UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed November 17, 2009, 12:00 a.m. through December 01, 2009, 11:59 p.m.

Number 2009-24
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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.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114-1201, telephone 801-538-3764, FAX 801-538-1773. Additional rulemaking information, and electronic versions of all administrative rule publications are available at: 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

Utah state bulletin.
Semimonthly.
1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.
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SPECIAL NOTICES

Health
Health Care Financing, Coverage and Reimbursement Policy

Notice for January 2010 Medicaid Rate Changes

Effective January 1, 2010, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies, potential adjustments to existing codes, and nursing home rate changes to case mix components consistent with adopted payment methodology. It is not anticipated that these rate changes will have a substantial fiscal impact. All rate changes are posted to the web and can be viewed at: http://health.utah.gov/medicaid/stplan/bcrp.htm

End of the Special Notices Section

NOTICES OF
PROPOSED RULES

A state agency may file a **Proposed Rule** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between November 17, 2009, 12:00 a.m., and December 01, 2009, 11:59 p.m. are included in this, the December 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 January 14, 2010. The agency may accept comment beyond this date and will indicate 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 hold a hearing on a specific **Proposed Rule**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through April 14, 2010, 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** 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; 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

Agriculture and Food, Animal Industry
R58-20-5
Facilities

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33217
FILED: 11/24/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to change the minimum size requirement of an elk hunting park. This change has been requested by the Utah Domestic Elk Advisory Council. A change in the minimum size requirement for an elk hunting park from 300 acres to 600 contiguous fenced acres.

SUMMARY OF THE RULE OR CHANGE: A change in the minimum size requirement for an elk hunting park from 300 acres to 600 contiguous fenced acres.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 4-39-106

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This rule change will not increase or decrease the requirement in state budget to fund the licensing and monitoring of these hunting parks.
♦ LOCAL GOVERNMENTS: Local government is not involved in the enforcement of this rule.
♦ SMALL BUSINESSES: A small business wanting to open a hunting park will need to have 600 acres instead of 300 acres.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The costs to affected individual will almost double, due to size requirement increase. It is hard to estimate how many individuals want to come into this business.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Additional land purchase cost and fencing costs will increase.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is realized that the cost for individuals wanting to open an elk hunting park will increase due to land and fencing increases, but this change was requested by the industry to reflect the need to make a better hunt experience for their clients.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
ANIMAL INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
♦ Terry Menlove by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at tmenlove@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: Leonard Blackham, Commissioner

R58. Agriculture and Food, Animal Industry.
R58-20. Domesticated Elk Hunting Parks.
R58-20-5. Facilities.

(1) Fencing requirements established by Section 4-39-201 of the Utah Code are applicable to both domestic elk farms and hunting parks.

(2) A hunting park for domesticated elk may be no smaller than 600 fenced contiguous[~~300~~] acres, with sufficient trees, rocks, hills and natural habitat, etc. to provide cover for the animals. Hunting park owners intending to operate facilities larger than 5,000 acres must obtain prior written approval of the Elk Advisory Council, following studies, reviews or assessments, etc., which the Council may deem necessary to undertake, in order to make an informed decision.

(3) There shall be notices posted on the outside fence and spaced a minimum of every 100 yards, to notify the public that the land area is a private hunting park.

(4) Each location of a licensed facility with separate perimeter fences must have its own separate loading facility.

(5) To be licensed, the park must include a handling and isolation facility which can be accessed and operated with reasonable ease for identification and disease control purposes. An exception to this rule may be granted in cases where there is a licensed farm owned by the same individual within 50 miles of the hunting park which can be accessed in a reasonably short period of time.

KEY: inspections
Date of Enactment or Last Substantive Amendment: [~~May 4, 2004~~]2010
Notice of Continuation: February 23, 2009
Authorizing, and Implemented or Interpreted Law: 4-39-106

Alcoholic Beverage Control, Administration
R81-1-11
Multiple-Licensed Facility Storage and Service

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33153
FILED: 11/17/2009

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is filed to implement provisions of S.B.187 passed by the 2009 legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: This year's passage of S.B. 187 created a new license type, the resort license, which includes provisions for sublicenses issued under the resort license. Sublicenses will be regulated in the same way as regular club, restaurant, beer, and banquet licenses. It is necessary to include sublicenses as a license type in rules that will affect them. This rule amendment adds sublicenses to the multiple storage and service rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None--This rule amendment regulates how sublicensees will dispense liquor and beer. It will be done as it is now done with regular liquor and beer licenses. There are not costs or savings involved in this rule amendment.
♦ LOCAL GOVERNMENTS: None--This rule amendment regulates how sublicensees will dispense liquor and beer. Dispensing is regulated by state government and does not involve local governments.
♦ SMALL BUSINESSES: None--In order to qualify for a resort license, a resort must be in a building that is at least 400,000 square feet and has at least 150 dwellings or lodging accommodations. Resorts of this size will obviously employ more than 50 persons, so this rule amendment will not affect small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule amendment does nothing more than include sublicenses among the license types that may dispense from a central area on a premises. There will be no cost or savings involved in clarifying these regulations for sublicensees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should be no compliance costs for affected persons in that a resort with several regular restaurant or club licenses operates in the same way as a resort with sublicenses. Permitting a central dispensing location for several outlets in a resort is cost effective.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment is more of a housekeeping amendment in that it does no more than add sublicenses among the list of other regular liquor licenses that must follow the regulations in the rule. There will be no additional fiscal impact for a sublicensee than for a regular licensee.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY, UT 84104-1630
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Sharon Mackay by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: Dennis Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope , Definitions, and General Provisions.
R81-1-11. Multiple-Licensed Facility Storage and Service.

(1) For the purposes of this rule:

(a) "premises" as defined in Section 32A-1-105(45) shall include the location of any licensed restaurant, limited restaurant, club, or on-premise beer retailer facility or facilities operated or managed by the same person or entity that are located within the same building or complex, and any similar sublicense located within the same building of a resort license under 32A-4a. Multiple licensed facilities shall be termed "qualified premises" as used in this rule.

(b) the terms "sell", "sale", "to sell" as defined in Section 32A-1-105(53) shall not apply to a cost allocation of alcoholic beverages as used in this rule.

(c) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount sold in each outlet.

(d) "remote storage alcoholic beverage dispensing system" means a dispensing system where the alcoholic product is stored in a single centralized location, and may have separate dispensing heads at different locations, and is capable of accounting for the amount of alcoholic product dispensed to each location.

(2) Where qualified premises have consumption areas in reasonable proximity to each other, the dispensing of alcoholic beverages may be made from the alcoholic beverage inventory of an outlet in one licensed location to patrons in either consumption area of the qualified premises subject to the following requirements:

(a) point of sale control systems must be implemented that will record the amounts of each alcoholic beverage product sold in each location;

(b) cost allocation of the alcoholic beverage product cost must be made for each location on at least a monthly or quarterly basis pursuant to the record keeping requirements of Section 32A-4-106, 32A-4-307, 32A-5-107, or 32A-10-206;

(c) dispensing of alcoholic beverages to a licensed location may not be made on prohibited days or at prohibited hours pertinent to that license type;

(d) if separate inventories of liquor are maintained in one dispensing location, the storage area of each licensee's liquor must remain locked during the prohibited hours and days of sale for each license type;

(e) dispensing of alcoholic beverages to a licensed location may not be made in any manner prohibited by the statutory or regulatory operational restrictions of that license type;

(f) alcoholic beverages dispensed under this section may be delivered by servers from one outlet to the various approved consumption areas, or dispensed to each outlet through the use of a remote storage alcoholic beverage dispensing system.

(3) On qualified premises where each licensee maintains an inventory of alcoholic beverage products, the alcoholic beverages owned by each licensee may be stored in a common location in the building subject to the following guidelines:

(a) each licensee shall identify the common storage location when applying for or renewing their license, and shall receive department approval of the location;

(b) each licensee must be able to account for its ownership of the alcoholic beverages stored in the common storage location by keeping records, balanced monthly, of expenditures for alcoholic beverages supported by items such as delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers; and

(c) the common storage area may be located on the premises of one of the licensed liquor establishments.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~June 24, 2009~~]2010
Notice of Continuation: August 31, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-106(9); 32A-1-107; 32A-1-119(5)(c); 32A-1-702; 32-1-703; 32A-1-704; 32A-1-807; 32A-3-103(1)(a); 32A-4-103(1)(a); 32A-4-106(1)(a); 32A-4-203(1)(a); 32A-4-304(1)(a); 32A-4-307(1)(a); 32A-4-401(1)(a); 32A-5-103(1)(a); 32A-6-103(2)(a); 32A-7-103(2)(a); 32A-7-106(5); 32A-8-103(1)(a); 32A-8-503(1)(a); 32A-9-103(1)(a); 32A-10-203(1)(a); 32A-10-206(14); 32A-10-303(1)(a); 32A-10-306(5); 32A-11-103(1)(a)

Alcoholic Beverage Control, Administration
R81-1-26
Criminal History Background Checks

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33154
FILED: 11/17/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being filed to implement S.B. 187 passed by the 2009 legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: This rule amendment is being proposed to add statutory references to include the new resort license statute to the list of statutory references in the present rule on criminal history background checks.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None--This amendment does nothing more than add additional statutory references for the new resort license created by S.B. 187.
♦ LOCAL GOVERNMENTS: None--This amendment does nothing more than add additional statutory references for the new resort license created by S.B. 187. It is a Department of Alcoholic Beverage Control rule and does not affect local governments.
♦ SMALL BUSINESSES: None--This amendment does nothing more than add additional statutory references for the new resort license created by S.B. 187. It will not affect businesses, large or small.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--This amendment does nothing more than add additional statutory references for the new resort license created by S.B. 187. There is no fiscal impact to anyone as a result of this amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This amendment does nothing more than add additional

statutory references for the new resort license created by S.B. 187. There are no compliance costs involved.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses as a result of this rule amendment. It simply adds two statutory references for the new resort license to an already long list of statutory references in the rule.

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

ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY, UT 84104-1630
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Sharon Mackay by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: Dennis Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-26. Criminal History Background Checks.

(1) Authority. This rule is pursuant to:

(a) the commission's powers and duties under 32A-1-107 to set policy by written rules that establish criteria and procedures for granting, denying, suspending, or revoking permits, licenses, and package agencies;

(b) 32A-1-111, 32A-2-101(1)(b),32A-3-103, 32A-4-103, 32A-4-203, 32A-4-304, 32A-4-403, 32A-4a-203, 32A-4a-303, 32A-5-103, 32A-6-103, 32A-7-103, 32A-8-103, 32A-8-503, 32A-9-103, 32A-10-203, 32A-10-303, and 32A-11-103 that prohibit certain persons who have been convicted of certain criminal offenses from being employed by the department or from holding or being employed by the holder of an alcoholic beverage license, permit, or package agency; and

(c) 32A-1-701 through 704 that allow for the department to require criminal history background check reports on certain individuals.

(2) Purpose. This rule:

(a) establishes the circumstances under which a person identified in the statutory sections enumerated in Subparagraph (1)(b), must provide the department with a criminal history background report that shows the person meets the qualifications of those statutory sections as a condition of employment with the department, or as a condition of the commission granting a license, permit, or package agency to an applicant for a license, permit, or package agency; and

(b) establishes the procedures for the filing and processing of criminal history background reports.

(3) Application of Rule.

(a)(i) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), (vi), and (vii) a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for at least two years, shall submit a fingerprint card to the department, and consent to a fingerprint criminal background check by Utah Bureau of Criminal Identification, Department of Public Safety (hereafter "B.C.I.").

(ii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), (vi), and (vii), and (3)(b) through (h), a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for less than two years, shall submit a fingerprint card to the department, and consent to a fingerprint criminal background check by the Federal Bureau of Investigation (hereafter "F.B.I.").

(iii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), and (vi), and (vii), (3)(b) through (h), a person identified in Subparagraph (1)(b) who currently resides outside the state of Utah shall submit a fingerprint card to the department, and consent to a fingerprint criminal background check by the F.B.I.

(iv) A person identified in Subparagraph (1)(b) who previously submitted a criminal background check as part of the application process for a different license, permit, or package agency that was issued by the commission shall not be required to submit a fingerprint card with the department or provide a new criminal history background report as part of the application process for a new license, permit, or package agency if the person attests that he or she has not been convicted of any disqualifying criminal offense identified in Subparagraph (1)(b).

(v) An applicant for a single event permit under Title 32A, Chapter 7 shall not be required to submit a fingerprint card or provide a criminal history background report if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense.

(vi) An applicant for a temporary special event beer permit under 32A-10-301 to -306 shall not be required to submit a fingerprint card or provide a criminal history background report if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense identified in Subparagraph (1)(b).

(vii) An applicant for employment with benefits with the department shall be required to submit a fingerprint card and consent to a fingerprint criminal background check only if the department has made the decision to offer the applicant employment with the department.

(b) An application that requires B.C.I. or F.B.I. criminal history background report(s) may be included on a commission meeting agenda, and may be considered by the commission for issuance of a license, permit, or package agency if:

(i) the applicant has completed all requirements to apply for the license, permit, or package agency other than the department receiving the required B.C.I. or F.B.I. criminal history background report(s);

(ii) the applicant attests in writing that he or she is not aware of any criminal conviction of any person identified in Subparagraph (1)(b) that would disqualify the applicant from applying for and holding the license, permit, or package agency;

(iii) the applicant has submitted to the department the necessary fingerprint card(s) required for the application, and

consented to the fingerprint criminal background check(s) by the B.C.I. or F.B.I.;

(iv) the applicant at the time of application supplies the department with a current criminal history background report conducted by a third-party background check reporting service on any person for which a B.C.I. or an F.B.I. background check is required; and

(v) the applicant stipulates in writing that if a B.C.I. or an F.B.I. report shows a criminal conviction that would disqualify the applicant from holding the license, permit, or package agency, the applicant shall immediately surrender the license, permit, or package agency to the department.

(c) The commission may issue a license, permit, or package agency to an applicant that has met the requirements of Subparagraph (3)(b), and the license, permit, or package agency shall be valid during the period the B.C.I. or F.B.I. is processing the criminal history report(s).

(d) The department shall use a unique file tracking system for such licenses, permits, and package agencies.

(e) If the required B.C.I. or F.B.I. report(s) are not received by the department within six (6) months of the date the license, permit, or package agency is issued by the commission, the licensee, permittee, or package agent shall appear at the next regular meeting of the commission for a status report, and the commission may either order the surrender of the license, permit, or package agency, or may extend the reporting period.

(f) Upon the department's receipt of the B.C.I. or F.B.I. report(s):

(i) if there is no disqualifying criminal history, the license, permit, or package agency shall continue for the balance the license or permit period, or the package agency contract period; or

(ii) if there is a disqualifying criminal history, the license, permit, or package agency shall be immediately surrendered, and the commission may enter an order accepting the surrender, or an order revoking the license, permit, or package agency depending on the circumstances.

(g) In the case of a license or permit, if the statutory deadline for renewing the license or permit occurs before receipt of the B.C.I. or F.B.I. report(s), the licensee or permittee may file for renewal of the license or permit subject to meeting all of the requirements in Subparagraphs (3)(b) through (f).

(h) An applicant for employment with benefits with the department that requires a B.C.I. or an F.B.I. criminal history background report may be conditionally hired by the department prior to receipt of the report if:

(i) the applicant attests in writing that he or she is not aware of any criminal conviction that would disqualify the applicant from employment with the department;

(ii) the applicant has submitted to the department the necessary fingerprint card(s) required for the application, and consented to the fingerprint criminal background check(s) by the B.C.I. or F.B.I.;

(iii) the applicant stipulates in writing that if a B.C.I. or an F.B.I. report shows a criminal conviction that would disqualify the applicant from employment with the department, the applicant shall terminate his or her employment with the department.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~June 24, 2009~~]2010
Notice of Continuation: August 31, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-106(9); 32A-1-107; 32A-1-119(5)(c); 32A-1-702; 32-1-703; 32A-1-704; 32A-1-807; 32A-3-103(1)(a); 32A-4-103(1)(a); 32A-4-106(1)(a); 32A-4-203(1)(a); 32A-4-304(1)(a); 32A-4-307(1)(a); 32A-4-401(1)(a); 32A-5-103(1)(a); 32A-6-103(2)(a); 32A-7-103(2)(a); 32A-7-106(5); 32A-8-103(1)(a); 32A-8-503(1)(a); 32A-9-103(1)(a); 32A-10-203(1)(a); 32A-10-206(14); 32A-10-303(1)(a); 32A-10-306(5); 32A-11-103(1)(a)

Alcoholic Beverage Control, Administration
R81-3-13
Operational Restrictions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33152
FILED: 11/17/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement S.B. 187 passed by the 2009 legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: This rule amendment provides regulations for type 4 package agencies located in a resort licensed under Title 32A, Chapter 4a. The amendment adds language to the current rule to permit these particular package agencies to be open 24 hours a day, 7 days a week, including Sundays and legal holidays.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This rule should not create cost or savings to the state's budget. However, it may create revenues to the state budget in that package agencies in resorts may be open extended hours and on Sundays and holidays. Extended hours may mean additional liquor sales which could potentially mean added revenues to the Department of Alcoholic Beverage Control (DABC) who contracts with these agencies.

♦ LOCAL GOVERNMENTS: There should be no additional costs or savings to local governments, but since package agencies in the resorts licensed under Title 32A, Chapter 4a, may have extended hours and be open on Sundays and holidays there is potential for additional taxes collected on liquor sales. Local governments receive part of those taxes.
♦ SMALL BUSINESSES: None--Resorts licensed under Title 32A, Chapter 4a, are huge facilities and not small businesses. Type 4 package agencies in resorts are issued for the sole purpose of providing room service to guests of the resort.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--It is not anticipated this rule amendment will fiscally affect any other persons. The rule simply establishes hours of business for package agencies in licensed resorts.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--It is not anticipated this rule amendment will fiscally affect any other persons. The rule simply establishes hours of business for package agencies in licensed resorts.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are only four resort licenses available by statute. Of the four, only one has been issued. DABC does not anticipate that any business will experience a fiscal impact created by this rule amendment.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY, UT 84104-1630
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Sharon Mackay by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: Dennis Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-3. Package Agencies.
R81-3-13. Operational Restrictions.

(1) Hours of Operation.

(a) Type 1, 2, and 5 package agencies may operate from 10:00 a.m. until 12:00 midnight, Monday through Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department. Type 2 agencies shall be open for business at least seven hours a day, five days a week, except where closure is otherwise required by law.

(b) Type 3 package agencies may operate from 10:00 a.m. until 10:00 p.m., Monday through Saturday, but may remain closed on Mondays in the discretion of the package agent. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department, provided the agency operates at least seven hours a day.

(c) Type 4 package agencies may operate from 10:00 a.m. until 1:00 a.m., Monday through Friday, and 10:00 a.m. until 12:00 midnight on Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department. A Type 4 package agency in a resort that is licensed under 32A-4a, may operate 24 hours a day, Monday through Sunday to provide room service to guests of the resort.

(d) Any change in the hours of operation of any package agency requires prior department approval, and shall be submitted in writing by the package agent to the department.

(e)(i) A package agency shall not operate on a Sunday or legal holiday except to the extent authorized by 32A-3-106(9) which allows the following to operate on a Sunday or legal holiday:

(A) a package agency located in certain licensed wineries; and

(B) a package agency held by a resort [~~licensee~~]that is licensed under 32A-4a that does not sell liquor in a manner similar to a state store which [~~includes~~]is limited to a Type [~~1, 4, and 5~~]4 package agency.

(ii) If a legal holiday falls on a Sunday, the following Monday will be observed as the holiday by a Type 2 and 3 package agency.

(2) Size of Outlet. The retail selling space devoted to liquor sales in a type 2 or 3 package agency must be at least one hundred square feet.

(3) Inventory Size. Type 2 and 3 package agencies must maintain at least fifty code numbers of inventory at a retail value of at least five thousand dollars and must maintain a representative inventory by brand, code, and size.

(4) Access to General Public. Type 1, 2, and 3 package agencies must be easily accessible to the general consuming public.

(5) Purchase of Inventory. All new package agencies, at the discretion of the department, will purchase and maintain their inventory of liquor.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~June 24, 2009~~]2010
Notice of Continuation: September 6, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-3-106(9)(c)(ii)

Alcoholic Beverage Control, Administration
R81-4D-1
Licensing

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33155
FILED: 11/17/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being filed to implement provisions of S.B. 187 passed by the 2009 legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: S.B. 187 created a new license type, the resort license, with provisions for sublicenses. The sublicenses are essentially identical to regular club, restaurant, on-premise banquet, and beer licenses, but are only available under the resort license. This amendment assigns sublicenses the same regulations as regular on-premise banquet licenses in Title 32A, Chapter 4D.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None--This amendment does no more than state that sublicenses will be regulated in the same way as regular on-premise banquet licenses and involves no cost or savings to the state budget.
♦ LOCAL GOVERNMENTS: None--This amendment does no more than state that sublicenses will be regulated in the same way as regular on-premise banquet licenses. Local authorities do not regulate on-premise banquet license.
♦ SMALL BUSINESSES: None--This amendment brings the regulations for the new sublicenses in line with other similar licenses which may include small business owners holding on-premise banquet licenses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--This amendment does no more than state that sublicenses will be regulated in the same way as regular on-premise banquet licenses. It will have no effect on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This rule amendment creates an even playing field between regular on-premise banquet licensees and on-premise banquet sublicensees. There will be no added costs for sublicensees to comply.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Clarifying how on-premise banquet sublicenses will be regulated will have no fiscal impact on businesses in Utah. This rule amendment merely places sublicenses on an even playing field with regular licenses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY, UT 84104-1630
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Sharon Mackay by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@utah.gov

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THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: Dennis Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4D. On-Premise Banquet License.
R81-4D-1. Licensing.

(1) An on-premise banquet license may be issued only to a hotel, resort facility, sports center or convention center as defined in this rule. An on-premise banquet sublicense may be issued to a resort licensee pursuant to 32A-4a. Any reference in the rules in this chapter 4D to an on-premise banquet license or licensee shall be interpreted as including an on-premise banquet sublicense or sublicensee.

(a) "Hotel" is a commercial lodging establishment:

(i) that offers temporary sleeping accommodations for compensation;

(ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iii) that has adequate kitchen or culinary facilities on the premises of the hotel to provide complete meals; and

(iv) that has at least 1000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 75 people, provided that in cities of the third, fourth or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(b) "Resort facility" is a publicly or privately owned or operated commercial recreational facility or area:

(i) that is designed primarily to attract and accommodate people to a recreational or sporting environment;

(ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iii) that has adequate kitchen or culinary facilities on the premises of the resort to provide complete meals; and

(iv) that has at least 1500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(c) "Sports center" is a publicly or privately owned or operated facility:

(i) that is designed primarily to attract people to and accommodate people at sporting events;

(ii) that has a fixed seating capacity for more than 2,000 persons;

(iii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iv) that has adequate kitchen or culinary facilities on the premises of the sports center to provide complete meals; and

(v) that has at least 2500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(d) "Convention center" is a publicly or privately owned or operated facility:

(i) the primary business or function of which is to host conventions, conferences, and food and beverage functions under a banquet contract;

(ii) that has adequate kitchen or culinary facilities on the premises of the convention center to provide complete meals;

(iii) that is in total at least 30,000 square feet unless the facility is a "grandfathered facility" under 32A-4-401(8); and

(iv) that has at least 3000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated counties, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(2)(a) A "banquet contract" as used in this rule means an agreement between an on-premise banquet licensee and a host of a banquet to provide alcoholic beverage services at a meal, reception, or other private banquet function at a defined location on a specific date and time for a pre-arranged, guaranteed number of attendees at a negotiated price.

(b) Each "banquet contract" shall:

(i) clearly define the location of the private banquet function;

(ii) require that the private banquet function be separate from other areas of the facility that are open to the general public; and

(iii) require signage at or near the entrance to the private banquet function to indicate that the location has been reserved for a specific group.

(3) On-premise banquet licenses are issued to persons as defined in Section 32A-1-105(44). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32A-4-402(4), 32A-4-403, and 32A-4-406(24).

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~June 24, 2009~~]2010
Notice of Continuation: July 31, 2008
Authorizing, and Implemented or Interpreted Law: 32A-1-107

Alcoholic Beverage Control, Administration
R81-4D-14
Reporting Requirement

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33156
FILED: 11/17/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being filed to implement provisions of S.B. 187 passed by the 2009 legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: On-premise banquet licensees are required to file reports with the Department of Alcoholic Beverage Control listing their scheduled banquet events at the beginning of each quarter. S.B. 187 created sublicense, a new license type to be held by resort license holders. This rule amendment assigns the same report filing requirements to on-premise banquet sublicensees as to regular on-premise banquet license holders.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None--This rule amendment merely states that on-premise banquet sublicensees must file the same quarterly reports as regular on-premise banquet licensees. This will not affect the state budget.
♦ LOCAL GOVERNMENTS: None--This rule amendment merely states that on-premise banquet sublicensees must file the same quarterly reports as regular on-premise banquet licensees. Local law enforcement does not regulate this requirement, therefore, there should be no cost to them.

♦ SMALL BUSINESSES: None--This rule amendment merely states that on-premise banquet sublicensees must file the same quarterly reports as regular on-premise banquet licensees.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--This rule amendment merely states that on-premise banquet sublicensees must file the same quarterly reports as regular on-premise banquet licensees. This should not involve a fiscal impact for any person.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Keeping records and filing quarterly reports regarding scheduled banquet events requires a minimal amount of manhours and materials. The compliance for this amendment will be nominal for on-premise banquet sublicensees. Costs will be different for different licensees depending on the number of scheduled events.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is important that all licensees and sublicensees comply with the same regulations for that license type. The amount of time spent reporting on the scheduled banquet events each quarter is minimal and should impose only a minor fiscal impact on any of these businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY, UT 84104-1630
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Sharon Mackay by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: Dennis Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4D. On-Premise Banquet License.
R81-4D-14. Reporting Requirement.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored, and pursuant to 32A-4-406(21).

(2) Purpose. This rule implements the requirement of 32A-4-406(21) that requires the commission to provide by rule procedures for on-premise banquet licensees or sublicensees to report scheduled banquet events to the department to allow random inspections of banquets by authorized representatives of the commission, the department, or by law enforcement officers to monitor compliance with the alcoholic beverage control laws.

(3) Application of the Rule.

(a) An on-premise banquet licensee and an on-premise banquet sublicense licensed under 32A-4a shall file with the department at the beginning of each quarter a report containing advance notice of events or functions that have been scheduled as of the reporting date for that quarter to be held under a banquet contract as defined in R81-4D-1.

(b) The quarterly reports are due on or before January 1, April 1, July 1, and October 1 of each year and may be hand-delivered or submitted by mail or electronically.

(c) Each report shall include the name and specific location of each event.

(d) The department shall make copies of the reports available to a commissioner, authorized representative of the department, and any law enforcement officer upon request to be used for the purpose stated in Section (2).

(e) The department shall retain a copy of each report until the end of each reporting quarter.

(f) Because any report filed under this rule contains commercial information, the disclosure of which could reasonably be expected to result in unfair competitive injury to the licensee or sublicensee submitting the information, and the licensee or sublicensee submitting the information has a greater interest in prohibiting access than the public in obtaining access to the report:

(i) any report filed shall be deemed to include a claim of business confidentiality, and a request that the report be classified as protected pursuant to 63G-2-305 and -309;

(ii) any report filed shall be classified by the department as protected pursuant to 63G-2-305; and

(iii) any report filed shall be used by the department and law enforcement only for the purposes stated in this rule.

(g) Failure of an on-premise banquet licensee or sublicensee to timely file the quarterly reports may result in disciplinary action pursuant to 32A-1-119, 32A-4-406, and R81-1-6 and -7.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~June 24, 2009~~|2010
Notice of Continuation: July 31, 2008
Authorizing, and Implemented or Interpreted Law: 32A-1-107

Alcoholic Beverage Control, Administration
R81-4E
Resort Licenses

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 33157
FILED: 11/18/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is proposed to implement the new resort license created in S.B. 187 passed by the 2009 legislature. (DAR NOTE: S.B. 187 (2009) is found at Chapter 383, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The 2009 legislature created a new liquor license type in the Resort License Act. This rule is proposed to ensure that resort licensees are regulated in the same way as the holders of other liquor licenses. Section R81-4E-1 requires that any transaction that may alter the organizational structure or owner interest of the license holder must first be approved by the Department of Alcoholic Beverage Control (DABC). Section R81-4E-2 outlines requirements of the application for a resort license and clarifies that sublicensees of the resort license need not file separate applications nor carry separate insurance and bond if those are adequately covered under the resort license. Section R81-4E-3 elaborates on regulations regarding the bond required by statute to be carried by resort licensees, including penalties for noncompliance. Section R81-4E-4 elaborates on regulations regarding requirements for resort licensee insurance coverage and penalties for noncompliance. Section R81-4E-5 regulates how resort licensees may place liquor orders at state liquor stores and how they should go about returning items if they over-buy. Title 32A, Chapter 4a, mandates that a resort licensee or sublicensee may have their liquor storage area open and unlocked only during hours they may legally sell the liquor. Section R81-4E-6 permits the licensee to open the storage area at other times for the limited purposes of inventory, restocking, repair, and cleaning. Resort licensees are the only licensee in the Liquor Act that operate their restaurants as sublicensees of the resort license. Section R81-4E-7 provides guidelines for where alcoholic beverages may be dispensed and consumed and how they may be sold in restaurants with sublicenses. The section also establishes how liquor sales records should be maintained. Section R81-4E-8 permits sublicensees in resorts to store all types of liquor in the same storage area on the licensed premises. Alcoholic product flavorings may be used in alcohol drinks or as a food preparation. Section R81-4E-9 regulates the use of alcoholic product flavorings used by resort licensees. Section R81-4E-10 allows wine service at a patron's table which is a practice accepted worldwide. Section R81-4E-11 establishes where on the premises of a restaurant sublicense alcoholic beverages may be consumed by a patron. Section R81-4E-12 establishes guidelines and regulations for posting liquor prices and liquor service prices and practices in sublicensed establishments licensed under a resort license. Section R81-4E-13 establishes regulations for employees of sublicenses established under the resort license for wearing a unique identification badge when selling and serving alcoholic beverages. Section R81-4E-14 addresses when it is legal and appropriate to permit brown-bagging on the premises of a sublicensee. The Resort License Act created a new license type called a Resort Spa Sublicense. Section R81-4E-15 defines the term resort spa, establishes application requirements, and addresses minors in spas with lounges. Section R81-4E-16 states that the rules for sublicenses issued under the larger resort license must comply with the same type of licenses issued by the DABC. For example, a restaurant sublicensee must comply with the same regulations as a regular restaurant licensee.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This rule elaborates on the statutory requirement in Title 32A, Chapter 4a, and provides application requirements, guidelines, and procedures for a resort license and restaurant sublicenses. The passage of this rule will not fiscally affect the state's budget.
♦ LOCAL GOVERNMENTS: Liquor stores in Utah are operated by the State of Utah. Local governments have no part in retail liquor sales. This rule only affects persons applying for a state-issued resort license. Therefore, this rule will have no fiscal impact on local governments.
♦ SMALL BUSINESSES: Resorts as defined by Title 32A, Chapter 4a, are huge enterprises employing hundreds of staff members. Resort licenses are issued only to facilities that are 400,000 square feet in size. These facilities will no doubt employ hundreds of staff members. Consequently, this rule will not affect small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The requirements for resort licensees will only affect the licensee and no other persons. The regulation of alcoholic beverage dispensing and consumption in restaurants within resorts only affects the resort itself. This rule states that the rules for sublicenses issued under the larger resort license must comply with the same type of licenses issued by the DABC. For example, a restaurant sublicensee must comply with the same regulations as a regular restaurant licensee. This rule regulates these resorts and will have no fiscal effect on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule outlines requirements for an applicant for a state resort license to carry insurance and a bond. Application requirements are mandated by Title 32A, Chapter 4a, but this rule clarifies the fact that sublicensees of the resort license are not required to file a separate application or carry separate insurance and bond. Consequently, this rule saves compliance costs for the resort licensee. Also, this rule defines the term resort spa, establishes application requirements, and addresses minors in spas with lounges. Resorts are not required to have spas on the premises. If they choose to have a spa, following the regulations established in the rule will have no added compliance costs.

The only compliance costs involved with this rule are costs to set up a record-keeping system that complies with the requirements of the rule. This cost will vary from one resort to another, but should be minimal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is written to ensure the holders of resort licenses comply with rules required of other liquor license holders. This rule sets guidelines for where alcoholic beverages may be consumed in an establishment licensed under the resort license law. The guidelines are reasonable and will have no fiscal impact on businesses. The resort license is a very limited license that will be utilized by a very select population. For this reason, this rule regulating the resort license should have no real fiscal impact on other businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY, UT 84104-1630
or at the Division of Administrative Rules.

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THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: Dennis Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4E. Resort Licenses.
R81-4E-1. Licensing.

Resort licenses are issued to persons as defined in Section 32A-1-105(44). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32A-4a-202(4), 32A-4a-203, 32A-4a-305(30), and 32A-4a-401(14).

R81-4E-2. Application.

(1) A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a resort license when the requirements of Sections 32A-4a-202, -203, and -205 have been met, a completed application has been received by the department, and the resort premises have been inspected by the department.

(2) Pursuant to 32A-4a-204(3) and 32a-4A-302(1), each sublicense of a resort license is not required to:

(a) submit an application or renewal application that is separate from the resort license application;

(b) carry public liability or dramshop insurance coverage that is separate from that carried by the resort licensee; or

(c) post a bond that is separate from the bond posted by the resort licensee if the aggregate of any bonds posted by the resort licensee covers each sublicense under the resort license.

(3) Pursuant to 32A-4a-302(1) and (2), a resort spa sublicense is not required to file a separate application from the application for the resort license unless the resort spa sublicense is being sought after the resort license has already been granted. If a resort licensee seeks to add a resort spa sublicense after its resort license is granted, the application shall comply with 32A-4a-302(2), and this rule.

R81-4E-3. Bonds.

No part of any corporate surety or cash bond required by Section 32A-4a-205, may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate surety or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4E-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32A-4e-202(1)(i) and (j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4E-5. Resort License Liquor Order and Return Procedures.

The following procedures shall be followed when a resort licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first served basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

(i) the bottle has not been opened;

(ii) the seal remains intact;
(iii) the label remains intact; and
(iv) upon a showing of the original cash register receipt.
(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds $1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.
(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-4E-6. Resort Licensee Operating Hours.
Allowable hours of liquor sales shall be in accordance with Section 32A-4a-305(18). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4E-7. Sale and Purchase of Alcoholic Beverages in Locations Operated Under a Restaurant or Limited Restaurant Sublicense.
(1) With respect to a restaurant sublicense or limited restaurant sublicense, alcoholic beverages (including light beer) must be sold in connection with an order for food placed and paid for by a patron. An order for food may not include food items gratuitously provided by the restaurant to patrons. A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab shall be commenced upon the patron's first purchase and shall be maintained by the restaurant during the course of the patron's stay at the restaurant regardless of where the patron orders and consumes an alcoholic beverage.
(2) The restaurant sublicense shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.
(3) Liquor dispensing shall be in accordance with Section 32A-4-106; and Section R81-1-9 (Liquor Dispensing Systems), and Section R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

R81-4E-8. Liquor Storage.
With respect to restaurant, on-premise banquet, resort spa, and club sublicenses, liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area as approved by the department.

R81-4E-9. Alcoholic Product Flavoring.
Resort licensees may use alcoholic products as flavoring subject to the following guidelines:
(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours allowed by law. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".
(2) No resort employee under the age of 21 years may handle alcoholic product flavorings.

R81-4E-10. Table and Counter Service.
A wine service may be performed by the server at the patron's table or counter for wine either purchased at a restaurant, limited restaurant, club, or resort spa sublicensed premises or carried in by a patron. The wine may be opened and poured by the server.

R81-4E-11. Consumption at Patron's Table or Counter in Locations Operated Under a Restaurant or Limited Restaurant Sublicense.
(1) With respect to restaurant sublicenses and limited restaurant sublicenses, a patron's table or counter may be located in waiting, patio, garden and dining areas previously approved by the department.
(2) Consumption of any alcoholic beverage must be within a reasonable proximity of a patron's table or counter so as to ensure that the server can maintain a written beverage tab on the amount of alcoholic beverages consumed.

R81-4E-12. Menus; Price Lists.
(1) Contents of Alcoholic Beverage Menu.
(a) Each restaurant, limited restaurant, on-premise banquet, resort spa, and club sublicensee shall have readily available for its patrons a printed alcoholic beverage price list, or menu containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer. With respect to on-premise banquet sublicenses, this list or menu need only be available to the host of a contracted banquet. With respect to limited restaurant sublicenses, the list or menu may only include wine, heavy beer, and beer.
(b) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and it meets the requirements of this rule.
(c) Customers shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.
(d) A sublicensee or employee of a sublicensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4E-13. Identification Badge.
Each employee of a sublicensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The sublicensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-4E-14. Brownbagging.

When private social functions or privately hosted events, as defined in 32A-1-105(47), are held on the premises of a resort license, the proprietor may, at the proprietor's discretion, allow members of the private group to bring onto the resort premises, their own alcoholic beverages under the following circumstances:

(1) When the entire area is closed to the general public for the private function or event, or

(2) When an entire room or area within the premises such as a private banquet room is closed to the general public for the private function or event, and members of the private group are restricted to that area, and are not allowed to co-mingle with public patrons of the facility.

(3) This section does not apply to private banquet events conducted under the on-premise banquet sublicense.

R81-4E-15. Resort Spa Sublicense.

(1) Definitions.

(a) "Resort spa" means a facility within the boundary of a resort building that provides professionally administered personal care treatments such as, but not limited to, massages, facials, hair care, and nail care. Treatment providers must be licensed under Title 58, Division of Professional Licensing Act. The resort spa also must hold a license to conduct business as a spa or similar operation under local licensing laws.

(2) Application. Pursuant to 32A-4a-302(1) and (2), a resort spa sublicense is not required to file a separate application from the application for the resort license unless the resort spa sublicense is being sought after the resort license has already been granted. If a resort licensee seeks to add a resort spa sublicense after its resort license is granted, the application shall comply with 32A-4a-302(2), and this rule.

(3) Minors in Lounge or Bar Areas.

(a) Pursuant to 32A-4a-305(24), a minor may be on the premises of a resort spa if accompanied by a person 21 years of age or older, but may not be admitted into, use, or be on the premises of any lounge or bar area of a resort spa.

(b) "Lounge or bar area" includes:

(i) the bar structure as defined in 32A-1-105(4);

(ii) any area in the immediate vicinity of the bar structure where the sale, service, display, and advertising of alcoholic beverages is emphasized; or

(iii) any area that is in the nature of or has the ambience or atmosphere of a bar, parlor, lounge, cabaret or night club.

(c) A minor who is otherwise permitted to be on the premises of a resort spa may momentarily pass through the resort spa's lounge or bar area en route to those areas of the resort spa where the minor is permitted to be. However, no minor shall remain or be seated in the resort spa's bar or lounge area.

R81-4E-16. Applicability of Rules.

(1) 32A-4a-402 requires that a person operating under a resort sublicense comply with the operational restrictions of Title 32A for the type of license applicable to the sublicense, except where otherwise provided. For example, a club sublicensee must comply with the operational restrictions found in 32A-5-107 that are applicable to a club licensee.

(2) This rule requires that a person operating under a resort sublicense comply with the operational restrictions found in any commission rule for the type of license applicable to the sublicense, except where otherwise provided.

KEY: alcoholic beverages
Date of Enactment of Last Substantive Amendment: 2010
Authorizing, and Implemented or Interpreted Law: 32A-1-107

Commerce, Consumer Protection
R152-1-1
Purposes, Policies and Rules of Construction

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33168
FILED: 11/18/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Administrative Rules Review Committee requested this agency to evaluate the need of the phrase "liberally construed" in the agency's administrative rules. A determination has been made that the phrase can be removed and replaced with different terminology.

SUMMARY OF THE RULE OR CHANGE: This change removes the phrase "shall be liberally construed and applied" and indicates that the rule is intended to promote the stated purposes and policies set forth.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-1-6 and Subsection 63G-4-102(6)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The state budget will not be affected by the change of terminology in expressing the purposes, policies and rules of construction.
♦ LOCAL GOVERNMENTS: Local government does not administer this agency's rules, thus, local governments' budgets are not affected.
♦ SMALL BUSINESSES: Small businesses will not be affected by the change in terminology in expressing the purposes, policies and rules of construction.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No persons will be affected by the change of terminology in expressing the purposes, policies and rules of construction.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No persons will be affected by the change of terminology in expressing the purposes, policies and rules of construction.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Administrative Rules Review Committee requested this agency to evaluate the need of the phrase "liberally construed" in the agency's administrative rules. A determination has been made that the phrase can be removed and replaced with different terminology. No fiscal impact to businesses is anticipated from the use of such replacement terminology.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Hendricks by phone at 801-530-6035, by FAX at 801-538-6001, or by Internet E-mail at ahendricks@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: Kevin Olsen, Director

R152. Commerce, Consumer Protection.
R152-1. Utah Division of Consumer Protection: "Buyer Beware List".
R152-1-1. Purposes, Policies and Rules of Construction.

A. These rules are promulgated pursuant to Subsection 13-2-5(1) to assist the orderly administration of the statutes listed in Utah Code Section 13-2-1.

B.(1) These substantive rules are adopted by the Director of the Division of Consumer Protection pursuant to general authority of Utah Code Section 13-2-5, and specific authority of the following statutory sections:

(a) Utah Code Subsection 13-11-8(2);

(b) Utah Code Subsection 13-15-3(1); and

(c) Utah Code Section Section 13-16-12.

(2) Without limiting the scope of any statute or rule, this rule [~~shall be liberally construed and applied~~]is intended to promote its stated purposes and policies. The purposes and policies of this rule are to:

(a) protect consumers from individuals and businesses who have engaged in and committed deceptive acts or practices, or have engaged in and committed unconscionable acts or practices.

(b) supply consumers with pertinent information on the nature of those individuals or businesses who may be engaging in and committing deceptive acts or practices, or may be engaging in and committing unconscionable acts or practices, so as to aid consumers in their decision making.

(c) encourage the development of fair consumer sales practices and wise decision making by consumers in all their consumer purchase decisions.

KEY: consumer protection
Date of Enactment or Last Substantive Amendment: [~~May 16, 2006~~]2010
Notice of Continuation: October 4, 2005
Authorizing, and Implemented or Interpreted Law: 13-2-5(1); 13-11-8(2); 13-15-3(1); 13-16-12

Commerce, Consumer Protection
R152-11-1
Purposes, Rules of Construction

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33169
FILED: 11/18/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Administrative Rules Review Committee requested this agency to evaluate the need of the phrase "liberally construed" in the agency's administrative rules. A determination has been made that the phrase can be removed and replaced with different terminology.

SUMMARY OF THE RULE OR CHANGE: This change removes the phrase "shall be liberally construed and applied" and indicates that the rule is intended to promote their purposes and policies.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-1-6 and Subsection 63G-4-102(6)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The state budget will not be affected by the change of terminology in expressing the purposes and rules of construction.
♦ LOCAL GOVERNMENTS: Local governments do not administer this agency's rules, thus, local governments' budgets are not affected.
♦ SMALL BUSINESSES: Small businesses will not be affected by the change of terminology in expressing the purposes and rules of construction.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No persons will be affected by the change of terminology in expressing the purposes and rules of construction.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No persons will be affected by the change of terminology in expressing the purposes and rules of construction.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Administrative Rules Review Committee requested this agency to evaluate the need of the phrase "liberally construed" in the agency's administrative rules. A determination has been made that the phrase can be removed and replaced with different terminology. No fiscal impact to businesses is anticipated from the use of such replacement terminology.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Angela Hendricks by phone at 801-530-6035, by FAX at 801-538-6001, or by Internet E-mail at ahendricks@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: Kevin Olsen, Director

R152. Commerce, Consumer Protection.
R152-11. Utah Consumer Sales Practices Act.
R152-11-1. Purposes, Rules of Construction.

A. These substantive rules are adopted by the Director of the Division of Consumer Protection pursuant to Section 8 of Chapter 188 of the Laws of Utah, 1973 (Utah Consumer Sales Practices Act, Utah Code Annotated Section 13-11-1 et seq., as amended). Without limiting the scope of any section of the Utah Consumer Sales Practices Act or any other rule, these rules [~~shall be liberally construed and applied~~]are intended to promote their purposes and policies. The purpose and policies of these rules are to:

(1) define with reasonable specificity acts and practices which violate Section 4 of the Utah Consumer Sales Practices Act.

(2) protect consumers from suppliers who engage in referral sellings, commit deceptive acts or practices, or commit unconscionable acts or practices.

(3) encourage the development of fair consumer sales practices.

(4) supplement and compliment any other rules promulgated by the State of Utah or any agency or subdivision thereof or any other governmental entity.

B. Definitions.

(1) "Advertisement" means any written, visual, or oral communication made to a consumer by means of newspaper, magazine, circular, billboard, direct mailing, sign, radio, television or otherwise, which identifies or represents the terms of any item of goods, service, franchise, distributorship or intangible which may be transferred in a consumer transaction.

(2) "Consumer Commodity" means any subject of a consumer transaction.

(3) "Fixture" or "Fixtures" means goods or products that are not readily removable from a permanent structure or land itself such as shingling, siding and or windows or other like improvements and which, when they thus become so related to particular real estate that an interest in them arises under real estate law.

(4) "Goods" mean all things which are movable at time of identification to the contract for sale other than the money in which the price is to be paid and things in action.

(5) "Service" means performance of labor or any act for the benefit of another.

(6) "Offer" means any attempt to effect, an offer to enter into a consumer transaction.

(7) "Product" means any goods, services, consumer commodity, or other property, both tangible and intangible (except securities and insurance) which is the subject or object of a consumer transaction.

(8) "Service" means performance of labor or any act for the benefit of another.

(9) All other terms used in these regulations shall carry the same meaning and definition as in the Utah Consumer Sales Practices Act unless otherwise specified, consistent with that Act.

KEY: advertising, bait and switch, consumer protection, negative options
Date of Enactment or Last Substantive Amendment: [~~August 19, 2009~~]2010
Notice of Continuation: February 1, 2007
Authorizing, and Implemented or Interpreted Law: 63G-3-201; 13-2-5; 13-11

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

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33227
FILED: 12/01/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this filing is to recodify the existing rule governing limited online prescribing as permitted under Subsection 58-1-501(4) from existing Rule R156-1 to the new Rule R156-1a. (DAR NOTE: The proposed new Rule R156-1a is under DAR No. 33228 in this issue, December 15, 2009, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-1-102(3), the definition of "branching questionnaire" is deleted and the remaining subsections are renumbered. The definition will now appear in the new Rule R156-1a. Also throughout Section R156-1-102, the term "division" has been capitalized where appropriate. Section R156-601 which addresses online assessment, diagnosis, and prescribing protocols is deleted and will now appear in the new Rule R156-1a.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Division will incur minimal costs of approximately $50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. The Division is already regulating the practice of limited online prescribing so the costs of this recodification should not be significant to the state budget. The recodification of the rule simply better defines the method of regulation. Initial applications for limited online prescribing permits are estimated to be ten or fewer with a review process that should be better defined and easier as compared to the former negotiation process of the loosely defined consent agreements, thus resulting in some cost savings that cannot be quantified. Primary professional licenses will have to be reprinted and mailed at a nominal cost.
♦ LOCAL GOVERNMENTS: The proposed amendments only apply to companies or practitioners applying for limited online prescribing permits. As a result, the proposed amendments do not apply to local governments.
♦ SMALL BUSINESSES: The proposed amendments only apply to companies or practitioners applying for limited online prescribing permits. Such companies may or may not qualify as a small business. The impact on small businesses is impossible to quantify. The rule codifies existing practice in large part and therefore is not expected to be unduly burdensome and provides an enhanced business opportunity for limited online prescribing permit practitioners and their Internet facilitators and contractual pharmacies.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The rule codifies existing practice in large part and therefore the compliance costs are not expected to be unduly burdensome to limited online prescribing permit practitioners and their Internet facilitators and contractual pharmacies. This rule will likely result in a wider availability, as well as a cost savings to consumers who choose to use the services of a limited online prescribing permit practitioner.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Any compliance costs for individuals is impossible to quantify. The rule codifies existing practice in large part and therefore the compliance costs are not expected to be unduly burdensome to limited online prescribing permit practitioners and their Internet facilitators and contractual pharmacies. This rule will likely result in a wider availability as well as a cost savings to consumers who choose to use the services of a limited online prescribing permit practitioner.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated beyond those addressed in detail in the rule summary.

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:
♦ Mark Steinagel by phone at 801-530-6292, by FAX at 801-530-6511, or by Internet E-mail at msteinagel@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 01/11/2010 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-1. General Rule 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 this rule:

(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 [~~d~~]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~~]4) "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~~]5) "Denial of licensure" means action by the [~~d~~]Division refusing to issue a license to an applicant for initial licensure, renewal of licensure, reinstatement of licensure or relicensure.

([~~7~~]6) "Disciplinary action" means adverse licensure action by the [~~d~~]Division under the authority of Subsections 58-1-401(2)(a) through (2)(b).

([~~8~~]7) "Diversion agreement" means a formal written agreement between a licensee, the [~~d~~]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]8) "Diversion committees" mean diversion advisory committees authorized by Subsection 58-1-404(2)(a)(i) and created under Subsection R156-1-404a.

([~~10~~]9) "Duplicate license" means a license reissued to replace a license which has been lost, stolen, or mutilated.

([~~11~~]10) "Emergency review committees" mean emergency adjudicative proceedings review committees created by the [~~d~~]Division under the authority of Subsection 58-1-108(2).

([~~12~~]11) "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~~]12) "Inactive" or "inactivation" means action by the [~~d~~]Division to place a license on inactive status in accordance with Sections 58-1-305 and R156-1-305.

([~~14~~]13) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the [~~d~~]Division regulatory and compliance officer, or if the [~~d~~]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 [~~d~~]Division regulatory and compliance officer and the designated bureau manager are unable to so serve for any reason, a department administrative law judge.

([~~15~~]14) "License" means a right or privilege to engage in the practice of a regulated occupation or profession as a licensee.

([~~16~~]15) "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~~]16) "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~~]17) "Nondisciplinary action" means adverse licensure action by the [~~d~~]Division under the authority of Subsections 58-1-401(1) or 58-1-401(2)(c) through (2)(d).

([~~19~~]18) "Peer committees" mean advisory peer committees to boards created by the legislature in Title 58 or by the [~~d~~]Division under the authority of Subsection 58-1-203(1)(f).

([~~20~~]19) "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~~]20) "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~~]21) "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~~]22) "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~~]23) "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~~]24) "Relicense" or "relicensure" means to license an applicant who has previously been revoked or has previously surrendered a license.

([~~26~~]25) "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~~]26) "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~~]27) "Revoke" or "revocation" means disciplinary action by the [~~d~~]Division extinguishing a license.

([~~29~~]28) "Suspend" or "suspension" means disciplinary action by the [~~d~~]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~~]29) "Surrender" means voluntary action by a licensee giving back or returning to the [~~d~~]Division in accordance with Section 58-1-306, all rights and privileges associated with a license issued to the licensee.

([~~31~~]30) "Temporary license" or "temporary licensure" means a license issued by the [~~d~~]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~~]31) "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~~]32) "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) [~~d~~]Division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of [~~d~~]Division concerns.

[~~**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 this rule 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: [~~August 10, 2009~~]2010

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

Commerce, Occupational and Professional Licensing
R156-1a
Limited Online Prescribing Permit Rule

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 33228
FILED: 12/01/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this filing is to recodify the existing rule governing limited online prescribing as permitted under Subsection 58-1-501(4) from existing Rule R156-1 to this new Rule R156-1a. (DAR NOTE: The proposed amendment to Rule R156-1 is under DAR No. 33227 in this issue, December 15, 2009, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This new rule provides the following sections: R156-1a-101-Title; R156-1a-102-Definitions; R156-1a-301-Limited Online Prescribing Permit - This section specifies that a permit is required to engage in the practice of limited online prescribing under Subsection 58-1-501(4) and clarifies that a permit does not authorize online assessment, diagnosis, and prescribing for any person located outside the State of Utah; R156-1a-302-Application Requirements; R156-1a-303-Existing Written Agreements for Online Prescribing; R156-1a-304-Pending Applications; R156-1a-305-Duties and Responsibilities of a Limited Online Prescribing Practitioner; R156-1a-306-Drugs Approved to be Prescribed Online; R156-1a-307-Internet Facilitator: This section requires the limited online prescribing practitioner to have an Internet facilitator and specifies the required role and responsibilities of the Internet facilitator and the limited online prescribing practitioner in regard thereto; R156-1a-308-Contractual Pharmacy: This section permits the limited online prescribing practitioner to utilize the services of a contractual pharmacy and specifies the role and responsibilities of the contractual pharmacy and the roles of the limited online prescribing practitioner and Internet facilitator in regard thereto; R156-1a-309-Audits: This section specifies that the online prescribing practitioner is required to allow and facilitate Division audits of the website, as well as the records of the limited online prescribing practitioner, contractual pharmacy, and Internet facilitator to ensure compliance with governing authority. This section specifies that the Division shall be given full remote read only access to all of the data used and stored in the system to conduct its audits including all of the information available to the limited online prescribing practitioner. The section also requires a specified report on a quarterly basis or other basis directed by the Division; R156-1a-310-Renewal of Limited Online Prescribing Permit/Procedure; R156-1a-401-Termination of Authority/Relationship with Internet Facilitator and Contractual Pharmacy: This section addresses termination of authority to engage in limited online prescribing either by expiration or termination of the limited online prescribing permit. It addresses the fact that the limited online prescribing permit holder is responsible for the actions of the practitioner's Internet facilitator and contractual pharmacy and indicates that their actions may well place the limited online prescribing permit practitioner out of compliance with the requirements of Rule R156-1a; R156-1a-501-Unprofessional Conduct; R156-1a-502-Immediate and Significant Danger: This section specifies what actions by the limited prescribing practitioner constitutes an immediate and significant danger under the Utah Administrative Procedures Act and grounds for emergency action to terminate the prescriptive authority for online prescribing under Section 63G-4-502; and R156-1a-601-Effect of Governing Authority Changes on this Rule: This section addresses the effect of any governing authority after the effective date of the rule rendering unlawful in any respect the practice of online prescribing authorized by this rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 58-1-106(1)(a) and Subsection 58-1-501(4)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Division will incur minimal costs of approximately $100 to print and distribute the rule once the proposed new rule is made effective. Any costs incurred will be absorbed in the Division's current budget. The Division is already regulating the practice of limited online prescribing so the costs of this recodification should not be significant to the state budget. The recodification of the rule simply better defines the method of regulation. Initial applications for limited online prescribing permits are estimated to be ten or fewer with a review process that should be better defined and easier as compared to the former negotiation process of the loosely defined consent agreements, thus resulting in some cost savings that cannot be quantified. Primary professional licenses will have to be reprinted and mailed at a nominal cost.
♦ LOCAL GOVERNMENTS: This proposed new rule only applies to companies or practitioners applying for limited online prescribing permits. As a result, the proposed new rule does not apply to local governments.
♦ SMALL BUSINESSES: The proposed new rule only applies to companies or practitioners applying for limited online prescribing permits. Such companies may or may not qualify as a small business. The impact on small businesses is impossible to quantify. The new rule codifies existing practice in large part and therefore is not expected to be unduly

burdensome and provides an enhanced business opportunity for limited online prescribing permit practitioners and their Internet facilitators and contractual pharmacies.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The new rule codifies existing practice in large part and therefore the compliance costs are not expected to be unduly burdensome to limited online prescribing permit practitioners and their Internet facilitators and contractual pharmacies. This rule will likely result in a wider availability, as well as a cost savings to consumers who choose to use the services of a limited online prescribing permit practitioner.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Any compliance costs for individuals is impossible to quantify. The new rule codifies existing practice in large part and therefore the compliance costs are not expected to be unduly burdensome to limited online prescribing permit practitioners and their Internet facilitators and contractual pharmacies. This rule will likely result in a wider availability as well as a cost savings to consumers who choose to use the services of a limited online prescribing permit practitioner.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated beyond those addressed in detail in the rule summary.

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:
♦ Mark Steinagel by phone at 801-530-6292, by FAX at 801-530-6511, or by Internet E-mail at msteinagel@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 01/11/2010 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-1a. Limited Online Prescribing Permit Rule.
R156-1a-101. Title.

This rule is known as the "Limited Online Prescribing Permit Rule".

R156-1a-102. Definitions.

In addition to the definitions in Title 58, Chapter 1, as used in this rule:

(1) "Active and in good standing", as used in this rule, is as defined in Subsection R156-1-102(1) and includes that the license has not been subject to disciplinary action in the past three years.

(2) "Branching questionnaire", as used in this rule for limited online prescribing, means an adaptive and progressive assessment tool completed by a patient, that requires the patient to provide answers to all the required questions and does not rely upon default answers.

(3) "Contractual Pharmacy" means a Utah licensed pharmacy that provides the services outlined in Section R156-1a-308.

(4) "Internet Facilitator" means a provider of a web-based system for electronic communication between a Limited Online Prescribing Practitioner and the Limited Online Prescribing Practitioner's patients in accordance with Section R156-1a-305.

(5) "Limited online prescribing" means the practice of prescribing medications listed in Section R156-1a-306 by a Limited Online Prescribing Practitioner to a patient, utilizing a branching questionnaire to obtain a comprehensive health history and assessment, which serves as the basis for a diagnosis and treatment plan for a specific patient.

(6) "Limited Online Prescribing Practitioner" means a person licensed in Utah with assessment, diagnosis, and prescribing authority within the scope of licensure, who has applied for and obtained a permit to prescribe specific legend drugs to persons located in the State of Utah based on an online comprehensive health history, assessment and diagnosis.

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

(8) "URL" means a uniform resource locator on the world wide web.

R156-1a-301. Limited Online Prescribing Permit.

(1) A written permit is required to engage in the practice of limited online prescribing in accordance with Subsection 58-1-501(4) and this rule.

(2) Each applicant for a limited online prescribing permit shall be licensed as required in Subsection R156-1a-302(1)(a), apply to the Division in writing upon forms available from the Division, and meet all the requirements established in this rule.

(3) Nothing in this rule shall be construed to authorize a Limited Online Prescribing Practitioner to engage in online assessment, diagnosis and prescribing for any person located outside the State of Utah.

R156-1a-302. Application Requirements.

(1) In accordance with Subsection 58-1-501(4) and this rule, to obtain an online prescribing permit a licensee shall:

(a) document that the applicant holds a Utah license that is active and in good standing that includes assessment, diagnosis and treatment of human ailments with prescription of medications within the scope of licensure;

(b) document that any other professional license the applicant for Limited Online Prescribing Practitioner possesses from other jurisdictions is in good standing;

(c)(i) submit an outline of the applicant's proposed online assessment, diagnosis and prescribing tool, such as a branching questionnaire; and

(ii) demonstrate the proposed online assessment, diagnosis and prescribing tool to the Division and appropriate board or boards, or board designee, and establish that the utilization of the assessment tool does not compromise the public's health, safety, or welfare;

(d) submit policies and procedures that address patient confidentiality, including measures that will be taken to ensure that the age and other identifying information of the person completing the online questionnaire are accurate;

(e) describe the mechanism by which the Limited Online Prescribing Practitioner and patient will communicate with one another, including electronic and telephonic communication;

(f) describe how the Limited Online Prescribing Practitioner/patient relationship will be established and maintained;

(g) submit the name, address, and contact person of the Internet Facilitator with whom the Limited Online Prescribing Practitioner has contracted to provide services which the Limited Online Prescribing Practitioner will use to engage in online assessment, diagnosis and prescribing;

(h) submit the name, address, license number and contact information of the contractual pharmacy with which the Limited Online Prescribing Practitioner contracts with to dispense medications or transfer prescription orders; and

(i) submit documentation satisfactory to the Division regarding public health, safety, and welfare documenting protections, including:

(i) how the Limited Online Prescribing Practitioner will comply with the requirements of Section R156-1a-303;

(ii) the contractual services arrangement between the Limited Online Prescribing Practitioner and Internet Facilitator, and the Limited Online Prescribing Practitioner and Contractual Pharmacy (if applicable); and

(iii) how the Limited Online Prescribing Practitioner will allow and facilitate the ability of the Division to conduct audits in accordance with R156-1a-309.

(2) A Limited Online Prescribing Practitioner may not utilize the services of an Internet Facilitator or Contractual Pharmacy that is engaging in or has engaged in unlawful or unprofessional conduct under Title 58 or R156 within the past three years.

(3) The application for a permit to engage in the practice of limited online prescribing is a public record. Should the applicant believe that any of the information contained in the application consists of trade secrets or commercial information that should not be released to the public, the applicant may provide to the Division a written claim of business confidentiality in accordance with Section 63G-2-309. In that event the Division shall act in compliance with the provisions of the Government Records Access and Management Act (Utah Code Ann. Sections 63G-2-101 through 901), and particularly with Section 63G-2-309 and Subsections 63G-2-305(1) and (2).

R156-1a-303. Existing Written Agreements for Online Prescribing.

(1) Any entity or other person not licensed by the Division who prior to December 31, 2009 has engaged in online prescribing with the written consent of the Division, whether such consent has been manifested by means of a stipulation, consent order, letter agreement, or otherwise, may continue to operate in accordance with the terms and conditions of such written consent until December 31, 2011, and shall discontinue such operations after that date.

(2) Any licensee who prior to June 30, 2009 has engaged in online prescribing with the written consent of the Division, whether such consent has been manifested by means of a stipulation, consent order, letter agreement, or otherwise, may continue to operate in accordance with the terms and conditions of such written consent subject to the following:

(a) On or before December 31, 2010, the licensee shall file an application with the Division in accordance with R156-1a-302 for a limited online prescribing permit.

(b) After that application is filed, the licensee may continue to operate under the terms and conditions of the prior written consent until the Division has issued its decision on the application.

(c) If the application is approved and a limited online prescribing permit is issued, the licensee may no longer operate under the terms and conditions of the prior written consent.

(d) The licensee may not operate under the prior written consent after the date an application filed in accordance with R156-1a-302 has been denied.

R156-1a-304. Pending Applications.

The following provisions shall apply to any application for authorization to engage in online prescribing that was pending on the effective date of this rule:

(1) The application shall comply with this rule.

(2) The applicant may by no later than June 30, 2010 provide supplemental documentation to the Division to correct any deficiency in the application. After any such supplemental documentation has been provided, the applicant shall notify the Division in writing that the application is ready to be acted upon by the Division.

(3) The applicant may rely upon the existing application, without any supplementation. In that event, the applicant shall notify the Division in writing that the application is ready to be acted upon by the Division.

(4) Unless the Division receives a notification from the applicant that the application is ready to be acted upon by the Division, the Division shall not act on the application until after June 30, 2010.

R156-1a-305. Duties and Responsibilities of a Limited Online Prescribing Practitioner.

(1) The Limited Online Prescribing Practitioner shall:

(a) conduct an assessment and diagnosis based upon a comprehensive health history and an assessment tool such as a branching questionnaire;

(b) ensure that a comprehensive health history, assessment and diagnosis have been made before prescribing any medications;

(c) conduct the online assessment and diagnosis only through the approved Internet Facilitator, as set forth in the Limited Online Prescribing Practitioner's application;

(d) only use the approved Internet Facilitator as the Limited Online Prescribing Practitioner's method for electronic communication between the Limited Online Prescribing Practitioner and patients;

(e) ensure that the Internet Facilitator uses only one URL address that does not link to any other sites; and

(f) comply with all governing state and federal laws, rules, regulations and orders.

(2) Medical records shall be readily available to the limited online prescribing practitioner and shall be maintained in accordance with the standards of the Limited Online Prescribing Practitioner's profession for each patient requesting a prescription, whether or not the Limited Online Prescribing Practitioner issues a prescription for the patient. The Limited Online Prescribing Practitioner may delegate the storage of these medical records to the Internet Facilitator only if the appropriate patient consent has been obtained. Only the Limited Online Prescribing Practitioner and the Division shall have access to all the patient records. A patient shall be able to view or obtain a copy of the patient's own records.

(3) The Limited Online Prescribing Practitioner shall be available for consultation with all of the online patients through secure electronic or other forms of communication. The Limited Online Prescribing Practitioner shall provide meaningful opportunities for patients to communicate their concerns or questions, and shall review and respond to those concerns or questions in a timely manner.

(4) The Limited Online Prescribing Practitioner shall not delegate to any person or third party the Limited Online Prescribing Practitioner's responsibility to:

(a) review and evaluate the patient comprehensive health history questionnaire;

(b) consult with the patient electronically or through other secure means regarding the patient's medical condition(s); and

(c) diagnose and prescribe medication to the patient.

(5) Decisions made by the Limited Online Prescribing Practitioner regarding patient care, including whether or not to prescribe particular drugs for a patient, shall be based solely on the professional judgment of the Limited Online Prescribing Practitioner. The health and welfare of the patient shall be the Limited Online Prescribing Practitioner's primary priority.

(6) The Limited Online Prescribing Practitioner's compensation for the services provided to patients may not be based on the issuance of a prescription by the Limited Online Prescribing Practitioner.

(7) The following information shall be conspicuously disclosed by the Limited Online Prescribing Practitioner on the URL that is submitted in the application:

(a) the owner of the site;

(b) the specific services provided by the Limited Online Prescribing Practitioner;

(c) the Limited Online Prescribing Practitioner's office address and contact information;

(d) the licensure and qualifications of the Limited Online Prescribing Practitioner;

(e) the financial interest of the Limited Online Prescribing Practitioner in the website or in any information, products, or services available through the website;

(f) the appropriate uses of the website and standards for operation of the site including providing health advice, and use and response times for e-mails, electronic messages and other communication transmitted via the website;

(g) the limitations of the website, including the inability to provide medical services electronically in emergency situations;

(h) an attestation that:

(i) no one associated with the website will sell or provide any confidential information;

(ii) the Limited Online Prescribing Practitioner, Internet Facilitator and Contractual Pharmacy will strictly adhere to HIPAA requirements; and

(iii) confidential information shall, upon request, be provided to the Division and to the patient to whom the information relates;

(i) a description of the rights of a patient with respect to obtaining the patient's own health information; and

(j) a list of risks and benefits of any of the drug therapies available on the site.

(8) A Limited Online Prescribing Practitioner shall have in place a method for communication between the patients and the Limited Online Prescribing Practitioner in the event the agreement between the Limited Online Prescribing Practitioner and Internet Facilitator is dissolved.

(9) The Limited Online Prescribing Practitioner shall follow the policies and procedures established by the approved Internet Facilitator to adequately safeguard patient confidentiality.

(10) The Limited Online Prescribing Practitioner shall keep the Division advised at all times regarding the name and contact information of the Contractual Pharmacy.

(11) The Limited Online Prescribing Practitioner shall maintain in good standing all of the Limited Online Prescribing Practitioner's professional licenses in the State of Utah and in all other jurisdictions in which the Limited Online Prescribing Practitioner is licensed. Any disciplinary action on the Limited Online Prescribing Practitioner's Utah license shall unless otherwise stated automatically have the same effect upon the Limited Online Prescribing Practitioner's permit for limited online prescribing.

(12) If a Limited Online Prescribing Practitioner is rendered unable to engage in online prescribing, the Limited Online Prescribing Practitioner shall recognize the existence of any previously established relationship with a patient to whom the Limited Online Prescribing Practitioner prescribed medication. The termination of such relationship shall be conducted only in accordance with the professional standards of the Limited Online Prescribing Practitioner's profession.

R156-1a-306. Drugs Approved to be Prescribed Online.

(1) In accordance with Subsection 58-1-501(4), only the following legend, non-controlled drugs that are approved by the Food and Drug Administration and prescribed to treat the condition for which the drug was approved, may be prescribed by a Limited Online Prescribing Practitioner in accordance with this rule:

(i) finasteride;

(ii) sildenafil citrate;

(iii) tadalafil;

(iv) vardenafil hydrochloride; and

(v) hormonal based contraception.

(2) Should the Food and Drug Administration issue an additional clinical black box warning on any drug listed in Subsection (1) after January 1, 2010, a Limited Online Prescribing Practitioner shall immediately cease to prescribe the drug and the Division shall consult with the appropriate board(s) to determine the warning's effect on Subsection (1).

(3) Any request to alter this list of approved drugs shall be directed to the Division Director in the form of a request to modify this rule. Any changes to this list shall be made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and in consultation with the Utah State Board of Pharmacy, the Physicians Licensing Board, and the Osteopathic Physicians and Surgeons Licensing Board.

R156-1a-307. Internet Facilitator.

(1) The Limited Online Prescribing Practitioner shall have an Internet Facilitator to provide services which the Limited Online Prescribing Practitioner will use in implementing the online assessment, diagnosis and prescribing tool.

(2) The Internet Facilitator shall provide electronic or telephonic communication between the Limited Online Prescribing Practitioner and the patient which is secure and confidential, and allows the Limited Online Prescribing Practitioner to be directly accessible to a patient to answer questions regarding the patient's treatment plan. A secure and confidential electronic method of communication does not include common email usage.

(3) The Limited Online Prescribing Practitioner shall use only one Internet Facilitator, and one URL address/site unless otherwise approved by the Division.

(4) The Limited Online Prescribing Practitioner's online assessment and diagnosis, the electronic communication between the Limited Online Prescribing Practitioner and the patient, and the maintenance of online medical records if delegated by the Limited Online Prescribing Practitioner, shall be conducted only through the approved Internet Facilitator.

(5) Any change of the Internet Facilitator or URL address/site shall be approved by the Division prior to the change.

(6) To ensure patient confidentiality and security of data, any system used to communicate with a patient shall comply with all HIPAA requirements.

(7) The Internet Facilitator is prohibited from advertising to any pornographic sites or sites that promote any illegal activity, or allowing links to and from the approved URL by any such sites.

R156-1a-308. Contractual Pharmacy.

(1) The Limited Online Prescribing Practitioner may utilize the services of a Contractual Pharmacy. The Contractual Pharmacy shall be licensed in good standing in Utah as a Class A Retail Pharmacy or a Class B Closed Door Pharmacy.

(2) The patients' freedom of choice in selecting who will fill prescriptions shall be preserved at all times. As requested by the patient, the Contractual Pharmacy shall:

(a) dispense the medication to the patient;

(b) transfer the prescription to the patient's personal pharmacy for dispensing at no additional cost to the patient; or

(c) send the prescription directly to the patient at no additional cost to the patient.

(3) The Contractual Pharmacy shall maintain a toll-free number for patients utilizing the services of the Contractual Pharmacy to receive medications prescribed online.

(4) A Contractual Pharmacy shall utilize a tracking ID number system when shipping medications prescribed for patients by a Limited Online Prescribing Practitioner.

(5) Should a patient choose to utilize the services of a Contractual Pharmacy, the Limited Online Prescribing Practitioner shall authorize the Internet Facilitator to provide the following information to the Contractual Pharmacy:

(a) the patient's basic biographical information including:

(i) full name of patient;

(ii) patient's address and telephone number; and

(iii) patient's date of birth or age and gender;

(b) a summary of the patient's medical history including:

(i) the patient's height, weight, and vital signs (if known);

(ii) any medication allergies or drug reactions the patient has; and

(iii) current medications including over-the-counter products the patient is taking; and

(c) any additional comments relevant to the patient's drug use.

(6) Any agreement between a Contractual Pharmacy and a Limited Online Prescribing Practitioner shall include the following:

(i) a requirement that the Contractual Pharmacy shall provide the Division access to the records of patients who receive medications pursuant to this rule; and

(ii) a requirement that the Contractual Pharmacy shall provide to the Division a quarterly report of all the drugs dispensed in accordance with this rule.

R156-1a-309. Audits.

(1) The Limited Online Prescribing Practitioner shall allow and facilitate the ability of the Division to conduct audits of the operation of the website as well as the records of the Limited Online Prescribing Practitioner, Contractual Pharmacy and Internet Facilitator to ensure compliance with state and federal statutes, rules, and regulations including:

(a) ensuring that a comprehensive history and assessment have been obtained and a diagnosis has been made for a patient before any medications are prescribed; and

(b) ensuring that only the approved medications are being prescribed.

(2) The Division shall be given full remote read access only rights to all of the data used and stored in the system to conduct its audits. The Division shall be able to access and review all of the information available to the Limited Online Prescribing

Practitioner. Access shall be provided in a manner that allows access from the Division's offices.

(3) The Limited Online Prescribing Practitioner shall provide to the Division on a quarterly basis or other basis as directed by the Division, a report containing the following information and other information as the Division may direct:

(a) number of prescriptions written by drug name;

(b) number of comprehensive histories/assessments received;

(c) number of comprehensive histories/assessments reviewed;

(d) the demographic data of the patients receiving prescriptions based on this rule; and

(e) the number of prescriptions:

(i) dispensed by the Contractual Pharmacy;

(ii) sent to a patient's pharmacy of choice; and

(iii) sent directly to a patient.

(4) The Division's authority to conduct an audit pursuant to this rule shall survive any termination or expiration of any prescriptive authority for online prescribing.

R156-1a-310. Renewal of Limited Online Prescribing Permit - Procedure.

(1) The limited online prescribing permit shall be associated with the Limited Online Prescribing Practitioner's primary professional license and may be renewed at the time the primary license is renewed in accordance with Subsection 58-1-308(1).

(2) The renewal requirements shall include continuous compliance with this rule and any other governing authority.

R156-1a-401. Termination of Authority - Relationship with Internet Facilitator and Contractual Pharmacy.

(1) The termination or expiration of a limited online prescribing permit for any reason does not limit the Division's authority to commence or continue any investigation or adjudicative proceeding.

(2) Because of the working business relationship between the Limited Online Prescribing Practitioner, the Internet Facilitator and the Contractual Pharmacy, the Limited Online Prescribing Practitioner's ability to comply with this rule may depend in some respects on the Internet Facilitator or Contractual Pharmacy. It is possible that a particular action or inaction by the Internet Facilitator or Contractual Pharmacy could have the effect of causing the Limited Online Prescribing Practitioner to be out of compliance with this rule, and the Limited Online Prescribing Practitioner may be held accountable for the non-compliance.

(3) This rule addresses the Limited Online Prescribing Practitioner's medical practice, and it is the Limited Online Prescribing Practitioner's professional licenses that will be at risk if the Limited Online Prescribing Practitioner violates this rule, whether or not an action or inaction by the Internet Facilitator or Contractual Pharmacy was a contributing factor in the Limited Online Prescribing Practitioner's violation. It shall not be a defense to an allegation that the Limited Online Prescribing Practitioner has failed to comply with this rule or to a disciplinary proceeding based on such an allegation, that failure to comply was a result of an action or inaction by the Internet Facilitator or Contractual Pharmacy.

R156-1a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) online prescribing to a person under the age of 18 years;

(2) online prescribing of a legend drug not authorized in Section R156-1a-306;

(3) online prescribing of any controlled substance;

(4) using the name or official seal of the State of Utah, the Utah Department of Commerce, the Utah Division of Occupational and Professional Licensing or its boards in an unauthorized manner;

(5) failing to respond to a request from the Division within the timeframe requested for:

(a) an audit of the website;

(b) records of the Limited Online Prescribing Practitioner, Internet Facilitator or Contractual Pharmacy; or

(c) other information;

(6) engaging in online prescribing using an online comprehensive health history without a permit granted by the Division under this rule;

(7) utilizing an Internet Facilitator without approval from the Division;

(8) failing to inform a patient of the patient's freedom of choice in selecting who will dispense a prescription;

(9) failing to comply with Subsection R156-1a-308(2);

(10) failing to keep the Division informed of the name and contact information of the Internet Facilitator or Contractual Pharmacy;

(11) prescribing any medications to a patient while engaged in practice as a Limited Online Prescribing Practitioner without first reviewing a comprehensive health history, making an assessment, or establishing a diagnosis;

(12) prescribing a medication listed in Section R156-1a-306 for a diagnosis that is not recognized by the Federal Food and Drug Administration to be treated by the prescribed drug;

(13) online prescribing to a person not located in the State of Utah (unless such practice is authorized by a source of legal authority independent from this rule); and

(14) prescribing a drug listed in Subsection R156-1a-306(1) following the issuance of any additional clinical black box warning issued after January 1, 2010 by the Food and Drug Administration.

R156-1a-502. Immediate and Significant Danger.

(1) If the Limited Online Prescribing Practitioner violates this rule in any of the ways specified below, the violation shall be deemed to constitute (1) an immediate and significant danger to the public health, safety, or welfare, and (2) a threat requiring immediate action by the Division to terminate the prescriptive authority for online prescribing pursuant to Section 63G-4-502:

(a) online prescribing to a person under the age of 18 years;

(b) online prescribing of a legend drug not authorized in Section R156-1a-306;

(c) online prescribing of any controlled substance;

(d) violating this rule after having been given reasonable opportunity to cure the violation;

(e) using the name or official seal of the State of Utah, the Utah Department of Commerce, the Utah Division of

Occupational and Professional Licensing or its boards in an unauthorized manner; or

(f) failing to respond to a request from the Division within the timeframe requested for:

(i) an audit of the website; or

(ii) records of the Limited Online Prescribing Practitioner, Internet Facilitator or Contractual Pharmacy.

R156-1a-601. Effect of Governing Authority Changes on this Rule.

If after the effective date of this rule any Utah or federal statute, regulation, rule, or amendment thereto becomes effective which renders unlawful in any respect the practice of online prescribing authorized by this rule, then this rule or any portion thereof shall terminate automatically on the effective date of the change in the law and the Limited Online Prescribing Practitioner shall immediately cease the prohibited practice of limited online prescribing.

KEY: licensing, limited online prescribing permit
Date of Enactment or Last Substantive Amendment: 2010
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-501(4)

Commerce, Occupational and Professional Licensing
R156-78B-4
General Provisions

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 33175
FILED: 11/19/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Administrative Rules Review Committee requested this agency to evaluate the need of the phrase "liberally construed" in the agency's adjudicative proceedings provisions. A determination has been made that the phrase can be removed and replaced with different terminology.

SUMMARY OF THE RULE OR CHANGE: This filing removes the phrase "liberally construed" from the general provisions for prelitigation panel reviews. Instead, the rule indicates that the agency intends to secure the just, speedy, and economical determination of all issues presented to the agency.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 78B-3-416(1)(b)

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The state budget will not be affected by the change of terminology in expressing this agency's intent as to its proceedings. There will be nominal reprinting costs. This rule is not distributed widely.

♦ LOCAL GOVERNMENTS: Local government does not administer this agency's adjudicative proceedings, such that local government budget is not affected.

♦ SMALL BUSINESSES: Small businesses will not be affected by the change of terminology in expressing this agency's intent as to its proceedings.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No persons will be affected by the change of terminology in expressing this agency's intent as to its proceedings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No persons will be affected by the change of terminology in expressing this agency's intent as to its proceedings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Administrative Rules Review Committee requested this agency to evaluate the need of the phrase "liberally construed" in the agency's adjudicative proceedings provisions. A determination has been made that the phrase can be removed and replaced with different terminology. No fiscal impact to businesses is anticipated from the use of such replacement terminology.

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 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 NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-78B. Prelitigation Panel Review Rule.
R156-78B-4. General Provisions.

(1) Purpose[~~Liberal Construction~~].

This rule is intended[~~shall be liberally construed~~] to secure the just, speedy and economical determination of all issues presented to the division.

(2) Deviation from Rule.

The division may permit a deviation from this rule insofar as it may find compliance therewith to be impractical or unnecessary.

(3) Computation of Time.

The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last, unless the last day is Saturday, Sunday or a state holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday nor a holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, three days shall be added to the prescribed period.

KEY: medical malpractice, prelitigation
Date of Enactment or Last Substantive Amendment: [~~December 8, 2008~~]2010
Notice of Continuation: April 9, 2007
Authorizing, and Implemented or Interpreted Law: 78B-3-416(1)(b)

Commerce, Real Estate
R162-101
Authority and Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33158
FILED: 11/18/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These amendments update the definitions: 1) to comply with the statutory provision allowing 12 months to reinstate an expired license; 2) to comply with the Appraiser Qualification Board requirement that a trainee be supervised by a certified appraiser; 3) to complete the transition from evaluating experience points to evaluating experience hours; and 4) to correct other nonsubstantive language.

SUMMARY OF THE RULE OR CHANGE: The address for the Appraiser Qualification Board is removed. The reinstatement period is changed from 6 months to 12 months. The trainee definition is corrected to state that a trainee must be supervised by a certified appraiser and amended to state that trainees earn experience hours, not experience points.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 61-2b-20 through 61-2b-31

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None of the proposed changes requires the state to implement or oversee a new program or procedure. No costs are anticipated.
♦ LOCAL GOVERNMENTS: Local governments are not involved in the licensing of appraisers or trainees. These rule amendments do not affect local governments.
♦ SMALL BUSINESSES: These rule amendments do not impose any new fees or costs on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: These rule amendments do not impose any new fees or costs on affected persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Affected persons will have 12 months rather than 6 months to reinstate an expired license. There are no costs associated with extending the reinstatement period. Affected appraiser trainees will document their experience in terms of hours rather than documenting both hours and points. There are no costs associated with this transition. It might save the trainees some time by simplifying their record-keeping requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule summary, no fiscal impact to businesses is anticipated from this filing, which conforms the rule to recent statutory amendments and Appraiser Qualification Board requirements and makes other technical changes.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
REAL ESTATE
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.
R162-101. Authority and Definitions.
R162-101-1. Authority.

101.1 The following administrative rules, applicable to the Division of Real Estate, Department of Commerce, have been established under the authority granted by Section 61-2b-6(1).

101.[~~1.1~~]2 The authority to establish and collect fees is granted by Section 61-2b-37.

101.3 The authority to exempt specific persons from complying with USPAP standards is granted by Section 61-2b-8(5)(c) within certain limitations as imposed by Section 61-2b-27(1)(c).

R162-101-2. Definitions.

101.2.1 AQB: the Appraiser Qualifications Board of The Appraisal Foundation[~~, 1029 Vermont Avenue, N.W., Suite 900, Washington, D.C. 20005~~].

101.2.2 Board: the Utah Real Estate Appraiser Licensing and Certification Board.

101.2.3 Classification: the type of license or certification held by an appraiser.

101.2.4 Division: the Division of Real Estate of the Department of Commerce.

101.2.5 Reinstatement: renewing a license or certification for an additional period after its expiration date has passed but prior to [~~six~~]12 months after the expiration date.

101.2.6 Renewal: extending a license or certification for an additional period upon its expiration.

101.2.7 Trainee: a person who is working under the direct supervision of a [~~State-licensed appraiser, a~~]State-certified residential appraiser[~~,~~] or a State-certified general appraiser to earn [~~points~~]hours for licensure, and who meets the requirements of [~~Section 105.3.3~~]R162-110.

101.2.8 USPAP: The Uniform Standards of Professional Appraisal Practice published by The Appraisal Foundation[~~, 1029 Vermont Avenue, N.W., Suite 900, Washington, D.C. 20005~~].

KEY: real estate appraisals, definitions
Date of Enactment or Last Substantive Amendment: [~~September 10, 2004~~]2010
Notice of Continuation: April 18, 2007
Authorizing, and Implemented or Interpreted Law: 61-2b-20 to 61-2b-31

Commerce, Real Estate
R162-102
Application Procedures

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33180
FILED: 11/24/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment complies with the statutory provisions: 1) requiring a trainee to renew the registration every two years; and 2) establishing a 12-month window in which to reinstate an expired license or trainee registration.

SUMMARY OF THE RULE OR CHANGE: This amendment establishes that trainees must renew their registrations every two years. It also establishes a 12-month window in which an appraiser or trainee may reinstate an expired license or trainee registration. Language is added to emphasize that a trainee must be registered with the Division in order to earn experience credit toward licensure. Other nonsubstantive corrections are included to clarify the language of the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2b-6(1)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Extending the reinstatement period will have no impact on the state budget. Renewing trainee registrations every two years will require some administrative hours. However, the Division is already renewing appraiser licenses every two years, and it is anticipated that the Division already has adequate staff and resources in place to cover the trainee renewals.
♦ LOCAL GOVERNMENTS: Local government is not involved in licensing appraisers or registering trainees. There are no costs to local government.
♦ SMALL BUSINESSES: Small businesses that choose to pay the renewal fees on behalf of their appraiser trainees may do so. The current renewal fee is $100.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Affected trainees will have to renew their registrations every two years. Currently, the renewal fee is $100.

COMPLIANCE COSTS FOR AFFECTED PERSONS: To comply, affected persons will have to renew a trainee registration every two years. Currently, the renewal fee is $100.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As stated in the rule summary, no fiscal impact to businesses is anticipated from this filing, which adopts standards required by recent statutory amendments relating to the registration of appraiser trainees and makes other clarifying amendments.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
REAL ESTATE
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.
R162-102. Application Procedures.
R162-102-1. Application.

102.1.1 Initial Review - An applicant for licensure or certification as an appraiser will be required to submit, on forms provided by the Division, documentation indicating successful completion of the education and experience required by the State of Utah. Until January 1, 2008, an applicant may submit education documentation and experience documentation to the Division for approval separately. Effective January 1, 2008, an applicant shall submit education documentation and experience documentation to the Division at the same time.

102.1.1.1 Education documentation may be reviewed by an Appraiser Education Review Committee appointed by the Real Estate Appraiser Licensing and Certification Board to determine if the education requirement has been met.

102.1.1.1.1 As a prerequisite to sitting for either the licensing examination or the certification examination, the applicant shall submit proof of successful completion of the 15-hour National USPAP Course or its equivalent from an instructor or instructors, at least one of whom is a State-Certified Residential or State-Certified General Appraiser and has been certified by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. Equivalency to the 15-hour National USPAP Course will be determined through the Course Approval Program of the Appraiser Qualifications Board (AQB) of the Appraisal Foundation.

102.1.1.2 The applicant shall provide evidence of meeting the experience requirement by completing the form required by the Division. The Division and the Board shall not award experience credit toward qualification as a state-licensed appraiser for any work performed at a time when the applicant was not registered with the Division as a trainee.

102.1.1.3 The candidate shall submit the appropriate license or certification fee at the time of [~~submission to the Division of either the education or experience documentation forms~~]application.

102.1.1.4 If an applicant has submitted education or experience documentation to the Division prior to January 1, 2008 and has obtained approval of only the education component or only the experience component required for licensure or certification, the applicant must submit proper documentation of the remaining component to the Division prior to January 1, 2011 or any approval of a component shall lapse.

102.1.2 Exam Application

102.1.2.1 Upon determining the candidate has completed the education and experience requirements, the Division will issue to the candidate a form permitting the candidate to register to sit for the examination. The permission to register to sit for the examination shall be valid for twenty-four months after issuance.

102.1.2.2 The candidate shall make application to take the examination by returning the application form and the appropriate testing fee to the testing service designated by the Division. If the applicant fails to take the examination, the fee will be forfeited.

102.1.3 Final Application

102.1.3.1 Within 90 days after successful completion of the exam, the appraiser applicant [~~must~~]shall return to the Division each of the following:

102.1.3.1.1 A report from the testing service indicating successful completion of the exam.

102.1.3.1.2 The application form required by the Division. The application form shall include the applicant's business and home addresses. A post office box without a street address is unacceptable as a business or home address. The applicant may designate either address to be used as a mailing address.

102.1.3.1.3 The fee for the federal registry if the applicant is applying for certification.

R162-102-2. Status Change.

102.2.1 A licensed appraiser,[~~or~~] certified appraiser, or trainee [~~must~~]shall notify the Division within ten working days of any status change. Status changes are effective on the date the properly executed forms and appropriate fees are received by the Division. Notice [~~must~~]shall be made in writing on the forms required by the Division.

102.2.1.1 Change of name requires submission of official documentation such as a marriage or divorce certificate, or driver's license.

102.2.1.2 Change of business, home address or mailing address requires written notification. A post office box without a street address is unacceptable as a business or home address. Any address may be designated as a mailing address.

102.2.2 State-licensed Appraisers, upon meeting the appropriate requirements for certification and upon filing a completed application within six months from their last renewal, will be allowed to transfer to the categories of either Certified Residential or Certified General by paying only a transfer fee.

102.2.2.1 Transfer to a certified category will not change the individual's expiration date.

R162-102-3. Renewal.

102.3.1 At least 30 days before expiration, a renewal notice shall be sent by the Division to the licensed appraiser,[~~or~~] certified appraiser, or trainee at the mailing address shown on the Division records. The applicant for renewal [~~must~~]shall return the completed renewal notice and the applicable renewal fee to the Division on or before the expiration shown on the notice.

102.3.1.1 The licensed appraiser,[~~or~~] certified appraiser, or trainee [~~must~~]shall return proof of completion of [~~28 hours of~~]the following continuing education taken during the preceding two years[~~-~~]:

(a) the 7-hour National USPAP Update Course; and

(b) 21 additional hours of Division-approved continuing education.

102.3.1.1.4 All appraisers and trainees must take the 7-hour National USPAP Update Course or its equivalent [~~at least once every two years~~]once for each renewal in order to maintain a license, [~~or~~]certification, or registration. In order to qualify as continuing education for renewal, the course must have been taken from an instructor or instructors, at least one of whom is a State-Certified Residential or State-Certified General Appraiser and has been certified by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation. Equivalency to the 7-hour National USPAP Update Course will be determined through the Course Approval Program of the Appraiser Qualifications Board (AQB) of the Appraisal Foundation.

102.3.2 If the renewal fee and documentation are not received within the prescribed time period, the license,[~~or~~] certification, or registration shall expire.

102.3.2.1 A license, [~~or~~]certification, or registration may be renewed for a period of 30 days after the expiration date upon payment of a late fee in addition to the requirements of Section 102.3.1.

102.3.2.2 [~~After this 30-day period and until six months after the expiration date, the license or certification may be reinstated upon payment of a reinstatement fee in addition to the requirements of Section 102.3.1. It shall be grounds for disciplinary sanction if, after the expiration date, the individual continues to perform work for which a license or certification is required.~~

~~102.3.2.3 A person who does not renew a license or certification within six months after the expiration date shall be relicensed or recertified as prescribed for an original application. The applicant will receive credit for previously credited prelicensing education. Applicants for a new license or certification will be required to complete a USPAP course and retake the examination for the classification for which they are applying.~~]Reinstatement.

(a) After the 30-day period described in Subsection 102.3.2.1 and until six months after the expiration date, an individual may reinstate an expired license, certification, or registration by

(i) complying with Subsection 102.3.1;

(ii) paying a late fee; and

(iii) paying a reinstatement fee.

(b) After the six-month period described in Subsection (a) and until one year after the expiration date, an individual may reinstate an expired license, certification, or registration by

(i) complying with Subsection 102.3.1;

(ii) paying a late fee;

(iii) paying a reinstatement fee; and

(iv) completing 24 hours of additional continuing education.

(c)(i) An individual who does not reinstate an expired license, certification, or registration within 12 months of the expiration date must:

(A) reapply with the Division as a new applicant;

(B) retake and pass the 15-hour USPAP course; and

(C) retake and pass any applicable licensing or certification examination.

(ii) An individual reapplying under Subsection (i) shall receive credit for previously credited prelicensing education if:

(A) it was completed within the five-year period prior to the date of reapplication; and it was either

(B) completed after January 1, 2008; or

(C) certified by the Division and the AQB prior to January 1, 2008, as approved, qualified prelicensing education.

102.3.3 If the Division has received renewal documents in a timely manner but the information is incomplete, the appraiser or trainee [~~shall~~]may be extended a 15-day grace period to complete the application.

102.3.4 Renewal while on active military service. An appraiser or trainee who is unable to renew a license or certification because active military service has prevented the completion of the appraiser's or trainee's required continuing education may submit a timely application for renewal that is complete, except for proof of continuing education, and may request that the application for renewal be held in suspense pending the completion of the continuing education requirement.

102.3.4.1 The appraiser or trainee shall[~~will~~] have 120 days after completion of active military service to complete the continuing education required for the renewal and submit proof of the continuing education to the Division.

102.3.4.2 An appraiser may not act as an appraiser in Utah after the expiration of the appraiser's current license while the appraiser's application for renewal is held in suspense by the Division pending the completion of military service and the completion of the continuing education required for renewal. The appraiser may not act as an appraiser in Utah until the appraiser submits proof of completion of the required continuing education and the appraiser's application for renewal is processed by the Division.

R162-102-5. Reciprocity.

102.5.1 An individual who is licensed or certified as an appraiser by another state may be licensed or certified in Utah by reciprocity on the following conditions:

102.5.1.1 The other state must have required the applicant to satisfactorily complete classroom hours of appraisal education approved by that state which are substantially equivalent in number to the hours required for the class of licensure or certification for which he is applying in Utah;

102.5.1.2 The education must have included a course in the Uniform Standards of Professional Appraisal Practice. The course must either be the 15-hour National USPAP Course or its equivalent. Equivalency to the 15-hour National USPAP Course will be determined through the Course Approval Program of the Appraiser Qualifications Board (AQB) of the Appraisal Foundation;

102.5.1.3 The applicant [~~must~~]shall obtain and study the Utah Real Estate Appraiser Licensing and Certification Act and the rules promulgated thereunder and [~~must~~]shall sign an attestation that he understands and will abide by them;

102.5.1.4 The applicant [~~must have~~]shall provide evidence of having passed an examination [~~which~~]that has been approved by the AQB for the class of licensure or certification for which he is applying;

102.5.1.5 If the applicant resides outside of the state of Utah, [~~he must~~]the applicant shall sign an irrevocable consent to service authorizing the Division to receive service of any lawful process on his behalf in any noncriminal proceeding arising out of his practice as an appraiser in this state;

102.5.1.6 The applicant [~~must~~]shall provide a complete licensing history sent directly to the Division by his home state and

any other state in which he has been licensed, which shall include the applicant's full name, home and business addresses and telephone numbers, the date first licensed, the type or types of licenses or certifications held, the date the current license or certification expires, and a statement concerning whether disciplinary action has ever been taken, or is pending, against the individual;

102.5.1.7 The applicant shall not have been convicted of a criminal offense involving moral turpitude relating to his ability to provide services as an appraiser; and

102.5.1.8 The applicant [~~must~~]shall agree, as a condition of licensure or certification, [~~that he will~~]to furnish to the Division upon demand all records requested by the Division relating to [~~his~~]the applicant's appraisal practice in Utah. Failure to do so will be considered grounds for revocation of license or certification.

KEY: real estate appraisals, licensing
Date of Enactment or Last Substantive Amendment: [~~September 27, 2007~~]2010
Notice of Continuation: February 15, 2007
Authorizing, and Implemented or Interpreted Law: 61-2b-6(1) [~~(l)~~]

Commerce, Real Estate
R162-104
Experience Requirement

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33224
FILED: 11/30/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is proposed to allow individuals to calculate experience toward licensure in terms of hours rather than in terms of both points and hours.

SUMMARY OF THE RULE OR CHANGE: Throughout, the term "point" is replaced with the term "hour," and the required points are converted to hours by a factor of five; i.e., where 1 point was required, now 5 hours are required. The number of hours allowed for data entry is changed to 0.25, or 15 minutes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 61-2b-1 through 61-2b-40

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The state might realize some savings in time required to review experience logs. Staff will have to analyze only the hours claimed rather than analyzing both points and hours. However, the state budget will not be affected.
♦ LOCAL GOVERNMENTS: Local governments are not required to complete or review the experience logs that are required for appraiser licensure and certification.
♦ SMALL BUSINESSES: Small businesses are not required to complete or review the experience logs that are required for appraiser licensure and certification. Small businesses that hire trainees and appraisers may choose to assist in tracking hours toward licensure and certification. Those businesses will benefit from having the process simplified.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Affected persons who are logging their experience in order to qualify for licensure or certification must record that experience in terms of hours. They no longer have to calculate points as well. There are no costs associated with relieving them of this additional requirement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: To comply, affected persons must log their experience in terms of hours only. This amendment should make it easier for them to record their experience. It will not impose any costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule filing, which simplifies the method of calculating experience toward licensure.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
REAL ESTATE
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.
R162-104. Experience Requirement.
R162-104-1. Measuring Experience.

104.1.1 Except for those applicants who qualify under Section 104-14, appraisal experience shall be measured in [~~points~~]hours according to the Appraisal Experience [~~Points~~]Hours

Schedules in Section R162-104-15 of this rule[~~ and also in time accrued~~].

104.1.1.1 Experience for state-licensed applicants shall have been accrued in no fewer than 12 months. Experience for the certified residential applicants shall have been accrued in no fewer than 24 months, as required by the AQB. Experience for the certified general applicants shall have been accrued in no fewer than 30 months, as required by the AQB.

104.1.1.2 Applicants[~~ for the state-licensed category~~] shall submit proof of experience as follows:[~~at least 400 points of experience and a minimum of 2000 appraisal hours of experience. Applicants for certified residential shall submit proof of at least 100 additional points and 500 additional appraisal hours accrued after state-licensed status was obtained, for a total of 500 points and 2500 appraisal hours of experience. Applicants for certified general shall submit proof of at least 200 additional points and 1000 appraisal hours accrued after state-licensed status was obtained, for a total of 600 points and 3000 appraisal hours of experience.~~]

(a) State-licensed appraiser: at least 2,000 hours of appraisal experience.

(b) Certified residential appraiser: 500 hours accrued after state-licensed status was obtained, for a minimum of 2,500 hours of appraisal experience.

(c) Certified general appraiser: 1,000 hours accrued after state-licensed status was obtained, for a minimum of 3,000 hours of appraisal experience.

R162-104-2. Maximum [~~Points~~]Hours Per Year.

104.2 [~~For applicants for certification, a maximum of 400 points will be credited for any one 12-month period. For applicants for licensure, a maximum of 400 points will be credited for any one~~]An applicant may not accrue more than 2,000 experience hours in any 12-month period.

R162-104-5. Compliance with USPAP and Licensing Requirements; Local Experience Requirement.

104.5 No experience credit will be given for appraisals which were performed in violation of Utah law, the law of another jurisdiction, or the administrative rules adopted by the Division and the Board.

104.5.1 No experience credit will be given for appraisals unless the appraisals were done in compliance with USPAP.

104.5.2 In order to qualify as experience credit toward certification, the additional [~~points~~]hours for certification required by Subsection R162-104.1.1.2 must have been accrued while the applicant was licensed as an appraiser in Utah, or in another state if licensure was required in that state, at the time the appraisal was performed.

104.5.3 Except for experience [~~points~~]hours claimed under Subsection R162-104.15.3, appraisals where only an exterior inspection of the subject property is performed shall be granted 25% of the credit awarded an appraisal which includes an interior inspection of the subject property. Not more than 25% of the total experience required for licensure or certification may be earned from appraisals where the interior of the subject property is not inspected.

104.5.4 At least 50% of the appraisals submitted for experience credit shall be appraisals of properties located in Utah.

R162-104-6. State-Licensed and State-Certified Applicants.

104.6.1 Except for those applicants who qualify under Section R162-104-14, applicants applying for licensure as State-Licensed Appraisers shall be awarded [~~points~~]hours from the [~~Points~~]Hours Schedules in Section R162-104-15 for their experience prior to licensure only if the experience claimed was gained in compliance with Subection R162-105-3.

104.6.2 Applicants applying for certification as State-Certified Residential Appraisers must document at least 75% of the [~~points~~]hours submitted from the Residential Experience [~~Points~~]Hours Schedule or the residential portion of the Mass Appraisal [~~Points~~]Hours Schedule. No more than 25% of the total [~~points~~]hours submitted may be from the General Experience [~~Points~~]Hours Schedule or from assignments listed on the Mass Appraisal [~~Points~~]Hours Schedule other than 1 to 4 unit residential properties.

104.6.3 Applicants applying for certification as State-Certified General Appraisers may claim [~~points~~]hours for experience from any of the [~~Points~~]Hours Schedules in Section R162-104-15, so long as at least 50% of the total [~~points~~]hours has been earned from the General Experience [~~Points~~]Hours Schedule or from assignments listed on the Mass Appraisal [~~Points~~]Hours Schedule other than 1 to 4 unit residential properties.

R162-104-7. Review or Supervision of Appraisals.

104.7 Review appraisals will be awarded experience credit when the appraiser has performed technical reviews of appraisals prepared by either employees, associates or others, provided the appraiser complied with Uniform Standards of Professional Appraisal Practice Standards Rule 3 when the appraiser was required to comply with the rule. The following [~~points~~]hours shall be awarded for review or supervision of appraisals:

104.7.1 Review of an appraisal which includes verification of the data, but which does not include a physical inspection of the property, commonly known as a desk review, shall be worth 30% of the [~~points~~]hours awarded to the appraisal if a separate written review appraisal report is prepared. Except as provided in Subsection R162-104.7.5, a maximum of [~~100 points~~]500 hours may be earned by desk review of appraisals.

104.7.2 Review of appraisals which includes a physical inspection of the property and verification of the data, commonly known as a field review, shall be worth 50% of the [~~points~~]hours awarded to the appraisal if a separate written review appraisal report is prepared. Except as provided in Subsection R162-104.7.5, a maximum of [~~100 points~~]500 hours may be earned by field review of appraisals.

104.7.3 Supervision of appraisers shall be worth 20% of the [~~points~~]hours awarded to the appraisal. A maximum of [~~100 points~~]500 hours may be earned by supervision of appraisers.

104.7.4 Except as provided in Subsection R162-104.7.5, not more than 50% of the total experience required for certification may be granted under Subsections R162-104.7.1 through R162-104.7.3 and R162-104.9.1 and R162-104.9.3 combined.

104.7.5 Applicants whose experience was earned through review of appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies are not subject to the [~~point~~]hour limitations in Subsections R162-104.7.1, R162-104.7.2, and R162-104.7.4.

R162-104-8. Condemnation Appraisals.

104.8 Condemnation appraisals shall be worth an additional 50% of the [~~points~~]hours normally awarded for the appraisal if the condemnation appraisal included a before and after appraisal because of a partial taking of the property.

R162-104-11. Unacceptable Experience.

104.11 An applicant will not receive [~~points~~]hours toward satisfying the experience requirement for licensure or certification for performing the following:

(a) Appraisals of the value of a business as distinguished from the appraisal of commercial real estate; or

(b) Personal property appraisals.

R162-104-14. Special Circumstances.

104.14 Applicants having experience in categories other than those shown on the Appraisal Experience [~~Points~~]Hours Schedules[~~, or~~]and applicants who believe the Experience [~~Points~~]Hours Schedules do not adequately reflect their experience[~~,~~] or [~~applicants who believe the Experience Points Schedules do not adequately reflect~~]the complexity or time spent on an appraisal[~~,~~] may petition the Board on an individual basis for evaluation and approval of their experience as being substantially equivalent to that required for licensure or certification. Upon a finding that an applicant's experience is substantially equivalent to that required for licensure or certification, the Board may accept the alternate experience and award the applicant an appropriate number of [~~points~~]hours for the alternate experience.

104.14.1 Fulltime elected county assessors and any person performing an appraisal for the purposes of establishing the fair market value of real estate for the assessment roll are not subject to the scope of authority limitations in Subsection R162-105.3.

R162-104-15. Appraisal Experience [~~Points~~]Hours Schedules.

[~~104.15 Points shall be awarded as follows. The point schedule in Table 1 is intended to award one experience point for every five hours of appraisal experience.~~

~~]~~104.15.1 Residential Experience [~~Points~~]Hours Schedule. The following [~~points~~]hours shall be awarded to form appraisals. [~~Three points~~]Fifteen hours may be added to the [~~points~~]hours shown if the appraisal was a narrative appraisal instead of a form appraisal.

[~~TABLE 1~~

~~(a) One-unit dwelling, above-grade living area less than 4,000 square feet, including a site~~	~~1 point~~
~~(1) One-unit dwelling, above-grade living area 4,000 square feet or more, including a site~~	~~1.5 points~~
~~(b) Multiple one-unit dwellings in the same subdivision or condominium project which are substantially similar~~	
~~(1) 1-25 dwellings~~	~~1 point per dwelling up to a maximum of 6 points~~
~~(2) Over 25 dwellings~~	~~A total of 10 points~~
~~(c) Two to four-unit dwelling~~	~~4 points~~
~~(d) Employee Relocation Counsel reports completed on currently accepted Employee Relocation Counsel form~~	~~2 points~~
~~(e) Residential lot, 1-4 unit~~	~~1 point~~
~~(f) Multiple lots in the same subdivision which are substantially similar~~	
~~(1) 1-25 lots~~	~~1 point per lot up to a maximum of 6 points~~
~~(2) Over 25 lots~~	~~A total of 10 points~~
~~(g) Small parcel up to 5 acres~~	~~1 point~~
~~(h) Vacant land, 20-500 acres~~	~~4-8 points, as determined by the Board~~
~~(i) Recreational, farm, or timber acreage suitable for a house site, up to 10 acres~~	~~2 points~~
~~Over 10 acres~~	~~3 points~~
~~(j) All other unusual structures or acreages, which are much larger or more complex than typical properties~~	~~1-7 points as determined by the Board~~
~~(k) Review of residential appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies~~	~~2-10 points~~

]

TABLE 1

(a) One-unit dwelling, above-grade living area less than 4,000 square feet, including a site	5 hours
(1) One-unit dwelling, above-grade living area 4,000 square feet or more, including a site	7.5 hours
(b) Multiple one-unit dwellings in the same subdivision or condominium project which are substantially similar	
(1) 1-25 dwellings	5 hours per dwelling up to a maximum of 30 hours
(2) Over 25 dwellings	A total of 50 hours
(c) Two to four-unit dwelling	20 hours
(d) Employee Relocation Counsel reports completed on currently accepted Employee Relocation Counsel form	10 hours
(e) Residential lot, 1-4 unit	5 hours
(f) Multiple lots in the same subdivision which are substantially similar	
(1) 1-25 lots	5 hours per lot up to a maximum of 30 hours
(2) Over 25 lots	A total of 50 hours
(g) Small parcel up to 5 acres	5 hours
(h) Vacant land, 20-500 acres	20-40 hours, as determined by the Board
(i) Recreational, farm, or timber acreage suitable for a house site, up to 10 acres	10 hours
Over 10 acres	15 hours
(j) All other unusual structures or acreages, which are much larger or more complex than typical properties	5-35 hours as determined by the Board
(k) Review of residential appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies	10-50 hours

104.15.1.1 Government Agency Experience. Applicants whose experience was earned primarily through review of residential appraisals with no opinion of value developed as part of the review that were performed in conjunction with investigations by government agencies will be required to submit proof of having performed at least the following number of one-unit dwelling appraisals conforming to USPAP Standards 1 and 2:

104.15.1.1.1 Applicants for State-Licensed Appraiser: five.

104.15.1.1.2 Applicants for State-Certified Residential Appraiser: eight.

104.15.1.2 A maximum of 250 experience [~~points~~]hours may be earned from appraisal of vacant land.

104.15.2 General Experience [~~Points~~]Hours Schedule. All appraisal reports claimed in the following areas must be narrative appraisal reports unless specified otherwise.[~~The point schedule in Table 2 is intended to award one experience point for every five hours of appraisal activity.~~] Experience [~~points~~]hours listed in Table 2 may be increased by 50% for unique and complex properties if the applicant notes the number of extra [~~points~~]hours claimed on the Appraiser Experience Log submitted by the applicant and maintains in the workfile for the appraisal an explanation about why the extra [~~points~~]hours are claimed.

[~~TABLE 2~~

~~(a) Apartment buildings, 5-100 units~~	~~8 points~~
~~Over 100 units~~	~~10 points~~
~~(b) Hotel or motels, 50 units or fewer~~	~~6 points~~
~~51-150 units~~	~~8 points~~
~~Over 150 units~~	~~10 points~~
~~(c) Nursing home, rest home, care facilities,~~	
~~Fewer than 80 beds~~	~~8 points~~
~~Over 80 beds~~	~~10 points~~
~~(d) Industrial or warehouse building,~~	
~~Fewer than 20,000 square feet~~	~~6 points~~
~~Over 20,000 square feet, single tenant~~	~~8 points~~
~~Over 20,000 square feet, multiple tenants~~	~~10 points~~
~~(e) Office buildings~~	
~~Fewer than 10,000 square feet~~	~~6 points~~
~~Over 10,000 square feet, single tenant~~	~~8 points~~
~~Over 10,000 square feet, multiple tenants~~	~~10 points~~
~~(f) Entire condominium projects, using income approach to value~~	
~~5- to 30-unit project~~	~~6 points~~
~~31- or more-unit project~~	~~10 points~~
~~(g) Retail buildings~~	
~~Fewer than 10,000 square feet~~	~~6 points~~
~~More than 10,000 square feet, single tenant~~	~~8 points~~
~~More than 10,000 square feet, multiple tenants~~	~~10 points~~
~~(h) Commercial, multi-unit, industrial, or other nonresidential use acreage~~	
~~1 to 99 acres~~	~~4-8 points~~
~~100 acres or more, income approach to value~~	~~10-12 points~~
~~(i) All other unusual structures or assignments which are much larger or more complex than the properties described in (a) to (h) herein.~~	~~1 to 20 points as determined by Board~~
~~(j) Entire Subdivisions or Planned Unit Developments (PUDs)~~	
~~1- to 25-unit subdivision or PUD~~	~~6 points~~
~~Over 25-unit subdivision or PUD~~	~~10 points~~
~~(k) Feasibility or market analysis, maximum 100 points~~	~~1 to 20 points as determined by Board~~

~~Farm and Ranch appraisals~~	~~Form~~	~~Narrative~~
~~(l) Separate grazing privileges or permits~~	~~4 pts.~~	~~5 pts.~~
~~(m) Irrigated cropland, pasture other than rangeland, 1 to 10 acres~~	~~2 pts.~~	~~3 pts.~~
~~11-50 acres~~	~~2.5 pts.~~	~~4 pts.~~
~~51-200 acres~~	~~3 pts.~~	~~5 pts.~~
~~201-1000 acres~~	~~5 pts.~~	~~8 pts.~~
~~More than 1000 acres~~	~~8 pts.~~	~~10 pts.~~
~~(n) Dry farm, 1 to 1000 acres~~	~~3 pts.~~	~~5 pts.~~
~~More than 1000 acres~~	~~4 pts.~~	~~8 pts.~~
~~(o) Improvements on properties other than a rural residence, maximum 2 points:~~		
~~Dwelling~~	~~1 pt.~~	~~1 pt.~~
~~Sheds~~	~~0.5 pt.~~	~~0.5 pt.~~
~~(p) Cattle ranches~~		
~~0-200 head~~	~~3 pts.~~	~~4 pts.~~
~~201-500 head~~	~~5 pts.~~	~~6 pts.~~
~~501-1000 head~~	~~6 pts.~~	~~8 pts.~~
~~More than 1000 head~~	~~8 pts.~~	~~10 pts.~~
~~(q) Sheep ranches~~		
~~0-2000 head~~	~~5 pts.~~	~~6 pts.~~
~~More than 2000 head~~	~~7 pts.~~	~~9 pts.~~
~~(r) Dairies, includes all improvements except a dwelling~~		
~~1-100 head~~	~~4 pts.~~	~~5 pts.~~
~~101-300 head~~	~~5 pts.~~	~~6 pts.~~
~~More than 300 head~~	~~6 pts.~~	~~7 pts.~~
~~(s) Orchards~~		
~~5-50 acres~~	~~6 pts.~~	~~8 pts.~~
~~More than 50 acres~~	~~8 pts.~~	~~10 pts.~~
~~(t) Rangeland/timber~~		
~~0-640 acres~~	~~4 pts.~~	~~5 pts.~~
~~More than 640 acres~~	~~6 pts.~~	~~7 pts.~~
~~(u) Poultry~~		
~~0-100,000 birds~~	~~6 pts.~~	~~8 pts.~~
~~More than 100,000 birds~~	~~8 pts.~~	~~10 pts.~~
~~(v) Mink~~		
~~0-5000 cages~~	~~6 pts.~~	~~7 pts.~~
~~More than 5000 cages~~	~~8 pts.~~	~~10 pts.~~
~~(w) Fish farms~~	~~8 pts.~~	~~10 pts.~~
~~(x) Hog farms~~	~~8 pts.~~	~~10 pts.~~
~~(y) Review of Table 2 appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies~~	~~4-20 points~~	

]

TABLE 2

(a) Apartment buildings, 5-100 units	40 hours
Over 100 units	50 hours
(b) Hotel or motels, 50 units or fewer	30 hours
51-150 units	40 hours
Over 150 units	50 hours
(c) Nursing home, rest home, care facilities,	
Fewer than 80 beds	40 hours
Over 80 beds	50 hours
(d) Industrial or warehouse building,	
Fewer than 20,000 square feet	30 hours
Over 20,000 square feet, single tenant	40 hours
Over 20,000 square feet, multiple tenants	50 hours
(e) Office buildings	
Fewer than 10,000 square feet	30 hours
Over 10,000 square feet, single tenant	40 hours
Over 10,000 square feet, multiple tenants	50 hours
(f) Entire condominium projects, using income approach to value	
5- to 30-unit project	30 hours
31- or more-unit project	50 hours
(g) Retail buildings	
Fewer than 10,000 square feet	30 hours
More than 10,000 square feet, single tenant	40 hours
More than 10,000 square feet, multiple tenants	50 hours
(h) Commercial, multi-unit, industrial, or other nonresidential use acreage	
1 to 99 acres	20-40 hours

100 acres or more, income approach to value	50-60 hours
(i) All other unusual structures or assignments which are much larger or more complex than the properties described in (a) to (h) herein.	5 to 100 hours as determined by Board
(j) Entire Subdivisions or Planned Unit Developments (PUDs)	
1- to 25-unit subdivision or PUD	30 hours
Over 25-unit subdivision or PUD	50 hours
(k) Feasibility or market analysis, maximum 500 hours	5 to 100 hours as determined by Board

Farm and Ranch appraisals	Form	Narrative
(l) Separate grazing privileges or permits	20 hrs.	25 hrs.
(m) Irrigated cropland, pasture other than rangeland, 1 to 10 acres	10 hrs.	15 hrs.
11-50 acres	12.5 hrs.	20 hrs.
51-200 acres	15 hrs.	25 hrs.
201-1000 acres	25 hrs.	40 hrs.
More than 1000 acres	40 hrs.	50 hrs.
(n) Dry farm, 1 to 1000 acres	15 hrs.	25 hrs.
More than 1000 acres	20 hrs.	40 hrs.
(o) Improvements on properties other than a rural residence, maximum 10 hours:		
Dwelling	5 hrs.	5 hrs.
Sheds	2.5 hrs.	2.5 hrs.
(p) Cattle ranches		
0-200 head	15 hrs.	20 hrs.
201-500 head	25 hrs.	30 hrs.
501-1000 head	30 hrs.	40 hrs.
More than 1000 head	40 hrs.	50 hrs.
(q) Sheep ranches		
0-2000 head	25 hrs.	30 hrs.
More than 2000 head	35 hrs.	45 hrs.
(r) Dairies, includes all improvements except a dwelling		
1-100 head	20 hrs.	25 hrs.
101-300 head	25 hrs.	30 hrs.
More than 300 head	30 hrs.	35 hrs.
(s) Orchards		
5-50 acres	30 hrs.	40 hrs.
More than 50 acres	40 hrs.	50 hrs.
(t) Rangeland/timber		
0-640 acres	20 hrs.	25 hrs.
More than 640 acres	30 hrs.	35 hrs.
(u) Poultry		
0-100,000 birds	30 hrs.	40 hrs.
More than 100,000 birds	40 hrs.	50 hrs.
(v) Mink		
0-5000 cages	30 hrs.	35 hrs.
More than 5000 cages	40 hrs.	50 hrs.
(w) Fish farms	40 hrs.	50 hrs.
(x) Hog farms	40 hrs.	50 hrs.
(y) Review of Table 2 appraisals with no opinion of value developed as part of the review performed in conjunction with investigations by government agencies		20-100 hours

104.15.2.1 Government Agency Experience. Applicants for certification as a State-Certified General Appraiser whose experience was earned primarily through review of appraisals that are listed on Table 2 with no opinion developed as part of the review that were performed in conjunction with investigations by government agencies will be required to submit proof of having performed at least eight Table 2 appraisals conforming to USPAP Standards 1 and 2.

104.15.2.2 Appraisals on commercial or multi-unit form reports shall be worth 75% of the [~~points~~]hours normally awarded for the appraisal.

104.15.3 Mass Appraisal Experience [~~Points~~]Hours Schedule.[~~The point schedule in Table 3 is intended to award one experience point for every five hours of mass appraisal activity.~~]

[~~TABLE 3~~

~~(a) One-unit dwelling, above-grade living area less than 4,000 square feet~~	
~~(1) Exterior inspection, highest and best use analysis, data collection only~~	~~.1 point~~
~~(2) Interior and exterior inspection, highest and best use analysis, data collection only~~	~~.2 point~~
~~(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report~~	~~.75 point~~
~~(b) One-unit dwelling, above-grade living area 4,000 square feet or more~~	
~~(1) Exterior inspection, highest and best use analysis, data collection only~~	~~.15 point~~
~~(2) Interior and exterior inspection, highest and best use analysis, data collection only~~	~~.3 point~~
~~(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report~~	~~1 point~~
~~(c) Two to four unit dwelling~~	
~~(1) Exterior inspection, highest and best use analysis, data collection only~~	~~.3 point~~
~~(2) Interior and exterior inspection, highest and best use analysis, data collection only~~	~~.6 point~~
~~(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report~~	~~3 points~~
~~(d) Commercial and industrial buildings, depending on complexity~~	
~~(1) Exterior inspection, highest and best use analysis, data collection only~~	~~.2 to 1 point~~
~~(2) Interior and exterior inspection, highest and best use analysis, data collection only~~	~~.4 to 2 points~~
~~(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report~~	~~1.5 to 7.5 points~~
~~(e) Agricultural and other improvements, depending on complexity~~	
~~(1) Exterior inspection, highest and best use analysis, data collection only~~	~~.1 to .5 point~~
~~(2) Interior and exterior inspection, highest and best use analysis, data collection only~~	~~.2 to 1 point~~
~~(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report~~	~~.75 to 4 points~~
~~(f) Vacant land, depending on complexity~~	
~~(1) Inspection, highest and best use analysis, data collection only~~	~~.1 to .5 point~~
~~(2) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report~~	~~.5 to 5 points~~
~~(3) Land segregation (division) analysis and processing, no field inspection~~	~~.05 point~~
~~(4)Land segregation (division) analysis and processing, field inspection~~	~~.1 point~~
~~(g) Data input and review for experience points claimed under Subsections R162-104-15.3(a) through (f)~~	~~.01 point~~
~~(h) Land valuation guideline~~	
~~(1) 25 or fewer parcels~~	~~2 points~~
~~(2) 26 to 500 parcels~~	~~6 points~~

~~(3) Over 500 parcels 5 additional points for each 500 parcels, up to a maximum of 25 points~~
~~(i) Assessment/sales ratio study, data collection, verification, sample inspection, analysis, conclusion, and implementation~~
~~(1) Base study of 100 reviewed sales 25 points~~
~~(2) Additional increments of 100 sales Add 5 points for each 100 additional sales, up to a maximum of 75 points~~
~~(j) Multiple Regression Model, Development and Implementation~~
~~(1) Less than 5,000 parcels 20 points~~
~~(2) Additional increments of 500 parcels Add 1 point for each additional 500 parcels, up to a maximum of 75 points~~
~~(k) Depreciation study and analysis 20 points~~
~~(l) Reviews of "Land Value in Use" in accordance with U.C.A. Section 59-2-505~~
~~(1)Office review only .05 point~~
~~(2) Field review .1 point~~
~~(m) Natural Resource Properties, depending on complexity~~
~~(1) Sand and Gravel, per site 1.5 to 4 points~~
~~(2) Mine 1.5 to 22 points~~
~~(3) Oil and Gas, per site .33 to 10 points~~
~~(n) Pipelines and gas distribution properties, depending on complexity 2 to 8 points~~
~~(o) Telephone and electrics properties, depending on complexity 1 to 16 points~~
~~(p) Airline and railroad properties, depending on complexity 2 to 16 points~~
~~(q) Appraisal review/audit, depending on complexity .5 to 25 points~~
~~(r) Capitalization rate study 16 points~~

]

TABLE 3

(a) One-unit dwelling, above-grade living area less than 4,000 square feet	
(1) Exterior inspection, highest and best use analysis, data collection only	.5 hours
(2) Interior and exterior inspection, highest and best use analysis, data collection only	1 hour
(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	3.75 hours
(b) One-unit dwelling, above-grade living area 4,000 square feet or more	
(1) Exterior inspection, highest and best use analysis, data collection only	.75 hours
(2) Interior and exterior inspection, highest and best use analysis, data collection only	1.5 hours
(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	5 hours
(c) Two to four unit dwelling	
(1) Exterior inspection, highest and best use analysis, data collection only	1.5 hours
(2) Interior and exterior inspection, highest and best use analysis, data collection only	3 hours
(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	15 hours
(d) Commercial and industrial buildings, depending on complexity	
(1) Exterior inspection, highest and best use analysis, data collection only	1 to 5 hours
(2) Interior and exterior inspection, highest and best use analysis, data collection only	2 to 10 hours
(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	3 to 37.5 hours
(e) Agricultural and other improvements, depending on complexity	
(1) Exterior inspection, highest and best use analysis, data collection only	.5 to 2.5 hours
(2) Interior and exterior inspection, highest and best use analysis, data collection only	1 to 5 hours
(3) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	3.75 to 20 hours
(f) Vacant land, depending on complexity	
(1) Inspection, highest and best use analysis, data collection only	.5 to 2.5 hours
(2) Inspection, highest and best use analysis, data collection, valuation analysis, conclusion, report	2.5 to 25 hours
(3) Land segregation (division) analysis and processing, no field inspection	.25 hours
(4)Land segregation (division) analysis and processing, field inspection	.5 hours
(g) Data input and review for experience hours claimed under Subsections R162-104-15.3(a) through (f)	.25 hours
(h) Land valuation guideline	
(1) 25 or fewer parcels	10 hours
(2) 26 to 500 parcels	30 hours
(3) Over 500 parcels	25 additional hours for each 500 parcels, up to a maximum of 125 hours
(i) Assessment/sales ratio study, data collection, verification, sample inspection, analysis, conclusion, and implementation	
(1) Base study of 100 reviewed sales	125 hours
(2) Additional increments of 100 sales	Add 25 hours for each 100 additional sales, up to a maximum of 375 hours
(j) Multiple Regression Model, Development and Implementation	
(1) Less than 5,000 parcels	100 hours
(2) Additional increments of 500 parcels	Add 5 hours for each additional 500 parcels, up to a maximum of 375 hours
(k) Depreciation study and analysis	100 hours
(l) Reviews of "Land Value in Use" in accordance with U.C.A. Section 59-2-505	
(1)Office review only	.25 hours
(2) Field review	.5 hours

(m) Natural Resource Properties, depending on complexity	
(1) Sand and Gravel, per site	7.5 to 20 hours
(2) Mine	7.5 to 110 hours
(3) Oil and Gas, per site	1.65 to 50 hours
(n) Pipelines and gas distribution properties, depending on complexity	10 to 40 hours
(o) Telephone and electrics properties, depending on complexity	5 to 80 hours
(p) Airline and railroad properties, depending on complexity	10 to 80 hours
(q) Appraisal review/audit, depending on complexity	2.5 to 125 hours
(r) Capitalization rate study	80 hours

104.15.3.1 Single-property appraisals performed under USPAP Standards 1 and 2 by mass appraisers will receive the same number of [~~points~~]hours shown in Tables 1 and 2.

104.15.3.2 Review and supervision of appraisals by mass appraisers will receive [~~points~~]hours in accordance with Subsection R162-104.7.

104.15.3.3 Mass appraisers and mass appraisal trainees who perform 60% or more of the appraisal work will receive 100% of the [~~points~~]hours shown on Table 3. Mass appraisers and mass appraisal trainees who perform between 25% and 59% of the appraisal work will receive 50% of the [~~points~~]hours shown on Table 3. Mass appraisers and mass appraisal trainees who perform less than 25% of the appraisal work will receive no credit for the appraisal assignment.

104.15.3.4 Applicants for State-Licensed Appraiser whose experience was earned primarily through mass appraisal will be required to submit proof of having performed at least five appraisals conforming to USPAP Standards 1 and 2. Applicants for certification as a State-Certified Residential Appraiser whose experience was earned primarily through mass appraisal will be required to submit proof of having performed at least eight one-unit residential appraisals conforming to USPAP Standards 1 and 2. Applicants for certification as a State-Certified General Appraiser whose experience was earned primarily through mass appraisal will be required to submit proof of having performed at least eight Table 2 appraisals conforming to USPAP Standards 1 and 2.

104.15.3.5 No more than 60% of the total [~~points~~]hours submitted for licensure or certification may have been earned from Subsections R162-104.15.3(a)(1) and (2), R162-104.15.3(b)(1) and (2), R162-104.15.3(c)(1) and (2), R162-104.15.3(d)(1) and (2), R162-104.15.3(e)(1) and (2), and R162-104.15.3(f)(1) combined.

104.15.3.6 No more than 25% of the total [~~points~~]hours submitted for licensure or certification may have been earned from Subsections R162-104.15.3(f)(3) and (4) combined.

104.15.3.7 No more than 20% of the total [~~points~~]hours submitted for licensure or certification may have been earned from Subsection R162-104.15.3(g).

104.15.3.8 Mass appraisal of property with a personal property component of less than 50% of value will be allowed the full experience [~~points~~]hours shown on Table 3 for the category of property appraised. Mass appraisal of property with a personal property component of 50% to 85% of value will be allowed 50% of the experience [~~points~~]hours shown on Table 3 for the category of property appraised. Mass appraisal of property with a personal property component greater than 85% will be awarded no experience [~~points~~]hours.

KEY: real estate appraisals, experience
Date of Enactment or Last Substantive Amendment: [~~September 27, 2007~~]2010
Notice of Continuation: February 15, 2007
Authorizing, and Implemented or Interpreted Law: 61-2b-1 through 61-2b-40

Commerce, Real Estate
R162-105
Scope of Authority

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33225
FILED: 11/30/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The appraisal board has proposed a new rule, Rule R162-110, for trainee registration. Therefore, Rule R162-105 is amended to remove the requirements for trainee registration. The appraisal board has also proposed amending Rule R162-104 so as to require trainees to record their experience in terms of hours rather than in terms of both points and hours. Therefore, Rule R162-105 is amended to track with those changes. (DAR NOTE: The proposed new Rule R162-110 is under DAR No. 33148 in the December 1, 2009, issue of the Bulletin. The proposed amendment to Rule R162-104 is under DAR No. 33224 in this issue, December 15, 2009, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Requirements for trainee registration are removed, as they are now incorporated into proposed Rule R162-110. The term "point" is replaced with the term "hour" to track with the proposed amendments to Rule R162-104.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2b-6(1)(l)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These changes do not implement or require a new program or procedure. They will have no impact on the state budget.
♦ LOCAL GOVERNMENTS: Local governments are not involved in the qualification and registration of appraiser trainees.
♦ SMALL BUSINESSES: Small businesses are not required to qualify or register appraiser trainees. Small businesses that hire trainees may choose to assist trainees in tracking their experience toward licensure. In that situation, they should benefit from having the process simplified. Small businesses that choose to pay the costs of a trainee's

registration and renewal may do so; those costs are outlined in the rule analysis for proposed Rule R162-110.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Shifting the trainee registration requirements to a different rule imposes no costs on appraiser trainees. The actual costs of registering were contemplated by H.B. 86 and are outlined in the rule analysis for proposed Rule R162-110. There is no cost associated with relieving trainees from the requirement that they record their experience in terms of points. (DAR NOTE: H.B 86 (2009) is under Chapter 352, Laws of Utah 2009, and was effective 05/12/2009.)

COMPLIANCE COSTS FOR AFFECTED PERSONS: To comply, affected persons will record trainee experience in terms of hours rather than recording both hours and points. There are no associated compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule filing, which makes technical amendments to properly track with other rule filings and statutory changes as described in the rule summary.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
REAL ESTATE
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.
R162-105. Scope of Authority.
R162-105-1. Scope of Authority.

105.1 Transaction value. "Transaction value" means:

105.1.1 For loans or other extensions of credit, the amount of the loan or extension of credit;

105.1.2 For sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and

105.1.3 For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

105.2 State-Licensed Appraisers. In federally-related transactions, the Utah Real Estate Appraiser Licensing Act and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and related federal regulations allow State-Licensed Appraisers to perform the appraisal of non-complex one to four residential units having a transaction value of less than $1,000,000 and complex one to four residential units having a transaction value of less than $250,000.

105.2.1 Subject to the transaction value limits in Section 105.2, State-Licensed Appraisers may also perform appraisals in federally-related transactions of vacant or unimproved land that is utilized for one to four family purposes, or for which the highest and best use is 1-4 family purposes, so long as net income capitalization analysis is not required by the terms of the assignment.

105.2.2 State-Licensed Appraisers may not perform appraisals of subdivisions in federally-related transactions for which a development analysis/appraisal is necessary or for which discounted cash flow analysis is required by the terms of the assignment.

105.3 Trainees.

105.3.1 For the purposes of these rules, "trainee" means a person who is working under the direct supervision of a State-Certified Appraiser to earn [~~points~~]hours for licensure.

105.3.2 Appraisal-related duties by unlicensed persons. Unlicensed persons who have not qualified as trainees as provided in Subsection [~~105.3.3~~]110 may perform only clerical duties in connection with an appraisal. For the purposes of this rule, appraisal-related clerical duties include typing an appraiser's research notes or an appraiser's report, taking photographs of properties, and obtaining copies of public records. Only those persons who have properly qualified as trainees as provided in Subsection [~~105.3.3~~]110 may perform the following appraisal-related duties: participating in property inspections, measuring or assisting in the measurement of properties, performing appraisal-related calculations, participating in the selection of comparables for an appraisal assignment, making adjustments to comparables, and drafting or assisting in the drafting of an appraisal report. The supervising appraiser shall be responsible to determine the point at which a trainee is competent to participate in each of these activities.

105.3.2.1 A trainee may not solicit an assignment or accept an assignment on behalf of anyone other than the trainee's supervisor or the supervisor's appraisal firm. All engagement letters shall be addressed to the supervisor or the supervisor's appraisal firm, not to the trainee. In all appraisal assignments, the supervisor shall delegate only such duties as are appropriate to the trainee and shall directly supervise the trainee in the performance of those duties.

[~~105.3.3 In order to become a trainee, the person must have successfully completed 75 classroom hours of State-approved education in subjects related to real estate appraisal, including the Uniform Standards of Professional Appraisal Practice (USPAP), must have passed the final examination in all courses, and must file a notification with the Division as provided in Subsection 105.3.3.1. The education required by this Subsection must have been~~

~~completed within the 5 years preceding the filing of the notification required by Subsection 105.3.3.1.~~

~~105.3.3.1 Trainee Notification. Prior to performing any of the appraisal-related activities for which points will be claimed toward licensure, a trainee must file with the Division a notification in the form required by the Division. In addition to any identifying information about the trainee required by the Division, the notification shall contain the name and business address of the appraiser(s) who will supervise the trainee in the performance of the appraisal-related duties, and shall be signed by the supervisor. The notification shall also contain the course names, course provider names, and course completion dates for the 75 hours of education required by Subsection 105.3.3. The original course completion certificates shall be submitted to the Division with the notification.~~

~~105.3.3.2 Except as provided in Subsection 105.3.3.3, no experience points will be granted toward licensure for trainee experience that is claimed to have been earned prior to the date the notification was filed with the Division.~~

~~105.3.3.3 Until September 10, 2009, points that were earned prior to September 10, 2004, may be claimed and will be awarded to applicants who are able to document those points on the forms required by the Division, notwithstanding the fact that the points were earned prior to the date a trainee notification was filed with the Division.~~

~~]~~105.3.4 Supervising Appraisers. A trainee may have more than one state-certified supervising appraiser. A supervising appraiser may supervise a maximum of three trainees at one time.

105.3.5 Residential Property Inspections. A trainee, including a trainee who was previously a state-registered appraiser, [~~must~~]shall be accompanied by a supervising State-Certified Appraiser on all inspections of residential property until the trainee has performed 100 inspections of residential properties in which both the interior and the exterior of the properties are inspected. All reports in appraisals in which a trainee participated in the inspection of the subject property shall comply with the requirements of Section 106.9.

105.3.6 Non-Residential Property Inspections. A trainee, including a trainee who was previously a state-registered appraiser, [~~must~~]shall be accompanied by a supervising State-Certified General Appraiser on all inspections of non-residential property until the trainee has performed 20 inspections of non-residential properties in which both the interior and the exterior of the properties are inspected. All reports in appraisals in which a trainee participated in the inspection of the subject property shall comply with the requirements of Section 106.9.

105.3.7 [~~Points~~]Hours for Licensure. A trainee may accumulate experience [~~points~~]hours for each duty listed below with the respective percentages, not to exceed the maximum number of [~~points~~]hours awarded by the Appraisal Experience [~~Point~~]Hour Schedule under Sections 104-15.1, [~~and~~]104-15.2, and 104.15.3. No more than one-third of the experience [~~points~~]hours submitted toward licensure may come from any one of the following categories:

(a) participation in highest and best use analysis - 10% of total [~~points~~]hours;

(b) participation in neighborhood description and analysis - 10% of total [~~points~~]hours;

(c) as provided in Sections 105.3.5 and 105.3.6, inspecting the interior and exterior, including measurement of the exterior of a property that is the subject of an appraisal and inspection of the exterior of a property that may be used as a comparable in an appraisal. No [~~points~~]hours will be granted for inspections that do not include both an interior and exterior inspection of the subject property - 20% of total [~~points~~]hours;

(d) participation in land value estimate - 20% of total [~~points~~]hours;

(e) participation in sales comparison property selection and analysis - 30% of total [~~points~~]hours;

(f) participation in cost analysis - 20% of total [~~points~~]hours;

(g) participation in income analysis - 30% of total [~~points~~]hours;

(h) participation in the final reconciliation of value - 10% of total [~~points~~]hours;

(i) participation in report preparation - 20% of total [~~points~~]hours.

105.3.8 Credit will be given for appraisal experience earned only within five years immediately preceding the licensure or certification application.

105.3.9 All trainees are prohibited from signing an appraisal report or discussing an appraisal assignment with anyone other than the appraiser responsible for the assignment, state enforcement agencies and such third parties as may be authorized by due process of law, or a duly authorized professional peer review committee.

105.3.10 A state-certified appraiser who supervises a trainee shall be responsible for the training and direct supervision of the trainee.

105.3.10.1 Direct supervision shall consist of critical observation and direction of all aspects of the appraisal process and accepting full responsibility for the appraisal and the contents of the appraisal report. The supervising appraiser shall be responsible to personally inspect each residential property that is appraised with a trainee until the trainee has performed 100 residential inspections as provided in Subsection 105.3.5 and 20 non-residential inspections as provided in Subsection 105.3.6. The supervising appraiser [~~must~~]shall actively supervise those inspections and the resulting appraisals. In addition, the supervising appraiser shall personally inspect all property when the appraisal report scope of work or certification requires appraiser inspection.

105.3.11 A supervising appraiser shall require the trainee to maintain a log in a form satisfactory to the Board which shall contain, at a minimum, the following information for each appraisal.

(a) [~~Type of property~~]file number;

(b) [~~Address of appraised property~~]report date;

(c) [~~Description of work performed~~]subject address;

(d) [~~Number of work hoursand points claimed~~]client name;

(e) [~~Signature and state certification number of the supervising appraiser; and~~]type of property;

(f) [~~Client name.~~]report form number or type; and

(g) number of work hours.

105.3.12 The trainee shall maintain a separate appraisal log for each supervising appraiser.

105.4. Trainee Status after Revocation, Surrender, Denial, or Suspension of License or Certification.

105.4.1 Trainee Status after Revocation, Surrender, or Denial of License or Certification. Unless otherwise ordered by the Board, an appraiser whose appraiser certification or license has been revoked by the Board, whose application for renewal of a certification or license has been denied by the Board, or who has surrendered a certification or license as a result of an investigation by the Division, may not serve as a trainee for a period of four years after the date of the revocation, denial, or surrender, nor may a licensed or certified appraiser employ or supervise the former appraiser in the performance of the activities permitted trainees for that same period of time.

105.4.2 Trainee Status while License or Certification is Suspended. Unless otherwise ordered by the Board, any appraiser whose appraiser license or certificate has been suspended by the Board as a result of an investigation by the Division may not serve as a trainee during the period of suspension. While an appraiser is suspended, a licensed or certified appraiser may not employ or supervise the suspended appraiser in the performance of the activities permitted trainees.

KEY: real estate appraisals
Date of Enactment or Last Substantive Amendment: [~~June 1, 2009~~]2010
Notice of Continuation: November 10, 2008
Authorizing, and Implemented or Interpreted Law: 61-2b-6(1)(l)

Commerce, Real Estate
R162-106-1
Uniform Standards

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33226
FILED: 11/30/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Pursuant to Subsection 61-2b-8(5)(c), the Appraiser Board wishes to exempt certain individuals from complying with the Uniform Standards Professional Appraisal Approval Practice (USPAP) standards in certain situations.

SUMMARY OF THE RULE OR CHANGE: This rule would exempt an individual from complying with USPAP when acting in an official capacity as a Division staff member or employee, a member of the experience review committee or technical review committee as appointed and approved by the Board, a hearing officer, a member of a county board of equalization, an administrative law judge, a member of the Utah State Tax Commission, or a member of the Board.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-2b-29 and Subsection 61-2b-8(5)(c)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This amendment does not create or implement a new program that would require administrative oversight. No impact to the state budget is anticipated.
♦ LOCAL GOVERNMENTS: Appraisers who work for local governments as hearing officers or members of county boards of equalization will not have to comply with USPAP in the performance of appraisal-related duties. Exempting these appraisers from compliance with USPAP does not require local governments to take any action or implement any oversight. No impact to local governments is anticipated.
♦ SMALL BUSINESSES: Small appraisal businesses have always been required to comply with USPAP are not eligible for the exemption provided by this amendment. They will remain obligated to comply, with no additional costs imposed.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Affected persons are relieved of the duty to comply with USPAP. There are no associated costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment relieves certain individuals from complying with USPAP standards. There are no associated compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule filing, which exercises statutory authority to exempt those acting in an official capacity from USPAP requirements.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
REAL ESTATE
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/27/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 01/27/2009 09:00 AM, Heber Wells Building, 160 E 300 S, Room 210, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 02/03/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.
R162-106. Professional Conduct.
R162-106-1. Uniform Standards.

[~~106.1.~~](1) [~~As required by the Appraisal Foundation in accordance with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA),~~]Unless exempted in Subsection 2, all appraisers and appraiser trainees must comply with the current edition of the Uniform Standards of Professional Appraisal Practice (USPAP)[~~currently approved by the Board. Information on which version of USPAP is currently approved by the Board may be obtained from the division~~]. All persons licensed or certified under this chapter must also observe the Advisory Opinions of USPAP.[~~Copies of USPAP may be obtained from the Appraisal Foundation, 1029 Vermont Avenue N.W., Suite 900,Washington, D.C. 20005. Registered expert witnesses, licensed and certified appraisers and candidates for registration, licensure or certification may obtain copies from the division.~~]

(2) An individual is exempt from complying with all provisions of USPAP when acting in an official capacity as:

(a) a Division staff member or employee;

(b) a member of the experience review committee as appointed and approved by the Board;

(c) a member of the technical review panel as appointed and approved by the Board;

(d) a hearing officer;

(e) a member of a county board of equalization;

(f) an administrative law judge;

(g) a member of the Utah State Tax Commission; or

(h) a member of the Board.

KEY: real estate appraisals, conduct
Date of Enactment or Last Substantive Amendment: [~~April 25, 2007~~]2010
Notice of Continuation: February 15, 2007
Authorizing, and Implemented or Interpreted Law: 61-2b-29, 61-2b-8(5)(c)

Environmental Quality, Water Quality
R317-1-1
Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33232
FILED: 12/01/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R317-1-1 contains definitions for rules under Title R317, Water Quality. This section is being amended to add three definitions in support of concurrent amendments to Rule R317-2. (DAR NOTE: The proposed amendment to Rule R317-2 is under DAR No. 33233 in this issue, December 15, 2009, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Definitions added for "assimilative capacity", "existing use", and "Great Salt Lake impounded wetlands" to support concurrent changes to Rule R317-2. "Assimilative Capacity" means the difference between the numeric criteria and the concentration in the waterbody of interest. "Existing Use" means any use during or after November 1975. "Great Salt Lake impounded wetlands" means wetland ponds which have been formed by dikes or berms to control and retain the flow of freshwater sources in the immediate proximity of the Great Salt Lake.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-5-105

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No costs or savings to the state budget are anticipated. The proposed amendment adds three definitions in support of concurrent amendments to Rule R317-2.
♦ LOCAL GOVERNMENTS: No costs or savings to the local government are anticipated. The proposed amendment adds three definitions in support of concurrent amendments to Rule R317-2.
♦ SMALL BUSINESSES: No costs or savings to small businesses are anticipated. The proposed amendment adds three definitions in support of concurrent amendments to Rule R317-2.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No costs or savings to other persons are anticipated. The proposed amendment adds three definitions in support of concurrent amendments to Rule R317-2.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional compliance costs are anticipated. The proposed amendment adds three definitions in support of concurrent amendments to Rule R317-2.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendments add three definitions in support of concurrent amendments to Rule R317-2. No impacts to businesses are anticipated.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
WATER QUALITY
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:
♦ Dave Wham by phone at 801-538-6052, by FAX at 801-538-6016, or by Internet E-mail at dwham@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 01/11/2010 06:00 PM, Utah Department of Environmental Quality, 168 N 1950 W, Room 101, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/27/2010

AUTHORIZED BY: Walter Baker, Director

R317. Environmental Quality, Water Quality.
R317-1. Definitions and General Requirements.
R317-1-1. Definitions.

1.1 "Assimilative Capacity" means the difference between the numeric criteria and the concentration in the waterbody of interest.

[~~1.1~~]1.2 "Board" means the Utah Water Quality Board.

[~~1.2~~]1.3 "BOD" means 5-day, 20 degrees C. biochemical oxygen demand.

[~~1.3~~]1.4 "Body Politic" means the State or its agencies or any political subdivision of the State to include a county, city, town, improvement district, taxing district or any other governmental subdivision or public corporation of the State.

[~~1.4~~]1.5 "Building sewer" means the pipe which carries wastewater from the building drain to a public sewer, a wastewater disposal system or other point of disposal. It is synonymous with "house sewer".

[~~1.5~~]1.6 "CBOD" means 5-day, 20 degrees C., carbonaceous biochemical oxygen demand.

[~~1.6~~]1.7 "COD" means chemical oxygen demand.

[~~1.7~~]1.8 "Deep well" means a drinking water supply source which complies with all the applicable provisions of the State of Utah Public Drinking Water Regulations.

[~~1.8~~]1.9 "Digested sludge" means sludge in which the volatile solids content has been reduced to about 50% by a suitable biological treatment process.

[~~1.9~~]1.10 "Division" means the Utah State Division of Water Quality.

[~~1.10~~]1.11 "Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, together with those from industrial establishments, and with such ground water, surface water, and storm water as may be present. It is synonymous with the term "sewage".

[~~1.11~~]1.12 "Effluent" means the liquid discharge from any unit of a wastewater treatment works, including a septic tank.

1.13 "Existing Uses" means those uses actually obtained in a water body on or after November 28, 1975, whether or not they are included in the water quality standards.

[~~1.12~~]1.14 "Human pathogens" means specific causative agents of disease in humans such as bacteria or viruses.

[~~1.13~~]1.15 "Industrial wastes" means the liquid wastes from industrial processes as distinct from wastes derived principally from dwellings, business buildings, institutions and the like. It is synonymous with the term "industrial wastewater".

[~~1.14~~]1.16 "Influent" means the total wastewater flow entering a wastewater treatment works.

1.17 "Great Salt Lake impounded wetland" means wetland ponds which have been formed by dikes or berms to control and retain the flow of freshwater sources in the immediate proximity of Great Salt Lake.

[~~1.15~~]1.18 "Large underground wastewater disposal system" means the same type of device as an onsite wastewater system except that it is designed to handle more than 5,000 gallons per day of domestic wastewater, or wastewater that originates in multiple dwellings, commercial establishments, recreational facilities, schools, or any other underground wastewater disposal system not covered under the definition of an onsite wastewater system. The Board controls the installation of such systems.

[~~1.16~~]1.19 "Onsite wastewater system" means an underground wastewater disposal system for domestic wastewater which is designed for a capacity of 5,000 gallons per day or less and is not designed to serve multiple dwelling units which are owned by separate owners except condominiums and twin homes. It usually consists of a building sewer, a septic tank and an absorption system.

[~~1.17~~]1.20 "Operating Permit" is a State issued permit issued to any wastewater treatment works covered under R317-3 or R317-5 with the following exceptions:

A. Any wastewater treatment permitted under Ground Water Quality Protection R317-6.

B. Any wastewater treatment permitted under Underground Injection Control (UIC) Program R317-7.

C. Any wastewater treatment permitted under Utah Pollutant Discharge Elimination System (UPDES) R317-8.

D. Any wastewater treatment permitted under Approvals and Permits for a Water Reuse Project R317-13.

E. Any wastewater treatment permitted by a Local Health Department under Onsite Wastewater Systems R317-4.

[~~1.18~~]1.21 "Person" means any individual, corporation, partnership, association, company, or body politic, including any agency or instrumentality of the United States government (Section 19-1-103).

[~~1.19~~]1.22 "Point source" means any discernible, confined and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flow from irrigated agriculture.

[~~1.20~~]1.23 "Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, or such discharge of any liquid, gaseous or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

[~~1.21~~]1.24 "Sewage" is synonymous with the term "domestic wastewater".

[~~1.22~~]1.25 "Shallow well" means a well providing a source of drinking water which does not meet the requirements of a "deep well".

[~~1.23~~]1.26 "Sludge" means the accumulation of solids which have settled from wastewater. As initially accumulated, and prior to treatment, it is known as "raw sludge".

[~~1.24~~]1.27 "SS" means suspended solids.

[~~1.25~~]1.28 Total Maximum Daily Load (TMDL) means the maximum amount of a particular pollutant that a waterbody can receive and still meet state water quality standards, and an allocation of that amount to the pollutant's sources.

[~~1.26~~]1.29 "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing or holding wastes. (Section 19-5-102).

[~~1.27~~]1.30 "TSS" means total suspended solids.

[~~1.28~~]1.31 "Underground Wastewater Disposal System" means a system for underground disposal of domestic wastewater. It includes onsite wastewater systems and large underground wastewater disposal systems.

[~~1.29~~]1.32 "Wastes" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. (Section 19-5-102).

[~~1.30~~]1.33 "Wastewater" means sewage, industrial waste or other liquid substances which might cause pollution of waters of the state. Intercepted ground water which is uncontaminated by wastes is not included.

[~~1.31~~]1.34 "Waters of the state" means all streams, lakes, ponds, marshes, water-courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish and wildlife, shall not be considered to be "waters of the state" under this definition (Section 19-5-102).

KEY: water pollution, waste disposal, industrial waste, effluent standards
Date of Enactment or Last Substantive Amendment: [~~June 11, 2009~~]2010
Notice of Continuation: October 2, 2007
Authorizing, and Implemented or Interpreted Law: 19-5

Environmental Quality, Water Quality
R317-2
Standards of Quality for Waters of the State

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33233
FILED: 12/01/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Clean Water Act (CWA) requires that US Environmental Protection Agency (EPA) Regional Office approve or deny any changes to water quality standards that are adopted by the states. The approval of a water quality standard indicates that EPA considers the standard adequate and that promulgation of a federal standard is not required. On 09/30/2009, EPA submitted a formal action on the changes to Rule R317-2 that were adopted by the Water Quality Board (WQB) on 11/10/2008. EPA disapproved portions of the state's antidegradation policy, Subsection R317-2-3.5(b)(5), that defines losses of assimilative capacity considered de minimis and not requiring a Level II review. Federal regulations require that any disapproval of a water quality standard be accompanied with options to solve the problem (CWA section 303(b)(2)) and provides states with 90 days to incorporate changes into their standards; otherwise, the Regional Administrator is required to promulgate a federal standard. These changes are in response to the EPAs actions. Changes to other sections of Rule R317-2 are made to provide clarifying language, correct editorial errors, and address other housekeeping items.

SUMMARY OF THE RULE OR CHANGE: The sections disapproved by the EPA that defined losses of assimilative capacity considered de minimis and not requiring a Level II review were deleted in Subsection R317-2-3(3.5)(b)(5). Subsection R317-2-3(3.5)(b)(1) was modified to read: Water quality will not be lowered by the proposed activity. For example, a Utah Pollutant Discharge Elimination System (UPDES) permit is being renewed and the proposed effluent concentration value and pollutant loading is equal to or less than the existing permitted concentration and corresponding pollutant loading. If waste loads are not defined in an existing permit the design capacity of the facility, of both concentrations and loads, will be used to determine whether a proposed project lowers water quality. Subsection R317-2-3(3.5)(f) is new. Implementation Procedures - The Executive Secretary shall establish reasonable protocols and guidelines: 1) for completing technical, social, and economic need demonstrations; 2) for review and determination of adequacy of Level II ADRs; and 3) for determination of additional treatment requirements. Protocols and guidelines will consider federal guidance and will include input from local governments, the regulated community, and the general public. The footnote to pH and dissolved oxygen (DO) numeric criteria (Section R317-2-3.5) specifies that numeric criteria are not applicable, but narrative criteria are, to Great Salt Lake's impounded wetlands. Editorial Corrections and Clarifications: In Subsection R317-2-6(6.5)(a), changed Union Pacific Causeway to Antelope Island Causeway for Gilbert Bay delineation. In Section R317-2-12, moved Weber River reference from Subsection R317-2-12(12.1) to

R317-2-12(12.2). In Subsection R317-2-13(13.2)(a), added "…Virgin River except as listed below". In Subsection R317-2-13(13.2)(a), corrected the beneficial use class to 2A (primary contact) from 2B for the North Fork of the Virgin River. In Subsection R317-2-13(13.5), two different reaches for beneficial use for Mill Race were listed but beneficial uses were identical. The two reaches were combined. No changes to beneficial use classes. In Subsection R317-2-14(2.14.1), added "dissolved for inorganics analyses for clarification. Also corrected geographic reference from Quitchupah Creek to Ivie Creek in Site Specific Standards for Total Dissolved Solids (TDS). Also corrected geographic reference Soldier Creek to Coal Creek to include inadvertently omitted reach. Redundant description of Green River to Coal Creek deleted at Subsection R317-2-14(2.14.2). Added carriage return to put footnote 11 on a new line and Subsection R317-2-14(2.14.2) Footnote 9a, corrected formula for ammonia by adding missing parentheses. In Subsections R317-2-14(2.14.3a) and R317-2-14(2.14.3b), corrected cadmium and lead log function in formulas in Tables 2.14.3a and 2.14.3b.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-5-105

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No additional costs or savings to state budget are anticipated. The proposed amendments will be addressed using existing resources.
♦ LOCAL GOVERNMENTS: Potential costs for local governments will be limited to entities holding or seeking permits to discharge to the waters of the state such as publicly-owned treatment works. The proposed amendments to the state's antidegradation policy at Section R317-2-3 will likely require more Level II Antidegradation Reviews to be completed by entities seeking new discharge permits or by existing permit holders desiring to expand their facilities. The cost increases associated with the changes are uncertain because: 1) no data exists on how many facilities were or would have been eligible for exemptions under the previous antidegradation language; and 2) the resources required to conduct antidegradation reviews are site-specific.
♦ SMALL BUSINESSES: Potential costs for small businesses will be limited to entities holding or seeking permits to discharge to the waters of the state. The proposed amendments to the state's antidegradation policy at Section R317-2-3 will likely require more Level II Antidegradation Reviews to be completed by entities seeking new discharge permits or by existing permit holders desiring to expand their facilities. The cost increases associated with the changes are uncertain because: 1) no data exists on how many facilities were or would have been eligible for exemptions under the previous antidegredation language; and 2) the resources required to conduct antidegradation reviews are site-specific.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Potential costs for persons will be limited to entities holding or seeking permits to discharge to the waters of the state. The proposed amendments to the state's antidegradation policy at Section R317-2-3 will likely require more Level II Antidegradation Reviews to be completed by entities seeking new discharge permits or by existing permit holders desiring to expand their facilities. The cost increases associated with the changes are uncertain because: 1) no data exists on how many facilities were or would have been eligible for exemptions under the previous antidegredation language; and 2) the resources required to conduct antidegradation reviews are site-specific.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs to entities holding or seeking permits to discharge to the waters of the state. The proposed amendments to the state's antidegradation policy at Section R317-2-3 will likely require more Level II Antidegradation Reviews to be completed by entities seeking new discharge permits or by existing permit holders desiring to expand their facilities. The cost increases associated with the changes are uncertain because: 1) no data exists on how many facilities were or would have been eligible for exemptions under the previous antidegradation language; and 2) the resources required to conduct antidegradation reviews are site-specific.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Compliance costs to entities holding or seeking permits to discharge to the waters of the state. The proposed amendments to the state's antidegradation policy at Section R317-2-3 will likely require more Level II Antidegradation Reviews to be completed by entities seeking new discharge permits or by existing permit holders desiring to expand their facilities. The cost increases associated with the changes are uncertain because: 1) no data exists on how many facilities were or would have been eligible for exemptions under the previous antidegradation language; and 2) the resources required to conduct antidegradation reviews are site-specific.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
WATER QUALITY
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:
♦ Dave Wham by phone at 801-538-6052, by FAX at 801-538-6016, or by Internet E-mail at dwham@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 01/11/2010 06:00 PM, Utah Department of Environmental Quality, 168 N 1950 W, Room 101, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/27/2010

AUTHORIZED BY: Walter Baker, Director

R317. Environmental Quality, Water Quality.
R317-2. Standards of Quality for Waters of the State.
R317-2-3. Antidegradation Policy.

3.1 Maintenance of Water Quality

Waters whose existing quality is better than the established standards for the designated uses will be maintained at high quality unless it is determined by the Board, after appropriate intergovernmental coordination and public participation in concert with the Utah continuing planning process, allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. However, existing instream water uses shall be maintained and protected. No water quality degradation is allowable which would interfere with or become injurious to existing instream water uses.

In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with Section 316 of the Federal Clean Water Act.

3.2 Category 1 Waters

Waters which have been determined by the Board to be of exceptional recreational or ecological significance or have been determined to be a State or National resource requiring protection, shall be maintained at existing high quality through designation, by the Board after public hearing, as Category 1 Waters. New point source discharges of wastewater, treated or otherwise, are prohibited in such segments after the effective date of designation. Protection of such segments from pathogens in diffuse, underground sources is covered in R317-5 and R317-7 and the Regulations for Individual Wastewater Disposal Systems (R317-501 through R317-515). Other diffuse sources (nonpoint sources) of wastes shall be controlled to the extent feasible through implementation of best management practices or regulatory programs.

Projects such as, but not limited to, construction of dams or roads will be considered where pollution will result only during the actual construction activity, and where best management practices will be employed to minimize pollution effects.

Waters of the state designated as Category 1 Waters are listed in R317-2-12.1.

3.3 Category 2 Waters

Category 2 Waters are designated surface water segments which are treated as Category 1 Waters except that a point source discharge may be permitted provided that the discharge does not degrade existing water quality. Waters of the state designated as Category 2 Waters are listed in R317-2-12.2.

3.4 Category 3 Waters

For all other waters of the state, point source discharges are allowed and degradation may occur, pursuant to the conditions and review procedures outlined in Section 3.5.

3.5 Antidegradation Review (ADR)

An antidegradation review will determine whether the proposed activity complies with the applicable antidegradation requirements for receiving waters that may be affected.

An antidegradation review (ADR) may consist of two parts or levels. A Level I review is conducted to insure that existing uses will be maintained and protected. In addition, a Level I review evaluates the criteria in Section 3.5b to determine if any degradation is de minimis in nature and therefore does not require a Level II review. A Level II review as described in Section 3.5c is needed when the impacts are not de minimus.

Both Level I and Level II reviews will be conducted on a parameter-by-parameter basis. A decision to move to a Level II review for one parameter does not require a Level II review for other parameters. Discussion of parameters of concern is those expected to be affected by the proposed activity.

Antidegradation reviews shall include opportunities for public participation, as described in Section 3.5e.

a. Activities Subject to Antidegradation Review (ADR)

1. For all State waters, antidegradation reviews will be conducted for proposed federally regulated activities, such as those under Clean Water Act Sections 401 (FERC and other Federal actions), 402 (UPDES permits), and 404 (Army Corps of Engineers permits). The Executive Secretary may conduct an ADR on other projects with the potential for major impact on the quality of waters of the state. The review will determine whether the proposed activity complies with the applicable antidegradation requirements for the particular receiving waters that may be affected.

2. For Category 1 Waters and Category 2 Waters, reviews shall be consistent with the requirement established in Sections 3.2 and 3.3, respectively.

3. For Category 3 Waters, reviews shall be consistent with the requirements established in this section

b. An Anti-degradation Level II review is not required where any of the following conditions apply:

1. Water quality will not be lowered by the proposed activity. [~~(e.g.,~~]For example,a UPDES permit is being renewed and the proposed effluent concentration value and pollutant loading is equal to or less than the existing [~~effluent concentrations value and pollutant loading).~~]permitted concentrations and corresponding pollutant loading. If waste loads are not defined in an existing permit, the design capacity of the facility, of both concentrations and loads, will be used to determine whether a proposed project lowers water quality.

2. Assimilative capacity (based upon concentration) is not available or has previously been allocated, as indicated by water quality monitoring or modeling information. This includes situations where:

(a) the water body is included on the current 303(d) list for the parameter of concern; or

(b) existing water quality for the parameter of concern does not satisfy applicable numeric or narrative water quality criteria; or

(c) discharge limits are established in an approved TMDL that is consistent with the current water quality standards for the receiving water (i.e., where TMDLs are established, and changes in effluent limits that are consistent with the existing load allocation would not trigger an antidegradation review).

Under conditions (a) or (b) the effluent limit in an UPDES permit may be equal to the water quality numeric criterion for the parameter of concern.

3. Water quality impacts will be temporary and related only to sediment or turbidity and fish spawning will not be impaired,

4. The water quality effects of the proposed activity are expected to be temporary and limited. As general guidance, CWA Section 402 general permits, CWA Section 404 nationwide and general permits, or activities of short duration, will be deemed to have a temporary and limited effect on water quality where there is a reasonable factual basis to support such a conclusion. The 404 nationwide permits decision will be made at the time of permit issuance, as part of the Division's water quality certification under CWA Section 401. Where it is determined that the category of activities will result in temporary and limited effects, subsequent individual activities authorized under such permits will not be subject to further antidegradation review. Factors to be considered in determining whether water quality effects will be temporary and limited may include the following:

(a) Length of time during which water quality will be lowered.

(b) Percent change in ambient concentrations of pollutants of concern

(c) Pollutants affected

(d) Likelihood for long-term water quality benefits to the segment (e.g., dredging of contaminated sediments)

(e) Potential for any residual long-term influences on existing uses.

(f) Impairment of the fish spawning, survival and development of aquatic fauna excluding fish removal efforts.

[~~5. The proposed concentration downstream of the mixing zone:~~

~~(a) would be equal to or less than 50% of the applicable criterion, and the project would consume less than 20% of remaining assimilative capacity; or~~

~~(b) is greater than 50% and less than 75% of the criterion, and the project would consume less than 10% of the remaining assimilative capacity.~~

~~Exception: Level II reviews are required if the proposed concentration below the mixing zone is equal to or greater than 75% of the criterion.~~

]c. Anti-degradation Review Process

For all activities requiring a Level II review, the Division will notify affected agencies and the public with regards to the requested proposed activity and discussions with stakeholders may be held. In the case of Section 402 discharge permits, if it is determined that a discharge will be allowed, the Division of Water Quality will develop any needed UPDES permits for public notice following the normal permit issuance process.

The ADR will cover the following requirements or determinations:

1. Will all Statutory and regulatory requirements be met?

The Executive Secretary will review to determine that there will be achieved all statutory and regulatory requirements for all new and existing point sources and all required cost-effective and reasonable best management practices for nonpoint source control in the area of the discharge. If point sources exist in the area that have not achieved all statutory and regulatory requirements, the Executive Secretary will consider whether schedules of compliance or other plans have been established when evaluating whether compliance has been assured. Generally, the "area of the discharge" will be determined based on the parameters of concern associated with the proposed activity and the portion of the receiving water that would be affected.

2. Are there any reasonable less-degrading alternatives?

There will be an evaluation of whether there are any reasonable non-degrading or less degrading alternatives for the proposed activity. This question will be addressed by the Division based on information provided by the project proponent. Control alternatives for a proposed activity will be evaluated in an effort to avoid or minimize degradation of the receiving water. Alternatives to be considered, evaluated, and implemented to the extent feasible, could include pollutant trading, water conservation, water recycling and reuse, land application, total containment, etc.

For proposed UPDES permitted discharges, the following list of alternatives should be considered, evaluated and implemented to the extent feasible:

(a) innovative or alternative treatment options

(b) more effective treatment options or higher treatment levels

(c) connection to other wastewater treatment facilities

(d) process changes or product or raw material substitution

(e) seasonal or controlled discharge options to minimize discharging during critical water quality periods

(f) pollutant trading

(g) water conservation

(h) water recycle and reuse

(i) alternative discharge locations or alternative receiving waters

(j) land application

(k) total containment

(l) improved operation and maintenance of existing treatment systems

(m) other appropriate alternatives

An option more costly than the cheapest alternative may have to be implemented if a substantial benefit to the stream can be realized. Alternatives would generally be considered feasible where costs are no more than 20% higher than the cost of the discharging alternative, and (for POTWs) where the projected per connection service fees are not greater than 1.4% of MAGHI (median adjusted gross household income), the current affordability criterion now being used by the Water Quality Board in the wastewater revolving loan program. Alternatives within these cost ranges should be carefully considered by the discharger. Where State financing is appropriate, a financial assistance package may be influenced by this evaluation, i.e., a less polluting alternative may receive a more favorable funding arrangement in order to make it a more financially attractive alternative.

It must also be recognized in relationship to evaluating options that would avoid or reduce discharges to the stream, that in some situations it may be more beneficial to leave the water in the stream for instream flow purposes than to remove the discharge to the stream.

3. Special Procedures for 404 Permits.

For 404 permitted activities, all appropriate alternatives to avoid and minimize degradation should be evaluated. Activities involving a discharge of dredged or fill materials that are considered to have more than minor adverse affects on the aquatic environment are regulated by individual CWA Section 404 permits. The decision-making process relative to the 404 permitting program is contained in the 404(b)(1) guidelines (40 CFR Part 230). Prior to

issuing a permit under the 404(b)(1) guidelines, the Corps of Engineers:

(a) makes a determination that the proposed activity discharges are unavoidable (i.e., necessary):

(b) examines alternatives to the proposed activity and authorize only the least damaging practicable alternative; and

(c) requires mitigation for all impacts associated with the activity. A 404(b)(1) finding document is produced as a result of this procedure and is the basis for the permit decision. Public participation is provided for in the process. Because the 404(b)(1) guidelines contains an alternatives analysis, the executive secretary will not require development of a separate alternatives analysis for the anti-degradation review. The division will use the analysis in the 404(b)(1) finding document in completing its anti-degradation review and 401 certification.

4. Does the proposed activity have economic and social importance?

Although it is recognized that any activity resulting in a discharge to surface waters will have positive and negative aspects, information must be submitted by the applicant that any discharge or increased discharge will be of economic or social importance in the area.

The factors addressed in such a demonstration may include, but are not limited to, the following:

(a) employment (i.e., increasing, maintaining, or avoiding a reduction in employment);

(b) increased production;

(c) improved community tax base;

(d) housing;

(e) correction of an environmental or public health problem; and

(f) other information that may be necessary to determine the social and economic importance of the proposed surface water discharge.

5. The applicant may submit a proposal to mitigate any adverse environmental effects of the proposed activity (e.g., instream habitat improvement, bank stabilization). Such mitigation plans should describe the proposed mitigation measures and the costs of such mitigation. Mitigation plans will not have any effect on effluent limits or conditions included in a permit (except possibly where a previously completed mitigation project has resulted in an improvement in background water quality that affects a water quality-based limit). Such mitigation plans will be developed and implemented by the applicant as a means to further minimize the environmental effects of the proposed activity and to increase its socio-economic importance. An effective mitigation plan may, in some cases, allow the Executive Secretary to authorize proposed activities that would otherwise not be authorized.

6. Will water quality standards be violated by the discharge?

Proposed activities that will affect the quality of waters of the state will be allowed only where the proposed activity will not violate water quality standards.

7. Will existing uses be maintained and protected?

Proposed activities can only be allowed if "existing uses" will be maintained and protected. No UPDES permit will be allowed which will permit numeric water quality standards to be exceeded in a receiving water outside the mixing zone. In the case of nonpoint pollution sources, the non-regulatory Section 319 program now in place will address these sources through application of best management practices to ensure that numeric water quality standards are not exceeded.

8. If a situation is found where there is an existing use which is a higher use (i.e., more stringent protection requirements) than that current designated use, the Division will apply the water quality standards and anti-degradation policy to protect the existing use. Narrative criteria may be used as a basis to protect existing uses for parameters where numeric criteria have not been adopted. Procedures to change the stream use designation to recognize the existing use as the designated use would be initiated.

d. Special Procedures for Drinking Water Sources

An Antidegradation Level II Review will be required by the Executive Secretary for discharges to waters with a Class 1C drinking water use assigned.

Depending upon the locations of the discharge and its proximity to downstream drinking water diversions, additional treatment or more stringent effluent limits or additional monitoring, beyond that which may otherwise be required to meet minimum technology standards or in stream water quality standards, may be required by the Executive Secretary in order to adequately protect public health and the environment. Such additional treatment may include additional disinfection, suspended solids removal to make the disinfection process more effective, removal of any specific contaminants for which drinking water maximum contaminant levels (MCLs) exists, and/or nutrient removal to reduce the organic content of raw water used as a source for domestic water systems.

Additional monitoring may include analyses for viruses, Giardia, Cryptosporidium, other pathogenic organisms, and/or any contaminant for which drinking water MCLs exist. Depending on the results of such monitoring, more stringent treatment may then be required.

The additional treatment/effluent limits/monitoring which may be required will be determined by the Executive Secretary after consultation with the Division of Drinking Water and the downstream drinking water users.

e. Public Notice

The public will be provided notice and an opportunity to comment on the conclusions of all completed antidegradation reviews. Where possible, public notice on the antidegradation review conclusions will be combined with the public notice on the proposed permitting action. In the case of UPDES permits, public notice will be provided through the normal permitting process, as all draft permits are public noticed for 30 days, and public comment solicited, before being issued as a final permit. The Statement of Basis for the draft UPDES permit will contain information on how the ADR was addressed including results of the Level I and Level II reviews. In the case of Section 404 permits from the Corps of Engineers, the Division of Water Quality will develop any needed 401 Certifications and the public notice will be published in conjunction with the US Corps of Engineers public notice procedures. Other permits requiring a Level II review will receive a separate public notice according to the normal State public notice procedures.

f. Implementation Procedures

The Executive Secretary shall establish reasonable protocols and guidelines (1) for completing technical, social, and economic need demonstrations, (2) for review and determination of adequacy of Level II ADRs and (3) for determination of additional

treatment requirements. Protocols and guidelines will consider federal guidance and will include input from local governments, the regulated community, and the general public. The Executive Secretary will inform the Water Quality Board of any protocols or guidelines that are developed.

R317-2-6. Use Designations.

The Board as required by Section 19-5-110, shall group the waters of the state into classes so as to protect against controllable pollution the beneficial uses designated within each class as set forth below. Surface waters of the state are hereby classified as shown in R317-2-13.

6.1 Class 1 -- Protected for use as a raw water source for domestic water systems.

a. Class 1A -- Reserved.

b. Class 1B -- Reserved.

c. Class 1C -- Protected for domestic purposes with prior treatment by treatment processes as required by the Utah Division of Drinking Water

6.2 Class 2 -- Protected for recreational use and aesthetics.

a. Class 2A -- Protected for frequent primary contact recreation where there is a high likelihood of ingestion of water or a high degree of bodily contact with the water. Examples include, but are not limited to, swimming, rafting, kayaking, diving, and water skiing.

b. Class 2B -- Protected for infrequent primary contact recreation. Also protected for secondary contact recreation where there is a low likelihood of ingestion of water or a low degree of bodily contact with the water. Examples include, but are not limited to, wading, hunting, and fishing.

6.3 Class 3 -- Protected for use by aquatic wildlife.

a. Class 3A -- Protected for cold water species of game fish and other cold water aquatic life, including the necessary aquatic organisms in their food chain.

b. Class 3B -- Protected for warm water species of game fish and other warm water aquatic life, including the necessary aquatic organisms in their food chain.

c. Class 3C -- Protected for nongame fish and other aquatic life, including the necessary aquatic organisms in their food chain.

d. Class 3D -- Protected for waterfowl, shore birds and other water-oriented wildlife not included in Classes 3A, 3B, or 3C, including the necessary aquatic organisms in their food chain.

e. Class 3E -- Severely habitat-limited waters. Narrative standards will be applied to protect these waters for aquatic wildlife.

6.4 Class 4 -- Protected for agricultural uses including irrigation of crops and stock watering.

6.5 Class 5 -- The Great Salt Lake.

a. Class 5A Gilbert Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation south of the Union Pacific Causeway, excluding all of the Farmington Bay south of the Antelope Island Causeway and salt evaporation ponds.

Beneficial Uses -- Protected for frequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

b. Class 5B Gunnison Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation north of the Union Pacific Causeway and west of the Promontory Mountains, excluding salt evaporation ponds.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

c. Class 5C Bear River Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation north of the Union Pacific Causeway and east of the Promontory Mountains, excluding salt evaporation ponds.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

d. Class 5D Farmington Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation east of Antelope Island and south of the [~~Union Pacific~~]Antelope Island Causeway, excluding salt evaporation ponds.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

e. Class 5E Transitional Waters along the Shoreline of the Great Salt Lake Geographical Boundary -- All waters below approximately 4,208-foot elevation to the current lake elevation of the open water of the Great Salt Lake receiving their source water from naturally occurring springs and streams, impounded wetlands, or facilities requiring a UPDES permit. The geographical areas of these transitional waters change corresponding to the fluctuation of open water elevation.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

R317-2-12. Category 1 and Category 2 Waters.

12.1 Category 1 Waters.

In addition to assigned use classes, the following surface waters of the State are hereby designated as Category 1 Waters:

a. All surface waters geographically located within the outer boundaries of U.S. National Forests whether on public or private lands with the following exceptions:

Category 2 Waters as listed in R317-2-12.2.

[~~Weber River, a tributary to the Great Salt Lake, in the Weber River Drainage from Uintah to Mountain Green.~~

————]b. Other surface waters, which may include segments within U.S. National Forests as follows:

1. Colorado River Drainage

Calf Creek and tributaries, from confluence with Escalante River to headwaters.

Sand Creek and tributaries, from confluence with Escalante River to headwaters.

Mamie Creek and tributaries, from confluence with Escalante River to headwaters.

Deer Creek and tributaries, from confluence with Boulder Creek to headwaters (Garfield County).

Indian Creek and tributaries, through Newspaper Rock State Park to headwaters.

2. Green River Drainage

Price River (Lower Fish Creek from confluence with White River to Scofield Dam.

Range Creek and tributaries, from confluence with Green River to headwaters.

Strawberry River and tributaries, from confluence with Red Creek to headwaters.

Ashley Creek and tributaries, from Steinaker diversion to headwaters.

Jones Hole Creek and tributaries, from confluence with Green River to headwaters.

Green River, from state line to Flaming Gorge Dam.

Tollivers Creek, from confluence with Green River to headwaters.

Allen Creek, from confluence with Green River to headwaters.

3. Virgin River Drainage

North Fork Virgin River and tributaries, from confluence with East Fork Virgin River to headwaters.

East Fork Virgin River and tributaries from confluence with North Fork Virgin River to headwaters.

4. Kanab Creek Drainage

Kanab Creek and tributaries, from irrigation diversion at confluence with Reservoir Canyon to headwaters.

5. Bear River Drainage

Swan Creek and tributaries, from Bear Lake to headwaters.

North Eden Creek, from Upper North Eden Reservoir to headwaters.

Big Creek and tributaries, from Big Ditch diversion to headwaters.

Woodruff Creek and tributaries, from Woodruff diversion to headwaters.

6. Weber River Drainage

Burch Creek and tributaries, from Harrison Boulevard in Ogden to headwaters.

Hardscrabble Creek and tributaries, from confluence with East Canyon Creek to headwaters.

Chalk Creek and tributaries, from U.S. Highway 189 to headwaters.

Weber River and tributaries, from U.S. Highway 189 near Oakley to headwaters.

7. Jordan River Drainage

City Creek and tributaries, from City Creek Water Treatment Plant to headwaters (Salt Lake County).

Emigration Creek and tributaries, from Hogle Zoo to headwaters (Salt Lake County).

Red Butte Creek and tributaries, from Foothill Boulevard in Salt Lake City to headwaters.

Parley's Creek and tributaries, from 13th East in Salt Lake City to headwaters.

Mill Creek and tributaries, from Wasatch Boulevard in Salt Lake City to headwaters.

Big Cottonwood Creek and tributaries, from Wasatch Boulevard in Salt Lake City to headwaters.

Little Willow Creek and tributaries, from diversion to headwaters (Salt Lake County.)

Bell Canyon Creek and tributaries, from Lower Bells Canyon Reservoir to headwaters (Salt Lake County).

South Fork of Dry Creek and tributaries, from Draper Irrigation Company diversion to headwaters (Salt Lake County).

8. Provo River Drainage

Upper Falls drainage above Provo City diversion (Utah County).

Bridal Veil Falls drainage above Provo City diversion (Utah County).

Lost Creek and tributaries, above Provo City diversion (Utah County).

9. Sevier River Drainage

Chicken Creek and tributaries, from diversion at canyon mouth to headwaters.

Pigeon Creek and tributaries, from diversion to headwaters.

East Fork of Sevier River and tributaries, from Kingston diversion to headwaters.

Parowan Creek and tributaries, from Parowan City to headwaters.

Summit Creek and tributaries, from Summit City to headwaters.

Braffits Creek and tributaries, from canyon mouth to headwaters.

Right Hand Creek and tributaries, from confluence with Coal Creek to headwaters.

10. Raft River Drainage

Clear Creek and tributaries, from state line to headwaters (Box Elder County).

Birch Creek (Box Elder County), from state line to headwaters.

Cotton Thomas Creek from confluence with South Junction Creek to headwaters.

11. Western Great Salt Lake Drainage

All streams on the south slope of the Raft River Mountains above 7000' mean sea level.

Donner Creek (Box Elder County), from irrigation diversion to Utah-Nevada state line.

Bettridge Creek (Box Elder County), from irrigation diversion to Utah-Nevada state line.

Clover Creek, from diversion to headwaters.

All surface waters on public land on the Deep Creek Mountains.

12. Farmington Bay Drainage

Holmes Creek and tributaries, from Highway US-89 to headwaters (Davis County).

Shepard Creek and tributaries, from Height Bench diversion to headwaters (Davis County).

Farmington Creek and tributaries, from Height Bench Canal diversion to headwaters (Davis County).

Steed Creek and tributaries, from Highway US-89 to headwaters (Davis County).

12.2 Category 2 Waters.

In addition to assigned use classes, the following surface waters of the State are hereby designated as Category 2 Waters:

a. Green River Drainage

Deer Creek, a tributary of Huntington Creek, from the forest boundary to 4800 feet upstream.

Electric Lake.

b. Weber River Drainage

Weber River from Uintah to Mountain Green.

R317-2-13. Classification of Waters of the State (see R317-2-6).

13.1 Upper Colorado River Basin

. . . . . .

13.2 Lower Colorado River Basin

a. Virgin River Drainage

TABLE

Beaver Dam Wash and tributaries, from Motoqua to headwaters		2B	3B	4
Virgin River and tributaries from state line to Quail Creek diversion except as listed below		2B	3B	4
Santa Clara River from confluence with Virgin River to Gunlock Reservoir	1C	2B	3B	4
Santa Clara River and tributaries, from Gunlock Reservoir to headwaters		2B	3A	4
Leed's Creek, from confluence with Quail Creek to headwaters		2B	3A	4
Quail Creek from Quail Creek Reservoir to headwaters	1C	2B	3A	4
Ash Creek and tributaries, from confluence with Virgin River to Ash Creek Reservoir		2B	3A	4
Ash Creek and tributaries, From Ash Creek Reservoir to headwaters		2B	3A	4
Virgin River and tributaries, from the Quail Creek diversion to headwaters, except as listed below	1C	2B	3C	4
North Fork Virgin River and tributaries	1C	2A[~~2B~~]	3A	4
East Fork Virgin River, from town of Glendale to headwaters		2B	3A	4
Kolob Creek, from confluence with Virgin River to headwaters		2B	3A	4

b. Kanab Creek Drainage

TABLE

Kanab Creek and tributaries, from state line to irrigation diversion at confluence with Reservoir Canyon		2B	3C	4
Kanab Creek and tributaries, from irrigation diversion at confluence with Reservoir Canyon to headwaters		2B	3A	4
Johnson Wash and tributaries, from state line to confluence with Skutumpah Canyon		2B	3C	4
Johnson Wash and tributaries, from confluence with Skutumpah Canyon to headwaters		2B	3A	4

. . . . . .

13.6 Sevier River Basin

a. Sevier River Drainage

TABLE

Sevier River and tributaries from Sevier Lake to Gunnison Bend Reservoir to U.S.National Forest boundary except as listed below		2B	3C	4
Beaver River and tributaries from Minersville City to headwaters		2B	3A	4
Little Creek and tributaries, From irrigation diversion to Headwaters		2B	3A	4
Pinto Creek and tributaries, From Newcastle Reservoir to Headwaters		2B	3A	4
Coal Creek and tributaries		2B	3A	4
Summit Creek and tributaries		2B	3A	4
Parowan Creek and tributaries		2B	3A	4
Tributaries to Sevier River from Sevier Lake to Gunnison Bend Reservoir from U.S. National Forest boundary to headwaters, including:		2B	3A	4
Pioneer Creek and tributaries, Millard County		2B	3A	4
Chalk Creek and tributaries, Millard County		2B	3A	4
Meadow Creek and tributaries, Millard County		2B	3A	4
Corn Creek and tributaries, Millard County		2B	3A	4
Sevier River and tributaries below U.S. National Forest boundary from Gunnison Bend Reservoir to Annabella Diversion except except as listed below		2B	3B	4
Oak Creek and tributaries, Millard County		2B	3A	4
Round Valley Creek and tributaries, Millard County		2B	3A	4
Judd Creek and tributaries, Juab County		2B	3A	4
Meadow Creek and tributaries, Juab County		2B	3A	4
Cherry Creek and tributaries Juab County		2B	3A	4

Tanner Creek and tributaries, Juab County		2B	3E	4
Baker Hot Springs, Juab County		2B	3D	4
Chicken Creek and tributaries, Juab County		2B 3A		4
San Pitch River and tributaries, from confluence with Sevier River to Highway U-132 crossing except As listed below:		2B	3C 3D	4
Twelve Mile Creek (South Creek) and tributaries, from U.S. Forest Service boundary to headwaters		2B 3A		4
Six Mile Creek and tributaries, Sanpete County		2B 3A		4
Manti Creek (South Creek) and tributaries, from U.S. Forest Service boundary to headwaters		2B 3A		4
Ephraim Creek (Cottonwood Creek) and tributaries, from U.S. Forest Service to headwaters		2B 3A		4
Oak Creek and tributaries, from U.S. Forest Service boundary near Spring City to headwaters		2B 3A		4
Fountain Green Creek and tributaries, from U.S. Forest Service boundary to headwaters		2B 3A		4
San Pitch River and tributaries, from Highway U-132 crossing to headwaters		2B 3A		4
Tributaries to Sevier River from Gunnison Bend Reservoir to Annabelle Diversion from U.S. National Forest boundary to headwaters		2B 3A		4
Sevier River and tributaries, from Annabella diversion to headwaters		2B 3A		4
Monroe Creek and tributaries, from diversion to headwaters		2B 3A		4
Little Creek and tributaries, from irrigation diversion to headwaters		2B 3A		4
Pinto Creek and tributaries, from Newcastle Reservoir to headwaters		2B 3A		4
Coal Creek and tributaries		2B 3A		4
Summit Creek and tributaries		2B 3A		4
Parowan Creek and tributaries		2B 3A		4
Duck Creek and tributaries	1C	2B 3A		4

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13.12 Lakes and Reservoirs. All lakes and any reservoirs greater than 10 acres not listed in 13.12 are assigned by default to the classification of the stream with which they are associated.

.....

bb. Weber County

TABLE

Causey Reservoir	2B 3A	4
Pineview Reservoir	1C 2A 2B 3A**	4
13.13 Unclassified Waters All waters not specifically classified are presumptively classified [~~as~~]:	2B[~~,~~]	3D[~~,~~]

R317-2-14. Numeric Criteria.

TABLE 2.14.1
NUMERIC CRITERIA FOR DOMESTIC, RECREATION, AND AGRICULTURAL USES

Parameter	Domestic Source 1C	Recreation and Aesthetics 2A	Recreation and Aesthetics 2B	Agriculture 4
BACTERIOLOGICAL (30-DAY GEOMETRIC MEAN) (NO.)/100 ML) (7)				
E. coli	206	126	206	
MAXIMUM (NO.)/100 ML) (7)				
E. coli	668	409	668	
PHYSICAL				
pH (RANGE)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0
Turbidity Increase (NTU)		10	10	
METALS (DISSOLVED, MAXIMUM MG/L) (2)				
Arsenic	0.01			0.1
Barium	1.0			
Beryllium	<0.004			
Cadmium	0.01			0.01
Chromium	0.05			0.10
Copper				0.2
Lead	0.015			0.1
Mercury	0.002			
Selenium	0.05			0.05
Silver	0.05			
INORGANICS (DISSOLVED, MAXIMUM MG/L)				
Bromate	0.01			
Boron				0.75
Chlorite	<1.0			
Fluoride (3)	1.4-2.4			
Nitrates as N	10			
Total Dissolved Solids (4)				1200
RADIOLOGICAL (MAXIMUM pCi/L)				

Gross Alpha	15			15
Gross Beta	4 mrem/yr			
Radium 226, 228 (Combined)	5			
Strontium 90	8			
Tritium	20000			
Uranium	30			
ORGANICS (MAXIMUM UG/L)				
Chlorophenoxy Herbicides				
2,4-D	70			
2,4,5-TP	10			
Methoxychlor	40			
POLLUTION INDICATORS (5)				
BOD (MG/L)		5	5	5
Nitrate as N (MG/L)		4	4	
Total Phosphorus as P (MG/L)(6)		0.05	0.05	

FOOTNOTES:

(1) Reserved

(2) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by approved laboratory methods for the required detection levels.

(3) Maximum concentration varies according to the daily maximum mean air temperature.

TEMP (C)	MG/L
12.0	2.4
12.1-14.6	2.2
14.7-17.6	2.0
17.7-21.4	1.8
21.5-26.2	1.6
26.3-32.5	1.4

(4) Site-specific criteria for total dissolved solids may be adopted by rulemaking where it is demonstrated that: (a) a less stringent criterion is appropriate because of natural or un-alterable conditions; or (b) a less stringent, site-specific criterion and/or date-specified criterion is protective of existing and attainable agricultural uses; or (c) a more stringent criterion is attainable and necessary for the protection of sensitive crops.
For water quality assessment purposes, up to 10% of representative samples may exceed the standard.

SITE SPECIFIC STANDARDS FOR TOTAL DISSOLVED SOLIDS (TDS)

Castle Creek from confluence with the Colorado River to Seventh Day Adventist Diversion: 1,800 mg/l;

Cottonwood Creek from the confluence with Huntington Creek to I-57: 3,500 mg/l;

Ferron Creek from the confluence with San Rafael River to Highway 10: 3,500 mg/l;

Huntington Creek and tributaries from the confluence with Cottonwood Creek to U-10: 4,800 mg/l;

Ivie Creek and its tributaries from the confluence with Muddy Creek to U-10: 2,600 mg/l;

Lost Creek from the confluence with Sevier River to U.S. Forest Service Boundary: 4,600 mg/l;

Muddy Creek and tributaries from the confluence with Ivie Creek to U-10: 2,600 mg/l;

Muddy Creek from confluence with Fremont River to confluence with [~~Quitchupah~~] Ivie Creek: 5,800 mg/l;

North Creek from the confluence with Virgin River to headwaters: 2,035 mg/l;

Onion Creek from the confluence with Colorado River to road crossing above Stinking Springs: 3000 mg/l;

Brine Creek-Petersen Creek, from the confluence with the Sevier River to U-119 Crossing: 9,700 mg/l;

Price River and tributaries from confluence with Green River to confluence with [~~Soldier~~]Coal Creek: 3,000 mg/l;

Price River and tributaries from the confluence with Coal Creek to Carbon Canal Diversion: 1,700 mg/l

[~~Price River and tributaries from the confluence with Green River to confluence with Soldier Creek: 3,000 mg/l;~~

]Quitchupah Creek from the confluence with Ivie Creek to U-10: 1,700 mg/l;

Rock Canyon Creek from the confluence with Cottonwood Creek to headwaters: 3,500 mg/l;

San Pitch River from below Gunnison Reservoir to the Sevier River: 2,400 mg/l;

San Rafael River from the confluence with the Green River to Buckhorn Crossing: 4,100 mg/l;

San Rafael River from the Buckhorn Crossing to the confluence with Huntington Creek and Cottonwood Creek: 3,500 mg/l;

Sevier River between Gunnison Bend Reservoir and DMAD Reservoir: 1,725 mg/l;

Sevier River from Gunnison Bend Reservoir to Clear Lake: 3,370 mg/l;

South Fork Spring Creek from confluence with Pelican Pond Slough Stream to US 89 1,450 mg/l (Apr.-Sept.)
1,950 mg/l (Oct.-March)

Virgin River from the Utah/Arizona border to Pah Tempe Springs: 2,360 mg/l

(5) Investigations should be conducted to develop more information where these pollution indicator levels are exceeded.

(6) Total Phosphorus as P (mg/l) indicator for lakes and reservoirs shall be 0.025.

(7) Where the criteria are exceeded and there is a reasonable basis for concluding that the indicator bacteria E. coli are primarily from natural sources (wildlife), e.g., in National Wildlife Refuges and State Waterfowl Management Areas, the criteria may be considered attained provided the density attributable to non-wildlife sources is less than the criteria. Exceedences of E. coli from nonhuman nonpoint sources will generally be addressed through appropriate Federal, State, and local nonpoint source programs.

Measurement of E. coli using the "Quanti-Tray 2000" procedure is approved as a field analysis. Other EPA approved methods may also be used.

For water quality assessment purposes, up to 10% of representative samples may exceed the 668 per 100 ml criterion (for 1C and 2B waters) and 409 per 100 ml (for 2A waters). For small datasets, where exceedences of these criteria are observed, follow-up ambient monitoring should be conducted to better characterize water quality.

TABLE 2.14.2
NUMERIC CRITERIA FOR AQUATIC WILDLIFE

Parameter	Aquatic Wildlife 3A	3B	3C	3D	5
PHYSICAL					
Total Dissolved Gases	(1)	(1)			
Minimum Dissolved Oxygen (MG/L) (2)(2a)					
30 Day Average	6.5	5.5	5.0	5.0	
7 Day Average	9.5/5.0	6.0/4.0			
Minimum	8.0/4.0	5.0/3.0	3.0	3.0	
Max. Temperature(C)(3)	20	27	27		
Max. Temperature Change (C)(3)	2	4	4		
pH (Range)(2a)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0	
Turbidity Increase (NTU)	10	10	15	15	
METALS (4) (DISSOLVED, UG/L)(5)					
Aluminum					
4 Day Average (6)	87	87	87	87	
1 Hour Average	750	750	750	750	
Arsenic (Trivalent)					
4 Day Average	150	150	150	150	
1 Hour Average	340	340	340	340	
Cadmium (7)					
4 Day Average	0.25	0.25	0.25	0.25	
1 Hour Average	2.0	2.0	2.0	2.0	
Chromium (Hexavalent)					
4 Day Average	11	11	11	11	
1 Hour Average	16	16	16	16	
Chromium (Trivalent) (7)					
4 Day Average	74	74	74	74	
1 Hour Average	570	570	570	570	
Copper (7)					
4 Day Average	9	9	9	9	
1 Hour Average	13	13	13	13	
Cyanide (Free)					
4 Day Average	5.2	5.2	5.2		
1 Hour Average	22	22	22	22	
Iron (Maximum)	1000	1000	1000	1000	
Lead (7)					
4 Day Average	2.5	2.5	2.5	2.5	
1 Hour Average	65	65	65	65	
Mercury					
4 Day Average	0.012	0.012	0.012	0.012	
1 Hour Average	2.4	2.4	2.4	2.4	
Nickel (7)					
4 Day Average	52	52	52	52	
1 Hour Average	468	468	468	468	
Selenium					
4 Day Average	4.6	4.6	4.6	4.6	
1 Hour Average	18.4	18.4	18.4	18.4	
Selenium (14)					
Gilbert Bay (Class 5A)					
Great Salt Lake					
Geometric Mean over Nesting Season (mg/kg dry wt)					12.5
Silver					
1 Hour Average (7)	1.6	1.6	1.6	1.6	
Zinc (7)					
4 Day Average	120	120	120	120	
1 Hour Average	120	120	120	120	
INORGANICS (MG/L) (4)					
Total Ammonia as N (9)					
30 Day Average	(9a)	(9a)	(9a)	(9a)	
1 Hour Average	(9b)	(9b)	(9b)	(9b)	
Chlorine (Total Residual)					
4 Day Average	0.011	0.011	0.011	0.011	
1 Hour Average	0.019	0.019	0.019	0.019	
Hydrogen Sulfide (13)					
(Undissociated, Max. UG/L)	2.0	2.0	2.0	2.0	
Phenol(Maximum)	0.01	0.01	0.01	0.01	
RADIOLOGICAL	(MAXIMUM pCi/L)				
Gross Alpha (10)	15	15	15	15	
ORGANICS (UG/L) (4)					
Aldrin					
1 Hour Average	1.5	1.5	1.5	1.5	
Chlordane					
4 Day Average	0.0043	0.0043	0.0043	0.0043	
1 Hour Average	1.2	1.2	1.2	1.2	
4,4' -DDT					
4 Day Average	0.0010	0.0010	0.0010	0.0010	
1 Hour Average	0.55	0.55	0.55	0.55	
Diazinon					
4 Day Average	0.17	0.17	0.17	0.17	
1 Hour Average	0.17	0.17	0.17	0.17	
Dieldrin					
4 Day Average	0.056	0.056	0.056	0.056	
1 Hour Average	0.24	0.24	0.24	0.24	
Alpha-Endosulfan					
4 Day Average	0.056	0.056	0.056	0.056	
1 Hour Average	0.11	0.11	0.11	0.11	
beta-Endosulfan					
4 Day Average	0.056	0.056	0.056	0.056	
1 Day Average	0.11	0.11	0.11	0.11	
Endrin					
4 Day Average	0.036	0.036	0.036	0.036	
1 Hour Average	0.086	0.086	0.086	0.086	
Heptachlor					
4 Day Average	0.0038	0.0038	0.0038	0.0038	
1 Hour Average	0.26	0.26	0.26	0.26	
Heptachlor epoxide					
4 Day Average	0.0038	0.0038	0.0038	0.0038	
1 Hour Average	0.26	0.26	0.26	0.26	

Hexachlorocyclohexane (Lindane)				
4 Day Average	0.08	0.08	0.08	0.08
1 Hour Average	1.0	1.0	1.0	1.0
Methoxychlor (Maximum)	0.03	0.03	0.03	0.03
Mirex (Maximum)	0.001	0.001	0.001	0.001
Nonylphenol				
4 Day Average	6.6	6.6	6.6	6.6
1 Hour Average	28.0	28.0	28.0	28.0
Parathion				
4 Day Average	0.013	0.013	0.013	0.013
1 Hour Average	0.066	0.066	0.066	0.066
PCB's				
4 Day Average	0.014	0.014	0.014	0.014
Pentachlorophenol (11)				
4 Day Average	15	15	15	15
1 Hour Average	19	19	19	19
Toxaphene				
4 Day Average	0.0002	0.0002	0.0002	0.0002
1 Hour Average	0.73	0.73	0.73	0.73
POLLUTION INDICATORS (11)				
Gross Beta (pCi/L)	50	50	50	50
BOD (MG/L)	5	5	5	5
Nitrate as N (MG/L)	4	4	4	
Total Phosphorus as P(MG/L) (12)	0.05	0.05		

FOOTNOTES:

(1) Not to exceed 110% of saturation.

(2) These limits are not applicable to lower water levels in deep impoundments. First number in column is for when early life stages are present, second number is for when all other life stages present.

(2a) These criteria are not applicable to Great Salt Lake impounded wetlands. Surface water in these wetlands shall be protected from changes in pH and dissolved oxygen that create significant adverse impacts to the existing beneficial uses.

(3) The temperature standard shall be at background where it can be shown that natural or un-alterable conditions prevent its attainment. In such cases rulemaking will be undertaken to modify the standard accordingly.

Site Specific Standards for Temperature

Ken's Lake: From June 1st - September 20th, 27 degrees C.

(4) Where criteria are listed as 4-day average and 1-hour average concentrations, these concentrations should not be exceeded more often than once every three years on the average.

(5) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by EPA approved laboratory methods for the required detection levels.

(6) The criterion for aluminum will be implemented as follows:
Where the pH is equal to or greater than 7.0 and the hardness is equal to or greater than 50 ppm as CaCO3 in the receiving water after mixing, the 87 ug/1 chronic criterion (expressed as total recoverable) will not apply, and aluminum will be regulated based on compliance with the 750 ug/1 acute aluminum criterion (expressed as total recoverable).

(7) Hardness dependent criteria. 100 mg/l used. Conversion factors for ratio of total recoverable metals to dissolved metals must also be applied. In waters with a hardness greater than 400 mg/l as CaCO3, calculations will assume a hardness of 400 mg/l as CaCO3. See Table 2.14.3 for complete equations for hardness and conversion factors.

(8) Reserved

(9) The following equations are used to calculate Ammonia criteria concentrations:

(9a) The thirty-day average concentration of total ammonia nitrogen (in mg/l as N) does not exceed, more than once every three years on the average, the chronic criterion calculated using the following equations.

Fish Early Life Stages are Present:

$$\text{mg/l as N (Chronic)} = \left(\left(0.0577/\left(1+10^{7.688-pH}\right)\right) + \left(2.487/\left(1+\left[10^{pH-7.688}\right]10^{pH-7.688}\right)\right)\right) * \text{MIN}\left(2.85, 1.45*10^{0.028*(25-T)}\right)$$

Fish Early Life Stages are Absent:

$$\text{mg/l as N (Chronic)} = \left(\left(0.0577/\left(1+10^{7.688-pH}\right)\right) + \left(2.487/\left(1+10^{pH-7.688}\right)\right)\right) * 1.45*10^{0.028*(25-\text{MAX}(T,7))}$$

(9b) The one-hour average concentration of total ammonia nitrogen (in mg/l as N) does not exceed, more than once every three years on the average the acute criterion calculated using the following equations.

Class 3A:

$$\text{mg/l as N (Acute)} = \left(0.275/\left(1+10^{7.204-pH}\right)\right) + \left(39.0/1+10^{pH-7.204}\right)$$

Class 3B, 3C, 3D:

$$\text{mg/l as N (Acute)} = 0.411/\left(1+10^{7.204-pH}\right) + \left(58.4/\left(1+10^{pH-7.204}\right)\right)$$

In addition, the highest four-day average within the 30-day period should not exceed 2.5 times the chronic criterion. The "Fish Early Life Stages are Present" 30-day average total ammonia criterion will be applied by default unless it is determined by the Division, on a site-specific basis, that it is appropriate to apply the "Fish Early Life Stages are Absent" 30-day average criterion for all or some portion of the year. At a minimum, the "Fish Early Life Stages are Present" criterion will apply from the beginning of spawning through the end of the early life stages. Early life stages include the pre-hatch embryonic stage, the post-hatch free embryo or yolk-sac fry stage, and the larval stage for the species of fish expected to occur at the site. The division will consult with the Division of Wildlife Resources in making such determinations. The Division will maintain information regarding the waterbodies and time periods where application of the "Early Life Stages are Absent" criterion is determined to be appropriate.

(10) Investigation should be conducted to develop more information where these levels are exceeded.

(11) pH dependent criteria. pH 7.8 used in table. See Table 2.14.4 for equation.

(12) Total Phosphorus as P (mg/l) as a pollution indicator for lakes and reservoirs shall be 0.025.

(13) Formula to convert dissolved sulfide to un-disassociated hydrogen sulfide is: $H_2S = \text{Dissolved Sulfide} * e^{((-1.92 + pH) + 12.05)}$

(14) The selenium water quality standard of 12.5 (mg/kg dry weight) for Gilbert Bay is a tissue based standard using the complete egg/embryo of aquatic dependent birds using Gilbert Bay based upon a minimum of five samples over the nesting season. Assessment procedures are incorporated as a part of this standard as follows:

Egg Concentration Triggers: DWQ Responses

Below 5.0 mg/kg: Routine monitoring with sufficient intensity to determine if selenium concentrations within the Great Salt Lake ecosystem are increasing.

5.0 mg/kg: Increased monitoring to address data gaps, loadings, and areas of uncertainty identified from initial Great Salt Lake selenium studies.

6.4 mg/kg: Initiation of a Level II Antidegradation review by the State for all discharge permit renewals or new discharge permits

to Great Salt Lake. The Level II Antidegradation review may include an analysis of loading reductions.

9.8 mg/kg: Initiation of preliminary TMDL studies to evaluate selenium loading sources.

12.5 mg/kg and above: Declare impairment. Formalize and implement TMDL.

Antidegradation
Level II Review procedures associated with this standard are referenced at R317-2-3.5.C.

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TABLE 2.14.3a

EQUATIONS TO CONVERT TOTAL RECOVERABLE METALS STANDARD WITH HARDNESS (1) DEPENDENCE TO DISSOLVED METALS STANDARD BY APPLICATION OF A CONVERSION FACTOR (CF).

Parameter	4-Day Average (Chronic) Concentration (UG/L)
CADMIUM	CF * $e^{(0.7409 ([\text{~~I~~}]\underline{l}n(\text{hardness})) -4.719}$ CF = 1.101672 - [~~(ln~~]ln(hardness) (0.041838)
CHROMIUM III	CF * $e^{(0.8190([\text{~~I~~}]\underline{l}n(\text{hardness})) + 0.6848}$ CF = 0.860
COPPER	CF * $e^{(0.8545(\ln(\text{hardness})) -1.702)}$ CF = 0.960
LEAD	CF * $e^{(1.273(\ln(\text{hardness}))-4.705)}$ CF = 1.46203 - [~~(ln~~]ln(hardness)(0.145712)
NICKEL	CF * $e^{(0.8460(\ln(\text{hardness}))+0.0584)}$ CF = 0.997
SILVER	N/A
ZINC	Cf * $e^{(0.8473(\ln(\text{hardness}))+0.884)}$ CF = 0.986

TABLE 2.14.3b

EQUATIONS TO CONVERT TOTAL RECOVERABLE METALS STANDARD WITH HARDNESS (1) DEPENDENCE TO DISSOLVED METALS STANDARD BY APPLICATION OF A CONVERSION FACTOR (CF).

Parameter	1-Hour Average (Acute) Concentration (UG/L)
CADMIUM	CF * $e^{(1.0166([\text{~~I~~}]\underline{l}n(\text{hardness}))-3.924)}$ CF = 1.136672 - [~~(ln~~]ln(hardness)(0.041838)
CHROMIUM (III)	CF * $e^{(0.8190(\ln(\text{hardness})) +3.7256)}$ CF = 0.316
COPPER	CF * $e^{(0.9422(\ln(\text{hardness}))- 1.700)}$ CF = 0.960
LEAD	CF * $e^{(1.273(\ln(\text{hardness}))-1.460)}$ CF = 1.46203 - [~~(ln~~]ln(hardness)(0.145712)
NICKEL	CF * $e^{(0.8460(\ln(\text{hardness})) +2.255}$ CF= 0.998
SILVER	CF * $e^{(1.72(\ln(\text{hardness}))- 6.59}$ CF = 0.85
ZINC	CF * $e^{(0.8473(\ln(\text{hardness})) +0.884}$ CF = 0.978

FOOTNOTE:
(1) Hardness as mg/l $CaCO_3$.

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KEY: water pollution, water quality standards
Date of Enactment or Last Substantive Amendment: [~~January 12, 2009~~|2010
Notice of Continuation: October 2, 2007
Authorizing, and Implemented or Interpreted Law: 19-5

Health, Epidemiology and Laboratory Services, Epidemiology
R386-702-11
Penalties

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33182
FILED: 11/24/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to remove an obsolete reference to criminal penalties for violating a rule that is no longer supported by statutory delegation of this authority by the Legislature (see H.B. 32, 2009 General Session, Utah State Legislature). (DAR NOTE: H.B. 32 (2009) is found at Chapter 347, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: Reference to criminal penalties for violating this rule is removed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 8a

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ LOCAL GOVERNMENTS: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.

♦ SMALL BUSINESSES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removing obsolete criminal penalties will impose no new fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES,
EPIDEMIOLOGY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Melissa Stevens Dimond by phone at 801-538-6810, by FAX at 801-538-9923, or by Internet E-mail at melissastevens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R386. Health, Community Health Services, Epidemiology.
R386-702. Communicable Disease Rule.
R386-702-11. Penalties.

Any person who violates any provision of R386-702 may be assessed a penalty [~~not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor~~]as provided in Section 26-23-6.

KEY: communicable diseases, quarantine, rabies, rules and procedures

Date of Enactment or Last Substantive Amendment: [~~June 11, 2008~~]2010
Notice of Continuation: March 22, 2007
Authorizing, and Implemented or Interpreted Law: 26-1-30; 26-6-3; 26-23b

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Health, Epidemiology and Laboratory Services, Epidemiology
R386-705-101
Penalties

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33183
FILED: 11/24/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to remove an obsolete reference to criminal penalties for violating a rule that is no longer supported by statutory delegation of this authority by the Legislature (see H.B. 32, 2009 General Session, Utah State Legislature). (DAR NOTE: H.B. 32 (2009) is found at Chapter 347, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: Reference to criminal penalties for violating this rule is removed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-6-3 and Section 26-6-7 and Subsection 26-1-30(2)(a) and Subsection 26-1-30(2)(b) and Subsection 26-1-30(2)(d) and Subsection 26-1-30(2)(e) and Subsection 26-1-30(2)(g)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ LOCAL GOVERNMENTS: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ SMALL BUSINESSES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large

business. No significant change to current enforcement practices is predicted.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removing obsolete criminal penalties will impose no new fiscal impact.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Beverly Jackson by phone at 801-538-6128, by FAX at 801-538-6036, or by Internet E-mail at beverlyjackson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R386. Health, Epidemiology and Laboratory Services, Epidemiology.
R386-705. Epidemiology, Health Care Associated Infection.
R386-705-101. Penalties.

As required by Section 63-46a-3(5): An entity that violates any provision of this rule may be assessed a civil money penalty [~~not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor~~]as provided in Section 26-23-6.

KEY: hospitals, quality improvement, patient safety
Date of Enactment or Last Substantive Amendment: [~~December 18, 2007~~]2010
Authorizing, and Implemented or Interpreted Law: 26-1-30(2)(a); 26-1-30(2)(b); 26-1-30(2)(d); 26-1-30(2)(e); 26-1-30(2)(g); 26-6-3; 26-6-7

Health, Epidemiology and Laboratory Services, Epidemiology
R386-800-8
Penalties for Violation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33185
FILED: 11/24/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to remove an obsolete reference to criminal penalties for violating a rule that is no longer supported by statutory delegation of this authority by the Legislature (see H.B. 32, 2009 General Session, Utah State Legislature). (DAR NOTE: H.B. 32 (2009) is found at Chapter 347, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: Reference to criminal penalties for violating this rule is removed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 6 and Title 26, Chapter3

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ LOCAL GOVERNMENTS: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ SMALL BUSINESSES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removing obsolete criminal penalties will impose no new fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES,
EPIDEMIOLOGY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Beverly Jackson by phone at 801-538-6128, by FAX at 801-538-6036, or by Internet E-mail at beverlyjackson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R386. Health, Epidemiology and Laboratory Services, Epidemiology.
R386-800. Immunization Coordination.
R386-800-8. Penalties for Violation.

As required by Section 63-46a-3(5): Any person who violates any provision of this rule may be assessed a civil money penalty [~~not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor~~]as provided in Section 26-23-6.

KEY: immunization data reporting, consent
Date of Enactment or Last Substantive Amendment: [~~July 8, 2002~~]2010
Notice of Continuation: May 24, 2005
Authorizing, and Implemented or Interpreted Law: 26-3; 26-6

Health, Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health
R388-804-9
Penalty for Violation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33188
FILED: 11/24/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to remove an obsolete reference to criminal penalties for violating a rule that is no longer supported by statutory delegation of this authority by the Legislature (see H.B. 32, 2009 General Session, Utah State Legislature). (DAR NOTE: H.B. 32 (2009) is found at Chapter 347, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The reference to criminal penalties for violating this rule is removed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 8a

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ LOCAL GOVERNMENTS: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ SMALL BUSINESSES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removing obsolete criminal penalties will impose no new fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES;
HIV/AIDS, TUBERCULOSIS CONTROL/
REFUGEE HEALTH
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:
♦ Cristie Chesler by phone at 801-538-9465, by FAX at 801-538-9913, or by Internet E-mail at cchesler@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R388. Health, Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health.
R388-804. Special Measures for the Control of Tuberculosis.
R388-804-9. Penalty for Violation.

(1) Any person who violates any provision of this rule may be assessed a civil money penalty [~~not to exceed the sum of $5000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor~~]as provided in Section 26-23-6.

KEY: tuberculosis, screening, communicable disease
Date of Enactment or Last Substantive Amendment: [~~July 16, 2007~~]2010
Notice of Continuation: May 29, 2007
Authorizing, and Implemented or Interpreted Law: 26-6-4; 26-6-6; 26-6-7; 26-6-8; 26-6-9; 26-6b

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Health, Epidemiology and Laboratory Services, Environmental Services
R392-100-2
Incorporation by Reference

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33210
FILED: 11/24/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to remove an obsolete reference to criminal penalties for violating a rule that is no longer supported by statutory delegation of this authority by the Legislature (see H.B. 32, 2009 General Session, Utah State Legislature). (DAR NOTE: H.B. 32 (2009) is found at Chapter 347, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The reference to criminal penalties for violating this rule is removed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 8a

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ LOCAL GOVERNMENTS: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
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♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removing obsolete criminal penalties will impose no new fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES,
ENVIRONMENTAL SERVICES
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 10/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R392. Health, Epidemiology and Laboratory Services, Environmental Services.
R392-100. Food Service Sanitation.
R392-100-2. Incorporation by Reference.

(1) The requirements as found in the U.S. Public Health Service, Food and Drug Administration, Food Code 2005, Chapters 1 through 8, Annex 1, and Annex 2, Federal Food, Drug, and Cosmetic Act, 21, U.S.S. 342, Sec. 402 are adopted and incorporated by reference, with the exclusion of Sections 8-302.14(C)(2),(D) and (E), 8-805.40, and 8-809.20; and

(2) with the following additions or amendments:

(a) Amend section 8-103.10 to read:

8-103.10 Modifications and Waivers.

(A) The regulatory authority may grant a variance by modifying or waiving the requirements of this Code if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under section 8-103.11 in its records for the food establishment.

(B) A variance or waiver issued by the regulatory authority and the documentation required in section 8-103.11 must be copied to the Utah Department of Health, Office of Epidemiology, Environmental Sanitation Program within 5 working days of issuance.

(C) A variance or waiver intended for a food establishment which is of a chain with stores in more than one local health jurisdiction in the State must be approved by the Utah Department of Health prior to issuance.

(b) Amend section 8-103.11 to add:

(D) In addition, a variance from section 3-301.11 may be issued only when:

(1) the variance is limited to a specific task or work station;

(2) the applicant has demonstrated good cause why section 3-301.11 cannot be met;

(3) suitable utensils are used to the fullest extent possible with ready-to-eat foods in the rest of the establishment; and

(4) the applicant can demonstrate active management control of this risk factor at all times.

(c) Amend Section 8-302.14 (C) to read:

A statement specifying whether the food establishment is mobile or stationary and temporary or permanent.

(d) Amend section 8-302.14 to renumber (F) to (D), (G) to (E), and (H) to (F).

(e) Amend section 8-304.10(A) to read:

(A) Upon request, the regulatory authority shall provide a copy of the food service sanitation rule according to the policy of the local regulatory agency.

(f) Amend section 8-304.11(J) to read:

Accept notices issued and served by the REGULATORY AUTHORITY according to LAW:

(g) Amend section 8-304.11(K) to read:

Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this Code or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives; and.

(h) Amend section 8-401.10(A) to read:

(A) Except as specified in paragraphs (B) and (C) of this section, the regulatory authority shall inspect a food establishment at least once every 6 months and twice in a season for seasonal operations.

(i) Amend section 8-501.10(B) to read:

(B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee; and

(j) Add section 8-501.10(C) to read:

(C) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703.

(k) Amend section 8-601.10 to read:

Due process and equal protection shall be afforded as required by law in all enforcement and regulatory actions.

(l) Amend section 8-701.30 to read:

Service is effective at the time the notice is served or when service is made as specified in section 8-701.20(B).

(m) Amend section 8-803.10 to read:

8-803.10 Impoundment of Adulterated Food Products Authorized.

(A) The impoundment of adulterated food is authorized under Section 26-15-9, UCA.

(B) The regulatory authority may impound, by use of a hold order, any food product found in places where food or drink is handled, sold, or served to the public, but is found or is suspected of being adulterated and unfit for human consumption,

(C) Upon five days notice and a reasonable opportunity for a hearing to the interested parties, to condemn and destroy the same if deemed necessary for the protection of the public health and

(D) If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the regulatory authority may remove the food that is subject to the hold order to a place of safekeeping.

(n) Amend section 8-803.60 to read:

The regulatory authority may examine, sample, and test food in order to determine its compliance with this Code in section 8-402.11.

(o) Amend section 8-803.90 to read:

The regulatory authority shall issue a notice of release from a hold order and shall physically remove the hold tags, labels, or other identification from the food if the hold order is vacated.

(p) Amend section 8-804.30 number/catchline to read:

8-804.30 Contents of the Summary Suspension Notice.

(q) Amend section 8-805.10(A) to read:

(A) A person who receives a notice of hearing shall file a response within 10 calendar days from the date of service. Failure to respond may result in license suspension, license revocation, or other administrative penalties.

(r) Amend section 8-805.20 to read:

A response to a hearing notice or a request for a hearing as specified in section 8-805.10 shall be in written form and contain the following:

(A) Response to a notice of hearing must include:

(1) An admission or denial of each allegation of fact;

(2) A statement as to whether the respondent waives the right to a hearing;

(3) A statement of defense, mitigation, or explanation concerning all claims; and

(4) A statement as to whether the respondent wishes to settle some or all of the claims made by the regulatory authority.

(B) A request for hearing must include:

(1) A statement of the issues of fact specified in section 8-805.30(B) for which a hearing is requested; and

(2) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.

(C) Witnesses - In addition to the above requirements, if witnesses are requested, the response to a notice of hearing and a request for hearing must include the name, address, telephone number, and a brief statement of the expected testimony for each witness.

(D) Legal Representation - Legal counsel is allowed, but not required. All documents filed by the respondent must include the name, address, and telephone number of the respondent's legal counsel, if any.

(s) Amend section 8-805.50(A)(1) to read:

(1) Except as provided in paragraph (B) of this section, within 5 calendar days after receiving a written request for an appeal hearing from:

(t) Adopt subsections 8-805.50(A)(1)(a) through (c) without changes.

(v) Amend subsection 8-805.50(A)(2) to read:

(2) Within 30 calendar days after the service of a hearing notice to consider administrative remedies for other matters as specified in section 8-805.10(C) or for matters as determined necessary by the regulatory authority.

(v) Amend section 8-805.60 number/catchline to read:

8-805.60 Notice of Hearing Contents.

(w) Amend section 8-805.80 number/catchline to read:

8-805.80 Expeditious and Impartial Hearing.

(x) Amend section 8-805.90 number/catchline to read:

8-805.90 Confidentially of Hearing and Proceedings.

(y) Amend section 8-805.90(A) to read:

(A) Hearings will be open to the public unless compelling circumstances, such as the need to discuss a person's medical or mental health condition, a food establishment's trade secrets, or any other matter private or protected under federal or state law.

(z) Amend section 8-806.30(B) to read:

(B) Unless a party appeals to the head of the regulatory authority within 10 calendar days of the hearing or a lesser number of days specified by the hearing officer

(aa) Adopt subsections 8-806.30(B)(1) through (2) without changes.

(ab) Amend section 8-807.60 to read:

Documentary evidence may be received in the form of a copy or excerpt if provided to the hearing officer and opposing party prior to the hearing as ordered by the hearing officer.

(ac) Amend section 8-808.20 to read:

Respondents accepting a consent agreement waive their rights to a hearing on the matter, including judicial review.

(ad) Amend section 8-811.10(B) to read:

(B) Any person who violates any provision of this rule may be assessed a civil penalty [~~not to exceed the sum of $5,000.00 or be punished for violation of a class B misdemeanor for the first violation. For any subsequent similar violation within two years, the person may be punished for violation of a class A misdemeanor~~]as provided in section 26-23-6.

(ae) Amend section 8-813.10 number/catchline to read:

8-813.10 Petitions, Penalties, Contempt, and Continuing Violations.

(af) Amend section 8-813.10(B) to replace the phrase (designate amount) with the phrase $5,000.

(ag) Add paragraph 8-813.10(D) to read:

(D) The adjudicative body, upon proper findings, shall assess violators a fee for each day the violation remains in contempt of its order.

(3) The requirements of the Utah Uniform Building Standards Act Rules as found in Sections R156-56-701(1)(c), and R156-56-803 are adopted and incorporated by reference.

KEY: public health, food services, sanitation
Date of Enactment or Last Substantive Amendment: [~~July 17, 2008~~]2010
Notice of Continuation: March 22, 2007
Authorizing, and Implemented or Interpreted Law: 26-1-30(2); 26-15-2

Health, Epidemiology and Laboratory Services, Environmental Services
R392-101-9
Penalties

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33211
FILED: 11/24/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to remove an obsolete reference to criminal penalties for violating a rule that is no longer supported by statutory delegation of this authority by the Legislature (see H.B. 32, 2009 General Session, Utah State Legislature). (DAR NOTE: H.B. 32 (2009) is found at Chapter 347, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: Reference to criminal penalties for violating this rule is removed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 8a

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: It is possible that increased focus on use of civil money penalties could have a positive impact

on state and local budgets, but any impact is expected to be minimal.
♦ LOCAL GOVERNMENTS: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ SMALL BUSINESSES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removing obsolete criminal penalties will impose no new fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES,
ENVIRONMENTAL SERVICES
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R392. Health, Epidemiology and Laboratory Services, Environmental Services.
R392-101. Food Safety Manager Certification.
R392-101-9. Penalties.

Any person who violates any provision of this rule may be assessed a civil money penalty [~~not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor~~]as provided in Section 26-23-6.

KEY: public health, food service
Date of Enactment or Last Substantive Amendment: [~~July 25, 2006~~]2010
Notice of Continuation: February 12, 2009
Authorizing, and Implemented or Interpreted Law: 26-15a-103

Health, Epidemiology and Laboratory Services, Environmental Services
R392-400-17
Penalty

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33212
FILED: 11/24/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to remove an obsolete reference to criminal penalties for violating a rule that is no longer supported by statutory delegation of this authority by the Legislature (see H.B. 32, 2009 General Session, Utah State Legislature). (DAR NOTE: H.B. 32 (2009) is found at Chapter 347, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: Reference to criminal penalties for violating this rule is removed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 8a

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ LOCAL GOVERNMENTS: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ SMALL BUSINESSES: It is possible that increased focus on use of civil money penalties could have a minimal impact on state and local budgets. No significant change to current enforcement practices is predicted.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large

business. No significant change to current enforcement practices is predicted.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removing obsolete criminal penalties will impose no new fiscal impact.

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

HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES,
ENVIRONMENTAL SERVICES
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R392. Health, Epidemiology and Laboratory Services, Environmental Services.
R392-400. Temporary Mass Gatherings Sanitation.
R392-400-17. Penalty.

(1) Any person who violates any provision of this rule may be assessed a penalty [~~not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor~~]as provided in Subsection 26-23-6.

(2) Each day such violation is committed or permitted to continue shall constitute a separate violation.

(3) In addition to other penalties imposed, any person who violates any requirement of this rule shall be liable for all expenses incurred by the department and local health department in removing or abating any nuisance, source of filth, cause of sickness or infection, health hazard, or sanitation violation.

KEY: public health, temporary mass gatherings, special events
Date of Enactment or Last Substantive Amendment: [~~April 11, 2002~~|2010
Notice of Continuation: May 8, 2007
Authorizing, and Implemented or Interpreted Law: 26-15-2

Health, Epidemiology and Laboratory Services, Environmental Services
R392-700-11
Enforcement and Penalties

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33213
FILED: 11/24/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to remove an obsolete reference to criminal penalties for violating a rule that is no longer supported by statutory delegation of this authority by the Legislature (see H.B. 32, 2009 General Session, Utah State Legislature). (DAR NOTE: H.B. 32 (2009) is found at Chapter 347, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: Reference to criminal penalties for violating the rule is removed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 8a

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ LOCAL GOVERNMENTS: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ SMALL BUSINESSES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business.

No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removing obsolete criminal penalties will impose no new fiscal impact.

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

HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES,
ENVIRONMENTAL SERVICES
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R392. Health, Epidemiology and Laboratory Services, Environmental Services.
R392-700. Indoor Tanning Bed Sanitation.
R392-700-11. Enforcement and Penalties.

A person who violates a provision of this rule that is also a provision of Section 26-15-13 may be subject to a class C misdemeanor. A person who violates a provision of this rule that is not also a provision of Section 26-15-13 is subject to [~~a Class B misdemeanor on the first offense or a Class A misdemeanor on the second offense within one year or~~]a civil penalty [~~on up to $5,000 for each offense~~]as provided in Section 26-23-6.

KEY: tanning beds, salons, sanitation, ultraviolet light safety
Date of Enactment or Last Substantive Amendment: [~~May 16, 2008~~]2010
Authorizing, and Implemented or Interpreted Law: 26-15-2; 26-15-13

Health, Community and Family Health Services, Immunization
R396-100-9
Penalties

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33181
FILED: 11/24/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to remove an obsolete reference to criminal penalties for violating a rule that is no longer supported by statutory delegation of this authority by the Legislature (see H.B. 32, 2009, General Session, Utah State Legislature). (DAR NOTE: H.B. 32 (2009) is found at Chapter 347, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The reference to criminal penalties for violating this rule is removed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-11-303 and Section 53A-11-306

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ LOCAL GOVERNMENTS: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ SMALL BUSINESSES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removing obsolete criminal penalties will impose no new fiscal impact.

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

HEALTH
COMMUNITY AND FAMILY HEALTH SERVICES,
IMMUNIZATION
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:
♦ Jennifer Brown by phone at 801-538-6131, by FAX at 801-538-9913, or by Internet E-mail at jenniferbrown@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R396. Health, Community and Family Health Services, Immunization.
R396-100. Immunization Rule for Students.
R396-100-9. Penalties.

Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including this Immunization Rule for Students, are prescribed under Section 26-23-6.[~~—A violation is punishable as a class B misdemeanor on the first offense, a class A misdemeanor on the second offense or by civil penalty of up to $5,000 for each violation.~~]

KEY: immunizations, rules and procedures
Date of Enactment or Last Substantive Amendment: [~~July 29, 2008~~]2010
Notice of Continuation: July 25, 2008
Authorizing, and Implemented or Interpreted Law: 53A-11-303; 53A-11-306

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-1
Utah Medicaid Program

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33214
FILED: 11/24/2009

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify in rule that a determination of death must be in accordance with the provisions of Section 26-34-2.

SUMMARY OF THE RULE OR CHANGE: This change clarifies that a determination of death must be in accordance with the provisions of Section 26-34-2. It also clarifies the reimbursement policy for making this determination.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3 and Section 26-34-2

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no expected impact to the state budget due to this clarification. Existing policy to make a determination of death has always been in accordance with state law.
♦ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund or provide Medicaid services to Medicaid clients.
♦ SMALL BUSINESSES: There is no expected impact to small businesses. Existing policy to make a determination of death has always been in accordance with state law. No provider is predicted to lose any funding.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no expected impact to persons other than small businesses, businesses, or local government entities. Existing policy to make a determination of death has always been in accordance with state law. No provider is predicted to lose any funding.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single person or entity predicted due to this clarification of existing policy. Compliance should be enabled due to this clarification.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact on business is expected. Section 26-34-2 already sets the standard for a medical professional to determine death. Medicaid financial responsibility for medically necessary care also should cease at death.

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 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 NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: David Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-1. Utah Medicaid Program.
R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

(1) "Act" means the federal Social Security Act.

(2) "Applicant" means any person who requests assistance under the medical programs available through the Division.

(3) "Categorically needy" means aged, blind or disabled individuals or families and children:

(a) who are otherwise eligible for Medicaid; and

(i) who meet the financial eligibility requirements for AFDC as in effect in the Utah State Plan on July 16, 1996; or

(ii) who meet the financial eligibility requirements for SSI or an optional State supplement, or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or

(iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or

(iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or

(v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or

(vi) who is least age six but not yet age 18, or is at least age six but not yet age 19 and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or

(vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or

(viii) who is a child for whom an adoption assistance agreement with the state is in effect.

(b) whose categorical eligibility is protected by statute.

(4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.

(5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.

(6) "CMS" means The Centers for Medicare and Medicaid Services, a Federal agency within the U.S. Department of Health and Human Services. Programs for which CMS is responsible include Medicare, Medicaid, and the State Children's Health Insurance Program.

(7) "Department" means the Department of Health.

(8) "Director" means the director of the Division.

(9) "Division" means the Division of Health Care Financing within the Department.

(10) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

(a) placing the patient's health in serious jeopardy;

(b) serious impairment to bodily functions;

(c) serious dysfunction of any bodily organ or part; or

(d) death.

(11) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of diagnosis.

(12) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

(13) "Executive Director" means the executive director of the Department.

(14) "InterQual" means the McKesson InterQual Criteria, a comprehensive, clinically based, patient focused medical review criteria and system developed by McKesson Corporation.

(15) "Medicaid agency" means the Department of Health.

(16) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18, UCA.

(17) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(18) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(19) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(20) "Medical standards," as applied in this rule, means that an individual may receive reasonable and necessary medical services up until the time a physician makes an official determination of death.

(2[~~0~~]1) "Prior authorization" means the required approval for provision of a service that the provider must obtain from the Department before providing the service. Details for obtaining prior authorization are found in Section I of the Utah Medicaid Provider Manual.

(2[~~1~~]2) "Provider" means any person, individual or corporation, institution or organization, qualified to perform services available under the Medicaid program and who has entered into a written contract with the Medicaid program.

(2[~~2~~]3) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program, or has had a premium paid to a managed care entity.

(2[~~3~~]4) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

R414-1-27. Determination of Death.

(1) In accordance with the provisions of Section 26-34-2, the fiduciary responsibility for medically necessary care on behalf of the client ceases upon the determination of death.

(2) Reimbursement for the determination of death by acceptable medical standards must be in accordance with Medicaid coverage and billing policies that are in place on the date the physician renders services.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~October 1, 2009~~]2010
Notice of Continuation: April 16, 2007
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-[~~1~~]3; 26-34-2

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-5
Reduction in Hospital Payments

NOTICE OF PROPOSED RULE

(Repeal)
DAR FILE NO.: 33215
FILED: 11/24/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This repeal is necessary because the uniform reduction of hospital payments as stated in the rule has been incorporated into the ongoing base rates.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no impact to the state budget because the uniform reduction of hospital payments as stated in the rule has simply been incorporated into the ongoing base rates.
♦ LOCAL GOVERNMENTS: There is no impact to local governments because they do not reimburse hospitals for their services.
♦ SMALL BUSINESSES: There is no impact to small businesses because the uniform reduction of hospital payments as stated in the rule has simply been incorporated into the ongoing base rates.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no impact to persons other than small businesses, businesses, or local government entities because the uniform reduction of hospital payments as stated in the rule has simply been incorporated into the ongoing base rates.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because the uniform reduction of hospital payments as stated in the rule has simply been incorporated into the ongoing base rates.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is obsolete and its repeal is expected to have no impact on regulated business. Public input will be carefully evaluated.

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 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 NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
[~~R414-5. Reduction in Hospital Payments.~~
~~R414-5-1. Introduction and Authority.~~

~~This rule describes the Utah Medicaid Program's uniform reduction in hospital inpatient payments. This rule is authorized by Title 26, Chapter 18, Section 7, UCA.~~

~~R414-5-2. Hospital Reimbursements.~~

~~The Utah Medicaid Program reimburses hospital services based upon diagnosis for urban hospitals and based upon a percent-of-charges for rural hospitals as described in the UTAH STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT MEDICAL ASSISTANCE PROGRAM attachment 4:19A, Section 190.~~

~~**R414-5-3. Inpatient Hospital Payments Reduced.**~~

~~For payment claims related to discharges occurring after January 15, 2003, the following reductions will be applied:~~

~~(1) For state fiscal year 2003, which ends June 30, 2003, a pro-rata reduction shall be applied to all claims at a percentage that will generate a $4.6 million reduction in the amount that would otherwise be paid to hospitals for claims that apply during the state fiscal year 2003.~~

~~(2) For subsequent state fiscal years, the pro-rata reduction will be reduced to a level that will generate a $4.6 million reduction for claims that apply during the subsequent state fiscal year.~~

~~(3) The executive director, after consultation with hospital providers, shall set the percentage at the level that is predicted to generate the requisite savings. The executive director may adjust the percentage as necessary, after consultation with hospital providers.~~

~~**KEY: Medicaid, hospital**~~
~~**Date of Enactment or Last Substantive Amendment: May 13, 2003**~~
~~**Notice of Continuation: May 13, 2008**~~
~~**Authorizing, and Implemented or Interpreted Law: 26-18**~~**]**

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-14A
Hospice Care

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33216
FILED: 11/24/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to update the rule with Code of Federal Regulation requirements and to update state Medicaid hospice guidelines and procedures.

SUMMARY OF THE RULE OR CHANGE: This amendment describes new limits on unsolicited direct marketing practices by hospice providers, requires hospice providers to submit notification to the Department within ten calendar days when a client revokes hospice benefits, expands requirements for provider-initiated discharge procedures, explains that Medicaid reimbursement for hospice services is terminated if Medicare determines that a hospice client is no longer eligible for Medicare reimbursement, expands the grace period before prior authorization is required (from five days to ten calendar days), removes language regarding long-term managed care projects, and defines roles and responsibilities for providers when a hospice client is also enrolled in a 1915(c) Home and Community-Based Services Waiver program. It also makes other revisions in terminology to more appropriately describe those who receive hospice services.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There is no expected impact to the state budget because this change only clarifies existing billing practices for hospice services that accommodate the state's four-day work week. Further, there are no expected savings from the restriction on unsolicited direct marketing practices because this practice is rare and makes any savings negligible.
♦ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund or provide hospice services for Medicaid clients.
♦ SMALL BUSINESSES: There is no expected impact on revenue to small businesses because this change only clarifies existing billing practices for hospice services that accommodate the state's four-day work week. Further, there is no expected decrease in revenue due to the restriction on unsolicited direct marketing because this practice is rare and makes any decrease negligible.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no expected impact on revenue to other persons or providers because this change only clarifies existing billing practices for hospice services that accommodate the state's four-day work week. Further, there is no expected decrease in revenue due to the restriction on unsolicited direct marketing because this practice is rare and makes any decrease negligible.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no expected compliance costs because this rule change imposes no additional requirements for a single Medicaid recipient and only clarifies policy for a single Medicaid provider. Further, there is no expected decrease in revenue for a single hospice provider because the practice of direct marketing is rare and makes any decrease negligible.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rule changes conform with current practice and no negative fiscal impact on regulated business is expected. Public comment will be carefully evaluated.

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 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 NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-14A. Hospice Care.
R414-14A-1. Introduction and Authority.

This rule is authorized by [~~Utah Code s~~]Sections 26-1-5 and 26-18-3[~~(2)(a)~~]. It implements Medicaid hospice care services as found in 42 [~~USCS~~]U.S.C. 1396d(o).

R414-14A-2. Definitions.

The definitions in Rule R414-1 apply to this rule. In addition:

(1) "Attending physician" means a physician who:

(a) is a doctor of medicine or osteopathy; and

(b) is identified by the [~~recipient~~]client at the time he or she elects to receive hospice care as having the most significant role in the determination and delivery of the [~~recipient's~~]client's medical care.

(2) "Cap period" means the 12 month period ending October 31 used in the application of the cap on reimbursement for inpatient hospice care as described in Subsection R414-14A-22(5).

(3) "Employee" means an employee of the hospice provider or, if the hospice provider is a subdivision of an agency or organization, an employee of the agency or organization who is appropriately trained and assigned to the hospice unit. "Employee" includes a volunteer under the direction of the hospice provider.

(4) "Hospice care" means care provided to terminally ill [~~recipients~~]clients by a hospice provider.

(5) "Hospice provider" means a provider that is licensed under the provisions of Rule R432-750 and is primarily engaged in providing care to terminally ill individuals.

(6) "Physician" means a doctor of medicine or osteopathy who is licensed by the state of Utah.

(7) "Representative" means an individual who has been authorized under state law to make health care decisions, including initiating, continuing, refusing, or terminating medical treatments for a [~~recipient~~]client who is mentally unable to make health care decisions.

(8) "Terminally ill" means the [~~recipient~~]client has a medical prognosis that his or her life expectancy is six months or less if the illness runs its normal course.

R414-14A-3. Client Eligibility Requirements.

(1) A [~~recipient~~]client who is terminally ill may obtain hospice care pursuant to this rule.

(2) A [~~recipient's~~]client's certification of a terminal condition required for hospice eligibility must be based on a face-to-face assessment by a physician conducted no more than 90 days prior to the date of enrollment.

(3) A [~~recipient~~]client dually enrolled in Medicare and Medicaid must elect the hospice benefit for both Medicare and Medicaid. The [~~recipient~~]client must receive hospice coverage under Medicare. Election for the Medicaid hospice benefit provides the [~~recipient~~]client coverage for Medicare co-insurance and coverage for room and board expenses while a resident of a Medicare-certified nursing facility, Intermediate Care Facility for the Mentally Retarded (ICF/MR), or freestanding hospice facility.

R414-14A-4. Program Access Requirements.

(1) Hospice care may be provided only by a hospice provider licensed by the Department, that is Medicare certified in accordance with 42 CFR Part 418, and that is a Medicaid provider.

(2) A hospice provider must have a valid Medicaid provider agreement in place prior to initiating hospice care for Medicaid clients. The Medicaid provider agreement is effective on the date a Medicaid provider application is received in the Department and shall not be made retroactive to an earlier date, including an earlier effective date of Medicare hospice certification.

(3) At the time of a change of ownership, the previous owner's provider agreement terminates as of the effective date of the change of ownership.

(4) The Department accepts all waivers granted to hospice agencies by the Centers for Medicare and Medicaid Services as part of the Medicare certification process.

(5) Hospice agencies participating in the Medicaid program shall provide hospice care in accordance with the requirements of 42 CFR Part 418[~~.3 through 418.204 as contained in this rule~~].

R414-14A-5. Service Coverage.

Hospice care categories eligible for Medicaid reimbursement are the following:

(1) "Routine home care day" is a day in which a [~~recipient~~]client who has elected to receive hospice care is at home and is not receiving continuous home care as defined in [~~s~~]Subsection [~~(5)(b)of this section~~]R414-14A-5(5). For purposes of routine home care day, extended stay residents of nursing facilities are considered at home.

(2) "Continuous home care day" is a day in which a [~~recipient~~]client who has elected to receive hospice care receives a minimum of eight aggregate hours of care from the hospice provider during a 24-hour day, which begins and ends at midnight. The eight aggregate hours of care must be predominately nursing care provided by either a registered nurse or licensed practical nurse. Continuous home care is only furnished during brief periods of crisis in which a patient requires continuous care that is primarily nursing care to achieve palliation or management of acute medical symptoms. For purposes of routine home care day, extended stay residents of nursing facilities are considered at home.

(3) "Inpatient respite care day" is a day in which the [~~recipient~~]client who has elected hospice care receives short-term inpatient care when necessary to relieve family members or other persons caring for the [~~individual~~]client at home.

(4) "General inpatient care day" is a day in which a [~~recipient~~]client who has elected hospice care receives general inpatient care for pain control or acute or chronic symptom management that cannot be managed in a home or other outpatient setting. General inpatient care may be provided in a hospice inpatient unit, a hospital, or a nursing facility.

(5) "Room and Board" is medication administration, performance of personal care, social activities, routine and therapeutic dietary services, meal service including direct feeding assistance, maintaining the cleanliness of the [~~recipient's~~]client's room, assistance with activities of daily living, durable equipment, prescribed therapies, and all other services unrelated to care associated with the terminal illness that would be covered under the Medicaid State [~~p~~]Plan nursing facility benefit.

R414-14A-6. Hospice Election.

(1) A [~~recipient~~]client who meets the eligibility requirement for Medicaid hospice must file an election statement with a particular hospice. If the [~~recipient~~]client is physically or mentally incapacitated, his or her legally authorized representative may file the election statement.

(2) Each hospice provider designs and prints its own election statement. The election statement must include the following:

(a) identification of the particular hospice that will provide care to the [~~recipient~~]client;

(b) the [~~recipient's~~]client's or representative's acknowledgment that he or she has been given a full understanding of the palliative rather than curative nature of hospice care, as it relates to the [~~recipient's~~]client's terminal illness;

(c) acknowledgment that the [~~recipient~~]client waives certain Medicaid services as set forth in Section R414-14A-11;

(d) acknowledgment that the [~~recipient~~]client or representative may revoke the election of the hospice benefit at any time in the future and therefore become eligible for Medicaid services waived at the time of hospice election as set forth in Section R414-14A-8; and

([~~f~~]e) the signature of the recipient or representative.

(3) The effective date of the election may be the first day of hospice care or a later date, but may be no earlier than the date of the election statement

(4) An election to receive hospice care remains effective through the initial election period and through the subsequent election periods without a break in care as long as the [~~recipient~~]client:

(a) remains in the care of a hospice;

(b) does not revoke the election; and

(c) is not discharged from the hospice.

(5) The hospice provider must notify the Department at the time a Medicaid [~~recipient~~]client selects the hospice benefit, including selecting the hospice provider under a change of designated hospice. The notification must include a copy of the hospice election statement and the [~~recipient's~~]client's plan of care for hospice care. Authorization for reimbursement of hospice care begins no earlier than the date notification is received by the Department for an eligible Medicaid client, except as provided in Section R414-14A-19.

(6) Subject to the conditions set forth in this rule, a [~~recipient~~]client may elect to receive hospice care during one or more of the following election periods:

(a) an initial 90-day period;

(b) a subsequent 90-day period; or

(c) an unlimited number of subsequent 60-day periods.

R414-14A-7. Change in Hospice Provider.

(1) A [~~recipient~~]client or representative may change, once in each election period, the designation of the particular hospice from which hospice care will be received.

(2) The change of the designated hospice is not a revocation of the election for the period in which it is made.

(3) To change the designation of hospice provider, the [~~recipient~~]client must file, with the hospice provider from which care has been received and with the newly designated hospice provider, a statement that includes the following information:

(a) the name of the hospice provider from which the [~~recipient~~]client has received care;

(b) the name of the hospice provider from which the [~~recipient~~]client plans to receive care; and

(c) the date the change is to be effective.

(4) The [~~recipient~~]client must file the change on or before the effective date.

R414-14A-8. Revocation and Re-election of Hospice [~~Revocation~~]Services.

(1) A [~~recipient~~]client or legal representative may voluntarily revoke the [~~recipient's~~]client's election of hospice care at any time during an election period.

(2) To revoke the election of hospice care, the [~~recipient~~]client or representative must file a statement with the hospice provider that includes the following information:

(a) a signed statement that the [~~recipient~~]client or representative revokes the [~~recipient's~~]client's election for Medicaid coverage of hospice care[~~, for the remainder of that election period; and~~].

(b) the date that the revocation is to be effective, which may not be earlier than the date that the revocation is made[~~.~~]; and

(c) an acknowledgment signed by the patient or the patient's representative that the patient will forfeit Medicaid hospice coverage for any remaining days in that election period.

(3) Upon revocation of the election of Medicaid coverage of hospice care for a particular election period, a [~~recipient~~]client:

(a) is no longer covered under Medicaid for hospice care;

(b) resumes Medicaid coverage for the benefits waived under Section R414-14A-6; and

(c) may at any time elect to receive hospice coverage for any other hospice election periods that he or she is eligible to receive.

(4) If an election has been revoked, the [~~recipient~~]client, or his or her representative if the [~~recipient~~]client is mentally incapacitated, may at any time file an election, in accordance with this rule, for any other election period that is still available to the [~~recipient~~]client.

(5) Hospice providers shall not encourage clients to temporarily revoke hospice services solely for the purpose of

avoiding financial responsibility for Medicaid services that have been waived at the time of hospice election as described in Section R414-14A-9.

(6) Hospice providers must send notification to the Department within ten calendar days that a client has revoked hospice benefits. Notification must include a copy of the revocation statement signed by the client or the client's legal representative.

R414-14A-9. Rights Waived to Some Medicaid.

(1) For the duration of an election for hospice care, a [~~recipient~~]client waives all rights to Medicaid to the following services:

(a) hospice care provided by a hospice other than the hospice designated by the [~~recipient~~]client, unless provided under arrangements made by the designated hospice; and

(b) any Medicaid services that are related to the treatment of the terminal condition for which hospice care was elected or a related condition or are duplicative of hospice care except for services:

(i) provided by the designated hospice;

(ii) provided by another hospice under arrangements made by the designated hospice; and

(iii) provided by the [~~recipient's~~]client's attending physician if the services provided are not otherwise covered by the payment made for hospice care.

(2) Medicaid services for illnesses or conditions not related to the [~~recipient's~~]client's terminal illness are not covered through the hospice program but are covered when provided by the appropriate provider.

R414-14A-10. Notice of Hospice Care in a Nursing Facility, ICF/MR, or Freestanding Inpatient Hospice Facility.

(1) The hospice provider must notify the Department at the time a Medicaid [~~recipient~~]client residing in a Medicare certified nursing facility, a Medicaid certified ICF/MR, or a Medicare freestanding inpatient hospice facility elects the Medicaid hospice benefit or at the time a Medicaid [~~recipient~~]client who has elected the Medicaid hospice benefit is admitted to a Medicare certified nursing facility, a Medicaid certified ICF/MR, or a Medicare freestanding inpatient hospice facility.

(2) The notification must include a prognosis of the time the [~~individual~~]client will require skilled nursing facility services under the hospice benefit.

(3) Except as provided in Section R414-14A-20, reimbursement for room and board begins no earlier than the date the hospice provider notifies the Department that the [~~recipient~~]client has elected the Medicaid hospice benefit.

R414-14A-11. Notice of Independent Attending Physician.

The hospice provider must notify the Department at the time a Medicaid [~~recipient~~]client designates an attending physician who is not a hospice employee.

R414-14A-12. [~~Independent Review of~~]Extended Hospice Care.

(1) [~~Recipients~~]Clients who accumulate 12 or more months of hospice benefits are subject to an independent utilization review by a physician with expertise in end-of-life and hospice care selected by the Department.

(2) If Medicare determines that a patient is no longer eligible for Medicare reimbursement for hospice services, the patient will no longer be eligible for Medicaid reimbursement for hospice services. Providers must immediately notify Medicaid upon learning of Medicare's determination. Medicaid reimbursement for hospice services will cease the day after Medicare notifies the hospice provider that the client is no longer eligible for hospice care.

R414-14A-13. [~~Involuntary Discharge Review~~]Provider Initiated Discharge from Hospice Care.

[~~(1) A hospice provider may not involuntary discharge a Medicaid recipient from hospice care without first obtaining approval from the Department.~~

~~(2) The hospice provider must notify the Department in writing of the intent to involuntarily discharge the recipient from hospice care.~~

~~(3) The hospice provider may involuntary discharge the recipient only if it can demonstrate to the Department that the hospice, in conjunction with other Medicaid services, cannot protect the recipient's health and safety or cannot address the recipient's needs identified through the plan of care required as a condition of participation in 42 CFR 418.58~~](1) The hospice provider may not initiate discharge of a patient from hospice care except in the following circumstances:

(a) the patient moves out of the hospice provider's geographic service area or transfers to another hospice provider by choice;

(b) the hospice determines that the patient is no longer terminally ill; or

(c) the hospice provider determines, under a policy set by the hospice for the purpose of addressing discharge for cause, that the patient's behavior (or the behavior of other persons in the patient's home) is disruptive, abusive, or uncooperative to the extent that delivery of care to the patient or the ability fo the hospice to operate effectively is seriously impaired.

(2) The hospice provider must carry out the following activities before it seeks to discharge a patient for cause:

(a) advise the patient that a discharge for cause is being considered;

(b) make a diligent effort to resolve the problem that the patient's behavior or situation presents;

(c) ascertain that the discharge is not due to the patient's use of necessary hospice services; and

(d) document the problem and efforts to resolve the problem in the patient's medical record.

(3) Before discharging a patient for any reason listed in Subsection R414-14A-13(1), the hospice provider must obtain a physician's written discharge order from the hospice provider's medical director. If a patient also has an attending physician, the hospice provider must consult the physician before discharge and the attending physician must include the review and decision in the discharge documentation.

(4) A client, upon discharge from the hospice during a particular election period, for reasons other than immediate transfer to another hospice:

(a) is no longer covered under Medicaid for hospice care;

(b) resumes Medicaid coverage of the benefits waived during the hospice coverage period; and

(c) may at any time elect to receive hospice care if the client is again eligible to receive the benefit in the future.

(5) The hospice provider must have in place a discharge planning process that takes into account the prospect that a patient's condition might stabilize or otherwise change if that patient cannot continue to be certified as terminally ill. The discharge planning process must include planning for any necessary family counseling, patient education, or other services before the patient is discharged because the patient is no longer terminally ill.

R414-14A-14. Hospice Room and Board Service.

If a [~~recipient~~]client residing in a nursing facility, ICF/MR or a freestanding hospice inpatient unit elects hospice care, the hospice provider and the facility must have a written agreement under which the total care of the individual must be specified in a comprehensive service plan, the hospice provider is responsible for the professional management of the [~~recipient's~~]client's hospice care, and the facility agrees to provide room and board and services unrelated to the care of the terminal condition to the [~~recipient~~]client. The agreement must include:

(1) identification of the services to be provided by each party and the method of care coordination to assure that all services are consistent with the hospice approach to care and are organized to achieve the outcomes defined by the hospice plan of care;

(2) a stipulation that Medicaid services may be provided only with the express authorization of the hospice;

(3) the manner in which the contracted services are coordinated, supervised and evaluated by the hospice provider;

(4) the delineation of the roles of the hospice provider and the facility in the admission process; needs assessment process, and the interdisciplinary team care conference and service planning process;

(5) requirements for documenting that services are furnished in accordance with the agreement;

(6) the qualifications of the personnel providing the services; and

(7) the billing and reimbursement process by which the nursing facility will bill the hospice provider for room and board and receive payment from the hospice provider.

(8) In cases in which nursing facility residents revoke their hospice benefits, it is the responsibility of the hospice provider to notify the nursing facility of the revocation. The notice must be in writing and the hospice provider must provide it to the nursing facility on or before the revocation date.

R414-14A-15. In Home Physician Services.

In-home physician visits by the attending physician are authorized for hospice [~~recipients~~]clients if the attending physician determines that direct management of the [~~recipient~~]client in the home setting is necessary to achieve the goals associated with a hospice approach to care.

R414-14A-16. Continuous Home Care.

When the hospice provider determines that a patient requires at least eight hours of primarily nursing care in order to manage an acute medical crisis, the hospice provider will maintain documentation to support the requirement that the services provided were reasonable and necessary and were in compliance with an established plan of care in order to meet a particular crisis situation. Continuous home care is a covered benefit only as necessary to maintain the terminally ill [~~individual~~]client at home.

R414-14A-17. General Inpatient Care.

(1) General inpatient care is authorized without prior authorization for an initial [~~five-day~~]ten calendar day length of stay. Prior authorization is required for any additional general inpatient care days during the same stay to verify that the [~~recipient's~~]client's needs meet the requirements for general inpatient care. If a hospice provider requests additional days, the subsequent requests are subject to clinical review and approval by qualified Department staff.

(2) General inpatient care days may not be used due to the breakdown of the primary care giving living arrangements or the collapse of other sources of support for the recipient.

(3) Prior authorization for additional days beyond the initial [~~five-day~~]ten calendar stay must be obtained before the hospice care is provided, except as allowed in Section R414-14A-19.

R414-14A-18. Inpatient Respite Care.

When the hospice provider determines that a patient requires a short-term inpatient respite stay in order to relieve the family members or other persons caring for the [~~individual~~]client at home, the hospice provider will maintain documentation to support the requirement that the services provided were reasonable and necessary to relieve a particular caregiver situation. Inpatient respite care may not be reimbursed for more than five consecutive days at a time. Inpatient respite care may not be reimbursed for a patient residing in a nursing facility, ICF/MR, or freestanding hospice inpatient unit.

R414-14A-19. Notification and Prior Authorization Grace Periods.

[~~During weekends, holidays, and after regular Department business hours, a hospice provider may begin service to a new Medicaid hospice enrollee, including covering room and board, or initiate a different hospice care requiring prior authorization for a period up to five days before notifying the Department. During the five-day period, the hospice provider must complete the required contact and notifications to the Department as outlined in R414-14A-4, 9, 15, 16, and 17. The Department pays for services during the allowed five-day grace period only if the hospice provider completes the required contact and notifications within the grace period and the Department determines that the individual met Medicaid eligibility requirements at the time the service was provided. If the hospice provider fails to complete the required contact and notifications to the Department within the allowed five day period, the Department does not reimburse the hospice provider for any hospice care delivered prior to the date the hospice provider completes the contact and notifications.~~]If a new patient is already Medicaid eligible upon admission to hospice care, the hospice provider must submit a prior authorization request form to the Department in order to receive reimbursement for hospice services it renders, except in the following circumstances:

(a) during weekend, holidays, and after regular Department business hours, a hospice provider may begin service to

a new Medicaid hospice enrollee, including covering room and board, or initiate a different hospice care requiring prior authorization for a grace period up to ten calendar days before notifying the Department;

(b) before the end of the ten calendar day grace period, the hospice provider must complete and submit the prior authorization request form to the Department in order to receive reimbursement for hospice services it renders.

(c) if the hospice provider does not submit the prior authorization request form timely, the Department will not reimburse the provider for the care that it renders before the date that the form is received.

R414-14A-20. Post-Payment for Services Provided While in Medicaid-Pending Status.

(1) [~~The~~]If a new client is not Medicaid eligible upon admission to hospice services but becomes Medicaid eligible at a later date, the Department will reimburse a hospice provider retroactively for up to [~~three months~~]90 days [~~prior to~~]to allow the hospice eligibility date to coincide with the [~~individual's establishing~~]client's Medicaid eligibility date if:

(a) the Department determines that the [~~individual~~]client met Medicaid eligibility requirements at the time the service was provided;

(b) the hospice care met the prior authorization criteria at the time of delivery; and

(c) the hospice provider reimburses the Department for care related to the [~~individual's~~]client's terminal illness delivered by other Medicaid providers during the retroactive period.

(2) The hospice provider must provide a copy of the initial care plan and any other documentation to the Department adequate to demonstrate the [~~service~~]hospice care met prior authorization criteria at the time of delivery.

R414-14A-21. Hospice Care Reimbursement.

(1) Medicaid payment for covered hospice care is made in accordance with the methodology set forth in the Utah Medicaid State Plan.

(2) A hospice provider may not charge a Medicaid [~~recipient~~]client for services for which the [~~recipient~~]client is entitled to have payment made under Medicaid.

(3) Medicaid reimbursement to a hospice provider for services provided during a cap period is limited to the cap amount specified in Subsection R414-14A-22(5).

(4) Medicaid does not apply the aggregate caps used by Medicare.

(5) Payment for hospice care is made on the basis of the geographic location where the service is provided as described in the Medicaid State Plan.

(6) Routine home care, continuous home care, general inpatient care, inpatient respite care services, and hospice room and board, are reimbursable to the hospice provider only.

(7) Hospice general inpatient care and inpatient respite care are not reimbursed by Medicaid for services provided in a Veterans Administration hospital or military hospital.

R414-14A-22. Payment for Hospice Care Categories.

(1) The Department establishes payment amounts for the following categories:

(a) Routine home care.

(b) Continuous home care.

(c) Inpatient respite care.

(d) General inpatient care.

(e) Room and Board service.

(2) The Department reimburses the hospice provider at the appropriate payment amount for each day for which an eligible Medicaid recipient is under the hospice's care.

(3) The Medicaid reimbursement covers the same services and amounts covered by the equivalent Medicare reimbursement rate for comparable service categories.

(4) The Department makes payment according to the following procedures:

(a) Payment is made to the hospice for each day during which the [~~recipient~~]client is eligible and under the care of the hospice, regardless of the amount of services furnished on any given day.

(b) Payment is made for only one of the categories of hospice care described in Subsection R414-14A-22(1) for any particular day.

(c) On any day in which the [~~recipient~~]client is not an inpatient, the Department pays the hospice provider the routine home care rate, unless the [~~recipient~~]client receives continuous home care as provided in [~~s~~]Subsection R414-14A-5([~~b~~]5) for a period of at least eight hours. In that case, the Department pays a portion of the continuous care day rate in accordance with [~~subsection (5)(e)~~]Subsection R414-14A-22(5).

(d) The hospice payment on a continuous care day varies depending on the number of hours of continuous services provided. The number of hours of continuous care provided during a continuous home care day is multiplied by the hourly rate to yield the continuous home care payment for that day. A minimum of eight hours of licensed nursing care must be furnished on a particular day to qualify for the continuous home care rate.

(e) Subject to the limitations described in [~~subsection (5)~~]Subsection R414-14A-22(5), on any day on which the [~~recipient~~]client is an inpatient in an approved facility for inpatient care, the appropriate inpatient rate (general or respite) is paid depending on the category of care furnished. The inpatient rate (general or respite) is paid for the date of admission and all subsequent inpatient days, except the day on which the [~~recipient~~]client is discharged. For the day of discharge, the appropriate home care rate is paid unless the [~~recipient~~]client dies as an inpatient. In the case where the [~~recipient~~]client dies as an inpatient, the inpatient rate (general or respite) is paid for the discharge day. Payment for inpatient respite care is subject to the requirement that it may not be provided consecutively for more than five days at a time.

(5) Payment for inpatient care is limited as follows:

(a) The total payment to the hospice for inpatient care (general or respite) is subject to a limitation that total inpatient care days for Medicaid [~~recipients~~]clients not exceed 20 percent of the total days for which these [~~recipients~~]clients had elected hospice care. [~~Individuals~~]Clients afflicted with AIDS are excluded when calculating inpatient days.

(b) At the end of a cap period, the Department calculates a limitation on payment for inpatient care for each hospice to ensure that Medicaid payment is not made for days of inpatient care in

excess of 20 percent of the total number of days of hospice care furnished to Medicaid [~~recipients~~]clients by the hospice.

(c) If the number of days of inpatient care furnished to Medicaid [~~recipients~~]clients is equal to or less than 20 percent of the total days of hospice care to Medicaid [~~recipients~~]clients, no adjustment is necessary.

(d) If the number of days of inpatient care furnished to Medicaid [~~recipients~~]clients exceeds 20 percent of the total days of hospice care to Medicaid [~~recipients~~]clients, the total payment for inpatient care is determined in accordance with the procedures specified in [~~paragraph (5)(e)of this section~~]Subsection R414-14A-22(5)(e). That amount is compared to actual payments for inpatient care, and any excess reimbursement must be refunded by the hospice.

(e) If a hospice exceeds the number of inpatient care days described in [~~paragraph~~]Subsection R414-14A-22(5)(d), the total payment for inpatient care is determined as follows:

(i) Calculate the ratio of the maximum number of allowable inpatient days to the actual number of inpatient care days furnished by the hospice to Medicaid [~~recipients~~]clients.

(ii) Multiply this ratio by the total reimbursement for inpatient care made by the Department.

(iii) Multiply the number of actual inpatient days in excess of the limitation by the routine home care rate.

(iv) Sum the amounts calculated in [~~subsections (5)(e)(ii) and (iii)~~]Subsection R414-14A-22(5)(e)(ii) and (iii).

(6) The hospice provider may request an exception to the inpatient care payment limitation if the hospice provider demonstrates the volume of Medicaid enrollees during the cap period was insufficient to reasonably achieve the required 20% ratio.

R414-14A-23. Payment for Physician Services.

(1) The following services performed by hospice physicians are included in the rates described in Sections R414-14A-21 and 22:

(a) General supervisory services of the medical director.

(b) Participation in the establishment of plans of care, supervision of care and services, periodic review and updating of plans of care, and establishment of governing policies by the physician member of the interdisciplinary group.

(2) For services not described in [~~paragraph (1) of this section~~]Subsection R414-14A-23(1), direct care services related to the terminal illness or a related condition provided by hospice physicians are reimbursed according to the Medicaid reimbursement fee schedule for physician services. Services furnished voluntarily by physicians are not reimbursable.

(3) Services of the [~~recipient's~~]client's attending physician, including in-home services, are reimbursed according to the Medicaid fee schedule for State Plan physician services. Services furnished voluntarily by physicians are not reimbursable.

R414-14A-25. Payment for Nursing Facility, ICF/MR, and Freestanding Inpatient Hospice Unit Room and Board.

(1) For [~~recipients~~]clients in a nursing facility, ICF/MR, or a freestanding hospice inpatient unit who elect to receive hospice care from a Medicaid enrolled hospice provider, Medicaid will pay the hospice provider an additional per diem for routine home care and continuous home care services to cover the cost of room and board in the facility. For nursing facilities and ICFs/MR, the room and board rate ise 95 percent of the amount that the Department would have paid to the nursing facility or ICF/MR provider for that [~~recipient~~]client if the [~~recipient~~]client had not elected to receive hospice care. For freestanding hospice inpatient facilities, the room and board rate is 95 percent of the statewide average paid by Medicaid for nursing facility services.

(2) Reimbursement for room and board is made to the hospice provider. The hospice provider is responsible to reimburse the facility the room and board payment received. The reimbursement is payment in full for the services described in Subsection R414-14A-14(2). The facility cannot bill Medicaid separately.

(3) If a hospice enrollee in a nursing facility, ICF/MR, or a freestanding hospice inpatient unit has a monetary obligation to contribute to his or her cost of care in the facility, the facility must collect and retain the contribution. The hospice must reimburse the facility the reduced amount received from Medicaid directly or from a Medicaid Health Plan.

R414-14A-26. Limitation on Liability for Certain Hospice Coverage Denials.

If a [~~recipient~~]client is determined not to be terminally ill while hospice care were received under this rule, the [~~recipient~~]client is not responsible to reimburse the Department. If the Department denies reimbursement to the hospice provider, the hospice provider may not seek reimbursement from the [~~recipient~~]client.

R414-14A-27. Medicaid Health Plans and Hospice.

(1) If a Medicaid-only [~~recipient~~]client is enrolled in a Medicaid health plan, the hospice selected by the [~~recipient~~]client must have a contract with the health plan. The health plan is responsible to reimburse the hospice for hospice care. The Department will not directly reimburse a hospice provider for a Medicaid-only [~~recipient~~]client covered by a health plan.

(2) If a Medicaid-only [~~recipient~~]client enrolled in a health plan elects hospice care before being admitted to a nursing facility, ICF/MR, or a freestanding hospice inpatient unit, the health plan is responsible to reimburse the hospice provider for both the hospice care and the room and board until the [~~individual~~]client is disenrolled from the health plan by the Department. At the point the health plan determines that the enrollee will require care in the nursing facility for greater than 30 days, the health plan will notify the Department of the prognosis of extended nursing facility services. The Department will schedule disenrollment from the health plan to occur in accordance with the terms of the health plan contract for care provided in skilled nursing facilities.

(3) If a hospice enrollee is covered by Medicare for hospice care, the Medicaid health plan is responsible for [~~payment of the Medicare coinsurance and deductibles.~~]the health plan's payment rate less any amount paid by Medicare and other payors. The health plan is responsible for payment [~~whether or not~~]even if the Medicare covered service is rendered by [~~a network~~]an out-of-plan provider or [~~has been~~]was not authorized by the health plan. [~~If a Medicare covered service is rendered by an out-of-network Medicare provider or a non-Medicare participating provider, the health plan is responsible to pay the coinsurance and deductibles.~~]

(4) The health plan is responsible for room and board expenses of a hospice enrollee receiving Medicare hospice care while the [~~recipient~~]client is a resident of a Medicare-certified nursing facility, ICF/MR, or freestanding hospice facility until the [~~individual~~]client is disenrolled from the health plan by the Department. On the 31st day, the [~~recipient~~]client is disenrolled from the health plan and enrolled in the Medicaid fee-for-service hospice program. At the point the Department determines that the enrollee will require care in the nursing facility for greater than 30 days, [~~T~~]the Department will schedule disenrollment from the health plan to occur in accordance with the terms of the health plan contract for care provided in skilled nursing facilities. The room and board expenses will be set in accordance with Section R414-14A-25.

(5) The hospice provider is responsible for determining if an applicant for hospice care is covered by a Medicaid health plan prior to enrolling the [~~recipient~~]client, for coordinating services and reimbursement with the health plan during the period the [~~recipient~~]client is receiving the hospice benefit, and for notifying the health plan when the [~~recipient~~]client disenrolls from the hospice benefit.

[~~R414-14A-28. Medicaid LTC Managed Care Projects and Hospice.~~

~~(1) A recipient receiving the Medicaid hospice benefit may enroll in a Medicaid LTC Managed Care project only if the LTC Managed Care project contractor and the recipient's hospice provider agree that the hospice care must be provided in the home. Medicaid recipients are not eligible for enrollment in a Medicaid LTC Managed Care project if the hospice care will be provided in a congregate care setting.~~

~~(2) For hospice enrollees covered by a Medicaid LTC Managed Care project, the LTC managed care contractor may provide services unrelated to the recipient's terminal illness as part of a coordinated care plan with the hospice provider.~~

]**R414-14A-28. Marketing by House Providers.**

Hospice providers shall not engage in unsolicited direct marketing to prospective clients. Marketing strategies shall remain limited to mass outreach and advertisements, except when a prospective client or legal representative explicitly requests information from a particular hospice provider. Hospice providers shall refrain from offering incentives or other enticements to persuade a prospective client to choose that provider for hospice care.

R414-14A-29. Medicaid 1915c HCBS Waivers and Hospice.

(1) For hospice enrollees covered by a Medicaid 1915c Home and Community-Based Services Waiver,[~~the waiver program may provide services unrelated to the recipient's terminal illness as part of a coordinated care plan with the hospice provider~~] hospice providers shall provide medically necessary care that is directly related to the patient's terminal illness.

(2) The waiver program may continue to provide services that are:

(a) unrelated to the client's terminal illness and;

(b) assessed by the waiver program as necessary to maintain safe residence in a home or community-based setting in accordance with waiver requirements.

(3) The waiver case management agency and the hospice case management agency shall meet together upon commencement of hospice services to develop a coordinated plan of care that clearly defines the roles and responsibilities of each program.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~July 2, 2005~~]2010
Notice of Continuation: October 6, 2004
Authorizing, and Implemented or Interpreted Law: 26-1-4.1; 26-1-5; 26-18-3

Health, Health Systems Improvement, Licensing
R432-2-6
Application

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33221
FILED: 11/30/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment would discontinue the requirement for a health care facility to submit a feasibility study prior to being licensed. This proposed amendment was presented to the Health Facility Committee and approved on 11/18/2009. A subcommittee of different provider types was assigned to review this proposal, and all agreed to remove this requirement. The feasibility study rule was originally developed in an attempt to have providers determine the feasibility of a proposed health facility prior to being licensed. The feasibility study requirement has not shown value to the licensing process for health providers. It cannot be used to deny a license and has become an extra unnecessary step to obtaining a license. This amendment will save staff time which will increase efficiency, and will also save provider time and expense.

SUMMARY OF THE RULE OR CHANGE: The amendment will remove the rule requirement for a proposed health care facility to submit a feasibility study prior to being licensed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21 and Title 26, Chapter 23

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: During the 2009 fiscal year, the Bureau received 66 feasibility studies which the staff reviewed and submitted to the newspaper for posting. The staff also billed and collected the fees for the newspaper

postings. With each feasibility study requiring 1.5 hours of staff time, the savings to the state budget would be approximately $1,683/year.
♦ LOCAL GOVERNMENTS: Some licensed facilities that are a part of local governments may possibly be affected by the decrease in cost of not being required to post the feasibility study in the newspaper. The average cost for posting in the 2009 fiscal year was $85.
♦ SMALL BUSINESSES: Some licensed facilities that are a small business may possibly be affected by the decrease in cost of not being required to post the feasibility study in the newspaper. The average cost for posting in the 2009 fiscal year was $85.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: New health care providers will not have to submit a feasibility study to the Bureau for posting in a local newspaper. The average cost for the newspaper posting in the 2009 fiscal year was $85. The total cost to health providers for publishing all of the feasibility studies in FY 09 was $5,579.63. The cost savings to all affected persons will be approximately $5,500 per year.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs for this rule amendment. The rule requirement will be removed, creating cost savings for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The feasibility study process has not been an effective tool and its removal will have a positive fiscal impact on regulated business.

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:
♦ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
♦ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R432. Health, Health Systems Improvement, Licensing.
R432-2. General Licensing Provisions.
R432-2-6. Application.

(1) An applicant for a license shall file a Request for Agency Action/License Application with the Utah Department of Health on a form furnished by the Department.

(2) Each applicant shall comply with all zoning, fire, safety, sanitation, building and licensing laws, regulations, ordinances, and codes of the city and county in which the facility or agency is located. The applicant shall obtain the following clearances and submit them as part of the completed application to the licensing agency:

(a) A certificate of fire clearance from the State Fire Marshal or designated local fire authority certifying compliance with local and state fire codes is required with initial and renewal application, change of ownership, and at any time new construction or substantial remodeling has occurred.

(b) A satisfactory Food Services Sanitation Clearance report by a local or state sanitarian is required for facilities providing food service at initial application and upon a change of ownership.

(c) Certificate of Occupancy from the local building official at initial application, change of location and at the time of any new construction or substantial remodeling.

(3) The applicant shall submit the following:

(a) a list of all officers, members of the boards of directors, trustees, stockholders, partners, or other persons who have a greater than 25 percent interest in the facility;

(b) the name, address, percentage of stock, shares, partnership, or other equity interest of each person; and

(c) a list, of all persons, of all health care facilities in the state or other states in which they are officers, directors, trustees, stockholders, partners, or in which they hold any interest;

(4) The applicant shall provide the following written assurances on all individuals listed in R432-2-6(3):

(a) None of the persons has been convicted of a felony;

(b) None of the persons has been found in violation of any local, state, or federal law which arises from or is otherwise related to the individual's relationship to a health care facility; and

(c) None of the persons who has currently or within the five years prior to the date of application had previous interest in a licensed health care facility that has been any of the following:

(i) subject of a patient care receivership action;

(ii) closed as a result of a settlement agreement resulting from a decertification action or a license revocation;

(iii) involuntarily terminated from participation in either Medicaid or Medicare programs; or

(iv) convicted of patient abuse, neglect or exploitation where the facts of the case prove that the licensee failed to provide adequate protection or services for the person to prevent such abuse.

[~~(5) An applicant or licensee shall submit a feasibility study as part of its application for a license for a new facility or agency or for a new license for an increase in capacity at a health care facility or expansion of the areas served by an agency.~~

~~(a) The feasibility study shall be a written narrative and provide at a minimum:~~

~~(i) the purpose and proposed license category for the proposed newly licensed capacity;~~

~~(ii) a detailed description of the services to be offered;~~
~~(iii) identification of the operating entity or management company;~~
~~(iv) a listing of affiliated health care facilities and agencies in Utah and any other state;~~
~~(v) identification of funding source(s) and an estimate of the total project capital cost;~~
~~(vi) an estimate of total operating costs, revenues and utilization statistics for the twelve month period immediately following the licensing of the new capacity;~~
~~(vii) identification of all components of the proposed newly licensed capacity which ensures that residents of the surrounding area will have access to the proposed facility or service;~~
~~(viii) identification of the impact of the newly licensed capacity on existing health care providers; and~~
~~(ix) a list of the type of personnel required to staff the newly licensed capacity and identification of the sources from which the facility or agency intends to recruit the required personnel.~~
~~(b) The applicant or licensee shall submit the feasibility study no later than the time construction plans are submitted. If new construction is not anticipated, the applicant or licensee shall submit the study at least 60-days prior to beginning the new service. The applicant shall provide a statement with the feasibility study indicating whether it claims business confidentiality on any portion of the information submitted and, if it does claim business confidentiality, provide a statement meeting the requirements of Utah Code section 63-2-308.~~
~~(c) The Department shall publish public notice, at the applicant's expense, in a newspaper in general circulation for the location where the newly licensed capacity will be located that the feasibility study has been completed. The Department shall accept public comment for 30 days from initial publication. The Department shall retain the feasibility study and make it available to the public.~~
~~(d) The Department shall review the feasibility study, summarize the public comment, review demographics of the geographic area involved and prepare a written evaluation to the applicant regarding the viability of the proposed program.~~
~~]~~(6) The licensee may apply to designate any number of beds within the facility's licensed capacity as banked beds on a form provided by the Department.

(a) The licensee may apply to designate beds as banked no later than December 1st of each year or upon application for license renewal.

(b) The Department shall thereafter show the facility as having an operational bed capacity equal to the licensed capacity minus any beds banked by the facility.

(c) Banking beds shall not alter the licensed capacity of a facility.

(7) The licensee may apply to return any number of banked beds to operational bed capacity on a form provided by the Department.

(a) The licensee may apply to return banked beds to operational capacity no later than December 1 of each year or upon application for license renewal.

(b) The Department shall thereafter show the facility as having an operational bed capacity equal to the licensed capacity minus any beds still banked by the facility.

(c) Beds previously banked that have been returned to operational capacity must meet the construction and life safety codes that were applicable to the facility at the time the beds were last banked.

(8) The requirements contained in Utah Code Section 26-21-23(5)(a) shall be met if a nursing care facility filed a notice of intent or application with the Department and paid a fee relating to a proposed nursing care facility prior to March 1, 2007.

(9) The requirements contained in Utah Code Section 26-21-23(5)(b) shall be met if a nursing care facility complies with the requirements of R432-4-14(4) and R432-4-16 on or before July 1, 2008.

KEY: health care facilities
Date of Enactment or Last Substantive Amendment: [~~May 29, 2007~~]2010
Notice of Continuation: December 24, 2008
Authorizing, and Implemented or Interpreted Law: 26-21-9; 26-21-11; 26-21-12; 26-21-13

Health, Health Systems Improvement, Licensing
R432-4-26
Penalties

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33186
FILED: 11/24/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change was reviewed by the Health Facilities Committee and approved. This committee has representation from a broad cross section of the entities affected by this rule. This rule change is proposed to amend two parts of the rule: 1) to change the civil money penalty limits in rule from a maximum of $5,000 to $10,000 per H.B. 32 (2009); and 2) to remove old rule language pertaining to the Bureaus of Licensing and Certification as two separate bureaus. These bureaus were combined in 2004. (DAR NOTE: H.B. 32 (2009) is found at Chapter 347, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The first rule change will include an increase from the previous maximum of $5,000 to $10,000. The second change will change the wording of "Bureau of Licensing" to "licensing agency".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21 and Title 26, Chapter 23

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This rule change will have no effect on state budgets. Licensing inspection schedules are already being done as needed.
♦ LOCAL GOVERNMENTS: Some rural hospitals that are a part of the local government may possibly be affected by the increase in civil money penalties if they are not in compliance with state rules.
♦ SMALL BUSINESSES: In the State Fiscal Year 2009 one small business was assessed a civil money penalty for violation of Section R432-4-26. The amount of civil money penalty issued was $500, which was not the maximum amount of $5,000. It is possible, but not likely, with this rule change that a small business could be assessed a $10,000 civil money penalty.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: In the State Fiscal Year 2009 one business was assessed a civil money penalty for violation of Section R432-4-26. The amount of civil money penalty issued was $500, which was not the maximum amount of $5,000. It is possible, but not likely, with this rule change that a business could be assessed a $10,000 civil money penalty.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In the State Fiscal Year 2009 two businesses were assessed a civil money penalty for violation of Section R432-4-26. The amount of civil money penalty issued for each was $500, which was not the maximum amount of $5,000. It is possible, but not likely, with this rule change that a business could be assessed a $10,000 civil money penalty.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removing obsolete criminal penalties will impose no new fiscal impact. Enforcement of civil money penalties is not expected to change as a result of this rule change, therefore no new fiscal impact is expected.

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:
♦ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
♦ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R432. Health, Health Systems Improvement, Licensing.
R432-4. General Construction.
R432-4-26. Penalties.

The Department may assess a civil money penalty of up to $[~~5,000~~]10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $[~~5,000~~]10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $[~~500~~]1,000 per day for each day a new or renovated area is occupied prior to [~~Bureau of~~]licensing agency approval.

KEY: health facilities
Date of Enactment or Last Substantive Amendment: [~~December 10, 2002~~]2010
Notice of Continuation: December 24, 2008
Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-16

Health, Health Systems Improvement, Licensing
R432-5-17
Penalties

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33187
FILED: 11/24/2009

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change was reviewed by the Health Facilities Committee and approved. This committee has representation from a broad cross section of the entities affected by this rule. This rule change is proposed to amend two parts of the rule: 1) to change the civil money penalty limits in rule from a maximum of $5,000 to $10,000 per H.B. 32 (2009); and 2) to remove old rule language pertaining to the Bureaus of Licensing and Certification as two separate bureaus. These bureaus were combined in 2004. (DAR NOTE: H.B. 32 (2009) is found at Chapter 347, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The first rule change will include an increase from the previous maximum of $5,000 to $10,000. The second change will change the wording of "Bureau of Licensing" to "licensing agency".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21 and Title 26, Chapter 23

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There may be some additional revenue to the state from the assessment of civil money penalties against providers who violate the rules. However, monies collected from these penalties is not used to offset budget expenditures within the Bureau. It is the policy of the Bureau to use these monies for additional activities to benefit providers, such as training.
♦ LOCAL GOVERNMENTS: Some rural nursing facilities that are a part of the local government may possibly be affected by the increase in civil money penalties if they are not in compliance with state rules.
♦ SMALL BUSINESSES: In the State Fiscal Year 2009 no small businesses were assessed a civil money penalty for violation of Section R432-5-17. It is possible, but not likely, with this rule change that a small business could be assessed a $10,000 civil money penalty.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: In the State Fiscal Year 2009 no businesses were assessed a civil money penalty for violation of Section R432-5-17. It is possible, but not likely, with this rule change that a business could be assessed a $10,000 civil money penalty.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In the State Fiscal Year 2009 no businesses were assessed a civil money penalty for violation of Section R432-5-17. It is possible, but not likely, with this rule change that a business could be assessed a $10,000 civil money penalty.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removing obsolete criminal penalties will impose no new fiscal impact. Enforcement of civil money penalties is not expected to change as a result of this rule change, therefore no new fiscal impact is expected.

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:
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♦ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R432. Health, Health Systems Improvement, Licensing.
R432-5. Nursing Facility Construction.
R432-5-17. Penalties.

The Department may assess a civil money penalty of up to $[~~5,000~~]10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $[~~5,000~~]10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $[~~500~~]1,000 per day for each day a new or renovated area is occupied prior to [~~Bureau of Licensing~~]licensing agency approval.

KEY: health facilities
Date of Enactment or Last Substantive Amendment: [~~January 15, 2003~~]2010
Notice of Continuation: December 24, 2008
Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-16

Health, Health Systems Improvement, Licensing
R432-6-211
Penalties

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33189
FILED: 11/24/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change was reviewed by the Health Facilities Committee and approved. This committee has representation from a broad cross section of the entities affected by this rule. This rule change is proposed to amend three parts of the rule: 1) to change the civil money penalty limits in rule from a maximum of $5,000 to $10,000 per H.B. 32 (2009); 2) to remove old rule language pertaining to the Bureaus of Licensing and Certification as two separate

bureaus. These bureaus were combined in 2004; and 3) the penalty section was located at Section R432-6-211 which is specifically for Assisted Living type II facilities by changing the penalties section to Section R432-6-26 it will apply to Assisted Living type I and type II facilities. (DAR NOTE: H.B. 32 (2009) is found at Chapter 347, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The first rule change will include an increase from the previous maximum of $5,000 to $10,000. The second change will change the wording of "Bureau of Licensing" to "licensing agency". The third would change that the penalty section was located at Section R432-6-211 which is specifically for Assisted Living type II facilities by moving the penalties section to Section R432-6-26 it will apply to Assisted Living type I and type II facilities.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21 and Title 26, Chapter 23

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There may be some additional revenue to the state from the assessment of civil money penalties against providers who violate the rules. However, monies collected from these penalties is not used to offset budget expenditures within the Bureau. It is the policy of the Bureau to use these monies for additional activities to benefit providers, such as training.
♦ LOCAL GOVERNMENTS: No Assisted Living facilities are a part of the government system therefore this change will not affect the local government.
♦ SMALL BUSINESSES: In the State Fiscal Year 2009 no small businesses were assessed a civil money penalty for violation of Rule R432-6. It is possible, but not likely, with this rule change that a small business could be assessed a $10,000 civil money penalty.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: In the State Fiscal Year 2009 no businesses were assessed a civil money penalty for violation of Rule R432-6. It is possible, but not likely, with this rule change that a business could be assessed a $10,000 civil money penalty.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In the State Fiscal Year 2009 no businesses were assessed a civil money penalty for violation of Rule R432-6. It is possible, but not likely, with this rule change that a business could be assessed a $10,000 civil money penalty.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removing obsolete criminal penalties will impose no new fiscal impact. Enforcement of civil money penalties is not expected to change as a result of this rule change, therefore no new fiscal impact is expected.

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:
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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R432. Health, Health Systems Improvement, Licensing.
R432-6. Assisted Living Facility General Construction.
R432-6-[~~211~~]26. Penalties.

[~~Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.~~

~~The Department may assess a civil money penalty of up to $5,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $5,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $500 per day for each day a new or renovated area is occupied prior to Bureau of Licensing approval.~~]The Department may assess a civil money penalty of up to $10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $1,000 per day for each day a new or renovated area is occupied prior to licensing agency approval.

KEY: health facilities
Date of Enactment or Last Substantive Amendment: [~~July 20, 2006~~]2010
Notice of Continuation: December 30, 2008
Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-16

Health, Health Systems Improvement, Licensing
R432-7-7
Penalties

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33190
FILED: 11/24/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change was reviewed by the Health Facilities Committee and approved. This committee has representation from a broad cross section of the entities affected by this rule. This rule change is proposed to amend two parts of the rule: 1) to change the civil money penalty limits in rule from a maximum of $5,000 to $10,000 per H.B. 32 (2009); and 2) to remove old rule language pertaining to the Bureaus of Licensing and Certification as two separate bureaus. These bureaus were combined in 2004. (DAR NOTE: H.B. 32 (2009) is found at Chapter 347, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The first rule change will include an increase from the previous maximum of $5,000 to $10,000. The second change will change the wording of "Bureau of Licensing" to "licensing agency".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21 and Title 26, Chapter 23

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There may be some additional revenue to the state from the assessment of civil money penalties against providers who violate the rules. However, monies collected from these penalties is not used to offset budget expenditures within the Bureau. It is the policy of the Bureau to use these monies for additional activities to benefit providers, such as training.
♦ LOCAL GOVERNMENTS: Some hospital facilities that are a part of the local government may possibly be affected by the increase in civil money penalties if they are not in compliance with state rules.
♦ SMALL BUSINESSES: In the State Fiscal Year 2009 no small businesses were assessed a civil money penalty for violation of Section R432-7-7. It is possible, but not likely, with this rule change that a small business could be assessed a $10,000 civil money penalty.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: In the State Fiscal Year 2009 no businesses were assessed a civil money penalty for violation of Section R432-7-7. It is possible, but not likely, with this rule change that a business could be assessed a $10,000 civil money penalty.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In the State Fiscal Year 2009 no businesses were assessed a civil money penalty for violation of Section R432-7-7. It is possible, but not likely, with this rule change that a business could be assessed a $10,000 civil money penalty.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removing obsolete criminal penalties will impose no new fiscal impact. Enforcement of civil money penalties is not expected to change as a result of this rule change, therefore no new fiscal impact is expected.

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:
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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R432. Health, Health Systems Improvement, Licensing.
R432-7. Specialty Hospital - Psychiatric Hospital Construction.
R432-7-7. Penalties.

The Department may assess a civil money penalty of up to $[~~5,000~~]10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $[~~5,000~~]10,000 if the licensee fails to follow Department-approved architectural plans. The Department may assess a civil money penalty of up to $[~~500~~]1,000 per day for each day a new or renovated area is occupied prior to [~~Bureau of Licensing~~]licensing agency approval.

KEY: health facilities
Date of Enactment or Last Substantive Amendment: [~~December 10, 2002~~]2010
Notice of Continuation: January 28, 2005
Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-2.1; 26-21-20

Health, Health Systems Improvement, Licensing
R432-8-8
Penalties

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33191
FILED: 11/24/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change was reviewed by the Health Facilities Committee and approved. This committee has representation from a broad cross section of the entities affected by this rule. This rule change is proposed to amend two parts of the rule: 1) to change the civil money penalty limits in rule from a maximum of $5,000 to $10,000 per H.B. 32 (2009); and 2) to remove old rule language pertaining to the Bureaus of Licensing and Certification as two separate bureaus. These bureaus were combined in 2004. (DAR NOTE: H.B. 32 (2009) is found at Chapter 347, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The first rule change will include an increase from the previous maximum of $5,000 to $10,000. The second change will change the wording of "Bureau of Licensing" to "licensing agency".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21 and Title 26, Chapter 23

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There may be some additional revenue to the state from the assessment of civil money penalties against providers who violate the rules. However, monies collected from these penalties is not used to offset budget expenditures within the Bureau. It is the policy of the Bureau to use these monies for additional activities to benefit providers, such as training.
♦ LOCAL GOVERNMENTS: Some hospital facilities that are a part of the local government may possibly be affected by the increase in civil money penalties if they are not in compliance with state rules.
♦ SMALL BUSINESSES: In the State Fiscal Year 2009 no small businesses were assessed a civil money penalty for violation of Section R432-8-8. It is possible, but not likely, with this rule change that a small business could be assessed a $10,000 civil money penalty.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: In the State Fiscal Year 2009 no businesses were assessed a civil money penalty for violation of Section R432-8-8. It is possible, but not likely, with this rule change that a business could be assessed a $10,000 civil money penalty.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In the State Fiscal Year 2009 no businesses were assessed a civil money penalty for violation of Section R432-8-8. It is possible, but not likely, with this rule change that a business could be assessed a $10,000 civil money penalty.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removing obsolete criminal penalties will impose no new fiscal impact. Enforcement of civil money penalties is not expected to change as a result of this rule change, therefore no new fiscal impact is expected.

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:
♦ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
♦ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: David Sundwall, Executive Director

R432. Health, Health Systems Improvement, Licensing.
R432-8. Specialty Hospital - Chemical Dependency/Substance Abuse Construction.
R432-8-8. Penalties.

The Department may assess a civil money penalty of up to $[~~5,000~~]10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $[~~5,000~~]10,000 if the licensee fails to follow approved architectural plans. The Department may assess a civil money penalty of up to $[~~500~~]1,000 per day for each day a new or renovated area is occupied prior to [~~Bureau of Licensing~~]licensing agency approval.

KEY: health facilities
Date of Enactment or Last Substantive Amendment: [~~December 10, 2002~~]2010
Notice of Continuation: January 28, 2005
Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-2.1; 26-21-20

Health, Health Systems Improvement, Licensing
R432-9-7
Special Hospital-Rehabilitation Construction Penalties

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33184
FILED: 11/24/2009

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change was reviewed by the Health Facilities Committee and approved. This committee has representation from a broad cross section of the entities affected by this rule. This rule change is proposed to amend two parts of the rule: 1) to change the civil money penalty limits in rule from a maximum of $5,000 to $10,000 per H.B. 32 (2009); and 2) to remove old rule language pertaining to the Bureaus of Licensing and Certification as two separate bureaus. These bureaus were combined in 2004. (DAR NOTE: H.B. 32 (2009) is found at Chapter 347, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: The first rule change will include an increase from the previous maximum of $5,000 to $10,000. The second change will change the wording of "Bureau of Licensing" to "licensing agency".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21 and Title 26, Chapter 23

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There may be some additional revenue to the state from the assessment of civil money penalties against providers who violate the rules. However, monies collected from these penalties is not used to offset budget expenditures within the Bureau. It is the policy of the Bureau to use these monies for additional activities to benefit providers, such as training.
♦ LOCAL GOVERNMENTS: Some hospital facilities that are a part of the local government may possibly be affected by the increase in civil money penalties if they are not in compliance with state rules.
♦ SMALL BUSINESSES: In the State Fiscal Year 2009 no small businesses were assessed a civil money penalty for violation of Section R432-9-7. It is possible, but not likely, with this rule change that a small business could be assessed a $10,000 civil money penalty.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: In the State Fiscal Year 2009 no businesses were assessed a civil money penalty for violation of Section R432-9-7. It is possible, but not likely, with this rule change that a business could be assessed a $10,000 civil money penalty.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In the State Fiscal Year 2009 no businesses were assessed a civil money penalty for violation of Section R432-9-7. It is possible, but not likely, with this rule change that a business could be assessed a $10,000 civil money penalty.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removing obsolete criminal penalties will impose no new fiscal impact. Enforcement of civil money penalties is not expected to change as a result of this rule change, therefore no new fiscal impact is expected.

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:
♦ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
♦ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R432. Health, Health Systems Improvement, Licensing.
R432-9. Specialty Hospital - Rehabilitation Construction Rule.
R432-9-7. Penalties.

The Department may assess a civil money penalty of up to $[~~5,000~~]10,000 and deny approval for patient utilization of new or remodeled areas if a health care provider does not submit architectural drawings to the Bureau of Licensing. The Department may assess a civil money penalty of up to $[~~5,000~~]10,000 if the licensee fails to follow Department-approved architectural plans.

The Department may assess a civil money penalty of up to $[~~500~~]1,000 per day for each day a new or renovated area is occupied prior to [~~Bureau of Licensing~~]licensing agency approval.

KEY: health facilities
Date of Enactment or Last Substantive Amendment: [~~December 10, 2002~~]2010
Notice of Continuation: January 28, 2005
Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-2.1; 26-21-20

Health, Epidemiology and Laboratory Services, Laboratory Improvement
R444-14-8
Penalties

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33218
FILED: 11/24/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to remove an obsolete reference to criminal penalties for violating a rule that is no longer supported by statutory delegation of this authority by the Legislature (see H.B. 32, 2009 General Session, Utah State Legislature). (DAR NOTE: H.B. 32 (2009) is found at Chapter 347, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: Reference to criminal penalties for violating this rule is removed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 8a

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ LOCAL GOVERNMENTS: It is possible that increased focus on use of civil money penalties could have a positive impact on state and local budgets, but any impact is expected to be minimal.
♦ SMALL BUSINESSES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Removing obsolete criminal penalties will impose no new fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES,
LABORATORY IMPROVEMENT
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:
♦ David Mendenhall by phone at 801-538-9370, by FAX at 801-538-9373, or by Internet E-mail at davidmendenhall@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R444. Health, Epidemiology and Laboratory Services, Laboratory Improvement.
R444-14. Rule for the Certification of Environmental Laboratories.
R444-14-8. Penalties.

A laboratory violates this rule and is subject to the penalties provided in Title 26, Chapter 23, including administrative and civil [~~penalties of up to $5,000.00 for each offense, criminal sanctions of a class B misdemeanor on the first offense and a class A misdemeanor on the second offense, and criminal penalties of up to $5,000.00 for each offense~~]if it:

(1) without being certified under this rule, holds itself out as one capable of testing samples for compliance with Federal Safe Drinking Water Act, Federal Clean Water Act, Federal Resource Conservation and Recovery Act; or

(2) without being approved to analyze for the analyte , analyzes samples for the analyte for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory.

KEY: laboratories
Date of Enactment or Last Substantive Amendment: [~~January 12, 2009~~]2010
Notice of Continuation: February 26, 2007
Authorizing, and Implemented or Interpreted Law: 26-1-30(2)(m)

Human Services, Administration
R495-879
Parental Support for Children in Care

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33192
FILED: 11/24/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change is to add the department authority for creating, amending and enforcing administrative rules; to specify the purpose of this rule; to remove language that is no longer applicable to the Office of Recovery Services (ORS) procedures; and to renumber subsections in the correct format for rules.

SUMMARY OF THE RULE OR CHANGE: The change is to add an authority and purpose section to the existing rule. Section 62A-1-111 authorizes the Department of Human Services to adopt, amend, and enforce rules as necessary. A purpose section was added to this rule to provide specific child support information when a child is in the care of the state. In addition, subsections were numbered and renumbered to follow the correct rule text formatting. A subsection of the rule is also being removed since it is no longer applicable to our policy and procedures. Mark Brasher, Director Of the Office of Recovery Services has reviewed and approved this rule amendment.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-1-111 and Section 62A-11-302 and Section 62A-15-607 and Section 62A-4a-114 and Section 62A-5-109 and Section 63G-4-102 and Section 78A-6-104 and Section 78A-6-1106 and Section 78B-12-106 and Section 78B-12-201 and Section 78B-12-203 and Section 78B-12-218 and Section 78B-12-301 and Section 78B-12-302 and Section 78B-12-401 and Section 78B-12-403

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Adding the authority and purpose section to the existing rule and the renumbering of subsections are for clarification purposes only and do not affect the current procedures and will not have a cost or savings effect on the state budget. There is no way to estimate the cost or savings to the state budget by removing the "Children Over 18 Years Old" subsection since there is no automated way to detect deviated worksheets, or the difference in a deviated child support amount between three children and two children, or if a worksheet is deviated with a child over the age of 18 years.
♦ LOCAL GOVERNMENTS: There is no anticipated change in cost or savings due to this amendment since administrative rules of the Office or Recovery Services/Child Support Services (ORS/CSS) do not apply to local government.
♦ SMALL BUSINESSES: There will be no financial impact for small businesses due to the amendment of this rule since the basic requirements of the current rule will not change.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no financial impact to other persons due to the amendment of this rule since the basic requirements of the current rule will not change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no changes in compliance costs since the procedural changes with the amendment of the current rule do not affect any persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses are not affected by this rule, and there will be no fiscal impact on businesses due to this rule amendment.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
ADMINISTRATION
120 N 200 W
SALT LAKE CITY, UT 84103-1500
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Shancie Nance by phone at 801-536-8191, by FAX at 801-536-8833, or by Internet E-mail at snance@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: Lisa-Michele Church, Executive Director

R495. Human Services, Administration.
R495-879. Parental Support for Children in Care.
R495-879-1. Authority and Purpose.

(1) The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111.

(2) The purpose of this rule is to provide information to parents relating to the establishment and enforcement of child support when a child is placed in an out-of-home program. In addition, the rule explains when a child support amount may deviate from the Utah Child Support Guidelines.

R495-879-2. Child Support Liability.

The Office of Recovery Services will establish and enforce child support obligations against parents whose children are in out-of-home placement programs, administered by the Department of Human Services or Department of Health. The department shall consider fees for outpatient and day services separate from child support payments. Establishment and enforcement of child support shall be pursuant to the Uniform Civil Liability for Support Act, Title 78B, Chapter 12; Child Support Services Act, 62A-11-301 et seq.; Support and expenses of child in custody of an individual or institution, 78A-6-1106[~~:~~].

R495-879-[~~2~~]3. Support Guidelines.

Child support obligations shall be calculated in accordance with Child Support Guidelines, Sections 78B-12-201, 78B-12-203 through 78B-12-218, 78B-12-301, 78B-12-302, and 78B-12-401 through 78B-12-403.

R495-879-[~~3~~]4. Criteria For Deviating From Guidelines.

The following criteria may be used to deviate from the guidelines when a prior order does not exist.

[~~1.~~](1) Deduction For a Disabled Child. A deduction from gross income shall be allowed each year, equal to the federal tax exemption for dependents, for each year a child was cared for at home if that child's disability would ordinarily have qualified him for residential care.

[~~2.~~](2) Medical Payments. A deduction from gross income shall be allowed for medical expenses equal to the IRS deduction allowed the previous year on the parents' 1040 tax return.

[~~3. Children Over 18 Years Old.~~

~~Children up to 23 years of age shall be included on the Child Support Worksheet if the parents are claiming the child as an exemption on their income tax return. Parents must provide prior year's tax return and a statement that they will be claiming child on current year tax return.~~

~~4. Loss of child's Social Security Survivor Payments.~~](3) Loss of child's Social Security Survivor Payments. If the parent's income is below 133% of the poverty level, allow a direct credit against the child support amount from the child's social security survivor's benefit paid to the state.

[~~5.~~](4) Adoption Assistance. The child is adopted, the parents continue to receive adoption assistance or have received adoption assistance, and the child is placed in the care or custody of the state for reasons other than neglect or abuse of the child by the parents.

[~~6.~~](5) Best Interest of the Child. It is in the best interest of the child to deviate from the child support guidelines pursuant to Section 78B-12-301 through 78B-12-302.

R495-879-[4]5. Establishing an Order.

ORS may modify and establish child support orders through the Child Support Services Act, 62A-11-301 et seq.; Administrative Procedures Act, Section 63G-4-102 et seq.; Jurisdiction - Determination of Custody questions by Juvenile Court, Subsection 78A-6-104; and in accordance with R527-200.

R495-879-[5]6. Good Cause Deferral and Waiver Request.

(1) If collections interfere with family re-unification, a division may, using the Good Cause-Deferral/Waiver (form 602), request a deferral or waiver of arrears payments once a support order has been established. The request may be applied to current support when an undue hardship is created by an unpreventable loss of income to the present family. A loss of income may include non payment of child support from the other parent for the children at home, loss of employment, or loss of monthly pension or annuity payments. The request shall be initiated by the responsible case worker and forwarded to his or her supervisor, regional director, division director/superintendent, or designee for approval.

(2) After a support order has been established, [~~T~~]the Good Cause Deferral and Waiver request may be denied or approved by the referring agency at any stage in the process. Once the waiver has been approved at all levels in the referring agency, the division director (or designee) shall send the waiver to the ORS director (or designee) for review and decision. If the requesting agency disagrees with the ORS director's (or designee's) decision, the request may be referred to the Executive Director of the Department of Human Services for a final decision. The requesting agency will notify the family of the final decision. The request shall not be approved when it proposes actions that are contrary to state or federal law.

R495-879-[6]7. In-Kind Support.

(1) ORS may accept in-kind support after the support amount has been established, based on the parent's service to the program in which the child is placed. The service provided by a parent must be approved by the director of the division or the superintendent of the institution responsible for the child's care. The approval should be based on a monetary savings or an enhancement to a program. If geographical distances prohibit direct service, then the division director or superintendent may approve support services for in-kind support that do not directly offset costs to the agency, but support the overall mission of the agency. For example, a parent with a child receiving services at the Utah State Hospital (USH) may provide services to a local mental health center with the approval of the USH superintendent.

(2) A memorandum of understanding shall be signed by the division/institution and the parent specifying the type, length, and dollar value of service. Verification of the service hours worked must be provided by the division/institution to ORS (using Form 603) within 10 days after the end of the month in which the service was performed. The verification shall include the dates the

service was performed, the number of hours worked, and the total credit amount earned. The in-kind service allowed shall be applied prospectively up to the current support ordered amount. Unless approved by the director of the Department, in-kind support approved by one division/institution shall not be used to reduce child support owed to another division/institution. In-kind support shall not be approved when it proposes actions that are contrary to state or federal law.

R495-879-[7]8. Extended Visitation During The Year.

A rebate shall be granted to a parent for support paid when a child's overnight visits equal 25% or more of the service period. The rebate will only be provided when the service period lasts six months or more. The rebate will be proportionate to the number of days at home compared to the number of days in care. One continuous 24-hour period equals one day.

R495-879-[8]9. Child Support and Adoption Assistance.

ORS will establish and enforce child support obligations for parents who are currently receiving adoption assistance or who have received adoption assistance from this state or any other state or jurisdiction, for children who are in the custody of the state, in accordance with Sections 78A-6-1106, 78B-12-106, R495-879-[1]2 and R527-550-1. If an order for support does not currently exist, the department will establish a monthly child support obligation prospectively on existing cases. When establishing a child support obligation, ORS will not include the adoption assistance amount paid to the family in determining the family's income, pursuant to Section 78B-12-207.

KEY: child support, custody of children
Date of Enactment or Last Substantive Amendment: [~~January 26, 2004~~]2010
Notice of Continuation: October 23, 2008
Authorizing, and Implemented or Interpreted Law: 62A-1-111(16); 62A-4a-114; 62A-5-109(1); 62A-11-302; 62A-15-607; 63G-4-102; 78A-6-104; 78A-6-1106; 78B-12-106; 78B-12-201; 78B-12-203 through 78B-12-218; 78B-12-301; 78B-12-302; 78B-12-401 through 78B-12-403

Labor Commission, Industrial Accidents
R612-13
Proceedings to Impose Non-Reporting Penalties Against Employers

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 33230
FILED: 12/01/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Labor Commission is given authority under Section 34A-2-407 to assess penalties against employers who do not timely report industrial accidents to the Commission. The purpose of this rule is to designate the Commission's initial imposition of such a penalty as "informal" adjudicative proceedings, subject to the procedures established by the Utah Administrative Procedures Act for such proceedings. The rule also provides that proceedings subsequent to the initial penalty assessment are to be conducted as "formal" adjudicative proceedings under the Utah Administrative Procedures Act.

SUMMARY OF THE RULE OR CHANGE: The proposed rule designates initial proceedings to impose non-reporting penalties against employers as "informal" adjudicative proceedings. The proposed rule designates all subsequent proceedings as "formal" adjudicative proceedings.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-2-101 et seq. and Section 34A-3-101 et seq. and Section 78B-8-402 and Section 78B-8-404 and Subsection 34A-1-104(1) and Subsection 63G-4-202(1)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Informal adjudicative proceedings can be conducted more economically than "formal" proceedings. The proposed rule will have the effect of reducing the Commission's costs, although the precise amount of such savings cannot be accurately predicted.
♦ LOCAL GOVERNMENTS: In their capacity as employers subject to the Commission's reporting rules, local governments may be subject to non-reporting penalties. Such penalties are infrequent, but designation of the initial assessment proceedings as "informal" rather than "formal" will reduce local governments' burden and expense in responding to proposed penalty assessments.
♦ SMALL BUSINESSES: In their capacity as employers subject to the Commission's reporting rules, small businesses may be subject to non-reporting penalties. Such penalties are infrequent, but designation of the initial assessment proceedings as "informal" rather than "formal" will reduce the burden and expense on small businesses in responding to proposed penalty assessments.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Commission does not anticipate that other persons will be affected by this rule. Consequently, the rule will result in no costs or savings to such other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed rule imposes no compliance costs on affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Utah Administrative Procedures Act requires that agency adjudicative proceedings, including proceedings to assess penalties, must be conducted as formal proceedings unless the agency specifically designates such proceedings as informal. By designating initial proceedings to impose non-reporting penalties against employers as "informal" proceedings, the proposed rule allows the parties to use simpler, less costly procedures. This should lessen the fiscal impact that such proceedings would otherwise have on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
LABOR COMMISSION
INDUSTRIAL ACCIDENTS
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:
♦ Ron Dressler by phone at 801-530-6841, by FAX at 801-530-6804, or by Internet E-mail at rdressler@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R612. Labor Commission, Industrial Accidents.
R612-13. Proceedings to Impose Non-Reporting Penalties Against Employers.
R612-13-1. Authority.
This rule is enacted under authority of U.C.A. Sections 34A-1-104(1) and 63G-4-202(1) and is applicable to proceedings under 34A-2-407 to assess a penalty against an employer who does not timely report an industrial accident.

R612-13-2. Designation as Informal Proceedings.
Initial proceedings to assess such penalty are hereby designated as informal adjudicatory proceeding, while all subsequent proceedings with respect to assessment of such penalty are hereby designated as formal proceedings.

KEY: workers' compensation, administrative procedures, reporting, penalties
Date of Enactment or Last Substantive Amendment: 2010
Authorizing, and Implemented or Interpreted Law: 34A-1-104(1); 34A-2-101 et seq.; 34A-3-101 et seq.; 63G-4-202(1);78B-8-402; 78B-8-404

Tax Commission, Administration
R861-1A-43
Electronic Meetings Pursuant to Utah Code Ann. Section 52-4-207

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33231
FILED: 12/01/2009

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment will alert the public if the public may participate electronically in an open meeting.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment indicates that the commission shall provide notice when the public may participate electronically in an open meeting, as well as indicate in those instances, how the public may participate in the meeting.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 52-4-207

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: By the state contracted rate, the Tax Commission would be charged 11.7 cents per minute per dial in caller.
♦ LOCAL GOVERNMENTS: The cost of a long distance call in its normal course of work.
♦ SMALL BUSINESSES: The cost of a long distance call in its normal course of business.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The cost of a long distance call based on its calling plan.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Calling-in to participate is optional. Long distance charges may apply. The dial-in costs are charged to the Commission.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The cost of a long distance call based on each individual business calling plan.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TAX COMMISSION
ADMINISTRATION
210 N 1950 W
SALT LAKE CITY, UT 84134-0002
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO: ♦ D'Arcy Dixon by phone at 801-297-3906, by FAX at 801-297-3901, or by Internet E-mail at ddixon@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: D'Arcy Dixon, Commissioner

R861. Tax Commission, Administration.
R861-1A. Administrative Procedures.
R861-1A-43. Electronic Meetings Pursuant to Utah Code Ann. Section 52-4-207.

(1) [~~The commission may convene an electronic meeting~~]A commissioner may participate electronically in a meeting open to the public under Section 52-4-207 if all of the following conditions are met:

[~~(1)~~](a) the purpose of the meeting is to discuss a commission administrative rule;

[~~(2)~~](b) two commissioners are present at a single anchor location; and

the number of separate connections for commissioners who are not present at the anchor location is no more than two.

(2)(a) The commission shall indicate in a public notice if the public may participate electronically in a meeting open to the public under Section 52-4-207.

(b) A notice provided under Subsection (2)(a) shall direct the public on how to participate electronically in the meeting.

KEY: developmentally disabled, grievance procedures, taxation, disclosure requirements
Date of Enactment or Last Substantive Amendment: [~~December 4, 2008~~]2010
Notice of Continuation: March 20, 2007
Authorizing, and Implemented or Interpreted Law: 52-4-207

End of the Notices of Proposed Rules Section

NOTICES OF
CHANGES IN PROPOSED RULES

After an agency has published a **Proposed Rule** in the *Utah State Bulletin*, it may receive public comment that requires the **Proposed Rule** to be altered before it goes into effect. A **Change in Proposed Rule** allows an agency to respond to comments it receives.

As with a **Proposed Rule**, a **Change in Proposed Rule** is preceded by a **Rule analysis**. This analysis provides summary information about the **Change in Proposed Rule** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **Change in Proposed Rule**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period, and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **Changes in Proposed Rules** published in this issue of the *Utah State Bulletin* ends January 14, 2010.

Following the **Rule Analysis**, the text of the **Change in Proposed Rule** is usually printed. The text shows only those changes made since the **Proposed Rule** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [~~example~~]). A row of dots in the text between paragraphs (**. . . . . .**) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **Change in Proposed Rule** is too long to print, the Division of Administrative Rules will include only the **Rule Analysis**. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

From the end of the 30-day waiting period through April 14, 2010, an agency may notify the Division of Administrative Rules that it wants to make the **Change in Proposed Rule** effective. When an agency submits a **Notice of Effective Date** for a **Change in Proposed Rule**, the **Proposed Rule** as amended by the **Change in Proposed Rule** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **Change in Proposed Rule**. If the agency designates a public comment period, the effective 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. Alternatively, the agency may file another **Change in Proposed Rule** in response to additional comments received. If the Division of Administrative Rules does not receive a **Notice of Effective Date** or another **Change in Proposed Rule** by the end of the 120-day period after publication, the **Change in Proposed Rule** filing, along with its associated **Proposed Rule**, lapses and the agency must start the process over.

Changes in Proposed Rules are governed by Section 63G-3-303; Rule R15-2; and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-320
Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver

NOTICE OF CHANGE IN PROPOSED RULE
DAR FILE NO.: 32925
FILED: 11/24/2009

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to allow an individual who receives continuation coverage under the Consolidated Omnibus Budget Reconciliation Act (COBRA) to enroll in Utah's Premium Partnership for Health Insurance (UPP).

SUMMARY OF THE RULE OR CHANGE: Section R414-320-7 is changed to allow an individual who is covered under COBRA at the time of application to enroll in UPP. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the September 15, 2009, issue of the Utah State Bulletin, on page 36. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This change does not impact the state budget because children who enroll in UPP are already qualified for and may enroll in the Children's Health Insurance Program (CHIP). In addition, adults who enroll in UPP are already qualified for and may enroll in the Primary Care Network Program (PCN). The state, therefore, does not incur any additional costs for COBRA enrollees.
♦ LOCAL GOVERNMENTS: This change does not impact local governments because they do not fund or provide UPP services.
♦ SMALL BUSINESSES: There is no budget impact because this change does not create any new requirements for small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are nominal savings to individuals who qualify for the COBRA and UPP programs. Nevertheless, there is insufficient data to determine these savings based on the number of individuals who will qualify for the UPP program and the current cost of their COBRA insurance. There are no additional costs to providers based on any new requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because there are no additional costs to a child or adult who is already enrolled in CHIP or PCN. Furthermore, there are no additional costs to a single provider based on new requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to business is predicted, but public input during the comment period will be carefully evaluated.

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 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 NO LATER THAN AT 5:00 PM ON 01/14/2010

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2010

AUTHORIZED BY: David Sundwall, MD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver.

. . . . . .

R414-320-7. Creditable Health Coverage.

(1) The Department adopts 42 CFR 433.138(b), 2007 ed., which is incorporated by reference.

(2) An individual who is covered under a group health plan or other creditable health insurance coverage, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), is not eligible for enrollment.

(a) An applicant who is covered by COBRA continuation coverage [~~and who applies for UPP from the dates of October 1, 2009, through November 30, 2009, is~~]may be eligible for UPP enrollment.

[~~(b) Beginning on December 1, 2009, an applicant who is enrolled in COBRA continuation coverage and has not applied for the UPP program is not eligible for UPP enrollment.~~

~~————~~](3) Eligibility for an individual who has access to but has not yet enrolled in employer-sponsored health insurance coverage will be determined as follows:

(a) If the cost of the employer-sponsored coverage is less than 5% of the household's gross income, the individual is not eligible for the UPP program.

(b) For adults, if the cost of the employer-sponsored coverage exceeds 15% of the household's gross income the adult may choose to enroll in the UPP program or may choose direct coverage through the Primary Care Network program if enrollment has not been stopped under the provisions of R414-310-16.

(c) A child may choose enrollment in UPP or direct coverage under the CHIP program if the cost of the employer sponsored coverage is equal to or more than 5% of the household's gross income.

(4) An individual who is covered under Medicare Part A or Part B, or who could enroll in Medicare Part B coverage, is not eligible for enrollment, even if the individual must wait for a Medicare open enrollment period to apply for Medicare benefits.

(5) An individual who is enrolled in the Veteran's Administration (VA) Health Care System is not eligible for enrollment. An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for the UPP program while waiting for enrollment in the VA Health Care System to become effective. To be eligible during this waiting period, the individual must initiate the process to enroll in the VA Health Care System. Eligibility for the UPP program ends once the individual becomes enrolled in the VA Health Care System.

(6) The Department shall deny eligibility if the applicant, spouse, or dependent child has voluntarily terminated health insurance coverage within the 90 days immediately prior to the application date for enrollment under the UPP program.

(a) An applicant, applicant's spouse, or dependent child can be eligible for the UPP program if their prior insurance ended more than 90 days before the application date.

(b) An applicant, applicant's spouse, or dependent child who voluntarily discontinues health insurance coverage under a COBRA plan, or under the Utah Comprehensive Health Insurance Pool, or who is involuntarily terminated from an employer's plan may be eligible for the UPP program without a 90 day waiting period.

(7) An individual with creditable health coverage operated or financed by Indian Health Services may enroll in the UPP program.

(8) Individuals must report at application and recertification whether each individual for whom enrollment is being requested has access to or is covered by a group health plan or other creditable health insurance coverage. This includes coverage that may be available through an employer or a spouse's employer, Medicare Part A or B, the VA Health Care System, or COBRA continuation coverage.

(9) The Department shall deny an application or recertification if the applicant or enrollee fails to respond to questions about health insurance coverage for any individual the household seeks to enroll or recertify.

. . . . . .

KEY: Medicaid, PCN, CHIP, UPP
Date of Enactment or Last Substantive Amendment: [~~July 1, 2009~~]2010
Authorizing, and Implemented or Interpreted Law: 26-18-3; 26-1-5

End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended 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 upon filing.

Notices are governed by Section 63G-3-305.

Agriculture and Food, Plant Industry
R68-3
Utah Fertilizer Act Governing Fertilizers and Soil Amendments

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33219
FILED: 11/25/2009

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: Promulgated under authority of Sections 4-2-2 and 4-13-4.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any comments/opposition regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: All fertilizer and soil amendment products distributed through the state are required to be registered with the Department. This process helps to minimize environmental impact to our land resources. Therefore, this rule should be continued. There has no opposition to this rule during the previous five-year period.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
PLANT INDUSTRY
350 N REDWOOD RD
SALT LAKE CITY, UT 84116-3034
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Clair Allen by phone at 801-538-7180, by FAX at 801-538-7189, or by Internet E-mail at clairallen@utah.gov
♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
♦ Robert Hougaard by phone at 801-538-7187, by FAX at 801-538-7189, or by Internet E-mail at rhougaard@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 11/25/2009

Health, Health Systems Improvement, Licensing
R432-7
Special Hospital - Psychiatric Hospital Construction

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33193
FILED: 11/24/2009

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: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE 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 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:

♦ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov

♦ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: David Sundwall, MD, Executive Director

EFFECTIVE: 11/24/2009

Health, Health Systems Improvement, Licensing

R432-8

Special Hospital - Chemical Dependency/Substance Abuse Construction

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33194
FILED: 11/24/2009

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: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE 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 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:
♦ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
♦ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: David Sundwall, MD, Executive Director

EFFECTIVE: 11/24/2009

Health, Health Systems Improvement, Licensing
R432-9
Specialty Hospital - Rehabilitation Construction Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33195
FILED: 11/24/2009

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: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE 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 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:
♦ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
♦ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: David Sundwall, MD, Executive Director

EFFECTIVE: 11/24/2009

Health, Health Systems Improvement, Licensing
R432-10
Specialty Hospital – Long Term Acute Care Construction Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33196
FILED: 11/24/2009

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: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE 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 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:

♦ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov

♦ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: David Sundwall, MD, Executive Director

EFFECTIVE: 11/24/2009

Health, Health Systems Improvement, Licensing
R432-11
Orthopedic Hospital Construction

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33197
FILED: 11/24/2009

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: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE 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 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:

♦ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov

♦ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: David Sundwall, MD, Executive Director

EFFECTIVE: 11/24/2009

Health, Health Systems Improvement, Licensing
R432-12
Small Health Care Facility (Four to Sixteen Beds) Construction Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33198
FILED: 11/24/2009

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: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE 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 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:

♦ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov

♦ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: David Sundwall, Executive Director

EFFECTIVE: 11/24/2009

Health, Health Systems Improvement, Licensing
R432-13
Freestanding Ambulatory Surgical Center Construction Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33199
FILED: 11/24/2009

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: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE 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 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:

♦ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov

♦ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: David Sundwall, Executive Director

EFFECTIVE: 11/24/2009

Health, Health Systems Improvement, Licensing
R432-14
Birthing Center Construction Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33200
FILED: 11/24/2009

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: There have been no written comments from any party regarding this rule.

REASONED JUSTIFICATION FOR THE 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 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:
♦ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
♦ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

AUTHORIZED BY: David Sundwall, Executive Director

EFFECTIVE: 11/24/2009

Human Services, Recovery Services
R527-10
Disclosure of Information to the Office of Recovery Services

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33172
FILED: 11/19/2009

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 62A-11-104.1(2) requires the Office of Recovery Services (ORS) to specify through rule the types of information that financial institutions and insurance companies are required to provide.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must continue for ORS to be in compliance with Subsection 62A-11-104.1(2). Information from financial institutions and insurance companies helps ORS successfully collect child support and provide insurance information to families.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY, UT 84102-4211
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ LeAnn Wilber by phone at 801-536-8950, by FAX at 801-536-8833, or by Internet E-mail at lwilber@utah.gov

AUTHORIZED BY: Mark Brasher , Director

EFFECTIVE: 11/19/2009

Human Services, Recovery Services
R527-450
Federal Tax Refund Intercept

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33201
FILED: 11/24/2009

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 62A-11-107 authorizes the Office of Recovery Services (ORS) to adopt, amend, and enforce rules as necessary to carry out its legal responsibilities listed in Title 62A, Chapter 11, including the collection of child and spousal support, and cooperation with the federal government in programs designed to recover money to the state. 45 CFR 303.72 outlines federal requirements for requesting collection of past-due support by federal tax refund intercept and how collections received by ORS shall be distributed. As authorized under these laws, this rule provides the certification criteria for federal tax intercept, the notice requirements, the conditions under which an earned income credit may be refunded, the requirement for distribution of funds collected through this process, and when ORS is required to delete or modify a previously certified debt.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides the information necessary for certifying a support debt for federal tax refund intercept, for making necessary refunds and adjustments, and for distributing collected amounts. The rule should be continued since the laws upon which it is based are still in effect. The Office of Recovery Services has identified that the rulemaking authority needs to be made to this rule. The amendment to correct this will be filed shortly.

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

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY, UT 84102-4211

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Shancie Nance by phone at 801-536-8191, by FAX at 801-536-8833, or by Internet E-mail at snance@utah.gov

AUTHORIZED BY: Mark Brasher , Director

EFFECTIVE: 11/24/2009

Labor Commission, Industrial Accidents
R612-9
Designation of the Initial Assessment of Noncompliance Penalties as an "Informal" Proceeding

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33229
FILED: 12/01/2009

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 34A-1-104 of the Labor Commission Act, in conjunction with Section 63G-4-202 of the Administrative Procedures Act, authorizes the commission to designate various adjudicative proceedings as either "formal" or "informal". Section 34A-2-211 of the Workers' Compensation Act establishes an adjudicative procedure for assessing penalties against employers who fail to provide workers' compensation insurance coverage. Rule R612-9 designates the initial level of such proceedings as "informal", and any subsequent proceedings as "formal".

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during and since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Because the penalty assessment procedure of Section 34A-2-211 remain in effect, it remains necessary to designate the various components of that procedure as either "informal" or "formal" under the Administrative Procedures Act. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
LABOR COMMISSION
INDUSTRIAL ACCIDENTS
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:
♦ Ron Dressler by phone at 801-530-6841, by FAX at 801-530-6804, or by Internet E-mail at rdressler@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

EFFECTIVE: 12/01/2009

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: James Karpowitz , Director

EFFECTIVE: 11/30/2009

Natural Resources, Wildlife Resources
R657-54
Taking Wild Turkey

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33220
FILED: 11/30/2009

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under Sections 23-14-18, 23-14-19, and 23-17-9 the Wildlife Board is authorized and required to regulate and prescribe the means for the taking of wild turkey.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments supporting or opposing Rule R657-54 were received since 12/02/2004, when the rule was created.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-54 provides the requirements, standards, and application procedures for the taking of wild turkey. The procedures adopted in this rule have provided an effective and efficient process. Continuation of this rule is necessary for continued success for the wild turkey populations and wildlife programs.

Public Safety, Peace Officer Standards and Training
R728-205
Council Resolution of Public Safety Retirement Eligibility

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33162
FILED: 11/18/2009

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The authority for this rule is authorized under Section 53-6-105, and Subsections 49-14-201(4)(5)(6) and 49-15-201(5)(6)(7) which authorizes the Director of POST to establish rules pertaining to this section.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: POST has not received any comments from any person in support of or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rules establishes guidelines for individuals to address POST council in regards to their eligibility to attain Peace Officer Retirement. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kelly Sparks by phone at 801-256-2321, by FAX at 801-256-0600, or by Internet E-mail at ksparks@utah.gov

AUTHORIZED BY: Lance Davenport, Commissioner

EFFECTIVE: 11/18/2009

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF
RULE EFFECTIVE DATES

State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a Notice of Effective Date within 120 days from the publication of a Proposed Rule or a related Change in Proposed Rule the rule lapses and the agency must start the rulemaking process over.

Notices of Effective Date are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

Abbreviations
AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal & Reenact
REP = Repeal

Commerce
Real Estate
No. 33003 (AMD): R162-6-1. Improper Practices
Published: 10/15/2009
Effective: 11/23/2009

Community and Culture
History
No. 32939 (NEW): R212-13. Capital Funds Request Prioritization
Published: 10/01/2009
Effective: 11/18/2009

Health
Health Care Financing, Coverage and Reimbursement Policy
No. 33008 (AMD): R414-1B. Prohibition of Payment for Certain Abortion Services
Published: 10/15/2009
Effective: 11/25/2009

No. 32977 (AMD): R414-31-3. Program Access Requirements
Published: 10/01/2009
Effective: 11/24/2009

Insurance
Administration
No. 33018 (AMD): R590-76. Health Maintenance Organizations and Limited Health Plans
Published: 10/15/2009
Effective: 11/24/2009

No. 32697 (AMD): R590-79. Life Insurance Disclosure Rule
Published: 06/15/2009
Effective: 11/24/2009

No. 32697 (CPR): R590-79. Life Insurance Disclosure Rule
Published: 10/15/2009
Effective: 11/24/2009

No. 32698 (AMD): R590-177. Life Insurance Illustrations Rule
Published: 06/15/2009
Effective: 11/24/2009

No. 32698 (CPR): R590-177. Life Insurance Illustrations Rule
Published: 10/15/2009
Effective: 11/24/2009

No. 32878 (AMD): R590-225. Submission of Property and Casualty Rate and Form Filings
Published: 09/01/2009
Effective: 11/19/2009

No. 32901 (AMD): R590-226. Submission of Life Insurance Filings
Published: 09/15/2009
Effective: 11/19/2009

No. 32903 (AMD): R590-227. Submission of Annuity Filings
Published: 09/15/2009
Effective: 11/19/2009

No. 32908 (AMD): R590-228. Submission of Credit Life and Credit Accident and Health Insurance Form and Rate Filings
Published: 09/15/2009
Effective: 11/19/2009

Labor Commission
Industrial Accidents
No. 33007 (AMD): R612-2-5. Regulation of Medical Practitioner Fees
Published: 10/15/2009
Effective: 11/23/2009

Public Education Job Enhancement Program
Job Enhancement Committee
No. 32986 (AMD): R690-100. Public Education Job Enhancement Program Participant Eligibility and Requirements
Published: 10/15/2009
Effective: 11/23/2009

End of the Notices of Rule Effective Dates Section

RULES INDEX

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 1, 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 is not included in this issue of the Utah State Bulletin. The release of eRules version 2.0 has introduced different functionality with regards to the index; this functionality has yet to be fully tested. Persons interested in alternative methods of acquiring the same information should visit "Researching Administrative Rules" at: http://www.rules.utah.gov/research.htm

Questions regarding the index and the information it contains should be addressed to 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/).