

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed December 16, 2008, 12:00 a.m. through December 31, 2008, 11:59 p.m.

Number 2009-2
January 15, 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

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Printed in the United States of America

Library of Congress Cataloging-in-Publication Data

Utah state bulletin.

Semimonthly.

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

I. Utah. Office of Administrative Rules.

KFU440.A73S7

348.792'025--DDC

85-643197

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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 16, 2008, 12:00 a.m., and December 31, 2008, 11:59 p.m. are included in this, the January 15, 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 Rules being repealed are completely struck out.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 17, 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 15, 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.

Commerce, Occupational and
Professional Licensing
R156-1
General Rules of the Division of
Occupational and Professional
Licensing

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 32241

FILED: 12/22/2008, 15:44

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division needs to update sections in the rule to clarify certain provisions.

SUMMARY OF THE RULE OR CHANGE: Throughout the rule, the term "rules" has been replaced with "rule" where applicable. In Section R156-1-308a, added barber and barber school to the listing of renewal dates. In Section R156-1-308i, added that the provisions of the section regarding reinstatement of a restricted, suspended, probationary license also applies to a license that expired while in a suspended status.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-1-308 and Subsections 58-1-106(1)(a) and 58-1-501(4)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The Division will incur minimal costs of approximately \$150 to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
- ❖ LOCAL GOVERNMENTS: Proposed amendments do not apply to local governments. Proposed amendments only apply to license classifications regulated under Title 58.
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Proposed amendments only apply to license classifications regulated under Title 58, which may include "small businesses". The Division does not anticipate any additional costs or savings to the regulated license classifications as a result of these proposed rule amendments as the amendments are simply housekeeping items. The proposed amendment in Section R156-1-308i would only affect those licensees who had allowed their license to expire while the license was either restricted, suspended, or on probationary status.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Proposed amendments only apply to license classifications regulated under Title 58. The Division does not anticipate any additional costs or savings to the regulated license classifications as a result of these proposed rule amendments as the amendments are simply housekeeping items. The proposed amendment in Section R156-1-308i would only affect those

licensees who had allowed their license to expire while the license was either restricted, suspended, or on probationary status.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact to businesses with this rule filing, which provides license renewal dates for barbers and barber schools and makes other clarifying amendments. Francine A. Gian, 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:

W. Ray Walker at the above address, by phone at 801-530-6256, by FAX at 801-530-6511, or by Internet E-mail at raywalker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2009

AUTHORIZED BY: F. David Stanley, Director

R156. Commerce, Occupational and Professional Licensing.
R156-1. General Rule[s] of the Division of Occupational and Professional Licensing.

R156-1-101. Title.

Th[ese]is rule[s-are] is known as the General Rule[s] of the Division of Occupational and Professional Licensing.

R156-1-102. Definitions.

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

- (1) "Active and in good standing" means a licensure status which allows the licensee full privileges to engage in the practice of the occupation or profession subject to the scope of the licensee's license classification.
- (2) "Aggravating circumstances" means any consideration or factors that may justify an increase in the severity of an action to be imposed upon an applicant or licensee. Aggravating circumstances include:
 - (a) prior record of disciplinary action, unlawful conduct, or unprofessional conduct;
 - (b) dishonest or selfish motive;
 - (c) pattern of misconduct;
 - (d) multiple offenses;
 - (e) obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the Division;

(f) submission of false evidence, false statements or other deceptive practices during the disciplinary process including creating, destroying or altering records after an investigation has begun;

(g) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the Division;

(h) vulnerability of the victim;

(i) lack of good faith to make restitution or to rectify the consequences of the misconduct involved;

(j) illegal conduct, including the use of controlled substances; and

(k) intimidation or threats of withholding clients' records or other detrimental consequences if the client reports or testifies regarding the unprofessional or unlawful conduct.

(3) "Branching questionnaire", as used in Section R156-1-601, means an adaptive, progressive inquiry used by a physician to determine a health history and assessment, and serves as the basis for a diagnosis.

(4) "Cancel" or "cancellation" means nondisciplinary action by the division to rescind, repeal, annul, or void a license issued in error. Such action includes rescinding a license issued to an applicant whose payment of the required application fee is dishonored when presented for payment, or who has been issued a conditional license pending a criminal background check and the check cannot be completed due to the applicant's failure to resolve an outstanding warrant or to submit acceptable fingerprint cards.

(5) "Charges" means the acts or omissions alleged to constitute either unprofessional or unlawful conduct or both by a licensee, which serve as the basis to consider a licensee for inclusion in the diversion program authorized in Section 58-1-404.

(6) "Denial of licensure" means action by the division refusing to issue a license to an applicant for initial licensure, renewal of licensure, reinstatement of licensure or relicensure.

(7) "Disciplinary action" means adverse licensure action by the division under the authority of Subsections 58-1-401(2)(a) through (2)(b).

(8) "Diversion agreement" means a formal written agreement between a licensee, the division, and a diversion committee, outlining the terms and conditions with which a licensee must comply as a condition of entering in and remaining under the diversion program authorized in Section 58-1-404.

(9) "Diversion committees" mean diversion advisory committees authorized by Subsection 58-1-404(2)(a)(i) and created under Subsection R156-1-404a.

(10) "Duplicate license" means a license reissued to replace a license which has been lost, stolen, or mutilated.

(11) "Emergency review committees" mean emergency adjudicative proceedings review committees created by the division under the authority of Subsection 58-1-108(2).

(12) "Expire" or "expiration" means the automatic termination of a license which occurs:

(a) at the expiration date shown upon a license if the licensee fails to renew the license before the expiration date; or

(b) prior to the expiration date shown on the license:

(i) upon the death of a licensee who is a natural person;

(ii) upon the dissolution of a licensee who is a partnership, corporation, or other business entity; or

(iii) upon the issuance of a new license which supersedes an old license, including a license which:

(A) replaces a temporary license;

(B) replaces a student or other interim license which is limited to one or more renewals or other renewal limitation; or

(C) is issued to a licensee in an upgraded classification permitting the licensee to engage in a broader scope of practice in the licensed occupation or profession.

(13) "Inactive" or "inactivation" means action by the division to place a license on inactive status in accordance with Sections 58-1-305 and R156-1-305.

(14) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the division regulatory and compliance officer, or if the division regulatory and compliance officer is unable to so serve for any reason, a bureau manager designated by the regulatory and compliance officer, or if both the division regulatory and compliance officer and the designated bureau manager are unable to so serve for any reason, a department administrative law judge.

(15) "License" means a right or privilege to engage in the practice of a regulated occupation or profession as a licensee.

(16) "Limit" or "limitation" means nondisciplinary action placing either terms and conditions or restrictions or both upon a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(17) "Mitigating circumstances" means any consideration or factors that may justify a reduction in the severity of an action to be imposed upon an applicant or licensee.

(a) Mitigating circumstances include:

(i) absence of prior record of disciplinary action, unlawful conduct or unprofessional conduct;

(ii) absence of dishonest or selfish motive;

(iii) personal, mental or emotional problems provided such problems have not posed a risk to the health, safety or welfare of the public or clients served such as drug or alcohol abuse while engaged in work situations or similar situations where the licensee or applicant should know that they should refrain from engaging in activities that may pose such a risk;

(iv) timely and good faith effort to make restitution or rectify the consequences of the misconduct involved;

(v) full and free disclosure to the client or Division prior to the discovery of any misconduct;

(vi) inexperience in the practice of the occupation and profession provided such inexperience is not the result of failure to obtain appropriate education or consultation that the applicant or licensee should have known they should obtain prior to beginning work on a particular matter;

(vii) imposition of other penalties or sanctions; and

(viii) remorse.

(b) The following factors should not be considered as mitigating circumstances:

(i) forced or compelled restitution;

(ii) withdrawal of complaint by client or other affected persons;

(iii) resignation prior to disciplinary proceedings;

(iv) failure of injured client to complain; and

(v) complainant's recommendation as to sanction.

(18) "Nondisciplinary action" means adverse licensure action by the division under the authority of Subsections 58-1-401(1) or 58-1-401(2)(c) through (2)(d).

(19) "Peer committees" mean advisory peer committees to boards created by the legislature in Title 58 or by the division under the authority of Subsection 58-1-203(1)(f).

(20) "Private reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a private record.

(21) "Probation" means disciplinary action placing terms and conditions upon a license;

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(22) "Public reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a public record.

(23) "Regulatory authority" as used in Subsection 58-1-501(2)(d) means any governmental entity who licenses, certifies, registers, or otherwise regulates persons subject to its jurisdiction, or who grants the right to practice before or otherwise do business with the governmental entity.

(24) "Reinstate" or "reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (26)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.

(25) "Relicense" or "relicensure" means to license an applicant who has previously been revoked or has previously surrendered a license.

(26) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (26)(a), placed on a license issued to an applicant for licensure.

(27) "Restrict" or "restriction" means disciplinary action qualifying or limiting the scope of a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-304; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

(28) "Revoke" or "revocation" means disciplinary action by the division extinguishing a license.

(29) "Suspend" or "suspension" means disciplinary action by the division removing the right to use a license for a period of time or indefinitely as indicated in the disciplinary order, with the possibility of subsequent reinstatement of the right to use the license.

(30) "Surrender" means voluntary action by a licensee giving back or returning to the division in accordance with Section 58-1-306, all rights and privileges associated with a license issued to the licensee.

(31) "Temporary license" or "temporary licensure" means a license issued by the division on a temporary basis to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-303.

(32) "Unprofessional conduct" as defined in Title 58 is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-1-502.

(33) "Warning or final disposition letters which do not constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions of law and do not constitute a reprimand, but which may address any or all of the following:

(a) division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of division concerns.

R156-1-103. Authority - Purpose.

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

R156-1-109. Presiding Officers.

In accordance with Subsection 63G-4-103(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

(1) The division regulatory and compliance officer is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the division regulatory and compliance officer is unable to so serve for any reason, a bureau manager designated by the regulatory and compliance officer is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Unless otherwise specified in writing by the director, or with regard to Title 58, Chapter 55, by the Construction Services Commission, the department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the director or commission, respectively, determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as provided in Subsection (4) or otherwise specified in writing by the director, the presiding officer for adjudicative proceedings before the division are as follows:

(a) Director. The director shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(f) through (g), and R156-46b-201(2)(a) through (b), however resolved, including stipulated settlements and hearings; and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(d), (h),(j), (m), (n), (p), and (q), and R156-46b-202(2)(a) through (c), however resolved, including memorandums of understanding and stipulated settlements.

(b) Bureau managers or program coordinators. Except for Title 58, Chapter 55, the bureau manager or program coordinator over the occupation or profession or program involved shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and shall issue a recommended order to the division based upon the record developed at the hearing determining all issues pending before the division to the director for a final order, and R156-46b-201(1)(e). The authority of the presiding officer in formal adjudicative proceedings described in R156-46b-201(1)(e)

shall be limited to approval of claims, conditional denial of claims, and final denial of claims based upon jurisdictional defects;

(ii) formal adjudicative proceedings described in Subsection R156-46b-201(1)(h), for purposes of determining whether a request for a board of appeal is properly filed as set forth in Subsections R156-56-105(1) through (4); and

(iii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (c), (e), (g), (i), (k), and (o).

(iv) At the direction of a bureau manager or program coordinator, a licensing technician or program technician may sign an informal order in the name of the licensing technician or program technician provided the wording of the order has been approved in advance by the bureau manager or program coordinator and provided the caption "FOR THE BUREAU MANAGER" or "FOR THE PROGRAM COORDINATOR" immediately precedes the licensing technician's or program technician's signature.

(c) Contested Citation Hearing Officer. The regulatory and compliance officer or other contested citation hearing officer designated in writing by the director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(l).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(f) for convening a board of appeal under Subsection 58-56-8(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. An administrative law judge shall perform the role specified in Subsection 58-1-109(2).

(e) Residence Lien Recovery Fund Advisory Board. The Residence Lien Recovery Fund Advisory Board shall be the presiding officer for adjudicative proceedings described in Subsection R156-46b-201(1)(e) and R156-46b-202(1)(g) that exceed the authority of the program coordinator, as delegated by the board, or are otherwise referred by the program coordinator to the board for action.

(4) Unless otherwise specified in writing by the Construction Services Commission, the presiding officers and process for adjudicative proceedings under Title 58, Chapter 55, are established or clarified as follows:

(a) Commission.

(i) The commission shall be the presiding officer for all adjudicative proceedings under Title 58, Chapter 55, except as otherwise delegated by the commission in writing or as otherwise provided in these rules; provided, however, that all orders adopted by the commission as a presiding officer shall require the concurrence of the director.

(ii) Unless otherwise specified in writing by the commission, the commission is designated as the presiding officer:

(A) for formal adjudicative proceedings described in Subsections R156-46b-201(1)(g) and R156-46b-201(2)(a) through (b), however resolved, including stipulated settlements and hearings;

(B) informal adjudicative proceedings described in Subsections R156-46b-202(1)(d), (m), (n), (p), and (q), and R156-46b-202(2)(a) and (c), however resolved, including memorandums of understanding and stipulated settlements;

(C) to serve as fact finder and adopt orders in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed under Title 58, Chapter 55; and

(D) to review recommended orders of a board, an administrative law judge, or other designated presiding officer who acted as the fact finder in an evidentiary hearing involving a person licensed or required to be licensed under Title 58, Chapter 55, and to adopt an order of its own. In adopting its order, the commission may accept, modify or reject the recommended order.

(iii) If the commission is unable for any reason to act as the presiding officer as specified, it shall designate another presiding officer in writing to so act.

(iv) Orders of the commission shall address all issues before the commission and shall be based upon the record developed in an adjudicative proceeding conducted by the commission. In cases in which the commission has designated another presiding officer to conduct an adjudicative proceeding and submit a recommended order, the record to be reviewed by the commission shall consist of the findings of fact, conclusions of law, and recommended order submitted to the commission by the presiding officer based upon the evidence presented in the adjudicative proceeding before the presiding officer.

(v) The commission or its designee shall submit adopted orders to the director for the director's concurrence or rejection within 30 days after it receives a recommended order or adopts an order, whichever is earlier. An adopted order shall be deemed issued and constitute a final order upon the concurrence of the director.

(vi) If the director or his designee refuses to concur in an adopted order of the commission or its designee, the director or his designee shall return the order to the commission or its designee with the reasons set forth in writing for the nonconcurrence therein. The commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return, provided that unless the director or his designee and the commission or its designee agree to an extension, any final order must be issued within 90 days of the date of the initial recommended order, or the adjudicative proceeding shall be dismissed. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the commission or its designee and the director or his designee to resolve the reasons for the director's refusal to concur in an adopted order.

(vii) The record of the adjudicative proceeding shall include recommended orders, adopted orders, refusals to concur in adopted orders, and final orders.

(viii) The final order issued by the commission and concurred in by the director may be appealed by filing a request for agency review with the executive director or his designee within the department.

(ix) The content of all orders shall comply with the requirements of Subsection 63G-4-203(1)(i) and Sections 63G-4-208 and 63G-4-209.

(b) Director. Unless otherwise specified in writing by the commission, the director is designated as the presiding officer for conducting informal adjudicative proceedings specified in R156-46b-202(2)(b).

(c) Administrative Law Judge. Unless otherwise specified in writing by the commission, the department administrative law judge is designated as the presiding officer to conduct formal adjudicative proceedings before the commission and its advisory boards, as specified in Subsection 58-1-109(2).

(d) Bureau Manager. Unless otherwise specified in writing by the commission, the responsible bureau manager is designated as the presiding officer for conducting:

(i) formal adjudicative proceedings specified in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board or commission who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and to adopt orders as set forth in this rule; and

(ii) informal adjudicative proceedings specified in Subsections R156-46b-202(1)(a) through (c), (e), (i), and (o) and R156-46b-202(2)(d) and (e).

(iii) At the direction of a bureau manager, a licensing technician may sign an informal order in the name of the licensing technician provided the wording of the order has been approved in advance by the bureau manager and provided the caption "FOR THE BUREAU MANAGER" immediately precedes the licensing technician's signature.

(e) Plumbers Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Plumbers Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as plumbers.

(f) Electricians Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Electricians Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as electricians.

(g) Alarm System Security and Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Alarm System Security and Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as alarm companies or agents.

R156-1-308a. Renewal Dates.

(1) The following standard two-year renewal cycle renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

TABLE
RENEWAL DATES

(1) Acupuncturist	May 31	even years
(2) Advanced Practice Registered Nurse	January 31	even years
(3) Alternate Dispute Resolution Provdr	September 30	even years
(4) Architect	May 31	even years
(5) Athlete Agent	September 30	even years
(6) Athletic Trainer	May 31	odd years
(7) Audiologist	May 31	odd years
(8) Barber	September 30	odd years
(9) Barber School	September 30	odd years
(10) Building Inspector	November 30	odd years
(11) Burglar Alarm Security	November 30	even years
(12) C.P.A. Firm	September 30	even years
(13) Certified Court Reporter	May 31	even years
(14) Certified Dietitian	September 30	even years
(15) Certified Nurse Midwife	January 31	even years
(16) Certified Public Accountant	September 30	even years
(17) Certified Registered Nurse Anesthetist	January 31	even years
(18) Certified Social Worker	September 30	even years
(19) Chiropractic Physician	May 31	even years
(20) Clinical Social Worker	September 30	even years

(21) Construction Trades Instructor	November 30	odd years
(22) Contractor	November 30	odd years
(23) Controlled Substance Precursor Distributor	May 31	odd years
(24) Controlled Substance Precursor Purchaser	May 31	odd years
(25) Controlled Substance Handler	May 31	odd years
(26) Cosmetologist/Barber	September 30	odd years
(27) Cosmetology/Barber School	September 30	odd years
(28) Deception Detection	November 30	even years
(29) Dental Hygienist	May 31	even years
(30) Dentist	May 31	even years
(31) Direct-entry Midwife	September 30	odd years
(32) Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	November 30	even years
(33) Electrologist	September 30	odd years
(34) Electrolgy School	September 30	odd years
(35) Environmental Health Scientist	May 31	odd years
(36) Esthetician	September 30	odd years
(37) Esthetics School	September 30	odd years
(38) Factory Built Housing Dealer	September 30	even years
(39) Funeral Service Director	May 31	even years
(40) Funeral Service Establishment	May 31	even years
(41) Genetic Counselor	September 30	even years
(42) Health Facility Administrator	May 31	odd years
(43) Hearing Instrument Specialist	September 30	even years
(44) Landscape Architect	May 31	even years
(45) Licensed Practical Nurse	January 31	even years
(46) Licensed Substance Abuse Counselor	May 31	odd years
(47) Marriage and Family Therapist	September 30	even years
(48) Massage Apprentice, Therapist	May 31	odd years
(49) Master Esthetician	September 30	odd years
(50) Medication Aide Certified	March 31	odd years
(51) Nail Technologist	September 30	odd years
(52) Nail Technology School	September 30	odd years
(53) Naturopath/Naturopathic Physician	May 31	even years
(54) Occupational Therapist	May 31	odd years
(55) Occupational Therapy Assistant	May 31	odd years
(56) Optometrist	September 30	even years
(57) Osteopathic Physician and Surgeon	May 31	even years
(58) Pharmacy (Class A-B-C-D-E)	September 30	odd years
(59) Pharmacist	September 30	odd years
(60) Pharmacy Technician	September 30	odd years
(61) Physical Therapist	May 31	odd years
(62) Physician Assistant	May 31	even years
(63) Physician and Surgeon	January 31	even years
(64) Plumber Apprentice, Journeyman, Residential Apprentice, Residential Journeyman	November 30	even years
(65) Podiatric Physician	September 30	even years
(66) Pre Need Funeral Arrangement Provider	May 31	even years
(67) Pre Need Funeral Arrangement Sales Agent	May 31	even years
(68) Private Probation Provider	May 31	odd years
(69) Professional Counselor	September 30	even years
(70) Professional Engineer	March 31	odd years
(71) Professional Geologist	March 31	odd years
(72) Professional Land Surveyor	March 31	odd years
(73) Professional Structural Engineer	March 31	odd years
(74) Psychologist	September 30	even years
(75) Radiology Practical Technician	May 31	odd years
(76) Radiology Technologist	May 31	odd years

(75 77)	Recreational Therapy Technician, Specialist, Master Specialist	May 31	odd years
(76 78)	Registered Nurse	January 31	odd years
(77 79)	Respiratory Care Practitioner	September 30	even years
(78 80)	Security Personnel	November 30	even years
(79 81)	Social Service Worker	September 30	even years
(80 82)	Speech-Language Pathologist	May 31	odd years
(81 83)	Veterinarian	September 30	even years

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:

(a) Certified Marriage and Family Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(b) Certified Professional Counselor Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(c) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first. An intern license may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(d) Funeral Service Apprentice licenses shall be issued for a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(e) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(f) Hearing Instrument Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examination, but a circumstance arose beyond the control of the licensee, to prevent the completion of the examination process.

R156-1-308i. Reinstatement of Restricted, Suspended, or Probationary Licensure After the Specified Term of Suspension of the License or After the Expiration of Licensure in a Restricted, Suspended or Probationary Status - Requirements.

Unless otherwise provided by a disciplinary order, an applicant who applies for reinstatement of a license after the specified term of suspension of the license or after the expiration of the license in a restricted, suspended or probationary status shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and conditions of license reinstatement;

(2) pay the established license renewal fee and the reinstatement fee;

(3) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be reinstated to engage in the occupation or profession for which the applicant was suspended, restricted, or placed on probation; and

(4) pay any fines or citations owes to the Division prior to the expiration of license.

R156-1-601. Online Assessment, Diagnosis and Prescribing Protocols.

(1) In accordance with Subsection 58-1-501(4), a person licensed to prescribe under this title may prescribe legend drugs to a person located in this state following an online assessment and diagnosis in accordance with the following conditions:

(a) the prescribing practitioner is licensed in good standing in this state;

(b) an assessment and diagnosis is based upon a comprehensive health history and an assessment tool that requires the patient to provide answers to all the required questions and does not rely upon default answers, such as a branching questionnaire;

(c) only includes legend drugs and may not include controlled substances;

(d) the practice is authorized by th[ese]is rule[s] and a written agreement signed by the Division and the practitioner and approved by a panel comprised of three board members from the Physicians Licensing Board or the Osteopathic Physician and Surgeon's Licensing Board and three members from the Utah State Board of Pharmacy. The written agreement shall include:

(i) the specific name of the drug or drugs approved to be prescribed;

(ii) the policies and procedures that address patient confidentiality;

(iii) a method for electronic communication by the physician and patient;

(iv) a mechanism for the Division to be able to conduct audits of the website and records to ensure an assessment and diagnosis has been made prior to prescribing any medications; and

(v) a mechanism for the physician to have ready access to all patients' records.

KEY: diversion programs, licensing, occupational licensing, supervision

Date of Enactment or Last Substantive Amendment: [~~October 9, 2008~~2009]

Notice of Continuation: March 1, 2007
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-308; 58-1-501(4)

160 E 300 S
 SALT LAKE CITY UT 84111-2316, or
 at the Division of Administrative Rules.

◆ ————— ◆

Commerce, Real Estate

R162-6

Licensee Conduct

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 32248
 FILED: 12/24/2008, 15:56

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule clarifies the responsibility licensees have to disclose instances when gifts or inducements are offered in a transaction. The rule also makes other technical changes.

SUMMARY OF THE RULE OR CHANGE: The rule change clarifies which real estate licensee in a transaction must notify the other when a gift or inducement is given. The rule also clarifies that a licensee is not required to give the notice according to a method preferred by another licensee and makes other technical amendments.

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

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There is no cost to the state budget since the rule is already in place. This rule change only clarifies what is existing law.
- ❖ **LOCAL GOVERNMENTS:** There is no cost to local governments since the rule is already in place. This rule change only clarifies what is existing law.
- ❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** There is no cost to the small businesses since the rule is already in place. This rule change only clarifies what is existing law.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no cost to anyone regulated by the Division. They know the existing rule. The rule change assists them in complying with the currently unclear portions of the law.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is foreseen from this rule filing, which clarifies existing standards and makes minor technical amendments. Francine Giani, Executive Director

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

COMMERCE
 REAL ESTATE
 HEBER M WELLS BLDG

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2009

AUTHORIZED BY: Mark Steinagel, Director

R162. Commerce, Real Estate.

R162-6. Licensee Conduct.

R162-6-1. Improper Practices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.1.10. Referrals and Provision of Settlement Services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6.1.12. Signing without legal authority. A licensee shall not sign or initial any document for a principal unless the licensee has prior

written authorization in the form of a duly executed power of attorney from the principal authorizing the licensee to sign or initial documents for the principal. A copy of the power of attorney shall be attached to all documents signed or initialed for the principal by the licensee.

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

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

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

R162-6-2. Standards of Practice.

6.2.1. Approved Forms. The following standard forms are approved by the Utah Real Estate Commission and the Office of the Attorney General for use by all licensees:

(a) August ~~5, 2003~~ 27, 2008, Real Estate Purchase Contract (use of this form shall be mandatory beginning January 1, ~~2004~~ 2009);

(b) January 1, 1999 Real Estate Purchase Contract for Residential Construction;

(c) January 1, 1987, Uniform Real Estate Contract;

(d) October 1, 1983, All Inclusive Trust Deed;

(e) October 1, 1983, All Inclusive Promissory Note Secured by All Inclusive Trust Deed;

(f) August 5, 2003, Addendum to Real Estate Purchase Contract;

(g) ~~January 1, 1999~~ August 27, 2008, Seller Financing Addendum to Real Estate Purchase Contract;

(h) January 1, 1999, Buyer Financial Information Sheet;

(i) August ~~5, 2003~~ 27, 2008, FHA/VA Loan Addendum to Real Estate Purchase Contract;

(j) January 1, 1999, Assumption Addendum to Real Estate Purchase Contract;

(k) January 1, 1999, Lead-based Paint Addendum to Real Estate Purchase Contract;

(l) January 1, 1999, Disclosure and Acknowledgment Regarding Lead-based Paint and/or Lead-based Paint Hazards.

6.2.1.1. Forms Required for Closing. Principal brokers and associate brokers may fill out forms in addition to the standard state-approved forms if the additional forms are necessary to close a transaction. Examples include closing statements, and warranty or quit claim deeds.

6.2.1.2. Forms Prepared by an Attorney. Any licensee may fill out forms prepared by the attorney for the buyer or lessee or the attorney for the seller or lessor to be used in place of any form listed in R162-6.2.1 (a) through (g) if the buyer or lessee or the seller or lessor requests that other forms be used and the licensee verifies that the forms have in fact been drafted by the attorney for the buyer or lessee, or the attorney for the seller or lessor.

6.2.1.3. Additional Forms. If it is necessary for a licensee to use a form for which there is no state-approved form, for example a lease, the licensee may fill in the blanks on any form which has been prepared by an attorney, regardless of whether the attorney was employed for the purpose by the buyer, seller, lessor, lessee, brokerage, or an entity whose business enterprise is selling blank legal forms.

6.2.1.4. Standard Supplementary Clauses. There are Standard Supplementary Clauses approved by the Utah Real Estate Commission

which may be added to Real Estate Purchase Contracts by all licensees. The use of the Standard Supplementary Clauses will not be considered the unauthorized practice of law.

6.2.2. Copies of Agreement. After a purchase agreement is properly signed by both the buyer and seller, it is the responsibility of each participating licensee to cause copies thereof, bearing all signatures, to be delivered or mailed to the buyer and seller with whom the licensee is dealing. The licensee preparing the document shall not have the parties sign for a final copy of the document prior to all parties signing the contract evidencing agreement to the terms thereof. After a lease is properly signed by both landlord and tenant, it is the responsibility of the principal broker to cause copies of the lease to be delivered or mailed to the landlord or tenant with whom the brokerage or property management company is dealing.

6.2.3. Residential Construction Agreement. The Real Estate Purchase Contract for Residential Construction must be used for all transactions for the construction of dwellings to be built or presently under construction for which a Certificate of Occupancy has not been issued.

6.2.4. Real Estate Auctions. A principal broker who contracts or in any manner affiliates with an auctioneer or auction company which is not licensed under the provisions of Section 61-2-1 et seq. for the purpose of enabling that auctioneer or auction company to auction real property in this state, shall be responsible to assure that all aspects of the auction comply with the requirements of this section and all other laws otherwise applicable to real estate licensees in real estate transactions. Auctioneers and auction companies who are not licensed under the provisions of Section 61-2-1 et seq. may conduct auctions of real property located within this state upon the following conditions:

6.2.4.1. Advertising. All advertising and promotional materials associated with an auction must conspicuously disclose that the auction is conducted under the supervision of a named principal broker licensed in this state; ~~and~~

6.2.4.2. Supervision. The auction must be conducted under the supervision of a principal broker licensed in this state who must be present at the auction; ~~and~~

6.2.4.3. Use of Approved Forms. Any purchase agreements used at the auction must meet the requirements of Section 61-2-20 and must be filled out by a Utah real estate licensee; ~~and~~

6.2.4.4. Placement of Deposits. All monies deposited at the auction must be placed either in the real estate trust account of the principal broker who is supervising the auction or in an escrow depository agreed to in writing by the parties to the transaction ~~[-]; and~~

6.2.4.5. Closing Arrangements. The principal broker supervising the auction shall be responsible to assure that adequate arrangements are made for the closing of each real estate transaction arising out of the auction.

6.2.5. Guaranteed Sales. As used herein, the term "guaranteed sales plan" includes: (a) any plan in which a seller's real estate is guaranteed to be sold or; (b) any plan whereby a licensee or anyone affiliated with a licensee will purchase a seller's real estate if it is not purchased by a third party in the specified period of a listing or within some other specified period of time.

6.2.5.1. In any real estate transaction involving a guaranteed sales plan, the licensee shall provide full disclosure as provided herein regarding the guarantee:

(a) Written Advertising. Any written advertisement by a licensee of a "guaranteed sales plan" shall include a statement advising the seller that if the seller is eligible, costs and conditions may apply and advising the seller to inquire of the licensee as to the terms of the guaranteed

sales agreement. This information shall be set forth in print at least one-fourth as large as the largest print in the advertisement.

(b) Radio/Television Advertising. Any radio or television advertisement by a licensee of a "guaranteed sales plan" shall include a conspicuous statement advising if any conditions and limitations apply.

(c) Guaranteed Sales Agreements. Every guaranteed sales agreement must be in writing and contain all of the conditions and other terms under which the property is guaranteed to be sold or purchased, including the charges or other costs for the service or plan, the price for which the property will be sold or purchased and the approximate net proceeds the seller may reasonably expect to receive.

6.2.6. Agency Disclosure. In every real estate transaction involving a licensee, as agent or principal, the licensee shall clearly disclose in writing to ~~his~~ the licensee's respective client(s) or any unrepresented parties, ~~his~~ the licensee's agency relationship(s). The disclosure shall be made prior to the parties entering into a binding agreement with each other. The disclosure shall become part of the permanent file.

6.2.6.1. When a binding agreement is signed in a sales transaction, the prior agency disclosure shall be confirmed in the currently approved Real Estate Purchase Contract or, with substantially similar language, in a separate provision incorporated in or attached to that binding agreement.

6.2.6.1.1. The blank in paragraph 5 of the approved Real Estate Purchase Contract for ~~"Listing Broker"~~ "Seller's Brokerage" shall be filled in with either the principal broker's individual name or the principal broker's brokerage name. Notwithstanding the fact that either the principal broker's name or the brokerage name may be shown in paragraph 5, filling in the name of the brokerage does not change the agency relationship with the seller.

6.2.6.2. When a lease or rental agreement is signed, a separate provision shall be incorporated in or attached to it confirming the prior agency disclosure. The agency disclosure shall be in the form stated in R162-6.2.6.1, but shall substitute terms applicable for a rental transaction for the terms "buyer" ~~,"seller", "listing agent", and "selling agent"~~ and "seller".

6.2.6.3. Disclosure to other agents. An agent who has established an agency relationship with a principal shall disclose who ~~he or she~~ the agent represents to another agent in a transaction upon initial contact with the other agent.

6.2.7. Duty to Inform. Sales agents and associate brokers must keep their principal broker or branch broker informed on a timely basis of all real estate transactions in which the licensee is involved, as agent or principal, in which the licensee has received funds on behalf of the principal broker or in which an offer has been written.

6.2.8. Broker Supervision. Principal brokers and associate brokers who are branch brokers shall be responsible for exercising active supervision over the conduct of all licensees affiliated with them.

6.2.8.1. A broker will not be held responsible for inadequate supervision if:

(a) An affiliated licensee violates a provision of Section 61-2-1, et seq., or the rules promulgated thereunder, in contravention of the supervising broker's specific written policies or instructions; ~~and~~

(b) Reasonable procedures were established by the broker to ensure that licensees receive adequate supervision and the broker has followed those procedures; ~~and~~

(c) Upon learning of the violation, the broker attempted to prevent or mitigate the damage; ~~and~~

(d) The broker did not participate in the violation; ~~and~~

(e) The broker did not ratify the violation; and

(f) The broker did not attempt to avoid learning of the violation.

6.2.8.2. The existence of an independent contractor relationship or any other special compensation arrangement between the broker and affiliated licensees shall not release the broker and licensees of any duties, obligations, or responsibilities.

6.2.9. Disclosure of Fees. If a real estate licensee who is acting as an agent in a transaction will receive any type of fee in connection with a real estate transaction in addition to a real estate commission, that fee must be disclosed in writing to all parties to the transaction.

6.2.10. Fees from Builders. All fees paid to a licensee for referral of prospects to builders must be paid to the licensee by the principal broker with whom ~~he~~ the licensee is licensed and affiliated. All fees must be disclosed as required by R162-6.2.10.

6.2.11. Fees from Manufactured Housing Dealers. If a licensee refers a prospect to a manufactured home dealer or a mobile home dealer, under terms as defined in Section 58-56-1, et seq., any fee paid for the referral of a prospect must be paid to ~~him~~ the licensee by the principal broker with whom ~~he~~ the licensee is licensed.

6.2.12. Gifts and Inducements. A gift given by a principal broker to a buyer or seller, lessor or lessee, in a real estate transaction as an inducement to use the services of a real estate brokerage, or in appreciation for having used the services of a brokerage, is permissible and is not an illegal sharing of commission.

6.2.12.1. If an inducement is to be offered to a buyer or seller, lessor or lessee, who will not be obligated to pay a real estate commission in a transaction, the principal broker who is offering the inducement must notify the principal broker of the party who will pay the commission that the inducement will be offered.

6.2.12.1.2. When the party who will pay the commission is not represented by a principal broker, the principal broker who is offering the inducement shall notify the party directly.

6.2.12.2. This rule does not:

(a) require notice under R162-6.2.12.1 to be given by one principal broker according to a specific method or form preferred by another principal broker; or

(b) authorize a principal broker to give any type of inducement that would violate the underwriting guidelines that apply to the loan for which a borrower has applied.

6.2.13. "Due-On-Sale" Clauses. Real estate licensees have an affirmative duty to disclose in writing to buyers and sellers the existence or possible existence of a "due-on-sale" clause in an underlying encumbrance on real property, and the potential consequences of selling or purchasing a property without obtaining the authorization of the holder of the underlying encumbrance.

6.2.14. Personal Assistants. With the permission of the principal broker with whom the licensee is affiliated, the licensee may employ an unlicensed individual to provide services in connection with real estate transactions which do not require a real estate license, including the following examples:

(a) Clerical duties, including making appointments for prospects to meet with real estate licensees, but only if the contact has been initiated by the prospect and not by the unlicensed person;

(b) At an open house, distributing preprinted literature written by a licensee, so long as a licensee is present and the unlicensed person furnishes no additional information concerning the property or financing and does not become involved in negotiating, offering, selling or filling in contracts;

(c) Acting only as a courier service in delivering documents, picking up keys, or similar services, so long as the courier does not engage in any discussion of, or filling in of, the documents;

(d) Placing brokerage signs on listed properties;

(e) Having keys made for listed properties; and

(f) Securing public records from the County Recorders' Offices, zoning offices, sewer districts, water districts, or similar entities.

6.2.14.1. If personal assistants are compensated for their work, they shall be compensated at a predetermined rate which is not contingent upon the occurrence of real estate transactions. Licensees may not share commissions with unlicensed persons who have assisted in transactions by performing the services listed in this rule.

6.2.14.2. The licensee who hires the unlicensed person will be responsible for supervising the unlicensed person's activities, and shall ensure that the unlicensed person does not perform activity which requires a real estate license.

6.2.14.3. Unlicensed individuals may not engage in telephone solicitation or other activity calculated to result in securing prospects for real estate transactions, except as provided in R162-6.2.14.(a) above.

6.2.15. Fiduciary Duties. A principal broker and licensees acting on his behalf owe the following fiduciary duties to the principal:

6.2.15.1. Duties of a seller's or lessor's agent. A principal broker and licensees acting on his behalf who act solely on behalf of the seller or the lessor owe the seller or the lessor the following fiduciary duties:

(a) Loyalty, which obligates the agent to act in the best interest of the seller or the lessor instead of all other interests, including the agent's own;

(b) Obedience, which obligates the agent to obey all lawful instructions from the seller or lessor;

(c) Full disclosure, which obligates the agent to tell the seller or lessor all material information which the agent learns about the buyer or lessee or about the transaction;

(d) Confidentiality, which prohibits the agent from disclosing any information given to the agent by the seller or lessor which would likely weaken the seller's or lessor's bargaining position if it were known, unless the agent has permission from the seller or lessor to disclose the information. This duty does not require the agent to withhold any known material fact concerning a defect in the property or the seller's or lessor's ability to perform his obligations;

(e) Reasonable care and diligence;

(f) Holding safe and accounting for all money or property entrusted to the agent; and

(g) Any additional duties created by the agency agreement.

6.2.15.2. Duties of a buyer's or lessee's agent. A principal broker and licensees acting on his behalf who act solely on behalf of the buyer or lessee owe the buyer or lessee the following fiduciary duties:

(a) Loyalty, which obligates the agent to act in the best interest of the buyer or lessee instead of all other interests, including the agent's own;

(b) Obedience, which obligates the agent to obey all lawful instructions from the buyer or lessee;

(c) Full Disclosure, which obligates the agent to tell the buyer or lessee all material information which the agent learns about the property or the seller's or lessor's ability to perform his obligations;

(d) Confidentiality, which prohibits the agent from disclosing any information given to the agent by the buyer or lessee which would likely weaken the buyer's or lessee's bargaining position if it were known, unless the agent has permission from the buyer or lessee to disclose the information. This duty does not permit the agent to misrepresent, either affirmatively or by omission, the buyer's or lessee's financial condition or ability to perform;

(e) Reasonable care and diligence;

(f) Holding safe and accounting for all money or property entrusted to the agent; and

(g) Any additional duties created by the agency agreement.

6.2.15.3. Duties of a limited agent. A principal broker and ~~licensees~~ a licensee acting on ~~his~~ the principal broker's behalf who act as agent for both seller and buyer, or lessor and lessee, commonly referred to as "dual agents," are limited agents since the fiduciary duties owed to seller and to buyer, or to lessor and lessee, are inherently contradictory. A principal broker and ~~licensees~~ a licensee acting on ~~his~~ the principal broker's behalf may act in this limited agency capacity only if the informed consent of both buyer and seller, or lessor and lessee, is obtained.

6.2.15.3.1. In order to obtain informed consent, the principal broker or a licensee acting on ~~his~~ the principal broker's behalf shall clearly explain to both buyer and seller, or lessor and lessee, that they are each entitled to be represented by their own agent if they so choose, and shall obtain written agreement from both parties that they will each be giving up performance by the agent of the following fiduciary duties:

(a) The principal broker or a licensee acting on ~~his~~ the principal broker's behalf shall explain to buyer and seller, or lessor and lessee, that they are giving up their right to demand undivided loyalty from the agent, although the agent, acting in this neutral capacity, shall advance the interest of each party so long as it does not conflict with the interest of the other party. In the event of conflicting interests, the agent will be held to the standard of neutrality; ~~and~~

(b) The principal broker or a licensee acting on ~~his~~ the principal broker's behalf shall explain to buyer and seller, or lessor and lessee, that there will be a conflict as to a limited agent's duties of confidentiality and full disclosure, and shall explain what kinds of information will be held confidential if told to a limited agent by either buyer or seller, or lessor and lessee, and what kinds of information will be disclosed if told to the limited agent by either party. The limited agent may not disclose any information given to the agent by either principal which would likely weaken that party's bargaining position if it were known, unless the agent has permission from the principal to disclose the information; and

(c) The principal broker or a licensee acting on ~~his~~ the principal broker's behalf shall explain to the buyer and seller, or lessor and lessee, that the limited agent will be required to disclose information given to the agent in confidence by one of the parties if failure to disclose the information would be a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations.

(d) The Division and the Commission shall consider use of consent language approved by the Division and the Commission to be informed consent.

6.2.15.3.2. In addition, a limited agent owes the following fiduciary duties to all parties:

(a) Obedience, which obligates the limited agent to obey all lawful instructions from either the buyer or the seller, lessor and lessee, consistent with the agent's duty of neutrality;

(b) Reasonable care and diligence;

(c) Holding safe all money or property entrusted to the limited agent; and

(d) Any additional duties created by the agency agreement.

6.2.15.4. Duties of a sub-agent. A principal broker and a licensee ~~licensees~~ acting on ~~his~~ the principal broker's behalf who act as sub-agents owe the same fiduciary duty to a principal as the brokerage retained by the principal.

KEY: real estate business

Date of Enactment or Last Substantive Amendment: ~~May 30, 2007~~ 2009

Notice of Continuation: April 18, 2007
Authorizing, and Implemented or Interpreted Law: 61-2-5.5



Education, Administration
R277-101
 Public Participation in Utah State Board
 of Education Decisions

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 32254
 FILED: 12/30/2008, 13:14

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah State Board of Education (Board) may choose or vote to reconsider previous actions. This rule is amended to provide procedures for the Board to follow for this purpose.

SUMMARY OF THE RULE OR CHANGE: The amendments include new definitions, a new section regarding reconsideration of previous Board action, and a new section on Board waiver of administrative rules.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The changes are specific to procedure and do not require additional funding.
- ❖ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The changes are procedural and relate specifically to the Board and do not involve schools or school districts.
- ❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** There are no anticipated costs or savings to small businesses AND persons other than businesses. The changes are procedural and relate specifically to the Board and do not involve small businesses AND other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The changes are specific to procedure and do not require any additional funding.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

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

EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY UT 84111-3272, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2009

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-101. [~~Public Participation in~~] Utah State Board of Education [~~Decisions~~] Procedures.

R277-101-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "Board leadership" means the duly elected Utah State Board of Education Chair and Vice-chair.
- ~~B~~C. "Chair" means duly elected Chairman of the Board, Vice-chair, or Chair of a Board standing committee.
- D. "Conflict of interest" means a business, family, monetary or relationship concern that may cause a reasonable person to be unduly influenced or that creates the appearance of undue influence.
- E. "Health, safety, and welfare of students" means such concerns as adequate and safe buildings and facilities and transportation vehicles, required immunizations and health screenings, required criminal background checks and reviews on potential teachers and employees, required curriculum that allows for complete transferability of credit and other similar standards and protections.
- F. "Official action" taken by local school boards or charter school governing boards means action taken in appropriately advertised board meetings, where votes and minutes are recorded and available for public review.
- G. "State or federal law or regulations" means federal law and regulations including Department of Agriculture regulations that govern the Child Nutrition Program as it operates in Utah public schools, the Individuals with Disability Education Act (IDEA), including federal and state implementing regulations and state administrative rules.
- H. "USOE" means the Utah State Office of Education.

R277-101-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution, Article X, Section 3 which vests general control and supervision of public education in the Board, Section 52-4-1 which directs that the actions of the Board be taken openly and that its deliberations be conducted openly and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to describe procedures to be followed by the Board in its conduct of the public's business in order to:

- (1) hear from those who desire to be heard on public education matters in the state;

(2) ~~conserve~~ effectively and efficiently utilize the time of the Board;

(3) enable staff to provide timely and essential information; and

(4) balance desire for public information with other demands on the Board's time.

R277-101-3. Public Participation.

A. Citizens may attend meetings of the Board. The Board welcomes public participation during Board meetings.

B. Citizens may speak to the Board when acknowledged and recognized by the Board Chair:

(a) to issues not on the agenda during the time designated for public comment.

(i) Priority shall be given to those individuals or groups who, prior to the meeting, have submitted a written request to address the Board, including a brief description of the issue to be addressed.

(ii) No action shall be taken by the Board ~~on issues raised~~ during the public comment portion of the meeting.

(iii) At the Board's discretion, a Board member may request that an item raised during public comment be placed on a future agenda for possible action.

(iv) The Chair may limit the time available for individual comments; number of comments and time limits shall be stated prior to the public comment portion of the agenda.

(v) The Chair may request groups to designate a spokesperson.

(b) to items on the agenda during the time designated for public comment, or at the discretion of and as invited by the Chair, when the item is properly before the Board or committee. The Chair may request that public comments be provided in writing.

C. All presentations to the Board or one of its committees shall exemplify courteous behavior and appropriate language.

D. Following any presentation to the Board or one of its committees, individuals and groups may remain as spectators ~~(to)~~ at the meeting.

E. Additional comments to the Board or committees may only be made as recognized and invited by the Board Chair during a meeting.

R277-101-4. Reconsideration on Previous Board Action.

A. The Board has discretion to reconsider any decision it has made.

B. A motion to reconsider shall be made in a meeting of the Board that satisfies requirements of Section 52-4 by a Board member who voted on the prevailing side of the previous Board vote.

C. A motion to reconsider requires a second.

D. A motion to reconsider a previous Board decision shall be ruled in order by the Board Chair only with adequate time for Board members to receive information and discuss the issue, as determined by the presiding Board officer.

E. The Board Chair shall determine the procedures for the reconsideration discussion; for instance:

(1) The Board Chair shall determine if the Board shall accept public testimony and how long the discussion shall continue;

(2) The Board Chair shall determine if the reconsideration vote may take place at the next regularly scheduled Board meeting if such meeting allows time for adequately providing information to Board members;

(3) The Board Chair shall determine if more information is necessary prior to a vote, even if the Board vote is to be held at the same Board meeting.

F. The Board shall consider and hear available evidence, including documentation of detrimental or positive consequences specifically to school districts, schools or other entities, that may occur if the Board reverses a previous decision.

G. The motion to reconsider shall pass if two-thirds of the total membership of the Board votes in favor of the motion.

H. If a motion to reconsider fails, the Board shall not consider a motion on the same or substantially similar motion to reconsider in the same meeting.

I. A Board vote taken upon reconsideration of the same or substantially similar issue is the final administrative decision by the Board.

R277-101-5. Board Waiver of Administrative Rules.

A. Criteria for waiver of Board Rules:

(1) The Board shall consider waiver requests consistent with its constitutional responsibility for general control and supervision of the public education system.

(2) Prior to waiver, the Board shall consider whether a local board's or local charter governing board's request could be accomplished through means other than waiver of Board rules.

(3) The Board shall waive rules only following a thorough review of available data and shall make data driven decisions.

(4) The Board shall not waive rules:

(a) that are required by and adopt criteria from federal or state law or regulations;

(b) that negatively affect the health, safety or welfare of public education students;

(c) if the waiver could reasonably result in discrimination or harassment of public school students or employees;

(d) that benefit one element or segment of the public education system to the detriment of another.

(5) Waivers shall always include an effective time period for the waiver, public review and accountability provisions and a sunset date.

(6) Prior to consideration by the Board, waivers requested by charter schools shall be presented to and considered by the State Charter School Board. Information and documentation of this action shall be available to the Board.

(7) All Board evaluations, considerations, and decisions shall be made in the Board's sole discretion.

B. Procedures for waiver of Board rules:

(1) A local board of education or a charter school governing board may request a waiver from Board rule(s) in writing consistent with USOE timelines and on forms available from the USOE by submitting to the Board a written request showing a vote by the local board requesting the waiver in an open board meeting.

(2) Complete waiver requests shall be reviewed first by a Board Committee during a regularly scheduled Board meeting.

(3) The Board Committee designated by Board leadership shall review the request, solicit additional information or testimony, if helpful, and make a recommendation for consideration by the full Board of Education.

(4) Board leadership or a Board Committee shall make a reasonable determination of the time or Committee meetings necessary for careful review of request(s) for waiver of Board rules;

Board leadership may consolidate consideration of duplicate or similar requests.

(5) At a minimum, the following shall be required from local boards of education or local charter governing boards seeking a waiver of Board rules:

(a) student achievement data that support the requested waiver;
(b) data demonstrating the cost effectiveness, without sacrificing student achievement, of the waiver request;

(c) a draft proposed agreement that outlines USOE and local board responsibilities, data gathering and reporting timelines if a waiver is granted by the Board.

(6) Upon direction by the Board, a local board or charter governing board shall make a presentation to an assigned Board Committee.

(7) Board leadership shall notify the local board of a proposed timeline for the Board to consider the request for waiver and provide a written decision, including an agreement between the Board and the local governing board, to the local board.

C. Public process and documents:

(1) Materials presented to the Board by the local board shall be public documents.

(2) Materials and draft agreements between the Board and the local board shall be protected draft documents.

(3) Final agreements between the Board and local governing boards shall be public documents and available for review by the public upon request consistent with the provisions of Title 63G, Chapter 2.

(4) Any breach of confidentiality while the discussion of agreements is in progress may compromise the fairness of the Board decision and may delay the discussion or Board decision or both.

KEY: school boards, open government

Date of Enactment or Last Substantive Amendment: ~~May 17, 2002~~ **2009**

Notice of Continuation: September 6, 2007

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 52-4-1; 53A-1-401(3)

Education, Administration

R277-117

Utah State Board of Education
Protected Documents

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 32255

FILED: 12/30/2008, 13:14

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to provide for a protected process to ensure efficient, confidential, and fair development of request for proposals (RFPs) within the Utah State Office of Education (USOE).

SUMMARY OF THE RULE OR CHANGE: This new rule provides definitions, procedures in preparing and releasing RFPs, and

RFP-like proposals or grants, and procedures for maintaining the fairness and confidentiality of RFP and RFP-like proposals or grants prior to release by the USOE.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The new procedures and process merely provide for confidentiality of RFP and RFP-like proposals or grants for which the USOE is responsible prior to release by the USOE. The development process does not require separate funding.

❖ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. This new rule provides procedures for confidentiality of RFPs and RFP-like proposals or grants which do not require any costs to school districts or schools.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no anticipated costs or savings to small businesses AND persons other than businesses. Procedures in place for ensuring confidentiality of RFPs and RFP-like proposals or grants do not add costs or save money for small businesses AND persons other than businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The procedures for maintaining a confidential and fair process for the development of RFPs and RFP-like proposals or grants does not involve any costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2009

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.**R277-117. Utah State Board of Education Protected Documents.****R277-117-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Request for proposal or RFP" means an official application or offer for services provided to the Board/USOE in response to an advertised opportunity to provide goods or services.
- C. "RFP-like document" means a grant application or a proposal of any kind offered in response to a Board request for applicants to provide goods or services to public education.
- D. "USOE" means the Utah State Office of Education.

R277-117-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and authority over public education in the Board, by Section 53A-1-402(c) which requires the Board to set minimum standards for alternative and pilot programs, Section 53A-1-402(c)(iv) which requires the Board to set minimum standards for curriculum and instruction requirements, Section 53A-1-402(e)(i) which requires the Board to set minimum standards for school productivity and cost effectiveness measures, Section 63G-2-305(6) which allows the Board to protect records if the disclosure would impair government procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity consistent with other provisions of Section 63G-2-305 and Section 63G-2-309, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purposes of this rule:

- (1) is to maintain fairness, objectivity, efficiency and timeliness, as the Board fulfills constitutional and statutory directives to and responsibilities for Utah public schools and public school programs.
- (2) to protect the integrity of proposal or bidding processes in order to provide fair and equal opportunities for vendors and service providers.

R277-117-3. Board Procedures in Preparing and Releasing RFP and RFP-like Proposals or Grants.

A. The Board or USOE staff acting for the Board shall act consistent with Section 63G-6-101 et seq. in advertising and soliciting services for Utah public schools unless the Board is specifically exempt from the procurement process in which case the Board shall continue to protect the integrity of a competitive process with the provisions of this rule.

B. The Board shall develop RFPs or RFP-like requests using the plain language of state statute(s) or federal regulation(s) that directs the Board to seek competitive or non-competitive applications or proposals for services that are funded through a public education appropriation to the Board.

C. The USOE, acting for the Board, shall use legislative intent to develop RFPs or RFP-like requests only when legislative intent is specifically written in state law, is passed by the State Legislature and is specific to the RFP in development.

D. The Board may request written information from legislators or legislative staff to explain the intent of individual bill sponsors; all written information received under this section shall be public information.

E. Board members or USOE staff may seek at the Board's or staff's sole discretion, additional information and expertise to facilitate the development of an RFP. All information gathered

under this provision shall be public information, including the source of the information.

F. The Board may allow for public comment at Board meetings or Board committee meetings to discuss the legislative intent for RFPs.

R277-117-4. Confidentiality of RFP and RFP-like Proposals or Grants Prior to Release by the USOE.

A. The RFP or RFP-like proposal shall be a protected document under Section 63G-2-305(22) until the proposal is released by the USOE or a commercial distributor of an RFP specifically commissioned by the USOE.

B. USOE staff shall stamp or mark all draft RFP documents DRAFT until the final version of an RFP or RFP-like document is officially released for public review and response.

C. If an RFP process for which the Board is responsible is compromised, as determined by a vote of the Board if necessary, the proposal shall be void and the USOE shall begin a new RFP process.

D. A USOE employee who intentionally violates the provisions of this rule may be subject to employment discipline up to and including termination.

KEY: RFPs, grants, confidentiality**Date of Enactment or Last Substantive Amendment: 2009****Authorizing, and Implemented or Interpreted Law: 53A-1-402(c); 53A-1-402(c)(iv); 53A-1-402(e)(i); 53A-1-401(3)**

Education, Administration
R277-462
 Comprehensive Counseling and
 Guidance Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32256

FILED: 12/30/2008, 13:15

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide for policies and practices in school districts and charter schools to free licensed school counselors for appropriate activities with students.

SUMMARY OF THE RULE OR CHANGE: The amendments include adding and changing definitions, providing procedures that require school districts and charter schools to meet a counselor to student ratio of 1 to 350 or requiring school districts and charter schools to provide a plan and time line approved by the Utah State Board of Education for how they will reach the established ratio, and providing procedures and practices for school districts and charter schools to ensure that licensed school counselors are involved in appropriate activities with students.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The new requirements will be implemented by existing staff within existing budget.

❖ LOCAL GOVERNMENTS: There may be additional costs to school districts and charter schools in meeting the new requirements because licensed counselors may have previously undertaken and performed functions outside of their counseling duties and now will be unable to do so. Additional staff may be required to perform duties previously handled by counselors. Costs are too uncertain and speculative to determine at this time.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no anticipated costs or savings to small businesses AND persons other than businesses. The amendments to this rule affect school districts and charter schools only.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Whatever speculative costs may be required for school districts and charter schools to meet new imposed ratios or plans for ratios will be borne by the school districts and schools, never by individual counselors.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2009

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.**R277-462. Comprehensive Counseling and Guidance Program.****R277-462-1. Definitions.**

[B]A. "Board" means the Utah State Board of Education [~~and Applied Technology Education~~].

[C]B. "Comprehensive Counseling and Guidance Program" or "Program" means the organization of resources to meet the priority needs of students and inform and involve parents or guardians through four delivery system components:

(1) school guidance curriculum which means providing guidance content to all students in a systematic way;

(2) individual student planning which means individualized education and career planning, including student educational and occupational planning [~~component which means individualized education and career planning~~] with all students;

(3) responsive services component designed to meet the immediate concerns of certain students; and

(4) system support component which addresses management of the Program and the needs of the school system itself.

[D]C. "Comprehensive Counseling and Guidance Steering and Advisory Committee" means representatives [~~of~~] designated by the USOE comprised of school district counseling supervisors, school district [ATE]career and technical education directors, PTA, the school counselor professional association, [~~and~~] practicing school counselors, and others designated by the USOE.

D. "Counselor to student ratio" means licensed school counselors full time equivalent (FTE), or percentage thereof, who by license and assignment are identified as school counselors for secondary students on October 1 of each year compared to the secondary student enrollment on October 1 of each year.

E. "Direct services" means time spent on the school guidance curriculum, individual student planning, including SEOP, and responsive services activities meeting students' identified needs as discerned by students, school personnel and parents or guardians consistent with school district and charter school policy.

F. "School counselor" means an educator licensed as a school counselor in the state of Utah consistent with R277-506 and assigned to provide counseling services.

G. "Secondary school" means a school providing services to students in grades 7-12.

H. "Secondary student" means a student in grades 7-12.

[F]I. "SEOP" means student education occupation plan[s and processes]. An SEOP is a developmentally organized intervention process that includes:

(1) a written plan, updated annually, for a student's (grade 9-12, at a minimum) education and occupational preparation;

(2) all Board, local board and local charter board graduation requirements;

(3) evidence of parent or guardian, student, and school representative involvement annually;

(4) attainment of approved workplace skill competencies, including job placement when appropriate; and

(5) identification of post secondary goals and approved sequence of courses.

[G]J. "Student achievement" means academic performance, career development, personal/social development, [~~retention~~]continued student engagement in learning, attendance, SEOP outcomes and other measures of adequate yearly progress.

[H]K. "USOE" means the Utah State Office of Education.

[A]L. "[ATE]Utah Career and Technical Education Consortium" means representatives of nine [ATE]Career and Technical Education Regional Planning Areas.

[F]M. "WPU" means weighted pupil unit, the basic unit used to calculate the amount of state funds for which a school district or charter school is eligible.

R277-462-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and authority over public education in the Board, by Section 53A-1a-106(2)(b) which directs

local boards to develop policies for the implementation of student education plans (SEP) or SEOPs, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. This rule establishes standards and procedures for entities applying for funds appropriated for Comprehensive Counseling and Guidance Programs administered by the Board.

C. This rule establishes counselor to student ratios as a requirement for all secondary schools.

D. This rule establishes provisions for school districts and charter schools not meeting the minimum counselor to student ratios.

E. This rule directs that local school district, charter school and building level policies and practices shall free licensed school counselors for appropriate identified activities with secondary students. School counselors shall not devote significant time to non-school counseling activities, including test coordination and assessment and other activities inconsistent with the Program.

R277-462-3. Comprehensive Counseling and Guidance Program Approval and Qualifying Criteria.

A. Comprehensive Counseling and Guidance disbursement criteria:

(1) In order to qualify for Comprehensive Counseling and Guidance Program funds, secondary schools shall implement SEOP policies and practices, consistent with Section 53A-1a-106(2)(b), local board or charter school governing board polic[y]ies, and the school improvement plans developed for Northwest Accreditation and required under Section 53A-1a-108.5.

(2) Consistent with the Utah Model for Comprehensive Counseling and Guidance: K-12 Programs, [E]ach school[; including] district and charter school[s] secondary school, which has a USOE-approved school counseling program [Comprehensive Counseling and Guidance Program] shall receive a WPU base[~~of 6 WPU~~] for the first 400 students as determined by the October 1 enrollment of the previous fiscal year, and a per student allotment, as funds are available, for each additional student beyond 400, capping at a maximum 1200 students if the local Program maintains Program criteria and ratios required in R277-462-5.

(3) Priority for funding shall be given ~~for~~ to grades nine through twelve for ~~ATE~~ career and technical education programs including the Comprehensive Counseling and Guidance Program and any remaining funds shall be allocated to grades seven and eight for the schools which meet Comprehensive Counseling and Guidance Program standards. Funds directed to grades seven and eight shall be distributed according to the formula under R277-462-3A(2) following the distribution of funds for grades nine through twelve.

(4) The charter school or school district Comprehensive Counseling and Guidance Program shall be integrated into the mission of the school and be consistent with the Northwest Accreditation process as defined in R277-413, Accreditation of Secondary Schools, Alternative or Special Purpose Schools. School counselors shall provide evidence that the Comprehensive Counseling and Guidance Program contributes to student achievement included in the local school improvement plan ~~developed as part of the Northwest Accreditation process~~.

(5) Secondary [S]chools shall qualify [to receive]for Comprehensive Counseling and Guidance Program funds through participation in a regular schedule of on-site reviews by team members [designated]determined by the school district or the charter

school's authorizing agency. Scheduling of the on-site review process shall be coordinated with the Northwest Accreditation process for secondary schools as defined in R277-413 and shall, at a minimum, take place every ~~three~~ six years with three year interim reviews, in a format determined by the school district or charter school authorizing agency. Successful on-site reviews of the Comprehensive Counseling and Guidance Program shall indicate a balance of activities consistent with Program models and goals in individual student planning, guidance curriculum, responsive services and system support.

(6) If a charter school requires assistance from a school district in conducting the charter school's on-site review, the charter school shall compensate the school district in a reasonable amount agreed upon between the school district and the charter school.

~~(6)7~~ Consistent with Section 53A-17a-113(5), of the monies allocated to Comprehensive Counseling and Guidance Programs, \$1,000,000 in grants shall be awarded to school districts and charter schools that:

(a) provide an equal amount of matching funds; and

(b) do not supplant other funds used for Comprehensive Counseling and Guidance Programs[; and

~~(c) show effort to make the counselor to student ratio for Comprehensive Counseling and Guidance Programs no greater than one counselor for every 350 students.~~

~~(7) Districts and charter schools shall include in their annual Request for Proposal to the USOE for Comprehensive Counseling and Guidance Program funds a description of sources for the matching funds and a confirmation that such monies shall be used to reduce counselor to student ratios or maximize direct services to students by school counselors].~~

(8) Comprehensive Counseling and Guidance Program funds shall be distributed to school districts and charter schools for secondary schools ~~[within the district or charter schools]~~ that have completed a regular schedule of on-site reviews and that meet all of the following criteria:

(a) Approval of the Comprehensive Counseling and Guidance Program by the local board of education or charter school governing board and on-going communication with the local or governing board regarding Program goals and outcomes supported by data;

(b) Regular participation of guidance team members in USOE sponsored Comprehensive Counseling and Guidance training;

(c) Adequate resources and support for guidance facilities, material, equipment, clerical support, and school improvement processes;

(d) Evidence that eighty percent of aggregate counselors' time is devoted to DIRECT service to students through a balanced program of individual planning, school guidance curriculum, and responsive services consistent with the results of the school needs data;

(e) Communication, collaboration, and coordination within the feeder system regarding the Comprehensive Counseling and Guidance Program;

(f) School-wide student/parent/teacher needs assessment data for the Comprehensive Counseling and Guidance Program gathered and analyzed at least every three years;

(g) Structures and processes to ensure effective Program management including advisory[~~and~~]/steering committees functioning effectively, school counselors working as Program leaders, and the Comprehensive Counseling and Guidance Program contributing to school improvement teams;

(h) ~~Available [R]responsive services[are available]~~ to address the immediate concerns and identified needs of ~~[all]~~ students through an education-oriented and programmatic approach, ~~[and in collaboration]services should compliment and coordinate~~ with existing school programs, ~~[and coordination with] famil[y]ies, and~~ school and community resources;

(i) Delivery to students of a developmental and sequential school guidance curriculum in harmony with content standards identified in the Utah model for the Comprehensive Counseling and Guidance Program. Guidance curriculum is prioritized according to the results of the school needs assessment process;

(j) Assistance for students in career development, including awareness and exploration, job seeking and finding skills, and post high school placement;

(k) ~~[Establishment]Facilitation by school counselors~~ of Student Education Occupation Planning (SEOP), both as a process and a product ~~[consistent with local board or charter school governing board policy and goals of the Utah Model for Comprehensive Counseling and Guidance Program, Northwest Accreditation, R277-413, and Applied Technology Education, R277-911];[and]~~

(l) Involvement of parents/guardians in all available Comprehensive Counseling and Guidance Program steering/advisory committees; and

~~([l]m) [All-]Program elements [are]that are designed to recognize and address the [diverse-]needs of [every]diverse students.~~

B. All school districts [may qualify schools for the] and local charter governing boards that receive Comprehensive Counseling and Guidance Program funds [and districts and charter school governing boards] shall provide written certification [in writing] that all Program standards are [being] met by each school [receiving funds under this rule and meet the following deadlines: The "Form for Program Approval" shall be received by the USOE from schools scheduled for review in the three year cycle no later than May 1 of each year for disbursement of funds the next year]consistent with USOE cycles, and using USOE forms. All schools and charter schools receiving Comprehensive Counseling and Guidance Program funds shall provide school-based data projects demonstrating program or intervention effectiveness as required by the USOE.

R277-462-4. Use of Funds.

~~A. Funds disbursed for this Program shall be used by the district in the district secondary schools in grades seven through twelve to provide a guidance curriculum and an SEOP for each student at the school, to provide responsive services, and to provide system support for the Comprehensive Counseling and Guidance Program. Such costs may include the following:~~

- ~~— (1) personnel costs;~~
- ~~— (2) career center equipment such as computers, or media equipment;~~
- ~~— (3) career center materials such as computer software, occupational information, SEOP folders, and educational information;~~
- ~~— (4) in service training of personnel involved in the Comprehensive Counseling and Guidance Program;~~
- ~~— (5) extended day or year if REQUIRED to run the Program; and~~
- ~~— (6) guidance curriculum materials for use in classrooms.~~

~~B. Funds shall not be used for non-guidance purposes or to supplant funds already being provided for the Comprehensive Counseling and Guidance Program except that:~~

~~— (1) Districts or charter schools may pay for the costs incurred in hiring NEW personnel as a means of reducing the pupil/counselor ratio and eliminating time spent on non-guidance activities in order to meet the Program criteria.~~

~~— (2) Districts or charter schools may pay other costs associated with a Comprehensive Counseling and Guidance Program which were incurred as a part of the Program during the implementation phase but which WERE NOT a regular part of the Program prior to that time.~~

R277-462-4. Student Education Occupation Planning.

A. School district and charter school secondary schools that receive Comprehensive Counseling and Guidance funds shall complete written SEOPs for all students.

B. Plans shall be signed by parents/guardians.

C. Plans shall be completed for students prior to the beginning of their ninth grade years.

D. Plans shall be maintained by the student's school.

E. Students' course registration and class changes shall be consistent with their written SEOPs.

F. The SEOP process shall be carried out consistent with the policies and goals of the school districts' or charter schools' Comprehensive Counseling and Guidance Program models.

R277-462-5. School Counselor to Student Ratios.

A. All school districts and charter schools shall certify to the USOE by October 1 annually:

(1) the full time equivalent licensed school counselors employed and assigned to each school;

(2) that secondary school counselor to secondary student ratios at the school district or charter school level are one (counselor) to 350 (students) or better; and

(3) that variations requiring less than a .25 full time equivalent licensed school counselor shall be permitted at the school level.

B. May 1 annually, school districts and charter schools not meeting the ratio required under R277-462-5A(2), shall submit to the Board a plan to be approved for meeting established ratios in a reasonable time frame to continue to receive Comprehensive Counseling and Guidance Program and Minimum School Program funding.

C. School districts and charter schools that do not satisfy required counselor to student ratios shall receive reasonable notice and reasonable time periods and opportunities to explain and remedy the failure to comply.

D. As additional funds for Comprehensive Counseling and Guidance Programs become available, lower counselor to student ratios may be required following Board approval and adequate notice to schools districts and charter schools.

R277-462-6. Use of Comprehensive Counseling and Guidance Program Funds.

A. School districts and charter schools shall satisfy all provisions of R277-462 including established counselor to student ratios, in order to receive Comprehensive Counseling and Guidance Program funds.

B. Funds shall be used for students in grades 7-12.

C. Funds may be used to provide a school guidance curriculum.

D. Funds may be used to provide student activities that support the SEOP process.

E. Funds may be used for personnel costs for clerical positions that support the SEOP process.

F. Funds may be used for Career Center equipment or materials such as computers, media equipment, computer software, occupational information, SEOP folders or educational information.

G. Funds may be used for professional development for personnel involved in the Comprehensive Counseling and Guidance Program.

H. Funds may be used for the expenses of extended days or years which are required to run the Program.

I. Funds may be used for guidance curriculum materials for use in classrooms.

J. Funds may be used at a minimum for one secondary school counselor, per school, per year to pay for membership in the American School Counselor Association (ASCA) to facilitate accessing research and resources for effective Program implementation and effective student interventions and outcomes.

R277-462-[5]7. Variances, Accountability and Reporting.

A. New schools that are created from schools that have Northwest accreditation and USOE Comprehensive Counseling and Guidance Program approval may qualify for Comprehensive Counseling and Guidance Program funding under this rule in the schools' first year of operation.

B. Charter schools and other new school district schools not meeting the requirements of R277-462-5A may receive Comprehensive Counseling and Guidance Program funding following two years of planning, training and [p]Program implementation.

C. USOE Data Gathering

(1) The USOE shall gather data annually in October from school districts and charter schools regarding the number and assignments of school counselors.

(2) The data shall be used to determine secondary school district and charter school compliance with this rule, including required ratios.

[C]D. The USOE shall monitor the Program statewide and [provide]prepare an annual report [on its progress and success]for the Legislature and the Board including data and compliance information.

[D]E. School [D]districts or charter schools shall certify on an annual basis that previously qualified schools continue to meet the Program criteria and provide the USOE with data and information on the Program [as]upon request[ed].

KEY: public education, counselors

Date of Enactment or Last Substantive Amendment: [August 7, 2007]2009

Notice of Continuation: September 7, 2004

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-15-201; 53A-17a-131.8



Education, Administration

R277-469

Instructional Materials Commission

Operating Procedures

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 32257

FILED: 12/30/2008, 13:15

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to include a requirement that all publishers of textbooks and text materials purchased by traditional and charter public schools provide electronic files of instructional material to the National Instructional Materials Access Center (NIMAC) consistent with federal regulations.

SUMMARY OF THE RULE OR CHANGE: The amendments provide new and changed definitions and provide new requirements for instructional materials to be accessible and available to students with visual impairment.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. Implementation of the new requirements will be administered by existing staff within existing budgets.

❖ **LOCAL GOVERNMENTS:** There may be some costs to local government. Public schools will have access to national databases to download and convert files into accessible instructional materials for students with visual impairments. There may, however, be some costs to schools to provide materials consistent with the Individuals with Disabilities Education Act (IDEA). The costs at this time are unknown. Costs will depend on the number of visually impaired students attending a school, the nature of students' impairment(s), and the availability and accessibility of materials students need.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** There are no anticipated costs or savings to small businesses AND persons other than businesses. This amended rule applies specifically to public schools.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. This new requirements will require public schools to provide instructional materials for students with visual impairments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses. Patti Harrington, State Superintendent of Public Instruction

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2009

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-469. Instructional Materials Commission Operating Procedures.

R277-469-1. Definitions.

A. "Advanced placement materials" means materials used for the College Board Advanced Placement Program and classes. The program policies are determined by representatives of member institutions. Operational services are provided by the Educational Testing Service. The program provides practical descriptions of college-level courses to interested schools and student test results based on these courses to colleges of the student's choice. Participating colleges grant credit or appropriate placement, or both, to students whose test results meet standards prescribed by the college.

B. "Basic skills course" means a subject which requires mastery of specific functions to include reading, language arts, mathematics through geometry, science, in grades 4 through 12, and effectiveness of written expression.

C. "Board" means the Utah State Board of Education.

D. "Commission" means the Instructional Materials Commission.

E. "Curriculum alignment" means the assurance that the material taught in a course or grade level matches the standards, objectives and assessments set by the state or school district for specific courses or grade levels.

F. "Curriculum map" means a visual representation, a tool, for assisting developers to conceptualize shared visions and values which will drive the curriculum as a whole. Sometimes called a concept map, this tool clarifies a plan for knowledge construction; it shows the links and relationships between concepts.

G. "Instructional materials" means systematically arranged text materials, in harmony with the Core framework and required courses of study or U-PASS requirements or both, which may be used by students or teachers or both as principal sources of study and which cover any portion of the course. These materials:

(1) shall be designed for student use; and

(2) may be accompanied by or contain teaching guides and study helps;~~and~~

(3) shall include all textbooks, workbooks and student materials and supplements necessary for a student to fully participate in coursework; and

~~(3)4~~ shall be high quality, research-based and proven to be effective in supporting student learning.

H. "Independent party" means an entity that is not the Board, not the superintendent of public instruction or USOE staff, or an

employee or board member of a school district, or the instructional materials creator or publisher, or anyone with a financial interest in the instructional materials, however minimal.

I. "Integrated instructional program" means any combination of textbooks, workbooks, software, videos, transparencies, or similar resources used for classroom instruction of students.

J. "International Baccalaureate" means college level work, limited in subject areas, which balances humanities and sciences in an interdisciplinary, global academic program that is both philosophical and practical. This multi-cultural experience emphasizes analytical and conceptual skills and aesthetic understanding for advanced students.

K. "National Instructional Materials Access Center (NIMAC)" is a central national repository established at the American Printing House for the Blind (APH) to store and to maintain NIMAS file sets. It features an automated system for allowing publishers to deposit NIMAS-conformant files within the repository. Files are checked to confirm that they are valid NIMAS-conformant files and then cataloged in a web-based database. Those who have been authorized for access have user identifications and passwords. These authorized users may search the NIMAC database and directly download the file(s) they need to convert into accessible instructional materials for those students who are in elementary and secondary schools and have qualifying disabilities.

~~K)L.~~ "National Instructional Materials Accessibility Standard (NIMAS)" is a technical standard used by publishers to produce consistent and valid XML-based source files that may be used to develop multiple specialized formats, such as Braille or audio books, for students with print disabilities.

~~L)M.~~ "Not recommended materials" means instructional materials which have been reviewed by the Commission but not recommended.

~~M)N.~~ "Primary instructional material" means a comprehensive basal or Core textbook or integrated instructional program for which a publisher seeks a recommendation for Core subjects designated in R277-700-4, 5, and 6.

~~N)O.~~ "Primary instructional materials provider" means a publisher or author and self-publisher who sells or provides instructional materials for use in Utah public schools.

~~O)P.~~ "Public website" means a website designated by the USOE provided by the publisher of instructional materials, free-of-charge, to teachers and the general public, to exhibit alignment and mapping to the Core for Utah primary instructional materials.

~~P)Q.~~ "Recommended instructional materials (RIMs)" means the recommended instructional materials searchable database provided as a free service by the USOE for the posting of evaluations and alignments to the Core of instructional materials submitted by publishers and on the public website of the publisher, if applicable, for review by the Commission and approval of the Board.

~~Q)R.~~ "State Core Curriculum (Core)" means minimum academic standards provided through courses as established by the Board which shall be completed by all students K-12 as a requisite for graduation from Utah's secondary schools. The Core is provided in R277-700.

~~R)S.~~ "USOE" means the Utah State Office of Education.

~~S)T.~~ "Utah Performance Assessment System for Students (U-PASS)" means:

(1) systematic norm-referenced achievement testing of all students in grades 3, 5, 8, and 11 required by this part in all schools

within each school district by means of tests designated by the Board;

(2) criterion-referenced achievement testing of students in all grade levels in basic skills courses, to include reading, language arts, mathematics through geometry, science, in grades 4 through 12, and effectiveness of written expression, as defined in Section 53A-1-602;

(3) a direct writing assessment in grades 6 and 9; and

(4) a tenth grade basic skills competency test as detailed in Section 53A-1-611.

R277-469-2. Authority and Purpose.

A. This rule is authorized under Utah Constitutional Article X, Section 3 which vests general control and supervision over public education in the Board, by Section 53A-14-101 which directs the Board to appoint an Instructional Materials Commission and directs the Commission to evaluate instructional materials for recommendation by the Board, by Section 53A-14-107 which directs the Board to make rules that establish the qualifications of the independent parties who may evaluate and map the alignment of the primary instructional materials and requirements for the detailed summary of the evaluation and its placement on a public website, and by ~~S[ubs]~~Section 53A-1-401(3) which allows the Board to make rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions, operating procedures and criteria for recommending instructional materials for use in Utah public schools. The rule also provides for mapping and alignment of primary instructional materials to the Core consistent with Utah law.

R277-469-3. Use of State Funds for Instructional Materials.

A. School districts may use funds:

(1) for primary instructional materials that have been mapped and aligned to the Core by an independent party; and

(2) for any supplemental or supportive instructional materials that support Core or U-PASS requirements.

(3) for instructional materials selected and approved by a school or school district consistent with the standards of this rule and:

(a) consistent with established local board procedures and timelines; and

(b) consistent with Section 53A-13-101(1)(c)(iii); or

(c) consistent with Section 53A-14-102(4).

B. Schools or school districts that use any funding source to purchase materials that have not been recommended or selected consistent with law, may have funds withheld to the extent of the actual costs of those materials pursuant to ~~S[ubs]~~Section 53A-1-401(3).

C. Free instructional materials:

(1) that are used as primary instructional materials or that are part of primary integrated instructional programs shall be subject to the same independent party evaluation and Core mapping as basal or Core material; or

(2) if free materials are provided as part of a supplemental program, they may be used as student instructional materials only consistent with the law and this rule; and

(3) shall be reviewed and recommended by the Commission or by a school in a public meeting consistent with Section 53A-14-102(4), prior to their use.

D. Charter schools are exempt from Section 53A-14-107. Despite this exemption and consistent U.S.C. 300.172(c), hereby

incorporated by reference, all public schools subject to a state education agency that contracts with NIMAC require publishers with whom the public schools under the control of the state education agency contract to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instruction materials using the NIMAS or purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

E. Notice to publishers

(1) All traditional and charter public schools shall be responsible for notifying all publishers with whom they contract for instructional materials beginning October 1, 2008 that all materials shall be provided consistent with R277-469-3D.

(2) Traditional and charter schools shall include a copy of R277-469, drawing publishers' attention to this provision of the rule, with the notice to publishers from whom the schools purchase materials.

(3) Schools shall provide publishers with timely notice of this requirement.

R277-469-10. Detailed Summary Requirements.

Independent parties that may align and map primary instructional materials shall provide to the publisher a detailed summary of the evaluation. The summary shall:

A. be provided on a public website required under Section 53A-14-107(3)(b) designated by the USOE;

B. submit the summary in the alignment template provided by the USOE;

C. submit the summary in a searchable, software database format designated by the USOE;

D. include detailed alignment information that includes at a minimum:

(1) the title of the material;

(2) the ISBN number;

(3) the publisher's name;

(4) the name/grade of the Core document used to align the material;

(5) the overall percentage of coverage of the Core;

(6) the overall percentage of coverage in ancillary resources of the material to the Core;

(7) the percentage of coverage of the Core in the material for each standard, objective and indicator in the Core with corresponding page numbers;

(8) percentage of coverage of the Core not covered in the material but covered in the ancillary resources for each standard;

(9) objective and indicator in the Core with corresponding page numbers; and

E. provide the detailed alignment information listed in R277-~~[477-]~~469-10~~[A-]~~D(4) for the student text for all editions of the text that are used in Utah public schools;

F. provide the detailed alignment information listed in R277-464-10~~[A-]~~D(4) for a teacher edition of text, if a teacher edition is used in Utah public schools;

G. provide a map of the materials detailing when the materials should be used in a 180 day school schedule including the standard, objective and indicator of the item to be taught with corresponding page numbers; the recommended use of the material, such as to introduce a concept, to gain information about a concept, to extend understanding of a concept, to apply a concept, or to assess a concept; and hyperlinks to other materials, websites, or lesson plans that correspond to the concept.

H. designate at the conclusion of the alignment document, the reviewer's evaluation of the material's alignment to the Core curriculum on a scale of 1-10, with 10 indicating the closest alignment to the Utah Core curriculum; and

I. provide an assurance, including a personal (electronic is adequate) signature that the work was completed personally and as required by the licensed and endorsed reviewer.

R277-469-11. Agreements and Procedures for Publishing Companies.

A. Publishing companies desiring to sell primary instructional materials to Utah school districts and schools shall:

(1) contract with an independent party who meets the requirements in R277-469-9 to align and map the primary instructional material and related ancillary materials to the appropriate Utah Core with the following provisions:

(a) the publisher provides a detailed summary of the Core alignment and mapping as described in R277-469-10 at no charge; and

(b) the publisher pays the costs associated with the requirements of Section 53A-14-107.

(2) The requirements under R277-469-9-A(1) shall only be performed by entities consistent with Section 53A-14-107(2).

B. Publishers seeking to sell recommended materials to Utah schools or school districts shall have adopted materials on deposit at an instructional materials depository in the business of selling instructional materials to schools or school districts in Utah.

C. Depository agreements may be made between publishers of materials and one or more depository.

D. The provisions of R277-469-11 shall not preclude publishers from selling instructional materials to schools or school districts in Utah directly or through means other than the designated depository.

E. Recommended materials with revisions:

(1) If a revised edition of recommended materials retains the original title and authorship, the publisher may request its substitution for the edition currently recommended providing that:

(a) the original contract price and contract date do not change and the original contract price applies for the substituted materials;

(b) the revised edition is compatible with the earlier edition, permitting use of either or both in the same classroom;

(c) a sample copy of the revised edition is provided to the USOE Instructional Materials Specialist for examination purposes;

(d) the publisher submits a revised electronic edition in NIMAS file format to the National Instructional Materials Access Center (NIMAC) if the USOE approves the substitution request; and

(e) a new curriculum alignment and map summary is provided.

(2) If S[ub]section R277-469-8E is not satisfied, a new edition shall be submitted for recommendation as new materials.

(3) The Commission shall make the final determination about the substitution of a new edition for a previously recommended edition with assistance from the state subject area specialist.

F. A publisher's contract price for materials recommended by the Commission shall apply for five years from the contract date.

KEY: instructional materials

Date of Enactment or Last Substantive Amendment: [August 7, 2008] 2009

Notice of Continuation: March 3, 2008

Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-14-101; 53A-14-107; 53A-1-401(3)

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**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-14-5
Service Coverage**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32223

FILED: 12/17/2008, 17:21

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to comply with budget reduction mandates set forth in the 2008 Second Special Session of the Utah Legislature.

SUMMARY OF THE RULE OR CHANGE: This change allows only pregnant women and individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) to receive physical therapy, occupational therapy, and speech pathology services under the home health services program.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The reduction of physical therapy, occupational therapy, and speech-pathology services will result in savings to the General Fund and to the federal budget. Estimates of these savings are listed in companion filings to this proposed rule (Rules R414-21 and R414-54). (DAR NOTE: The proposed rule filing for Rule R414-21 is under DAR No. 32224 and the proposed rule filing for Rule R414-54 is under DAR No. 32227 in this issue, January 15, 2009, of the Bulletin.)

❖ **LOCAL GOVERNMENTS:** This change does not impact local governments because they do not fund or provide physical therapy, occupational therapy, and speech-pathology services to Medicaid clients in the home.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** The Department estimates annual losses in revenue to providers of physical therapy, occupational therapy and speech therapy. These estimates are listed in companion filings to this proposed rule (Rules R414-21 and R414-54). The explanation and estimate of annual expenses to clients who elect to pay out-of-pocket to receive physical therapy, occupational therapy and speech therapy are also found in the companion filings to this proposed rule (Rules R414-21 and R414-54).

COMPLIANCE COSTS FOR AFFECTED PERSONS: The annual losses in revenue to a single provider of physical therapy, occupational therapy, and speech therapy are listed in the companion filings to this proposed rule (Rules R414-21 and R414-54). The explanation and estimate of annual expenses to clients who elect to pay out-of-pocket to receive physical therapy, occupational therapy, and speech therapy in the home are also found in the companion filings to this proposed rule (Rules R414-21 and R414-54).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change reflects the reductions passed in S.B. 2001 (2008 2nd Spec Sess) and are necessary to file under emergency authority to immediately implement the budget reductions. David N. Sundwall, MD, Executive Director (DAR NOTE: S.B. 2001 (2008 2nd Spec Sess) is found at Chapter 2, Laws of Utah 2008 (2nd Spec Sess) and was effective 09/29/2008.)

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

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

R414-14. Home Health Services.

R414-14-5. Service Coverage.

1. Two levels of home health service are covered: Skilled Home Health Care and Supportive Maintenance Home Health Care.

2. Skilled nursing service encompasses the expert application of nursing theory, practice and techniques by a registered professional nurse to meet the needs of patients in their place of residence through professional judgments, through independently solving patient care problems, and through application of standardized procedures and medically delegated techniques.

3. Home health aide service encompasses assistance with, or direct provision of, routine care not requiring specialized nursing skill. The home health aide is closely supervised by a registered, professional nurse to assure competent care. The aide works under written instructions and provides necessary care for the patient.

4. Supportive maintenance home health care serves those patients who have a medical condition which has stabilized, but who demonstrate continuing health problems requiring minimal assistance, observation, teaching, or follow-up. This assistance can be provided by a certified home health agency through the knowledge and skill of a licensed practical nurse (LPN) or a home health aide with periodic supervision by a registered nurse. A physician continues to provide direction.

5. IV therapy, enteral and parenteral nutrition therapy are provided as a home health service either in conjunction with skilled or maintenance care or as the only service to be provided. Specific policy is outlined in the medical supplies program and all requirements of the home health program must be met in relation to orders, plan of care, and 60 day review and recertification.

6. Physical therapy and speech pathology services are occasionally indicated and approved for the patient needing home health service. Any therapy services offered by the home health agency directly or under arrangement must be ordered by a physician and provided by a qualified licensed therapist in accordance with the plan of care. Physical therapy, occupational therapy and speech pathology services in the home are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

7. Medical supplies utilized for home health service must be suitable for use in the home in providing home health care, consistent with physician orders, and approved as part of the plan of care.

8. Medical supplies provided by the home health agency do not require prior approval, but are limited to:

(a) supplies used during the initial visit to establish the plan of care;

(b) supplies that are consistent with the plan of care; and

(c) non-durable medical equipment.

9. Supportive maintenance home health care is limited in time equal to one visit per day determined by care needs and care giver participation.

10. A registered nurse employed by an approved, certified home health agency must supervise all home health services. Nursing service and all approved therapy services must be provided by the appropriate licensed professional.

11. Only one home health provider (agency) may provide service to a patient during any period of time. However, a subcontractor of a home health provider may provide service if the original agency is the only provider that bills for services. A second provider or agency requesting approval of service will be denied.

12. Home health care provided to a patient capable of self care is not a covered Medicaid benefit.

13. Personal care services, except as determined necessary in providing skilled care, is not a covered home health benefit.

14. Housekeeping or homemaking services are not covered home health benefits.

15. Occupational therapy is not a covered Medicaid benefit except for children covered under CHEC for medically necessary service.

16. Home health nursing service beyond the initial evaluation visit requires prior authorization.

17. All home health service beyond the initial visit, including supplies and therapies, shall be in the plan of care that the home health agency submits for prior authorization. Prior to providing the service, the home health agency must first obtain approval for the level of skilled or maintenance service based on the prior authorization request

and a review of the plan of care. If level of service needs change, the home health agency must submit a new prior authorization request.

18. A home health agency may provide therapy services only in accordance with medical necessity and after receiving prior authorization.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~April 26, 2005~~ 2009

Notice of Continuation: October 6, 2004

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

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Health, Health Care Financing, Coverage and Reimbursement Policy **R414-21-2** Eligibility Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32224

FILED: 12/17/2008, 17:26

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to comply with budget reduction mandates set forth in the 2008 Second Special Session of the Utah Legislature.

SUMMARY OF THE RULE OR CHANGE: This change allows only pregnant women and individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) to receive physical and occupational therapy. It also allows Medicaid to cover physical and occupational therapy as a component of inpatient and outpatient hospital services.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The Department estimates an annual savings of \$45,225 to the General Fund and \$109,180 in federal dollars as a result of this change.

❖ **LOCAL GOVERNMENTS:** This change does not impact local governments because they do not fund or provide physical and occupational therapy to Medicaid clients.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Providers of physical therapy and occupational therapy will lose a combined total of \$154,405 in annual revenue as a result of this change. The total out-of-pocket expense to Medicaid clients who elect to pay out-of-pocket is difficult to estimate because it is impossible to know how many clients would elect to obtain these services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The annual loss in revenue to a single provider of physical therapy is

approximately \$457.52, while the annual loss in revenue to a single provider of occupational therapy is approximately \$873.82. These estimates are based on the total number of providers and client visits per year. The annual out-of-pocket expense to a single Medicaid client who elects to pay for physical and occupational therapy is difficult to estimate because the fees will vary depending on the provider's fee schedule. According to current Medicaid rates, the out-of-pocket cost for physical therapy would exceed \$117 based on an average of four physical therapy visits per year, while the out-of-pocket expense to a single Medicaid client who elects to pay for occupational therapy would exceed \$87 based on an average of three occupational therapy visits per year.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change reflects the reductions passed in S.B. 2001 (2008 2nd Spec Sess) and are necessary to file under emergency authority to immediately implement the budget reductions. David N. Sundwall, MD, Executive Director (DAR NOTE: S.B. 2001 (2008 2nd Spec Sess) is found at Chapter 2, Laws of Utah 2008 (2nd Spec Sess) and was effective 09/29/2008.)

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

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

R414-21. Physical and Occupational Therapy.

R414-21-2. Eligibility Requirements.

Physical therapy and occupational therapy services are available only to clients who are [categorically and medically needy individuals under Medicaid]pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program. In addition, physical therapy and occupational therapy services are available to a client as a component of inpatient or outpatient hospital services.

KEY: Medicaid**Date of Enactment or Last Substantive Amendment:** [January 10, 2008]2009**Notice of Continuation:** April 16, 2007**Authorizing, and Implemented or Interpreted Law:** 26-1-4.1; 26-1-5; 26-18-3

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Health, Health Care Financing, Coverage and Reimbursement Policy

R414-52

Optometry Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 32225

FILED: 12/17/2008, 17:33

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to comply with budget reduction mandates set forth in the 2008 Second Special Session of the Utah Legislature.

SUMMARY OF THE RULE OR CHANGE: This change allows only pregnant women and individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) to receive eyeglasses under this rule. It further removes the \$3 copayment for eyeglasses that the Department currently applies to recipients who fall under the copayment requirement.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The reduction of eyeglasses will result in savings to the General Fund and to the federal budget. Estimates of these savings are listed in the companion filing to this proposed rule (Rule R414-53). (DAR NOTE: The proposed filing on Rule R414-53 is under DAR No. 32226 in this issue, January 15, 2009, of the Bulletin.)

❖ **LOCAL GOVERNMENTS:** This change does not impact local governments because they do not fund or provide optometry services to Medicaid clients.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** The Department estimates annual losses in revenue to providers of eyeglasses. These estimates are listed in the companion filing to this proposed rule (Rule R414-53). The explanation and estimate of annual expenses to clients who elect to pay out-of-pocket to receive eyeglasses is also found in the companion filing to this proposed rule (Rule R414-53).

COMPLIANCE COSTS FOR AFFECTED PERSONS: The annual loss in revenue to a single provider of eyeglasses is listed in the companion filing to this proposed rule (Rule R414-53). The explanation and estimate of annual expenses to a single Medicaid client who elects to pay out-of-pocket to receive

eyeglasses is also found in the companion filing to this proposed rule (Rule R414-53).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change reflects the reductions passed in S.B. 2001 (2008 2nd Spec Sess) and are necessary to file under emergency authority to immediately implement the budget reductions. David N. Sundwall, MD, Executive Director (DAR NOTE: S.B. 2001 (2008 2nd Spec Sess) is found at Chapter 2, Laws of Utah 2008 (2nd Spec Sess) and was effective 09/29/2008.)

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-52. Optometry Services.****R414-52-3. Client Eligibility Requirements.**

Optometry services are available to categorically and medically needy individuals, except that the provision of eyeglasses is available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

R414-52-5. Reimbursement.

(1) Fees for services for which the Department will pay optometrists are established from the physician's fees for CPT codes as described in the State Plan, Attachment 4.19-B, Section D Physicians. ~~A \$3 copayment for each pair of eyeglasses is applied to Medicaid recipients who fall under the copayment requirement.~~ Fee schedules were initially established after consultation with provider representatives. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.

(2) The Department pays the lower of the amount billed and the rate on the schedule. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private-pay patients.

KEY: Medicaid, optometry**Date of Enactment or Last Substantive Amendment:** ~~February 1, 2008~~ **2009****Notice of Continuation:** May 19, 2008**Authorizing, and Implemented or Interpreted Law:** 26-1-5; 26-18-3

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Health, Health Care Financing, Coverage and Reimbursement Policy

R414-53

Eyeglasses Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32226

FILED: 12/17/2008, 17:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to comply with budget reduction mandates set forth in the 2008 Second Special Session of the Utah Legislature.

SUMMARY OF THE RULE OR CHANGE: This change allows only pregnant women and individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) to receive eyeglasses services. It further removes the \$3 copayment for eyeglasses that the Department currently applies to recipients who fall under the copayment requirement.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The Department estimates an annual savings of \$231,252 to the General Fund and \$558,275 in federal dollars as a result of this change. These estimates also apply to Rule R414-52 Optometry Services, which is a companion filing to this proposed rule. (DAR NOTE: The proposed filing on Rule R414-52 is under DAR No. 32225 in this issue, January 15, 2009, of the Bulletin.)

❖ **LOCAL GOVERNMENTS:** This change does not impact local governments because they do not fund or provide eyeglasses services to Medicaid clients.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Providers of eyeglasses services will lose approximately \$789,528 in annual revenue as a result of this change. However, the total out-of-pocket expense to Medicaid clients who elect to pay out-of-pocket to receive eyeglasses is difficult to estimate because it is impossible to know how many clients would choose this option. Further, there are a wide range of options and prices available for eyeglasses. The above estimate and explanation also apply to Rule R414-52 Optometry Services, which is a companion filing to this proposed rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The annual loss in revenue to a single provider of eyeglasses is approximately \$43,863 based on the total number of providers and client visits per year. However, the annual out-of-pocket expense to a single Medicaid client who elects to pay out-of-pocket to receive eyeglasses is difficult to estimate because it is impossible to know how many clients would choose this option. Further, there are a wide range of options and prices available for eyeglasses. The above estimate and explanation apply to Rule R414-52 Optometry Services, which is a companion filing to this proposed rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change reflects the reductions passed in S.B. 2001 (2008 2nd Spec Sess) and are necessary to file under emergency authority to immediately implement the budget reductions. David N. Sundwall, MD, Executive Director (DAR NOTE: S.B. 2001 (2008 2nd Spec Sess) is found at Chapter 2, Laws of Utah 2008 (2nd Spec Sess) and was effective 09/29/2008.)

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO: Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

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

R414-53. Eyeglasses Services.

R414-53-3. Client Eligibility Requirements.

Eyeglasses are available only to clients who are [categorically and medically needy individuals] pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

R414-53-5. Reimbursement.

(1) The Department pays for lenses and standard frames on a fee-for-service basis, based on CPT codes as described in the State Plan, Attachment 4.19-B. ~~[A \$3 copayment for each pair of eyeglasses is applied to Medicaid recipients who fall under the copayment requirement.]~~

(2) The Department pays the lower of the amount billed or the rate on the schedule. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private-pay patients.

(3) Fee schedules were initially established after consultation with provider representatives. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.

KEY: Medicaid, eyeglasses

Date of Enactment or Last Substantive Amendment: ~~February 1, 2008~~ **2009**

Notice of Continuation: June 5, 2008

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



**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-54
Speech-Language Pathology Services**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32227

FILED: 12/17/2008, 17:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to comply with budget reduction mandates set forth in the 2008 Second Special Session of the Utah Legislature.

SUMMARY OF THE RULE OR CHANGE: This change allows only pregnant women and individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) to receive speech-language pathology services. It also incorporates by reference the Speech-Language Pathology Services Provider Manual, effective 01/01/2009.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Speech-Language Pathology Services Provider Manual, effective 01/01/2009

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The Department estimates an annual savings of \$46,045 to the General Fund and \$111,159 in federal dollars as a result of this change.

❖ **LOCAL GOVERNMENTS:** This change does not impact local governments because they do not fund or provide speech-language pathology services to Medicaid clients.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Providers of speech-language pathology services will lose approximately \$157,204 in annual revenue as a result of this

change. However, the total out-of-pocket expense to Medicaid clients who elect to pay out-of-pocket to receive these services is difficult to estimate because it is impossible to know how many clients would choose to obtain these services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The annual loss in revenue to a single provider of speech-language pathology services is approximately \$2,620 based on the total number of providers and approximate client visits per year. However, the annual out-of-pocket expense to a single Medicaid client who elects to pay for speech-language pathology services is difficult to estimate because the fees will vary depending on the provider's fee schedule. According to current Medicaid rates, the out-of-pocket costs would exceed \$164 based on an average of three speech therapy visits per year.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change reflects the reductions passed in S.B. 2001 (2008 2nd Spec Sess) and are necessary to file under emergency authority to immediately implement the budget reductions. David N. Sundwall, MD, Executive Director (DAR NOTE: S.B. 2001 (2008 2nd Spec Sess) is found at Chapter 2, Laws of Utah 2008 (2nd Spec Sess) and was effective 09/29/2008.)

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

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

R414-54. Speech-Language Pathology Services.

R414-54-3. Services.

(1) Speech-language pathology services are optional.

(2) Speech-language pathology services are limited to services described in the Speech-Language Pathology Services Provider Manual, effective January 1, 2009, which is incorporated by reference.

(3) The Speech-Language Pathology Services Provider Manual specifies the reasonable and appropriate amount, duration, and scope of the service sufficient to reasonably achieve its purpose.

(4) Speech-language pathology services may be provided by licensed speech-language pathologists, or speech-language pathology aides under the supervision of speech-language pathologists.

R414-54-4. [~~Services for Individuals Eligible for Optional Services~~Client Eligibility Requirements.

(1) Speech-language pathology services are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

~~(1)~~ (2) An individual receiving speech-language pathology services may receive speech-language pathology services as described in the Speech-Language Pathology Provider Manual.

~~(2)~~ (3) An individual receiving speech-language pathology services must meet the criteria established in the Speech-Language Pathology Provider Manual and obtain prior approval if required.

KEY: Medicaid, speech-language pathology services

Date of Enactment or Last Substantive Amendment: [~~October 2, 2008~~2009]

Notice of Continuation: March 23, 2004

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



Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-59-4
Services for Individuals Eligible for
Optional Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 32228

FILED: 12/17/2008, 17:47

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to comply with budget reduction mandates set forth in the 2008 Second Special Session of the Utah Legislature.

SUMMARY OF THE RULE OR CHANGE: This change allows only pregnant women and individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) to receive audiology-hearing services. It also incorporates by reference the Audiology Provider Manual, effective 01/01/2009.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Audiology Provider Manual, effective 01/01/2009

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Department estimates an annual savings of \$69,082 to the General Fund and \$166,774 in federal dollars as a result of this change.

❖ LOCAL GOVERNMENTS: This change does not impact local governments because they do not fund or provide audiology-hearing services to Medicaid clients.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Providers of audiology-hearing services will lose approximately \$235,856 in annual revenue as a result of this change. However, the total out-of-pocket expense to Medicaid clients who elect to pay out-of-pocket to receive these services is difficult to estimate because it is impossible to know how many clients would choose to obtain these services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The annual loss in revenue to a single provider of audiology-hearing services is approximately \$2,650 based on the total number of providers and client visits per year. However, the annual out-of-pocket expense to a single Medicaid client who elects to pay for audiology-hearing services is difficult to estimate because the fees will vary depending on the provider's fee schedule. According to current Medicaid rates, the out-of-pocket costs would exceed \$165 based on an average of two audiology-hearing visits per year.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change reflects the reductions passed in S.B. 2001 (2008 2nd Spec Sess) and are necessary to file under emergency authority to immediately implement the budget reductions. David N. Sundwall, MD, Executive Director (DAR NOTE: S.B. 2001 (2008 2nd Spec Sess) is found at Chapter 2, Laws of Utah 2008 (2nd Spec Sess) and was effective 09/29/2008.)

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

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

R414-59. Audiology-Hearing Services.

R414-59-4. ~~[Services for Individuals Eligible for Optional Services]~~Client Eligibility Requirements.

(1) Audiology-hearing services are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

(1)2) An individual receiving audiology-hearing services may receive audiology services as described in the Audiology Provider Manual, effective January 1, 2009, which is incorporated by reference.

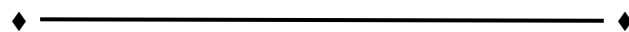
(2)3) An individual receiving audiology-hearing services must meet the criteria established in the Audiology Provider Manual and obtain prior approval if required.

KEY: Medicaid, audiology

Date of Enactment or Last Substantive Amendment: ~~[October 2, 2008]~~2009

Notice of Continuation: November 22, 2005

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



**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-99-2
Client Eligibility Requirements**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32229

FILED: 12/17/2008, 17:51

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to comply with budget reduction mandates set forth in the 2008 Second Special Session of the Utah Legislature.

SUMMARY OF THE RULE OR CHANGE: This change allows only pregnant women and individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT) to receive chiropractic services.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Department estimates an annual savings of \$65,158 to the General Fund and \$157,300 in federal dollars as a result of this change.

❖ LOCAL GOVERNMENTS: This change does not impact local governments because they do not fund or provide chiropractic services to Medicaid clients.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Providers of chiropractic services will lose approximately \$222,458 in annual revenue as a result of this change. The total out-of-pocket expense to Medicaid clients who elect to pay out-of-pocket to receive these services is difficult to estimate because it is impossible to know how many clients would elect to obtain these services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The annual loss in revenue to a single provider of chiropractic services is approximately \$931 based on the total number of providers and client visits per year. The annual out-of-pocket expense to a single Medicaid client who elects to pay for chiropractic services is difficult to estimate because the fees will vary depending on the provider's fee schedule. According to current Medicaid rates, the out-of-pocket costs would exceed \$78 based on an average of four chiropractic visits per year.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change reflects the reductions passed in S.B. 2001 (2008 2nd Spec Sess) and are necessary to file under emergency authority to immediately implement the budget reductions. David N. Sundwall, MD, Executive Director (DAR NOTE: S.B. 2001 (2008 2nd Spec Sess) is found at Chapter 2, Laws of Utah 2008 (2nd Spec Sess) and was effective 09/29/2008.)

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

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

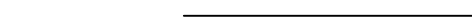
DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2009

AUTHORIZED BY: David N. Sundwall, Executive Director



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

R414-99. Chiropractic Services.

R414-99-2. Client Eligibility Requirements.

Chiropractic services are available only to clients who are ~~categoryically and medically needy individuals~~pregnant women or

who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

KEY: Medicaid, chiropractic services

Date of Enactment or Last Substantive Amendment: ~~February 17, 2004~~ **2009**

Authorizing, and Implemented or Interpreted Law: 26-18



**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-200
Non-Traditional Medicaid Health Plan
Services**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32230

FILED: 12/17/2008, 18:04

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to comply with budget reduction mandates set forth in the 2008 Second Special Session of the Utah Legislature.

SUMMARY OF THE RULE OR CHANGE: This change eliminates physical therapy, occupational therapy and chiropractic services as Non-Traditional Medicaid (NTM) services.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The reduction of physical therapy, occupational therapy and chiropractic services will result in savings to the General Fund and to the federal budget. Estimates of these savings are listed in companion filings to this proposed rule (Rules R414-21 and R414-99). (DAR NOTE: The proposed rule filing for Rule R414-21 is under DAR No. 32224 and the proposed rule filing for Rule R414-99 is under DAR No. 32229 in this issue, January 15, 2009, of the Bulletin.)

❖ **LOCAL GOVERNMENTS:** This change does not impact local governments because they do not fund or provide physical therapy, occupational therapy, and chiropractic services to Medicaid clients.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** The Department estimates annual losses in revenue to providers of physical therapy, occupational therapy and chiropractic services. These estimates are listed in companion filings to this proposed rule (Rules R414-21 and R414-99). The explanation of annual expenses to clients who elect to pay out-of-pocket to receive physical therapy, occupational therapy, and chiropractic services is also found in the companion filings to this proposed rule (Rules R414-21 and R414-99).

COMPLIANCE COSTS FOR AFFECTED PERSONS: The annual losses in revenue to a single provider of physical therapy, occupational therapy and chiropractic services are listed in the companion filings to this proposed rule (Rules R414-21 and R414-99). The explanation and estimate of annual expenses to clients who elect to pay out-of-pocket to receive physical therapy, occupational therapy, and chiropractic services are also found in the companion filings to this proposed rule (Rules R414-21 and R414-99).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change reflects the reductions passed in S.B. 2001 (2008 2nd Spec Sess) and are necessary to file under emergency authority to immediately implement the budget reductions. David N. Sundwall, MD, Executive Director (DAR NOTE: S.B. 2001 (2008 2nd Spec Sess) is found at Chapter 2, Laws of Utah 2008 (2nd Spec Sess) and was effective 09/29/2008.)

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

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

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

R414-200-3. Services Available.

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

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

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

(2) Medical or hospital services for which providers are reimbursed under the Non-Traditional Medicaid Health Plan are limited

by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

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

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

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

(c) emergency services in dedicated hospital emergency departments;

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

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

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

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

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

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

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

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

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

(~~m~~l) certain organ transplants;

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

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

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

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

(~~r~~q) pharmacy services provided by a licensed pharmacy;

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

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

(~~t~~t) outpatient substance abuse services;

(~~v~~u) dental services are not covered[-]; and

(~~w~~v) interpretive services if they are provided by entities under contract with the Department of Health to provide medical translation

services for people with limited English proficiency and interpretive services for the deaf[;

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

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

(4) Emergency services are:

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

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

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

(d) not related to an organ transplant procedure.

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

R414-200-4. Cost Sharing.

(1) An enrollee is responsible to pay to the:

(a) hospital a \$220 co-insurance payment for each inpatient hospital admission;

(b) hospital a \$6 copayment for each non-emergency use of hospital emergency services;

(c) provider a \$3 copayment for outpatient office visits for physician, physician-related, and mental health services~~[-, and physical therapy services];~~ except, no copayment is due for preventive services, immunizations and health education; and

(d) pharmacy a \$3 copayment per prescription for prescription drugs.

(2) The out-of-pocket maximum payment for copayments or co-insurance is limited to \$500 per enrollee per calendar year.

KEY: Medicaid, non-traditional, cost sharing

Date of Enactment or Last Substantive Amendment: ~~July 23, 2007~~**2009**

Notice of Continuation: May 24, 2007

Authorizing, and Implemented or Interpreted Law: 26-18



Insurance, Administration

R590-252

Use of Senior-Specific Certifications and Professional Designations

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 32261

FILED: 12/31/2008, 14:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule is to set forth standards to protect consumers from misleading marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, an annuity, accident and health, or life insurance product.

SUMMARY OF THE RULE OR CHANGE: This rule sets forth standards to protect consumers from misleading and

deceptive marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, an annuity, accident and health, or life insurance product. The rule also sets penalties for the violation of this rule. The enforcement of the rule will take effect 45 days after the rule goes into effect.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-23a-402

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This rule should have a neutral fiscal impact on the state's budget unless the department receives a large number of complaints from the public requiring the department to hire additional employees to investigate and take administrative actions against violators. This is an unlikely scenario since there is a hiring freeze and legislation would have to be passed.

❖ LOCAL GOVERNMENTS: The agency is unaware of any way this rule could affect local governments. The rule deals with the way those selling insurance represent themselves to the consumer, requiring them not to apply misleading and deceptive titles to themselves.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Those agents and agencies using noncompliant designations or certifications to solicit insurance to consumers, especially seniors, will have to reprint anything they have the certification or designation on.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Insurance companies should incur no costs or savings as a result of this rule. They are not the ones that solicit consumers directly. Agents and agencies using noncompliant designations or certifications to solicit insurance to consumers, especially seniors, will have to reprint anything with the noncompliant certification or designation on it. The rule is written to protect the public from those who would try to validate their product with the use of a misleading or deceptive designation or certification in order to sway the consumer into purchasing an insurance product they do not need.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Only those in violation of the this rule will incur a cost. D. Kent Michie, Commissioner

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

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2009

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-252. Use of Senior-Specific Certifications and Professional Designations.

R590-252-1. Authority.

This rule is promulgated pursuant to:

(1) Subsection 31A-2-201(3)(a) wherein the commissioner may make rules to implement the provisions of Title 31A; and

(2) Subsection 31A-23a-402(8)(a) that authorizes the commissioner to define by rule unfair methods of competition and unfair or deceptive acts or practices in the business of insurance.

R590-252-2. Purpose.

The purpose of this rule is to set forth standards to protect consumers from misleading marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with, an annuity, accident and health, or life insurance product.

R590-252-3. Scope.

This rule shall apply to any solicitation, sale or purchase of, or advice made in connection with, an annuity, accident and health, or life insurance product by an insurance producer or consultant.

R590-252-4. Findings.

The commissioner finds that the acts prohibited by this rule are unfair, misleading and deceptive.

R590-252-5. Prohibited Uses of Senior-Specific Certifications and Professional Designations.

(1)(a) An insurance producer or consultant may not use a senior-specific certification or professional designation that indicates or implies, in such a way as to mislead a purchaser or prospective purchaser, that the insurance producer or consultant has special certification or training in advising or servicing seniors in connection with the solicitation, sale or purchase of any annuity, accident and health, or life insurance product or in the provision of advice as to the value of or the advisability of purchasing or selling an annuity, accident and health, or life insurance product, either directly or indirectly through publications or writings, or by issuing or promulgating analyses or reports related to an annuity, accident and health, or life insurance product.

(b) The prohibited use of senior-specific certifications or professional designations includes, but is not limited to, the following:

(i) use of a certification or professional designation by an insurance producer or consultant who has not actually earned or is otherwise ineligible to use such certification or designation;

(ii) use of a nonexistent or self-conferred certification or professional designation;

(iii) use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the insurance producer or consultant using the certification or designation does not have; and

(iv) use of a certification or professional designation that was obtained from a certifying or designating organization that:

(A) is primarily engaged in the business of instruction in sales or marketing;

(B) does not have reasonable standards or procedures for assuring the competency of its certificants or designees;

(C) does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or

(D) does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certificate or designation.

(2) There is a rebuttable presumption that a certifying or designating organization is not disqualified solely for purposes of subsection (1)(b)(iv) when the certification or designation issued from the organization does not primarily apply to sales or marketing and when the organization or the certification or designation in question has been accredited by:

(a) the American National Standards Institute (ANSI);

(b) the National Commission for Certifying Agencies; or

(c) any organization that is on the U.S. Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes."

(3) In determining whether a combination of words or an acronym standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing seniors, factors to be considered shall include:

(a) use of one or more words such as "senior," "retirement," "elder," or like words combined with one or more words such as "certified," "registered," "chartered," "advisor," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(b) the manner in which those words are combined.

(4)(a) For purposes of this rule, a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency is not a certification or professional designation, unless it is used in a manner that would confuse or mislead a reasonable consumer, when the job title:

(i) indicates seniority or standing within the organization; or

(ii) specifies an individual's area of specialization within the organization.

(b) For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates insurers, insurance producers, insurance consultants, broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940.

R590-252-6. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-252-7. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-252-8. Severability.

If any provision of this rule or its application to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

KEY: senior-specific insurance designations

Date of Enactment or Last Substantive Amendment: 2009

Authorizing, and Implemented or Interpreted Law: 31A-2-201, 31A-23a-402



Labor Commission, Safety

R616-2-3

Safety Codes and Rules for Boilers and Pressure Vessels

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 32259

FILED: 12/31/2008, 12:30

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to adopt the most current addenda of the American Society of Mechanical Engineers (ASME) and the most current edition of the National Board Inspection Code (NBIC). The Labor Commission's intent is to maintain uniformity between its practices and national standards.

SUMMARY OF THE RULE OR CHANGE: The NBIC current edition and the ASME addenda adopted by this proposed rule change make a large number of relatively minor technical and editorial changes, such as material specifications, testing, inspection, and administrative dialog. The NBIC edition has also been reformatted into three separate volumes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-7-101

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: National Board Inspection Code NB-23, 2007 Edition, published December 2007; and AMSE Boiler and Pressure Vessel Code 2008 addenda issued July 1, 2008, Sections I, IV and VIII

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Although the addenda addresses a large number of relatively minor changes, these changes taken as a whole will not result in net costs or savings. As for the purchase of the code books, the codes are purchased every three years and the addenda are included in the original purchase price. The cost of each 3-volume set of NBIC code books is \$165.

❖ LOCAL GOVERNMENTS: Although the addenda addresses a large number of relatively minor changes, these changes taken as a whole will not result in net costs or savings.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Although the addenda addresses a large number of relatively minor changes, these changes taken as a whole will not result in net costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: On balance, the proposed rule will not result in significant expense or savings to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The technical changes required by these new editions will have no net fiscal impact on business, however businesses will enjoy competitive benefits by maintaining conformity between Utah and national standards. Sherrie Hayashi, Commissioner

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Pete Hackford at the above address, by phone at 801-530-7605, by FAX at 801-530-6390, or by Internet E-mail at phackford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2009

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R616. Labor Commission, Boiler and Elevator Safety.

R616-2. Boiler and Pressure Vessel Rules.

R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels.

The following safety codes and rules shall apply to all boilers and pressure vessels in Utah, except those exempted pursuant to Section 34A-7-101, and are incorporated herein by this reference in this rule.

A. ASME Boiler and Pressure Vessel Code (2007).

1. Section I Rules for Construction of Power Boilers published July 1, 2007, and the 2008 addenda published July 1, 2008.

2. Section IV Rules for Construction of Heating Boilers published July 1, 2007, and the 2008 addenda published July 1, 2008.

3. Section VIII Rules for Construction of Pressure Vessels published July 1, 2007, and the 2008 addenda published July 1, 2008.

B. Power Piping ASME B31.1 (2004), issued August 16, 2004.

C. Controls and Safety Devices for Automatically Fired Boilers ASME CSD-1-1998; the ASME CSD-1a-1999 addenda, issued March 10, 2000; and the ASME CSD-1b (2001) addenda, issued November 30, 2001.

D. National Board Inspection Code ANSI/NB-23 (200[4]7) issued December 31, 200[4]7[~~the 2005 Addendum issued December 31, 2005, and the 2006 Addendum issued December 31, 2006~~].

E. NFPA 85 Boiler and Combustion Systems Hazard Code 2004 Edition.

F. Recommended Administrative Boiler and Pressure Vessel Safety Rules and Regulations NB-132 Rev. 4.

G. Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair and Alteration API 510 Ninth Edition, June 2006.

Except:

1. Section-8, and
2. Appendix-A.

KEY: boilers, certification, safety

Date of Enactment or Last Substantive Amendment: [~~December 24, 2007~~]**2009**

Notice of Continuation: November 30, 2006

Authorizing, and Implemented or Interpreted Law: 34A-7-101 et seq.



Public Service Commission,
Administration
R746-343-3
Eligibility Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32232

FILED: 12/18/2008, 09:16

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: It was necessary to change the language in Section R746-343-3 to eliminate reference to public assistance programs which no longer exist under the names used in the rule. Rather than attempt to list the programs again, with potential for additional modification as programs change or are renamed, the rule language is proposed to be amended to follow the statutory language. Administering state department responsibilities have also changed, so reference to a department name was eliminated as well. The amendment follows the language used in the authorizing statute.

SUMMARY OF THE RULE OR CHANGE: Changes are proposed to remove the example list of low-income assistance programs. No attempt to list example programs is made and the proposed rule language simply states a Lifeline applicant be eligible for, although need not participate in, a low-income public assistance program; the same language as used in the statute. Departments administering these programs have changed or been renamed as well, so reference to administering agencies is also removed, as their inclusion is not needed for operation of the rule or the Lifeline program.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-8b-10

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: No effect on state budget is expected as the outdated list of programs under which an applicant could qualify is replaced with the statutory language. Qualification criteria has not changed, simply the wording in the rule.

❖ LOCAL GOVERNMENTS: No effect on local government, see the explanation under "State budget" above. The rule does not apply to any local government activity.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: No effect on small businesses, see the explanation under "State budget" above. Small businesses do not participate as customers in the Lifeline program and no "small business" is a telecommunications service provider which could participate as a Lifeline service provider.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--As explained above in the "Summary" under the "State budget", no change in the Lifeline program will occur. The amendment simply removes an outdated list of example qualifying programs and uses the statutory language instead.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no impact on businesses. Telephone customers who qualify for the Lifeline program will remain the same, customer qualification criteria remain the same, and participating telephone companies will continue to receive disbursements on the same basis as before the rule amendment. Ted Boyer, Chairman

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

PUBLIC SERVICE COMMISSION
ADMINISTRATION
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:

Sheri Bintz at the above address, by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@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 02/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2009

AUTHORIZED BY: Sandy Mooy, Legal Counsel

R746. Public Service Commission, Administration.

R746-343. Rule for Deaf, Severely Hearing or Speech Impaired Person.

R746-343-3. Eligibility Requirements.

A. An applicant is eligible if he is deaf, severely hearing impaired, or severely speech impaired and is eligible for assistance under a low income public assistance program[~~administered by the Department of Human Services~~]. The impairment must be established by the certification on an application form by a person who is permitted to practice medicine in Utah, an audiologist, otolaryngologist, speech/language pathologist, or qualified personnel within a state agency. The applicant must provide evidence that they are currently eligible, though it is not necessary that they be participating in a low income public assistance program.~~[, for public assistance under one of the following programs:~~

- ~~1. Aid to Families with Dependent Children;~~
- ~~2. Emergency Work Program;~~
- ~~3. Food Stamps;~~
- ~~4. General Assistance;~~
- ~~5. Home Energy Assistance Target Program;~~
- ~~6. Medical Assistance;~~
- ~~7. Refugee Assistance; or~~
- ~~8. Supplemental Security Income.]~~

C. The provider may require additional documentation to determine applicant's eligibility.

D. During the training session required in Section R746-343-8, Training, the applicant must demonstrate an ability to send and receive messages with a TDD or other appropriate devices.

KEY: [~~AFDC~~]public assistance, physically handicapped, rates, telecommunications

Date of Enactment or Last Substantive Amendment: [~~July 1, 2000~~]2009

Notice of Continuation: December 13, 2007

Authorizing, and Implemented or Interpreted Law: 54-8b-10



Tax Commission, Motor Vehicle Enforcement

R877-23V-7

Misleading Advertising Pursuant to Utah Code Ann. Section 41-3-210

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32234

FILED: 12/18/2008, 10:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment updates the standards of practice for the advertising and selling of motor vehicles.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment updates dealer advertising prohibitions by repealing language that is no longer applicable and adding prohibitions to match the current vehicle market and current advertising techniques.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-3-210

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--The proposed amendment provides guidance on how a car dealer may advertise the sale of motor vehicles.

❖ LOCAL GOVERNMENTS: None--There are no local revenues involved in this process.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--The proposed amendment provides guidance on how a car dealer may advertise the sale of motor vehicles.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment provides guidance on how a car dealer may advertise the sale of motor vehicles.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts. D'Arcy Dixon, Commissioner

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

TAX COMMISSION
MOTOR VEHICLE ENFORCEMENT
210 N 1950 W
SALT LAKE CITY UT 84134, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clec@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 02/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2009

AUTHORIZED BY: D'Arcy Dixon, Commissioner

R877. Tax Commission, Motor Vehicle Enforcement.

R877-23V. Motor Vehicle Enforcement.

R877-23V-7. Misleading Advertising Pursuant to Utah Code Ann. Section 41-3-210.

(1)(a) "Advertisement" means any oral, written, graphic, or pictorial statement made that concerns the offering of a motor vehicle for sale or lease.

(b) "Advertisement" includes any statement or representation:

(i) made in a newspaper, magazine, electronic medium, or other publication;

(ii) made on radio or television;

(iii) appearing in any notice, handbill, sign, billboard, banner, poster, display, circular, pamphlet, letter, or other printed material;

(iv) contained in any window sticker or price tag; and

(v) in any oral statement.

(c) "Advertisement" includes the terms "advertise" and "advertising".

(d) "Advertisement" does not include:

(i) a statement made solely for the purpose of obtaining vehicle financing or a vehicle title; or

(ii) hand written negotiation sheets between a dealer and a customer of the dealer.

(2) Violation of any of the following standards of practice for the advertising and selling of motor vehicles is a violation of Section 41-3-210.

(4)(a) Accuracy. Any advertised statements and offers about a vehicle as to year, make, model, type, condition, equipment, price, trade-in-allowance, terms, and so forth, shall be clearly set forth and based upon facts.

(2)(b) Bait. Bait advertising and selling practices may not be used. A vehicle advertised at a specific price shall be in the possession of the advertiser at the address given. It shall be willingly shown, demonstrated and sold~~[-or, in the case of a new vehicle floor model, orders shall be taken for future delivery of the identical model at the advertised price and terms].~~ If sold, the advertiser shall, upon request of any prospective purchaser, peace officer, or employee of the division, show sales records of the advertised vehicle.

(3)(a)(4)(c)(i)(A) Price. When the price or payment of a vehicle is quoted, the vehicle shall be clearly identified as to make, year, model and if new or used. Except as provided in Subsection ~~[(3)(a)(4)(c)(i)(B),~~ the advertised price must include ~~[all]~~ charges that the customer must pay for the vehicle, including freight or destination charges, dealer preparation, and dealer handling~~[-and additional dealer profit].~~

(4)(B) The following fees are not required to be included in the advertised price that the customer must pay for the vehicle:

(A)(I) dealer document [service] fees;

(B)(II) if optional, undercoating or rustproofing fees; and

(C)(III) taxes or fees[sales tax, or titling and registration fees] required by the state or a county, including sales tax, titling and registration fees, safety and emission fees, and waste tire recycling fees.

(b)(ii) In addition to other advertisements, this pertains to price statements such as "\$.... Buys".

(e)(iii) When "list", "sticker", or words of similar import are used in an advertisement, they may refer only to the manufacturer's suggested retail price. If a supplementary price sticker is used, the advertised price must include all items listed on the supplementary sticker.

(d)(iv) If the customer requests and receives a temporary permit, the temporary permit fee need not be included in the advertised price. [Documentation fees are not required by the state or counties.]

(4)(d) Savings and Discount Claims. Because the intrinsic value of a used vehicle is difficult to establish, specific claims of savings may not be used in an advertisement. This includes statements such as, "Was priced at \$....., now priced at \$....."

(a)(i) The word "wholesale" may not be used in retail automobile advertising.

(b)(ii) When an automotive advertisement contains an offer of a discount on a new vehicle, the amount of the discount must be stated by reference to the manufacturer's suggested retail price of the vehicle.

~~[(5)](e)~~ Down Payments. The amount of the down payment may not be stated in a manner that suggests that it is the selling price of the vehicle. If an advertisement states "You can buy with no money down", or terms of similar import, the customer must be able to leave the dealership with the vehicle without making any outlay of money.

~~[(6)](f)~~ Trade-in Allowance. Statements representing that no other dealer grants greater allowances for trade-ins may not be used. A specific trade-in amount or range of trade-in amounts may not be used in advertising.

~~[(7)](g)(i)(A)~~ Finance. The phrases, "no finance charge", "no carrying charge", or similar expressions may not be used when there is a charge for placing the transaction on a time payment basis. Statements representing or implying that no prospective credit purchaser will be rejected because of inability to qualify for credit, such as "we accept all credit applications", may not be used.

(B) If the amount of the advertised payment changes during the term of the loan, both the payments and the terms of the loan must be disclosed together.

(ii) The phrase "we will pay off your trade no matter what you owe" may not be used.

~~[(8)](h)~~ Unpaid Balance and Repossessions. The term "repossessed" may be used only to describe vehicles that have actually been repossessed from a purchaser. Advertisers offering repossessed vehicles for sale may be required to offer proof of those repossessions. The unpaid balance shall be the full selling price unless otherwise stated.

~~[(9)](i)~~ Current Used. When a used motor vehicle, as defined by Section 41-3-102, of a current series is advertised, the first line of the advertisement must contain the word "used", "pre-owned", "certified used", "certified pre-owned", or other similar term used to designate a used vehicle, or the text must clearly indicate that the vehicle offered is used.

~~[(10)](j)~~ Demonstrators, Executives' and Officials' Cars.

~~[(a)](i)~~ "Demonstrator" means a vehicle that has never been sold or leased to a member of the public.

~~[(b)](ii)~~ Demonstrator vehicles include vehicles used by new vehicle dealers or their personnel for demonstrating performance ability but not vehicles purchased or leased by dealers or their personnel and used as their personal vehicles.

~~[(c)](iii)~~ A demonstrator vehicle may be advertised for sale only by a dealer franchised for the sale of that make of new vehicle.

~~[(d)](iv)~~ An executive's or official's vehicle shall have been used exclusively by an executive of the dealer's franchising manufacturer or distributor, or by an executive of the franchised dealership. These vehicles may not have been sold or leased to a member of the public prior to the appearance of the advertisement.

~~[(e)](v)~~ Demonstrator's, executive's and official's vehicles shall be clearly and prominently advertised as such. Advertisements shall include the year, make, and model of the vehicle offered for sale.

~~[(11)](k)~~ Taxi-cabs, Police, Sheriff, and Highway Patrol Vehicles. Taxi-cabs, police, sheriff, and highway patrol vehicles shall be so identified. These vehicles may not be described by an ambiguous term such as "commercial".

~~[(12)](l)~~ Mileage Statements. When an advertisement quotes the number of miles or a range of miles a vehicle has been driven, the ~~[(h)](e)~~dealer must have written evidence that the vehicle has not been operated in excess of the advertised mileage.

~~[(a)](i)~~ The evidence required by this section shall be the properly completed odometer statement required by Section 41-1a-902.

~~[(b)](ii)~~ If a ~~[(h)](e)~~dealer chooses to advertise specific mileage or a range of miles a vehicle has been driven, the ~~[(h)](e)~~dealer shall

upon request of any prospective purchaser, peace officer, or employee of the division produce all documents in its possession pertaining to that vehicle so that the mileage can be readily verified.

~~[(13)](m)~~ Underselling Claims. Unsupported underselling claims may not be used. Underselling claims include the following: "our prices are guaranteed lower than elsewhere", "money refunded if you can duplicate our values", "we guarantee to sell for less", "we sell for less", "we purchase vehicles for less so we can sell them for less", "highest trade-in allowance", "we give \$300 more in trade than any other dealers". Evidence of supported underselling claims must be contained in the advertisement and shall be produced upon request of a prospective purchaser, peace officer, or employee of the division.

~~[(14)]~~ Would You Take \$..... Use of cards, circulars, or other advertising containing such offers as "would you take \$....., if I could get you \$..... for your car", may not be used.

~~[(15)](n)~~ Free. "Free" may be used in advertising only when the advertiser is offering ~~an unconditional gift. If receipt of the merchandise or service is conditional on a purchase the following conditions must be satisfied:~~

~~(a) The normal price of the merchandise or service to be purchased may not have been increased nor its quantity reduced;~~

~~(b) The advertiser must disclose this condition clearly and conspicuously together with the offer and not by placing an asterisk or symbol next to the word "free" and then referring to the condition in a footnote; and~~

~~(c) The offer must be temporary. For purposes of this subsection, "temporary" means that the offer is made for no more than 30 days during any 12 month period|a gift that is not conditional on the purchase of any property or service.~~

~~[(16)](o)~~ Driving Trial. A free driving trial means that the purchaser may drive the vehicle during the trial period and return it to the dealer within the specified period and obtain a refund of all moneys, signed agreements, or other considerations deposited and a return of any vehicle traded in. The exact terms and conditions of the free driving trial shall be set forth in writing and a copy given to the purchaser at the time of the sale.

~~[(17)](p)~~ Guaranteed. When words such as "guarantee", "warranty", or other terms implying protection are used in advertising, an explanation of the time and coverage of the guarantee or warranty shall be given in clear and concise language. The purchaser shall be provided with a written document stating the specific terms and coverage.

~~[(18)](q)~~ Name Your Own Deal. Statements such as "write your own deal", "name your own price", "name your own monthly payments", "appraise your own vehicle", and phrases of similar import may not be used.

~~[(19)](r)~~ Disclosure of Material Facts. Disclosures of material facts that are contained in advertisements and that involve types of vehicles and transactions shall be made in a clear and conspicuous manner.

~~(a) Factors to be taken into consideration include advertisement layout, headlines, illustrations, type size, contrast, crawl speed and editing.~~

~~(b)(i)~~ Fine print, and mouse print are not acceptable methods of disclosing material facts.

~~[(e)](ii)~~ The disclosure must be made in a typeface and point size comparable to the smallest typeface and point size of the text used throughout the body of the advertisement.

~~[(d)](iii)~~ An asterisk may be used to give additional information about a word or term, however, asterisks or other reference symbols

may not be used as a means of contradicting or substantially changing the meaning of any advertising statements.

~~(20)~~(s) Lease. When an advertisement relates to a lease, the advertisement must make it readily apparent that the transaction advertised is a lease.

~~(a)~~(i) The word "lease" must appear in a prominent position in the advertisement in a typeface and point size comparable to the largest text used to directly advertise the vehicle.

~~(b)~~(ii) Statements that do not use the term "lease" do not constitute adequate disclosure of a lease.

~~(c)~~(iii) Lease advertisements may not contain the phrase "no down payment" or words of similar import if an outlay of money is required to lease the vehicle.

~~(d)~~(iv) Lease terms that are not available to the general public may not be included in advertisements directed at the general public.

~~(e)~~(v) Limitations and qualifications applicable to the lease terms advertised shall be clearly and conspicuously disclosed.

~~(21)~~(t) ~~Television~~ Electronic Medium Disclosures. A disclosure appearing in any television advertisement ~~television advertisement~~ electronic advertising medium must clearly and conspicuously feature all necessary information in a manner that can be read and understood if type is used, or that can be heard and understood if audio is used. ~~Fine print and mouse print do not constitute clear and conspicuous disclosure.~~

~~(22)~~(u) Invoice or Cost. The terms "invoice" or "factory invoice" may be used as long as the dealer is willing to show the factory invoice to the prospective buyer. The term "cost" may not be used.

~~(23)~~(v) Rebate Offers. "Rebate", "cash rebate", or similar terms may be used only when it is clearly and conspicuously stated who is offering the rebate.

~~(24)~~(w) Buy-down Interest Rates. No buy-down interest rate may be advertised unless the dealer discloses the amount of dealer contribution and states that the contribution by the dealership may increase the negotiated price of the vehicle.

~~(25)~~(x) Special Status of Dealership. An automotive advertisement may not falsely imply that the dealer has a special sponsorship, approval status, affiliation, or connection with the manufacturer that is greater or more direct than any other like dealer.

~~(26)~~(y) Price Equaling. An advertisement that expresses a policy of matching or bettering competitor's prices shall fully disclose any conditions that apply and specify the evidence a consumer must present to take advantage of the offer. The evidence requirement may not place an unreasonable burden on the consumer ~~by~~; however, for example requiring the consumer to ~~produce a signed contract from another dealer or to find a vehicle with the identical features~~ bring a written offer made to that consumer by an authorized representative of a dealership on a substantially similar vehicle would be considered reasonable.

~~(27)~~ Van Conversion Advertisements. A dealer may advertise a modified vehicle using the conversion firm's name and may refer to the chassis manufacturer in a less prominent manner, but may not advertise a modified vehicle solely by a chassis manufacturer's name unless enfranchised to sell that make of vehicle.

~~(28)~~(z) Auction. "Auction" or "auction special" and other terms of similar import may be used only in connection with vehicles offered or sold at a bona fide auction.

~~(29)~~(aa) Layout and Type Size. The layout, headlines, illustrations, or type size of a printed advertisement and the broadcast words or pictures of radio, ~~or~~ television, or electronic medium advertisements may not convey or permit an erroneous or misleading

impression as to which vehicle or vehicles are offered at featured prices.

~~(a)~~(i) When an advertisement contains a picture of a vehicle along with a quoted price, the vehicle pictured must be ~~the exact~~ a similar model with ~~identical~~ similar options and accessories as the vehicle advertised.

~~(b)~~(ii) No advertised offer, expression, or display of price, terms, down payment, trade-in allowances, cash difference, savings, or other material terms may be misleading and any necessary qualifications shall be clearly, conspicuously, and accurately set forth to prevent misunderstanding.

~~(c)~~(iii) Qualifying terms and phrases shall be clearly, conspicuously, and accurately set forth as follows:

~~(1)~~(A) in bold print and in type of a size that is capable of being read without unreasonable extra effort;

~~(2)~~(B) in terms that are understandable to the buying public; and

~~(3)~~(C) in close proximity to the qualified representation and not separated or buried by asterisk in some other part of the advertisement.

(bb) An advertisement must disclose a salvage or branded title as prominently as the description of the advertised vehicle.

KEY: taxation, motor vehicles

Date of Enactment or Last Substantive Amendment: ~~June 27, 2008~~2009

Notice of Continuation: March 14, 2007

Authorizing, and Implemented or Interpreted Law: 41-3-210



Tax Commission, Property Tax
R884-24P-19
Appraiser Designation Program
Pursuant to Utah Code Ann. 59-2-701
and 59-2-702

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 32260
FILED: 12/31/2008, 13:55

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These amendments are to update Section R884-24P-19 to reflect proposed changes to the State Tax Commission's Property Tax Division Appraiser Designation Program and recognize increased appraiser education requirements by the Division of Real Estate.

SUMMARY OF THE RULE OR CHANGE: The significant changes are to: 1) change all course requirements from letters to numbers including renumbering the five remaining lettered courses in the 500 series; 2) allow two exam re-takes before requiring a student to re-take a course. This is a policy of the Appraiser Qualification Board; and 3) reduce the continuing education requirement for personal property appraisers from 28 to 14 hours every two years. This requirement does not affect the real property appraisers who are required by the State Division of Real Estate to take 28 hours every 2 years,

including USPAP. The 500 series courses are those courses required for designation, but not required for Division of Real Estate licensing/certification. The appraisal courses will be numbered as: 1-99 Continuing Education; 100-199 Trainee; 200-299 License; 300-399 Certified Residential; 400-499 Certified General; and 500-599 Designation. Subsection 59-2-701(3) authorizes the commission to prescribe additional requirements for any person performing an appraisal for purposes of establishing fair market value for the assessment roll. Subsection 59-2-701(4) authorizes the commission to promulgate a rule establishing qualifications for personal property appraisers exempt from licensure under the Real Estate Appraiser Licensing and Certification Act. Education increase of ad valorem residential designation, Subsection R884-24P-19(5): The current requirement is courses A, B, C, D, and J (five courses). Because the appraiser must be licensed, the proposed minimum requirement is courses 501, 502, 101, 102, 103, 201, 202, 203, and 204 (nine courses). This is an increase of four required courses. Education increase for ad valorem general designation, Subsection R884-24P-19(6): The current requirement is courses A, B, C, D, E, and J (six courses). The appraiser must be certified, either certified residential or certified general. If the appraiser elects certified residential, the proposed minimum requirement is courses 501, 502, 505, 101, 102, 103, 201, 202, 203, 204, 301, 302 and 303 (13 courses). If the appraiser elects to be certified general, the proposed minimum requirement is courses 501, 502, 505, 101, 102, 103, 201, 202, 203, 204, 301, 401, 402, 403, 404, 405, and 406 (17 courses). This is an increase of 7 courses for certified residential and an increase of 11 courses for certified general. Education increase for ad valorem personal property auditor/appraiser, Subsection R884-24P-19(7): No change in number of courses required. The current requirement is four courses; the proposed requirement is four courses. Education increase for ad valorem centrally assessed valuation analyst, Subsection 19(8): The current requirement is courses A, B, E, H, and J (five courses). The proposed education is courses 501 and 504. In addition, the appraiser must be either licensed or certified. Based on the courses listed above, the total number of courses required is: Licensed appraiser: 9 courses, an increase of 4 courses. Certified Residential: 12 courses, an increase of 7 courses. Certified General: 16 courses, an increase of 11 courses. To summarize, in 2008, the Property Tax Division taught all but six of these courses required for designation. The proposed rule would require the teaching of the additional six courses: i.e., 401, 402, 403, 404, 405, and 406 to satisfy the increased Division of Real Estate's education requirements.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-2-701 and 59-2-702

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The total amount of savings or cost to state government is undetermined. However, books and supplies for additional appraisal classes is estimated to be \$9,000 (six additional classes will be conducted with an average of 30 students and a book cost of \$50 per student).
 ❖ LOCAL GOVERNMENTS: The total amount of savings or cost to local government is undetermined. However, the estimated

lodging and per diem cost to local government is \$11,250 (six additional classes with 15 students requiring lodging and per diem of \$125).

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Not applicable since this rule applies only to state and local government employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Not applicable since this rule applies only state and local government employees.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts. D'Arcy Dixon, Commissioner

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

TAX COMMISSION
 PROPERTY TAX
 210 N 1950 W
 SALT LAKE CITY UT 84134, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2009

AUTHORIZED BY: D'Arcy Dixon, Commissioner

R884. Tax Commission, Property Tax.

R884-24P. Property Tax.

R884-24P-19. Appraiser Designation Program Pursuant to Utah Code Ann. Sections 59-2-701 and 59-2-702.

(1) "State certified general appraiser," "state certified residential appraiser," ~~and~~ "state licensed appraiser," and trainee are as defined in Section 61-2b-2.

(2) The ad valorem training and designation program consists of several courses and practica.

(a) Certain courses must be sanctioned by either the Appraiser Qualification Board of the Appraisal Foundation (AQB) or the Western States Association of Tax Administrators (WSATA).

(b) The courses comprising the basic designation program are:

~~(i) Course A - Assessment Practice in Utah;~~

~~(ii)(i) Course [B]101 - Fundamentals of Real Property Appraisal;~~ Basic Appraisal Principles;

~~(ii) Course 103 - Uniform Standards of Professional Appraisal Practice (AQB);~~

~~(iii) Course 501 - Assessment Practice in Utah;~~

~~(iii)(iv) Course [C]502 - Mass Appraisal of Land;~~

~~(iv) Course D - Building Analysis and Valuation;~~

~~(v) Course E - Income Approach to Valuation;~~

] ~~(vii)~~(v) Course ~~[G]~~503 - Development and Use of Personal Property Schedules;

~~(vii)~~(vi) Course ~~[H]~~504 - Appraisal of Public Utilities and Railroads (WSATA); and

~~(viii) Course J - Uniform Standards of Professional Appraisal Practice (AQB).~~

] ~~(e) The Tax Commission may allow equivalent appraisal education to be submitted in lieu of Course B, Course D, Course E, and Course J.~~

~~(e) The Tax Commission may allow equivalent appraisal education to be submitted in lieu of Course B, Course D, Course E, and Course J.~~

] (3) Candidates must attend 90 percent of the classes in each course and pass the final examination for each course with a grade of 70 percent or more to be successful.

(4) There are four recognized ad valorem designations: ad valorem residential appraiser, ad valorem general real property appraiser, ad valorem personal property auditor/appraiser, and ad valorem centrally assessed valuation analyst.

(a) These designations are granted only to individuals employed in a county assessor office or the Property Tax Division, working as appraisers, review appraisers, valuation auditors, or analysts/administrators providing oversight and direction to appraisers and auditors.

(b) An assessor, county employee, or state employee must hold the appropriate designation to value property for ad valorem taxation purposes.

(5) Ad valorem residential appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete courses 501 and 502;

~~(A) Courses A, B, C, D, and J; or~~

~~(B) equivalent appraisal education as allowed under Subsection (2)(e);~~

] (ii) successfully complete a comprehensive residential field practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the appraiser may value residential, vacant, and agricultural property for ad valorem taxation purposes.

(6) Ad valorem general real property appraiser.

(a) In order to qualify for this designation, an individual must:

(i) successfully complete courses 501, 502, and 505;

~~(A) Courses A, B, C, D, E, and J; or~~

~~(B) equivalent appraisal education as allowed under Subsection (2)(e);~~

] (ii) successfully complete a comprehensive field practicum including residential and commercial properties; and

(iii) attain and maintain state ~~licensed or state~~ certified appraiser status.

(b) Upon designation, the appraiser may value all types of locally assessed real property for ad valorem taxation purposes.

(7) Ad valorem personal property auditor/appraiser.

(a) To qualify for this designation, an individual must:

(i) successfully complete courses 101, 103, 501, and 503;

and

~~(A) Courses A, B, G, and J; or~~

~~(B) equivalent appraisal education as allowed under Subsection (2)(e); and~~

] (ii) successfully complete a comprehensive auditing practicum.

(b) Upon designation, the auditor/appraiser may value locally assessed personal property for ad valorem taxation purposes.

(8) Ad valorem centrally assessed valuation analyst.

(a) In order to qualify for this designation, an individual must:

(i) successfully complete courses 501 and 504;

~~(A) Courses A, B, E, H, and J; or~~

~~(B) equivalent appraisal education as allowed under Subsection (2)(e);~~

] (ii) successfully complete a comprehensive valuation practicum; and

(iii) attain and maintain state licensed or state certified appraiser status.

(b) Upon designation, the analyst may value centrally assessed property for ad valorem taxation purposes.

(9) If a candidate fails to receive a passing grade on a final examination, ~~one re-examination is~~ two re-examinations are allowed. If the ~~re-examination is~~ re-examinations are not successful, the individual must retake the failed course. The cost to retake the failed course will not be borne by the Tax Commission.

(10) A practicum involves the appraisal or audit of selected properties. The candidate's supervisor must formally request that the Property Tax Division administer a practicum.

(a) Emphasis is placed on those types of properties the candidate will most likely encounter on the job.

(b) The practicum will be administered by a designated appraiser assigned from the Property Tax Division.

(11) An appraiser trainee referred to in Section 59-2-701 shall be designated an ad valorem associate if the appraiser trainee:

(a) has completed all ~~Tax Commission appraiser~~ education and practicum requirements for designation under Subsections (5), (6), ~~and~~ or (8); and

(b) has not completed the non-education requirements for licensure or certification under Title ~~74~~ 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

(12) An individual holding a specified designation can qualify for other designations by meeting the additional requirements ~~outlined above~~ under Subsections (5), (6), (7), or (8).

(13)~~(a)~~ Maintaining designated status for individuals designated under Subsection (7) requires completion of ~~28~~ 14 hours of Tax Commission approved classroom work every two years.

(b) Maintaining designated status for individuals designated under Subsections (5), (6), and (8) requires maintaining their appraisal license or certification under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification.

~~(14)~~ Upon termination of employment from any Utah assessment jurisdiction, or if the individual no longer works primarily as an appraiser, review appraiser, valuation auditor, or analyst/administrator in appraisal matters, designation is automatically revoked.

(a) Ad valorem designation status may be reinstated if the individual secures employment in any Utah assessment jurisdiction within four years from the prior termination.

(b) If more than four years elapse between termination and rehire, and:

(i) the individual has been employed in a closely allied field, then the individual may challenge the course examinations. Upon successfully challenging all required course examinations, the prior designation status will be reinstated; or

(ii) if the individual has not been employed in real estate valuation or a closely allied field, the individual must retake all required courses and pass the final examinations with a score of 70 percent or more.

(15) All appraisal work performed by Tax Commission designated appraisers shall meet the standards set forth in section 61-2b-27.

(16) If appropriate Tax Commission designations are not held by assessor's office personnel, the appraisal work must be contracted out to qualified private appraisers. An assessor's office may elect to contract out appraisal work to qualified private appraisers even if personnel with the appropriate designation are available in the office. If appraisal work is contracted out, the following requirements must be met:

(a) The private sector appraisers ~~[contracting the]~~performing the contracted work must hold the state certified residential appraiser or state certified general appraiser license issued by the Division of Real Estate of the Utah Department of Commerce. Only state certified general appraisers may appraise nonresidential properties.

(b) All appraisal work shall meet the standards set forth in Section 61-2b-27.

(17) The completion and delivery of the assessment roll required under Section 59-2-311 is an administrative function of the elected assessor.

(a) There are no specific licensure, certification, or educational requirements related to this function.

(b) An elected assessor may complete and deliver the assessment roll as long as the valuations and appraisals included in the assessment roll were completed by persons having the required designations.

KEY: taxation, personal property, property tax, appraisals
Date of Enactment or Last Substantive Amendment: [~~December 1, 2008~~2009]
Notice of Continuation: March 12, 2007
Authorizing, and Implemented or Interpreted Law: 59-2-701; 59-2-702



Tax Commission, Property Tax
R884-24P-24
Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918 through 59-2-924

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 32233
 FILED: 12/18/2008, 09:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 77 (2008) changed the statutes governing the calculation of new growth. The statutory changes impacted this rule. (DAR NOTE: H.B. 77 (2008) is found at Chapter 61, Laws of Utah 2008, and was effective 01/01/2009.)

SUMMARY OF THE RULE OR CHANGE: The proposed amendment modifies the calculation of new growth to reflect the fact that the certified rate calculation no longer uses current year personal property values, but prior year personal property values.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-2-918 through 59-2-924

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any impacts were considered in H.B. 77 (2008).
- ❖ LOCAL GOVERNMENTS: None--Any impacts were considered in H.B. 77 (2008).
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Any impacts were considered in H.B. 77 (2008).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The move from current to prior year personal property values makes compliance with property tax laws easier for businesses.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts. D'Arcy Dixon, Commissioner

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

TAX COMMISSION
 PROPERTY TAX
 210 N 1950 W
 SALT LAKE CITY UT 84134, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 02/17/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 02/24/2009

AUTHORIZED BY: D'Arcy Dixon, Commissioner

R884. Tax Commission, Property Tax.

R884-24P. Property Tax.

R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918 through 59-2-924.

(1) The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

(a) If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

(i) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax ~~[changes]~~Changes.

(ii) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

(b) The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

(2) The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

- (a) New property is created by a new legal description; or
- (b) The status of the improvements on the property has changed.
- (c) In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

(d) If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in Subsection (1).

(3) Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

(4)(a) All completion dates specified for the disclosure of property tax information must be strictly observed.

(b) Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in Subsection (1).

(5) If the proposed rate exceeds the certified rate, jurisdictions in which the fiscal year is the calendar year are required to hold public hearings even if budget hearings have already been held for that fiscal year.

(6) If the cost of public notice required under Sections 59-2-918 and 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

(7) Calculation of the amount and percentage increase in property tax revenues required by Sections 59-2-918 and 59-2-919, shall be computed by comparing property taxes levied for the current year with property taxes collected the prior year, without adjusting for revenues attributable to new growth.

(8) If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

(9) The value of property subject to the uniform fee under Section 59-2-405 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

(10) The value and taxes of property subject to the uniform fee under Section 59-2-405, as well as tax increment distributions and related taxable values of redevelopment renewal agencies, are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-913.

(11) The following formulas and definitions shall be used in determining new growth:

(a) Actual new growth shall be computed as follows:

(i) the taxable value of property assessed by the commission and locally assessed real property for the current year adjusted for redevelopment minus year-end taxable value of property assessed by the commission and locally assessed real property for the previous year adjusted for redevelopment; then

(ii) plus or minus the difference between the taxable value of locally assessed personal property for the prior year adjusted for

redevelopment and the year-end taxable value of locally assessed personal property for the year that is two years prior to the current year adjusted for redevelopment; then

~~[(ii)](iii)~~ plus or minus changes in value as a result of factoring; then

~~[(iii)](iv)~~ plus or minus changes in value as a result of reappraisal; then

~~[(iv)](v)~~ plus or minus any change in value resulting from a legislative mandate or court order.

(b) Net annexation value is the taxable value for the current year adjusted for redevelopment of all properties annexed into an entity during the previous calendar year minus the taxable value for the previous year adjusted for redevelopment for all properties annexed out of the entity during the previous calendar year.

(c) New growth is equal to zero for an entity with:

- (i) an actual new growth value less than zero; and
- (ii) a net annexation value greater than or equal to zero.

(d) New growth is equal to actual new growth for:

(i) an entity with an actual new growth value greater than or equal to zero; or

(ii) an entity with:

(A) an actual new growth value less than zero; and

(B) the actual new growth value is greater than or equal to the net annexation value.

(e) New growth is equal to the net annexation value for an entity with:

(i) a net annexation value less than zero; and

(ii) the actual new growth value is less than the net annexation value.

(f) Adjusted new growth equals new growth multiplied by the mean collection rate for the previous five years.

(12)(a) For purposes of determining the certified tax rate, ad valorem property tax revenues budgeted by a taxing entity for the prior year are calculated by:

(i) increasing or decreasing the adjustable taxable value from the prior year Report 697 by the average of the percentage net change in the value of taxable property for the equalization period for the three calendar years immediately preceding the current calendar year; and

(ii) multiplying the result obtained in Subsection (12)(a)(i) by:

(A) the percentage of property taxes collected for the five calendar years immediately preceding the current calendar year; and

(B) the prior year approved tax rate.

(b) If a taxing entity levied the prior year approved tax rate, the budgeted revenues determined under Subsection (12)(a) are reflected in the budgeted revenue column of the prior year Report 693.

(13) Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

(a) the valuation bases for the funds are contained within identical geographic boundaries; and

(b) the funds are under the levy and budget setting authority of the same governmental entity.

(14) For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

(15) No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

KEY: taxation, personal property, property tax, appraisals
**Date of Enactment or Last Substantive Amendment: [~~December 1,~~
~~2008]~~2009**

Notice of Continuation: March 12, 2007

**Authorizing, and Implemented or Interpreted Law: 59-2-918
through 59-2-924**



End of the Notices of Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (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.

Human Services, Services for People with Disabilities **R539-15-4** Limitations

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 32251
FILED: 12/28/2008, 18:22

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this emergency rule is to provide standards for eligibility for the Division's Time-Limited Respite Care Program.

SUMMARY OF THE RULE OR CHANGE: Funds may be limited for less than six months or lesser amounts to participants to keep expenditures within Division appropriations. The Division may freeze program participation and return unused funds to the Legislature.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 63A-5-102(3) and (6)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** Savings to the state budget is \$100,000.
- ❖ **LOCAL GOVERNMENTS:** There is no cost to local government because no contracts were created for local government.
- ❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** There is some potential for lost revenue to small businesses that provide respite care since Department of Services for People with Disabilities may be returning unspent funds. However, no providers are expecting these funds.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs for affected persons because no person or small business is anticipating funding from these returned monies.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Small businesses who provide respite care may be affected by this rule. Lisa-Michelle Church, Executive Director

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law. Regular rulemaking would cause the program to obligate additional money that needs to be limited to meet budget reductions.

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

HUMAN SERVICES
SERVICES FOR PEOPLE WITH DISABILITIES
Room 411
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO: Steven Bradford at the above address, by phone at 801-538-4197, by FAX at 801-538-4279, or by Internet E-mail at sbradford@utah.gov

THIS RULE IS EFFECTIVE ON: 12/29/2008

AUTHORIZED BY: Alan Ormsby, Director

R539. Human Services, Services for People with Disabilities.**R539-15. Time-Limited Respite Care Program.****R539-15-4. Limitations.**

(1) A Person who meets eligibility requirements for the Time-Limited Respite Care Program is limited to no more than \$1,000 for respite care services from July 1, 2008 to June 30, 2009.

(2) Funds are granted for 12 months. After six months, the Person must report the expenditure of funds to the Division. The use of the respite care funds will be evaluated by the Division. ~~[If there is no plan to use the funds or funds are unused, those funds may be reallocated to another eligible Person.]~~ Funds may be limited for less than six months or lesser amounts to participants, if necessary, to keep expenditures within Division appropriations as required by Section

63A-5-102(3)and(6). Further, should budgetary restraints require it, the Division may freeze program participation and return unused funds to the Legislature.

(3) Persons receiving ongoing services are not eligible for time-limited respite services.

KEY: disabilities

Date of Enactment or Last Substantive Amendment: December 29, 2008

Authorizing, and Implemented or Interpreted Law: 62A-5-103

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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, Licensing **R432-1** General Health Care Facility Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 32245
FILED: 12/24/2008, 11:31

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act authorizes the Utah Department of Health to promulgate rules for the licensing of health care facilities. This rule defines the standard terms for all licensed health care facilities and agencies.

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 from the public.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department's Health Facility Committee authorized continuation of this rule on 02/20/2008. The Department agrees with the need to continue the rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Wanda Patterson or Tracy Freeman at the above address, by phone at 435-251-8893 or 801-538-6571, by FAX at 435-251-8896 or 801-538-6163, or by Internet E-mail at wpatterson@utah.gov or tfreeman@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 12/24/2008



Health, Health Systems Improvement, Licensing **R432-2** General Licensing Provisions

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 32249
FILED: 12/24/2008, 22:23

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act authorizes the Utah Department of Health to promulgate rules for the licensing of health care facilities. This rule defines the standards that health care facilities and agencies must follow in order to obtain a license.

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 from the public.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department's Health

Facility Committee authorized continuation of this rule on 02/20/2008. The Department agrees with the need to continue the rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Wanda Patterson or Tracy Freeman at the above address, by phone at 435-251-8893 or 801-538-6571, by FAX at 435-251-8896 or 801-538-6163, or by Internet E-mail at wpatterson@utah.gov or tfreeman@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 12/24/2008



Health, Health Systems Improvement,
Licensing
R432-3
General Health Care Facility Rules
Inspection and Enforcement

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**
DAR FILE No.: 32246
FILED: 12/24/2008, 11:32

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act authorizes the Utah Department of Health to promulgate rules for the licensing of health care facilities. This rule delineates the role and responsibility of the Department in the enforcement of rules and regulations pertaining to health care facilities and agencies regulated by Title 26, Chapter 21; and provides guidelines and criteria to ensure that sanctions are applied consistently and appropriately.

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 from the public.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be

required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department's Health Facility Committee authorized continuation of this rule on 02/20/2008. The Department agrees with the need to continue the rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Tracy Freeman or Wanda Patterson at the above address, by phone at 801-538-6571 or 435-251-8893, by FAX at 801-538-6163 or 435-251-8896, or by Internet E-mail at tfreeman@utah.gov or wpatterson@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 12/24/2008



Health, Health Systems Improvement,
Licensing
R432-4
General Construction

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**
DAR FILE No.: 32247
FILED: 12/24/2008, 11:34

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act authorizes the Utah Department of Health to promulgate rules for the licensing of health care facilities. This rule promotes the health and safety of individuals receiving services in general hospitals, specialty facilities, inpatient hospices, birthing centers, abortion clinics, and small health care facilities by establishing basic construction standards for the common use of these facilities.

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 from the public.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be

required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department's Health Facility Committee authorized continuation of this rule on 02/20/2008. The Department agrees with the need to continue the rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Wanda Patterson or Tracy Freeman at the above address, by phone at 435-251-8893 or 801-538-6571, by FAX at 435-251-8896 or 801-538-6163, or by Internet E-mail at wpatterson@utah.gov or tfreeman@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 12/24/2008

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**Health, Health Systems Improvement,
Licensing
R432-5
Nursing Facility Construction**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR File No.: 32250
FILED: 12/24/2008, 22:24

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act authorizes the Utah Department of Health to promulgate rules for the licensing of health care facilities. This rule establishes, and provides for the enforcement of specialized construction standards to be used in licensed nursing care facilities.

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 from the public.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department's Health

Facility Committee authorized continuation of this rule on 02/20/2008. The Department agrees with the need to continue the rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Wanda Patterson or Tracy Freeman at the above address, by phone at 435-251-8893 or 801-538-6571, by FAX at 435-251-8896 or 801-538-6163, or by Internet E-mail at wpatterson@utah.gov or tfreeman@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 12/24/2008

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**Health, Health Systems Improvement,
Licensing
R432-6
Assisted Living Facility General
Construction**

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR File No.: 32253
FILED: 12/30/2008, 07:11

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act authorizes the Utah Department of Health to promulgate rules for the licensing of health care facilities. This rule establishes and provides for the enforcement of specialized construction standards to be used in licensed assisted living facilities.

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 from the public.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be required by Title 26, Chapter 21, of the Health Facility Licensure and Inspection Act. The Department's Health Facility Committee authorized continuation of this rule on

02/20/2008. The Department agrees with the need to continue the rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Wanda Patterson or Tracy Freeman at the above address, by phone at 435-251-8893 or 801-538-6571, by FAX at 435-251-8896 or 801-538-6163, or by Internet E-mail at wpatterson@utah.gov or tfreeman@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 12/30/2008



School and Institutional Trust Lands,
Administration
R850-110
Off-Highway Vehicle Designations

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE No.: 32218
FILED: 12/16/2008, 07:54

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 41-22-10.1 allows for

lands administered by the School and Institutional Trust Lands Administration to be designated for Off-Highway Vehicle (OHV) use. Subsection 53C-1-302(1)(a)(ii) authorizes the Director of the School and Institutional Trust Lands Administration to require off-highway vehicle use designation.

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 concerning this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The need for designating various roads, trails, and areas for various classes of OHV use is becoming more and more critical as this form of recreation becomes more popular. This rule is needed to help protect the value of lands held in trust for the various beneficiaries. Therefore, this rule should be continued.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
Room 500
675 E 500 S
SALT LAKE CITY UT 84102-2818, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kim S. Christy at the above address, by phone at 801-538-5183, by FAX at 801-355-0922, or by Internet E-mail at kimchristy@utah.gov

AUTHORIZED BY: Kevin S. Carter, Director

EFFECTIVE: 12/16/2008



End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules. The extension permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed extensions for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date. The five-year review extension is governed by Subsection 63G-3-305(4) and (5).

Transportation

Motor Carrier

No. 32264: R909-3. Standards for Utah School Buses.

ENACTED OR LAST REVIEWED: 01/05/2004 (No. 26880, 5YR, filed 01/05/2004 at 3:36 p.m., published 02/01/2004).

EXTENDED DUE DATE: 05/05/2009

End of the Notices of Five-Year Review Extensions 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

No. 32053 (NEW): R590-249. Secondary Medical Condition Exclusion.
Published: November 1, 2008
Effective: December 31, 2008

Commerce

Occupational and Professional Licensing
No. 32071 (AMD): R156-40. Recreational Therapy Practice Act Rules.
Published: November 15, 2008
Effective: December 22, 2008

No. 32090 (AMD): R156-46a. Hearing Instrument Specialist Licensing Act Rules.
Published: November 15, 2008
Effective: December 22, 2008

Community and Culture

Arts and Museums, Museum Services
No. 32108 (NEW): R210-100. Certified Local Museum Designation.
Published: November 15, 2008
Effective: January 1, 2009

Health

Health Care Financing, Coverage and Reimbursement Policy
No. 32102 (AMD): R414-1-5. Incorporations by Reference.
Published: November 15, 2008
Effective: January 1, 2009

No. 32103 (NEW): R414-42. Telehealth Home Health Services.
Published: November 15, 2008
Effective: December 29, 2008

Insurance

Administration
No. 31903 (NEW): R590-248. Mandatory Fraud Reporting Rule.
Published: September 15, 2008
Effective: December 30, 2008

Labor Commission

Industrial Accidents
No. 32054 (AMD): R612-4-2. Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund.
Published: November 1, 2008
Effective: January 1, 2009

Natural Resources

Parks and Recreation
No. 32095 (AMD): R651-301. State Recreation Fiscal Assistance Programs.
Published: November 15, 2008
Effective: December 22, 2008

No. 32094 (AMD): R651-634-1. User Permits and Fees.
Published: November 15, 2008
Effective: December 22, 2008

Public Safety

Criminal Investigations and Technical Services, Criminal Identification
No. 32088 (AMD): R722-310. Regulation of Bail Bond Recovery and Enforcement Agents.
Published: November 15, 2008
Effective: January 1, 2009

Transportation

Administration
No. 32091 (AMD): R907-67. Debarment of Contractors from Work on Department Projects -- Reasons.
Published: November 15, 2008
Effective: December 24, 2008

Motor Carrier
No. 32089 (AMD): R909-16. Overall Motor Carrier Safety Standing.
Published: November 15, 2008
Effective: December 24, 2008

**2009 RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2009, including notices of effective date received through December 31, 2008, the effective dates of which are no later than January 15, 2009. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *Index of Changes*. Nonsubstantive changes, while not published in the *Bulletin*, do become part of the *Utah Administrative Code (Code)* and are included in this *Index*, as well as 120-Day (Emergency) rules that do not become part of the *Code*. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Agriculture and Food					
<u>Regulatory Services</u>					
R70-630	Water Vending Machine	32289	5YR	01/08/2009	Not Printed
Career Service Review Board					
<u>Administration</u>					
R137-1-2	Definitions	32286	EMR	01/08/2009	Not Printed
R137-1-22	The Board's Appellate/Step 6 Procedures	32288	EMR	01/08/2009	Not Printed
Commerce					
<u>Occupational and Professional Licensing</u>					
R156-56	Utah Uniform Building Standard Act Rules	32001	AMD	01/01/2009	2008-21/9
<u>Real Estate</u>					
R162-2-2	Licensing Procedure	32115	AMD	01/08/2009	2008-22/19

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CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R162-103	Appraisal Education Requirements	31998	AMD	01/01/2009	2008-21/23
<u>Securities</u>					
R164-15-2	Notice Filings for Rule 506 Offerings	32039	AMD	01/12/2009	2008-21/28
Community and Culture					
<u>Arts and Museums, Museum Services</u>					
R210-100	Certified Local Museum Designation	32108	NEW	01/01/2009	2008-22/21
Crime Victim Reparations					
<u>Administration</u>					
R270-2	Crime Victim Reparations Adjudicative Proceedings	32196	NSC	01/12/2009	Not Printed
R270-3	ADA Complaint Procedure	32197	NSC	01/12/2009	Not Printed
Education					
<u>Administration</u>					
R277-109-1	Definitions	32139	AMD	01/07/2009	2008-23/2
R277-110-1	Definitions	32140	AMD	01/07/2009	2008-23/2
R277-437	Student Enrollment Options	32265	5YR	01/05/2009	Not Printed
R277-486	Professional Staff Cost Program	32266	5YR	01/05/2009	Not Printed
R277-495	Required Policies for Electronic Devices in Public Schools	32141	NEW	01/07/2009	2008-23/3
R277-502	Educator Licensing and Data Retention	32142	AMD	01/07/2009	2008-23/5
R277-518	Applied Technology Education Licenses	32143	AMD	01/07/2009	2008-23/7
R277-520-1	Definitions	32144	AMD	01/07/2009	2008-23/9
R277-524	Paraprofessional Qualifications	32267	5YR	01/05/2009	Not Printed
R277-527	International Guest Teachers	32145	NEW	01/07/2009	2008-23/11
R277-724	Criteria for Sponsors Recruiting Day Care Facilities in the Child and Adult Care Food Program	32268	5YR	01/05/2009	Not Printed
R277-735	Corrections Education Programs	32269	5YR	01/05/2009	Not Printed
R277-911	Secondary Career and Technical Education	32146	AMD	01/07/2009	2008-23/12
<u>Rehabilitation</u>					
R280-201	USOR ADA Complaint Procedure	32270	5YR	01/05/2009	Not Printed
R280-202	USOE Procedures for Individuals with the Most Severe Disabilities	32271	5YR	01/05/2009	Not Printed
Environmental Quality					
<u>Air Quality</u>					
R307-121	General Requirements: Clean Fuel Vehicle Tax Credits	31928	AMD	01/01/2009	2008-19/25
R307-121	General Requirements: Clean Air and Efficient Vehicle Tax Credit	32275	5YR	01/06/2009	Not Printed
<u>Solid and Hazardous Waste</u>					
R315-1-1	Definitions	32137	AMD	01/15/2009	2008-23/17
R315-2	General Requirements - Identification and Listing of Hazardous Waste	32138	AMD	01/15/2009	2008-23/19
Health					
<u>Health Care Financing, Coverage and Reimbursement Policy</u>					
R414-1-5	Incorporations by Reference	32102	AMD	01/01/2009	2008-22/22

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>Center for Health Data, Health Care Statistics</u>					
R428-12	Health Data Authority Survey of Enrollees in Health Maintenance Organizations and Preferred Provider Organizations	32118	AMD	01/08/2009	2008-23/21
<u>Epidemiology and Laboratory Services, Laboratory Improvement</u>					
R444-14	Rule for the Certification of Environmental Laboratories	31910	AMD	01/12/2009	2008-18/42
Housing Corporation (Utah)					
<u>Administration</u>					
R460-7-2	Definitions	32211	NSC	01/12/2009	Not Printed
Human Services					
<u>Administration, Administrative Services, Licensing</u>					
R501-1	General Provisions	32190	NSC	01/12/2009	Not Printed
R501-4-7	Administrative Hearing	32191	NSC	01/12/2009	Not Printed
R501-12-8	Safety	32192	NSC	01/12/2009	Not Printed
R501-14	Background Screening	32193	NSC	01/12/2009	Not Printed
Labor Commission					
<u>Industrial Accidents</u>					
R612-4-2	Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund	32054	AMD	01/01/2009	2008-21/66
Natural Resources					
<u>Wildlife Resources</u>					
R657-13	Taking Fish and Crayfish	32129	AMD	01/07/2009	2008-23/23
R657-60-2	Definitions	32081	AMD	01/07/2009	2008-22/28
Pardons (Board Of)					
<u>Administration</u>					
R671-201	Original Parole Grant Hearing Schedule and Notice	32067	AMD	03/15/2009	2008-22/29
R671-312	Commutation Hearings for Death Penalty Cases	32065	AMD	03/15/2009	2008-22/30
R671-405	Parole Termination	32066	AMD	03/15/2009	2008-22/33
Public Safety					
<u>Criminal Investigations and Technical Services, Criminal Identification</u>					
R722-310	Regulation of Bail Bond Recovery and Enforcement Agents	32088	AMD	01/01/2009	2008-22/34
R722-900	Review and Challenge of Criminal Record	32208	NSC	01/12/2009	Not Printed
Public Service Commission					
<u>Administration</u>					
R746-365	Intercarrier Service Quality	32283	5YR	01/06/2009	Not Printed
Regents (Board Of)					
<u>University of Utah, Museum of Natural History (Utah)</u>					
R807-1	Curation of Collections from State Lands	32284	5YR	01/06/2009	Not Printed

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CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Tax Commission					
<u>Auditing</u>					
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	32035	AMD	01/01/2009	2008-21/76
R865-12L-6	Place of Transaction Pursuant to Utah Code Ann. Section 59-12-207	32034	AMD	01/01/2009	2008-21/78
R865-12L-12	Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-204	32032	AMD	01/01/2009	2008-21/79
R865-12L-13	Repairmen and Servicemen Pursuant to Utah Code Ann. Section 59-12-204	32015	AMD	01/01/2009	2008-21/79
R865-19S-12	Filing of Returns Pursuant to Utah Code Ann. Sections 59-12-107 and 59-12-118	32008	AMD	01/01/2009	2008-21/80
R865-19S-27	Retail Sales Defined Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103(1)(g)	32017	AMD	01/01/2009	2008-21/81
R865-19S-29	Wholesale Sale Defined Pursuant to Utah Code Ann. Section 59-12-102	32030	AMD	01/01/2009	2008-21/82
R865-19S-90	Telephone Service Pursuant to Utah Code Ann. Section 59-12-103	32007	AMD	01/01/2009	2008-21/83
R865-19S-92	Computer software and Other Related Transactions Pursuant to Utah Code Ann. Section 59-12-103	32016	AMD	01/01/2009	2008-21/84
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	32012	AMD	01/01/2009	2008-21/85
R865-19S-119	Certain Transactions Involving Food and Lodging Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104	32013	AMD	01/01/2009	2008-21/86
R865-21U-3	Liability of Retailers Pursuant to Utah Code Ann. Section 59-12-107	32033	AMD	01/01/2009	2008-21/87
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	32010	AMD	01/01/2009	2008-21/87
<u>Motor Vehicle</u>					
R873-22M-20	Aircraft Registration Pursuant to Utah Code Ann. Sections 72-10-102, 72-10-109 through 72-10-112	32045	AMD	01/01/2009	2008-21/88
R873-22M-23	Registration Information Update for Vintage Vehicle Special Group License Plates Pursuant to Utah Code Ann. Section 41-1a-1209	32037	AMD	01/01/2009	2008-21/89
<u>Property Tax</u>					
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	32063	AMD	01/01/2009	2008-21/90
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	32036	AMD	01/01/2009	2008-21/92
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	32044	AMD	01/01/2009	2008-21/93
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	32052	AMD	01/01/2009	2008-21/97
Transportation					
<u>Administration</u>					
R907-3	Administrative Procedure	32217	NSC	01/12/2009	Not Printed

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R907-64	Longitudinal and Wireless Access to Interstate Highway Rights-of-Way for Installation of Telecommunications Facilities	31961	AMD	01/12/2009	2008-20/25
R907-66	Incorporation and Use of Federal Acquisition Regulations on Federal-Aid and State-Financed Transportation Projects	32213	NSC	01/12/2009	Not Printed
<u>Motor Carrier</u>					
R909-3	Standards for Utah School Buses	32274	5YR	01/05/2009	Not Printed
R909-19	Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification	32215	NSC	01/12/2009	Not Printed
<u>Program Development</u>					
R926-11	Rules for Permitting of Eligible Vehicles for a Clean Fuel Special Group License Plate On or After January 1, 2009	32076	NEW	01/05/2009	2008-22/39
<u>Preconstruction</u>					
R930-3	Highway Noise Abatement	32000	AMD	01/12/2009	2008-21/98
R930-3	Highway Noise Abatement	31925	AMD	01/12/2009	2008-19/48
Transportation Commission					
<u>Administration</u>					
R940-3	Procedures for Transportation Infrastructure Loan Fund Assistance	31920	NEW	01/12/2009	2008-18/62
Workforce Services					
<u>Employment Development</u>					
R986-200-240	Additional Payments Available Under Certain Circumstances	32114	AMD	01/06/2009	2008-22/41

RULES INDEX - BY KEYWORD (SUBJECT)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
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NEW = New rule	5YR = Five-Year Review
EXD = Expired	

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>ADA complaint procedures</u>					
Crime Victim Reparations, Administration	32197	R270-3	NSC	01/12/2009	Not Printed
<u>administrative procedures</u>					
Crime Victim Reparations, Administration	32196	R270-2	NSC	01/12/2009	Not Printed
	32217	R907-3	NSC	01/12/2009	Not Printed
<u>air pollution</u>					
Environmental Quality, Air Quality	31928	R307-121	AMD	01/01/2009	2008-19/25
	32275	R307-121	5YR	01/06/2009	Not Printed

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<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<u>aircraft</u>					
Tax Commission, Motor Vehicle	32045	R873-22M-20	AMD	01/01/2009	2008-21/88
	32037	R873-22M-23	AMD	01/01/2009	2008-21/89
<u>alternative fuels</u>					
Environmental Quality, Air Quality	31928	R307-121	AMD	01/01/2009	2008-19/25
	32275	R307-121	5YR	01/06/2009	Not Printed
<u>appellate procedures</u>					
Crime Victim Reparations, Administration	32196	R270-2	NSC	01/12/2009	Not Printed
<u>appraisals</u>					
Tax Commission, Property Tax	32063	R884-24P-27	AMD	01/01/2009	2008-21/90
	32036	R884-24P-47	AMD	01/01/2009	2008-21/92
	32044	R884-24P-53	AMD	01/01/2009	2008-21/93
	32052	R884-24P-70	AMD	01/01/2009	2008-21/97
<u>archaeological resources</u>					
Regents (Board Of), University of Utah, Museum of Natural History (Utah)	32284	R807-1	5YR	01/06/2009	Not Printed
<u>assignments</u>					
Education, Administration	32144	R277-520-1	AMD	01/07/2009	2008-23/9
<u>background screening</u>					
Human Services, Administration, Administrative Services, Licensing	32193	R501-14	NSC	01/12/2009	Not Printed
<u>bail bond enforcement agent</u>					
Public Safety, Criminal Investigations and Technical Services, Criminal Identification	32088	R722-310	AMD	01/01/2009	2008-22/34
<u>bail bond recovery agent</u>					
Public Safety, Criminal Investigations and Technical Services, Criminal Identification	32088	R722-310	AMD	01/01/2009	2008-22/34
<u>barrier</u>					
Transportation, Preconstruction	32000	R930-3	AMD	01/12/2009	2008-21/98
	31925	R930-3	AMD	01/12/2009	2008-19/48
<u>bonuses</u>					
Transportation, Administration	32213	R907-66	NSC	01/12/2009	Not Printed
<u>building codes</u>					
Commerce, Occupational and Professional Licensing	32001	R156-56	AMD	01/01/2009	2008-21/9
<u>building inspections</u>					
Commerce, Occupational and Professional Licensing	32001	R156-56	AMD	01/01/2009	2008-21/9
<u>C plate</u>					
Transportation, Program Development	32076	R926-11	NEW	01/05/2009	2008-22/39
<u>capital punishment</u>					
Pardons (Board Of), Administration	32065	R671-312	AMD	03/15/2009	2008-22/30
<u>career and technical education</u>					
Education, Administration	32143	R277-518	AMD	01/07/2009	2008-23/7

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
	32146	R277-911	AMD	01/07/2009	2008-23/12
<u>certifications</u>					
Transportation, Motor Carrier	32215	R909-19	NSC	01/12/2009	Not Printed
<u>certified local inspector</u>					
Human Services, Administration, Administrative Services, Licensing	32191	R501-4-7	NSC	01/12/2009	Not Printed
<u>certified local museums</u>					
Community and Culture, Arts and Museums, Museum Services	32108	R210-100	NEW	01/01/2009	2008-22/21
<u>charities</u>					
Tax Commission, Auditing	32008	R865-19S-12	AMD	01/01/2009	2008-21/80
	32017	R865-19S-27	AMD	01/01/2009	2008-21/81
	32030	R865-19S-29	AMD	01/01/2009	2008-21/82
	32007	R865-19S-90	AMD	01/01/2009	2008-21/83
	32016	R865-19S-92	AMD	01/01/2009	2008-21/84
	32012	R865-19S-113	AMD	01/01/2009	2008-21/85
	32013	R865-19S-119	AMD	01/01/2009	2008-21/86
<u>clean fuel</u>					
Transportation, Program Development	32076	R926-11	NEW	01/05/2009	2008-22/39
<u>collections</u>					
Tax Commission, Auditing	32034	R865-12L-6	AMD	01/01/2009	2008-21/78
	32032	R865-12L-12	AMD	01/01/2009	2008-21/79
	32015	R865-12L-13	AMD	01/01/2009	2008-21/79
<u>complaints</u>					
Education, Rehabilitation	32270	R280-201	5YR	01/05/2009	Not Printed
<u>contractors</u>					
Commerce, Occupational and Professional Licensing	32001	R156-56	AMD	01/01/2009	2008-21/9
<u>contracts</u>					
Transportation, Administration	32213	R907-66	NSC	01/12/2009	Not Printed
<u>criminal records</u>					
Public Safety, Criminal Investigations and Technical Services, Criminal Identification	32208	R722-900	NSC	01/12/2009	Not Printed
<u>curation</u>					
Regents (Board Of), University of Utah, Museum of Natural History (Utah)	32284	R807-1	5YR	01/06/2009	Not Printed
<u>custody</u>					
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	32271	R280-202	5YR	01/05/2009	Not Printed
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<u>facilities</u>					
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<u>infrastructure assistance</u> Transportation Commission, Administration	31920	R940-3	NEW	01/12/2009	2008-18/62
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	32015	R865-12L-13	AMD	01/01/2009	2008-21/79
	32008	R865-19S-12	AMD	01/01/2009	2008-21/80
	32017	R865-19S-27	AMD	01/01/2009	2008-21/81
	32030	R865-19S-29	AMD	01/01/2009	2008-21/82
	32007	R865-19S-90	AMD	01/01/2009	2008-21/83
	32016	R865-19S-92	AMD	01/01/2009	2008-21/84
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DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

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ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

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ABBREVIATIONS

AMD = Amendment
 CPR = Change in proposed rule
 EMR = Emergency rule (120 day)
 NEW = New rule
 EXD = Expired

NSC = Nonsubstantive rule change
 REP = Repeal
 R&R = Repeal and reenact
 5YR = Five-Year Review

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	31462	R307-102	NSC	06/18/2008	Not Printed
	31461	R307-103	NSC	06/18/2008	Not Printed
	31809	R307-103-2	NSC	10/01/2008	Not Printed
	31426	R307-107	NSC	09/04/2008 see 5YR DAR No. 31927	Not Printed
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	31557	R307-110-28	AMD	11/10/2008 see CPR in 10/01/2008 Bulletin	2008-13/34
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	30698	R307-115	AMD	02/08/2008	2007-23/28
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	31389	R307-121	AMD	08/07/2008	2008-11/87
	31928	R307-121	AMD	01/01/2009	2008-19/25
	30889	R307-121-3	NSC	01/30/2008	Not Printed
	31390	R307-123	NEW	10/08/2008 see CPR in 09/01/2008 Bulletin	2008-11/89
	31390	R307-123	CPR	10/08/2008	2008-17/71
	31558	R307-150-4	AMD	09/04/2008	2008-13/35
	30962	R307-170	5YR	02/08/2008	2008-5/41
	30699	R307-170-7	AMD	02/08/2008	2007-23/29
	30963	R307-202	5YR	02/08/2008	2008-5/42
	30964	R307-203	5YR	02/08/2008	2008-5/43
	30430	R307-214	AMD	01/11/2008	2007-19/12
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	30832	R307-221-2	NSC	02/08/2008	Not Printed
	30702	R307-222	AMD	02/08/2008	2007-23/36
	30967	R307-222	5YR	02/08/2008	2008-5/44
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	30703	R307-223	AMD	02/08/2008	2007-23/38
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	30704	R307-224-2	AMD	02/08/2008	2007-23/39
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	31559	R307-250	AMD	11/10/2008 see CPR in 10/01/2008 Bulletin	2008-13/37
	31559	R307-250	CPR	11/10/2008	2008-19/58
	32073	R307-250	NSC	12/17/2008	Not Printed
	31388	R307-302-3	AMD	08/07/2008	2008-11/91
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	30709	R307-401-14	AMD	02/08/2008	2007-23/42
	30431	R307-405	AMD	01/11/2008	2007-19/15
	30707	R307-801	AMD	02/08/2008	2007-23/45
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	30844	R873-22M-34	AMD	02/25/2008	2008-1/38
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	32074	R81-1-25	NSC	12/17/2008	Not Printed
	31289	R81-1-26	AMD	06/27/2008	2008-10/16
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	32059	R652-6-200	NSC	11/17/2008	Not Printed
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	32093	R199-11-7	NSC	12/17/2008	Not Printed
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	31536	R861-1A-3	AMD	08/18/2008	2008-13/111
	31386	R861-1A-13	NSC	08/18/2008	Not Printed
	31633	R861-1A-16	AMD	09/09/2008	2008-14/96
	30688	R861-1A-20	AMD	01/11/2008	2007-23/68
	31947	R861-1A-20	AMD	12/04/2008	2008-19/45
	31394	R861-1A-22	NSC	08/18/2008	Not Printed
	31634	R861-1A-23	AMD	09/09/2008	2008-14/98
	30589	R861-1A-24	AMD	01/11/2008	2007-21/69
	31395	R861-1A-24	NSC	08/18/2008	Not Printed
	30717	R861-1A-26	AMD	01/11/2008	2007-23/69
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	31638	R861-1A-27	AMD	09/09/2008	2008-14/101
	31403	R861-1A-28	NSC	08/18/2008	Not Printed

	31404	R861-1A-29	NSC	08/18/2008	Not Printed
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	31407	R861-1A-31	NSC	08/18/2008	Not Printed
	31412	R861-1A-32	NSC	08/18/2008	Not Printed
	30838	R861-1A-40	AMD	02/25/2008	2008-1/32
	30835	R861-1A-42	AMD	02/25/2008	2008-1/33
	30780	R861-1A-43	AMD	01/25/2008	2007-24/24
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	30895	R307-214	5YR	01/11/2008	2008-3/77
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	31496	R311-203	AMD	08/18/2008	2008-12/16
	31497	R311-206-3	AMD	08/18/2008	2008-12/19
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	31817	R671-515	AMD	10/13/2008	2008-17/66
	31655	R671-516	5YR	07/03/2008	2008-15/105
	31818	R671-516	AMD	10/13/2008	2008-17/67
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