarantine, closure, or other measures such as decontamination of the facility and equipment, destruction of aquatic animals, etc. may be imposed. Such measures will be in accordance with current medical knowledge of the organism, the Blue Book, and guidelines set forth by the Emergency Response Team.

(B) A quarantine may be imposed by the Commissioner of Agriculture or the State Veterinarian where aquatic animals are possessed, transported or transferred in violation of this rule, wildlife rules, or statute and consequently pose a possible disease threat; or where a quarantine is reasonably necessary to protect aquatic animals within the state. This action may be reviewed by the Board for recommendations to the Department.

(1) Quarantines imposed on facilities for rule or statute violations or for purposes of protecting aquatic animals may be lifted once sufficient evidence is presented to the State Veterinarian's satisfaction that infection is not present at the facility or that biosecurity control measures are being followed which will control further spread of the pathogen, and that removal of the quarantine does not create a risk to other aquatic animal populations. In addition, the Department may require decontamination of the facilities and equipment in accordance with current medical knowledge of the organism, Blue Book procedures, and guidelines set forth by the Emergency Response Team.

(2) If the Department has reasonable evidence that the contagion is present pursuant to R58-17-11, then quarantine, closure, or other measures shall be imposed pursuant to R58-17-10(A)(2).

(C) Any person, licensed pursuant to R58-17 and affiliated with a facility under quarantine, who delivers aquatic animals from health-approved sources for other public or private aquaculture facilities may, with written permission from the Department, use their hauling trucks if the operator either houses the truck off the quarantined facility, or sanitizes the truck according to Department recommendations each time it leaves the quarantined facility.

R58-17-11. Handling of Aquatic Animals and Premises Confirmed to Be Infected With a Listed Pathogen in R58-17-15(D).

(A) Where any facility or group of aquatic animals is confirmed to be infected with one or more of the pathogens listed in R58-17-15(D), the Commissioner of Agriculture and Food or State Veterinarian may either quarantine or remove the facility from the health approval list pursuant to R58-17-10 and take steps to prevent the spread of the pathogen and to eliminate it. These actions may be reviewed by the Board for recommendations to the Department. The Department or Division, in their respective areas of responsibility, may take one or more of the following actions as listed below in this subsection, depending on the pathogen involved and the potential effects of the pathogen on the receiving water, neighboring aquaculture facilities or the public fishery resource.

(1) Destruction and disposal of all infected and exposed aquatic animals.

(2) Cleaning and decontamination or disposal of all handling equipment and holding facilities.

(3) Testing is required of all lots of fish, which may be at the owner's expense, to detect the presence or spread of the pathogen. This may include the use of sentinel fish. After two negative tests, six months apart, the quarantine shall be reassessed, possibly released, and/or other measures may be imposed pursuant to R58-17-10(A)(2). Once sufficient evidence shows that the pathogen is not present at a facility, full restocking may begin.

(4) The infected aquatic animals may be allowed to remain on the premises through the production cycle depending on the pathogen involved and its potential effects on adjacent animals. All stocks within the facility shall be tested according to provisions outlined in the biosecurity plan to determine if the pathogen persists. At the end of the production cycle, then testing should be done at least annually. If the pathogen is not found after two consecutive annual inspections, then testing may revert to the original requirements for the facility. If biosecurity of the facility cannot or is not being maintained, immediate destruction of the stocks may be required. The biosecurity plan for the facility shall remain in effect if the COR holder sells or goes out of business.

R58-17-13. Importation of Aquatic Animals or Aquaculture Products Into Utah.

(A) An official ENTRY PERMIT is required to import live aquatic animals or their gametes into Utah. This permit is in addition to the COR for operation of the facility or as otherwise specified in R58-17-4. The entry permit can be obtained at no charge by contacting the Department, Fish Health Program and providing the following information:

(1) Name, address, phone number and COR number of importer.

(2) Species, size and/or number of aquatic animals to be imported.

(3) Name and health approval number of sources, origin of aquatic animals, transfer history, and approximate date of shipment.

(4) For international shipments, a certificate of veterinary inspection from the source must be obtained by the importer indicating a negative record of testing by OIE reference labs for prohibited pathogens pursuant to R58-17-15(D)(2) and (3), a negative record of other OIE-listed pathogens affecting the aquatic animals to be imported, and that known nuisance species are not found in the water source. In addition, written authorization from the US Department of Agriculture, Animal and Plant Health Inspection Service (USDA/APHIS) for the importation must be included.

(B) Each shipment of live aquatic animals must be authorized. A copy of the entry permit will be sent to the requesting party and a copy must accompany the shipment. The permit holder shall allow up to two weeks for the Department to verify the health approval status of the source and to verify authorized species status pursuant to R58-17-5.

(C) All import shipments of live aquatic animals must originate from sources that have been health approved by the Department pursuant to R58-17-15(A)(2) and (B). A list of approved sources is maintained by the Department, but the list is not published due to frequent updates. Information on currently approved sources may be obtained by contacting the Department Fish Health Program.

(D) All importations must be species that have been authorized by the Wildlife Board and the Division pursuant to R657-3, R657-59-16, and 4-37-105(1).

(E) To import live grass carp (Ctenopharyngodon idella), [~~a COR and an ENTRY PERMIT are required. In addition, ~~]the fish must [~~also~~]be verified as being triploid (sterile) by a laboratory and method acceptable to the Department. A U. S. Fish and Wildlife Service triploid verification form must be obtained from the supplier as required in R657-16-7. Both this form and the Department's statement verifying treatment or testing for the Asian tapeworm must be on file with the Department prior to shipment of the fish. Copies of the entry permit, treatment or testing statement and the triploid verification forms must accompany the fish during transit. The statement verifying treatment or testing is also required for all aquatic animal species that are known or reported hosts or carriers of the Asian tapeworm.

(F) The State Veterinarian may require inspection, treatment or testing of any aquatic animal and plant species, including aquatic invasive species, water, vehicle, or container, in accordance with current [~~medical~~]scientific knowledge before importation.

(G) Whole dead and eviscerated fresh or frozen salmonid fish or live aquatic animals may be imported into Utah for processing at a fish processing plant without an Entry Permit. Live salmonid fish may be imported into and transported within Utah for processing at a fish processing plant without an Entry Permit, but they must be killed upon release from the transport vehicle and may not be held live at the fish processing plant. Waste products, i.e., brine shrimp cysts, carcasses, viscera and waste water, must be incinerated, buried with "quick lime" (Calcium oxide), composted, digested, or disposed of by means acceptable to the Department to deter the spread of pathogens and non-native species pursuant to R657-3 by water or animals. The Department may apply the requirements in this subsection to other species of aquatic animals and pathogens if future needs arise.

(H) Placement of dead fish, fish parts, or fish waste products from a fish processing plant, or live or dead aquatic animals from any facility into public waters is illegal. Proper disposal is the responsibility of the processor/owner/broker pursuant to R58-17-13(G).

(I) All transport vehicles, importing aquatic animals imported into Utah or transporting them through Utah pursuant to R58-17-14(C), must have proper documentation and are subject to inspection. The lack of proper documentation and/or the findings of an inspection may result in entry denial, fines, or other Department actions. All inspection costs will be born by the importer.

(J) Aquatic animals may be imported and transported to a private fish pond by an out-of-state source, approved by the Department, or by an aquaculture facility representative with a current COR by following requirements in section 4-37-204. The approved or licensed facility representative and the private fish pond representative shall sign and forward receipts pursuant to R58-17-17 (D).

R58-17-14. Buying, Selling, and Transporting Aquatic Animals.

(A) Buying aquatic animals:

Live aquatic animals, except ornamental fish, unless the ornamental fish are determined a risk pursuant to R58-17-2(A)(24), may be purchased or acquired only by persons or entities who possess a valid COR that authorizes the animals or as otherwise specified in R58-17-4. This applies to separate facilities owned by the same individual. Live aquatic animals must be purchased only from sources that either are located in-state and have a valid COR for aquaculture or are located outside of Utah. In both cases, the sources must also be on the current fish health approval list.

(B) Selling aquatic animals:

Live aquatic animals, except ornamental fish, unless the ornamental fish are determined a risk pursuant to R58-17-2(A)(24), may be sold only by a person or entity located in-state who possesses a valid COR for aquaculture or by a person or entity located outside of Utah. Current listing for each source and species on the health approval list is also required. Within Utah, an aquaculture facility operator may only sell or transfer live aquatic animals to a person or entity, which has been issued a valid COR to possess such animals or as otherwise specified in R58-17-4.

(C) Transporting aquatic animals:

(1) Any person possessing a valid COR may transport the live aquatic animals specified on the COR to the facility named on the COR.

(2) All transfers or shipments of live aquatic animals within Utah, except ornamental fish, unless the ornamental fish are determined a risk pursuant to R58-17-2(A)(24), must be accompanied by documentation of the source and destination, including:

(a) Name, address, phone number, COR number and COR expiration date, fish health approval number and expiration date of source and transfer history.

(b) Species, size, number or weight being shipped.

(c) Name, address, phone number, COR number and COR expiration date of the destination or as specified in R58-17-4.

(d) Date of transaction.

(3) Live aquatic animals may be shipped through Utah without a COR, provided that the animals will not be sold, released or transferred, the products remain in the original container, water from the out-of-state source is not exchanged or released, and the shipment is in Utah no longer than 72 hours. Proof of legal ownership, origin of aquatic animals and destination must accompany the shipment.

(4) Any person who hauls fish may transport a species other than those listed on their COR provided the source facility and destination both have a valid COR to possess that species. Transportation of aquatic animals to a private fish pond may not require a COR pursuant to R657-59-3, but movement and delivery of the aquatic animals is subject to the species restrictions in R657-59-16.

(5) No person may move or cause to be moved aquatic animals from a facility known to be exposed to or infected with any of the pathogens on the pathogen list, R58-17-15(D)(2) through (4), without first reporting it to the appropriate regulating agency pursuant to R58-17-9 and receiving written authorization to move the aquatic animals.

(D) Brokers:

(1) Brokers shall follow the same requirements that other producers follow as to importation, health approval of their facility and their source facilities and assuring that live sales are only made to those with valid CORs.

(2) To qualify for health approval of their fish, brokers shall obtain health approval for all source facilities from which they broker fish.

R58-17-16. Inspection of Records and Facilities.

(A) Except as otherwise provided in R657-16-9 and R657-59-12, [~~T~~]the following records shall be maintained for a period of up to five years and be available for inspection during reasonable hours by the appropriate agency pursuant to R58-17-4.

(1) Purchase, acquisition, distribution, and production histories of live aquatic animals.

(2) CORs and entry permits.

(3) Valid identification of stocks, including origin of stocks.

(B) The appropriate agency representatives pursuant to R58-17-4 and Utah Codes 4-1-4, 4-31-16 and 23-15-10 and under appropriate regulatory responsibility may conduct pathological or physical investigations at any registered facility, [~~including~~]private fish ponds and fish being imported or transported in vehicles, during reasonable hours if there is cause to believe that a disease condition

exists or as otherwise authorized in R58-17-7, R58-17-17 (D), R657-59 and R657-16. Any laboratory testing as a result of this investigation will be at the owner's expense if evidence indicates that R58-17 has been violated pursuant to the investigation.

R58-17-17. Aquaculture Facilities, Fish Processing Plants, Brokers.

(A) COR required:

A COR is required to operate an aquaculture facility or a fish processing plant and to act as a broker. A separate COR and fee are required for each facility defined under "aquaculture facility", Section 4-37-103(2), regardless of ownership.

(B) Live aquatic animals may be sold or transferred:

The operator of an aquaculture facility with health approval may take the aquatic animals as authorized on the COR from the facility at any time and offer them for sale. Within Utah, live aquatic animals can only be sold to other facilities which have a valid COR for that species. Fish [~~P~~]processing plants dealing with salmonids shall neither hold nor sell live salmonids.

(C) Fee-fishing facility and/or fish processing plant allowed:[~~—~~] The operator of an aquaculture facility may also operate a fee-fishing facility pursuant to R58-17-18 and/or a fish processing plant pursuant to R58-17-17 and R58-17-13(G) and (H), provided the fee-fishing facility or the fish processing plant is within one half mile distance from the aquaculture facility, contains only those species authorized on the COR for the aquaculture facility, and this activity is listed on the COR for the aquaculture facility.

(D) Receipts required:[~~—~~] Any [~~in state~~]sale, shipment, or transfer of live aquatic animals from an out-of-state approved source, from an aquaculture facility or by a broker must be accompanied by a receipt. A receipt book will be provided by the Department upon request. Copies of all receipts will be submitted to the Department with the annual report. The receipt will contain:

(1) Names, addresses, phone numbers, COR numbers, COR expiration dates, fish health approval numbers and expiration dates of sources.

(2) Number, strain name, species name, age/size, reproductive capability and weight being shipped[~~, by species~~].

(3) Names, addresses and phone numbers of destinations.

(4) COR numbers and COR expiration dates for destinations excluding private fish pond owners that qualify to operate without a COR.

(5) Dates of transactions.

(6) Signatures of seller and buyer or as otherwise required in R657-59.

(E) Annual reports required:

Aquaculture facility owners, fish processing plant owners, and brokers shall submit annual reports of all sales, transfers, and purchases to the Department at the time of the COR renewal, pursuant to R58-17-8(B)(2). Report forms will be provided by the Department.

(1) The report will contain:[~~—~~] (a) Names, addresses, phone numbers, COR numbers and health approval numbers of sources.

(b) Number, size and weight by species.

(c) Names, addresses, phone numbers, COR numbers of the destinations.

(d) Dates of transactions.

(2) Copies of receipts pursuant to R58-17-17(D), shall be submitted as part of the annual report to the Department.

(3) Reports shall be submitted to the Department by December 31 each year and must be received before a COR will be renewed. If the report, application, receipts and fee are not received by December 31 pursuant to R58-17-8(B), the COR will no longer be valid and regulatory action may be initiated pursuant to R58-17-8(B)(3). For sales made after submittal of the annual report and before January 1, the facility owner shall submit an addendum report that is due by January 31.

(4) The report made by operators of fish processing plants shall also contain all purchases and transfers to and from the facility and shall address proper methods of disposal with dates and locations pursuant to R58-17-13(G) and (H).

(F) Fees assessed:

The initial and annual renewal COR fee for aquaculture facilities, brokers, and fish processing plants is $150.00, pursuant to Section 4-37-301.

(G) The COR holder shall keep a copy of CORs, reports, and records on file for two years pursuant to 4-37-110.

R58-17-19. Public Aquaculture, Private Fish Ponds, Institutional Aquaculture Facilities, Short Term Fishing Events, Private Stocking and Displays.

Details on the COR and regulatory requirements pursuant to R58-17-4[~~(2)~~] for operating public aquaculture, private fish ponds, institutional aquaculture facilities, short term fishing events, private stocking and displays are found in Division of[~~the code for Natural Resources,~~] Wildlife Resources'[~~, at~~] Rules R657-16 and R657-59.[~~of the Utah Administrative Code.~~]

KEY: aquaculture
Date of Enactment or Last Substantive Amendment: [~~September 15, 2005~~]2009
Notice of Continuation: February 3, 2005
Authorizing, and Implemented or Interpreted Law: 4-2-2; 4-37

♦ ♦

Commerce, Occupational and Professional Licensing

R156-31b

Nurse Practice Act Rule

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 32212
FILED: 12/15/2008, 11:05

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Nursing Board are proposing amendments to the rule to implement H.B. 399 which was passed during the 2008 General Session of the Legislature with respect to Medication Aides-Certified. The proposed amendments establish and clarify the requirements for certification as a medication aide and establish a process for training programs to be approved by the Division. The proposed amendments also establish a model curriculum based upon the model curriculum adopted by the 2007 Delegate Assembly of the National Council of State Boards of Nursing. This proposed rule filing is a follow-

up to the previously filed rule (DAR No. 31614) which was filed in June 2008. At that time, two separate rule filings were published with respect to Rule R156-31b which amended language in the rule. The other rule filing addressed mostly nursing education standards and was made effective on 08/25/2008. A few suggested changes with respect to medication aides-certified were made at the prior rule hearing held on 07/18/2008. Those additional changes are included in this proposed rule filing. By adopting only one of the earlier proposed rule filing affecting Rule R156-31b, the numbering within the definition section of the newly effective rule was dramatically different than that which was filed with the medication aide implementation language. Upon consulting with the Division of Administrative Rules, it was determined that it would be best to allow the original medication aide proposed rule filing (DAR No. 31614) to lapse and begin the rulemaking process again with a new filing concerning the medication aides-certified. The language in this new filing regarding medication aide-certified (MA-C) includes suggestions made during the July 2008 public hearing, written comments, and verbal comments. (DAR NOTE: H.B. 214 (2008) is found at Chapter 214, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-31b-102(1), adds 900 clock hours to the definition of an "academic year". In Subsection R156-31b-102(15), changed "delegation" to "delegator". In Subsection R156-31b-102(24), adds the acronym "MA-C" to mean a medication aide-certified. In Subsection R156-31b-102(40), deleted section numbers and added "this rule". The remaining subsections are renumbered. In Section R156-31b-302c, corrects the name and provider of the nurse midwifery certification examination, establishes the examination required to become a MA-C as the Utah Medication Aide Certification Examination, and sets the minimum pass rate at 75%. Also requires a MA-C applicant to pass the exam within six months of course completion and the exam cannot be taken more than two times without repeating the training course. In Section R156-31b-303, establishes the requirement for a MA-C to complete eight contact hours of continuing education related to medication administration and medications to qualify for renewal of the certification. In Section R156-31b-304, eliminates temporary licensure for new licensed practical nurse (LPN) and registered nurse (RN) graduates who have not taken the licensure examination. Given the examination is available up to six days a week and applications for nurses are accepted during the last semester of the program, an applicant can generally take the examination within two to three weeks of receiving a complete transcript. The Division has seen an alarming number of graduates who pay for a temporary license and delay taking the examination. Nursing Board members believe the public is better protected by eliminating the temporary license and ensuring an applicant meets all the criteria for licensure before allowing her to provide hands-on care. In Subsection R156-31b-309(1)(a), changed 90 days to 180 days. The length of time an advanced practice registered nurse (APRN) intern license is effective has been increased to 180 days to allow for those certification examinations which are only available two to three times a year. In Section R156-31b-601, the proposed amendments allow the parent institution to be accredited or preaccredited by regional or national professional accrediting bodies that are recognized by the Council for Higher Education Accreditation and the nurse accrediting body chosen by the program. In Section R156-31b-603, the proposed amendments provide a deadline date by which currently approved programs shall require students to obtain general education, pre-requisite and co-requisite courses from a regionally accredited institution of higher education or have an articulation agreement with a regionally accredited institution. The amendments allow current program administrators who do not meet all the requirements in the rule to have a period of time until 07/01/2011 to meet those criteria. Section R156-31b-801 is a new section that establishes the protocols that must be followed by a MA-C when administering medications and establishes routes of medication administration that cannot be used by the MA-C. Section R156-31b-802 is a new section that establishes the process and standards that must be met in order for a facility, association or educational institution to offer a MA-C training program. Section R156-31b-803 is a new section that establishes a model curriculum that must be followed, as a minimum, to be approved as a training program. The curriculum is based on a national model adopted by the National Council of State Boards of Nursing.

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

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. Any costs incurred will be absorbed in the Division's current budget. An administrator of a nursing education program offered in a State school who doesn't meet all the criteria established in the rule will be given time to complete any additional formal course work that may be required. Generally most programs have budgeted money for educational opportunities, so there should be little to no impact on the school's budget. State schools desiring to offer the MA-C training program will need to follow the model curriculum and have the necessary human and fiscal resources necessary to offer the program. The cost to operate an MA-C training program is unknown at this time. However, the schools who have indicated an interest in offering a program, currently offer the certified nurse aide program and can use the same facilities, supplies, and faculty currently involved in the assistant program so the costs should be minimal. By eliminating the availability of a temporary license for LPN and RN applicants, the Division will see a decrease in fees related to the temporary license of approximately $23,500 per year (470 applicants at $50 each).

❖ LOCAL GOVERNMENTS: There should be little or no effect on local government as a result of the proposed amendments. Local governments do not operate nursing education programs and few operate any kind of health care facilities. However, if a local government ran a regulated facility, the use of an MA-C may save money because the MA-C could administer medications under the supervision of a nurse and

the facility would not be required to hire another nurse to administer medications.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Small Business and Persons: A regulated facility may use the MA-C in addition to existing staff, thus lessening the burden on the nurses. Given there is a shortage of nurses throughout the state, the utilization of an MA-C under appropriate nurse supervision could save facilities personnel costs. If a regulated facility chooses to cover the costs of the training and examination as a benefit to its staff or as a recruitment/ retention incentive, the facility would be responsible for those costs. Otherwise, the MA-C would be responsible to pay the costs incurred to become certified. It is estimated that the cost of the MA-C training and examination will be similar to that of the certified nurse aide. Training programs offered within educational institutions and associations/organizations charge between $280 and $400 for the course. The examination is estimated to cost between $58 and $70. Although the training and examination to become a MA-C will cost approximately between $360 and $470, the ability to utilize this type of provider to help with the administration of medications will more than offset any of the certification costs. The Division is not able to determine how many persons will apply for certification as a medication aide-certified. Also LPN and RN applicants for licensure will see a savings in the cost for a temporary license, which is $50, as a result of the proposed elimination of temporary licenses. By eliminating the availability of a temporary license for LPN and RN applicants, graduates will delay their ability to start working by three to four weeks. However, many facilities have interim nonlicensed positions which these graduates can fill while waiting to take the required examination. The Division anticipates approximately 470 LPN and RN applicants will save the $50 temporary license fee, thus resulting in an aggregate savings to the applicants of $23,500 and a decrease of fees to the Division of $23,500. By allowing a parent educational institution to be regionally or nationally accredited by an accrediting body recognized by the Department of Education and the nurse accrediting body, more proprietary schools would qualify to seek approval to begin a nursing education program in Utah which may result in a potential savings to the parent educational institution. However, the Division is unable to determine exact savings due to varying factors.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As indicated above, the training and examination costs are expected between $360 and $470 per applicant for certification as a MA-C. The MA-C application fee is $89 and the two-year renewal fee is $42. However, a person certified as an MA-C is expected to make at least $1/hour more than a certified nursing assistant. Hence, costs incurred could be recouped within a two month period of time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing implements H.B. 399 passed during the 2008 Legislative Session regarding MA-C. The implementation of the MA-C provisions create no fiscal impact to businesses beyond those anticipated by the Legislature in passing H.B. 399; such costs are addressed in the rule summary. In order to better protect the public, the rule filing removes the temporary license provisions for LPN and RN graduates, requiring them to take the examination and apply for licensure towards the completion of their nursing education program. This may delay their ability to begin working by three to four weeks, but they may be able to obtain interim nonlicensed positions while completing the examination and licensing process. Thus, the fiscal impact is anticipated to be minimal. 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 02/02/2009

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 1/08/2009 at 1:00 PM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 02/09/2009

AUTHORIZED BY: F. David Stanley, Director

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

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

(1) "Academic year", as used in Section R156-31b-601, means three quarters or two semesters or 900 clock hours. A quarter is defined to be equal to ten weeks and a semester is defined to be equal to 14 or 15 weeks.

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

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

(4) "APRN-CRNA" means an advanced practice registered nurse specializing and certified as a certified registered nurse anesthetist.

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

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

(b) nursing education courses taken from an approved education program as defined in Subsection R156-31b-102(6); and

(c) health related course work taken from an educational institution accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education", 2006-2007 edition, published by the American Council on Education.

(6) "Approved education program" as defined in Subsection 58-31b-102(3) is further defined to include any nursing education program located within the state of Utah which meets the standards established in Sections R156-31b-601, 602 and 603; and any nursing education program located outside of Utah which meets the standards established in Section R156-31b-607.

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

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

(9) "COA", as used in this rule, means the Council of Accreditation of Nurse Anesthesia Education Programs.

(10) "Clinical preceptor", as used in Section R156-31b-608, means an individual who is employed by a clinical health care facility and is chosen by that agency, in collaboration with the Parent Nursing Education-Program, to provide direct, on-site supervision and direction to a nursing student who is engaged in a clinical rotation, and who is accountable to both the clinical agency and the supervisory clinical faculty member.

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

(12) "Contact hour" means 60 minutes.

(13) "Delegatee", as used in Sections R156-31b-701 and 701a, means one or more competent persons receiving a delegation who acts in a complementary role to the delegating nurse, who has been trained appropriately for the task delegated, and whom the delegating nurse authorizes to perform a task that the delegates is not otherwise authorized to perform.

(14) "Delegation" means transferring to delegates the authority to perform a selected nursing task in a selected situation. The delegating nurse retains accountability for the delegation.

(15) "Delegat[~~ion~~]or", as used in Sections R156-31b-701 and 701a, means the nurse making the delegation.

(16) "Diabetes medical management plan (DMMP), as used in this rule, means an individualized plan that describes the health care services that the student is to receive at school. The plan is developed and signed by the student's parent or guardian and health care team. It provides the school with information regarding how the student will manage diabetes at school on a daily basis. The DMMP shall be incorporated into and shall become a part of the student's IHP.

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

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

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

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

(19) "Equivalent to an approved practical nursing education program", as used in Subsection 58-31b-302(2)(e), means the applicant for licensure as an LPN by equivalency is currently enrolled in an RN education program with full approval status, and has completed course work which is equivalent to the course work of an NLNAC accredited practical nursing program.

(20) "Focused nursing assessment", as used in Section R156-31b-703, means an appraisal of an individual's status and situation at hand, contributing to the comprehensive assessment by the registered nurse, supporting ongoing data collection and deciding who needs to be informed of the information and when to inform.

(21) "Individualized healthcare plan (IHP), as used in Section R156-31b-701a, means a plan for managing the health needs of a specific student, written and reviewed at least annually by a school nurse. The IHP is developed by a nurse working in a school setting in conjunction with the student and the student's parent or guardian to guide school personnel in the care of a student with medical needs. The plan shall be based on the student's practitioner's orders for the administration of medications or treatments for the student, or the student's DMMP.

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

(23) "LPN" means a licensed practical nurse.

(24) "MA-C" means a medication aide - certified.

([~~24~~]25) "Medication", as used in Sections R156-31b-701 and 701a, means any prescription or nonprescription drug as defined in Subsections 58-17b-102(39) and (61) of the Pharmacy Practice Act.

([~~25~~]26) "NLNAC" means the National League for Nursing Accrediting Commission.

([~~26~~]27) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

([~~27~~]28) "Non-approved education program" means any foreign nurse education program.

([~~28~~]29) "Nurse", as used in this rule, means an individual licensed under Title 58, Chapter 31b as a licensed practical nurse, registered nurse, advanced practice registered nurse, or advanced practice registered nurse-certified registered nurse anesthetist, or a certified nurse midwife licensed under Title 58, Chapter 44a.

([~~29~~]30) "Nurse accredited", as used in this rule, means accreditation issued by NLNAC, CCNE or COA.

([~~30~~]31) "Other specified health care professionals", as used in Subsection 58-31b-102(15), who may direct the licensed practical nurse means:

(a) advanced practice registered nurse;

(b) certified nurse midwife;

(c) chiropractic physician;

(d) dentist;

(e) osteopathic physician;

(f) physician assistant;

(g) podiatric physician;

(h) optometrist;

(i) naturopathic physician; or

(j) mental health therapist as defined in Subsection 58-60-102(5).

([~~31~~]32) "Parent academic institution", as used in this rule, means the educational institution which grants the academic degree or awards the certificate of completion.

([~~32~~]33) "Parent nursing education-program", as used in Section R156-31b-607, means a nationally accredited, Board of Nursing approved nursing education program that is providing nursing education (didactic, clinical or both) to a student and is responsible for the education program curriculum, and program and student policies.

([~~33~~]34) "Patient", as used in this rule, means a recipient of nursing care and includes students in a school setting or clients of a health care facility, clinic, or practitioner.

([~~34~~]35) "Patient surrogate", as used in Subsection R156-31b-502(1)(d), means an individual who has legal authority to act on behalf of the patient when the patient is unable to act or decide for himself, including a parent, foster parent, legal guardian, or a person designated in a power of attorney.

([~~35~~]36) "Psychiatric mental health nursing specialty", as used in Subsection 58-31b-302(4)(g), includes psychiatric mental health nurse specialists and psychiatric mental health nurse practitioners.

([~~36~~]37) "Practitioner", as used in Sections R156-31b-701 and 701a, means a person authorized by law to prescribe treatment, medication, or medical devices, and who acts within the scope of such authority.

([~~37~~]38) "RN" means a registered nurse.

([~~38~~]39) "School", as used in Section R156-31b-701a, means any private or public institution of primary or secondary education, including charter schools, pre-school, kindergarten, and special education programs.

([~~39~~]40) "Supervision", as used in [~~Sections R156-31b-701 and 701a~~]this rule, means the provision of guidance and review by a licensed nurse for the accomplishment of a nursing task or activity, including the provision for the initial direction of the task, periodic inspection of the actual act of accomplishing the task or activity, and evaluation of the outcome.

([~~40~~]41) "Supervisory clinical faculty", as used in Section R156-31b-608, means one or more individuals employed by an approved nursing education program who meet the accreditation and Board of Nursing specific requirements to be a faculty member and are responsible for the overall clinical experiences of nursing students and may supervise and coordinate clinical preceptors who provide the actual direct clinical experience.

([~~41~~]42) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 31b, is further defined in Section R156-31b-502.

R156-31b-302c. Qualifications for Licensure - Examination Requirements.

(1) An applicant for licensure under Title 58, Chapter 31b shall pass the applicable licensure examination within three years from the date of completion or graduation from a nursing education program or four attempts whichever is sooner. An individual who does not pass the applicable licensure examination within three years of completion or graduation or four attempts is required to complete another approved nursing education program.

(2) In accordance with Section 58-31b-302, the examination requirements for graduates of approved nursing programs are as follows.

(a) An applicant for licensure as an LPN or RN shall pass the applicable NCLEX examination.

(b) An applicant for licensure as an APRN shall pass one of the following national certification examinations consistent with the applicant's educational specialty:

(i) one of the following examinations administered by the American Nurses Credentialing Center Certification:

(A) Adult Nurse Practitioner;

(B) Family Nurse Practitioner;

(C) Pediatric Nurse Practitioner;

(D) Gerontological Nurse Practitioner;

(E) Acute Care Nurse Practitioner;

(F) Clinical Specialist in Medical-Surgical Nursing;

(G) Clinical Specialist in Gerontological Nursing;

(H) Clinical Specialist in Adult Psychiatric and Mental Health Nursing;

(I) Clinical Specialist in Child and Adolescent Psychiatric and Mental Health Nursing; or

(J) Psychiatric and Mental Health Nurse Practitioner (Adult and Family);

(ii) Pediatric Nursing Certification Board;

(iii) American Academy of Nurse Practitioners;

(iv) the National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties;

(v) the Oncology Nursing Certification Corporation Advanced Oncology Certified Nurse if taken on or before July 1, 2005;

(vi) one of the following examinations administered by the American Association of Critical Care Nurses Certification Corporation Inc.:

(A) the Advanced Practice Certification for the Clinical Nurse Specialist in Acute and Critical Care; or

(B) the Acute Care Nurse Practitioner Certification;

(vii) the national [~~nurse midwifery~~]certifying examination administered by the [~~Accreditation Commission for Midwifery Education~~]American Midwifery Certification Board, Inc.; or

(viii) the examination of the Council on Certification of Nurse Anesthetists.

(3) In accordance with Section 58-31b-303, an applicant for licensure as an LPN or RN from a non-approved nursing program shall pass the applicable NCLEX examination.

(4)(a) An applicant for certification as an MA-C shall pass the Utah Medication Aide Certification Examination with a score of 75% of greater; and

(b) the certification examination must be taken within six months of completion of the approved training program and cannot be taken more than two times without repeating an approved training program.

([~~4~~]5) The examinations required under this Section are national exams and cannot be challenged before the Division.

R156-31b-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 31b, is established by rule in Section R156-1-308.

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

(3) Each applicant for renewal shall comply with the following continuing competence requirements:

(a) An LPN or RN shall complete one of the following during the two years immediately preceding the application for renewal:

(i) licensed practice for not less than 400 hours;

(ii) licensed practice for not less than 200 hours and completion of 15 contact hours of approved continuing education; or

(iii) completion of 30 contact hours of approved continuing education hours.

(b) An APRN shall complete the following:

(i) be currently certified or recertified in their specialty area of practice; or

(ii) if licensed prior to July 1, 1992, complete 30 hours of approved continuing education and 400 hours of practice.

(c) An MA-C shall complete eight contact hours of approved continuing education related to medications or medication administration during the two years immediately preceding the application for renewal.

R156-31b-304. Temporary Licensure.

[~~(1) In accordance with Subsection 58-1-303(1), the division may issue a temporary license to a person who meets all qualifications for licensure as either an LPN or RN, except for the passing of the required examination, if the applicant:~~

~~(a) is a graduate of or has completed a Utah-based, nursing education program with full approval status within two months immediately preceding application for licensure;~~

~~(b) has never before taken the specific licensure examination;~~

~~(c) submits to the division evidence of having secured employment conditioned upon issuance of the temporary license, and the employment is under the direct, on-site supervision of a fully licensed registered nurse; and~~

~~(d) has registered for the appropriate NCLEX examination.~~

~~(2) The temporary license issued under Subsection (1) expires the earlier of:~~

~~(a) the date upon which the division receives notice from the examination agency that the individual failed the examination;~~

~~(b) 90 days from the date of issuance; or~~

~~(c) the date upon which the division issues the individual full licensure.~~

~~(2)~~]A temporary license issued in accordance with Section 58-1-303 to a graduate of a foreign nursing education program may be issued for a period of time not to exceed one year from the date of issuance and shall not be renewed or extended.

R156-31b-309. Intern Licensure.

(1) In accordance with Section 58-31b-306, an intern license shall expire the earlier of:

(a) [~~90~~]180 days from the date of issuance, unless the applicant is applying for licensure as an APRN specializing in psychiatric mental health nursing, then the intern license shall be issued for a period of one year and can be extended in one year increments not to exceed five years;

(b) 30 days after notification from the applicant or the examination agency, if the applicant fails the examination; or

(c) upon issuance of an APRN license.

(2) Regardless of the provisions of Subsection (1) of this section, the division in collaboration with the board may extend the term of any intern license upon a showing of extraordinary circumstances beyond the control of the applicant.

(3) It is the professional responsibility of the APRN Intern to inform the Division of examination results within ten calendar days of receipt and to cause to have the examination agency send the examination results directly to the Division.

R156-31b-601. Standards for Parent Academic Institution Offering Nursing Education Program.

In accordance with Subsection 58-31b-601(2), the minimum standards that a parent academic institution offering a nursing education program must meet to qualify graduates for licensure under this chapter are as follows.

(1) The parent academic institution shall be legally authorized by the State of Utah to provide a program of education beyond secondary education.

(2) The parent academic institution shall admit as students only persons having a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate.

(3) At least 20 percent of the parent academic institution's revenue shall be from sources that are not derived from funds provided under title IV, HEA program funds or student fees, including tuition if a proprietary school.

(4) In addition to the standards established in Subsections (1), (2), and (3) above, a parent education institution offering a nursing education program leading toward licensure as an LPN shall:

(a) be accredited or preaccredited [~~regionally~~]by a regional or national professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education, and recognized by the nurse accrediting body from which the nursing program will seek nurse accreditation[~~or one of the following national accrediting bodies: the Accrediting Bureau of Health Education Schools (ABHES), the Accrediting Commission of Career Schools and Colleges of Technology (ACCSCT), Council on Occupational Education, or the Accrediting Commission of the Distance Education and Training Council (DETC)~~]; and

(b) provide not less than one academic year program of study that leads to a certificate or recognized educational credential.

(5) In addition to the standards established in Subsections (1), (2), and (3) above, a parent education institution offering a nursing education program leading toward licensure as an RN shall:

(a) be accredited or preaccredited [~~regionally~~]by a regional or national professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education, and recognized by the nurse accrediting body from which the nursing program will seek nurse accreditation[~~or one of the following national accrediting bodies: the Accrediting Bureau of Health Education Schools (ABHES), the Accrediting Commission of Career Schools and Colleges of Technology (ACCSCT), or the Accrediting Commission of the Distance Education and Training Council (DETC)~~]; and

(b) provide or require not less than a two academic year program of study that awards a minimum of an associate degree.

(6) In addition to the standards established in Subsections (1), (2), and (3) above, a parent education institution offering a nursing education program leading toward licensure as an APRN or APRN-CRNA shall:

(a) be accredited or preaccredited [~~regionally~~]by a regional or national professional accrediting body approved by the Council for Higher Education Accreditation of the American Council on Education and recognized by the nurse accrediting body from which the nursing program will seek nurse accreditation;

(b) admit as students, only persons having completed at least an associate degree in nursing or baccalaureate degree in a related discipline; and

(c) provide or require not less than a two academic year program of study that awards a minimum of a master's degree.

R156-31b-603. Nursing Education Program Standards.

In accordance with Subsection 58-31b-601(2), the minimum standards that a nursing education program must meet to qualify graduates for licensure under this chapter are set forth as follows.

(1) A nursing education program shall meet the following standards:

(a) purposes and outcomes shall be consistent with the Nurse Practice Act and Rule and other relevant state statutes;

(b) purposes and outcomes shall be consistent with generally accepted standards of nursing practice appropriate for graduates of the type of nursing program offered;

(c) consumer input shall be considered in developing and evaluating the purpose and outcomes of the program;

(d) the program shall implement a comprehensive, systematic plan for ongoing evaluation that is based on program outcomes and incorporates continuous improvement;

(e) the curriculum shall provide diverse, integrated didactic and clinical learning experiences across the lifespan, consistent with program outcomes;

(f) the faculty and students shall participate in program planning, implementation, evaluation, and continuous improvement;

(g) the nursing program administrator shall be professionally and academically qualified as a registered nurse with institutional authority and administrative responsibility for the program;

(h) professionally and academically qualified nurse faculty shall be sufficient in number and expertise to accomplish program outcomes and quality improvement;

(i) fiscal, human, physical, clinical and technical learning resources shall be adequate to support program processes, security and outcomes;

(j) program information communicated by the nursing program shall be fair, accurate, complete, consistent, and readily available;

(k) the program shall meet all the criteria established in this rule;

(l) the program shall be an integral part of a parent academic institution which is accredited by an accrediting body that is recognized by the U.S. Secretary of Education; and

(m) the program shall require students to obtain general education, pre-requisite, and co-requisites courses from a regionally accredited institution of higher education, or have in place an articulation agreement with a regionally accredited institution of higher education; a current approved program has until January 1, 2010 to come into compliance with this standard.

(2) A comprehensive nursing education program evaluation shall be performed annually for quality improvement and shall include but not be limited to:

(a) students' achievement of program outcomes;

(b) evidence of adequate program resources including fiscal, physical, human, clinical and technical learning resources, and the availability of clinical sites and the viability of those sites to meet the objectives of the program;

(c) multiple measures of program outcomes for graduates such as NCLEX pass rate, student and employer survey, and successful completion of national certification programs;

(d) evidence that accurate program information for consumers is readily available;

(e) evidence that the head of the academic institution and the administration support program outcomes;

(f) evidence that the program administrator and program faculty meet board qualifications and are sufficient to achieve program outcomes; and

(g) evidence that the academic institution assures security of student information.

(3) The curriculum of the nursing education program shall enable the student to develop the nursing knowledge, skills and competencies necessary for the level, scope and standards of nursing practice consistent with the level of licensure. The curriculum shall include:

(a) content regarding legal and ethical issues, history and trends in nursing and health care, and professional responsibilities;

(b) experiences that promote the development of leadership and management skills and professional socialization consistent with the level of licensure, including the demonstration of the ability to supervise others and provide leadership of the profession;

(c) learning experiences and methods of instruction, including distance education methods, consistent with the written curriculum plan;

(d) coursework including, but not limited to:

(i) content in the biological, physical, social and behavioral sciences to provide a foundation for safe and effective nursing practice;

(ii) didactic content integrated with supervised clinical experience in the prevention of illness and the promotion, restoration, and maintenance of health in patients across the life span and in a variety of clinical settings, to include:

(A) using informatics to communicate, manage knowledge, mitigate error and support decision making;

(B) employing evidence-based practice to integrate best research with clinical expertise and patient values for optimal care, including skills to identify and apply best practices to nursing care;

(C) providing patient-centered, culturally competent care:

(1) respecting patient differences, values, preferences and expressed needs;

(2) involving patients in decision-making and care management;

(3) coordinating and managing continuous patient care; and

(4) promoting healthy lifestyles for patients and populations;

(D) working in interdisciplinary teams to cooperate, collaborate, communicate and integrate patient care and health promotion; and

(E) participating in quality improvement processes to measure patient outcomes, identify hazards and errors, and develop changes in processes of patient care;

(e) supervised clinical practice which includes development of skill in making clinical judgments, management and care of groups of patients, experience with interdisciplinary teamwork, working with families in the provision of care, managing crisis situations, and delegation to and supervision of other health care providers:

(i) clinical experience shall be comprised of sufficient hours, shifts, variety of populations, and hands-on practice to meet these standards, and ensure students' ability to practice at an entry level;

(ii) no more than 25% of the clinical hours can be obtained in a nursing skills laboratory, or by clinical simulation or virtual clinical excursions;

(iii) all student clinical experiences, including those with preceptors, shall be supervised by qualified nursing faculty at a ratio of not more than 10 students to one faculty member unless the experience includes students working with preceptors who can be supervised at a ratio of not more than 15 students to one faculty member; and

(iv) nursing faculty, must be on-site with students during all fundamental, medical-surgical and acute care clinical experiences;

(f)(i) clinical preceptors may be used to enhance faculty-directed clinical learning experiences after a student has completed didactic and clinical instruction in all foundational courses including introduction to nursing, fundamentals, medical-surgical, obstetrics, and pediatrics. Therefore, clinical preceptors shall not be utilized in LPN nursing programs.

(ii) a clinical preceptor shall:

(A) demonstrate competencies related to the area of assigned clinical teaching responsibilities;

(B) serve as a role model and educator to the student;

(C) be licensed as a nurse at or above the level for which the student is preparing;

(D) not be used to replace clinical faculty;

(F) be provided with a written document defining the functions and responsibilities of the preceptor;

(G) confer with the clinical faculty member and student for monitoring and evaluating learning experiences, but the clinical faculty member shall retain responsibility for student learning; and

(H) not supervise more than two students during any one scheduled work time or shift; and

(g) delivery of instruction by distance education methods must be consistent with the program curriculum plan and enable students to meet the goals, competencies and objectives of the educational program and standards of the division.

(4) Students rights and responsibilities:

(a) opportunities to acquire and demonstrate the knowledge, skills and abilities for safe and effective nursing practice, in theory and clinical experience with faculty oversight shall be provided to students;

(b) all policies shall be written and available to students;

(c) students shall be required to meet the health standards and criminal background checks as required in Utah;

(d) students shall receive faculty instruction, advisement and oversight;

(e) students shall maintain the integrity of their work;

(f) (i) an applicant accepted into a nursing education program that has received provisional approval status from the Division, must sign a disclaimer form indicating the applicant's knowledge of the provisional approval status of the program, and the lack of a guarantee that the program will achieve national nursing accreditation and full approval status from the Division; and

(ii) the disclaimer shall also contain a statement regarding the lack of a guarantee that the credit received from the provisionally approved program will be accepted by or transferable to another educational facility; and

(g) an applicant accepted into a nursing education program or a student of a nursing education program that is on or receives probationary approval status from the Division, must sign a disclaimer form indicating the applicant or student has knowledge of the program's probationary approval status, and the lack of a guarantee that the program will maintain any approval status or will be able to offer the complete program.

(5) An administrator of a nursing education program shall meet the following requirements:

(a) a program preparing an individual for licensure as an LPN:

(i) have a current, active, unencumbered RN or APRN license or multistate privilege to practice nursing in Utah;

(ii) have a minimum of an earned graduate degree with a major in nursing, or a baccalaureate degree in nursing and an earned doctoral degree in a related discipline from a nurse accredited education program or regionally accredited institution;

(iii) have academic preparation in curriculum and instruction;

(iv) have at least three years of experience teaching in an accredited nursing education program;

(v) have knowledge of current LPN practice; and

(vi) have adequate time to fulfill the role and responsibilities of a program administrator;

(b) a program preparing an individual for licensure as an RN:

(i) have a current, active, unencumbered RN or APRN license or multistate privilege to practice nursing in Utah;

(ii)(A) associate degree program: have a minimum of an earned graduate degree with a major in nursing from a nurse accredited education program;

(B) baccalaureate degree program: have a minimum of an earned graduate degree in nursing and an earned doctorate in nursing or a related discipline from a nurse accredited program or regionally accredited institution;

(iii) have academic preparation in curriculum and instruction;

(iv) have at least three years of experience teaching in an accredited nursing education program;

(v) have knowledge of current RN practice; and

(vi) have adequate time to fulfill the role and responsibilities of a program administrator;

(c) a program preparing an individual for licensure as an APRN:

(i) have a current, active, unencumbered RN or APRN license or multistate privilege to practice nursing in Utah;

(ii) have a minimum of an earned graduate degree with a major in nursing and an earned doctorate in nursing or a related discipline from a nurse accredited program or regionally accredited institution;

(iii) have academic preparation in curriculum and instruction;

(iv) have at least three years of experience teaching in an accredited nursing education program;

(v) have knowledge of current nursing practice;

(vi) have adequate time to fulfill the role and responsibilities of a program administrator; and

(v) if the program administrator is not a licensed APRN, then the program must also have a director that meets the qualifications of Subsection (d) below;

(d) the director of a graduate program preparing an individual for licensure as an APRN shall meet the following requirements:

(i) have a current, active, unencumbered APRN license or multistate privilege to practice as an APRN in Utah;

(ii) have a minimum of an earned graduate degree with a major in nursing in an APRN role and specialty from a nurse accredited program;

(iii) have educational preparation in curriculum and instruction;

(iv) have at least three years of experience teaching in an accredited nursing education program;

(v) have knowledge of current APRN practice; and

(vi) have adequate time to fulfill the role and responsibilities of a program director.

(6) The qualifications for nursing faculty who teach didactic, clinical, or in a skills practice laboratory, in a nursing education program shall include:

(a) a program preparing an individual for licensure as an LPN:

(i) have a current, active, unencumbered RN or APRN license or multistate privilege to practice nursing in Utah;

(ii) have a baccalaureate degree in nursing or an earned graduate degree with a major in nursing from a nurse accredited program, the majority of faculty (at least 51%) shall have an earned graduate degree with a major in nursing from a nurse accredited program;

(iii) have at least two years of clinical experience;

(iv)(A) have educational preparation in curriculum and instruction; or

(B) have at least three years of experience teaching in an accredited nursing education program; and

(v) the majority of faculty shall have documented educational preparation as specified in Subsection (iv)(A) above;

(b) a program preparing an individual for licensure as an RN:

(i) have a current, active, unencumbered RN or APRN license or multistate privilege to practice nursing in Utah;

(ii) have an earned graduate degree with a major in nursing from a nurse accredited program or be currently enrolled in a graduate level accredited nursing education program with graduation from the program no later than three years from the date of hire;

(iii) have at least two years of clinical experience;

(iv)(A) have educational preparation in curriculum and instruction; or

(B) have at least three years of experience teaching in an accredited nursing education program; and

(v) the majority of faculty shall have documented educational preparation as specified in Subsection (iv)(A) above;

(c) a program preparing an individual for licensure as an APRN:

(i) have a current, active, unencumbered APRN license or multistate privilege to practice nursing in Utah;

(ii) have an earned graduate degree with a major in nursing in an APRN role and specialty from a nurse accredited program or regionally accredited institution; the majority of the faculty shall have an earned doctorate from a regionally accredited institution;

(iii) have at least two years of clinical experience practicing as an APRN;

(iv)(A) have educational preparation in curriculum and instruction; or

(B) have at least three years of experience teaching in an accredited nursing education program; and

(v) the majority of faculty shall have documented educational preparation as specified in Subsection (iv)(A) above.

(7) At the time this Rule becomes effective, any currently employed nursing program administrator or faculty member who does not meet the criteria established in Subsection (5) or (6), shall have until July 1, 2011 to meet the criteria.

(8) Adjunct clinical faculty, except clinical associates, employed solely to supervise clinical nursing experiences of students shall meet all the faculty qualifications for the program level they are teaching. A clinical associate is a staff member of a health care facility with an earned graduate degree or a student currently enrolled in a graduate nursing education program, who is given release time from the facility to provide clinical supervision to other students. The clinical associate is supervised by a graduate prepared mentor faculty member.

(9) Interdisciplinary faculty who teach non-clinical nursing courses shall have advanced preparation appropriate to the area of content.

(10) A nursing education program preparing graduates for licensure as either an LPN or RN must maintain an average pass rate on the applicable NCLEX examination that is no more than 5% below the national average pass rate for the same time period.

(11) A program that has received full approval status from the Division in collaboration with the board and is accredited by either CCNE or NLNAC:

(a) if the low NCLEX pass rate occurs twice, either after two consecutive graduation cycles or over a two year period of time, the program shall be issued a letter of warning by the Division in collaboration with the Board, and within 30 days from the date of the letter of warning, the program administrator shall submit a written remediation plan to the Board for approval;

(b) if the low NCLEX pass rate occurs three times either after three consecutive graduation cycles or over a two year period of time, the program administrator shall schedule and participate in a meeting with the Board to discuss the approved remediation plan and its implementation, and the program's approval status shall be changed to "Probationary"; and

(c) if the low NCLEX pass rate occurs four times either after four consecutive graduation cycles or over a two year period of time, the program shall cease accepting new students;

(i) if the program is unable to raise the pass rate to the required level after five consecutive graduation cycles or over a two year period of time, the program shall cease operation at the end of the current academic timeframe such as at the end of the current semester or quarter; and

(ii) a nursing education program that ceases to operate under this Subsection, may submit a new application for approval status of a nursing education program to the Division for review and action no sooner than one year from the date the program ceases to operate.

(12) A program that has been granted provisional approval status by the Division in collaboration with the Board, but has not received either CCNE or NLNAC accreditation:

(a) if a low NCLEX pass rate occurs after any one graduation cycle, the program shall be issued a letter of warning by the Division in collaboration with the Board, and within 30 days from the date of the letter of warning, the program administrator shall submit a written remediation plan to the Board for approval;

(b) if the low NCLEX pass rate occurs twice, either after two consecutive graduation cycles, or a two year period of time, the program administrator shall schedule and participate in a meeting with the Board to discuss the approved remediation plan and its implementation and the program's approval status shall be changed to "Probationary"; and

(c) if the low NCLEX pass rate occurs three times either after three consecutive graduation cycles or over a two year period of time, the program shall cease accepting new students;

(i) if the program is unable to raise the pass rate to the required level after four consecutive graduation cycles or over a two year period of time, the program shall cease operation at the end of the current academic timeframe such as at the end of the current semester or quarter; and

(ii) a nursing education program that ceases operation under this Subsection, may submit a new application for approval status of a nursing education program to the Division for review and action no sooner than one year from the date the program ceases to operate.

(13) Additional required components of graduate education programs, including post-masters certificate programs, leading to APRN licensure include:

(a) each student enrolled shall be licensed or have a multistate privilege to practice as an RN in Utah;

(b) the curriculum shall be consistent with nationally recognized APRN roles and specialties and shall include:

(i) graduate level advanced practice nursing core courses including legal, ethical and professional responsibilities of the APRN, advanced pathophysiology, advanced health assessment, pharmacotherapeutics, and management and treatment of health care status; and

(ii) coursework focusing on the APRN role and specialty;

(c) dual track APRN graduate programs (preparing for two specialties) shall include content and clinical experience in both functional roles and specialties;

(d) instructional track/major shall have a minimum of 500 hours of supervised clinical experience directly related to the recognized APRN role and specialty;

(e) specialty tracks that provide care to multiple age groups and care settings shall require additional hours distributed in a manner that represents the populations served;

(f) there shall be provisions for the recognition of prior learning and advanced placement in the curriculum for individuals who hold a masters degree in nursing who are seeking preparation in a different role and specialty;

(g) post-masters nursing students shall complete the requirements of the APRN masters program through a formal graduate level certificate or master level track in the desired role and specialty;

(i) a program offering a post-masters certificate in a specialty area must also offer a master degree course of study in the same specialty area; and

(ii) post-master students must master the same APRN outcome criteria as the master level students and are required to complete a minimum of 500 supervised clinical hours; and

(h) a lead faculty member who is educated and nationally certified in the same specialty area and licensed as an APRN or possessing an APRN multistate privilege shall coordinate the educational component for the role and specialty in the APRN program.

R156-31b-801. Medication Aide - Certified - Formulary and Protocols.

In accordance with Subsection 58-31b-102(12)(b)(i), the formulary and protocols for an MA-C to administer routine medications are as follows.

(1) Under the supervision of a licensed nurse as defined in Subsection R156-31b-102(40), an MA-C may:

(a) administer medication:

(i) via approved routes as listed in Subsection 58-31b-102(17)(b);

(ii) that includes turning oxygen on and off at a predetermined, established flow rate; and

(iii) that is prescribed as PRN (as needed), if expressly instructed to do so by the nurse, or the medication is an over-the-counter medication;

(b) destroy medications per facility policy;

(c) assist a patient with self administration; and

(d) account for controlled substances with another MA-C or nurse.

(2) An MA-C shall not administer medications via the following routes:

(a) central lines;

(b) colostomy;

(c) intramuscular;

(d) subcutaneous;

(e) intrathecal;

(f) intravenous;

(g) nasogastric;

(h) nonmetered inhaler;

(i) intradermal;

(j) urethral;

(k) epidural;

(l) endotracheal; or

(m) gastronomy or jejunostomy tubes.

(3) An MA-C shall not administer the following kinds of medications:

(a) barium and other diagnostic contrast;

(b) chemotherapeutic agents except oral maintenance chemotherapy;

(c) medication pumps including client controlled analgesia; and

(d) nitroglycerin paste.

(4) An MA-C shall not:

(a) administer any medication which requires nursing assessment or judgment prior to administration, on-going evaluation, or follow-up;

(b) receive written or verbal orders;

(c) transcribe orders from the medical record;

(d) conduct patient or resident assessments or evaluations;

(e) engage in patient or resident teaching activities regarding medications unless expressly instructed to do so by the nurse;

(f) calculate drug doses, or administer any medication that requires a medication calculation to determine the appropriate dose;

(g) administer the first dose of a new medication or a dosage change, unless expressly instructed to do so by the nurse; and

(h) account for controlled substances, unless assisted by another MA-C or a nurse.

(5) In accordance with Section R156-31b-701, a nurse may refuse to delegate the administration of medications to a specific patient or in a specific situation.

(6) A nurse practicing in a facility that is required to provide nursing services 24 hours per day shall not supervise more than two MA-Cs per shift.

(7) A nurse providing nursing services in a facility that is not required to provide nursing services 24 hours per day may supervise up to and including four MA-Cs per shift.

R156-31b-802. Medication Aide - Certified - Approval of Training Programs.

In accordance with Subsection 58-31b-601(3), the minimum standards for an MA-C training program to be approved by the Division in collaboration with the Board and the process to obtain approval are established as follows.

(1) All training programs shall be approved by the Division in collaboration with the Board and shall obtain approval prior to implementing the program.

(2) Training programs may be offered by an educational institution, a health care facility, or a health care association.

(3) The program shall consist of a minimum of 60 clock hours of didactic (classroom) training which is consistent with the model curriculum in Section R156-31b-803, and at least 40 hours of practical training within a long-term care facility.

(4) The classroom instructor shall:

(a) have a current, active, unencumbered LPN, RN or APRN license or multistate privilege to practice nursing in Utah;

(b) be a faculty member of an approved nursing education program, or an approved certified nurse aide (CNA) instructor who has completed the Department of Health's "Train the Trainer" program; and

(c) have at least two years of clinical experience and at least one year of experience in long-term care in the past five years.

(5) The on-site practical training experience instructor shall be available at all times during the practical training experience and shall meet the following criteria:

(a) have a current, active, unencumbered LPN, RN or APRN license or multistate privilege to practice nursing in Utah;

(b)(i) be a faculty member of an approved nursing education program with at least one year of experience in long-term care nursing; or

(ii) be an approved CNA instructor who has completed the Department of Health's "Train the Trainer" program with at least one year of experience in long-term care, and at least three months experience in the specific training facility;

(c) shall not delegate supervisory responsibilities when providing practical experience training to a student;

(d) the practical training instructor to student ratio shall be:

(i) 1:2 if the instructor is working one-on-one with the student to administer the medications; or

(ii) 1:8 if the instructor is supervising a student who is working one-on-one with the clinical facility's medication nurse.

(6) An entity desiring to be approved to provide an MA-C training program to qualify a person for certification as a medication aide shall:

(a) submit to the Division an application form prescribed by the Division;

(b) provide evidence of adequate and appropriate trainers and resources to provide the training program including a well-stocked clinical skills lab or the equivalent;

(c) submit a copy of the proposed training curriculum and an attestation that the proposed curriculum is consistent with the model curriculum in Section R156-31b-803;

(d) document minimal admission requirements including, but not limited to:

(i) an earned high school diploma or successful passage of the general educational development (GED) test;

(ii) current certification as a nursing aide, in good standing, from the Utah Nursing Assistant Registry, with at least 2,000 hours of experience within the two years prior to application to the training program, working as a certified nurse aide in a long-term care setting; and

(iii) current cardiopulmonary resuscitation (CPR) certification.

R156-31b-803. Medication Aide - Certified - Model Curriculum.

Module 1: Medication Fundamentals, recommend 16 hours classroom instruction and four hours of skills lab.

(1) Objectives - the learner will:

(a) describe the different documents on which medications can be ordered and recorded;

(b) detail the elements of a complete medication order for safe administration;

(c) discuss the various tasks to be performed for medications to be safely stored;

(d) identify conditions necessitating disposal of medications or questioning an incomplete medication order;

(e) state the ways to measure medications;

(f) state the different forms in which medications can be manufactured;

(g) recognize that the same medication may have different names;

(h) identify accepted abbreviations;

(i) recognize the abbreviations that should not be used;

(j) list the different effects medications can cause, locally and systemically;

(k) state the types of information that should be known about a specific medication prior to giving that medication;

(l) list the three safety checks of medication administration;

(m) identify the six rights of medication administration; and

(n) describe basic steps of medication preparation prior to administration.

(2) Content Outline - medication orders, documentation, storage and disposal:

(a) medication prescription or order:

(i) recorded on patient record;

(ii) complete order must be signed, legible, and include the drug name, dose, route, time, and frequency;

(iii) MA-C should not take verbal or telephone orders; and

(iv) questioning an incomplete medication order;

(b) medication documentation system:

(i) documentation of orders onto agency's medication document;

(ii) medication administration record (MAR); and

(iii) controlled substance medication log;

(c) medication storage:

(i) storage area;

(ii) medication room;

(iii) medication cart; and

(iv) medication tray; and

(d) disposal of outdated, contaminated or unused medication.

(3) Content Outline - mathematics, weights and measures:

(a) MA-C does not convert medications dosages; and

(b) systems of measurement:

(i) apothecaries' system;

(ii) metric system;

(iii) common household measures;

(iv) roman numerals - drams or grains;

(v) weight is grain; and

(vi) volume is minim.

(4) Content Outline - forms of medication:

(a) liquid:

(i) aerosol;
(ii) inhalant;
(iii) drops;
(iv) elixir;
(v) spray;
(vi) solution;
(vii) suspension (needs mixing or shaking);
(viii) syrup; and
(ix) tincture; and
(b) solid and semi-solids:
(i) capsules;
(ii) tablet (dissolve);
(iii) scored versus unscored;
(iv) caplets;
(v) time-released;
(vi) covered with a special coating (not to be crushed);
(vii) lozenges (dissolve);
(viii) ointment;
(ix) paste;
(x) powder;
(xi) cream;
(xii) lotion; and
(xiii) liniment.
(5) Content Outline - medication basics:
(a) terminology:
(i) medication names:
(A) generic; and
(B) brand or trade name;
(b) abbreviations:
(i) use standardized abbreviations, acronyms and symbols; and
(ii) do not use abbreviations that should no longer be in use;
(c) dosage range;
(d) actions (how drug causes chemical changes in body);
(e) implications for administration (what medical conditions are treated by the drug);
(f) therapeutic effects (desired effect);
(g) side effects (reaction not part of main effect desired);
(h) precautions (anticipate or prepare for conditions that may change effect of drug);
(i) contraindications (condition making drug dangerous to use);
(j) allergic reactions (life threatening - anaphylaxis);
(k) adverse reactions (unpleasant or serious side effects, other than desired);
(l) tolerance (body adapts to drug and may be resistant or less effective);
(m) interactions:
(i) specific administration information such as do not take with grapefruit juice; and
(ii) certain classes of medications that should not be prescribed at the same time;
(n) additive (synergistic) or antagonist effect;
(o) idiosyncratic effect (drug has unusual effect); and
(p) paradoxical effect (drug works in opposite way).
(6) Content Outline - safety and rights of medication administration:
(a) three safety checks:
(i) when removing the medication package from storage (drawer or shelf);
(ii) when removing medication from the package or container it is kept in; and
(iii) when returning the package to where it is stored; and
(b) six rights of medication administration:
(i) right client;
(ii) right drug;
(iii) right dose;
(iv) right route;
(v) right time; and
(vi) right documentation.
(7) Content Outline - preparation and actual medication administration:
(a) wash hands;
(b) review medications that require checking of pulse or blood pressure before administering;
(c) identify the patient;
(d) introduce yourself;
(e) explain what you are going to do;
(f) glove if necessary;
(g) position the client;
(h) do what you explained;
(i) wash your hands;
(j) special considerations; and
(k) document.
Module 2: Safety, recommend six hours of classroom instruction and one hour of skills lab.
(1) Objectives - the learner will:
(a) identify information needed about the patient and the medication prior to medication administration;
(b) identify common causes of medication errors; and
(c) state what steps should be taken when a medication error occurs.
(2) Content Outline - prevention of medication errors:
(a) know the following before administering medications:
(i) name, generic and trade;
(ii) purpose;
(iii) effect;
(iv) length of time to take effect;
(v) side effects;
(vi) adverse effects;
(vii) interactions;
(viii) special instructions; and
(ix) where to get help.
(3) Content Outline - causes and reporting of medication errors:
(a) failure to follow prescriber's orders exactly;
(b) failure to follow manufacturer's specifications or directions for use;
(c) failure to follow accepted standards for medication administration;
(d) failure to listen to a patient's or family's concerns;
(e) notify the agency's nurse, supervisor, pharmacist, physician or other prescriber, according to the agency policy; and
(f) complete a medication error or incident report.
Module 3: Communication and documentation, recommend six hours of classroom instruction and two hours of skills lab:
(1) Objectives - the learner will:
(a) discuss building relationships (review from CNA training);
(b) state when the nurse must be notified of a change in the patient's normal condition;
(c) discuss when the nurse should be notified about vital sign changes;
(d) state when the nurse should be notified of a patient's pain;

(e) identify other alterations or conditions that should be reported to the nurse;
(f) state documentation requirements for medication administration; and
(g) explain the responsibilities of the delegating nurse when delegating medication administration to the MA-C.
(2) Content Outline - building relationships:
(a) review the communication process;
(b) review barriers to effective listening and communication;
(c) setting boundaries; and
(d) review team building.
(3) Content Outline - reporting of symptoms or side effects:
(a) observe, monitor and report any change that is different from the patient's normal condition;
(b) notify the nurse as soon as possible with as much information as available; and
(c) record changes.
(4) Content Outline - report any change from the patient's normal condition:
(a) temperature;
(b) pulse;
(c) respirations;
(d) blood pressure;
(e) observe and report complaints of pain; and
(f) other changes in condition such as urinary output, mental status, and activity.
(5) Content Outline - documentation of medication administration:
(a) identifying initials and time on the medication administration record (MAR);
(b) circle and document the reasons that a patient may not take a medication; and
(c) prn medication, delegated by the licensed nurse, per facility or agency policy.
(6) Content Outline - role of the delegating nurse:
(a) the nurse must determine the level of supervision, monitoring and accessibility he must provide for nursing assistive personnel;
(b) the nurse continues to have responsibility for the overall nursing care;
(c) to delegate effectively, nurses need to be able to rely on nursing assistive personnel's credentials and job descriptions, especially for a first time assignment;
(d) nursing administration has the responsibility for validating credentials and qualifications of employees;
(e) both nurse and MA-C need the appropriate interpersonal and communication skills and organizational support to successfully resolve delegation issues; and
(f) trust is central to the working relationships between nurses and assistive personnel; good relationships have two-way communication, initiative, appreciation, and willingness to help each other.
Module 4 - Medication administration, recommend 18 hours of classroom instruction and two hours of skills lab:
(1) Objectives - the learner will:
(a) identify common methods of medication administration;
(b) identify factors that may affect how the body uses medication; and
(c) identify the classifications of medications, state common effects of medications on the body, and identify resource materials and professionals to contact for clarification of medication questions.
(2) Content Outline - routes of administration:
(a) oral;
(b) buccal;
(c) sublingual;
(d) inhaler (metered dose);
(e) nebulizer;
(f) nasal;
(g) eye (ophthalmic);
(h) ear (otic);
(i) topical;
(j) dressings;
(k) soaks;
(l) transdermal such as patches; and
(m) suppositories, rectal and vaginal.
(3) Content Outline - factors affecting how the body uses medication:
(a) age;
(b) size;
(c) family traits;
(d) diet;
(e) disease;
(f) psychological issues;
(g) gender and basic metabolic rate; and
(h) dosage.
(4) Content Outline - classes of medications related to body systems and common actions:
(a) antimicrobials control or prevent growth of bacteria, fungus, virus or other microorganisms;
(b) cardiovascular:
(i) corrects an irregular, fast or slow heart rate;
(ii) prevents blood from clotting; and
(iii) lowers blood pressure;
(c) dermatological:
(i) antiinfective; and
(ii) anti-inflammatory;
(d) endocrine:
(i) antidiabetic;
(ii) reduces inflammation; and
(iii) hormones;
(e) gastrointestinal:
(i) promotes bowel movements;
(ii) antacids;
(iii) antidiarrheal; and
(iv) reduces gastric acid;
(f) musculoskeletal relaxes muscles;
(g) neurological:
(i) prevents seizures;
(ii) relieves pain;
(iii) lowers body temperature;
(iv) anti-parkinsonian;
(v) antidepressants;
(vi) promotes sleep;
(vii) relieves anxiety;
(viii) antipsychotics; and
(ix) mood stabilizer;
(h) nutrients, vitamins, and minerals replace chemicals missing or low in the body;
(i) respiratory:

(i) decreases mucus production;
(ii) broncholilation;
(iii) cough depressant or expectorant; and
(iv) decongestant;
(j) sensory:
(i) antiglaucoma;
(ii) artificial terms; and
(iii) earwax emulsifiers; and
(k) urinary increases water loss through kidneys.
(5) Content Outline - location of resources and references:
(a) nurse;
(b) pharmacist;
(c) physician;
(d) package or drug insert; and
(e) drug reference manuals.
Module 5 - Ethical and Legal, recommend four hours classroom instruction and one hour skills lab:
(1) Objectives - the learner will:
(a) identify when a delegated task should or should not be performed by the MA-C;
(b) recognize when and how to report errors;
(c) recognize what should be reported to the licensed nurse;
(d) distinguish between the tasks an MA-C can and cannot accept;
(e) define redelegation;
(f) identify skills that enhance the delegation process;
(g) describe the rights of the client;
(h) discuss the types of abuse that must be reported;
(i) describe examples of the types of legal problems that can occur;
(j) list the three steps to take before medication is safe to give; and
(k) recognize the numerous rights that must be followed before and after medication is administered.
(2) Content Outline - role of the MA-C:
(a) MA-C may perform a task involving administration of medications if:
(i) MA-C's assignment is to administer medications under the supervision of a licensed nurse in accordance with provisions of the Nurse Practice Act and Rule; and
(ii) the delegation is not prohibited by any provision of this act and rule;
(b) role of the MA-C includes medication administration as a delegated nursing function under nursing supervision. The following shall not be delegated to an MA-C:
(i) conversion or calculation of medication dosage;
(ii) assessment of patient need for or response to medications;
(iii) nursing judgment regarding the administration of PRN medications; or
(iv) medications to be given via parenteral routes and through nasogastric, gastrostomy, or jejunostomy routes;
(c) MA-C shall not perform a task involving the administration of medications if:
(i) the medication administration requires an assessment of the patient's need for medication, a calculation of the dosage of the medication or the conversion of the dosage;
(ii) the supervising nurse is unavailable to monitor the progress of the patient and the effect of the medication on the patient; or
(iii) the patient is not stable or has changing needs;
(d) any MA-C who has any reason to believe that he has made an error in the administration of medication shall follow facility policy and procedure to report the possible or known error to the appropriate superior and shall assist in completing any required documentation of the medication error; and
(e) medication administration policies:
(i) MA-C shall report to the supervising nurse:
(A) signs or symptoms that appear life-threatening;
(B) events that appear health-threatening; and
(C) medications that produce no results or undesirable effects as reported by the patient;
(ii) a licensed nurse shall supervise an MA-C; and
(iii) a licensed nurse shall review periodically the following:
(A) authorized provider orders; and
(B) patient medication records.
(3) Content Outline - the responsibility of the MA-C when accepting delegation tasks:
(a) the MA-C has the responsibility not to accept a delegation that he knows is beyond his knowledge and skills;
(b) delegation is patient specific; having done a task for one patient does not automatically mean assistive personnel can do the task for all patients, additionally, delegation is also situation specific, doing a task for one patient in one situation does not mean the nursing assistive personnel may perform that task for this patient in all situations;
(c) a task delegated to assistive personnel cannot be redelegatd by the nursing assistive personnel;
(d) the MA-C is expected to speak up and ask for training and assistance in performing the delegation, or request not to be delegated a particular task, function, or activity; and
(e) both nurse and MA-C need the appropriate interpersonal and communication skills and organizational support to successfully resolve delegation issues.
(4) Content Outline - rights of individuals:
(a) maintain confidentiality;
(b) respect patient's rights;
(c) respect patient's privacy;
(d) respect patient's individuality and autonomy;
(e) communicate respectfully;
(f) respect patient's wishes whenever possible;
(g) right to refuse medication; and
(h) right to be informed.
(5) Content Outline - specific legal and ethical issues:
(a) abuse or neglect:
(i) identify types of abuse:
(A) physical;
(B) verbal;
(C) psychological;
(D) sexual; and
(E) financial;
(ii) preventive measures; and
(iii) duty to report;
(b) exposure to medical malpractice, negligence claims, or lawsuits;
(c) fraud;
(d) theft; and
(e) diversion.
(6) Content Outline - safety and rights of medication administration:
(a) review the three safety checks; and
(b) review the six rights of medication administration.
Module 6 - Practicum:

(1) Objective - the learner will demonstrate safe administration of medications to patients in a clinical setting.

(2) Content Outline - forty hours of supervised clinical practicum, which should be progressive, where the instructor observes medication administration, and gradually, the instructor increases the number of patients to whom the student administers medications.

KEY: licensing, nurses
Date of Enactment or Last Substantive Amendment: [~~August 25, 2008~~]2009
Notice of Continuation: April 1, 2008
Authorizing, and Implemented or Interpreted Law: 58-31b-101; 58-1-106(1)(a); 58-1-202(1)(a)

♦ ♦

Environmental Quality, Radiation Control

R313-22-75

Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32206
FILED: 12/11/2008, 10:31

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to maintain compatibility with certain federal regulations that prescribe training requirements for nuclear pharmacists, add text to the rule that had been previously omitted, and remove referenced prescribed training requirements that have expired.

SUMMARY OF THE RULE OR CHANGE: In Subsection R313-22-75(9), this change incorporates a certain requirement for nuclear pharmacists. Specifically, a preceptor training document is now required before the person can be added to a radioactive materials license. This requirement already exists for medical doctors and this addition is intended to keep consistency with the same requirements for medical doctors. The rule language in Subsection R313-22-75(10) has been updated to include two previous omissions in equivalent federal rulemaking actions. To be consistent with Rule R313-32 (incorporating 10 CFR Part 35 2007 ed.), this section is revised to add supplementing text that had been inadvertently omitted. Rule R313-32 (incorporating 10 CFR Part 35, 2002 ed.) had prescribed training requirements for medical doctors using radioactive material, as set forth in Subpart J. Subpart J expired 10/24/2005 and all references to Subpart J have been removed from the 2007 edition of 10 CFR Part 35. Training and board certifications that were listed in Subpart J have also been removed from the regulations and are now found on the Nuclear Regulatory Commission website.

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

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Update from 10 CFR Part 35, 2005 ed. to 10 CFR Part 35, 2007 ed.

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no significant regulatory requirements added or removed in this rule. It is expected that there be no anticipated cost or savings to the state budget.

❖ LOCAL GOVERNMENTS: There are no significant regulatory requirements added or removed in this rule. There is no anticipated cost or savings to local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no significant regulatory requirements added or removed in this rule. There is no anticipated cost or savings to individuals and small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As this change only prescribes an additional requirement to ensure appropriate training has been met, there should be no additional costs incurred by this rule change. Other changes are not significant and also should not incur any additional costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses with a radioactive material license will not see a fiscal impact due to the proposed changes to Rule R313-22. The proposed changes do not add or remove significant requirements that affect the radiation control program or the Utah Radiation Control Board. Richard W. Sprott, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
David Hogge at the above address, by phone at 801-536-4250, by FAX at 801-533-4097, or by Internet E-mail at dhogge@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 02/02/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/12/2009

AUTHORIZED BY: Dane Finerfrock, Director

R313. Environmental Quality, Radiation Control.
R313-22. Specific Licenses.
R313-22-75. Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material.

. . . . . .

(8) Licensing the manufacture and distribution of ice detection devices. An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed under Subsection R313-21-22(10) will be approved if:

(a) the applicant satisfies the general requirements of Section R313-22-33; and

(b) the criteria of 10 CFR 32.61, 32.62, 32.103, 2006 ed. are met.

(9) Manufacture, preparation, or transfer for commercial[~~and~~] distribution of radioactive drugs[~~radiopharmaceuticals~~] containing radioactive material for medical use under R313-32[~~group licenses~~].

(a) An application for a specific license to manufacture and distribute radiopharmaceuticals containing radioactive material for use by persons licensed pursuant to Rule R313-32 will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits evidence that the applicant is at least one of the following:

(A) registered or licensed with the U.S. Food and Drug Administration (FDA) as a drug manufacturer;

(B) registered or licensed with a state agency as a drug manufacturer;

(C) licensed as a pharmacy by a State Board of Pharmacy; or

(D) operating as a nuclear pharmacy within a medical institution.

(iii) the applicant submits information on the radionuclide; the chemical and physical form; the maximum activity per vial, syringe, generator, or other container of the radioactive drug; and the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees; and

(iv) the applicant satisfies the following labeling requirements:

(A) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL"; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half life greater than 100 days, the time may be omitted.

(B) A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL" and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

(b) A licensee described by Subsections R313-22-75(9)(a)(ii)(C) or (D):

(i) May prepare radioactive drugs for medical use, as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference), provided that the radioactive drug is prepared by either an authorized nuclear pharmacist, as specified in Subsections R313-22-75(9)(b)(ii) and (iv), or an individual under the supervision of an authorized nuclear pharmacist as specified in Rule R313-32 (incorporating 10 CFR 35.27 by reference).

(ii) May allow a pharmacist to work as an authorized nuclear pharmacist if:

(A) this individual qualifies as an authorized nuclear pharmacist as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference);

(B) this individual meets the requirements specified in Rule R313-32 (incorporating 10 CFR 35.55(b) and 10 CFR 35.59 by reference) and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(C) this individual is designated as an authorized nuclear pharmacist in accordance with Subsection R313-22-75(9)(b)(iv).

(iii) The actions authorized in Subsections R313-22-75(9)(b)(i) and (ii) are permitted in spite of more restrictive language in license conditions.

(iv) May designate a pharmacist, as defined in Rule R313-32 (incorporating 10 CFR 35.2 by reference), as an authorized nuclear pharmacist if the individual is identified as of January 1, 1997 as an "authorized user" on a nuclear pharmacy license issued by the Executive Secretary under Subsection R313-22-75(9).

[~~(v) Shall provide to the Executive Secretary a copy of each individual's certification by the Board of Pharmaceutical Specialties, the Nuclear Regulatory Commission or Agreement State license, or the permit issued by a licensee of broad scope, and a copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, pursuant to Subsections R313-22-75(9)(b)(ii)(A) and (B), the individual to work as an authorized nuclear pharmacist.~~](v) Shall provide to the Executive Secretary:

(A) a copy of each individual's certification by a specialty board whose certification process has been recognized by the Nuclear Regulatory Commission or Agreement State as specified in Rule R313-32 (incorporating 10 CFR 35.55(a) by reference) with the written attestation signed by a preceptor as required by Rule R313-32 (incorporating 10 CFR 35.55(b)(2) by reference); or

(B) the Nuclear Regulatory Commission or Agreement State license; or

(C) the permit issued by a licensee of broad scope; and

(D) and a copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, pursuant to Subsections R313-22-75(9)(b)(ii)(A) and R313-22-75(9)(b)(ii)(C), the individual to work as an authorized nuclear pharmacist.

(c) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

(i) perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(ii) check each instrument for constancy and proper operation at the beginning of each day of use.

(d) Nothing in Subsection R313-22-75(9) relieves the licensee from complying with applicable FDA, or Federal, and State requirements governing radioactive drugs.

(10) Manufacture and distribution of sources or devices containing radioactive material for medical use. An application for a specific license to manufacture and distribute sources and devices

containing radioactive material to persons licensed [~~pursuant to~~]under Rule R313-32 [~~(incorporating 10 CFR 35.18)~~]for use as a calibration, transmission, or reference source or for the uses listed in Rule R313-32 (incorporating 10 CFR 35.400, 10 CFR 35.500,[~~and~~] 10 CFR 35.600, and 35.1000 by reference) will be approved if:

(a) the applicant satisfies the general requirements in Section R313-22-33;

(b) the applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

(i) the radioactive material contained, its chemical and physical form and amount,

(ii) details of design and construction of the source or device,

(iii) procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents,

(iv) for devices containing radioactive material, the radiation profile of a prototype device,

(v) details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests,

(vi) procedures and standards for calibrating sources and devices,

(vii) legend and methods for labeling sources and devices as to their radioactive content, and

(viii) instructions for handling and storing the source or device from the radiation safety standpoint, these instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device; provided that instructions which are too lengthy for a label may be summarized on the label and printed in detail on a brochure which is referenced on the label;

(c) the label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity and date of assay, and a statement that the source or device is licensed by the Executive Secretary for distribution to persons licensed pursuant to Rule R313-32 (incorporating 10 CFR 35.18, 10 CFR 35.400, 10 CFR 35.500, and 10 CFR 35.600 by reference) or under equivalent regulations of the Nuclear Regulatory Commission, an Agreement State or a Licensing State; provided that labeling for sources which do not require long term storage may be on a leaflet or brochure which accompanies the source;

(d) in the event the applicant desires that the source or device be required to be tested for leakage of radioactive material at intervals longer than six months, the applicant shall include in the application sufficient information to demonstrate that a longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source; and

(e) in determining the acceptable interval for test of leakage of radioactive material, the Executive Secretary shall consider information that includes, but is not limited to:

(i) primary containment or source capsule,

(ii) protection of primary containment,

(iii) method of sealing containment,

(iv) containment construction materials,

(v) form of contained radioactive material,

(vi) maximum temperature withstood during prototype tests,

(vii) maximum pressure withstood during prototype tests,

(viii) maximum quantity of contained radioactive material,

(ix) radiotoxicity of contained radioactive material, and

(x) operating experience with identical sources or devices or similarly designed and constructed sources or devices.

(11) Requirements for license to manufacture and distribute industrial products containing depleted uranium for mass-volume applications.

(a) An application for a specific license to manufacture industrial products and devices containing depleted uranium for use pursuant to Subsection R313-21-21(5) or equivalent regulations of the Nuclear Regulatory Commission or an Agreement State will be approved if:

(i) the applicant satisfies the general requirements specified in Section R313-22-33;

(ii) the applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses and potential hazards of the industrial product or device to provide reasonable assurance that possession, use or transfer of the depleted uranium in the product or device is not likely to cause an individual to receive a radiation dose in excess of ten percent of the annual limits specified in Subsection R313-15-201(1); and

(iii) the applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(b) In the case of an industrial product or device whose unique benefits are questionable, the Executive Secretary will approve an application for a specific license under Subsection R313-22-75(11) only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(c) The Executive Secretary may deny an application for a specific license under Subsection R313-22-75(11) if the end use of the industrial product or device cannot be reasonably foreseen.

(d) Persons licensed pursuant to Subsection R313-22-75(11)(a) shall:

(i) maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

(ii) label or mark each unit to:

(A) identify the manufacturer of the product or device and the number of the license under which the product or device was manufactured, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and

(B) state that the receipt, possession, use and transfer of the product or device are subject to a general license or the equivalent and the regulations of the Nuclear Regulatory Commission or an Agreement State;

(iii) assure that the uranium before being installed in each product or device has been impressed with the following legend clearly legible through a plating or other covering: "Depleted Uranium";

(iv) furnish to each person to whom depleted uranium in a product or device is transferred for use pursuant to the general license contained in Subsection R313-21-21(5) or its equivalent:

(A) a copy of the general license contained in Subsection R313-21-21(5) and a copy of form DRC-12; or

(B) a copy of the general license contained in the Nuclear Regulatory Commission's or Agreement State's regulation equivalent to Subsection R313-21-21(5) and a copy of the Nuclear Regulatory Commission's or Agreement State's certificate, or alternatively, furnish a copy of the general license contained in Subsection R313-21-21(5)

and a copy of form DRC-12 with a note explaining that use of the product or device is regulated by the Nuclear Regulatory Commission or an Agreement State under requirements substantially the same as those in Subsection R313-21-21(5);

(v) report to the Executive Secretary all transfers of industrial products or devices to persons for use under the general license in Subsection R313-21-21(5). The report shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the Executive Secretary and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of the calendar quarter in which the product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under Subsection R313-21-21(5) during the reporting period, the report shall so indicate;

(vi) provide certain other reports as follows:

(A) report to the Nuclear Regulatory Commission all transfers of industrial products or devices to persons for use under the Nuclear Regulatory Commission general license in 10 CFR 40.25, 2006 ed.;

(B) report to the responsible state agency all transfers of devices manufactured and distributed pursuant to Subsection R313-22-75(11) for use under a general license in that state's regulations equivalent to Subsection R313-21-21(5),

(C) reports shall identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the agency and the general licensee, the type and model number of the device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within thirty days after the end of each calendar quarter in which a product or device is transferred to the generally licensed person,

(D) if no transfers have been made to Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the Nuclear Regulatory Commission, and

(E) if no transfers have been made to general licensees within a particular Agreement State during the reporting period, this information shall be reported to the responsible Agreement State agency upon the request of that agency; and

(vii) records shall be kept showing the name, address and point of contact for each general licensee to whom the person transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in Subsection R313-21-21(5) or equivalent regulations of the Nuclear Regulatory Commission or an Agreement State. The records shall be maintained for a period of two years and shall show the date of each transfer, the quantity of depleted uranium in the product or device transferred, and compliance with the report requirements of Subsection R313-22-75(11).

KEY: specific licenses, decommissioning, broad scope, radioactive materials
Date of Enactment or Last Substantive Amendment: [~~October 19, 2007~~]2009
Notice of Continuation: October 5, 2006
Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108

♦ ♦

Environmental Quality, Radiation Control
R313-32
Medical Use of Radioactive Material

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32207
FILED: 12/11/2008, 10:32

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to maintain compatibility with corresponding federal regulations.

SUMMARY OF THE RULE OR CHANGE: Currently Rule R313-32 incorporates 10 CFR Part 35, 2005 ed. by reference. Some errors in 10 CFR Part 35 have been corrected in the 2007 edition of 10 CFR Part 35. Rule R313-32 will now be updated to incorporate 10 CFR Part 35, 2007 ed.

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

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Update from 10 CFR Part 35, 2005 ed. to 10 CFR Part 35, 2007 ed.

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no new regulatory requirements in 10 CFR 35, 2007 ed., thus there are no anticipated costs or savings expected. The proposed changes do not add or remove significant requirements that affect the radiation control program or the Utah Radiation Control Board.

❖ LOCAL GOVERNMENTS: There are no new regulatory requirements in 10 CFR 35, 2007 ed., thus there are no anticipated costs or savings expected. The proposed changes do not add or remove significant requirements that affect the radiation control program or the Utah Radiation Control Board.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no new regulatory requirements in 10 CFR 35, 2007 ed., thus there are no anticipated costs or savings expected. The proposed changes do not add or remove significant requirements that affect the radiation control program or the Utah Radiation Control Board.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no new regulatory requirements in 10 CFR 35, 2007 ed., thus there are no anticipated cost or savings expected. The proposed changes do not add or remove significant requirements that affect the radiation control program or the Utah Radiation Control Board.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses with a radioactive material license will not see a fiscal impact due to the proposed changes to Rule R313-32. The proposed changes do not add or remove significant requirements that affect the radiation control program or the Utah Radiation Control Board. Richard W. Sprott, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

David Hogge at the above address, by phone at 801-536-4250, by FAX at 801-533-4097, or by Internet E-mail at dhogge@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 02/02/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/12/2009

AUTHORIZED BY: Dane Finerfrock, Director

R313. Environmental Quality, Radiation Control.
R313-32. Medical Use of Radioactive Material.
R313-32-2. Clarifications or Exceptions.

For the purposes of Rule R313-32, 10 CFR 35.2 through 35.7; and 35.10 through 35.3067 [~~(January 1, 2006)~~](January 1, 2007) are incorporated by reference with the following clarifications or exceptions:

(1) The exclusion of the following:

(a) In 10 CFR 35.2, exclude definitions for "Address of Use," "Agreement State," "Area of Use," "Dentist," "Pharmacist," "Physician," "Podiatrist," and "Sealed Source"; and

(b) In 10 CFR 35.3067, exclude "with a copy to the Director, Office of Nuclear Material Safety and Safeguards."

(2) The substitution of the following date references:

[~~(a) "October 25, 2006" for "October 25, 2005";~~
~~(b) "October 24, 2006" for "October 24, 2005";~~]

(a)[~~(c)~~] "May 13, 2005" for "October 24, 2002"; and

(b)[~~(d)~~] "May 10, 2006" for "April 29, 2005."

(3) The substitution of the following rule references:

(a) "Rule R313-15" for reference to "10 CFR Part 20" or for reference to "Part 20 of this chapter";

(b) "Rule R313-19" for reference to "Part 30 of this chapter" or for reference to "10 CFR Part 30" except for the reference to "Part 30 of this chapter" found in 10 CFR 35.65(d);

(c) "10 CFR 30" for reference to "Part 30 of this chapter" found in 10 CFR 35.65(d);

(d) "Rules R313-15 and R313-19" for reference to "parts 20 and 30 of this chapter";

(e) "Section R313-12-110" for reference to "Sec. 30.6 of this chapter" or for reference to "Sec. 30.6(a)" or for reference to "Sec. 30.6(a) of this chapter";

(f) "Section R313-15-101" for reference to "Sec. 20.1101 of this chapter";

(g) "Subsection R313-15-301(1)(a)" for reference to "Sec. 20.1301(a)(1) of this chapter";

(h) "Subsection R313-15-301(1)(c)" for reference to "Sec. 20.1301(c) of this chapter";

(i) "Section R313-15-501" for reference to "Sec. 20.1501 of this chapter";

(j) "Section R313-18-12" for reference to "Sec. 19.12 of this chapter";

(k) "Subsection R313-22-75(10) or equivalent U.S. Nuclear Regulatory Commission or Agreement State regulations" for reference to "Sec. 32.74 of this chapter," found in 10 CFR 35.65(b);

(l) "Subsection R313-22-75(10)" for reference to "10 CFR 32.74 of this chapter," or for reference to "Sec. 32.74 of this chapter" except for the reference to "Sec. 32.74 of this chapter" found in 10 CFR 35.65(b);

(m) "Rule R313-70" for reference to "Part 170 of this chapter";

(n) "Section R313-19-34(2)" for reference to "Sec. 30.34(b) of this chapter";

(o) "Rule R313-22" for reference to "Part 33 of this chapter";

(p) "Subsection R313-22-50(2)" for reference to "Sec. 33.13 of this chapter";

(q) "Subsection R313-22-75(9)(b)(iv)" for reference to "Sec. 32.72(b)(4)";

(r) "Subsection R313-22-75(9)" for reference to "Sec. 32.72 of this chapter";[~~ and~~]

(s) "Subsection R313-22-75(9)(b)(v)" for reference to "Sec. 32.72(b)(5)"

[~~(s)~~](t) "(c)(1) or (c)(2)" for reference to "(c)(1)" in 10 CFR 35.50(d)[~~,~~]; and

(u) "35.600 or 35.1000" for reference to "35.600" in 10 CFR 35.41(b)(1).

(4) The substitution of the following terms:

(a) "radioactive material" for reference to "byproduct material";

(b) "original" for "original and one copy";

(c) "(801) 536-4250 or after hours, (801) 536-4123" for "(301) 951-0550";

(d) "Form DRC-[~~02~~]01, ['~~Application for Medical Use of~~] 'Radioactive Material License Application'" for reference to "NRC Form 313, 'Application for Material License'";

(e) "State of Utah radioactive materials" for reference to "NRC" in 10 CFR 35.6(c);

(f) "the Executive Secretary, the U.S. Nuclear Regulatory Commission, or an Agreement State" for reference to "the Commission or Agreement State" or for reference to "the Commission or an Agreement State";

(g) "an Executive Secretary, the U.S. Nuclear Regulatory Commission, or an Agreement State" for reference to "a Commission or Agreement State";

(h) "Equivalent U.S. Nuclear Regulatory Commission or Agreement State" for reference to "equivalent Agreement State" as found in 10 CFR 35.63(b)(2)(i), 10 CFR 35.63(c)(3), 10 CFR 35.65(a), 10 CFR 35.100(a), 10 CFR 35.200(a), and 10 CFR 35.300(a);

(i) "Executive Secretary" for reference to "NRC Operations Center" in 10 CFR 35.3045(c) and 10 CFR 35.3047(c);

(j) "Utah Division of Radiation Control" for reference to "NRC Operations Center" in Footnote 3 to 10 CFR 35.3045;

(k) "Executive Secretary" for reference to "appropriate NRC Regional Office listed in Sec. 30.6 of this chapter";

(l) "Utah Radiation Control Board" for reference to "Commission" in 10 CFR 35.18(a)(3)(second instance) and 10 CFR 35.19;

(m) "Executive Secretary" for reference to "Commission" in 10 CFR 35.10(b), 10 CFR 35.12(d)(2), 10 CFR 35.14(a)(first instance), 10 CFR 35.14(b), 10 CFR 35.18(a), 10 CFR 35.18(a)(3)(first instance), 10 CFR 35.18(b), 10 CFR 35.24(a)(1), 10 CFR 35.24(c), 10 CFR 35.26(a), and 10 CFR 35.1000(b);

(n) "the Executive Secretary" for reference to "NRC" in 10 CFR 35.13(b)(4)(i), 10 CFR 35.3045(g)(1), and 10 CFR 35.3047(f)(1);

(o) "the U.S. Nuclear Regulatory Commission or an Agreement State" for reference to "an Agreement State" in 10 CFR 35.49(a) and 10 CFR 35.49(c);[~~and~~]

(p) "Executive Secretary, a U.S. Nuclear Regulatory Commission, or Agreement State" for reference to "NRC or Agreement State" in 10 CFR 35.63(b)(2)(ii), 10 CFR 35.100(c), 10 CFR 35.200(c), and 10 CFR 35.300(c)[~~.~~];

(q) In 10 CFR 35.2, Definitions, "Medium dose-rate remote afterloader," substitute "remotely delivers a dose rate of greater than 2 gray (200 rads) per hour, but less than or equal to 12 gray (1200 rads) per hour" for "remotely delivers a dose rate of greater than 2 gray (200 rads), but less than 12 gray (1200 rads) per hour."

(r) In 10 CFR 35.75(a) "Footnote 1", substitute "The current version of NUREG-1556, Vol. 9" for "NUREG-1556 Vol. 9,";

(s) In 10 CFR 35.92(a) substitute "less than or equal to" for "less than";

(t) In 10 CFR 35.190, paragraph (a)(1), substitute "as described in paragraphs (c)(1)(i) through (c)(1)(ii)(F) of this section; and" for "that includes the topics listed in paragraphs (c)(1)(i) and (c)(1)(ii) of this section; and"

(u) In 10 CFR 35.290, paragraph (a)(1), substitute "as described in paragraphs (c)(1)(i) through (c)(1)(ii)(G) of this section; and" for "that includes the topics listed in (c)(1)(i) and (c)(1)(ii) of this section."

KEY: radioactive materials, radiopharmaceutical, brachytherapy, nuclear medicine
Date of Enactment or Last Substantive Amendment: [~~May 10, 2006~~]2009
Notice of Continuation: October 5, 2006
Authorizing, and Implemented or Interpreted Law: 19-3-104; 19-3-108

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Health, Health Systems Improvement, Emergency Medical Services
R426-100
Emergency Medical Services Do Not Resuscitate

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32195
FILED: 12/03/2008, 16:26

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to implement a process that will allow emergency responders to recognize and honor the end of life wishes of a person that they serve.

SUMMARY OF THE RULE OR CHANGE: Physicians Order for Life Sustaining Treatment and Do Not Resuscitate Order processes are being consolidated into a single Life with Dignity Order. Emergency responders will be allowed to recognize and honor this end of life choice adopted by a person.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 75-2a-106

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There may be some costs for printing and training, but these can be covered under existing budgets.
❖ LOCAL GOVERNMENTS: Simplifying and consolidating the form should not impose costs on local governments.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Simplifying and consolidating the form should not impose costs on small business.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Simplifying and consolidating the form should not impose costs on individuals.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Simplifying and consolidating this form should have no fiscal impact on business. Public comment from facilities and person affected by the rule will be carefully evaluated. David N. Sundwall, MD, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH SYSTEMS IMPROVEMENT,
EMERGENCY MEDICAL SERVICES
3760 S HIGHLAND DR
SALT LAKE CITY UT 84106, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Guy Dansie at the above address, by phone at 801-538-9171, by FAX at 801-538-6808, or by Internet E-mail at gdansie@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 02/02/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/09/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

R426. Health, Health Systems Improvement, Emergency Medical Services.

R426-100. [~~Emergency Medical Services Do Not Resuscitate~~]Life with Dignity Order.

R426-100-1. Authority and Purpose.

[~~This rule implements the prehospital Emergency Medical Services/Do Not Resuscitate (EMS/DNR) provisions of Section 75-2-1105.5 and clarifies that EMS personnel shall also follow a patient's treating physician's orders, which may include an order not to resuscitate a patient that does not comply with the formalities of the EMS/DNR form.~~

~~**R426-100-2. EMS/DNR Forms, Directives, Bracelets, and Necklaces.**~~

~~(1) Only the Utah Department of Health may create EMS/DNR forms. Each EMS/DNR form must have a state of Utah watermark and a unique identifying number provided by the Department.~~

~~(2) The Department shall distribute the EMS/DNR directive forms to any licensed physician as requested.~~

~~(3) An EMS/DNR directive is valid only if made on an EMS/DNR form upon which a physician licensed to practice medicine under Part 1 of Chapter 12, Title 58, the Utah Osteopathic Medicine Licensing Act, or under Part 5, of Chapter 12, Title 58, the Utah Medical Practice Act, also makes a determination certifying that the declarant is in a terminal condition.~~

~~(4) An EMS/DNR bracelet or necklace may be issued only to individuals whose physician has determined that the declarant is in a terminal condition and who submits an EMS/DNR directive to the Department.~~

~~(5) An EMS/DNR bracelet or necklace may only be issued by either the Department or by an entity approved by the Department.~~

~~(6) For EMS/DNR bracelets or necklaces issued by a Department approved entity:~~

~~(a) the entity may issue bracelets or necklaces for which the Department has approved the design and construction quality;~~

~~(b) the entity may issue an EMS/DNR bracelet or necklace only after verifying with the Department that the individual has submitted a valid EMS/DNR directive to the Department;~~

~~(c) the bracelet or necklace shall clearly display:~~

~~(i) the words "UTAH EMS - DO NOT RESUSCITATE"; and~~

~~(ii) the declarant's EMS/DNR number, or a unique identifying number that the entity links to the declarant's EMS/DNR number;~~

~~(7) A Department approved entity must:~~

~~(a) keep a hard copy or an electronically scanned image of each EMS/DNR directive for which it has issued a bracelet or necklace;~~

~~(b) be continuously available by toll-free telephone service 24 hours every day, including weekends and holidays that is staffed by an EMT or other licensed health care individual knowledgeable in providing medical care;~~

~~(c) immediately send a copy of the EMS/DNR directive to an EMS provider in the field upon request, either by facsimile or in a readily readable electronic format, as requested by the EMS provider; and~~

~~(d) verify that the bracelet or necklace matches an EMS/DNR order on file with the entity.~~

~~**R426-100-3. Issuance of an EMS/DNR Directive, or Bracelet, or Necklace.**~~

~~(1) If the prospective declarant or proxy desires to make an EMS/DNR directive, the physician who makes the determination that the declarant is in a terminal condition must:~~

~~(a) explain to the prospective declarant or proxy, and his family, the significance of making an EMS/DNR directive;~~

~~(b) complete the information requested on the EMS/DNR form;~~

~~(c) sign and date the EMS/DNR form certifying that the declarant is in a terminal condition;~~

~~(d) give the original of the directive with the watermark to the declarant or the proxy; and~~

~~(e) fill out and give to the declarant or proxy the authorized EMS/DNR bracelet to be placed on the declarant.~~

~~(2) The physician or designee, who places the bracelet, must explain to the declarant or proxy how and by whom the EMS/DNR directive may be revoked.~~

~~(3) The physician or designee, shall confirm with the Department the execution of the EMS/DNR directive and placement of the EMS/DNR and bracelet or necklace by submitting a duplicate original of the EMS/DNR directive to the Department.~~

~~(4) The EMS/DNR directive is effective immediately upon the physician's signing the EMS/DNR directive. The EMS/DNR directive is the property of the declarant and shall be kept with the declarant's medical record, but is not part of the medical record.~~

~~(a) To be honored by EMS personnel, the EMS/DNR directive must be placed in an unobstructed view above the declarant on the wall or in close proximity to the head of the bed or the declarant must be wearing the EMS/DNR bracelet, except in health care facilities licensed pursuant to Title 26, Chapter 21.~~

~~(b) To be honored by EMS personnel who are called to render service in health care facilities licensed pursuant to Title 26, Chapter 21, the EMS/DNR directive must be displayed in the declarant's medical record or the declarant must be wearing an EMS/DNR bracelet. Health care facility personnel must present the medical record to responding EMS personnel upon their arrival. Health care facilities shall document for Department review that appropriate health care facility staff have been informed of the declarant's EMS/DNR directive sufficient to notify EMS personnel of the existence of the EMS/DNR directive.~~

~~(5) If the EMS/DNR directive is not complete or does not appear to conform to statutory and regulatory requirements, the Department shall notify the physician and explain the defect or defects and shall notify the declarant or proxy and EMS agencies likely to respond to the declarant.~~

~~**R426-100-4. Revocation of an EMS/DNR Directive.**~~

~~(1) An EMS/DNR bracelet is the embodiment of an EMS/DNR directive and shall be given the same legal treatment as the actual EMS/DNR directive. An EMS/DNR directive may be revoked as provided in Section 75-2-1111.~~

~~(2) If both the original of the EMS/DNR directive with the watermark and the EMS/DNR bracelet are not intact, or have been defaced, the EMS/DNR directive is invalid. If an EMS/DNR directive is revoked, EMS personnel must provide emergency~~

~~medical services to the declarant as if no EMS/DNR directive had been issued.~~

~~(3) If there is any question about the validity of an EMS/DNR directive, the EMS personnel must provide emergency medical services to the declarant as if no EMS/DNR directive had been issued.~~

~~R426-100-5. Treatment of a Declarant with an EMS/DNR Directive.~~

~~(1) As part of routine patient assessment, EMS personnel must inspect to see if the declarant is wearing an EMS/DNR bracelet or has an EMS/DNR directive either clearly displayed or located within the declarant's medical record file. If the EMS/DNR directive appears to be incorrectly executed, incomplete, or otherwise flawed in the making, EMS personnel need not honor the EMS/DNR directive. EMS personnel are not liable for failure to honor an EMS/DNR directive.~~

~~(2) An EMS/DNR directive only directs that life sustaining procedures be withheld. It does not direct the withholding of medication or the performance of any medical procedure either of which is intended to provide comfort care or to alleviate pain.~~

~~(3) In the case of a declarant who has sustained a recent injury clearly unrelated to the terminal condition that served as the basis for the EMS/DNR directive, EMS personnel may contact medical control regarding the provision of emergency medical services to the declarant.~~

~~R426-100-6. Transferable Physician Order for Life Sustaining Treatment.~~

~~(1) EMS personnel shall honor a patient's desires for life-sustaining treatment as expressed through the treating physician's written orders. EMS personnel shall comply with treating physician orders for life-sustaining treatment as expressed on Transferable Physician Order for Life-sustaining Treatment Forms, including a physician order not to resuscitate a patient that does not meet the formalities on the EMS/DNR form established in this rule. A patient shall always be provided respect, comfort, and hygienic care.~~

~~(2) A health care facility may present a completed Transferable Physician Order for Life-sustaining Treatment Form in lieu of an EMS/DNR directive or bracelet.~~]

(1) This rule is adopted pursuant to Utah Code Title 26, Chapter 21, and Section 75-2a-110.

(2) This rule establishes the forms and systems for Life with Dignity Orders.

R426-100-2. Definitions.

In addition to the definitions found in 75-2a, "Health care facility" is as defined in Section 26-21-2.

R426-100-3. Life with Dignity Order-Forms.

An individual who desires to execute a Life with Dignity Order must use the form created by the Department. The form may not be altered in layout or style, including font style and size, without the express written permission of the Department.

R426-100-4. Life with Dignity Order Creation-Facility Responsibilities.

(1) Upon admission to a health care facility described in Subsection (2), the health care facility shall:

(a) make a good faith effort to determine whether the individual has completed a Life with Dignity Order;

(b) inform each individual (or if the individual does not have the capacity to act, the individual's family or legal representative) about the Life with Dignity Order in the same manner as required for providing information about advance directives; and

(c) offer each individual an opportunity to complete a Life with Dignity Order.

(2) Health care facilities that must comply with Subsection (1):

(a) a general acute hospital licensed under R432-100;

(b) a long-term acute care facility licensed under R432-104;

(c) a critical access hospital licensed under R432-106;

(d) a nursing care facility licensed under R432-150;

(e) a mental retardation facility licensed under R432-152;

(f) a small health care facility (four to sixteen beds) licensed under r432-200;

(g) an assisted living facility licensed under r432-270;

(h) a small health care facility - type N licensed under r432-300;

(i) a home health agency licensed under R432-700; and

(j) a hospice agency licensed under R432-700.

R426-100-5. Transferability and Availability of Life with Dignity Orders.

(1) A Life with Dignity Order is fully transferable between all health care facilities.

(a) If a health care facility transfers an individual with a Life with Dignity Order to another health care facility, the sending health care facility shall provide a copy of the Life with Dignity Order to the receiving health care facility.

(b) The receiving health care facility and health care providers at the receiving health care facility shall read the Life with Dignity Order.

(2) A health care facility shall allow a patient or resident to complete or amend a Life with Dignity Order at any time upon request.

(3) The health care facility shall place the Life with Dignity Order in a prominent part of the individual's current medical record.

(4)(a) Except for home health agencies and home-based hospice, health care facility personnel must present the medical record, including the Life with Dignity Order, to EMS personnel upon their arrival.

(b) If an individual at a health care facility possesses a Life with Dignity Order, the health care facility, except for home health agencies and home-based hospice, must inform responding EMS personnel of the Life with Dignity Order.

(5)(a) If an individual under the care of a home health agency or a hospice agency possesses a Life with Dignity Order, the agency must ensure that a copy of the Life with Dignity Order is left at the individual's place of residence.

(b) For an individual who resides at home, it is recommended that the Life with Dignity Order be posted on the front of the refrigerator or over the individual's bed.

R426-100-6. Review of Life with Dignity Orders.

A health care facility caring for an individual with a Life with Dignity Order shall ensure that appropriate personnel as provided in Section 75-2a-106(2) review the Life with Dignity Order with the individual (or if the individual does not have the capacity to act, the individual's family or legal representative) if:

(1) there is a substantial, permanent change in the individual's health status; or

(2) the individual's treatment preferences change.

R426-100-7. Life with Dignity Bracelets and Necklaces.

(1) An individual with a Life with Dignity Order may obtain an approved Life with Dignity bracelet or necklace from a vendor approved by the Department. The approved Life with Dignity bracelet or necklace identifies the individual to EMS or other health care providers as possessing a Life with Dignity Order.

(2) The bracelet or necklace shall clearly display "Utah EMS Life with Dignity Order" and the individual's name.

(3) The bracelet or necklace is available in two colors:

(a) Purple indicates that the EMS or other health care personnel should not attempt or continue resuscitation.

(b) Yellow indicates that the EMS or other health care personnel should attempt to resuscitate the individual.

(4) EMS or other health care personnel who encounter an individual with a Life with Dignity bracelet or necklace shall attempt to find the Life with Dignity Order to determine the details of the individual's health care preferences.

(a) If EMS or other health care personnel are unable to locate the Life with Dignity Order, the color of the necklace or bracelet indicates the legal presence of a valid Life with Dignity Order with instructions consistent with the color coding as provided in Subsection (3).

(b) Regardless of the type of Utah EMS Life with Dignity Order worn by the individual, EMS or other health care personnel may provide measures to alleviate pain and discomfort for the individual.

R426-100-8. Validity of Prior Orders.

EMS and other health care providers may recognize as valid all prior advance directives, POLST orders, and EMS/DNR orders, including bracelets and necklaces, unless superceded by a subsequent advance directive or Life with Dignity Order.

KEY: [~~emergency medical services~~]POLST, do not resuscitate, Life with Dignity Order
Date of Enactment or Last Substantive Amendment: [~~September 6, 2006~~]2009
Notice of Continuation: October 1, 2004
Authorizing, and Implemented or Interpreted Law: 75-2-1105.5

♦ ♦

Natural Resources, Water Rights

R655-14

Administrative Procedures for Enforcement Proceedings Before the Division of Water Rights

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32201
FILED: 12/09/2008, 13:18

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes incorporate two substantive amendments which increase the time for filing hearing requests from seven (days to fourteen days following the date of an initial order, and also place a maximum cap on the penalty assessed for failure to submit well driller reports.

SUMMARY OF THE RULE OR CHANGE: This filing increases the time for filing hearing requests, and places a maximum cap on the penalty assessed for failure to submit well driller reports.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 73-2-1(4)(g) and Sections 73-2-25, 73-2-26, and 73-3-25

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The proposed amendments will result in minimal costs to reprint the rule once the amendments are made effective.

❖ LOCAL GOVERNMENTS: The proposed amendments do not apply to local governments; no costs or savings are anticipated.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The proposed amendments do not apply to a small business, no costs or savings are anticipated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The significant changes proposed should actually decrease compliance costs for affected persons because one allows increased time for requesting a hearing and the other puts a cap on the total amount of the penalty that can be assessed for each violation for failure to submit a well log.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact to businesses from these rule amendments. Michael Styler, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Kaelyn Anfinsen at the above address, by phone at 801-538-7370, by FAX at 801-538-7442, or by Internet E-mail at KAELYNANFINSEN@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 02/02/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/09/2009

AUTHORIZED BY: Jerry Olds, Director

R655. Natural Resources, Water Rights.
R655-14. Administrative Procedures for Enforcement Proceedings Before the Division of Water Rights.
R655-14-11. Options for Adjudicative Enforcement.

(1) The State Engineer may pursue any combination of the following administrative and judicial enforcement actions depending upon the circumstances and gravity of each case.

(a) Notice of Violation: a formal notice of a suspected violation issued in accordance with Section 73-2-25 which:

(i) Cites the law, rule, regulation, permit and/or order allegedly violated;

(ii) States the facts that form the basis for the State Engineer's belief that a violation has occurred;

(iii) States the administrative fine, enforcement costs, and/or other penalty to which the respondent may be subject;

(iv) Specifies a reasonable deadline or deadlines by which the respondent:

(A) Shall comply with the requirements described in the Notice of Violation, and/or

(B) Shall pay the administrative fine and enforcement costs, and/or

(C) Shall submit a written plan or proposal setting forth how and when the respondent proposes to replace water taken without right.

(v) Informs the respondent:

(A) Of the right to file a timely written request for a hearing on the alleged violation, the administrative penalties defined, or both;

(B) That the respondent must file said written request for a hearing with Division within [~~seven (7)~~]fourteen (14) days after service of the Notice of Violation;

(C) That said written request shall strictly comply with R655-14-16;

(D) That said notice shall become the basis for a Final Judgment and Order of the Presiding Officer upon the respondent's election to waive participation or failure to timely respond or otherwise participate in the proceeding, and

(E) That the Enforcement Engineer may treat each day's violation as a separate violation in describing the Initial Administrative Penalty under Subsection 73-2-25 (2)(b)(ii); that is, the administrative penalty continues to accrue each day from the time the violation begins until compliance is achieved.

(vi) Identifies the individual to whom correspondence and inquiries regarding the Notice of Violation should be directed;

(vii) States to whom and the date by which the administrative fine and enforcement costs shall be paid if the respondent elects to waive or fails to request an adjudicative hearing in a timely manner and elects to pay the fine and costs; and

(viii) States the State Engineer's authority to pursue further administrative or judicial enforcement action.

(b) Cease and Desist Order (CDO): an immediate compliance order issued pursuant to Section 73-2-25 either upon discovery of a suspected violation of the Water and Irrigation Code or in combination with a Notice of Violation, which:

(i) Cites the law, rule, license, permit, notice and/or order allegedly violated;

(ii) Describes the act or course of conduct that is prohibited by the Cease and Desist Order;

(iii) Orders the respondent to immediately cease the prohibited act or prohibited course of conduct;

(iv) States any action deemed necessary by the Enforcement Engineer to confirm compliance and assure continued compliance;

(v) Takes effect immediately upon the date issued or within such time as specified by the Enforcement Engineer in the CDO; and

(vi) States the administrative penalties to which the respondent may be subject for any violation of the CDO.

(c) Court Action

(i) Civil: direct recourse to a court of competent jurisdiction either in addition to or in lieu of administrative action where:

(A) It is necessary to enforce a Final Judgment and Order and seek civil and/or administrative penalties

(B) An imminent threat to the public health, safety, welfare or environment exists which warrants injunctive or other emergency relief; or

(C) A pattern of continuous, significant violations exists such that administrative enforcement action alone is unlikely to achieve compliance; or

(D) The court is the most convenient or appropriate forum for resolution of the dispute.

(ii) Criminal: referral to the County Prosecutor or the Attorney General's Office for prosecution or criminal investigation where:

(A) The alleged act or failure to act may be defined as a criminal offense by state law;

(B) Enforcement is beyond the jurisdiction or investigative capability of the State Engineer; or

(C) Criminal sanctions may be appropriate.

(d) Miscellaneous - other enforcement options may be pursued to achieve compliance. Additional options include, but are not limited to:

(i) Joint actions with, or referrals to, other federal, state or local agencies;

(ii) Direct legal or equitable actions in state or federal court; and/or

(iii) Denial, suspension or revocation of state-granted licenses, approvals permits or certifications.

(2) Unless otherwise stated, all notices, orders and judgments are effective upon the date issued.

(3) Combinations of enforcement actions are not mutually exclusive and may be concurrent and/or cumulative.

(4) An IO may be incorporated into a Default Order if the respondent fails to participate as defined herein.

R655-14-14. Procedures For Determining Administrative Penalties, Enforcement Costs and Water Replacement.

(1) An administrative fine shall not exceed the maximum amounts established by statute at Subsection 73-2-26 (1), as such may be amended.

(2) For violations per Subsections 73-2-25(2)(a)(i) through (vii), the following procedures shall be employed:

(a) Administrative Fines: This penalty shall be based primarily on the actual economic benefit estimated to result or potentially to result from the violation. The economic benefit may come in the form of a direct economic benefit as income derived directly from the unlawful activity or it may come in the form of avoided costs that would otherwise be incurred in order to comply with a specific statute, rule, notice or order from the State Engineer. The administrative fine assessment procedure used (direct economic benefit or avoided costs) will be that which produces the greater fine. In order to implement the punitive intent of this penalty, a multiplier is to be calculated and applied to the estimated actual direct economic benefit or avoided costs.

(i) "Direct Economic Benefit" Initial Administrative Fine Calculations. The initial administrative fine shall be calculated in the following manner:

(A) The daily economic benefit is equal to the gross income that is or could potentially be realized from the violation (without regard for production costs, taxes, etc.) divided by the number of days of violation. For water right violations, the daily economic benefit is calculated using the gross income through a full period of beneficial use, divided by the number of days in the period of beneficial use.

(B) The daily administrative fine is equal to the product of the daily economic benefit and the multiplier to be calculated as described in paragraph (iii) below.

(C) The initial administrative fine is equal to the product of the daily administrative fine and the number of days of continuing violation to the date the IO is issued, but shall not exceed the product of the highest calculated total realized economic benefit and the penalty multiplier.

(D) The total initial administrative fine will have a maximum value of four times the direct economic benefit or the statutory maximum fine, whichever is less.

(ii) The multiplier for penalties based on direct economic benefit shall be calculated utilizing the following statutory considerations. (Statutorily required considerations relative to the quantity of water taken and the gravity and impact of the violation are accommodated in the calculations of the economic "benefit" and "injury.")

(A) Whether the violation was committed knowingly or unknowingly;

(B) The economic injury to others;

(C) The length of time over which the violation has occurred; and

(D) The violator's efforts to comply.

(iii) The penalty multiplier is the sum of the points calculated using Table 1:

TABLE 1

DIRECT ECONOMIC BENEFIT PENALTY MULTIPLIER

CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing	1.00
Unknowing	0.00
Economic injury to others	
Greater than $15,000	1.00
$10,000 to $15,000	0.75
Less than $10,000 or injury is not measurable or there is no evidence others suffered economic injury	0.50
Length of violation	
Three (3) or more years of violation	1.00
More than one (1), but less that three (3) years of violation	0.75
One (1) year or less of violation	0.50
Violator's efforts to comply prior to Initial Order	
Violator has made no efforts to comply	1.00
Violator has made limited but ineffective efforts to comply	0.75
Violator has made reasonable and partially effective efforts to comply	0.50
Violator fully complied prior to issuance of Initial Order	0.00

(iv) "Avoided Cost Economic Benefit" Initial Administrative Fine Calculation: In some cases, including but not limited to violations under Subsections 73-2-25 (2)(a) (iii) through (vii), an economic benefit may result from an avoided cost of compliance with a notice or order from the State Engineer, or from failure to obtain a necessary approval, permit or license. In the case of a failure to comply with a prior notice or order, the daily administrative fine commences with the day following the compliance date in the notice or order. In the event of a failure to obtain a necessary approval, permit or license, the period of violation is deemed to begin on the first day the unauthorized activity is commenced. The economic benefit and daily administrative fine for an "avoided cost economic benefit" shall be calculated in the following manner:

(A) The total realized economic benefit is equal to the highest calculated avoided costs of failing to implement specific actions required by a statute, rule, notice or order from the State Engineer.

(B) The daily administrative fine is equal to the product of $20 or 5% of the total realized economic benefit, whichever is greater, and the penalty multiplier to be calculated as described in paragraph (vi), below.

(C) The initial administrative fine is equal to the product of the daily administrative fine and the number of days of continuing violation preceding the date of the IO, but shall not exceed the product of the highest calculated total realized economic benefit and the penalty multiplier.

(D) The total initial administrative fine will have a maximum value of three times the economic benefit or the statutory maximum fine, whichever is less.

(v) The statutory considerations applicable to producing the multiplier for an avoided cost economic benefit are: (Statutorily required considerations relative to the quantity of water taken and the gravity and impact of the violation are accommodated in calculations of the economic "benefit" and "injury.").

(A) Whether the violation was committed knowingly or unknowingly;

(B) The economic injury to others; and

(C) The violator's efforts to comply.

(vi) The penalty multiplier is the sum of the points resulting from Table 2:

TABLE 2

AVOIDED COST ECONOMIC BENEFIT PENALTY MULTIPLIER

CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing.	1.00
Unknowing	0.00
Economic injury to others	
Greater than $15,000.	1.00
$10,000 to $15,000	0.75
Less than $10,000 or injury is not measurable or there is no evidence others suffered economic injury	0.50
Violator's efforts to comply prior to Initial Order	
Violator has made no efforts to comply	1.00
Violator has made limited but ineffective efforts to comply	0.75
Violator has made reasonable and partially effective efforts to comply	0.50
Violator fully complied prior to issuance of Initial Order	0.00

(b) Replacement of Water: This penalty will be initially calculated as the product of 100% of the amount unlawfully taken and the penalty multiplier previously calculated, but not to exceed 200% of that unlawfully taken. If replacement of water unlawfully taken is deemed to be infeasible by the Enforcement Engineer or the Presiding Officer, this penalty will not be further considered.

(c) Reimbursement of Enforcement Costs: This penalty will be initially based on a standard requiring 100% reimbursement of the State Engineer's enforcement costs to the date of the IO.

(3) For violations related to unlawful natural stream channel alteration or dam safety regulations per Subsections 73-2-25(1)(a)(vi) and (vii), the following procedures shall be employed:

(a) Daily Administrative Fine: All enforcement activities for unlawful natural stream alteration or dam safety violations must statutorily result from violation of a prior notice or order. Statute provides for a daily administrative fine with the day following the compliance date in the notice/order being counted as the first day of violation. The calculated daily administrative fine would apply to violations continuing beyond the compliance date set forth in the notice or order. The economic benefit and daily administrative fine shall be calculated in the following manner:

(i) For stream alteration and dam safety violations, there may be a direct economic benefit, or there may be an avoided cost economic benefit deriving from:

(A) Initiating an activity without the benefit of proper permitting and/or,

(B) Failing to implement specific actions required by a notice, order or permit from the State Engineer.

(ii) The daily administrative fine is equal to the product of $20 or 5% of the total realized economic benefit, whichever is greater, and the multiplier to be calculated as described in paragraph (iii), below.

(iii) The penalty multiplier is calculated as the sum of the points from Table 3 or Table 4, as may be appropriate:

TABLE 3

STREAM ALTERATION PENALTY MULTIPLIER

CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing	1.00
Unknowing	0.00
Gravity of violation	
Natural stream environment harmed to significant levels not readily reversible by mitigation efforts	1.00
Natural stream environment harmed to moderate levels partially reversible by mitigation efforts	0.75
Natural stream environment harmed to minor levels readily reversible by mitigation efforts.	.0.50
Violator's efforts to comply prior to Initial Order	
Violator has made no efforts to comply	.1.00
Violator has made no reasonable or effective efforts to comply	.0.75
Violator has made reasonable and partially effective efforts to comply	.0.50
Violator achieved full compliance prior to issuance of Initial Order	.0.00

TABLE 4

DAM SAFETY PENALTY MULTIPLIER

CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing	1.00
Unknowing	0.00
Gravity of violation	
Failure to comply with a notice or order for a high-hazard or moderate-hazard dam: 1) Related to building, enlarging or substantially altering same without prior approval or authorization; OR 2) Addressing an existing unsafe condition	.1.00
Failure to comply with a notice or order for a high-hazard or moderate-hazard dam: 1) Addressing a developing unsafe condition OR 2) Requiring monitoring or critical dam performance indicators; OR Failure to prepare and file acceptable required operational documents, OR Failure to comply with a notice or order for a low-hazard dam related to building, enlarging or substantially altering same without prior authorization	.0.75
Failure to comply with a notice or order for a high-hazard or moderate-hazard dam related to routine operation or maintenance activities, OR Failure to comply with a notice or order for a low-hazard dam to address an existing or developing unsafe condition	0.50
Violator's efforts to comply prior to Initial Order	
Violator has made no efforts to comply	.1.00
Violator has made limited reasonable or effective efforts to comply	.0.75
Violator has made reasonable and partially effective efforts to comply	.0.50
Violator achieved full compliance prior to issuance of Initial Order	.0.00

(iv) The total administrative fine shall not exceed the product of the highest calculated total realized economic benefit and the penalty multiplier.

(b) Reimbursement of Enforcement Costs is initially based on a standard requiring 100% reimbursement of the State Engineer's enforcement costs to the date of the Initial Order.

(3) For violations under Subsection 73-2-25(2)(a)[~~(iii)~~](viii) related to failure to submit a report required by Section 73-3-25, the following procedures shall be employed:

(a) The daily administrative fine is equal to $5.00.

(b) The number of days of continuing violation commences 90 days after the day on which the well driller license lapses.

(c) The initial administrative fine is equal to the product of the daily administrative fine and the number of days of continuing violation to the date the IO is issued, up to a maximum fine of $200.

(d) The total administrative fine shall not exceed the product of the daily administrative fine and the number of days of continuing violation, up to a maximum fine of $200.

(e) Reimbursement of enforcement costs is initially based on a standard requiring 100% reimbursement of the State Engineer's enforcement costs to the date of the Initial Order.

(4) For violations under Subsection 73-2-25(2)(a)(ix) related to engaging in well drilling without a license required by Section 73-3-25, the following procedures shall be employed:

(a) The direct economic benefit is equal to the gross income that is or could potentially be realized (without regard for production costs, taxes, etc.) from engaging in well drilling (as defined herein) without a license.

(b) The total initial administrative fine is equal to the product of the direct economic benefit resulting from the violation and the penalty multiplier described in paragraph (c) below.

(c) The penalty multiplier is calculated as the sum of the points from Table 5.

TABLE 5

WELL DRILLING PENALTY MULTIPLIER

CONSIDERATION/ CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing	1.50
Unknowing	1.00
Gravity of Violation	
New well construction	1.00
Deepening a well	0.80
Renovating a well	0.60
Abandoning a well	0.40
Cleaning/developing a well	0.20

(d) The total administrative fine shall not exceed the product of the direct economic benefit and the penalty multiplier.

(e) Reimbursement of enforcement costs is initially based on a standard requiring 100% reimbursement of the State Engineer's enforcement costs to the date of the Initial Order.

(5) Post-Initial Order penalty adjustments: Subsequent to issuance of the IO, the Presiding Officer may make adjustments to the initial administrative fine; the requirement for replacement of water unlawfully taken; requirements pertaining to violations of stream channel alteration or dam safety regulations; and/or the requirement for reimbursement of enforcement costs. Such adjustments may be based on one or more of the following considerations:

(a) Errors or Omissions in Calculation of an Initial Administrative Penalty: If shown by acceptable evidence or testimony that any fact used in calculation of the economic benefit, of the quantity of water unlawfully taken, or of the penalty multiplier was in error, or that a significant fact or group of facts was omitted from consideration, the Presiding Officer shall recalculate the initial administrative penalties taking consideration of the corrected or additional fact(s).

(b) Reduction in Penalty Multiplier: The penalty multiplier used in calculating the Initial Administrative Penalties may be reduced according to Table 6 on the basis of the respondent's efforts to comply after receiving the IO.

TABLE 6

PENALTY MULTIPLIER REDUCTION

CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Respondent's efforts to comply with the Initial Order	
Respondent has made extraordinary efforts to successfully achieve full and prompt compliance with the IO.	.1.00
Respondent has made efforts to successfully achieve full and prompt compliance with the IO, but these efforts are not extraordinary . .	.0.50
Respondent has made efforts that achieve full compliance with the IO, but the efforts were neither extraordinary nor prompt	0.25
Respondent has made no efforts to comply or has made efforts that fail to achieve full compliance with the IO	.0.00

If the Presiding Officer determines that the penalty multiplier should be reduced according to the table above, the appropriate number of points will be subtracted from the penalty multiplier used in calculating the initial administrative penalty and the penalty will be re-calculated with the new multiplier.

(c) Failure to take reasonable and effective measures to achieve full and prompt compliance with the requirements of the IO will allow the daily administrative fines to continue to accrue as provided in rule at Subsection R655-14-12(4) until full compliance is achieved.

(d) Adjustments to recovery of enforcement costs:

(i) If shown by acceptable evidence or testimony that any expense incurred by the State Engineer and assessed for reimbursement resulted from activities not pertinent to the violation, the Presiding Officer may reduce that portion of the reimbursement requirement accordingly.

(ii) Pursuit of an enforcement action after issuance of the IO will continue to require the expenditure of varying amounts of staff time and may require acquisition and analysis of special data or information. Such costs may be added to the initial reimbursement requirement, specifically including all costs incurred that are unique to the enforcement action under consideration.

(e) Mitigating Factors: Other factors which the Presiding Officer may consider in amendment of initial penalties for incorporation into a Final Order or Consent Order may include, as appropriate:

(i) Ability to pay: This factor will be considered only if raised by a respondent and only if the respondent provides all necessary information to evaluate the claim. The burden to demonstrate inability to pay rests solely on the respondent. The Presiding Officer shall disregard this factor if a respondent fails to provide sufficient or persuasive financial information. If it is determined that a respondent cannot afford the full monetary penalties prescribed by this rule, or if it is determined that payment of all or a portion of the monetary penalties will preclude the respondent from achieving compliance or from carrying out remedial measures which are deemed more important than the deterrent effect of the monetary penalties, the following options may be considered by the Presiding Officer:

(A) A delayed payment schedule with full payment of monetary penalties to be made at a date not exceeding 180 days from the date the Final Judgment and Order is issued; or

(B) A direct reduction of the monetary penalties, which reduction is deemed by the Presiding Officer to be consistent with achieving the purposes of the enforcement action and the aims of equity and justice.

(C) A portion of the monetary penalties may be suspended with conditions as determined by the Presiding Officer, which suspension is deemed by the Presiding Officer to be consistent with achieving the purposes of the enforcement action and the aims of equity and justice. Failure by a respondent to adhere to the conditions of the suspension may result in an Order of reinstatement of any part of the suspended monetary penalties, which will be due and payable immediately upon reinstatement.

R655-14-16. Request for Hearing.

(1) Regardless of any other provision of the general laws to the contrary, all requests for a hearing shall be in writing and shall be filed with the Division within [~~seven (7)~~]fourteen (14) calendar days of the date the IO was issued.

(2) The request for a hearing shall state clearly and concisely the specific facts that are in dispute, the supporting facts, the relief sought, the State Engineer Agency Action (SEAA) number, and any additional information required by applicable statutes and rules.

(3) The Presiding Officer may, upon the Presiding Officer's own initiative or upon the motion of any party, order any party to file a response or other pleading, and further permit either party to amend its pleadings in a manner just to all parties.

(4) The Presiding Officer shall, if it is determined a hearing is warranted, give all parties at least three (3) days notice of the date, time and place for the hearing. The Presiding Officer may grant requests for continuances for good cause shown.

(5) Any party may, by motion, request that a hearing be held at some place other than that designated by the Presiding Officer, due to disability or infirmity of any party or witness, or where justice and equity would be best served.

KEY: water rights, enforcement, administrative penalties
Date of Enactment or Last Substantive Amendment: [~~July 8, 2008~~]2009
Authorizing, and Implemented or Interpreted Law: 73-2-1(4)(g); 73-2-25; 73-2-26; 73-3-25

♦ ♦

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

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32210
FILED: 12/15/2008, 09:22

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is 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 amendment: 1) modifies the current language to reflect a "certified general appraiser"; and 2) removes the allowance of a real estate broker's estimate of value.

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 the Division 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 02/02/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/09/2009

AUTHORIZED BY: James F Karpowitz, Director

R657. Natural Resources, Wildlife Resources.
R657-61. Valuation of Real Property Interests for Purposes of Acquisition or Disposal.
R657-61-2. 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 general 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~~]3) A written opinion of value [~~may~~]shall be rendered by[~~: (a)~~] a state [~~registered, licensed, or~~]certified general 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~~]4) 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 general 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.

KEY: wildlife, land sales, property values
Date of Enactment or Last Substantive Amendment: [~~November 24, 2008~~]2009
Authorizing, and Implemented or Interpreted Law: 23-21-1

♦ ♦

Public Safety, Driver License
R708-7-10
Use of the Functional Ability Profile

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32202
FILED: 12/09/2008, 14:54

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The division has changed their post office (PO) box to a state PO box. The actual PO box number and zip code need to be changed in the rule.

SUMMARY OF THE RULE OR CHANGE: This amendment changes the mailing address.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 53-3-224, 53-3-303, and 53-3-304, and 49 CFR 391.43

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: No cost incurred to the state budget due to change in PO box only.
❖ LOCAL GOVERNMENTS: No cost incurred to local government due to change in PO box only.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: No cost incurred to small businesses due to change in PO box only.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost because it is a mailing address change only.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact due to changing the PO box and zip code only. Scott T. Duncan, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY UT 84119-5595, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Marge Dalton at the above address, by phone at 801-865-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@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 02/02/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/10/2009

AUTHORIZED BY: Nannette Rolfe, Director

R708. Public Safety, Driver License.
R708-7. Functional Ability in Driving: Guidelines for Physicians.
R708-7-10. Use of the Functional Ability Profile.

(1) Health care professionals who evaluate their patients' health status for purposes of the patient obtaining a Utah driver license, shall report functional ability profiles on forms provided by the division.

(2) In assessing patient health and completing these report forms, health care professionals shall apply the standards and related information contained in the following lists, charts, and tables, which standards and guidelines are adopted and incorporated within this rule by reference, and are referred to in a booklet entitled, "Functional Ability in Driving: Guidelines And Standards for Health Care Professionals", (November 2006 ed.). Specific categories are:

(a) "Category A" - diabetes and other metabolic conditions; narrative listing and table;

(b) "Category B" - cardiovascular; narrative listing and table;

(c) "Category C" - pulmonary; narrative listing and table;

(d) "Category D" - neurologic; narrative listing and table;

(e) "Category E" - epilepsy and other episodic conditions; narrative listing and table;

(f) "Category F" - learning, memory and communications; narrative listing and table;

(g) "Category G" - psychiatric or emotional conditions; narrative listing and table;

(h) "Category H" - alcohol and other drugs; narrative listing and table;

(i) "Category I" - visual acuity; narrative listing and table;

(j) "Category J" - musculoskeletal abnormality or chronic medical debility; narrative listing and table;

(k) "Category K" - alertness or sleep disorders; narrative listing and table; and

(L) "Category L" - hearing and balance; narrative listing and table.

(3) Copies of these guidelines are printed in a booklet and distributed by the division. These booklets may be obtained at no cost for health care professionals or $5 per booklet for all other individuals. Copies may be obtained in person or by written request to the Driver License Division Medical Section at P.O. Box [~~30560~~]144501, Salt Lake City, Utah [~~84130-0560~~]84114-4501.

(4) Report forms completed by a health care professional and received by the division are to be used as a screening tool in assessing an individual's ability to safely operate a motor vehicle.

(a) Some profile levels as identified in the "Functional Ability in Driving: Guidelines And Standards for Health Care Professionals", may result in the division requesting an individual to complete a driving skills test in order to demonstrate the ability to safely operate a motor vehicle before determining whether the individual will maintain the privilege to drive. In some cases when a privilege to drive is granted, driving restrictions may be required in order to ensure public safety.

(b) A health care professional may also request that the division evaluate an individual's driving skill level at the health care professional's discretion.

(5) The division shall notify an individual that their privilege to drive is denied upon receipt of the following:

(a) a medical report that is completed in the categories A, B, C, D, E, F, G, H, J, K, or L, that is profiled at a level "8" in accordance with the "Functional Ability in Driving: Guidelines And Standards for Health Care Professionals", or other documentation which indicates that the health care professional recommends that the individual does not drive; or

(b) a medical report that is completed in the category I that is profiled at a level "10" in accordance with the "Functional Ability in Driving: Guidelines And Standards for Health Care Professionals", or other documentation which indicates that the health care professional recommends that the individual does not drive.

(6) Upon receipt of a notice of denial of the privilege to drive, an individual may request a review of the division's decision by a panel of board members. All of the actions of the director and board are subject to judicial review.

KEY: administrative procedures, health care professionals, physicians
Date of Enactment or Last Substantive Amendment: [~~April 23, 2007~~]2009
Notice of Continuation: March 13, 2007
Authorizing, and Implemented or Interpreted Law: 53-3-224; 53-3-303; 53-3-304; 49 CFR 391.43

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Sports Authority (Utah), Pete Suazo Utah Athletic Commission
R859-1
Pete Suazo Utah Athletic Commission Act Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32205
FILED: 12/10/2008, 17:47

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to require Hepatitis B Surface Antigen (HBsAg) and Hepatitis C Virus (HCV) Antibody testing for contestants prior to a contest to protect the health and safety of contestants, officials, and spectators.

SUMMARY OF THE RULE OR CHANGE: The amendment will require negative HBsAg and HCV Antibody test results be provided to the commission by contestants prior to a contest.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63C, Chapter 11

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be a small cost (estimated at less than $500) to modify the Division of Occupational and Professional Licensing (DOPL) licensing software to record the new test data.

❖ LOCAL GOVERNMENTS: Several local public health agencies provide HCV Antibody tests as a public service for a fee. If this amendment is adopted, it is anticipated there will be an increase in the number of tests administered by these agencies. It is unknown if the fees presently charged are revenue neutral.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Presently the HCV tests cost about $21 at local public agencies. These costs will either be borne by the contestant, insurance, or possibly by the promoter or manager. The costs for HBsAG tests is estimated at $50 per test. If a contestant has been immunized for Hepatitis B, this will be a one-time fee.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Presently the HCV tests cost about $21 at local public agencies. These costs will either be borne by the contestant, insurance, or possibly by the promoter or manager. The cost for HBsAG tests is estimated at $50 per test. If a contestant has been immunized for Hepatitis B, this will be a one-time fee. Immunization for Hepatitis B is estimated at about $100 and may be covered by insurance. The HCV test results must be completed within six months prior to a competition. Consequently, and active contestant may require two tests per calendar year.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The anticipated costs will likely be borne by individual contestants and/or their private medical insurance. However, some promoters/managers may absorb some of the costs at their discretion to promote the sport. Alan Dayton, Chair, PSUAC

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

SPORTS AUTHORITY (UTAH)
PETE SUAZO UTAH ATHLETIC COMMISSION
Room 500
324 S STATE ST
STE 500
SALT LAKE CITY UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Bill Colbert at the above address, by phone at 801-538-8876, by FAX at 801-538-8888, or by Internet E-mail at bcolbert@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 02/02/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/01/2009

AUTHORIZED BY: Bill Colbert, Secretary, PSUAC

R859. Sports Authority (Utah), Pete Suazo Utah Athletic Commission.

R859-1. Pete Suazo Utah Athletic Commission Act Rule.

R859-1-508. Hepatitis B Surface Antigen (HBsAg) & Hepatitis C Virus (HCV) Antibody Testing.

In accordance with Section 63C-11-317(d), contestants shall produce evidence of a negative test for HBsAg and HCV antibody as a condition to participation in a contest as follows:

(1) All contestants shall provide evidence in the form of a competent laboratory examination certificate verifying that the contestant is negative at the time of the weigh-in.

(2) The examination certificate shall certify that the HBsAg and HCV antibody testing was completed within 180 days prior to the contest.

(3) Any contestant whose HBV or HCV result is positive shall be prohibited from participating in a contest.

(4) In lieu of a negative HBsAg test result, a contestant may present laboratory testing evidence of immunity against Hepatitis B virus based on a positive hepatitis B surface antibody (anti-HBs) test result or of having received the complete hepatitis B vaccine series as recommended by the Advisory Committee on Immunization Practices.

R859-1-50[8]9. Contestant Use or Administration of Any Substance.

(1) The use or administration of drugs, stimulants, or non-prescription preparations by or to a contestant during a contest is prohibited, except as provided by this Rule.

(2) The giving of substances other than water to a contestant during the course of the contest is prohibited.

(3) The discretional use of petroleum jelly may be allowed, as determined by the referee.

(4) The discretional use of coagulants, adrenalin 1/1000, avetine, and thrombin, as approved by the Commission, may be allowed between rounds to stop the bleeding of minor cuts and lacerations sustained by a contestant. The use of monsel solution, silver nitrate, "new skin," flex collodion, or substances having an iron base is prohibited, and the use of any such substance by a contestant is cause for immediate disqualification.

(5) The ringside physician shall monitor the use and application of any foreign substances administered to a contestant before or during a contest and shall confiscate any suspicious foreign substance for possible laboratory analysis, the results of which shall be forwarded to the Commission.

R859-1-510[9]. Weighing-In.

(1) Unless otherwise approved by the Commission for a specific contest, the weigh-in shall occur not less than six nor more than 24 hours before the start of a contest. The designated Commission member or authorized Commission representative(s), shall weigh-in each contestant in the presence of other contestants.

(2) Contestants shall be licensed at the time they are weighed-in.

(3) Only those contestants who have been previously approved for the contest shall be permitted to weigh-in.

(4) Each contestant must weigh in the presence of his opponent, a representative of the commission and an official representing the promoter, on scales approved by the commission at any place designed by the commission.

(5) The contestant must have all weights stripped from his body before he is weighed in, but may wear shorts. Female contestants are permitted to wear a singlet and/or sports bra for modesty.

(6) The commission may require contestants to be weighted more than once for any cause deemed sufficient by the commission.

(7) A contestant who fails to make the weight agreed upon in his bout agreement forfeits:

(a) Twenty five percent of his purse if no lesser amount is set by the commission's representative: or

(b) A lesser amount set by the secretary and approved by the commission, unless the weight difference is 1 pound or less.

R859-1-51[0]1. Announcer.

(1) At the beginning of a contest, the announcer shall announce that the contest is under the auspices of the Commission.

(2) The announcer shall announce the names of the referee, judges, and timekeeper when the competitions are about to begin, and shall also announce the changes made in officials as the contest progresses.

(3) The announcer shall announce the names of all contestants, their weight, professional record, their city and state of residence, and country of origin if not a citizen.

R859-1-51[1]2. Timekeepers.

(1) A timekeeper shall indicate the beginning and end of each round by the gong.

(2) A timekeeper shall possess a whistle and a stopwatch.

(3) Ten seconds before the beginning of each round, the timekeeper shall warn the contestants of the time by blowing a whistle.

(4) If a contest terminates before the scheduled limit of rounds, the timekeeper shall inform the announcer of the exact duration of the contest.

(5) The timekeeper shall keep track of and record the exact amount of time that any contestant remains on the canvas.

R859-1-51[2]3. Stopping a Contest.

In accordance with Subsections 63C-11-316(2) and 63C-11-302(14)(b), authority for stopping a contest is defined, clarified or established as follows.

(1) The referee may stop a contest to ensure the integrity of a contest or to protect the health, safety, or welfare of a contestant or the public for any one or more of the following reasons:

(a) injuries, cuts, or other physical or mental conditions that would endanger the health, safety, or welfare of a contestant if the contestant were to continue with the competition.

(b) one-sided nature of the contest;

(c) refusal or inability of a contestant to reasonably compete; and

(d) refusal or inability of a contestant to comply with the rules of the contest.

(2) If a referee stops a contest, the referee shall disqualify the contestant, where appropriate, and recommend to the designated Commission member that the purse of that professional contestant be withheld pending an impoundment decision in accordance with Section 63C-11-321.

(3) The designated Commission member may stop a contest at any stage in the contest when there is a significant question with respect to the contest, the contestant, or any other licensee associated with the contest, and determine whether the purse should be withheld pursuant to Section 63C-11-321.

KEY: licensing, boxing, unarmed combat, white-collar contests
Date of Enactment or Last Substantive Amendment: [~~September 1, 2008~~]2009
Notice of Continuation: May 10, 2007
Authorizing, and Implemented or Interpreted Law: 63C-11-101 et seq.

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Sports Authority (Utah), Pete Suazo Utah Athletic Commission

R859-1-301

Qualifications for Licensure

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32188
FILED: 12/02/2008, 17:00

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to create and define an "Amateur MMA" contestant license.

SUMMARY OF THE RULE OR CHANGE: This amendment creates and defines the requirements for an "Amateur MMA" contestant license. Creating an amateur MMA contestant license will promote the sport within Utah.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63C, Chapter 11

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: No significant costs or savings are anticipated as a result of this proposed action. All unarmed combat contestants are currently required to hold a license and this information is recorded within an existing database. The proposed change establishes a new contestant license category, but this feature can be added to the existing database and the new license category printed on existing forms.

❖ LOCAL GOVERNMENTS: No anticipated costs or savings are anticipated to local government since these entities are not involved in unarmed combat contestant licensing.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: No significant costs or savings are anticipated since all unarmed combat contestants are currently required to hold a license. The proposed change establishes a new contestant license category, with no increase cost to the applicant. The only potential cost would be if the Amateur licensee requested to change their contestant category from "Amateur" to "Professional" during the year the license is effective and would require payment of $25 for the new license.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendment will not impact compliance costs since all unarmed combat contestants are currently required to hold a license. The proposed change establishes a new contestant license category, with no increase cost to the applicant. The only potential cost would be if the Amateur licensee requested to change their contestant category from "Amateur" to "Professional" during the year the license is effective and would require payment of $25 for the new license.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendment will not have any fiscal impact on businesses since all unarmed combat contestants are currently required to hold a Contestant license. These fees are generally paid for by the contestant. Alan Dayton, PSUAC Chair

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

SPORTS AUTHORITY (UTAH)
PETE SUAZO UTAH ATHLETIC COMMISSION
Room 500
324 S STATE ST
STE 500
SALT LAKE CITY UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Bill Colbert at the above address, by phone at 801-538-8876, by FAX at 801-538-8888, or by Internet E-mail at bcolbert@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 02/02/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/01/2009

AUTHORIZED BY: Bill Colbert, Secretary, PSUAC

R859. Sports Authority (Utah), Pete Suazo Utah Athletic Commission.
R859-1. Pete Suazo Utah Athletic Commission Act Rule.
R859-1-301. Qualifications for Licensure.

(1) In accordance with Section 63C-11-308, a license is required for a person to act as or to represent that the person is a promoter, manager, contestant, second, referee, or judge.

(2) A licensed amateur MMA contestant shall not compete against a professional unarmed combat contestant, or receive a purse and/or other remuneration (other than for reimbursement for reasonable travel expenses, consistent with IRS guidelines).

([~~2~~]3) A licensed manager shall not hold a license as a referee or judge.

([~~3~~]4) A promoter shall not hold a license as a referee, judge, or contestant.

KEY: licensing, boxing, unarmed combat, white-collar contests
Date of Enactment or Last Substantive Amendment: [~~September 1, 2008~~]2009
Notice of Continuation: May 10, 2007
Authorizing, and Implemented or Interpreted Law: 63C-11-101 et seq.

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Transportation, Administration
R907-1
Appeal of Departmental Actions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32214
FILED: 12/15/2008, 15:24

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In response to H.B. 63 from the 2008 General Session, the agency is required to change the code citations to match the recodification of Title 63. The rule also updates and clarifies the procedural process. (DAR NOTE: H.B. 63 (2008) is found at Chapter 382, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: The statutes referenced in the rule have been updated to reflect the recent code renumbering. The procedural process was clarified.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63G-4-101 through 63G-4-502 and 72-2-102

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: No cost or savings are anticipated with this rule change. No new requirements were created with this rule change which will impact the state budget.

❖ LOCAL GOVERNMENTS: No cost or savings are anticipated for local governments with this rule change. No new requirements were created with this rule change that impact local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: No cost or savings are anticipated for small businesses with this rule change. No new requirements were created with this rule change that impact small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No cost or savings are anticipated for compliance of affected persons. No new requirements were created with this rule change that impact affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should have no fiscal impact on businesses. 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 02/02/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/09/2009

AUTHORIZED BY: John R. Njord, Executive Director

R907. Transportation, Administration.
R907-1. Appeal of Departmental Actions.
R907-1-1. General Administrative Procedures.

All applications, Requests for Agency Action, and appeals from Notices of Agency Action shall be processed as informal adjudicative proceedings pursuant to Title [~~63,~~]63G, Chapter [~~46b,~~]4, Utah Administrative Procedures Act (UAPA), unless another rule specifically designates a proceeding as formal or either party requests conversion to a formal proceeding and the presiding officer decides that conversion is in the public interest and does not prejudice the rights of any party. An evidentiary hearing will be held only for formal adjudicative proceedings. However, nothing in this rule is intended to prohibit the presiding officer from holding a meeting of all parties for purposes of settlement, fleshing out of the issues, oral argument, or presentation of evidence. Adjudicative proceedings are subject to agency review or appeal pursuant to Utah Code Ann. Section [~~63-46b-12~~]63G-4-3-301, only when statute or a rule specifically provides for review. This rule does not apply to employee grievances, personnel actions, or requests for records under the Governmental Records Access and Management Act (GRAMA). When used in these rules, "director" means Presiding Officer except when used as Executive Director.

R907-1-3. Commencement by a member of the public -- Complete or Partial Denials of Applications or Requests for Agency Action -- Default.

(1) If the Department denies, either completely or in part, an application or Request for Agency Action and that action is subject to agency appeal, the division or office issuing the denial shall send to the applicant a written reply as promptly as possible. The reply should include a brief summary of the reasons for the decision along with a listing of any statutes or rules that were interpreted or relied upon for it, along with UDOT's file or reference number. It shall advise the applicant of his or her right to request agency review by filing a written request with the initiating division or office within 30 days after issuance of the notice. In addition, the reply shall inform the applicant that his written request for appeal must include any supporting documentation, including legal memoranda, that he or she wishes to be considered. The reply shall constitute the proposed order of the division or office making the decision and shall so indicate on the reply. If there is no appeal within 30 days, it shall become the final order of the department.

(2) Upon receiving a Request for Agency Appeal, the division or office shall first evaluate it to determine whether it meets the requirements of Utah Code Ann. Section [~~63-46b-12(1)(b),~~]63G-4-301(1)(6), i.e., whether it is signed, states the grounds upon which review is requested, the relief sought, and stating the date upon which it was mailed. If the request does not meet the statutory requirements, or was received at the division or office after the 30-day appeals period, it shall be returned to the sender with explanation as to the reason for the return. If the request meets the statutory requirements, the division or office shall promptly forward the material and a copy of any relevant material in its files to:

(a) the State Operations Engineer, if the action involves Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act;

(b) the deputy Director, if the action involves Title 72, Chapter 9, Motor Carrier Safety Act;

(c) the Project Development Director or designee, if the matter relates to:

(i) construction contract disputes; or

(ii) construction bids or the Disadvantaged Business Enterprise (DBE) program, in which case, the agency review also constitutes "administrative reconsideration" under federal regulation;

(d) the Region Director, if the action involves something other than the items listed in Subsections (a), (b), or (c), and a specific appellate procedure is not otherwise specified in these rules or in statute;

(e) the Executive Director or designee, if the action involves something other than the items listed in subsections (a), (b), (c), or (d) and was initiated by Department personnel located at Department headquarters at the Calvin Rampton Complex.

(3) The positions listed above shall be the respective presiding officers. However, either the Executive Director or deputy Director may designate another to act as a substitute. Additionally, when called to preside over adjudicative proceeding that involves access management or has potential "takings" or inverse condemnation implications, the Region Director may designate a group of individuals either to advise on the issue or to take over presiding officer duties. If the Region Director designates a group to take over presiding officer duties, he or she shall appoint:

(a) an odd-numbered group so that any decision will not result in a tie; and

(b) a chairperson.

(4) The person who issued the appealed order may not be included in either of the groups established in paragraph (3). However, the person who issued the decision may be consulted, asked for the reasons underlying his decision, and called as a witness if the proceeding is converted to a formal one.

(4) Absent filing of a timely Request for Agency Appeal, the department will issue an order that the respondent is in default. If the defaulting party is the sole respondent, the Request for Agency Action will be dismissed. The department shall either mail a copy of the default order and the dismissal order to the person who requested the action.

(5) If the defaulting party is not the sole requester, the initiating division, office, or the appropriate hearing officer shall mail the Order of Default to all parties. The adjudicative proceeding may continue and the department may determine all issues in the proceeding, including those affecting the defaulting party.

(6) A defaulting party may seek agency appeal of an Order of Default by appealing to the presiding. If the Order of Default was issued by that officer, then the defaulting party must seek reconsideration of the Order of Default pursuant to R907-1-5. The sole issue is whether entering default was appropriate.

R907-1-4. Administrative Appeals -- Procedures.

(1) (1)Discovery is prohibited, but subpoenas may be issued for the production of necessary evidence. Upon request, the applicant shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, except as otherwise provided by law.

(2)Within 20 days after receipt of a request for agency review, any party, including the division or office that issued the original decision, may submit additional documentation, which may include legal briefs, to the person required to decide on review. The person deciding on review may grant either party an extension of time. The decision should be made on the record appearing after the responses have been submitted, but the person required to decide on review may meet with the parties, if he or she considers it necessary. This meeting is not a hearing as contemplated under Title [~~63,~~]63G, Chapter [~~46b,~~]4 Utah Administrative Procedures Act.

(3)The person deciding the review shall issue a final agency order as promptly as possible. The order shall contain:

(a) a designation of the statute or rule permitting or requiring review;

(b) a statement of the issues reviewed;

(c) findings as fact as to each of the issues;

(d) conclusions of law as to each of the issues;

(e) the reasons for the disposition;

(f) whether the decision of the division or office initiating the decision is affirmed, reversed, modified, or remanded;

(g) the right to judicial review pursuant to Utah Code Ann. Section [~~63-46b-15~~]63G-4-402 by filing a complaint in district court within 30 days.

R907-1-6. Administrative Procedures for Motor Carrier Actions.

(1) When a motor carrier appeals the imposition of a penalty under Title 72, Chapter 9, Motor Carrier Safety Act, he or she shall follow the procedures established in R907-1. This proceeding is an informal adjudicative proceeding under [~~Title~~]Section [~~63, Chapter 46b,~~]63G-4-402, Utah Administrative Procedures Act; therefore, discovery is prohibited, but the administrative hearing officer may issue subpoenas or other orders to compel production of necessary evidence.

The Department shall provide the applicant, upon request, information in the agency's files, including records that are part of any investigation unless those records are otherwise made confidential or protected from disclosure.

(2) If the proceeding is converted to a formal adjudicative proceeding and an evidentiary hearing held, the Department's deputy Director may act as the administrative hearing officer. He may also designate another in his stead. At the hearing, the motor carrier shall go first and is burdened to show why the Department's civil penalties should not be assessed. The division shall respond, with the motor carrier being given an opportunity to rebut the division's evidence. If the administrative hearing officer decides doing so will be beneficial to his understanding of the issues, he may allow closing statement or arguments and he may tape the proceedings. The rules of evidence do not apply.

(3) The person deciding the review shall issue a final agency order as promptly as possible. The order shall contain:

(a) a designation of the statute or rule permitting or requiring review;

(b) a statement of the issues reviewed;

(c) findings as fact as to each of the issues;

(d) conclusions of law as to each of the issues;

(e) the reasons for the disposition;

(f) whether the decision of the division or office initiating the decision is affirmed, reversed, modified, or remanded;

(g) the right to judicial review pursuant to Utah Code Ann. Section [~~63-46b-15~~]63G-4-402 by filing a complaint in district court within 30 days.

R907-1-7. Formal Process and Hearing: Initiation.

(1) If, notwithstanding R907-1-1, the department wishes to initiate an adjudicative proceeding as a formal proceeding, the formal hearing process shall be conducted as follows:

(2) A Notice of Agency Action shall include the following information:

(a) the names and mailing addresses of all respondents and any other persons to whom notice is being given;

(b) the department's file number or other reference number;

(c) a name or caption of the adjudicative proceeding, i.e., Utah Department of Transportation, Motor Carrier Safety Division v. XXXX Trucking Company;

(d) the date on which the Notice was placed in U.S. Mail, or personally served upon the respondents;

(e) a statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained;

(f) the name, title, mailing address, and telephone number of the office initiating the Notice of Agency Action and the appropriate hearing officer;

(g) a general statement of the purpose of the adjudicative proceeding and, to the extent known, the questions to be decided;

(h) if the department is proposing to assess a fine or penalty, the amount of the fine or penalty and a summary of the evidence supporting the proposed amount;

(i) A statement that the adjudicative proceeding is to be conducted formally according to the provisions of these Rules and Sections [~~63-46b-6 to 63-46b-11;~~]63G-4-204 to 63G-4-209;

(j) A statement that a written response must be filed within 30 days of the mailing date of the Notice of Agency Action;

(k) A statement of the time and place of the hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default;

(3) Absent filing of a timely request, the department will issue an order that the respondent is in default. If the defaulting party is the sole respondent, the Notice of Agency Action will then become the department's final order. The initiating division, office, or appropriate hearing officer shall revise the Notice of Agency Action to effect this change, captioning the Notice as the Final Order, affixing the appropriate signature the new date. The department may not change the contents in any substantive manner. However, the final order shall include a provision that notifies the respondent of his right to judicial. The department shall then either mail or personally serve the respondent with a copy of the default order and the final order.

(4) If the defaulting party is not the sole respondent, the initiating division, office, or the appropriate hearing officer shall mail the Order of Default to all parties. The adjudicative proceeding may continue and the department may determine all issues in the proceeding, including those affecting the defaulting party.

(5) A defaulting party may seek agency review of an Order of Default by appealing to the appropriate hearing officer identified in R907-1-3(2). If the Order of Default was issued by that hearing officer, then the defaulting party must seek reconsideration of the Order of Default pursuant to R907-3-1. The sole issue is whether entering default was appropriate.

R907-1-15. Exhaustion of Administrative Remedies.

(1) Persons must exhaust their administrative remedies in accordance with Section [~~63-46b-14,~~]63G-4-401, prior to seeking judicial review.

(2) In any adjudicative proceeding before the Director, there is an opportunity for affected parties to respond and participate. Only those aggrieved parties that so exhausted these available and adequate remedies before the Director may be allowed to seek judicial review of the final Director action.

R907-1-16. Deadline for Judicial Review.

A party shall file a petition for judicial review of final agency action within 30 days after the date that the order constituting the final agency action is issued. The petition shall name the agency and all other appropriate parties as respondents and shall meet the form requirements specified in Title [~~63,~~]63G, Chapter [~~46b.~~]4.

R907-1-17. Judicial Review of Formal Adjudicative Proceedings.

Judicial review of formal adjudicative proceedings shall be conducted in conformance with Sections [~~63-46b-16 through 63-46b-18.~~]63G-4-405.

R907-1-20. Construction.

The Utah Administrative Procedures Act described in Title [~~63~~]63G, Chapter [~~46b~~]4 or any other federal, state statute, or federal regulation shall supersede any conflicting provision of these Rules. It is the Department's intent that, where possible, the provisions of these rules be construed to be in compliance with those superseding provisions.

KEY: administrative procedures, enforcement (administrative)
Date of Enactment or Last Substantive Amendment: [~~April 23, 2003~~]2009
Notice of Continuation: November 29, 2006

Authorizing, and Implemented or Interpreted Law: [~~63-46b-1~~]63G-4-101 through [~~20;~~]502 72-1-102

Workforce Services, Employment Development
R986-200-246
Transitional Cash Assistance

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 32209
FILED: 12/11/2008, 18:26

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to better ensure compliance with Department participation requirements.

SUMMARY OF THE RULE OR CHANGE: Transitional Cash Assistance (TCA) is to help customers stabilize employment and reduce recidivism by providing some assistance for customers who are just starting out on a new job when needed. If that customer had not been complying with the Department's participation requirements, however, it would not be appropriate to provide transitional assistance. This change provides that if a customer had a pending sanction, TCA will not be available.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsections 35A-1-104(4) and 35A-3-302(5)(b)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: This applies to federally-funded programs so there are no costs or savings to the state budget.
❖ LOCAL GOVERNMENTS: This applies to federally-funded programs so there are no costs or savings to local government.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There will be no costs to small businesses to comply with these changes because this is a federally-funded program. There will be no costs of any persons to comply with these changes because there are no costs or fees associated with these proposed changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with these changes for any persons because this is a federally-funded program and there are no fees or costs associated with these proposed changes.

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. Kristen Cox, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
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 02/02/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/09/2009

AUTHORIZED BY: Kristen Cox, Executive Director

R986. Workforce Services, Employment Development.
R986-200. Family Employment Program.
R986-200-246. Transitional Cash Assistance.

(1) Transitional Cash Assistance, (TCA) is offered to help FEP and FEPTP customers stabilize employment and reduce recidivism.

(2) To be eligible for TCA a client must;

(a) have been eligible for and have received FEP or FEPTP during the month immediately preceding the month during which TCA is requested or granted. The FEP or FEPTP assistance must have been terminated due to earned or unearned income and not for nonparticipation under R986-200-212. If the immediately preceding month was during a diversion period, or the client has a reduction or termination pending due to non participation as provided in R986-200-212, the client is not eligible for TCA, and

(b) be employed an average of 30 hours per week for FEP households. The parents in a FEPTP household cannot combine hours for TCA. Each parent must be employed 30 hours per week.

(3) TCA is only available if the customer verifies employment averaging the minimum required in subparagraph (2)(b) of this section.

(4) TCA is available for a maximum of three months.

(a) The assistance payment for the first two months of TCA is based on household size. All household income, earned and unearned, is disregarded.

(b) Payment for the third month is one half of the payment available in (4)(a) of this section.

(5) If initial verification is provided and a client is paid one month of TCA but the client is unable to provide documentation to support that initial verification, no further payments will be made under TCA but the one month payment will not result in an overpayment.

(6) A client can only receive TCA once in any 24 month period. This time limit applies regardless of how many months of TCA a client received.

(7) TCA does not count toward the 36 month time limit found in R986-200-217.

KEY: family employment program
Date of Enactment or Last Substantive Amendment: [~~September 29, 2008~~]2009
Notice of Continuation: September 14, 2005

Authorizing, and Implemented or Interpreted Law: 35A-3-301 et seq.

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End of the Notices of Proposed Rules Section

NOTICES OF
CHANGES IN PROPOSED RULES

After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [~~example~~]). A row of dots in the text between paragraphs (· · · · ·) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends February 2, 2009. At its option, the agency may hold public hearings.

From the end of the waiting period through May 1, 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.

The Changes in Proposed Rules Begin on the Following Page.

Health, Health Systems Improvement, Child Care Licensing
R430-6
Background Screening

NOTICE OF CHANGE IN PROPOSED RULE
DAR File No.: 31820
Filed: 12/15/2008, 15:47

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change is in response to public comments received on the proposed rule. In these public comments, concerns were raised about allowing individuals with certain alcohol-related crimes involving juveniles to be employed in a child care facility regulated by the Department of Health.

SUMMARY OF THE RULE OR CHANGE: The change modifies which Misdemeanor A convictions would not prohibit an individual from being employed in a regulated child care program, if it has been ten years or more since the disqualifying Misdemeanor A offense. It prohibits individuals convicted of certain alcohol-related crimes involving juveniles from working in a child care facility regulated by the Department of Health. It also excludes individuals convicted of providing a weapon to a violent minor. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed repeal and reenactment that was published in the September 1, 2008, issue of the Utah State Bulletin, on page 54. 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 repeal and reenactment 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: Title 26, Chapter 39

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget, because this rule change does not affect the number of background screenings conducted by Department of Health staff, nor the time it takes to conduct a background screening.

❖ LOCAL GOVERNMENTS: If a local government operates a child care program, they may see a cost resulting from not being able to employ some individuals they would have been able to employ otherwise. Because we have no way of knowing the number of individuals seeking employment that would be affected by this change, the division cannot reasonably estimate the cost savings to local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: All child care programs are small businesses. These programs may see a cost resulting from not being able to employ some individuals they would have been able to employ otherwise. Because we have no way of knowing the number of individuals seeking employment that would be affected by this change, the division cannot reasonably estimate the cost savings to local governments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because this change does not increase any of the requirements for employment in a regulated child care program, there will be no compliance costs for affected programs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change to prohibit individuals convicted of certain alcohol-related crimes involving juveniles from working in a child care facility is in response to public comment. The fiscal impact should be minor and the protection to the public outweighs that small cost. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
CHILD CARE LICENSING
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Teresa Whiting at the above address, by phone at 801-538-6320, by FAX at 801-538-6325, or by Internet E-mail at TWHITING@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 02/02/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/09/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

R430. Health, Health Systems Improvement, Child Care Licensing.
R430-6. Background Screening.
R430-6-2. Definitions.

Terms used in this rule are defined in Title 26, Chapter 39. In addition:

(1) "Applicant" means a person who has applied for a new child care license or residential certificate from the Department, or a currently licensed or certified child care provider who is applying for a renewal of their child care license or certificate.

(2) "Background finding" means a determination by the Department that an individual:

(a) has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.

(b) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor.

(3) "Covered individual" means:

(a) owners;

(b) directors;

(c) members of the governing body;

(d) employees;

(e) providers of care, including children residing in a home where child care is provided;

(f) volunteers, excluding parents of children enrolled in the program;[~~and~~]

(g) all individuals age 12 and older residing in a residence where child care is provided[~~.~~]; and

(h) anyone who has unsupervised contact with a child in care.

(4) "Department" means the Utah Department of Health.

(5) "Involved with child care" means to provide child care, volunteer, own, operate, direct, be employed in, or function as a member of the governing body of a child care program with a license or certificate issued by the Department.

(6) "Supported finding" means an individual is listed on the Licensing Information System child abuse and neglect database maintained by the Utah Department of Human Services.

(7) "Unsupervised Contact" means contact with children that provides the person opportunity for personal communication or touch when not under the direct supervision of a child care provider or employee who has passed a background screening.

(8) "Volunteer" means an individual who receives no form of direct or indirect compensation for providing care.

R430-6-4. Criminal Background Screening.

(1) Regardless of any exception under R430-6-4(4), if an in-state criminal background screening indicates that a covered individual age 18 or older has a background finding, the Department may require that individual to submit a fingerprint card and fee from which the Department may conduct a national criminal background screening on that individual.

(2) Except for the offenses listed under Subsection (3), if a covered individual has a background finding, that individual may not be involved with child care. If such a covered individual resides in a home where child care is provided, the Department shall revoke an existing license or certificate or refuse to issue a new license or certificate.

(3) A background finding for any of the following offenses does not prohibit a covered individual from being involved with child care:

(a) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act[~~;~~], except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code[~~;~~] except for 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, where the penalty falls under 41-6a-503;

(c) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for:

(i) 76-4-401, Enticing a Minor;

(g) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 6, Offenses Against Property;

(h) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 6a, Pyramid Scheme Act;

(i) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 8, Offenses Against the Administration of Government;

(k) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 9, Offenses Against Public Order and Decency, except for:

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

(l) any Class A misdemeanor offense as allowed in Subsection (4), and any Class B or C misdemeanor offense under Title 76, Chapter 10, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

[~~(ii)~~](iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

[~~(iii)~~](iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

[~~(iv)~~](v) 76-10-1301 to 1314, Prostitution; and

[~~(v)~~](vi) 76-10-2301, Contributing to the Delinquency of a Minor.

(4) A covered individual with a Class A misdemeanor background finding may be involved with child care if either of the following conditions is met:

(a) if the Class A misdemeanor background finding is for any of the excluded misdemeanor offenses in Subsection (3), and:

(i) ten or more years have passed since the Class A misdemeanor offense; and

(ii) there is no other background finding for the individual in the past ten years; or

(b) if the Class A misdemeanor background finding is for any of the excluded misdemeanor offenses in Subsection (3) and five or more years have passed, but ten years have not passed since the Class A misdemeanor offense, and there is no other background finding since the Class A misdemeanor offense, then the individual may be involved with child care as an employee of an existing licensed or certified child care program for up to six months if:

(i) the individual provides documentation for an active petition for expungement of the disqualifying offense within 30 days of the notice of the disqualifying background finding; and

(ii) the licensee or certificate holder ensures that another employee who has passed the background screening is always present in the same room as the individual, and ensures that the individual has no unsupervised contact with any child in care.

(5) If the court denies a petition for expungement from an individual who has petitioned for expungement and continues to be involved with child care as an employee under Subsection (4)(b), that individual may no longer be employed in an existing licensed or certified child care program, even if six months have not passed since the notice of the disqualifying background finding.

(6) The Department may rely on the criminal background screening as conclusive evidence of the arrest warrant, arrest, charge, or conviction, and the Department may revoke or deny a license, certificate, or employment based on that evidence.

(7) If a covered individual is denied a license, certificate or employment based upon the criminal background screening and the covered individual disagrees with the information provided by the Department of Public Safety, the covered individual may challenge the information as provided in Utah Code, Sections 77-18-10 through 77-18-14 and 77-18a-1.

(8) If the Department takes an action adverse to any covered individual based upon the criminal background screening, the Department shall send a written decision to the licensee or certificate holder and the covered individual explaining the action and the right of appeal.

(9) All licensees, certificate holders, and covered individuals must report to the Department any felony or misdemeanor arrest, charge, or conviction of a covered individual within 48 hours of becoming aware of the arrest warrant, arrest, charge, or conviction. Failure to notify the Department within 48 hours may result in disciplinary action, including revocation of the license or certificate.

R430-6-5. Covered Individuals with Arrests or Pending Criminal Charges.

(1) If a covered individual has an outstanding arrest warrant for, or has been arrested or charged with a felony or a misdemeanor that would not be excluded under R430-6-4(3), the Department may revoke or suspend any license or certificate of a provider, or deny employment, if necessary to protect the health and safety of children in care.

(2) If the Department denies or revokes a license or certificate or denies employment based upon the arrest warrant, arrest, or charge, the Department shall send a written decision to the licensee or certificate holder and the covered individual notifying them that a hearing with the Department may be requested.

(3) The Department may hold the license, certificate, or employment denial in abeyance until the arrest warrant, arrest, or felony or misdemeanor charge is resolved.

KEY: child care facilities
Date of Enactment or Last Substantive Amendment: [~~February 6, 2006~~]2009
Notice of Continuation: August 13, 2007
Authorizing, and Implemented or Interpreted Law: 26-39

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End of the Notices of Changes in Proposed Rules Section

NOTICES OF
120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

(a) cause an imminent peril to the public health, safety, or welfare;
(b) cause an imminent budget reduction because of budget restraints or federal requirements; or
(c) place the agency in violation of federal or state law (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.

Commerce, Real Estate
R162-211
Adjusted Licensing Terms

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 32200
FILED: 12/04/2008, 17:22

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 adjust 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. A previous emergency rule granted an extension to 2009 license renewals through the end of 2009, but it required the 2009 renewals to join the Nationwide Mortgage Licensing System sooner than the rest of licensees. Licensees have requested a new emergency rule be issued that gives 2009 licensees a shorter licensing term (12 to 24 months) but places them on the Nationwide Mortgage Licensing System at the same time as the rest of Utah's mortgage licensees.

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 25 months to transition, the Division will be causing the least amount of impact on mortgage licensees. Many licensees will be granted a license term beyond 2 years, while others 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. Many licensees will gain a slightly longer 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: Many licensees will benefit by a longer term of licensure without any additional fee. Other licensees will have a shorter licensing term than is currently required. They will have to renew, and pay the costs associated with renewal, sooner than is currently required.

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. (DAR NOTE: This filing supersedes DAR No. 31968 in the October 15, 2008, issue of the Bulletin that was effective on 10/01/2008.)

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: 12/08/2008

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 R162, Sections 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) An applicant between January 1, 2008, and December 31, 2008, and who applies for and 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.

(iii) The Division shall issue a new license with the new expiration date to a licensee who was issued a mortgage license during 2008 prior to the enactment of this rule.

(b) An applicant for license renewal whose license expires between January 1, 2009, and December 31, 2009, 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.

(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 existing at time of licensure or license renewal.

(2) This rule does not affect any provisions under Rules R162-201 through R162-210 regarding licensee discipline.

KEY: mortgage renewal license term
Date of Enactment or Last Substantive Amendment: December 8, 2008
Authorizing, and Implemented or Interpreted Law: 61-2c-205(1)(b)

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End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by Section 63G-3-305.

Health, Health Systems Improvement, Primary Care and Rural Health

R434-40

Utah Health Care Workforce Financial Assistance Program Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 32194

FILED: 12/03/2008, 11:42

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 26-46-102(1) created the program and Subsection 26-46-102(2) grants to the department power to make rules governing the administration of the program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is required under Subsection 26-46-102(2). The continuation of the rule is justified through the ongoing need for health care professionals serving medically underserved populations throughout the State of Utah.

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
PRIMARY CARE AND RURAL HEALTH
3760 S HIGHLAND DR
SALT LAKE CITY UT 84106, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Erin Olsen at the above address, by phone at 801-273-6618, by FAX at 801-273-4146, or by Internet E-mail at elolsen@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 12/03/2008

♦ ——— ♦

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. Statute permits an agency to make a rule effective "on any date specified by the agency that is no fewer than seven calendar days after the close of the public comment period . . . , nor more than 120 days after the publication date." Subsection 63G-3-301(9).

Abbreviations
AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Administrative Services
Facilities Construction and Management
No. 31931 (AMD): R23-19. Facility Use Rules.
Published: October 1, 2008
Effective: December 4, 2008

Agriculture and Food
Animal Industry
No. 32011 (AMD): R58-18. Elk Farming.
Published: November 1, 2008
Effective: December 8, 2008

Regulatory Services
No. 32014 (AMD): R70-310. Grade A Pasteurized Milk.
Published: November 1, 2008
Effective: December 8, 2008

No. 31992 (AMD): R70-910. Voluntary Registration of Servicemen and Service Agencies for Commercial Weighing and Measuring Devices.
Published: November 1, 2008
Effective: December 8, 2008

Commerce
Occupational and Professional Licensing
No. 32001 (AMD): R156-56. Utah Uniform Building Standard Act Rules.
Published: November 1, 2008
Effective: January 1, 2009

No. 32025 (REP): R156-59. Professional Employer Organization Registration Act Rule.
Published: November 1, 2008
Effective: December 8, 2008

No. 32043 (AMD): R156-78B-14. Determination - Supplemental Opinion - Certificate of Compliance.
Published: November 1, 2008
Effective: December 8, 2008

Real Estate
No. 31998 (AMD): R162-103. Appraisal Education Requirements.
Published: November 1, 2008
Effective: January 1, 2009

Education
Administration
No. 32024 (AMD): R277-470-17. Charter School Building Subaccount.
Published: November 1, 2008
Effective: December 8, 2008

No. 32023 (AMD): R277-606. Grants to Purchase or Retrofit Clean School Buses.
Published: November 1, 2008
Effective: December 8, 2008

Environmental Quality
Air Quality
No. 31928 (AMD): R307-121. General Requirements: Clean Fuel Vehicle Tax Credits.
Published: October 1, 2008
Effective: January 1, 2009

Radiation Control
No. 32049 (AMD): R313-38-3. Clarifications or Exceptions.
Published: November 1, 2008
Effective: December 10, 2008

Labor Commission
Adjudication
No. 32055 (AMD): R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.
Published: November 1, 2008
Effective: December 8, 2008

No. 32056 (NEW): R602-5. Procedures for Resolving Disputes Regarding "Cooperation" and "Diligent Pursuit" Under Subsection 34A-2-413(6)(e)(iii) and Subsection 34A-2-413(9) Consistent with Utah Administrative Code Subsection R612-1-10(D)(4).
Published: November 1, 2008
Effective: December 8, 2008

No. 32057 (NEW): R602-6. Procedures Applicable for Approval of Settlement Agreements in Workers' Compensation.
Published: November 1, 2008
Effective: December 8, 2008

Industrial Accidents
No. 32058 (AMD): R612-2-9. Changes of Doctors and Hospitals.
Published: November 1, 2008
Effective: December 8, 2008

Public Education Job Enhancement Program
Job Enhancement Committee
No. 32041 (AMD): R690-100. Public Education Job Enhancement Program Participant Eligibility and Requirements.
Published: November 1, 2008
Effective: December 8, 2008

Public Safety
Driver License
No. 32018 (AMD): R708-26-5. Motorcycle Learner Permit.
Published: November 1, 2008
Effective: December 9, 2008

Fire Marshal
No. 32051 (AMD): R710-2-8. Adjudicative Proceedings.
Published: November 1, 2008
Effective: December 9, 2008

Highway Patrol
No. 31988 (AMD): R714-240. Standards and Specifications for Child Restraint Devices and Safety Belts.
Published: October 15, 2008
Effective: December 10, 2008

Sports Authority (Utah)
Pete Suazo Utah Athletic Commission
No. 31899 (AMD): R859-1-501. Promoter's Responsibility in Arranging Contests - Permit Fee, Bond, Restrictions.
Published: September 15, 2008
Effective: December 2, 2008

Tax Commission
Administration
No. 31947 (AMD): 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, 59-10-533, 59-10-535, 59-12-114, 59-13-210, 63-46b-3; 63-46b-14; 68-3-7; and 68-3-85.
Published: October 1, 2008
Effective: December 4, 2008

Auditing
No. 32035 (AMD): R865-4D-2. Clean Special Fuel Certificate, Refund Procedures for Undyed Diesel Fuel Used Off-Highway or to Operate a Power Take-Off Unit, and Sales Tax Liability Pursuant to Utah Code Ann. Sections 59-13-301 and 59-13-304.
Published: November 1, 2008
Effective: January 1, 2009

No. 31943 (AMD): R865-6F-39. Definitions Related to Captive Real Estate Investment Trust and Foreign Real Estate Investment Trust Pursuant to Utah Code Ann. Section 59-7-101.
Published: October 1, 2008
Effective: December 4, 2008

No. 32034 (AMD): R865-12L-6. Place of Transaction Pursuant to Utah Code Ann. Section 59-12-207.
Published: November 1, 2008
Effective: January 1, 2009

No. 32032 (AMD): R865-12L-12. Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-204.
Published: November 1, 2008
Effective: January 1, 2009

No. 32015 (AMD): R865-12L-13. Repairmen and Servicemen Pursuant to Utah Code Ann. Section 59-12-204.
Published: November 1, 2008
Effective: January 1, 2009

No. 31944 (AMD): R865-14W-1. Mineral Production Tax Withholding Pursuant to Utah Code Ann. Sections 59-6-101 through 59-6-104.
Published: October 1, 2008
Effective: December 4, 2008

No. 32008 (AMD): R865-19S-12. Filing of Returns Pursuant to Utah Code Ann. Sections 59-12-107 and 59-12-118.
Published: November 1, 2008
Effective: January 1, 2009

No. 32017 (AMD): R865-19S-27. Retail Sales Defined Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103(1)(g).
Published: November 1, 2008
Effective: January 1, 2009

No. 32030 (AMD): R865-19S-29. Wholesale Sale Defined Pursuant to Utah Code Ann. Section 59-12-102.
Published: November 1, 2008
Effective: January 1, 2009

No. 32007 (AMD): R865-19S-90. Telephone Service Pursuant to Utah Code Ann. Section 59-12-103.
Published: November 1, 2008
Effective: January 1, 2009

No. 32016 (AMD): R865-19S-92. Computer software and Other Related Transactions Pursuant to Utah Code Ann. Section 59-12-103.
Published: November 1, 2008
Effective: January 1, 2009

No. 32012 (AMD): R865-19S-113. Sales Tax Obligations of Jeep, Snowmobile, Aircraft, and Boat Tour Operators, River Runners, Outfitters, and Other Sellers Providing Similar Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-107.
Published: November 1, 2008
Effective: January 1, 2009

No. 32013 (AMD): R865-19S-119. Certain Transactions Involving Food and Lodging Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104.
Published: November 1, 2008
Effective: January 1, 2009

No. 32033 (AMD): R865-21U-3. Liability of Retailers Pursuant to Utah Code Ann. Section 59-12-107.
Published: November 1, 2008
Effective: January 1, 2009

No. 32010 (AMD): R865-21U-15. Automobile, Construction Equipment and Other Merchandise Purchased from Out-Of-State Vendors Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-107.
Published: November 1, 2008
Effective: January 1, 2009

Motor Vehicle

No. 32045 (AMD): R873-22M-20. Aircraft Registration Pursuant to Utah Code Ann. Sections 72-10-102, 72-10-109 through 72-10-112.
Published: November 1, 2008
Effective: January 1, 2009

No. 32037 (AMD): R873-22M-23. Registration Information Update for Vintage Vehicle Special Group License Plates Pursuant to Utah Code Ann. Section 41-1a-1209.
Published: November 1, 2008
Effective: January 1, 2009

Property Tax

No. 32063 (AMD): R884-24P-27. Standards for Assessment Level and Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5.
Published: November 1, 2008
Effective: January 1, 2009

No. 32036 (AMD): R884-24P-47. Uniform Tax on Aircraft Pursuant to Utah Code Ann. Sections 59-2-404, 59-2-1005, 59-2-1302, and 59-2-1303.
Published: November 1, 2008
Effective: January 1, 2009

No. 32044 (AMD): R884-24P-53. 2008 Valuation Guides for Valuation of Land Subject to the Farmland Assessment Act Pursuant to Utah Code Ann. Section 59-2-515.
Published: November 1, 2008
Effective: January 1, 2009

No. 32052 (AMD): R884-24P-70. Real Property Appraisal Requirements for County Assessors Pursuant to Utah Code Ann. Sections 59-2-303.1 and 59-2-919.1.
Published: November 1, 2008
Effective: January 1, 2009

Workforce Services

Unemployment Insurance

No. 31970 (AMD): R994-403-114c. Claimant's Obligation to Prove Weekly Eligibility.
Published: October 15, 2008
Effective: December 3, 2008

No. 31904 (AMD): R994-405-216. Cancellations Not Allowed.
Published: September 15, 2008
Effective: December 3, 2008

No. 31971 (AMD): R994-406-401. Claimant Fraud.
Published: October 15, 2008
Effective: December 3, 2008

End of the Notices of Rule Effective Dates Section

RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The *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 complete 2008 Rules Index and the beginning 2009 Rules Index will be printed in the next issue of the Bulletin, January 15, 2009.

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/).