

UTAH STATE BULLETIN

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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

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NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between February 02, 2010, 12:00 a.m., and February 16, 2010, 11:59 p.m. are included in this, the March 01, 2010 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 Rules being repealed are completely struck out.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 March 31, 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 June 29, 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 OF 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

**Administrative Services, Risk
Management
R37-1
Risk Management General Rules**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33390

FILED: 02/16/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purposes of the proposed amendments are to recognize participating charter schools as covered entities; to avoid inconsistencies between the Risk Management Insurance Policy and administrative rule; and to provide clarification of underwriting standards and loss control practices.

SUMMARY OF THE RULE OR CHANGE: The proposed amendments add participating charter schools as covered entities. Minor revisions are provided to clarify existing language concerning liability limits, property deductibles, and covered entities' obligations to implement corrective measures. Citations to the Governmental Immunity Act are updated. Coverage and conditions provisions are deleted to avoid conflicts between the administrative rule and the Risk Management Fund Insurance Policy. Risk control and underwriting standards are updated to reflect the existence of the online self-inspection survey; to require the timely notification of acquired assets; to clarify and modify training requirements for driver safety and workplace harassment and discrimination; and to update references to applicable building and fire codes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-4-101

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The proposed amendments are not expected to realize any costs or savings to the state budget, because the amendments are simply clarifying or updating current practices and standards.
- ◆ **LOCAL GOVERNMENTS:** The proposed amendments are applicable only to Risk Management's covered entities, which are all state agencies, public school districts, public institutions of higher education, and participating charter schools.
- ◆ **SMALL BUSINESSES:** The proposed amendments are applicable only to Risk Management's covered entities, which are all state agencies, public school districts, public institutions of higher education, and participating charter schools.

- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments are applicable only to Risk Management's covered entities, which are all state agencies, public school districts, public institutions of higher education, and participating charter schools.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs for the covered entities that are impacted by these proposed amendments. As indicated above, these revisions were drafted to address current standards and practices.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These revisions will only impact Risk Management covered entities. Consequently, I anticipate no compliance costs for other businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
RISK MANAGEMENT
ROOM 5120 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Brian Nelson by phone at 801-538-9576, by FAX at 801-538-9597, or by Internet E-mail at benelson@utah.gov
- ◆ Stephen Hewlett by phone at 801-538-9572, by FAX at 801-538-9597, or by Internet E-mail at shewlett@utah.gov
- ◆ Tani Downing by phone at 801-538-9560, by FAX at 801-538-9597, or by Internet E-mail at [tdowning@utah.gov](mailto:t Downing@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/09/2010

THIS RULE MAY BECOME EFFECTIVE ON: 04/16/2010

AUTHORIZED BY: Kimberly Hood, Executive Director

R37. Administrative Services, Risk Management.

R37-1. Risk Management General Rules.

R37-1-3. Definitions.

- (1) "Conditions" specific policy requirements the violation of which will invalidate coverage.
- (2) "Coverage or coverage provision" means the type of protection provided against specific risks or losses.
- (3) "Covered Entity" means a state department or other state agency not within a state department, a state college or university, a public school district, a participating charter school, or other entity which is covered under the terms of a coverage document issued to it by the Risk Management Fund.

(4) "Underwriting Standard" or "Risk Control Standard" means an action or procedure which must be performed by a covered entity in order to reduce the risk of loss or to avoid imposition of coverage restrictions, deductibles, increased premiums, or loss of credits or dividends.

R37-1-4. Description of the Fund and its Activities.

The Risk Management Fund, hereafter referred to as the Fund, is a self-insurance mechanism established by statute to handle losses to or claims against the state, its agencies, ~~and~~ institutions of higher education, ~~and~~ participating school districts, participating charter schools, and other entities, which are treated as state agencies when participating, all hereafter referred to as covered entities. Although coverage through the Fund may be in formats like or similar to insurance policies, the relationship between the Fund and covered entities is not that of insurer and insured. No special duties, rules of construction or other legal doctrines recognized by the courts or created by statute with respect to the relationship of an insurer to its insured shall apply to the Fund or entities covered by it, except those which are specifically required by Title 31A, Chapter 12 with respect to some coverage provided to school districts. The duty to defend employees, as defined in Section 63-30d-102 UCA, or volunteers, as defined in Section 67-20-2 UCA, of covered entities extends only as far as the entities' duty to employees or volunteers under the "Governmental Immunity Act" and no special relationship of insurer to insured exists between the Fund and employees or volunteers of covered entities.

R37-1-5. Coverage, Deductibles, Duties and Conditions.

Specific risks covered, properties covered, coverage limits, exclusions, deductibles, conditions and other coverage provisions for coverage through the Risk Management Fund shall apply in accordance with coverage policies issued by the Fund to each covered entity. Subject to specific provisions of the coverage policies, the Fund provides the following coverage:

(1) Liability

(a) Risks Covered - General, automobile, personal injury, errors and omissions, malpractice and garage keepers' liability, and personal injury protection coverage applying to all premises, operations, approved contracts, products and completed operations; owned, non-owned and hired automobiles, other than personal use automobiles; employees, volunteers, and students in the scope of employment or approved services to the public.

(b) Limits - Typically, the limits are the [M]maximum liability [under]calculated pursuant to Section 63G-7-604[63-30d-604] UCA ~~for situations subject to the Governmental Immunity Act~~; lower or higher limits for other situations as indicated in coverage policies issued to each covered entity.

(c) Deductible - Deductibles apply to some specific property coverages and situations as noted in the coverage document, but there is no general deductible with regard to liability coverage.

(d) Conditions - The following conditions apply to liability coverages:

(i) In the event of an occurrence, personal injury, act, error, omission, incident, or any other situation likely to give rise to a claim covered by the Fund, written notice containing particulars

sufficient to identify the covered entity or person and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the potential claimant, and of available witnesses, shall be given by or for the covered entity or person to the Fund or any of its authorized agents as soon as practicable. The covered entity shall promptly take ~~at its own expense,~~ all reasonable steps to prevent additional injury or damage ~~from~~ arising out of the same or similar conditions, ~~provided (1) that a~~ A covered entity's failure to take preventive measures shall not constitute a breach of this condition unless the Fund has requested the covered entity, in writing, to undertake the preventive measures, ~~and (2) the expense~~. Costs incurred by a covered entity to implement preventive measures shall not be recoverable from the Fund.

(ii) If claim is made or suit is brought against the covered entity or person, whether in court or through an administrative proceeding with the Utah Anti-discrimination Division, the Federal Equal Employment Opportunity Commission or similar body, the covered entity or person shall immediately forward to the Fund a copy of every demand, notice, summons or other process received by it or its representative. Any covered person who is an employee or volunteer of the covered entity shall comply with all provisions of Sections ~~63-30d-902~~ 63G-7-902 UCA, ~~63-30d-903~~ 63G-7-903 UCA, or both before the Fund shall have any duty to defend or pay any judgment against such covered person.

(iii) The covered entity or person shall cooperate with the Fund and, upon the Fund's request, provide the fund with requested information, assist in making settlements, assist in making rule 68 offers of judgment, and assist in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the covered entity or person because of bodily injury or property damage with respect to which coverage is afforded by the Fund; and the covered entity or person shall attend hearings and trials and assist in securing and ~~assist~~ giving providing evidence and obtaining the attendance of witnesses. The covered entity or person shall not, except at its own cost, voluntarily make any payment, assume any obligation or incur any expense other than for qualified first aid to others at the time of the accident.

(iv) In the event any employee or volunteer requests under the terms of Section ~~63-30d-902~~ 63G-7-902 UCA that the covered entity defend him relative to any action or claim which would be covered by the Fund, the covered entity shall immediately forward the request to the Fund and the Fund shall have the right to determine on behalf of the covered entity whether to defend, defend under a reservation of rights, or decline to defend.

(v) The covered entity or person shall share with the Fund all records requested by the Fund, relative to any claim under this coverage, to the fullest extent permitted by the Utah Government Records Access and Management Act (GRAMA). If the covered entity falls under the provisions of Section 63-2-701, 702 or 703 UCA, the covered entity shall adopt an ordinance or policy, or make rules which allow the sharing of records with the Fund to at least the extent permitted by GRAMA and shall share with the Fund all records requested relative to any claim under this coverage to the fullest extent permitted by the ordinance, policy or rule.

(vi) This coverage does not apply to any claim under the Americans With Disabilities Act, as amended, Section 504[-] of the Rehabilitation Act of 1973, as amended, or similar laws based in

whole or in part on the failure of any covered entity to provide a [requested]reasonable accommodation unless the covered entity has notified the Fund of its preliminary intention not to provide the requested accommodation, [and]has allowed the Fund a reasonable opportunity to consult with the covered entity before the covered entity denies the requested accommodation, and the Fund agrees with the proposed denial.

~~[(e) Special Automobile Condition - A \$10,000 per accident deductible applies to amounts otherwise payable under this coverage because of an accident involving an automobile driven by a covered person who either:~~

~~(i) at the time of the accident was not a licensed driver for the type of vehicle involved; and who also was not so licensed at the closer to the accident date of:~~

~~(A) the date of his employment as a driver of the covered entity;~~

~~(B) the date of the covered entity became or should have become aware he was not so licensed; or~~

~~(C) one year prior to the accident date; or~~

~~(D) at the time of such accident the covered entity knew or should have known that the employee:~~

~~(I) had a vehicle accident which was his fault;~~

~~(II) had been convicted of driving under the influence of alcohol or drugs; or~~

~~(III) had been convicted of reckless driving, during the one year period prior to such accident and who had not completed a Fund approved driver safety program before the accident, provided, however, that this provision shall not apply if the date of the accident is less than thirty days after the covered entity knew of or should have known of the incident under a, b or c above.~~

~~(2) Property~~

~~(a) Risks Covered - Virtually all insurable risks of loss.~~

~~(b) Property Covered - Real and personal property owned by covered entities, for which they are liable or for which they have assumed responsibility, and which has been reported to the Fund.~~

~~(c) Limits - Replacement cost in most cases; sub-limits apply for earthquake and flood damage.~~

~~(d) Deductible - \$1,000 per occurrence applies to each and every loss, as indicated in the coverage policy.~~

~~(e) A \$100,000 deductible applies to each and every loss occurrence at any location for which:~~

~~(I) the fund has recommended that the insured take a reasonable risk reduction action;~~

~~(II) the fund has given the insured thirty days notice that this higher deductible will apply, if the recommendation is not complied with; and~~

~~(III) the insured has not complied with the recommendation within thirty days of notice that without compliance this higher deductible will apply~~

~~This higher deductible will cease to apply when the insured has complied with the recommendation to the satisfaction of the fund as evidenced by written notice to the insured of the reduction of the deductible.~~

~~(f) Conditions - The following conditions apply to property coverage.~~

~~(i) In case of loss, the covered entity shall:~~

~~(A) give immediate notice of such loss to the Fund;~~

~~(B) protect the covered property from further damage, make reasonable temporary repairs required to protect the covered property, and keep an accurate record of repair expenditures;~~

~~(C) prepare an inventory of damaged personal property, showing in detail, quantity, description, replacement value, and amount of loss. Attach to the inventory all bills, receipts and related documents that substantiate the figures in the inventory;~~

~~(D) exhibit the remains of the damaged property as often as may be reasonably required by the Fund and submit to examination under oath;~~

~~(E) submit to the Fund within 60 days after requested a signed, sworn statement of loss that sets forth to the best of the covered entity's knowledge and belief:~~

~~(I) the time and cause of loss;~~

~~(II) interest of the covered entity and all others in the property involved and all encumbrances on the property;~~

~~(III) other policies of insurance that may cover the loss;~~

~~(IV) changes in title or occupancy of the property during the term of the policy;~~

~~(V) specifications of any damaged building and detailed estimates for repair of the damage;~~

~~(VI) an inventory of damaged personal property described in (C) above;~~

~~(F) give immediate notice of the loss to the proper police authority if loss is due to a violation of law.~~

~~(ii) Values Reporting~~

~~The covered entity agrees to submit a statement of replacement values of property covered by the Fund by April 1st each year or by a later date as indicated by the Fund. Required information will be in formats requested by the Fund. In addition, any acquisition valued in excess of \$25,000,000 must be reported within ninety days of acquisition in order to be covered. The requirements of this condition apply to all types of covered property.~~

~~(3) Bond~~

~~(a) Risks Covered - Faithful performance; all employees except treasurers by title are covered.~~

~~(b) Limits - \$10,000,000~~

~~(c) Deductible -~~

~~(I) Subject to (II) below a \$1,000 deductible applies to each and every occurrence~~

~~(II) A \$100,000 deductible applies to each and every loss occurrence or from any operation which;~~

~~(A) the fund has recommended that the insured take a reasonable risk reduction action;~~

~~(B) the fund has given the insured thirty days notice that this higher deductible will apply, if the recommendation is not complied with; and~~

~~(C) the insured has not complied with the recommendation within thirty days of notice that without compliance this higher deductible will apply~~

~~This higher deductible will cease to apply when the insured has complied with the recommendation to the satisfaction of the fund as evidenced by written notice to the insured of the reduction of the deductible.~~

~~(d) Conditions -~~

~~(i) Upon knowledge or discovery of loss under this coverage, the covered entity shall:~~

~~(A) give notice thereof at the earliest practicable moment, not to exceed 30 days, to the Fund and;~~

~~(B) file detailed proof of loss, duly sworn to, with the Fund within four months after the discovery of loss.~~

~~(ii) Upon the Fund's request, the covered entity shall produce for the Fund's examination all pertinent records, at reasonable times and places as the Fund shall designate, and shall cooperate with the Fund in all matters pertaining to loss or claims under this coverage.~~

~~(4) Automobile Physical Damage~~

~~(a) Risks Covered - Comprehensive and collision.~~

~~(b) Automobiles Covered - All automobiles of an entity except personal use automobiles.~~

~~(c) Limits - Actual cash value~~

~~(d) Deductible - \$1,000 or less, according to coverage policy.~~

~~(e) Conditions -~~

~~(i) In the event of loss, the covered entity shall:~~

~~(A) protect the covered automobile, whether or not this coverage applies to the loss, and any further loss or damage due to the named insured's failure to protect shall not be recoverable under this coverage; reasonable expenses incurred in affording such protection shall be deemed incurred at the Fund's request;~~

~~(B) give notice thereof as soon as practicable to the Fund or any of its authorized agents and also, in the event of theft or larceny, to the police;~~

~~(C) file with the Fund within 90 days after loss, sworn proof of loss in such form and including such information as the Fund may reasonably require and, upon the Fund's request shall exhibit the damaged property and submit to examination under oath;~~

~~(D) cooperate with the Fund and, upon the Fund's request, shall assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the covered entity because of loss with respect to which this coverage applies; and shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.]~~

~~(5)(2) Conditions applicable to all coverages provided by the Fund:~~

~~(a) In accordance with Subsection 63A-4-101(2)(b)(v) UCA, in the event of any coverage dispute between the Fund and any covered entity or person, there shall be no right of legal action against the Fund, unless such right is specifically required by statute. Coverage disputes shall be resolved by binding arbitration upon request of any covered entity or person. In the event of a request, the Fund and the requesting covered entity or person shall each select an arbitrator and the two arbitrators shall select a third arbitrator. Decisions made by a majority of the three arbitrators shall be binding upon the Fund and the requesting covered entity or person. The Fund and the requesting covered entity or person shall each pay the cost of their chosen arbitrator. The losing party shall pay the cost of the third arbitrator. The Fund and the covered entity or person may mutually agree on any alternative arbitration procedure.]~~

~~(b) In the event of any payment under any coverage provided through the Fund, the Fund shall be subrogated to all of the covered entity or person's rights of recovery therefor against any person or organization and the covered entity or person shall~~

execute and deliver instruments and papers and do whatever else is necessary to secure these rights. The covered entity or person shall do nothing after the loss to prejudice these rights.

R37-1-6. Premium Establishment.

In addition to other actuarially sound factors, the Risk Manager may use the following in determining the appropriate premiums for coverage provided to each covered entity:

(1) Entity efforts at exposure management including completion of self[-]inspection [forms]surveys, employee training, agency attendance at Fund[-]sponsored seminars, agency risk control meetings, risk[-]related policy development and implementation, etc.

(2) Entity accidents, claims and loss history.

(3) Recent state and federal statutes or court decisions affecting covered entities and operations.

(4) Number of employees in the entity and size of the entity's budget.

(5) Value, protection and other characteristics of the entity's buildings and contents.

(6) Number, type, and value of entity vehicles.

(7) Entity operations and activities.

(8) Actuarial studies.

R37-1-7. Risk Control Standards.

In accordance with Subsection 63A-4-101(2)(b)(i), each covered entity shall comply with the following risk control standards:

(1) Covered entities shall appoint an entity risk coordinator who shall report directly to the covered entity's director, school superintendent or university/college president, or to another individual who reports directly to the covered entity's director, school superintendent or college/university president. Subordinate risk coordinators or other individuals may be appointed at the division, school or lower levels of the organization as the entity deems appropriate. The day to day implementation or management of the entity's risk management duties may be assigned by the risk coordinator to subordinate individuals, committees, or groups as necessary for efficient operation and implementation.

(2) The covered entity risk coordinator shall be responsible for the following duties:

(a) Identifying, evaluating and resolving risk exposures for the entity,

(b) Coordinating with the Fund on the reporting and investigation of all claims or losses,

(c) Coordinating with the Fund on all liability prevention and loss control and prevention activities.

(d) Ensuring that the Fund is provided with all reasonable information necessary to compute premiums.

(e) Ensuring that premium billings are processed and paid.

(f) Ensuring that notification is made to the Fund on all incidents, issues or informal or administrative claims, including claims originating at the EEOC and/or UALD that may result in a formal claim against the Fund.

(g) Internally supervising or managing all loss prevention activities.

(h) Normally chairing the entity Risk Control Committee and ensuring staff support to the Risk Control Committee.

(3) Each covered entity shall appoint a Risk Control Committee, hereinafter referred to as the committee. Each covered entity shall include on its committee those positions deemed necessary by the Risk Coordinator and/or the entity director, president, or superintendent to provide comprehensive review and risk management services to all of the entities operations. It is recommended that the following positions be included on the committee:

- (a) Entity Risk Coordinator.
- (b) The covered entity's maintenance director and/or facilities director, where the entity owns or manages its own buildings or in the case where the building is leased the DFCM manager assigned to that building.
- (c) The covered entity's Human Resource/Personnel director.
- (d) The covered entity's Americans with Disabilities Act Coordinator, or other entity Civil Rights coordinator or director.
- (e) The covered entity's Safety Director.
- (f) The covered entity's legal counsel or attorney as an ex-officio member.
- (g) Staff from the Fund, who may attend the meetings in an ex officio capacity.

The covered entity may appoint on either a permanent or ad hoc basis other individuals whose job duties or special expertise may be of use to the committee. These individuals may include the covered entity's internal auditor, the covered entity's security director, the transportation or motor pool director, a representative from the entity's finance and accounting section and employee representatives. School districts may also wish to include on the committee representatives from the district's athletic, vocational, science and other high risk curriculum areas. The Fund, upon request of the covered entity risk coordinator, will provide recommendations on the makeup of the committee.

The committee shall be normally chaired by the covered entity's risk coordinator. The committee shall be responsible for oversight and supervision of the entity's risk coordination and management program and shall meet at least once each quarter. In advance of the meeting, the committee shall publish an agenda of its meetings and shall forward a copy of the agenda to the Fund. The entity or its committee may appoint other ad hoc or standing committees, or subcommittees to deal with specific issues and problems such as safety, risk control training, civil rights, accident review etc.

(4) The duties of the committee shall include the following activities:

- (a) Identifying, evaluating and resolving entity risk exposures.
- (b) Reviewing the hazards and corrective actions identified during the annual Risk Management self-inspection survey and developing effective and timely plans to eliminate those hazards. ~~Preparing, or reviewing the preparation of, the Risk Management self evaluation forms and shall certify their accuracy.~~
- (c) Serving as a liaison between the Fund and the entity at the discretion of the Risk Coordinator.
- (d) Reviewing inspection and other reports from the Fund and where applicable, implementing the proposed recommendations.
- (e) Reviewing and analyzing investigation reports and recommendations regarding all claims, accidents, workers injuries

or near accidents, and making recommendations to entity management at appropriate levels on methods for reducing accidents or claims.

(i) Where appropriate, the committee may recommend disciplinary and/or corrective action for employees who violate safety standards including but not limited to OSHA, health, hazardous materials, fire and entity specific standards and/or other standards, policies or rules that result in claims, accidents, worker injuries or near accidents. Any disciplinary or corrective action imposed shall be taken in accordance with the entity's rules.

(ii) The committee, acting as the agency's Accident Review committee, shall review reports and recommendations from subcommittees and others regarding the driving and accident records of employees and may restrict employees from using entity vehicles or the employee's own vehicle on entity business.

(f) Developing policies related to risk reduction and accident prevention and shall recommend their adoption by entity management.

(g) Conducting appropriate evaluations or audits of entity operations and developing findings and recommendations for resolution of identified problems or risk exposures.

(h) Conducting an annual review or evaluation of the entity's risk reduction efforts and providing the Fund with a copy of this evaluation.

(i) Performing other related duties as assigned by the entity risk coordinator, by entity management, or as requested by the Fund.

R37-1-8. Underwriting Standards.

In accordance with Subsection 63A-4-101(2)(b)(i), covered entities shall comply with the following underwriting standards.

(1) Covered entities shall annually review, update, and submit a Statement of Values to the Fund before July 1st. Furthermore, within 90 days of acquisition, covered entities shall report to the Fund the description and value of any after-acquired personal property in excess of \$20,000 and real property in excess of \$250,000. If a covered entity fails to comply with this standard, the Fund may deny coverage with respect to any loss associated with a non-reported asset.

~~_____~~ ~~(+)~~(2) Covered entities shall accurately complete and annually submit the Risk Management Online Self[-]Inspection [Forms]Survey before June 1st ~~[within established time frames on the forms supplied by the Fund]~~, unless special exemption has been granted by the State Risk Manager.

~~(2)~~(3) Covered entities shall provide all ~~[staff]~~volunteers and employees with training approved by the Fund on ~~[sexual harassment]~~ ~~[(c)]~~unlawful discrimination and harassment~~(b)~~ in the work[-]place and other civil rights and liability issues as required by the Fund. After initial training all covered entities shall provide updated or refresher training to all staff members every two (2) years. For state entities the Fund shall coordinate the required training with the Department of Human Resource Management as appropriate. This training shall be developed and provided by qualified individuals. Covered entities shall keep records of the training, including who provided the training, who attended the training and when they attended it.

~~(3)~~(4) Covered entities shall conduct or shall have conducted for them driver's license verification checks on all new

employees and volunteers who operate entity vehicles or their own vehicles on entity business at time of employment. Covered entities shall, at least annually, verify the status of the driver's license of all employees and volunteers who operate entity vehicles or their own vehicles on entity business.

~~(a)~~(5) Covered entities shall establish procedures to ensure that any employee or volunteer who does not have a valid driver's license is not allowed to operate an entity vehicle or his own vehicle on entity business.

(b)(6) Covered entities shall develop procedures to ensure that records of driver's license checks and the results of these checks shall be kept confidential.

(4)(7) Covered entities shall include in all written job descriptions or other job analysis documents or individual performance plans where use of a vehicle is an essential function of the job, a requirement for maintenance of a valid and appropriate driver's license.

(5)(8) Covered entities shall require and document that all employees and volunteers who operate entity vehicles, or their own vehicles on entity business, ~~as an essential function of the job, complete yearly a Fund approved or provided driver safety course. All other employees who drive vehicles as part of the performance of entity business shall~~ complete a Fund~~-~~approved or Fund-provided driver safety program at the time of initial employment and at least once every ~~three~~two years.

(6)(9) Covered entities shall develop and enforce policies and procedures to deal with problem drivers and other hazardous driving situations. In addition to other appropriate provisions, these policies shall contain the following:

(a) Employees or volunteers who are involved in an at-fault accident, shall not be allowed to operate entity vehicles, or their own vehicles on entity business, beyond a reasonable time, not to exceed thirty days. During this time the employee or volunteer must complete the Fund approved driver safety program in order to maintain driving privilege. This training shall not take the place of any agency imposed discipline~~;~~ or corrective action~~—or counseling~~.

(b) Employees ~~or~~and volunteers who are required to operate entity vehicles or their own vehicles while on entity business shall operate the vehicles within the limits or restrictions of their individual licenses.

(c) ~~Drivers~~Employees and volunteers who are convicted of Driving under the Influence of Alcohol or Drugs, or Reckless Driving, shall not be allowed to operate entity vehicles or their own vehicles on entity business, until their driving privileges are legally restored.

(7)(10) Covered entities shall develop return to work and temporary transitional duty procedures. Entities shall ensure that these procedures are in accordance with the requirements of the "Americans With Disabilities Act", as amended, and other applicable laws and rules. The procedures shall provide for the return of injured employees to work at the earliest appropriate date.

(8)(11) Covered entities shall review the performance standards or evaluation plan of each employee and where appropriate add a standard requiring the use of required safety equipment, adherence to safety standards, or other liability and risk reduction requirements appropriate to the position and duties performed by the employee.

(9)(12) All new construction, remodels, additions to existing facilities shall comply with the adopted editions of the ~~Uniform~~International Building Code, ~~Uniform~~International Fire Code, and other applicable codes. Existing facilities known to be out of compliance with the adopted edition of the ~~Uniform~~International Building Code, ~~Uniform~~International Fire Code and all other applicable codes at the time of construction, shall be brought up to compliance as a condition of insurability, otherwise an appropriate premium surcharge or coverage restriction may be instituted upon reasonable notice and opportunity to correct areas of noncompliance.

KEY: risk management
Date of Enactment or Last Substantive Amendment: ~~March 31, 2006~~2010
Notice of Continuation: June 8, 2007
Authorizing, and Implemented or Interpreted Law: 63A-4-101 et seq.

Commerce, Real Estate
R162-2c
Utah Residential Mortgage Practices
and Licensing Rules

NOTICE OF PROPOSED RULE
 (New Rule)
 DAR FILE NO.: 33372
 FILED: 02/11/2010

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule is threefold. First, it revises the division's procedures and requirements for licensing, certification, and renewal to comply with the nationwide database. Second, it restructures the division's rules to mirror the statutory structure of Title 61, Chapter 2c. Third, it rennumbers the rules using a statutory numbering scheme.

SUMMARY OF THE RULE OR CHANGE: Applicants must use the nationwide database to license with the division and to renew a license. Continuing education requirements for renewal are implemented to comply with the nationwide database regulations. Schools and instructors intending to offer national prelicensing courses must certify through the nationwide database. As of January 1, 2011, schools and instructors intending to offer continuing education must certify through the nationwide database.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2c-103(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The costs to the state for transitioning to the nationwide database have been paid. There are no new costs specific to the implementation of this rule.

◆ **LOCAL GOVERNMENTS:** Local governments are not required to license, renew, or certify with the division. Transitioning onto the nationwide database for licensure, renewal, and certification will not affect local governments.

◆ **SMALL BUSINESSES:** As a result of transitioning onto the nationwide database, small businesses that license, renew, or certify with the division will have to pay fees charged by the nationwide database that exceed what the division has charged in the past. However, these fees have been contemplated and addressed through the legislative process that required the division to use the nationwide database (codified as Section 61-2c-205). There are no additional costs to small businesses other than those already considered.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** As a result of transitioning onto the nationwide database, individuals that license, renew, or certify with the division will have to pay fees charged by the nationwide database that exceed what the division has charged in the past. However, these fees have been contemplated and addressed through the legislative process that required the division to use the nationwide database (codified as Section 61-2c-205). There are no additional costs to small businesses other than those already considered.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Affected persons will pay the fees required by the division and the nationwide database in order to license, renew, or certify.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing changes the rule numbering to coincide with the statutory numbering scheme and revises procedures for licensing and certification to comply with the nationwide database. No fiscal impact to businesses is anticipated from the structural change. Any fiscal impact from adherence to the nationwide database was previously addressed by the Legislature in adopting the nationwide database process.

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 03/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.**R162-2c. Utah Residential Mortgage Practices and Licensing Rules.****R162-2c-101. Title.**

This chapter is known as the "Utah Residential Mortgage Practices and Licensing Rules."

R162-2c-102. Definitions.

(1) The acronym "ALM" stands for associate lending manager.

(2) "Branch manager" means the person assigned to oversee a branch office.

(a) A branch office applying for a license or registering in the nationwide database prior to November 1, 2010 may identify either a mortgage loan originator or an ALM to serve as the branch manager.

(b) As of November 1, 2010, a branch office applying for an initial license or renewing an existing license shall identify an ALM to serve as the branch manager.

(3) "Certification" means authorization from the division to:

(a) establish and operate a school that provides courses for Utah-specific prelicensing education or continuing education; or

(b) function as an instructor for courses approved for Utah-specific prelicensing education or continuing education.

(4) "Credit hour" means 50 minutes of instruction within a 60-minute time period, allowing for a ten-minute break.

(5) "Credit hour equivalent" means the conversion of college course hours to continuing education hours as follows:

(a) One college quarter hour credit may be considered as equivalent to up to 10 classroom hours of education.

(b) One college semester hour credit may be considered as equivalent to up to 15 classroom hours of education.

(6) "Control person" means any individual identified by an entity within the nationwide database as being primarily responsible for directing the management or policies of a company and may be:

(a) a manager;

(b) a managing partner;

(c) a director;

(d) an executive officer; or

(e) an individual who performs a function similar to an individual listed in this Subsection (6).

(7) "Individual applicant" means any individual who applies to obtain or renew a license to practice as a mortgage loan originator, principal lending manager, or associate lending manager.

(8) "Instruction method" means the forum through which the instructor and student interact and may be:

_____ (a) classroom: traditional instruction where instructors and students are located in the same physical location;

_____ (b) classroom equivalent: an instructor-led course where the instructor and students may be in two or more physical locations; or

_____ (c) online: instructor and student interact through an online classroom.

_____ (9) "Instructor applicant" means any individual who applies to obtain or renew certification as an instructor of Utah-specific pre-licensing or continuing education courses.

_____ (10) "Mortgage entity" means any entity that:

_____ (a) engages in the business of residential mortgage lending;

_____ (b) is required to be licensed under Section 61-2c-201; and

_____ (c) operates under a business name or dba that is registered with the Division of Corporations and Commercial Code.

_____ (11) "Nationwide database" means the Nationwide Mortgage Licensing System & Registry.

_____ (12) The acronym "PLM" stands for principal lending manager.

_____ (13) "Qualifying individual" means the PLM who is identified within the nationwide database as the managing principal or qualified person in charge of an entity.

_____ (14) "Restricted license" means any license that is issued subject to a definite period of suspension or terms of probation.

_____ (15) "School" means

_____ (a) any college or university accredited by a regional accrediting agency that is recognized by the United States Department of Education;

_____ (b) any community college;

_____ (c) any vocational-technical school;

_____ (d) any state or federal agency or commission;

_____ (e) any nationally recognized mortgage organization that has been approved by the commission;

_____ (f) any Utah mortgage organization that has been approved by the commission;

_____ (g) any local mortgage organization that has been approved by the commission; or

_____ (h) any proprietary mortgage education school that has been approved by the commission.

_____ (16) "School applicant" means a director or owner of a school who applies to obtain or renew a school's certification.

R162-2c-201. Licensing Procedures.

_____ (1) Mortgage Loan Originator.

_____ (a) To obtain a Utah license to practice as a mortgage loan originator, an individual who is not currently and validly licensed in any state shall:

_____ (i) evidence good moral character pursuant to R162-2c-202(1);

_____ (ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

_____ (iii) successfully complete, within the 12-month period prior to the date of application, 60 hours of pre-licensing education as follows:

_____ (A) 40 hours of Utah-specific education; and

_____ (B) 20 hours as approved by the nationwide database according to the nationwide database outline for national course curriculum;

_____ (iv) take and pass a multiple choice examination;

_____ (A) approved and administered through the nationwide database; and

_____ (B) consisting of a national portion and a Utah-specific portion;

_____ (v) obtain a unique identifier through the nationwide database;

_____ (vi) select the "mortgage loan originator" license type within the nationwide database and complete the corresponding MU4 form;

_____ (vii) identify within the nationwide database the applicant's sponsoring mortgage entity;

_____ (viii) submit to a background check as conducted through the nationwide database;

_____ (ix) provide to the division all court documents related to any past criminal proceeding;

_____ (x) provide to the division complete documentation of any past action taken against the applicant by a regulatory agency; and

_____ (xi) pay all fees through the nationwide database as required by the division and by the nationwide database.

_____ (b) To obtain a Utah license to practice as a mortgage loan originator, an individual who is currently and validly licensed in another state shall:

_____ (i) evidence good moral character pursuant to R162-2c-202(1);

_____ (ii) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

_____ (iii)(A) successfully complete, within the 12-month period prior to the date of application, 40 hours of Utah-specific mortgage loan originator prelicensing education; and

_____ (B) take and pass the Utah-specific portion of the licensing examination;

_____ (iv) provide to the division all court documents related to any past criminal proceeding;

_____ (v) provide to the division complete documentation of any action taken against the applicant by a regulatory agency;

_____ (vi) identify within the nationwide database the applicant's sponsoring mortgage entity;

_____ (vii) request licensure as a mortgage loan originator through the nationwide database; and

_____ (viii) pay all fees through the nationwide database as required by the division and by the nationwide database.

_____ (2) Principal Lending Manager. To obtain a Utah license to practice as a PLM, an individual shall:

_____ (a) qualify as a mortgage loan originator through the nationwide database;

_____ (b) evidence good moral character pursuant to R162-2c-202(1);

_____ (c) evidence competency to transact the business of residential mortgage loans pursuant to R162-2c-202(2);

_____ (d) obtain approval from the division to take the Utah-specific PLM prelicensing education by evidencing that the applicant has, within the five years preceding the date of application, had three years of full-time active experience as a mortgage loan originator;

_____ (e) within the 12-month period preceding the date of application, successfully complete 40 hours of Utah-specific PLM preclicensing education as certified by the division;

_____ (f)(i) if currently licensed in Utah as a mortgage loan originator, take and pass a principal lending manager examination as approved by the commission; or

_____ (ii) if not currently licensed in Utah as a mortgage loan originator, take and pass:

_____ (A) the Utah-specific portion of the mortgage loan originator licensing examination; and

_____ (B) a principal lending manager examination as approved by the commission;

_____ (g) provide to the division all court documents related to any criminal proceeding not disclosed through a previous application or renewal;

_____ (h) provide to the division complete documentation of any action taken against the applicant by a regulatory agency and not disclosed through a previous application or renewal:

_____ (i) register in the nationwide database by:

_____ (i) selecting the "principal lending manager" license type and completing the associated MU4 form; and

_____ (ii) completing an MU2 form to register as the qualifying individual for the entity; and

_____ (j) pay all fees through the nationwide database as required by the division and by the nationwide database.

_____ (3) Associate Lending Manager. To obtain a Utah license to practice as an ALM, an individual shall:

_____ (a) comply with this Subsection (2)(a) through (h);

_____ (b) register in the nationwide database by:

_____ (i) selecting the "associate lending manager" license type and completing the associated MU4 form; and

_____ (ii) if the applicant will serve as a branch manager, completing an MU2 form to identify the applicant as a control person for the branch office; and

_____ (c) pay all fees through the nationwide database as required by the division and by the nationwide database.

_____ (4) Mortgage Entity. To obtain a Utah license to operate as a mortgage entity, a person shall:

_____ (a) establish that all control persons meet the requirements for moral character pursuant to R162-2c-202(1);

_____ (b) establish that all control persons meet the requirements for competency pursuant to R162-2c-202(2);

_____ (c) register any assumed business name or dba with the Division of Corporations and Commercial Code;

_____ (d) register the entity in the nationwide database by:

_____ (i) submitting an MU1 form that includes:

_____ (A) all required identifying information;

_____ (B) the name of the PLM who will serve as the entity's qualifying individual;

_____ (C) the name of any individuals who may serve as control persons; and

_____ (D) the entity's registered agent; and

_____ (ii) create a sponsorship through the nationwide database that identifies the mortgage loan originator(s) sponsored by the entity;

_____ (e) pay all fees through the nationwide database as required by the division and by the nationwide database;

_____ (f) provide to the division proof that any assumed business name is registered with the Division of Corporations and Commercial Code;

_____ (g) provide to the division all court documents related to any criminal proceeding not disclosed through a previous application or renewal and involving any control person;

_____ (h) provide to the division complete documentation of any action taken by a regulatory agency against:

_____ (i) the entity itself; or

_____ (ii) any control person; and

_____ (iii) not disclosed through a previous application or renewal; and

_____ (i) provide to the division a corporate resolution or equivalent document authorizing the PLM to use the entity's name.

_____ (5) Branch Office. To obtain a Utah license to operate a branch office, a person shall register the branch office in the national database by:

_____ (a) submitting an MU3 form that includes:

_____ (i) all required identifying information; and

_____ (ii)(A) if registering prior to November 1, 2010, the name of the mortgage loan originator or ALM who will serve as the branch manager; or

_____ (B) if registering on or after November 1, 2010, the name of the ALM who will serve as the branch manager;

_____ (b) creating a sponsorship through the nationwide database that identifies the mortgage loan originator(s) who will work from the branch office; and

_____ (c) paying all fees through the nationwide database as required by the division and by the nationwide database.

_____ (6) Licenses not transferable.

_____ (a) A licensee shall not transfer the licensee's license to any other person.

_____ (b) A licensee shall not allow any other person to work under the licensee's license.

_____ (c) If a change in corporate structure of a licensed entity creates a separate and unique legal entity, that entity shall obtain a unique license, and shall not operate under any existing license.

_____ (7) Expiration of test results.

_____ (a) Scores for the mortgage loan originator licensing examination shall be valid for five years.

_____ (b) Scores for the PLM exam shall be valid for 90 days.

_____ (8) Incomplete PLM or ALM application.

_____ (a) The division may grant a 30-day extension of the 90-day application window upon a finding that:

_____ (i) an applicant has made a good faith attempt to submit a completed application; but

_____ (ii) requires more time to provide missing documents or to obtain additional information.

_____ (b) If the applicant does not supply the required documents or information within the 30-day extension, the division may deny the application as incomplete.

_____ (9) Nonrefundable fees. All fees are nonrefundable, regardless of whether an application is granted or denied.

_____ (10) Other business names.

_____ (a) The division shall not approve a license for any person operating under an assumed business name that poses a reasonable likelihood of misleading the public into thinking that the person is:

(i) endorsed by the division, the state government, or the federal government;

(ii) an agency of the state or federal government; or

(iii) not engaged in the business of residential mortgage loans.

(b) A mortgage entity that operates under a dba shall obtain a separate entity license for the dba.

R162-2c-202. Qualifications for Licensure.

(1) Character. Individual applicants and control persons shall evidence good moral character, honesty, integrity, and truthfulness.

(a) An applicant shall be denied a license for:

(i) criminal history as outlined in Section 61-2c-203(1) (a)-(f);

(ii) any misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in:

(A) a conviction occurring within three years of the date of application;

(B) a plea agreement occurring within three years of the date of application; or

(C) a jail or prison release date falling within three years of the date of application.

(b) An applicant may be denied a license or issued a restricted license for incidents in the applicant's past that reflect negatively on the applicant's moral character, honesty, integrity, and truthfulness. In evaluating an applicant for these qualities, the division and commission may consider any evidence, including the following:

(i) criminal convictions or plea agreements entered more than three years prior to the date of application, with particular consideration given to convictions or plea agreements relative to charges that involve moral turpitude;

(ii) the circumstances that led to any criminal conviction or plea agreement under consideration;

(iii) past acts related to honesty or moral character, with particular consideration given to any such acts involving the business of residential mortgage loans;

(iv) dishonest conduct that would be grounds under Utah law for sanctioning an existing licensee;

(v) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;

(vi) court findings of fraudulent or deceitful activity;

(vii) evidence of non-compliance with court orders or conditions of sentencing;

(viii) evidence of non-compliance with:

(A) terms of a diversion agreement still subject to prosecution;

(B) a probation agreement; or

(C) a plea in abeyance; or

(ix) failure to pay taxes or child support obligations.

(2) Competency. Individual applicants and control persons shall evidence competency to transact the business of residential mortgage loans. In evaluating an applicant for competency, the division and commission may consider any evidence that reflects negatively on an applicant's competency, including:

(a) civil judgments, with particular consideration given to any such judgments involving the business of residential mortgage loans;

(b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;

(c) failure of any previous mortgage loan business in which the individual was engaged, as well as the circumstances surrounding that failure;

(d) evidence as to the applicant's business management and employment practices, including the payment of employees, independent contractors, and third parties;

(e) the extent and quality of the applicant's training and education in mortgage lending;

(f) the extent and quality of the applicant's training and education in business management;

(g) the extent of the applicant's knowledge of the Utah Residential Mortgage Practices Act;

(h) evidence of disregard for licensing laws;

(i) evidence of drug or alcohol dependency;

(j) sanctions placed on professional licenses; and

(k) investigations conducted by regulatory agencies relative to professional licenses.

(3) Age. An applicant shall be at least 18 years of age.

(4) Minimum education. An applicant shall have a high school diploma, GED, or equivalent education as approved by the commission.

R162-2c-203. Utah-Specific Education Certification.

(1) School certification.

(a) A school offering Utah-specific education shall certify with the division before providing any instruction.

(b) To certify, a school applicant shall prepare and supply the following information to the division:

(i) contact information, including

(A) name, phone number, and address of the physical facility;

(B) name, phone number, and address of any school director;

(C) name, phone number, and address of any school owner; and

(D) an e-mail address where correspondence will be received by the school;

(ii) evidence that all school directors and owners meet the moral character requirements outlined in R162-2c-202(1) and the competency requirements outlined in R162-2c-202(2);

(iii) school description, including

(A) type of school; and

(B) description of the school's physical facilities;

(iv) list of courses offered;

(v) proof that each course has been certified by the division;

(vi) list of the instructor(s), including any guest lecturer(s), who will be teaching each course;

(vii) proof that each instructor

(A) has been certified by the division;

(B) is qualified as a guest lecturer; or

(C) is exempt from certification under Subsection 203(5)

(f);

_____ (viii) schedule of courses offered, including the days, times, and locations of classes;

_____ (ix) statement of attendance requirements as provided to students;

_____ (x) refund policy as provided to students;

_____ (xi) disclaimer as provided to students; and

_____ (xii) criminal history disclosure statement as provided to students.

_____ (c) Minimum standards.

_____ (i) The course schedule may not provide or allow for more than eight credit hours per student per day.

_____ (ii) The attendance statement shall require that each student attend at least 90% of the scheduled class time.

_____ (iii) The disclaimer shall adhere to the following requirements:

_____ (A) be typed in all capital letters at least 1/4 inch high; and

_____ (B) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the mortgage entities that may be soliciting for licensees at this school."

_____ (iv) The criminal history disclosure statement shall

_____ (A) be provided to students while they are still eligible for a full refund; and

_____ (B) clearly inform the student that upon application with the nationwide database, the student will be required to:

_____ (I) accurately disclose the student's criminal history according to the licensing questionnaire provided by the nationwide database and authorized by the division; and

_____ (II) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;

_____ (C) clearly inform the student that the division will consider the applicant's criminal history pursuant to R162-2c-202(1) in making a decision on the application; and

_____ (D) include a section for the student's attestation that the student has read and understood the disclosure.

_____ (d) Within 15 calendar days after the occurrence of any material change in the information outlined in Subsection (1), the school shall provide to the division written notice of that change.

_____ (e) A school certification expires 24 months from the date of issuance and must be renewed before the expiration date in order for the school to remain in operation. To renew, a school applicant shall:

_____ (i) complete a renewal application as provided by the division; and

_____ (ii) pay a nonrefundable renewal fee.

_____ (2) Utah-specific Course Certification.

_____ (a) A school providing a Utah-specific course shall certify the course with the division before offering the course to students.

_____ (b) Application shall be made at least 30 days prior to the date on which a course requiring certification is proposed to begin.

_____ (c) To certify a course, a school applicant shall prepare and supply the following information:

_____ (i) instruction method;

_____ (ii) outline of the course, including:

_____ (A) a list of subjects covered in the course;

_____ (B) reference to the approved course outline for each subject covered;

_____ (C) length of the course in terms of hours spent in classroom instruction;

_____ (D) number of course hours allocated for each subject;

_____ (E) at least three learning objectives for every hour of classroom time;

_____ (F) instruction format for each subject, i.e. lecture or media presentation;

_____ (G) name and credentials of any guest lecturer; and

_____ (H) list of topic(s) and session(s) taught by any guest lecturer;

_____ (ii) a list of the titles, authors, and publishers of all required textbooks;

_____ (iii) copies of any workbook used in conjunction with a non-lecture method of instruction;

_____ (iv) the number of quizzes and examinations; and

_____ (v) the grading system, including methods of testing and standards of grading.

_____ (d) Minimum standards.

_____ (i) All texts, workbooks, supplement pamphlets and other materials shall be appropriate, current, accurate, and applicable to the required course outline.

_____ (ii) The course shall cover all of the topics set forth in the associated outline.

_____ (iii) The lecture method shall be used for at least 50% of course instruction unless the division gives special approval otherwise.

_____ (iv) A school applicant that uses a non-lecture method for any portion of course instruction shall provide to the student:

_____ (A) an accompanying workbook as approved by the division for the student to complete during the instruction; and

_____ (B) a certified instructor available within 48 hours of the non-lecture instruction to answer student questions.

_____ (v) The division shall not approve an online education course unless:

_____ (A) there is a method to ensure that the enrolled student is the person who actually completes the course;

_____ (B) the time spent in actual instruction is equivalent to the credit hours awarded for the course; and

_____ (C) there is a method to ensure that the student comprehends the material.

_____ (3) Course expiration and renewal.

_____ (a) A certification for a 40-hour Utah-specific prelicensing course expires two years from the date of certification.

_____ (b) As of January 1, 2010, a 20-hour Utah-specific prelicensing course certified by the division shall be deemed expired, regardless of any expiration date printed on the certification.

_____ (c)(i) A division-approved continuing education course shall expire on whichever of the following occurs first:

_____ (A) the expiration date printed on the certificate; or

_____ (B) December 31, 2010.

_____ (ii) To renew a division-approved continuing education course, a school applicant shall, within six months following the expiration date,

_____ (A) complete a renewal form as provided by the division; and

_____ (B) pay a nonrefundable renewal fee.

(iii) To certify a continuing education course that has been expired for more than six months, a school applicant shall resubmit it as if it were a new course.

(iv) After a continuing education course has been renewed three times, a school applicant shall submit it for certification as if it were a new course.

(d) The division shall cease reviewing and certifying courses for continuing education on December 30, 2010.

(e) As of January 1, 2011, any course offered for continuing education shall be approved through the nationwide database.

(4) Education committee

(a) The commission may appoint an education committee to:

(i) assist the division and the commission in approving course topics; and

(ii) make recommendations to the division and the commission about:

(A) whether a particular course topic is relevant to residential mortgage principles and practices; and

(B) whether a particular course topic would tend to enhance the competency and professionalism of licensees.

(b) The division and the commission may accept or reject the education committee's recommendation on any course topic.

(5) Instructor certification.

(a) Except as provided in Subsection (e), an instructor shall certify with the division before teaching a Utah-specific course.

(b) Application shall be made at least 30 days prior to the date on which the instructor proposes to begin teaching.

(c) To certify as an instructor of mortgage loan originator prelicensing courses, an individual shall provide evidence of:

(i) a high school diploma or its equivalent;

(ii)(A) at least five years of experience in the residential mortgage industry within the past ten years; or

(B) successful completion of appropriate college-level courses specific to the topic proposed to be taught;

(iii)(A) a minimum of twelve months of full-time teaching experience;

(B) part-time teaching experience that equates to twelve months of full-time teaching experience; or

(C) participation in instructor development workshops totaling at least two days in length; and

(iv) having passed, within the six-month period preceding the date of application and with a minimum score of 85%, the state portion of the national licensing examination.

(d) To certify as an instructor of PLM prelicensing courses, an individual shall:

(i) meet the general requirements of this Subsection 5(c); and

(ii) meet the specific requirements for any of the following courses the individual proposes to teach.

(A) Management of a Residential Mortgage Loan Office: at least two years practical experience in managing an office engaged in the business of residential mortgage loans.

(B) Mortgage Lending Law: two years practical experience in the field of real estate law; and either:

(I) current active membership in the Utah Bar Association; or

(II) degree from an American Bar Association accredited law school.

(C) Advanced Appraisal:

(I) at least two years practical experience in appraising; and

(II) current state-certified appraiser license.

(D) Advanced Finance:

(I) at least two years practical experience in real estate finance; and

(II) association with a lending institution as a loan originator.

(e) To certify as an instructor of continuing education courses, an individual shall demonstrate:

(i) knowledge of the subject matter of the course proposed to be taught, as evidenced by:

(A) at least three years of experience in a profession, trade, or technical occupation in a field directly related to the course;

(B) a bachelor or higher degree in the field of real estate, business, law, finance, or other academic area directly related to the course; or

(C) a combination of experience and education acceptable to the division; and

(ii) ability to effectively communicate the subject matter, as evidenced by:

(A) a state teaching certificate;

(B) successful completion of college courses acceptable to the division in the field of education;

(C) a professional teaching designation from the National Association of Mortgage Brokers, the Real Estate Educators Association, the Mortgage Bankers Association of America, or a similar association; or

(D) other evidence acceptable to the division that the applicant has the ability to teach in schools, seminars, or equivalent settings.

(f) The following instructors are not required to be certified by the division:

(i) a guest lecturer who:

(A) is an expert in the field on which instruction is given;

(B) provides to the division a resume or similar documentation evidencing satisfactory knowledge, background, qualifications, and expertise; and

(C) teaches no more than 20% of the course hours;

(ii) a college or university faculty member who evidences academic training, industry experience, or other qualifications acceptable to the division;

(iii) an individual who:

(A) evidences academic training, industry experience, or other qualifications satisfactory to the division; and

(B) receives approval from the commission; and

(iv) a division employee.

(g) Renewal.

(i) An instructor certification for prelicensing education expires 24 months from the date of issuance and shall be renewed before the expiration date. To renew, an applicant shall submit to the division:

(A) evidence of having taught at least 20 hours of classroom instruction in a certified mortgage education course during the preceding two years;

(B) evidence of having attended an instructor development workshop sponsored by the division during the preceding two years;

(C) evidence of having successfully completed 12 hours of live education courses taken in real estate financing related subjects; and

(D) a renewal fee as required by the division.

(ii) An instructor certification for division-approved continuing education expires 24 months from the date of issuance and shall be renewed before the expiration date. To renew, an applicant shall submit to the division:

(A) evidence of having taught at least one class in the subject area for which renewal is sought within the year preceding the date of application; or

(B)(I) written explanation for why the instructor has not taught a class in the subject area within the past year; and

(II) documentation to evidence that the applicant maintains the required expertise in the subject matter; and

(C) a renewal fee as required by the division.

(iii) An instructor certification issued by the division on or before December 31, 2010 for continuing education shall expire December 31, 2010.

(iv) The division shall cease certifying instructors for continuing education on December 30, 2010.

(v) As of January 1, 2011, any instructor proposing to teach a continuing education course shall certify through the nationwide database.

(h) Reinstatement.

(i) An instructor may reinstate an expired certification within 30 days of expiration by:

(A) complying with Subsection (g) as applicable to the type of course taught; and

(B) paying an additional non-refundable late fee.

(ii) Until six months following the date of expiration, an instructor may reinstate a certification that has been expired more than 30 days by:

(A) complying with Subsection (g) as applicable to the type of course taught;

(B) paying an additional non-refundable late fee; and

(C) completing six classroom hours of education related to residential mortgages or teaching techniques.

(6)(a) The division may monitor schools and instructors for:

(i) adherence to course content;

(ii) quality of instruction and instructional materials; and

(iii) fulfillment of affirmative duties as outlined in R162-2c-301(6)(a) and R162-2c-301(7)(a).

(b) To monitor schools and instructors, the division may:

(i) collect and review evaluation forms; or

(ii) assign an evaluator to attend a course and make a report to the division.

R162-2c-204. License Renewal.

(1) Renewal period.

(a) Any person who holds an active license as of October 31 shall renew by December 31 of the same calendar year.

(b) Any person who obtains a license on or after November 1 shall renew by December 31 of the following calendar year.

(2) Qualification for Renewal.

(a) Character.

(i) Individuals and control persons applying for a renewed license shall evidence that they maintain good moral character, honesty, integrity, and truthfulness as required for initial licensure.

(ii) An individual applying for a renewed license may not have:

(A) a felony that resulted in a conviction or plea agreement during the renewal period; or

(B) a finding of fraud, misrepresentation, or deceit entered against the applicant by a court of competent jurisdiction or a government agency and occurring within the renewal period.

(iii) The division may deny an individual applicant a renewed license upon evidence, as outlined in R162-2c-202(1)(b), of circumstances that reflect negatively on the applicant's character, honesty, integrity, or truthfulness and that:

(A) occurred during the renewal period; or

(B) were not disclosed and considered in a previous application or renewal.

(iv) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standards for character, honesty, integrity, and truthfulness required of individual applicants.

(b) Competency.

(i) Individual applicants and control persons shall evidence that they maintain the competency required for initial licensure.

(ii) The division may deny an individual applicant a renewed license upon evidence, as outlined in R162-2c-202(2), of circumstances that reflect negatively on the applicant's competency and that:

(A) occurred during the renewal period; or

(B) were not disclosed and considered in a previous application or renewal.

(iii) The division may deny an entity applicant a renewed license upon evidence that a control person fails to meet the standard for competency required of individual applicants.

(c) Continuing education.

(i) Beginning January 1, 2011, an individual who holds an active license as of October 31 of the calendar year shall complete:

(A) eight hours of non-duplicative continuing education approved through the nationwide database;

(B) within the renewal period ending December 31 of the same calendar year; and

(C) consisting of:

(1) three hours federal laws and regulations;

(2) two hours ethics (fraud, consumer protection, fair lending);

(3) two hours non-traditional; and

(4) one hour elective.

(ii) An individual who obtains a license on or after November 1 of the calendar year is exempt from continuing education for the renewal period ending December 31 of the same calendar year.

(iii) Continuing education courses shall be completed within the renewal period.

(iv) Continuing education courses shall be non-duplicative of courses taken in the preceding renewal period.

(3) Renewal procedures for the renewal period ending December 31, 2010. In order to renew by December 31, 2010:

(a) an individual licensee shall:

(i) evidence having completed a minimum of

(A) 20 hours of prelicensing education as approved by:

(I) the division; or

(II) the nationwide database; or

(B) 28 hours of division-approved continuing education in the two previous renewal cycles;

(ii) evidence having taken and passed a Utah licensing examination as approved by the commission;

(iii) register in the nationwide database by May 31, 2010;

(iv) evidence having completed, since the date of last renewal, continuing education:

(A)(I) totaling 14 hours if licensed as of October 1, 2009;
or

(II) totaling eight hours if licensed on or after October 1, 2009;

(B) approved by either the division or the nationwide database; and

(C) non-duplicative of any hours required to satisfy the registration education requirement under this Subsection (3)(a)(i);

(v) take and pass the national portion of the licensing examination as approved by the nationwide database;

(vi) submit to the division the jurisdiction-specific documents and information required by the nationwide database; and

(vii) submit through the nationwide database:

(A) a request for renewal; and

(B) all fees as required by the division and by the nationwide database.

(b) an entity or dba licensee shall:

(i) register in the nationwide database by May 31, 2010;

(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database;

(iii) submit through the nationwide database a request for renewal; and

(iv) pay through the nationwide database all renewal fees required by the division and by the nationwide database.

(c) a branch office licensee shall:

(i) comply with this Subsection (3)(b); and

(ii) if registered in the nationwide database with a mortgage loan originator as the branch manager, identify an ALM who will serve as the branch manager.

(4) Renewal procedures for the renewal period ending December 31, 2011. In order to renew by December 31, 2011,

(a) an individual licensee shall:

(i) evidence having completed, since the date of last renewal, continuing education:

(A) as required by Subsection (2)(c);

(B) non-duplicative of any continuing education hours taken in the previous renewal cycle; and

(C) approved by the nationwide database;

(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database; and

(iii) submit through the nationwide database:

(A) a request for renewal; and

(B) all fees as required by the division and by the nationwide database.

(b) an entity, branch office, or dba licensee shall:

(i) submit through the nationwide database a request for renewal;

(ii) submit to the division the jurisdiction-specific documents and information required by the nationwide database; and

(iii) pay through the nationwide database all renewal fees required by the division and by the nationwide database.

(5) Reinstatement.

(a) To reinstate an expired license, a person shall, by February 28 of the calendar year following the date on which the license expired:

(i) comply with all requirements for an on-time renewal; and

(ii) pay through the nationwide database all late fees and other fees as required by the division and the nationwide database.

(b) A person may not reinstate a license after February 28. To obtain a license after the reinstatement period described in Subsection (5)(a) expires, a person shall reapply as a new applicant.

R162-2c-205. Notification of Changes.

(1) An individual licensee who is registered with the nationwide database shall:

(a) enter into the national database any change in the following:

(i) name of licensee;

(ii) contact information for licensee, including:

(A) mailing address;

(B) telephone number(s); and

(C) e-mail address(es);

(iii) sponsoring entity; and

(iv) license status (sponsored or non-sponsored); and

(b) pay all change fees charged by the national database and the division.

(2) An entity licensee shall:

(a) enter into the national database any change in the following:

(i) name of licensee;

(ii) contact information for licensee, including

(A) mailing address;

(B) telephone number(s);

(C) fax number(s); and

(D) e-mail address(es);

(iii) sponsorship information;

(iv) control person(s);

(v) qualifying individual; and

(vi) license status (sponsored or non-sponsored); and

(b) pay any change fees charged by the national database and the division.

R162-2c-301. Unprofessional Conduct.

(1) Mortgage loan originator.

(a) Affirmative duties. A mortgage loan originator who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator shall:

(i) solicit business and market products solely in the name of the mortgage loan originator's sponsoring entity;

(ii) conduct the business of residential mortgage loans solely in the name of the mortgage loan originator's sponsoring entity;

(iii) remit to any third party service provider the fee(s) that have been collected from a borrower on behalf of the third party service provider, including:

(A) appraisal fees;

(B) inspection fees;

(C) credit reporting fees; and

(D) insurance premiums;

(iv) turn all records over to the sponsoring entity for proper retention and disposal;

(v) comply with a division request for information within 10 business days of the date of the request; and

(vi) retain certificates to prove completion of continuing education requirements for at least two years from the date of renewal.

(b) Prohibited conduct. A mortgage loan originator who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage loan originator may not:

(i) charge for services not actually performed;

(ii) require a borrower to pay more for third party services than the actual cost of those services;

(iii) withhold, without reasonable justification, payment owed to a third party service provider in connection with the business of residential mortgage loans;

(iv) alter an appraisal of real property; or

(v) unless acting under a valid real estate license and not under a mortgage license, perform any act that requires a real estate license under Title 61, Chapter 2, including:

(A) providing a buyer or seller of real estate with a comparative market analysis;

(B) assisting a buyer or seller to determine the offering price or sales price of real estate;

(C) representing or assisting a buyer or seller of real estate in negotiations concerning a possible sale of real estate;

(D) advertising the sale of real estate by use of any advertising medium;

(E) preparing, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property; or

(F) altering, on behalf of a buyer or seller, a Real Estate Purchase Contract, addendum, or other contract for the sale of real property.

(c) A mortgage loan originator does not engage in an activity requiring a real estate license where the mortgage loan originator:

(i) offers advice about the consequences that the terms of a purchase agreement might have on the terms and availability of various mortgage products;

(ii) owns real property that the mortgage loan originator offers "for sale by owner"; or

(ii) advertises mortgage loan services in cooperation with a "for sale by owner" seller where the advertising clearly identifies:

(A) the owner's contact information;

(B) the owner's role;

(C) the mortgage loan originator's contact information; and

(D) the specific mortgage-related services that the mortgage loan originator may provide to a buyer; or

(iii) advertises in conjunction with a real estate brokerage where the advertising clearly identifies the:

(A) contact information for the brokerage;

(B) role of the brokerage;

(C) mortgage loan originator's contact information; and

(D) specific mortgage-related services that the mortgage loan originator may provide to a buyer.

(2) PLM.

(a) Affirmative duties. A PLM who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A PLM shall:

(i) be accountable for the affirmative duties outlined in Subsection (1)(a);

(ii) provide to all sponsored mortgage loan originators and unlicensed staff specific written policies as to their affirmative duties and prohibited activities, as established by:

(A) federal law governing residential mortgage lending;

(B) state law governing residential mortgage lending and including the Utah Residential Mortgage Practices Act; and

(C) administrative rules promulgated by the division under authority of the Utah Residential Mortgage Practices Act;

(iii) exercise reasonable supervision over all sponsored mortgage loan originators and over all unlicensed staff by:

(A) directing the details and means of their work activities;

(B) requiring that they read and agree to comply with the Utah Residential Mortgage Practices Act and the rules promulgated thereunder;

(C) requiring that they conduct all residential mortgage loan business in the name of the sponsoring entity; and

(D) prohibiting unlicensed staff from engaging in any activity that requires licensure;

(iv) establish and enforce written policies and procedures for ensuring the independent judgment of any underwriter employed by the PLM's sponsoring entity;

(v) establish and follow procedures for responding to all consumer complaints;

(vi) personally review any complaint relating to conduct by a sponsored mortgage loan originator or unlicensed staff member that might constitute a violation of federal law, state law, or division administrative rules;

(vii) establish and maintain a quality control plan that:

(A) complies with HUD/FHA requirements;

(B) complies with Freddie Mac and Fannie Mae requirements; or

(C) includes, at a minimum, procedures for:

(1) performing pre-closing and post-closing audits of at least ten percent of all loan files; and

(2) taking corrective action for problems identified through the audit process; and

_____ (viii) review for compliance with applicable federal and state laws all advertising and marketing materials and methods used by:

_____ (A) the PLM's sponsoring entity; and

_____ (B) the entity's sponsored mortgage loan originators.

_____ (b) A PLM who hires ALM(s) as needed to assist in accomplishing the required affirmative duties shall:

_____ (i) actively supervise any such ALM; and

_____ (ii) remain personally responsible and accountable for adequate supervision of all sponsored mortgage loan originators and unlicensed staff.

_____ (c) Prohibited conduct. A PLM who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A PLM may not engage in any activity that is prohibited for a mortgage loan originator or a mortgage entity.

_____ (d) An ALM who acts as a branch manager:

_____ (i) shall be subject to the same affirmative duties as a PLM; and

_____ (ii) may not engage in any activity that is prohibited for a mortgage loan originator or a mortgage entity.

_____ (4) Mortgage Entity.

_____ (a) Affirmative duties. A mortgage entity that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A mortgage entity shall:

_____ (i) remit to any third party service provider the fee(s) that have been collected from a borrower on behalf of the third party service provider, including:

_____ (A) appraisal fees;

_____ (B) inspection fees;

_____ (C) credit reporting fees; and

_____ (D) insurance premiums;

_____ (ii) retain and dispose of records according to R162-2c-302; and

_____ (iii) comply with a division request for information within 10 business days of the date of the request.

_____ (b) Prohibited conduct. A mortgage entity shall be subject to discipline under Sections 61-2c-401 through 405 if:

_____ (i) any sponsored mortgage loan originator or PLM engages in any prohibited conduct; or

_____ (ii) any unlicensed employee performs an activity for which licensure is required.

_____ (5) Reporting Unprofessional Conduct.

_____ (a) The division shall report in the nationwide database any disciplinary action taken against a licensee for unprofessional conduct.

_____ (b) The division may report in the nationwide database a complaint that the division has assigned for investigation.

_____ (c) A licensee may challenge the information entered by the division into the nationwide database pursuant to Section 63G-2-603.

_____ (6) School.

_____ (a) Affirmative duties. A school that fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. A school shall:

_____ (i) within 15 calendar days of any material change in the information outlined in R162-2c-204(1)(b), provide to the division written notice of the change;

_____ (ii) with regard to the criminal history disclosure required under R162-2c-203(1)(b)(xi),

_____ (A) obtain each student's signature before allowing the student to participate in course instruction;

_____ (B) retain each signed criminal history disclosure for a minimum of two years; and

_____ (C) make any signed criminal history disclosure available to the division upon request;

_____ (iii) maintain a record of each student's attendance for a minimum of five years after enrollment;

_____ (iv) upon request of the division, substantiate any claim made in advertising materials;

_____ (v) maintain a high quality of instruction;

_____ (vi) adhere to all state laws and regulations regarding school and instructor certification;

_____ (vii) provide the instructor(s) for each course with the required course content outline;

_____ (viii) require instructors to adhere to the approved course content;

_____ (ix)(A) at the conclusion of each class, require each student to complete a standard evaluation form as provided by the division; and

_____ (B) return the completed evaluation forms to the division in a sealed envelope within 10 days of the last class session; and

_____ (x) comply with a division request for information within 10 business days of the date of the request.

_____ (b) Prohibited conduct. A school that engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. A school may not:

_____ (i) accept payment from a student without first providing to that student the information outlined in R162-2c-203(1)(b)(ix) through (xii);

_____ (ii) continue to operate after the expiration date of the school certification and without renewing;

_____ (iii) continue to offer a course after its expiration date and without renewing;

_____ (iv) allow an instructor whose instructor certification has expired to continue teaching;

_____ (v) allow an individual student to earn more than eight credit hours of education in a single day;

_____ (vi) award credit to a student who has not complied with the minimum attendance requirements;

_____ (vii) allow a student to obtain credit for all or part of a course by taking an examination in lieu of attending the course;

_____ (viii) give valuable consideration to a person licensed with the division under Section 61-2c for referring students to the school;

_____ (ix) accept valuable consideration from a person licensed with the division under Section 61-2c for referring students to a licensed mortgage entity;

_____ (x) allow licensed mortgage entities to solicit prospective mortgage loan originators at the school during class time or during the 10-minute break that is permitted during each hour of instruction;

_____ (xi) require a student to attend any program organized for the purpose of solicitation;

_____ (xii) make a misrepresentation in its advertising;

_____ (xiii) advertise in any manner that denigrates the mortgage profession;

_____ (xiv) advertise in any manner that disparages a competitor's services or methods of operation;

_____ (xv) advertise or teach any course that has not been certified by the division;

_____ (xvi) advertise a course with language that indicates division approval is pending or otherwise forthcoming; or

_____ (xvii) attempt by any means to obtain or to use in its educational offerings the questions from any mortgage examination unless the questions have been dropped from the current bank of exam questions.

_____ (7) Instructor.

_____ (a) Affirmative duties. An instructor who fails to fulfill any affirmative duty shall be subject to discipline under Sections 61-2c-401 through 405. An instructor shall:

_____ (i) adhere to the approved outline for any course taught;

_____ (ii)(A) at the conclusion of each class, require each student to complete a standard evaluation form as provided by the division; and

_____ (B) return the completed evaluation forms to the division in a sealed envelope within 10 days of the last class session; and

_____ (iii) comply with a division request for information within 10 business days of the date of the request.

_____ (b) Prohibited conduct. An instructor who engages in any prohibited activity shall be subject to discipline under Sections 61-2c-401 through 405. An instructor may not:

_____ (i) continue to teach any course after the instructor's certification has expired and without renewing the instructor's certification; or

_____ (ii) continue to teach any course after the course has expired and without renewing the course certification.

R162-2c-302. Requirements for Record Retention and Disposal.

_____ (1) Record Retention.

_____ (a) An entity licensed under the Utah Residential Mortgage Practices Act shall maintain for the period set forth in Section 61-2c-302 the following records:

_____ (i) application forms;

_____ (ii) disclosure forms;

_____ (iii) truth-in-lending forms;

_____ (iv) credit reports and the explanations therefor;

_____ (v) conversation logs;

_____ (vi) verifications of employment, paycheck stubs, and tax returns;

_____ (vii) proof of legal residency, if applicable;

_____ (viii) appraisals, appraisal addenda, and records of communications between the appraiser and the registrant, licensee, and lender;

_____ (ix) underwriter denials;

_____ (x) notices of adverse action;

_____ (xi) loan approval; and

_____ (xii) all other records required by underwriters involved with the transaction or provided to a lender.

_____ (b) Records may be maintained electronically if the storage system complies with Title 46 Chapter 04, Utah Uniform Electronic Transactions Act.

_____ (c) A licensed entity shall make all records available to the division pursuant to Section 61-2c-302(3).

_____ (d) An individual who terminates sponsorship with an entity shall turn over to the entity any records in the individual's possession at the time of termination.

_____ (2) Record Disposal. A person who disposes of records at the end of the retention period shall take reasonable measures to safeguard personal information as that term is defined in Section 13-44-102.

_____ (3) Responsible Party.

_____ (a) If a licensed entity is actively engaged in the business of residential mortgage loans, the PLM is responsible for proper retention and disposal of records.

_____ (b) If a licensed entity ceases doing business in Utah, the control person(s) as of its last day of operation are responsible for proper retention and disposal of records.

R162-2c-401. Administrative Proceedings.

_____ (1) Request for agency action.

_____ (a) If completed in full and submitted in compliance with the rules promulgated by the division, the following shall be deemed a request for agency action under Utah Administrative Procedures Act, Section 63G-4-102, et seq.:

_____ (i) an original or renewal application for a license;

_____ (ii) an original or renewal application for a school certification;

_____ (iii) an original or renewal application for a course certification; and

_____ (iv) an original or renewal application for an instructor certification.

_____ (b) Any other request for agency action shall:

_____ (i) be in writing;

_____ (ii) be signed by the requestor; and

_____ (iii) comply with Utah Administrative Procedures Act, Section 63G-4-201(3).

_____ (c) The following shall not be deemed a request for agency action under Utah Administrative Procedures Act, Section 63G-4-102, et seq., even if submitted in compliance with this Subsection (1)(b):

_____ (i) a complaint against a licensee; and

_____ (ii) a request that the division commence an investigation or a disciplinary action against a licensee.

_____ (2) Formal adjudicative proceedings. An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted as a formal adjudicative proceeding.

_____ (3) Informal adjudicative proceedings.

_____ (a) All adjudicative proceedings as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as informal adjudicative proceedings. These informal proceedings shall include:

_____ (i) a proceeding on an original or renewal application for a license;

_____ (ii) a proceeding on an original or renewal application for a school, instructor, or course certification; and

_____ (iii) except as provided in Section 63G-4-502, a proceeding for disciplinary action commenced by the division pursuant to Section 63G-4-201(2) following investigation of a complaint.

_____ (b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Residential Mortgage Practices and Licensing Act or by these rules.

_____ (4) Hearings not allowed. A hearing may not be held in the following informal adjudicative proceedings:

_____ (a) the issuance of an original or renewed license when the application has been approved by the division;

_____ (b) the issuance of an original or renewed school certification, instructor certification, or course certification when the application has been approved by the division;

_____ (c) the issuance of any interpretation of statute, rule, or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the division;

_____ (d) the denial of an application for an original or renewed license on the ground that it is incomplete;

_____ (e) the denial of an application for an original or renewed school, instructor, or course certification on the ground that it does not comply with the requirements stated in these rules; or

_____ (f) a proceeding on an application for an exemption from a continuing education requirement.

_____ (5) Hearings required. A hearing before the commission shall be held in the following circumstances:

_____ (a) a proceeding commenced by the division for disciplinary action pursuant to Section 61-2c-402 and Section 63G-4-201(2);

_____ (b) an appeal of a division order denying or restricting a license; and

_____ (c) an application that presents unusual circumstances such that the division determines that the application should be heard by the commission.

_____ (6) Procedures for hearings in informal adjudicative proceedings.

_____ (a) The division director shall be the presiding officer for any informal adjudicative proceeding unless the matter has been delegated to the chairperson of the commission or an administrative law judge.

_____ (b) All informal adjudicative proceedings shall adhere to procedures as outlined in:

_____ (i) Utah Administrative Procedures Act Title 63G, Chapter 4;

_____ (ii) Utah Administrative Code Section R151-46b; and

_____ (iii) the rules promulgated by the division.

_____ (b) Except as provided in Subsection 7(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

_____ (c) In any proceeding under this Subsection, the commission and the division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the commission and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

_____ (d) Upon the scheduling of a hearing by the division and at least ten days prior to the hearing, the division shall, by first class postage pre-paid delivery, mail to the address last provided to the division pursuant to Section 61-2c-106 written notice of the date, time, and place scheduled for the hearing.

_____ (e) Formal discovery is prohibited.

_____ (f) The division may issue subpoenas or other orders to compel production of necessary and relevant evidence:

_____ (i) on its own behalf; or

_____ (ii) on behalf of a party where:

_____ (A) the party makes a written request;

_____ (B) assumes responsibility for effecting service of the subpoena; and

_____ (C) bears the costs of the service, any witness fee, and any mileage to be paid to the witness.

_____ (g) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.

_____ (h) The division shall adhere to Title 63G, Chapter 2, Government Records Access and Management Act in addressing a request for information obtained by the division through an investigation.

_____ (i) The division may decline to provide a party with information that it has previously provided to that party.

_____ (j) Intervention is prohibited.

_____ (k) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:

_____ (i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or

_____ (ii) Title 52, Chapter 4, the Open and Public Meetings Act.

_____ (l) Upon filing a proper entry of appearance with the division pursuant to R151-46b-6, an attorney may represent a respondent.

_____ (7) Additional procedures for disciplinary proceedings.

_____ (a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:

_____ (i) a notice of agency action;

_____ (ii) a petition setting forth the allegations made by the division;

_____ (iii) a witness list, if applicable; and

_____ (iv) an exhibit list, if applicable.

_____ (b) Answer.

_____ (i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.

_____ (ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.

_____ (iii) Any answer shall be filed with the division within thirty days after the mailing date of the notice of agency action and petition.

_____ (c) Witness and exhibit lists.

_____ (i) The division shall provide its witness and exhibit list to the respondent at the time it mails its notice of hearing.

_____ (ii) The respondent shall provide its witness and exhibit list to the division no later than thirty days after the mailing date of the division's notice of agency action and petition.

_____ (iii) Any witness list shall contain:

_____ (A) the name, address, and telephone number of each witness; and

_____ (B) a summary of the testimony expected from each witness.

_____ (iv) Any exhibit list:

_____ (A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and

_____ (B) shall be accompanied by copies of the exhibits.

_____ (d) Pre-hearing motions.

_____ (i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the

Department of Commerce shall be made in accordance with those rules.

(ii) The division director shall receive and rule upon any pre-hearing motions.

KEY: residential mortgage, loan origination, licensing, enforcement

Date of Enactment or Last Substantive Amendment: 2010

Authorizing, and Implemented or Interpreted Law: 61-2c-103(3)

Commerce, Real Estate **R162-201** Residential Mortgage Definitions

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 33373

FILED: 02/11/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R162-201 is repealed in light of the Division's proposed new Rule R162-2c (at Section R162-2c-201) which updates the mortgage definitions to track with the terms and procedures used by the nationwide database. (DAR NOTE: The proposed new Rule R162-2c is under DAR No. 33372 in this issue, March 1, 2010, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R162-201 is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2c-103(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Repealing this rule and incorporating the mortgage definitions into a new rule will have no net impact on the state budget. It neither reduces revenue to the state nor requires expenditures by the state.

◆ **LOCAL GOVERNMENTS:** Repealing this rule and incorporating the mortgage definitions into a new rule will have no impact on local governments. It requires no expenditures by local governments.

◆ **SMALL BUSINESSES:** The defining of terms used in the mortgage industry creates no financial impact for small businesses. Repealing this rule and incorporating the mortgage definitions into a new rule will impose no costs or savings for small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The defining of terms used in the mortgage industry creates

no financial impact for affected persons. Repealing this rule and incorporating the mortgage definitions into a new rule will impose no costs or savings for affected persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In repealing this rule, the division relieves affected persons of any obligation to comply with it. There are no 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 repeal as a substitute rule amendment containing the substance of this section is also proposed by the Division

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 03/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

[R162-201. Residential Mortgage Definitions.

R162-201-1. Residential Mortgage Definitions.

~~201.1 Control. As used in Section 61-2c-102(1) of the Utah Residential Mortgage Practices Act, "control" is defined as the power to directly or indirectly:~~

- ~~(a) direct or exercise a controlling influence over:~~
 - ~~(i) the management or policies of an entity;~~
 - ~~(ii) the election of a majority of the directors, officers, managers, or managing partners of an entity;~~
- ~~(b) vote 20% or more of any class of voting securities of an entity by an individual; or~~
- ~~(c) vote more than 5% of any class of voting securities of an entity by another entity.~~

~~201.2 Certification. "Certification" means that the holder of a certificate is authorized by the Division to:~~

- ~~(a) establish and operate a school that provides courses for prelicensing requirements;~~
- ~~(b) provide courses that are approved for continuing education; or~~
- ~~(c) function as an instructor for courses approved for prelicensing requirements or for continuing education.~~

~~KEY: residential mortgage loan origination~~
~~Date of Enactment or Last Substantive Amendment: November 3, 2004~~
~~Notice of Continuation: May 27, 2009~~
~~Authorizing, and Implemented or Interpreted Law: 61-2c-103(3)~~

Commerce, Real Estate
R162-202
 Initial Application

NOTICE OF PROPOSED RULE
 (Repeal)
 DAR FILE NO.: 33374
 FILED: 02/11/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R162-202 is repealed in light of the Division's proposed new Rule R162-2c (at Sections R162-2c-201 and R162-2c-202) which updates the mortgage licensing procedures to comply with the nationwide database. (DAR NOTE: The proposed new Rule R162-2c is under DAR No. 33372 in this issue, March 1, 2010, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R162-202 is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2c-103(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: Repealing this rule relieves the state from having to oversee and enforce it. The costs to the state of implementing and overseeing the new licensing procedures are included in the rule analysis for proposed new Rule R162-2c.
- ◆ LOCAL GOVERNMENTS: Local governments are not required to license with the division. Repealing this rule governing the initial application will have no fiscal impact to local governments.
- ◆ SMALL BUSINESSES: Repealing this rule relieves small businesses from having to comply with it. The costs to small businesses of having to comply with the new licensing procedures are included in the rule analysis for proposed new Rule R162-2c.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Repealing this rule relieves affected persons from having to comply with it. The costs to affected persons of having to comply with the new licensing procedures are included in the rule analysis for proposed new Rule R162-2c.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In repealing this rule, the division relieves affected persons of any obligation to comply with it. There are no 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 repeal as a substitute rule amendment containing the substance of these provisions is also proposed by the Division.

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 03/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

~~[R162-202. Initial Application.~~

~~R162-202-1. Licensing Examination.~~

~~202.1 Except as provided in Subsection 202-8, an individual applying for an initial license is required to have passed the licensing examination approved by the commission before making application to the division for a license.~~

~~202.1.1 The licensing examination will be a multiple choice examination and will consist of a national portion and a Utah-specific portion. An applicant will be required to pass both portions of the examination within a six-month period of time.~~

~~202.1.2 In order to register for the licensing examination, the applicant shall deliver an application to take the examination, together with the applicable examination fee to the testing service designated by the division. If the applicant registers for the examination, the examination fee will be forfeited unless the applicant has complied with the Change/Cancel Policy in the candidate handbook furnished to the applicant by the examination provider.~~

~~202.1.3 All examination results are valid for 90 days after the date of the examination. If the applicant does not submit an application for licensure within 90 days after successful completion of the examination, the examination results shall lapse and the applicant shall be required to retake and successfully pass the examination again in order to apply for a license.~~

R162-202-2. Form of Application.

~~202.2 All applications must be made in the form required by the division and shall include the following information:~~

~~202.2.1 Any name under which the individual will transact business in this state;~~

~~202.2.2 The address of the principal business location of the applicant;~~

~~202.2.3 The home street address and home telephone number of any individual applicant;~~

~~202.2.4 A mailing address for the applicant;~~

~~202.2.5 The date of birth and social security number of any individual applicant;~~

~~202.2.6 Answers to a "Licensing Questionnaire" supplying information about present or past mortgage licensure in other jurisdictions, past license sanctions or surrenders, pending disciplinary actions, pending investigations, past criminal convictions or pleas, and/or civil judgments based on fraud, misrepresentation, or deceit;~~

~~202.2.7 A "Letter of Waiver" authorizing the division to obtain the fingerprints of the applicant, review past and present employment and education records, and to conduct a criminal history background check;~~

~~202.2.8 If an individual applicant or a director, executive officer, manager, or a managing partner of an entity applicant, or anyone who occupies a position or performs functions similar to a director, executive officer, manager or managing partner of an entity that has applied for a license, has been convicted of any felonies or misdemeanors involving moral turpitude within the ten years preceding application, the charging document, the judgment and sentencing document, and the case docket on each such conviction must be provided with the application; and~~

~~202.2.9 If an individual or entity applicant or a director, executive officer, manager, or a managing partner of an entity applicant, or anyone who occupies a position or performs functions similar to a director, executive officer, manager or managing partner of an entity that has applied for a license, has had a license or registration suspended, revoked, surrendered, canceled or denied in the five years preceding application based on misconduct in a professional capacity that relates to good moral character or the competency to transact the business of residential mortgage loans, the documents stating the sanction taken against the license or registration and the reasons therefore must be provided with the application.~~

~~202.2.10 Applicants for a mortgage officer license shall submit proof in the form required by the Division of successful completion of the hours of approved prelicensing education required by Section 61-2e-202(4)(a)(iii)(B) and R162-202-10 taken within one year prior to application; or~~

~~202.2.11 An applicant for a principal lending manager license shall submit proof in the form required by the Division of successful completion of the 40 hours of approved prelicensing education required by Section 61-2e-206(1)(c) taken within one year prior to application.~~

R162-202-3. Incomplete Application.

~~202.3 If an applicant for a license makes a good faith attempt to submit a completed application within 90 days after passing the examination, but the application is incomplete, the~~

~~Division may grant an extension of the validity of the examination results for a period not to exceed 30 days to enable the applicant to provide the missing documents or information necessary to complete the application. Following the extension period, the application will be denied as incomplete if the applicant has not supplied the missing documents or information.~~

R162-202-4. Nonrefundable Fees.

~~202.4 All fees required in conjunction with an application for a license are nonrefundable and will not be refunded if the applicant fails to complete an application or if a completed application is denied for failure to meet the licensing criteria.~~

R162-202-5. Determining Fitness for Licensure.

~~202.5.1 Qualifications of Applicants. All mortgage officer and principal lending manager applicants, and all directors, executive officers, and managing partners of any entity applicant, and anyone who occupies a position or performs functions similar to a director, executive officer, manager or managing partner of an entity applicant, shall meet the following qualifications. None of these persons may have:~~

~~(a) been convicted of, entered a plea in abeyance to, or completed any sentence of confinement on account of, any felony within five years preceding the application; or~~

~~(b) been convicted of, entered a plea in abeyance to, or completed any sentence of confinement on account of, any misdemeanor involving fraud, misrepresentation, theft, or dishonesty within three years preceding the application.~~

~~202.5.2 In determining whether an individual who has not been disqualified by Subsection 202.5.1 meets the requirements of good moral character, honesty, integrity, and truthfulness, the Commission and the Division will consider information which may include the following in addition to whether the individual has been convicted of a felony or misdemeanor involving moral turpitude in the ten years preceding the application:~~

~~(a) The circumstances that led to any criminal convictions considered by the Commission and the Division;~~

~~(b) The amount of time that has passed since the individual's last criminal conviction;~~

~~(c) Any character testimony presented at the hearing and any character references submitted by the individual;~~

~~(d) Past acts related to honesty or moral character involving the business of residential mortgage loans;~~

~~(e) Whether the individual has been guilty of dishonest conduct in the five years preceding the application that would have been grounds under Utah law for revocation or suspension of a registration or license had the individual then been registered or licensed;~~

~~(f) Whether a civil judgment based on fraud, misrepresentation, or deceit has been entered against the individual, or whether a finding of fraud, misrepresentation or deceit by the individual has been made in a civil suit, regardless of whether related to the residential mortgage loan business, and whether any money judgment has been fully satisfied;~~

~~(g) Whether fines and restitution ordered by a court in a criminal proceeding have been fully satisfied, and whether the individual has complied with court orders in the criminal proceeding;~~

~~_____ (h) Whether a probation agreement, plea in abeyance, or diversion agreement entered into in a criminal proceeding in the ten years preceding the application has been successfully completed;~~

~~_____ (i) Whether any tax and child support arrearages have been paid; and~~

~~_____ (j) Whether there has been good conduct on the part of the individual subsequent to the individual's offenses.~~

~~202.5.3 Competency to Transact the Business of Residential Mortgage Loans. The Commission and the Division will consider information necessary to determine whether an applicant for a license or director, executive officer, manager, or a managing partner of an entity that has applied for a license, or anyone who occupies a position or performs functions similar to a director, executive officer, manager or managing partner of an entity that has applied for a license, meets the requirement of competency to transact the business of residential mortgage loans, which shall include the following:~~

~~_____ (a) Past acts related to competency to transact the business of residential mortgage loans;~~

~~_____ (b) Whether a civil judgment involving the business of mortgage loans has been entered against the individual, and whether the judgment has been fully satisfied, unless the judgment has been discharged in bankruptcy;~~

~~_____ (c) The failure of any previous mortgage loan business in which the individual engaged, and the reasons for any failure;~~

~~_____ (d) The individual's management and employment practices in any previous mortgage loan business, including whether or not employees were paid the amounts owed to them;~~

~~_____ (e) The individual's training and education in mortgage lending, if any was available to the applicant;~~

~~_____ (f) The individual's training, education, and experience in the mortgage loan business or in management of a mortgage loan business, if any was available to the individual;~~

~~_____ (g) A lack of knowledge of the Utah Residential Mortgage Practices Act on the part of the individual;~~

~~_____ (h) A history of disregard for licensing laws;~~

~~_____ (i) A prior history of drug or alcohol dependency within the last five years, and any subsequent period of sobriety; and~~

~~_____ (j) Whether the individual has demonstrated competency in business subsequent to any past incompetence by the individual in the mortgage loan business.~~

~~202.5.4 Age. All mortgage officer and principal lending manager applicants shall be at least 18 years old.~~

~~R162-202-6. Registration of Assumed Business Name.~~

~~202.6.1 An individual or entity licensed to engage in the business of residential mortgage loans who intends to conduct business under an assumed business name instead of the individual's own name shall register the assumed business name with the Division.~~

~~202.6.2 To register an assumed business name, the applicant shall pay the applicable non-refundable fee and submit proof in the form required by the Division of a current filing of that assumed business name with the Division of Corporations and Commercial Code.~~

~~202.6.3 Misleading or deceptive business names. The Division shall not register an assumed business name if there is a substantial likelihood that the public will be misled by the name~~

~~into thinking that they are not dealing with an individual or entity engaged in the residential mortgage loan business.~~

~~R162-202-7. Reciprocal Licenses.~~

~~202.7.1 An applicant who is a legal resident of a state with which the Division has entered into a written reciprocity agreement and who applies for a Utah license shall submit to the Division:~~

~~_____ (a) An application for a reciprocal license on the form required by the Division;~~

~~_____ (b) All applicable licensing fees and the Residential Mortgage Loan Education, Research, and Recovery Fund fee;~~

~~_____ (c) An official license history from the licensing agency in the applicant's state of legal residence containing the dates of the applicant's licensure and any complaint or disciplinary history; and~~

~~_____ (d) The information required by Subsections 202.2.1 through 202.2.9.~~

~~202.7.2 An applicant who is a legal resident of a state with which the Division has not entered into a written reciprocity agreement and who applies for a Utah license shall submit to the Division:~~

~~_____ (a) An application for a reciprocal license on the form required by the Division;~~

~~_____ (b) All applicable licensing fees and the Residential Mortgage Loan Education, Research, and Recovery Fund fee;~~

~~_____ (c) A signed, notarized affidavit attesting that the applicant has at least five years experience in the business of residential mortgage loans;~~

~~_____ (d) An official license history from the licensing agency in the applicant's state of legal residence, and any other state(s) in which the experience referred to in Subsection 202.7.2(c) was obtained, that includes the dates of the applicant's licensure and any complaint or disciplinary history; and~~

~~_____ (e) Proof of having successfully completed state-required pre-licensing education and having passed a state-required competency examination; and~~

~~_____ (f) Those items required by Subsections 202.2.1 through 202.2.9.~~

~~R162-202-8. Branch Office.~~

~~202.8 A branch office shall be registered with the Division prior to operation. To register the branch office, the principal lending manager of the entity must submit to the Division, on the forms required by the Division, the location of the branch office and the names of all licensees assigned to the branch, along with the fee for registering the branch office.~~

~~R162-202-9. Principal Lending Manager Experience Requirement.~~

~~202.9 Equivalent Experience. Experience in originating loans or directly supervising individuals who originate loans shall be considered to be "equivalent experience" for the purposes of Section 61-2e-206(1)(c).~~

~~R162-202-10. Prelicensing Education Requirements.~~

~~202.10.1 Beginning January 1, 2010, an applicant for a mortgage officer license shall submit proof of completing 60 hours of prelicense education that complies with the course content~~

~~outline adopted by the Residential Mortgage Regulatory Commission and the Division.~~

~~KEY: residential mortgage loan origination~~

~~Date of Enactment or Last Substantive Amendment: June 22, 2009~~

~~Notice of Continuation: December 13, 2006~~

~~Authorizing, and Implemented or Interpreted Law: 61-2c-103(3)]~~

Commerce, Real Estate
R162-203
 Changes to Residential Mortgage
 Licensure Statement

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 33375

FILED: 02/11/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R162-203 is repealed in light of the Division's proposed new Rule R162-2c which updates the provisions of the existing rule to comply with procedures mandated by the nationwide database. (DAR NOTE: The proposed new Rule R162-2c is under DAR No. 33372 in this issue, March 1, 2010, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R162-203 is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2c-103(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: Repealing this rule relieves the state from having to oversee and enforce it. The costs to the state of implementing and overseeing the new provisions as to changes in licensure are included in the rule analysis for proposed new Rule R162-2c.
- ◆ LOCAL GOVERNMENTS: Local governments have never been subject to this rule. Repealing it will have no fiscal impact to local governments.
- ◆ SMALL BUSINESSES: Repealing this rule relieves small businesses from having to comply with it. The costs to small businesses of having to comply with the new provisions as to changes in licensure are included in the rule analysis for proposed new Rule R162-2c.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Repealing this rule relieves affected persons from having to

comply with it. The costs to affected persons of having to comply with the new provisions as to changes in licensure are included in the rule analysis for proposed new Rule R162-2c.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In repealing this rule, the division relieves affected persons of any obligation to comply with it. There are no 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 repeal as a substitute rule amendment updates the provisions of this rule to comply with procedures in the nationwide database.

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 03/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

~~**[R162-203. Changes to Residential Mortgage Licensure Statement.**~~

~~**R162-203-1. Status Changes.**~~

~~203.1. A licensee shall notify the Division within ten working days of any status change. Status changes are effective on the date the properly executed forms and non-refundable fees are received by the Division. Notice must be on the forms required by the Division.~~

~~203.1.1 Change in Entity. If a change in a licensed entity results in the creation of a new legal entity, the new entity may not operate under the license issued to the previous entity. If the change of partners in a partnership, either by the addition or withdrawal of partners, creates a new legal entity, the new entity may not operate under the license issued by the Division to the previous partnership. The dissolution of a corporation, partnership, limited liability company, association, or other entity that holds a license issued by the Division terminates that license.~~

~~203.1.1.1 Notification of Change in Entity. The principal lending manager of a licensed entity shall provide written notification to the Division of any change in the entity that will~~

create a new legal entity or that will cause the dissolution of the entity prior to the effective date of the change.

~~203.1.2. Change of name requires submission of official documentations such as a marriage certificate, divorce decree, or driver's license.~~

~~203.1.3. 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. The licensee may designate any address to be used as a mailing address.~~

~~203.1.4. Change of name of a licensed entity shall be accompanied by evidence that the new name has been approved by the Division of Corporations and Commercial Code, Department of Commerce.~~

~~203.1.5. Change of principal lending manager of a licensed entity requires notice from the entity in the form required by the Division, signed by both the terminating principal lending manager and the new principal lending manager, and the applicable change fee.~~

R162-203-2. Affiliation with Principal Lending Manager.

~~203.2.1 A mortgage officer licensed under the Utah Residential Mortgage Practices Act shall notify the Division, on the form required by the Division, of the principal lending manager on whose behalf that individual mortgage officer shall conduct residential mortgage lending before acting on behalf of that principal lending manager.~~

~~203.2.2. Transfers. Prior to transferring from one principal lending manager to another, or from one branch office to another, the licensee must mail, deliver, or electronically transmit to the Division written notice of the transfer on the form required by the Division.~~

R162-203-3. Unavailability of Licensee.

~~203.3.1 Change in license affiliation of Mortgage Officers. If a mortgage officer is not available to properly execute the form required to terminate the license affiliation of the mortgage officer with a principal lending manager, the principal lending manager may still terminate the mortgage officer's license affiliation with the principal lending manager, provided a letter advising the mortgage officer of the termination is mailed by the principal lending manager by certified mail to the last known address of the mortgage officer. A verified copy of the letter and proof of mailing by certified mail shall be attached to the form required to terminate the mortgage officer's license affiliation with the principal lending manager when the form is submitted to the Division.~~

~~203.3.1.1 If a mortgage officer's principal lending manager is not available to properly execute the form required to terminate the license affiliation of the mortgage officer with a principal lending manager, the mortgage officer may still terminate the mortgage officer's license affiliation with the principal lending manager, provided the mortgage officer sends to the principal lending manager by certified mail to the last known address of the principal lending manager a letter advising the principal lending manager of the mortgage officer's resignation. A verified copy of the letter and proof of mailing by certified mail shall be attached to the form required to terminate the mortgage officer's license affiliation with the principal lending manager when the form is submitted to the Division.~~

~~203.3.2 Change in Entity Affiliation of Principal Lending Manager. If a principal lending manager who will no longer be the principal lending manager of an entity is not available to properly execute the form that is required by the Division to substitute one principal lending manager for the other, the change in principal lending manager may still be made by the entity, provided a letter advising of the change is signed by a person who is legally authorized to make staffing decisions on behalf of the entity and mailed by certified mail to the last known address of the unavailable person. A verified copy of the letter and proof of mailing by certified mail shall be attached to the form required by the Division to substitute one principal lending manager for another when the form is submitted to the Division.~~

R162-203-4. Inactivation.

~~203.4 To voluntarily inactivate a license, the licensee shall deliver, mail, or electronically transmit to the Division a written request for license inactivation on the form required by the Division, which form shall have been signed by both the licensee and the licensee's principal lending manager.~~

~~203.4.1 The principal lending manager of the entity with which a mortgage officer is licensed may terminate the mortgage officer's license affiliation with the entity without the mortgage officer's consent, known as an "involuntarily inactivation" of the mortgage officer's license by complying with R162-203.3.1.~~

R162-203-5. Activation.

~~203.5 All licensees changing to active status must submit to the Division:~~

~~(a) the applicable non-refundable activation fee;~~
~~(b) a written request for activation on the form required by the Division; and~~

~~(c) if the licensee was on inactive status at the time of the most recent renewal, proof of successful completion of the number of hours of continuing education that would have been required to renew had the licensee been on active status at the time of the licensee's most recent renewal. To qualify as continuing education for activation, all continuing education hours submitted must have been completed within twenty-four months prior to applying to activate.~~

~~203.5.1 In addition to the requirements of Section 203.5, any licensee who was licensed prior to January 1, 2005, but whose license was inactivated by the Division for failure to submit proof by January 1, 2005 of having passed the examination required by Section 61-2e-202(4)(a)(i)(D), shall submit to the Division proof of having passed that examination before the Division will activate the individual's license.~~

KEY: residential mortgage loan origination

Date of Enactment or Last Substantive Amendment: April 10, 2007

Notice of Continuation: December 13, 2006

Authorizing, and Implemented or Interpreted Law: 61-2e-205(3)

Commerce, Real Estate
R162-204
Residential Mortgage Record Keeping
Requirements

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 33376

FILED: 02/11/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R162-204 is repealed in light of the Division's proposed new Rule R162-2c which updates the provisions of the existing rule to comply with the procedures mandated by the nationwide database. (DAR NOTE: The proposed new Rule R162-2c is under DAR No. 33372 in this issue, March 1, 2010, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R162-204 is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2c-103(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Repealing this rule relieves the state from having to oversee and enforce it. The costs to the state of implementing and overseeing the new provisions as to record-keeping requirements are included in the rule analysis for proposed new Rule R162-2c.

◆ **LOCAL GOVERNMENTS:** Local governments have never been subject to this rule. Repealing it will have no fiscal impact to local governments.

◆ **SMALL BUSINESSES:** Repealing this rule relieves small businesses from having to comply with it. The costs to small businesses of having to comply with the new provisions as to record-keeping requirements are included in the rule analysis for proposed new Rule R162-2c.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Repealing this rule relieves affected persons from having to comply with it. The costs to affected persons of having to comply with the new provisions as to record-keeping requirements are included in the rule analysis for proposed new Rule R162-2c.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In repealing this rule, the division relieves affected persons of any obligation to comply with it. There are no 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

repeal as a substitute rule amendment containing the substance of this provision is also proposed by the Division.

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 03/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

~~**R162-204. Residential Mortgage Record Keeping Requirements.**~~

~~**R162-204-1. Residential Mortgage Record Keeping Requirements.**~~

~~204.1.1 Entity Requirements. An entity licensed under the Utah Residential Mortgage Practices Act shall maintain for the period set forth in Utah Code Section 61-2c-302 the following records:~~

- ~~(a) Application forms;~~
- ~~(b) Disclosure forms;~~
- ~~(c) Truth-in-Lending forms;~~
- ~~(d) Credit reports and the explanations to the credit reports;~~
- ~~(e) Conversation logs;~~
- ~~(f) Verifications of employment, paycheck stubs, and tax returns;~~
- ~~(g) Proof of legal residency, if applicable;~~
- ~~(h) Appraisals, appraisal addenda, and records of communications between the appraiser and the registrant or lender;~~
- ~~(i) Underwriter denials;~~
- ~~(j) Notices of adverse action;~~
- ~~(k) Loan approval; and~~
- ~~(l) All other records required by underwriters involved with the transaction.~~

~~204.1.2. Principal Lending Manager Requirements. Except as provided in Subsection 204.1.2.1, the principal lending manager of an entity is responsible to make the records set forth in Section 204.1.1 available to the Division as provided in Utah Code Annotated Section 61-2c-302(3):~~

~~204.1.2.1. Defunct entity. If a licensed entity ceases doing business in Utah, an owner or director of the entity, rather than the principal lending manager, is responsible to make the records set forth in Section 204.1.1 available to the Division.~~

~~204.1.3. Disposal of Records. If an entity licensed under the Utah Residential Mortgage Practices Act disposes of the records under this section after the end of the retention schedule in Utah Code Section 61-2c-302, the entity shall dispose of the records in a reasonable manner that safeguards any personal information, as defined in Utah Code Annotated Section 13-44-102.~~

~~KEY: residential mortgage loan origination
 Date of Enactment or Last Substantive Amendment: June 1, 2009
 Notice of Continuation: December 13, 2006
 Authorizing, and Implemented or Interpreted Law: 61-2c-302]~~

Commerce, Real Estate
R162-205
 Residential Mortgage Unprofessional
 Conduct

NOTICE OF PROPOSED RULE
 (Repeal)
 DAR FILE NO.: 33377
 FILED: 02/11/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R162-205 is repealed in light of the Division's proposed new Rule R162-2c, which incorporates the provisions of the existing rule into a new numbering system and organizational scheme. (DAR NOTE: The proposed new Rule R162-2c is under DAR No. 33372 in this issue, March 1, 2010, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R162-205 is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2c-103(3)

ANTICIPATED COST OR SAVINGS TO:
 ♦ THE STATE BUDGET: The substantive provisions of this rule are incorporated into the new rule. There is no change in the costs to the state.
 ♦ LOCAL GOVERNMENTS: Local governments have never been subject to the rules governing the conduct of mortgage licensees. Repealing this rule will have no fiscal impact to local governments.
 ♦ SMALL BUSINESSES: The substantive provisions of this rule are incorporated into the new rule. There is no change in the costs to small businesses, which have always been, and remain, subject to oversight for unprofessional conduct.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The substantive provisions of this rule are incorporated into the new rule. There is no change in the costs to affected persons, which have always been, and remain, subject to oversight for unprofessional conduct.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In repealing this rule, the division relieves affected persons of any obligation to comply with it. There are no 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 repeal as a substitute rule amendment containing the substance of these provisions is also proposed by the Division.

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 03/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.
~~[R162-205. Residential Mortgage Unprofessional Conduct.
 R162-205-1. Residential Mortgage Unprofessional Conduct.
 205.1 Unprofessional conduct includes the following acts:
 205.1.1 conducting the business of residential mortgage loans, including soliciting or marketing, in the licensee's individual name, the principal lending manager's individual name, or any name other than the name of the licensed mortgage entity with which the individual's principal lending manager is affiliated;
 205.1.2 failing to remit to third party service providers the appraisal fees, inspection fees, credit reporting fees, insurance premiums, or other similar fees which have been collected from a borrower;
 205.1.3 withholding payment owed, as determined by a court of competent jurisdiction to a third party service provider in connection with the business of residential mortgage loans;~~

- ~~205.1.4 charging for services not actually performed;~~
- ~~205.1.5 charging a borrower more for third party services than the actual cost of those services;~~
- ~~205.1.6 filling out or altering any Real Estate Purchase Contract or other contract for the sale of real property, or any addenda to the contract;~~
- ~~205.1.7 making any alteration to any appraisal of real property;~~
- ~~205.1.8 unless acting as a real estate licensee and not as a mortgage licensee:~~
- ~~(a) providing a buyer or seller of real estate with comparative market analysis or otherwise assisting a buyer or seller to determine the offering price or sales price of real estate;~~
- ~~(b) representing or assisting a buyer or seller of real estate in negotiations concerning a possible sale of real estate, except that a mortgage licensee may advise a borrower about the consequences that the terms of a purchase agreement may have on the terms and availability of various mortgage products;~~
- ~~(c) performing any other acts that require a real estate license under Title 61, Chapter 2;~~
- ~~(d) advertising the sale of real estate by use of any advertising medium, except that a mortgage licensee may:~~
- ~~(i) advertise real estate owned by the licensee as a "for sale by owner";~~
- ~~(ii) provide advertising to a property owner who has not signed an agency agreement with a real estate licensee and is selling the real estate "for sale by owner", so long as the advertising provides clear and distinguishable identification, contact information, function and responsibility of both the property owner and the mortgage licensee; or~~
- ~~(iii) advertise in conjunction with a real estate brokerage, so long as the advertising provides clear and distinguishable identification, contact information, function and responsibility of both the real estate licensee and the mortgage licensee.~~
- ~~205.1.9 disposing of records in violation of R162-204.1.3~~

R162-205-2. Residential Mortgage Standards of Practice.

- ~~205.2.1 Supervision of licensees and unlicensed staff. Principal lending managers shall exercise reasonable supervision by controlling and directing the details and means of the work activities of all licensees affiliated with the principal lending manager and all unlicensed staff. To exercise reasonable supervision, a principal lending manager shall:~~
- ~~(a) establish, maintain, and provide to all licensees affiliated with the principal lending manager and all unlicensed staff written policies setting out the office procedures for complying with federal and state laws governing residential mortgage lending, including the Utah Residential Mortgage Practices Act and the rules promulgated thereunder;~~
- ~~(b) ensure that each person affiliated with the principal lending manager and all unlicensed staff have read the Utah Residential Mortgage Practices Act and the rules promulgated thereunder;~~
- ~~(c) ensure that the business of residential mortgage loans conducted by an entity is conducted only by individuals who hold active mortgage officer or associate lending manager licenses issued by the Division of Real Estate;~~
- ~~(d) ensure that the licensees affiliated with the principal lending manager conduct all residential mortgage loan business, as~~

defined in Utah Code Section 61-2e-102(1)(c), in the name of the licensed mortgage entity with which the principal lending manager is affiliated, and not in the licensee's own name or any other name;

~~(e) establish and enforce written policies and procedures for ensuring the independent judgment of any underwriter employed by the entity which employs the principal lending manager;~~

~~(f) establish and follow procedures for responding to all consumer complaints, and personally review any complaint relating to conduct that could constitute a violation of federal or state law governing residential mortgage lending by a licensee affiliated with the principal lending manager or by any unlicensed staff;~~

~~(g) establish and maintain a quality control plan that includes at a minimum procedures for performing pre-closing and post-closing auditing of at least ten percent of all loan files and taking corrective action for problems identified through the audit process. Quality control plans which comply with HUD/FHA or Freddie Mac requirements shall be deemed to be in compliance with this rule; and~~

~~(h) review for compliance with applicable federal and state laws all advertising and marketing materials and all marketing methods to be used by the entity and licensees affiliated with the principal lending manager.~~

~~205.2.1.1 Assistance from associate lending managers. A principal lending manager may employ associate lending managers to assist in performing the duties listed in Subsection 205.2.1. The principal lending manager shall actively supervise such associate lending managers and will remain personally responsible for adequate supervision of all licensees affiliated with the principal lending manager and all unlicensed staff.~~

~~205.2.2 Reasonable supervision. A principal lending manager will not be held responsible for failing to exercise reasonable supervision if:~~

~~(a) a licensee affiliated with the principal mortgage officer or an unlicensed staff member violates a provision of federal or state law, including the Utah Residential Mortgage Practices Act, in contravention of the principal lending manager's specific written policies;~~

~~(b) the principal lending manager's current written policies were provided to the licensee or unlicensed staff prior to the violation;~~

~~(c) the principal lending manager took reasonable steps intended to enforce the written policies;~~

~~(d) upon learning of the violation, the principal lending manager reported the violation to the Division and attempted to prevent or mitigate the damage;~~

~~(e) the principal lending manager did not participate in or implicitly or explicitly condone the violation; and~~

~~(f) the principal lending manager did not attempt to avoid learning of the violation.~~

KEY: residential mortgage loan origination

Date of Enactment or Last Substantive Amendment: June 1, 2009

Notice of Continuation: December 13, 2006

Authorizing, and Implemented or Interpreted Law: 61-2e-301(1)(k)]

**Commerce, Real Estate
R162-207
License Renewal**

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 33378
FILED: 02/11/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R162-207 is repealed in light of the Division's proposed new Rule R162-2c, which updates the mortgage license renewal procedures to comply with the nationwide database. (DAR NOTE: The proposed new Rule R162-2c is under DAR No. 33372 in this issue, March 1, 2010, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R162-207 is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2c-103(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: Repealing this rule relieves the state from having to oversee and enforce it. The costs to the state of implementing and overseeing the new license renewal procedures are included in the rule analysis for proposed new Rule R162-2c.
- ◆ LOCAL GOVERNMENTS: Local governments are not required to license or, therefore, to renew with the division. Repealing this rule governing the renewal process will have no fiscal impact to local governments.
- ◆ SMALL BUSINESSES: Repealing this rule relieves small businesses from having to comply with it. The costs to small businesses of having to comply with the new license renewal procedures are included in the rule analysis for proposed new Rule R162-2c.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Repealing this rule relieves affected persons from having to comply with it. The costs to affected persons of having to comply with the new license renewal procedures are included in the rule analysis for proposed new Rule R162-2c.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In repealing this rule, the division relieves affected persons of any obligation to comply with it. There are no 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 repeal as a substitute rule amendment containing the

substance of these provisions is also proposed by the Division.

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 03/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.
~~**R162-207. License Renewal.**~~
~~**R162-207-1. License Renewal.**~~

~~207.1 Renewal period. Licenses issued under the Utah Residential Mortgage Practices Act are valid for a period of two years.~~

~~**R162-207-2. Renewal Process.**~~

~~207.2.1 Renewal Notice. A license renewal notice shall be sent by the Division to the licensee at the mailing address shown on Division records. The renewal notice shall specify the requirements for renewal and shall require that the licensee document or certify that the requirements have been met. The licensee must apply to renew and pay all applicable fees on or before the expiration date shown on the notice.~~

~~207.2.2 Application for Renewal. All applications for renewal must be made in the form required by the division and shall include the following:~~

- ~~(a) A licensure statement in the form required by the division;~~
- ~~(b) The renewal fee and the Residential Mortgage Loan Education, Research, and Recovery Fund fee;~~
- ~~(c) If the applicant is an individual, proof through means approved by the division of having completed during the two years prior to application the continuing education required by the commission under Section 61-2e-104;~~
- ~~(d) The current home street address and home telephone number of any individual applicant and the current physical street address of any entity applicant;~~
- ~~(e) A current mailing address for the applicant;~~
- ~~(f) Answers to a "Licensing Questionnaire" supplying information about events that occurred in the preceding two years related to mortgage licensure in other jurisdictions, license sanctions or surrenders, pending disciplinary actions, pending~~

investigations, criminal convictions or pleas, and/or civil judgments or findings based on fraud, misrepresentation, or deceit;

(g) If, at the time of application for renewal, an individual applicant, or the principal lending manager, director, executive officer, manager, or a managing partner of an entity applicant, or anyone who occupies a position or performs functions similar to a director, executive officer, manager or managing partner of an entity that has applied for a license, is charged with, or since the last renewal has been convicted of or entered a plea to, any felony or misdemeanor, the following information must be provided on each conviction, plea, or charge: the charging document, the case docket, and the judgment and sentencing document, if applicable; and

(h) If, in the two years preceding application for renewal, an individual or entity applicant or principal lending manager of an entity applicant has had a license or registration suspended, revoked, surrendered, canceled or denied based on misconduct in a professional capacity that relates to good moral character or the competency to transact the business of residential mortgage loans, the applicant must provide the documents stating the sanction taken against the license or registration and the reasons therefore.

~~207.2.3 Continuing Education Requirement. All active licensees are required to have completed their continuing education requirement prior to applying to renew and by the 15th day of the month of expiration.~~

~~207.2.3.1 Documentation of Continuing Education. Any licensee who renews online and certifies that the required continuing education has been completed shall maintain the original course completion certificates supporting that certification for two years following renewal. The licensee shall produce those certificates for audit upon request by the Division.~~

~~207.2.3.2 Out of State Courses. Continuing education credit will be given for a course taken in another state provided the course has been certified for continuing education purposes by the licensing agency in the other state and the subject matter of the course relates to protection of the public, but not to state-specific licensing laws. Evidence must be retained by the licensee, and provided to the Division upon request, that the course was certified by the other state at the time the course was taken.~~

~~207.2.3.3 Continuing Education Requirement upon activation of license. As a condition for the activation of an inactive license that was on inactive status at the time of the licensee's most recent renewal, the licensee shall supply the Division with proof of successful completion of the number of hours of continuing education that would have been required to renew had the licensee been on active status at the time of the licensee's most recent renewal. To qualify as continuing education for activation, all continuing education hours submitted must have been completed within twenty-four months prior to applying to activate.~~

~~207.2.4 Late Renewal. If all required renewal forms, fees, and documentation have not been received or postmarked by the expiration date of the license, the license shall expire. When an active license expires, an individual licensee's affiliation with a licensed entity automatically terminates.~~

~~207.2.4.1 A licensee may apply to renew an expired license within thirty days after the expiration date of the license by completing all of the renewal requirements, including the continuing education requirement, and paying a non-refundable late fee.~~

~~207.2.4.2 After the thirty day period, and until six months after the expiration date of the license, a licensee may apply to reinstate a license by completing all of the renewal requirements, including the continuing education requirement, paying a non-refundable late fee, and providing proof of successful completion of 12 hours of continuing education in addition to that required for a timely renewal on active status.~~

~~R162-207-3. Current Entity Name Registration.~~

~~207.3 An entity submitting an application for renewal must at the time of application have a name registration with the Utah Division of Corporations that is current and in good standing. The division will not process an application for renewal unless it can verify that the applicant's name registration is current and in good standing.~~

~~R162-207-4. Incomplete Application.~~

~~207.4 If an applicant makes a good faith attempt to submit a completed application for renewal prior to the expiration date of the applicant's current registration or license, but the application is incomplete, the Division may grant an extension for a period not to exceed 30 days to enable the applicant to provide the missing documents or information necessary to complete the application.~~

~~R162-207-5. Nonrefundable Fees.~~

~~207.5 All fees required in conjunction with an application for renewal are nonrefundable if the applicant fails to complete an application or if a completed application is denied for failure to meet the renewal criteria.~~

~~R162-207-6. Determining Fitness for Renewal.~~

~~207.6 Qualifications for Renewal. In order to qualify for renewal, all mortgage officer and principal lending manager applicants, and all directors, executive officers, and managing partners of any entity applicant, and anyone who occupies a position or performs functions similar to a director, executive officer, manager, or managing partner of any entity applicant, shall meet the following qualifications. None of these persons may have:~~

~~(a) been convicted of, or entered a plea in abeyance to, a felony; or during the term of the last license or during the period between license expiration and application to reinstate an expired license;~~

~~(b) a finding of fraud, misrepresentation or deceit entered against the applicant, related to activities requiring a mortgage license, by any court of competent jurisdiction or any government agency, unless the finding was explicitly considered by the Division in approving the applicant's initial license or previous license renewals.~~

~~207.6.1 Determining fitness for renewal. In determining whether an applicant who has not been disqualified by Subsection 207.6 meets the requirements of good moral character, honesty, integrity, and truthfulness, the commission and the division shall determine fitness for renewal in accordance with Section 202.5.2 above.~~

~~R162-207-7. Applications Filed by Mail.~~

~~207.7 The Division will consider a properly completed application for renewal that has been postmarked on or before the expiration date shown on the renewal notice to have been timely filed.~~

~~R162-207-8. Misrepresentation on an Application.~~

~~207.8 Any misrepresentation in an application for renewal, regardless of whether the application is filed with the Division by mail or made online, will be considered a separate violation of these rules and grounds for disciplinary action against the licensee.~~

~~R162-207-9. Exemption from Continuing Education Requirement.~~

~~207.9 A licensee may obtain an exemption from the continuing education requirement of R162-208.1 for a period not to exceed four years upon a finding by the Division that there is reasonable cause to grant the exemption.~~

~~207.9.1 Exemptions from the continuing education requirement may be granted for reasons including military service, prolonged absence from Utah for religious or secular service, and extended or serious illness.~~

~~207.9.2 A licensee seeking an exemption from the continuing education requirement shall apply to the Division for an exemption. An application for an exemption from the continuing education requirement shall set forth with specificity the reasons why the licensee is unable to complete the continuing education and the reasons why the licensee believes that an exemption would be reasonable.~~

~~207.9.3 A licensee may not seek a retroactive exemption by applying for the exemption after the time period for renewal and reinstatement of a license has already passed.~~

~~207.9.4 All applications for an exemption shall be considered in an informal proceeding before the Division Director or the Director's designee and shall be based on the information submitted with the application. No hearing will be permitted.~~

~~207.9.5 Upon a finding of reasonable cause, the Division shall grant the exemption from the continuing education requirement for a specified period of time, not to exceed four years.~~

~~KEY: residential mortgage loan origination~~

~~Date of Enactment or Last Substantive Amendment: July 30, 2008~~

~~Notice of Continuation: November 10, 2008~~

~~Authorizing, and Implemented or Interpreted Law: 61-2e-103(3); 61-2e-202(4)(a)(ii)]~~

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 33379

FILED: 02/11/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R162-208 is repealed in light of the Division's proposed new Rule R162-2c, which updates the mortgage continuing education rules to comply with the nationwide database. (DAR NOTE: The proposed new Rule R162-2c is under DAR No. 33372 in this issue, March 1, 2010, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R162-208 is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2c-103(3)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Repealing this rule relieves the state from having to oversee and enforce it. The costs to the state of implementing and overseeing the new continuing education rules are included in the rule analysis for proposed new Rule R162-2c.

◆ LOCAL GOVERNMENTS: Local governments are not required to take, provide, or oversee continuing education. Repealing this rule will have no fiscal impact to local governments.

◆ SMALL BUSINESSES: Affected businesses are not required to take, provide, or oversee continuing education. Repealing this rule will have no fiscal impact to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Repealing this rule relieves affected persons from having to comply with it. The costs to affected persons of having to comply with the new continuing education procedures and requirements are included in the rule analysis for proposed new Rule R162-2c.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In repealing this rule, the division relieves affected persons of any obligation to comply with it. There are no 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 repeal as a substitute rule amendment containing the substance of these provisions is also proposed by the Division.

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

COMMERCE
REAL ESTATE
HEBER M WELLS BLDG

Commerce, Real Estate
R162-208
Continuing Education

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 03/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

[R162-208. Continuing Education:

R162-208-1. Required Hours of Continuing Education:

208.1 An applicant for license renewal shall complete fourteen hours of continuing education approved by the Division to qualify for license renewal.

R162-208-2. Proof of Continuing Education Hours:

208.2 Proof of continuing education hours must be in the form required by the Division.

R162-208-3. Credit Hours:

208.3 For the purpose of this rule, a credit hour is defined as 50 minutes of education within a 60 minute time period. A 10 minute break may be taken for every 50 minutes of education. Education credit will be limited to a maximum of 8 credit hours per day.

R162-208-4. Subject Matter:

208.4 The following subject matter is acceptable for continuing education credit:

208.4.1 Each time the licensee renews, the required 14 credit hours must include a minimum of 2 credit hours of ethics and a minimum of 3 credit hours related to compliance with Federal and State laws governing mortgage lending.

208.4.2 The balance of the credit hours required for renewal may consist of any courses related to residential mortgage principles and practices that would enhance the competency and professionalism of licensees.

208.4.3 The Division may maintain and may make available to any person upon request a list of course topics that have been approved by the Division and the Commission as acceptable for continuing education purposes. The Division may also post the list of course topics on its website.

R162-208-5. Unacceptable Subject Matter:

208.5 The following topics are not acceptable for continuing education purposes:

208.5.1 Offerings in mechanical office and business skills such as typing, speed reading, memory improvement, report writing, advertising or similar offerings;

208.5.2 Offerings concerning physical well-being or personal development, such as personal motivation, stress management, time management, dress-for-success, or similar offerings; and

208.5.3 Meetings held in conjunction with the general business of the licensee and the entity for which the licensee conducts residential mortgage business, such as sales meetings, or in-house staff meetings unless the in-house staff meetings consist of training on the subjects set forth in Section 61-2c-104(7)(d)(ii).

R162-208-6. Education Committee:

208.6 The Commission may appoint an Education Committee, the purpose of which will be to assist the Division and the Commission in approving continuing education course topics. The Education Committee will make recommendations to the Division and the Commission about whether any particular course topic is sufficiently related to residential mortgage principles and practices, and whether the topic would tend to enhance the competency and professionalism of licensees, to justify placing the topic on the list of course topics that are acceptable for continuing education purposes. The Division and the Commission may accept or reject the Committee's recommendation on any course topic.

208.6.1 If an Education Committee has been appointed by the Commission, any licensee or any course provider may request that the Education Committee recommend to the Division and the Commission that a specific topic be approved as an acceptable topic for continuing education purposes. The request must be made in writing, addressed to the Education Committee in care of the Division, and must state specific reasons why the requester believes the topic qualifies for continuing education purposes.

208.6.2 If the Education Committee turns down a request to approve a certain topic for continuing education purposes, the party who requested that the topic be approved may petition the Division and the Commission on an individual basis for evaluation and approval of the topic as being acceptable for continuing education purposes. The Petition must be made in writing, addressed to the Division and the Commission in care of the Division, and must state specific reasons why the requester believes that the topic qualifies for continuing education purposes. If the Division and the Commission find that the topic is acceptable for continuing education purposes, the Division shall add the topic to the list maintained by the Division of approved continuing education topics.

R162-208-7. Course Completion Certificate and Continuing Education Banking:

208.7.1 The course provider shall issue a course completion certificate in the form required by the Division to all licensees who successfully complete a course in a topic that is approved for continuing education purposes. The course completion certificate shall indicate the number of credit hours successfully completed by the student and must be signed by the student and the instructor who taught the course. The course completion certificate must include the course title, date of the course, course certificate number, and course certificate expiration date.

~~208.7.2 For the purposes of this rule, "continuing education banking" is defined as the upload by a course provider of such information as specified by the Division to the Division's data base concerning the students who have successfully completed a continuing education course, including the name of the course, the certificate number assigned to the course by the Division, the date the course was taught, and the names and license numbers of all students who successfully completed the course.~~

~~208.7.3 In addition to complying with the requirements of Subsection 208.7.1 and except as provided in Subsection 208.7.5, all course providers shall bank continuing education for all students who successfully completed a course within ten days after the course was taught.~~

~~208.7.4 A student must provide an accurate license number and the full name the student has registered with the Division to the course provider within 7 days after course attendance.~~

~~208.7.5 If a course provider is unable to bank a student's continuing education credit because the student has failed to properly and accurately comply with the requirements of Subsection 208.7.4, the course provider shall not be disciplined by the Division for failure to bank the student's continuing education credit.~~

~~R162-208.8. Online Courses.~~

~~208.8 Online courses may be accepted by the Division for continuing education purposes if they comply with all of the other provisions of this rule and if: a) the student who successfully completes a course is able to print from the course provider's website a continuing education certificate to submit to the Division that meets the requirements of Section 208.7 above; and b) the course provider has methods in place to determine whether a student has successfully completed a course and to insure that only those students who have successfully completed a course are able to print a course completion certificate.~~

~~R162-208.9. Continuing Education Instructor Certification.~~

~~208.9 All instructors of courses to be taught for continuing education purposes must apply for certification from the Division not less than 30 days prior to the anticipated date of the first class that they intend to teach.~~

~~208.9.1 Continuing education course instructor applicants shall meet the requirements set forth in Section 210.5 and Section 210.7 of these rules, and shall demonstrate knowledge of the subject matter of the course they intend to teach by submitting proof of the following:~~

~~(a) at least three years of experience in a profession, trade, or technical occupation in a field directly related to the course which the applicant intends to instruct;~~

~~(b) a bachelors or postgraduate degree in the field of real estate, business, law, finance, or other academic area directly related to the course which applicant intends to instruct; or~~

~~(c) any combination of at least three years of full-time experience and college-level education in a field directly related to the course which the applicant intends to instruct.~~

~~208.9.2 Instructor applicants shall demonstrate evidence of the ability to communicate the subject matter by the submission of proof of the following:~~

~~(a) a state teaching certificate or showing successful completion of appropriate college courses in the field of education;~~

~~(b) a professional teaching designation from the National Association of Mortgage Brokers, the Real Estate Educators Association, the Mortgage Bankers Association of America, or a similar association; or~~

~~(c) evidence, such as instructor evaluation forms or letters of reference, of the ability to teach in schools, seminars, or in an equivalent setting.~~

~~208.9.3 Upon approval by the Division, an instructor shall be issued a certification to act as a continuing education instructor. A continuing education instructor certification shall expire twenty-four months after its issuance. An instructor shall apply for renewal of a continuing education instructor certification prior to the expiration of the instructor's current certification, using the form required by the Division.~~

~~208.9.3.1 To qualify for renewal of instructor certification, an instructor must provide proof of having taught a minimum of one class in each course for which renewal is sought in the year preceding application for renewal. The term of a renewed instructor certification shall be twenty-four months.~~

~~208.9.3.1.1 If the instructor has not taught during the year preceding renewal and wishes to renew certification, written explanation shall be submitted outlining the reason for not instructing the course, including documentation satisfactory to the Division as to the instructor's present level of expertise in the subject matter of the course.~~

~~208.9.4 Reinstatement of Expired Instructor Certification. If the instructor does not submit a properly completed renewal form, the renewal fee, and any required documentation prior to the expiration date of the instructor's current certification, the certification shall expire. When an instructor certification expires, the certification may be reinstated for a period of thirty days after the expiration date upon payment of a non-refundable late fee in addition to completing all of the requirements for a timely renewal. After the thirty day period, and until six months after the expiration date, an instructor certification may be reinstated upon payment of a non-refundable late fee and completion of 6 classroom hours of education related to residential mortgages or teaching techniques in addition to completing all of the requirements for a timely renewal. After the six month period, an instructor will be required to apply by following the procedure for obtaining original certification.~~

~~R162-208.10. Continuing Education Course Certification.~~

~~208.10 Continuing education course providers who provide education courses specifically tailored for, or marketed to, Utah real estate, appraiser, or mortgage licensees are required to apply to the Division for certification of any course for which continuing education credit is promised at least 30 days prior to the anticipated date of the first class. Except as may be provided in Subsection 208.10.5, the Division will not grant continuing education credit to students who have taken courses that have not been certified by the Division in advance of the courses being taught to students.~~

~~208.10.1 Approved continuing education providers may include accredited colleges and universities, public or private vocational schools, national and state mortgage-related professional societies and organizations, and proprietary schools and instructors.~~

~~208.10.2 Application Procedure. Except as provided in Subsection 208.10.3, education providers shall make application to the Division following the procedures set forth in Subsection 208.10.4.~~

~~208.10.3. A continuing education provider who provides proof to the Division that a course offering has been certified for continuing education credit in a minimum of three other states and that the provider has specific standards in place for development of courses and approval of instructors may be granted certification of a course by filling out the form required by the Division and including the following with the application:~~

~~(a) a copy of the provider's standards used for developing curricula and for approving instructors;~~

~~(b) evidence that the course is certified in at least three states;~~

~~(c) a sample of the course completion certificate bearing all information required by Subsection 208.10.4(1) and~~

~~(d) all required fees, which shall be non-refundable.~~

~~208.10.4 Submission of Course for Certification. The application shall include the non-refundable instructor certification fee and the non-refundable course certification fee per course per instructor. The application shall be made on the form required by the Division, and shall include all information required by the Division concerning the course and the course sponsor.~~

~~208.10.5 Individual licensees may apply to the Division for continuing education credit for a non-certified mortgage course that was not required by these rules to be certified in advance by submitting the form required by the Division and providing all information concerning the course required by the Division. If the licensee is able to demonstrate to the satisfaction of the Division that the course will likely improve the licensee's ability to better protect or serve the public and improve the licensee's professional licensing status, the Division may grant the individual licensee continuing education for the course.~~

~~208.10.5.1 Provided the subject matter of the course is applicable to residential mortgage loan business in Utah, a course approved for continuing education purposes in another state or jurisdiction may be granted Utah continuing education credit on a case-by-case basis.~~

~~208.10.6 Distance Education. Continuing education courses in which the instruction does not take place in a traditional classroom setting, but rather through other media where teacher and student are separated by distance and sometimes by time, may be certified by the Division if the particular distance education method has been approved by the Commission and the Division. Application must be made to the Division on the form required by the Division for certification of courses that do not take place in a traditional classroom setting.~~

R162-208-11. Conditions of Certification.

~~208.11.1 Minimum class time for live courses. Course completion certificates may be given only to those students who have attended a minimum of 90% of the required class time of a live lecture course.~~

~~208.11.2 Registration Records. A course provider shall maintain for three years a record of registration of each individual completing a course and any other information required by the Division regarding the individual's attendance at the course, including exam results, if any.~~

~~208.11.3 Course providers shall require that a student registered for a distance education course completes the course within one year of the date the student originally registered for the course.~~

~~208.11.4 Material Changes in Courses Certified for Continuing Education Purposes. Whenever there is a material change in a certified continuing education course, including a change in curriculum, course length, instructor, or refund policy, the provider shall promptly notify the Division in writing.~~

~~208.11.5 Course Evaluation Forms. At the end of each course, course providers shall require that each student complete a standard evaluation form provided by the Division. The forms shall be collected at the end of the class, sealed in an envelope, and mailed by the course provider to the Division within 10 days of the last class.~~

R162-208-12. Continuing Education Course Certification and Renewal.

~~208.12 All course certifications shall expire two years after their issuance.~~

~~208.12.1 Application for renewal of a continuing education course certification shall be made on the form required by the Division and shall include the non-refundable renewal fee.~~

~~208.12.1.1 If the certification of a continuing education course is not renewed within six months after its expiration date, the course provider will be required to apply for a new certification for the course.~~

~~208.12.2 After a course has been renewed three times, the course provider will be required to apply for a new certification.~~

R162-208-13. Division Evaluation and Monitoring of Courses and Instructors.

~~208.13.1 The Division shall cause certified continuing education courses to be evaluated for adherence to course content and other prescribed criteria, and for the effectiveness of the instructor.~~

~~208.13.2 On a randomly selected basis, the Division may assign monitors to attend courses for the purpose of evaluating the courses and the instructors. The monitors will complete a standard evaluation form provided by the Division and return the form to the Division within 10 days after the last class.~~

R162-208-14. Limitation on Multiple Use of Credit Hours.

~~208.14 A mortgage licensee who is also licensed by the Division as a real estate broker, real estate sales agent, or real estate appraiser may not receive credit toward renewal of a mortgage license for continuing education hours that have already been used toward renewal of a real estate broker, real estate sales agent, or real estate appraiser license.~~

R162-208-15. Marketing of Continuing Education Courses.

~~208.15.1 A course provider may not advertise or market a continuing education course where Division continuing education course credit will be offered or provided to a licensed attendee unless the course:~~

~~(a) is approved and has been issued a current continuing education course certification number by the Division; and~~

~~(b) is advertised with the continuing education course certification number issued by the Division displayed in all advertising materials.~~

~~208.15.2 A course provider may not advertise, market, or promote a continuing education course with language which indicates Division continuing education course approval is "pending" or otherwise forthcoming.~~

~~KEY: residential mortgage loan origination~~

~~Date of Enactment or Last Substantive Amendment: June 23, 2008~~

~~Notice of Continuation: November 10, 2008~~

~~Authorizing, and Implemented or Interpreted Law: 61-2c-103(3); 61-2c-104(7)(d)(ii)]~~

Commerce, Real Estate
R162-209
Administrative Proceedings

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 33380

FILED: 02/11/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R162-209 is repealed in light of the Division's proposed new Rule R162-2c, which incorporates the provisions of the existing rule into a new numbering system and organizational scheme. (DAR NOTE: The proposed new Rule R162-2c is under DAR No. 33372 in this issue, March 1, 2010, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R162-209 is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-4-202

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The substantive provisions of this rule are incorporated into the new rule. There is no change in the costs to the state.

◆ LOCAL GOVERNMENTS: Local governments have never been subject to administrative proceedings conducted by the division relative to the mortgage industry. Repealing this rule will have no fiscal impact to local governments.

◆ SMALL BUSINESSES: The substantive provisions of this rule are incorporated into the new rule. There is no change in the costs to small businesses, which have always been, and remain, subject to the rules governing administrative proceedings conducted by the division relative to the mortgage industry.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The substantive provisions of this rule are incorporated into the new rule. There is no change in the costs to affected persons, which have always been, and remain, subject to the rules governing administrative proceedings conducted by the division relative to the mortgage industry.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In repealing this rule, the division relieves affected persons of any obligation to comply with it. There are no 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 repeal as a substitute rule amendment containing the substance of these provisions is also proposed by the Division.

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 03/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

[R162-209. Administrative Proceedings.

R162-209-1. Requests for Agency Action.

~~209.1.1 Any application form which is filled out and submitted to the Division for a license or renewal of a license, or for certification of a school, instructor, or course, shall be deemed a request for agency action pursuant to the Utah Administrative Procedures Act, Section 63G-4-102, et seq.~~

~~209.1.2 A complaint against a licensee requesting that the Division commence an investigation or a disciplinary action is not a request for agency action pursuant to the Utah Administrative Procedures Act, Section 63G-4-102, et seq.~~

~~209.1.3 Other requests for agency action shall be in writing and signed by the requestor, and shall contain the information required by the Utah Administrative Procedures Act, Section 63G-4-201.~~

R162-209-2. Formal Adjudicative Proceedings.

Any adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted on a formal basis.

R162-209-3. Informal Adjudicative Proceedings.

209.3.1. All adjudicative proceedings as to any other matters not specifically designated as formal adjudicative proceedings shall be conducted as informal adjudicative proceedings.

209.3.2. A hearing will be held in an informal adjudicative proceeding only if required or permitted by the Utah Residential Mortgage Practices Act or by these rules.

209.3.3. All proceedings on original or renewal applications for a license will be conducted as informal adjudicative proceedings.

209.3.4. All proceedings on original or renewal applications for certification of a school, instructor, or course will be conducted as informal adjudicative proceedings.

209.3.5. Except as provided in Section 63G-4-502, all proceedings for disciplinary action commenced by the Division following investigation of a complaint will be conducted as informal adjudicative proceedings.

R162-209-4. Hearings Not Required.

A hearing is not required and will not be held in the following informal adjudicative proceedings:

(a) The issuance of an original or renewed license when the application has been approved by the Division;

(b) The issuance of an original or renewed school certification, instructor certification, or course certification when the application has been approved by the Division;

(c) The issuance of any interpretation of statute, rule or order, or the issuance of any written opinion or declaratory order determining the applicability of a statute, rule or order, when enforcement or implementation of the statute, rule or order lies within the jurisdiction of the Division;

(d) The denial of an application for original or renewed license on the ground that it is incomplete;

(e) The denial of an application for original or renewed school certification, instructor certification, or course certification on the ground that it does not comply with the requirements of Sections R162-208.9, R162-210.2, R162-210.5, or R162-210.6; or

(f) All proceedings on an application for an exemption from the continuing education requirement.

R162-209-5. Hearings Required in Informal Adjudicative Proceedings.

209.5.1. Hearings will be held in all proceedings commenced by the Division for disciplinary action pursuant to U.C.A. Section 61-2e-402.

R162-209-6. Hearings Permitted.

209.6.1. Except as provided in Subsection 209.6.2, an informal post-revocation hearing following the revocation of a license pursuant to Utah Code Section 61-2e-202(4)(d) for the failure of a person to accurately disclose his criminal history will be held if requested in writing by the person within 30 days from the date the Division's order revoking the license was mailed.

209.6.2. Upon a finding of good cause shown for a delay in requesting a hearing, the Director may grant a post-revocation hearing to a licensee whose request for a hearing was not timely made.

R162-209-7. Procedures for Hearing in All Informal Adjudicative Proceedings.

209.7.1. The procedures to be followed in all informal adjudicative proceedings are set forth in Title 63G, Chapter 4, Utah Administrative Procedures Act, Utah Administrative Code Section R151-46b, and in these rules.

209.7.2. Except as provided in Subsection 209.8.3 of these rules, a party is not required to file a written answer to a notice of agency action from the Division in an informal adjudicative proceeding.

209.7.3. Assistance of an Administrative Law Judge. In any proceeding under this subsection, the Commission and the Division may, but shall not be required to, delegate a hearing to an Administrative Law Judge or request that an Administrative Law Judge assist the Commission and the Division in conducting the hearing. Any delegation of a hearing to an Administrative Law Judge shall be in writing.

209.7.4. Notice of hearing. Upon the scheduling of a hearing by the Division on an application for a license or upon receipt of a timely request for a hearing where other hearings are permitted, the Division shall mail written notice of date, time, and place scheduled for the hearing at least ten days prior to the hearing.

209.7.5. Discovery. Discovery is prohibited, but the Division may issue subpoenas or other orders to compel production of necessary and relevant evidence upon written request to the Division. Parties shall have access to information gathered during an investigation by the Division to the extent permitted by Title 63G, Chapter 2, Government Records Access and Management Act, and other applicable laws. The Division shall provide the information within 15 days of receipt of the written request. Information that will not be provided by the Division to a party includes the Division's Investigative Report, draft documents, attorney/client communications, materials containing an attorney's work product, materials containing the investigators' thought processes or analysis, or internal Division forms and memoranda. The Division may decline to provide a party with information that it has already provided to that party.

209.7.6. Intervention. Intervention is prohibited.

209.7.7. Hearings. Hearings shall be open to all parties, except that a hearing may be conducted in a closed session which is not open to the public if the presiding officer closes the hearing pursuant to Title 63G, Chapter 4, the Utah Administrative Procedures Act, or Title 52, Chapter 4, the Open and Public Meetings Act.

209.7.8. Representation by Counsel. The respondent in a proceeding commenced by the Division, or the requestor in a proceeding commenced by a request for agency action, may be represented by counsel and shall have the opportunity to testify, present witnesses and other evidence, and comment on the issues.

209.7.9. Witnesses. A party to a proceeding may request that the Division subpoena witnesses or documents on the party's behalf by making a written request to the Division. The Division will thereafter generate the witness subpoenas and furnish them to the party requesting them. The party who has requested that a

witness be subpoenaed shall bear the cost of service of the subpoena upon the witness, the witness fee and mileage to be paid to the witness:

~~209.7.10. Record. The Division shall cause a record to be made of the hearing by audio or video recorder, or by a certified shorthand reporter. Any party to a proceeding, at his own expense, may have a reporter approved by the Division prepare a transcript from the Division's recording of the proceedings.~~

~~209.7.11. Orders. Within a reasonable time after the close of a proceeding, the presiding officer shall issue a signed order in writing that states the decision, the reasons for the decision, a notice of any right of administrative or judicial review available to the parties, and the time limits for filing an appeal or requesting review. The order shall be based on the facts appearing in the Division's files and on the facts presented in evidence at the hearing. A copy of the Order shall be promptly mailed or delivered to each of the parties.~~

~~R162-209-8. Additional Procedures for Disciplinary Proceedings Commenced by the Division.~~

~~209.8.1 The following additional procedures shall apply to disciplinary proceedings commenced by the Division pursuant to U.C.A. Section 61-2c-402 following the investigation of a complaint by the Division:~~

~~209.8.2 Notice of Agency Action and Petition. The proceeding shall be commenced by the Division filing and serving a Notice of Agency Action and a Petition setting forth the allegations made by the Division.~~

~~209.8.3 Answer. The presiding officer at the time the Petition is filed may, upon a determination of good cause, require a person against whom a disciplinary proceeding has been initiated pursuant to U.C.A. Section 61-2c-402 to file an Answer to the Petition by ordering in the Notice of Agency Action that the respondent shall file an Answer with the Division. All Answers are required to be filed with the Division within thirty days after the mailing date of the Notice of Agency Action and Petition.~~

~~209.8.4 Witness and Exhibit Lists. The Division shall provide its Witness and Exhibit Lists to the respondent at the time it mails its Notice of Hearing to the respondent. The respondent shall provide its Witness and Exhibits Lists to the Division no later than thirty days after the mailing date of the Division's Notice of Agency Action and Petition.~~

~~209.8.4.1 Contents of Witness List. A Witness List shall contain the name, address, and telephone number of each witness, and a summary of the testimony expected from the witness.~~

~~209.8.4.2 Contents of Exhibit List. An Exhibit List shall contain an identification of each document or other exhibit that the party intends to use at the hearing, and shall be accompanied by copies of the exhibits.~~

~~209.8.5 Pre-hearing Motions. Any pre-hearing motion permitted by the Department of Commerce Administrative Procedures Act Rules shall be made in accordance with those rules. The Director of the Division shall receive and rule upon any pre-hearing motions.~~

KEY: residential mortgage loan origination

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

Notice of Continuation: January 30, 2006

Authorizing, and Implemented or Interpreted Law: 63G-4-202]

**Commerce, Real Estate
R162-210
Certification of Prelicensing Education
Providers**

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 33381

FILED: 02/11/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R162-210 is repealed in light of the Division's proposed new Rule R162-2c, which updates the mortgage education certification rules to comply with the nationwide database. (DAR NOTE: The proposed new Rule R162-2c is under DAR No. 33372 in this issue, March 1, 2010, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R162-210 is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2c-103(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Repealing this rule relieves the state from having to oversee and enforce it. The costs to the state of implementing and overseeing the new education certification rules are included in the rule analysis for proposed new Rule R162-2c.

◆ **LOCAL GOVERNMENTS:** Local governments do not take, provide, or oversee mortgage prelicensing education and have never been subject to the rules governing it. Repealing this rule will have no fiscal impact to local governments.

◆ **SMALL BUSINESSES:** Businesses that provide prelicensing education no longer have to comply with this rule. The costs to them of complying with the new rule governing prelicensing education are addressed in the rule analysis for proposed new Rule R162-2c.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Individuals teaching prelicensing education courses no longer have to comply with this rule. The costs to them of complying with the new rule governing prelicensing education are addressed in the rule analysis for proposed new Rule R162-2c.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In repealing this rule, the division relieves affected persons of any obligation to comply with it. There are no 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 repeal as a substitute rule amendment containing the substance of these provisions is also proposed by the Division.

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 03/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.

[R162-210. Certification of Prelicensing Education Providers.

R162-210-1. Definitions:

210.1.1 For the purposes of this rule, "school" includes:

(a) Any college or university accredited by a regional accrediting agency which is recognized by the United States Department of Education;

(b) Any community college, vocational-technical school, state or federal agency or commission;

(c) Any nationally recognized mortgage organization, any Utah mortgage organization, or any local mortgage organization which has been approved by the Utah Residential Mortgage Regulatory Commission; and

(d) Any proprietary mortgage education school.

210.1.2 For the purposes of this rule, "applicant" shall include school directors, school owners and pending instructors.

210.1.3 "Distance Education" is defined as education in which the instruction does not take place in a traditional classroom setting, but rather through other media where teacher and student are separated by distance and sometimes by time.

R162-210-2. Application for School Certification.

210.2.1 A school offering prelicensing education must be certified by the Division of Real Estate before providing any education. Each school requesting approval of an educational

program designed to meet the prelicensing education requirements must make application for approval on the form prescribed by the Division. The application must include the non-refundable application fee and the following information which will be used in determining the school's eligibility for approval:

(a) Name, phone number and address of the school, school director, and all owners of the school;

(b) A description of the type of school and a description of the school's physical facilities. All courses must be taught in an appropriate classroom facility and not in any private residence, except for courses approved for specific home study purposes;

(c) A comprehensive course outline including a description of the course, the length of time to be spent on each subject area broken into class periods, and a minimum of three to five learning objectives for every three hours of classroom time. The curriculum must include all of the topics set forth in the Standard Curriculum approved by the Utah Residential Mortgage Regulatory Commission and the Division. A school may alter the sequence of presentation of the required topics, and may add topics in addition to those required by the Standard Curriculum;

(d) A list of each certified instructor the school intends to use and the instructor certification number which has been issued by the Division. A college or university may use any faculty member to teach an approved course provided the instructor demonstrates to the satisfaction of the Division the academic training or experience qualifying him to teach the course;

(e) An itemization of methods of instruction, including lecture method, slide presentation, cassette, videotape, movie, or other method;

(f) A list of the titles, authors and publishers of all required textbooks. All texts, workbooks, supplement pamphlets and any other materials must be appropriate and current in their application to the required course outline;

(g) A schedule of the days, times and locations of classes;

(h) A copy of the statement which shall be provided for each student outlining the days, times and locations of classes; the number of quizzes and examinations; the grading system, including methods of testing and standards of grading; the requirements for attendance; the school's evidence of notification to candidates of the qualifying questionnaire; and the school's refund policy. The statement to the student shall state in capital letters no smaller than 1/4 inch the following language: "Any student attending the (school name) is under no obligation to affiliate with any of the mortgage entities that may be soliciting for licensees at this school;" and

(i) Any other information as the Division may require.

R162-210-3. School Certification and Renewal.

210.3.1 When a school has met all conditions of certification, and upon approval by the Division, a school will be issued certification. A school certification will expire 24 months from the date of issuance. A school shall apply for renewal for additional twenty-four month periods prior to the expiration of each current certification, using the form required by the Division.

R162-210-4. Rules of Conduct for Certified Schools.

210.4.1 A school shall teach the approved course of study as outlined in the Standard Course Outline approved by the Utah Residential Mortgage Regulatory Commission.

~~210.4.2 A school shall require each student to attend the required number of hours.~~

~~210.4.3 A school shall maintain a record of each student's attendance for a minimum of five years after enrollment.~~

~~210.4.4 A school shall not accept a student for a number of hours that is less than the full prelicensing curriculum without first having a written statement from the Division indicating the exact number of hours that an applicant for licensure by reciprocity is required by the Division to complete.~~

~~210.4.5 A school shall not make any misrepresentation in its advertising about any course of instruction, and shall be able to provide substantiation of any claims made in its advertising. School advertising and public notices shall not denigrate the mortgage profession and shall not make disparaging remarks about a competitor's services or methods of operation.~~

~~210.4.6 Guest Lecturers. No more than 20% of the required prelicensing education hours may be provided by guest lecturers. Guest lecturers shall be experts in the field on which they provide instruction. Prior to using any guest lecturer, a certified school shall provide to the Division the name of the guest lecturer and a resume which defines the knowledge and expertise of the guest lecturer, or other evidence of professional qualifications of the guest lecturer.~~

~~210.4.7 Minimum class time. A school shall not give a student credit for more credit hours of education than the student has actually completed. A credit hour is defined as 50 minutes of instruction within a 60 minute time period. A 10 minute break will be given for each 50 minutes of instruction.~~

~~210.4.8 Maximum class hours per day. Education credit will be limited to a maximum of eight credit hours per day.~~

~~210.4.9 Limitation on Non-lecture Methods of Instruction. Absent special approval from the Division: (a) Non-lecture methods of instruction will be limited to 50% of the total credit hours of the prelicensing curriculum; (b) Non-lecture methods of instruction will have an accompanying workbook for the student to complete during the instruction. The schools shall submit copies of the workbooks to the Division prior to using a non-lecture method of instruction; and (c) A school must have a certified instructor available to answer student questions within 48 hours after a non-lecture method of instruction has been used.~~

~~210.4.10 Proof of Course Integrity for Distance Education Courses. Distance education courses will be reviewed on a case by case basis and will be approved only if, in the opinion of the Division, assurance of the following can be provided: a) There is a method to insure that the person actually completing the course is the student who is to receive credit for the course; b) The course provides no fewer hours of actual instruction than the number of credit hours that will be granted for the course; and c) There is a method to insure that the student comprehends the material.~~

~~210.4.11 Challenge by Examination. A student cannot challenge a course or any part of a course of study by examination in lieu of attendance at the course.~~

~~210.4.12 College Credit Hour Equivalents. A college or a university that provides Division-approved prelicensing education courses may schedule those courses within its regular quarter or semester schedule. A college quarter hour credit is the equivalent of 10 classroom hours of prelicensing education, and a college semester hour credit is the equivalent of 15 classroom hours of prelicensing education.~~

~~210.4.13 Within 15 calendar days after the occurrence of any material change in the information provided in the school's application for certification, the school shall give the Division written notice of that change.~~

~~210.4.14 A school shall not attempt by any means to obtain or to use in its educational offerings the questions from the prelicensing examination unless the questions have been dropped from the current bank of exam questions.~~

~~210.4.15 A school shall not give any valuable consideration to an individual or entity licensed with the Division under the Utah Residential Mortgage Practices Act for having referred students to the school, nor shall a school accept valuable consideration from an individual or entity licensed with the Division under the Utah Residential Mortgage Practices Act for having referred students to a licensed mortgage entity.~~

~~210.4.16 Licensed mortgage entities may be permitted by a school to solicit prospective mortgage officers at the school, provided that no solicitation may be made during the class time or the 10-minute breaks that are permitted during every hour of instruction. Such solicitation may be made only after the regularly scheduled class time has concluded. No student may be required to attend any such solicitation.~~

~~210.4.17 A school shall use only certified instructors or guest lecturers. The school shall notify the Division about which class sessions the guest lecturers will teach.~~

~~210.4.18 A school's owners and directors shall be responsible for the quality of instruction in the school and for adherence to the state laws and regulations regarding school and instructor certification.~~

~~210.4.19 School directors shall provide the instructor for each course with the required content outline for the course and shall assure that the required subject matter has been taught.~~

~~210.4.20 Disclosure Requirements Regarding Criminal History. For the purposes of this rule, criminal history is defined as any felony or misdemeanor convictions, any pleas in abeyance or diversion agreements, or any pending criminal charges.~~

~~210.4.20.1 Prior to accepting payment from a prospective student for a pre-licensing education course, a certified school shall provide a written disclosure to the prospective student stating: a) applicants for licensure must disclose any criminal history by answering a questionnaire as part of the mortgage exam; b) applicants for licensure must submit fingerprint cards to the Division and consent to a criminal background check; c) licenses issued by the Division are conditional pending the completion of the background check and failure to accurately disclose a criminal history will result in an immediate and automatic license revocation; d) applicants with a criminal history described in Subsection R162-202-5(202.5.1) do not qualify for a license; and e) applicants with a criminal history other than as described in Subsection R162-202-5(202.5.1) will be considered on a case-by-case basis and may be required to appear at an administrative hearing to determine qualifications for licensure.~~

~~210.4.20.2 The school shall be required to obtain the student's signature on the written disclosure required by Section 210.4.20.1 acknowledging receipt of the disclosure. The disclosure form and acknowledgement shall be retained in the school's records and made available for inspection by the Division for a minimum of two years following the date upon which the student completes the pre-licensing course.~~

R162-210-5. Instructor Application for Certification.

~~210.5.1~~ An instructor shall not teach a prelicensing course by himself without having been certified by the Division prior to teaching the course. Each applicant for certification as a prelicensing instructor shall make application for approval on the form required by the Division.

~~210.5.2~~ The applicant for instructor certification to teach Mortgage Officer prelicensing courses shall provide:

~~(a)~~ Evidence of a minimum educational level of graduation from high school or its equivalent;

~~(b)~~ Evidence of a minimum of five years of experience in the residential mortgage industry within the past ten years, or evidence of having completed appropriate college-level courses specific to the topic proposed to be taught;

~~(c)~~ Evidence of a minimum of twelve months of fulltime teaching experience or an equivalent number of months of part time teaching experience, or attendance at Instructor Development Workshops totaling at least two days in length; and

~~(d)~~ Evidence of having passed an examination designed to test the knowledge of the subject matter proposed to be taught.

~~210.5.3~~ Lending Manager Prelicensing Courses. In addition to the requirements of Section 210.5.2, an applicant for certification to teach the following specific Lending Manager prelicensing courses shall have experience as follows:

~~210.5.3.1~~ Management of a Residential Mortgage Loan Office. An applicant for certification to teach office management courses must have at least two years practical experience in managing an office that engaged in the business of residential mortgage loans.

~~210.5.3.2~~ Mortgage Lending Law. An applicant to teach mortgage lending law courses must be a current member of the Utah Bar Association or have graduated from an American Bar Association accredited law school, and must have at least two years practical experience in the field of real estate law.

~~210.5.3.3~~ Advanced Appraisal. An applicant to teach advanced appraisal courses must be a State-Certified appraiser and must hold an MAI designation or equivalent designation. The instructor applicant must have at least two years practical experience in appraising.

~~210.5.3.4~~ Advanced Finance. An applicant to teach advanced finance courses must have been associated with a lending institution as a loan officer or have a degree in finance. The instructor applicant must have at least two years practical experience in real estate finance.

~~210.5.4~~ Special Circumstances. Instructor applicants who cannot meet the requirements of Section 210.5.2, but who believe they are qualified to be certified as instructors, may petition the Utah Residential Mortgage Regulatory Commission on an individual basis for evaluation and approval of their qualifications as being substantially equivalent to those required for instructor certification.

R162-210-6. Instructor Certification and Renewal.

~~210.6.1.~~ Upon approval by the Division, an instructor applicant will be issued a certification that expires twenty-four months following certification. An instructor shall apply for renewal for additional twenty-four month periods prior to the expiration of each current certification, using the form required by the Division.

~~210.6.2.~~ As a condition of renewal of certification, the applicant shall include the following with the application for renewal:

~~(a)~~ Proof of having taught at least 20 hours of in-class instruction in a certified mortgage education course during the preceding two years;

~~(b)~~ Proof of attendance at an instructor development workshop sponsored by the Division during the preceding two years; and

~~(c)~~ Proof of successful completion of 12 hours of live education courses taken in real estate financing related subjects;

~~210.6.3~~ A renewed certification will be issued for two full calendar years, expiring on December 31 of the second calendar year.

~~210.6.4~~ If an application for renewal of instructor certification, including all required fees and documentation, is not received prior to the expiration date of the current instructor certification, the instructor certification shall expire.

~~210.6.4.1~~ When an instructor certification expires, the certification may be reinstated for a period of thirty days after the expiration date of the certification upon payment of a non-refundable late fee in addition to completion of the requirements for a timely renewal.

~~210.6.4.2~~ After the thirty day period, and until three months after the expiration date, an instructor certification may be reinstated upon payment of a non-refundable late fee and completion of 6 classroom hours of education related to residential mortgages or teaching techniques in addition to completing all of the requirements for a timely renewal. After the three month period, an instructor will be required to apply as for an original certification.

R162-210-7. Determining Fitness for Certification.

~~210.7.1~~ In order to qualify for school certification, all school directors and all owners of the school must meet the criteria of honesty, integrity, truthfulness, reputation, and competency. In order to qualify for instructor certification, all instructors must meet the criteria of good moral character, honesty, integrity, truthfulness, reputation, and competency.

~~210.7.2~~ The determination of whether a person possesses these qualifications will be made by the Division, with the concurrence of the Commission. In determining fitness for certification, the Division and Commission may consider various factors, including:

~~(a)~~ whether the person has had a license to practice in the mortgage profession, or any other regulated profession or occupation denied, restricted, suspended, or revoked or subjected to any other disciplinary action by this or another jurisdiction;

~~(b)~~ whether the person has been permitted to resign or surrender a mortgage license or any other professional license or has ever allowed a license to expire while the applicant was under investigation, or while action was pending against the applicant by a mortgage licensing or any other regulatory agency;

~~(c)~~ whether any action is pending against the person by any mortgage licensing or other regulatory agency;

~~(d)~~ whether the person is currently under investigation for, or charged with, or has ever been convicted of or pled guilty or no contest to, or entered a plea in abeyance to, a misdemeanor or felony;

- ~~_____ (e) the circumstances that led to any criminal convictions;~~
- ~~_____ (f) the amount of time that has passed since the individual's last criminal conviction;~~
- ~~_____ (g) whether the person has ever been placed on probation or ordered to pay a fine or restitution in connection with any criminal offense or a licensing action;~~
- ~~_____ (h) whether a civil judgment has ever been entered against the person based on fraud, misrepresentation or deceit, and, if the judgment awarded damages against the person, whether the judgment has been fully satisfied;~~
- ~~_____ (i) whether any restitution ordered by a court in a criminal conviction has been fully satisfied;~~
- ~~_____ (j) whether the probation in a criminal conviction or a licensing action has been completed and fully served;~~
- ~~_____ (k) whether there has been subsequent good conduct on the part of the person;~~
- ~~_____ (l) any character testimony presented at the hearing and any character references submitted by the individual;~~
- ~~_____ (m) past acts related to honesty or moral character involving the business of residential mortgage loans;~~
- ~~_____ (n) whether the individual has been guilty of dishonest conduct in the five years preceeding application that would have been ground under Utah law for revocation or suspension of a certification had the individual then been certified;~~
- ~~_____ (o) whether any tax and child support arrearages have been paid; and~~
- ~~_____ (p) whether the individual has demonstrated competency in business subsequent to any part incompetency by the individual in the mortgage loan business.~~

~~**R162-210.8. Division Evaluation and Monitoring of Courses and Instructors.**~~

~~210.8.1 The Division shall cause certified prelicensing education courses to be evaluated for adherence to course content and other prescribed criteria, and for the effectiveness of the instructor.~~

~~210.8.2 On a randomly selected basis, the Division may assign monitors to attend courses for the purpose of evaluating the courses and the instructors. The monitors will complete a standard evaluation form provided by the Division and return the form to the Division within 10 days after the last class.~~

~~**KEY: residential mortgage loan origination**~~

~~**Date of Enactment or Last Substantive Amendment: April 7, 2008**~~

~~**Notice of Continuation: May 27, 2009**~~

~~**Authorizing, and Implemented or Interpreted Law: 61-2c-103(6)]**~~

**Commerce, Real Estate
R162-211
Adjusted License Terms**

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 33382

FILED: 02/11/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Rule R162-211 was promulgated in order to adjust the expiration dates of existing licenses so that the licensees may transition onto the nationwide database with a yearly expiration date of December 31. New licenses have been issued by the division. The division's proposed new Rule R162-2c establishes a yearly license expiration date of December 31. Therefore, Rule R162-211 is no longer necessary. (DAR NOTE: The proposed new Rule R162-2c is under DAR No. 33372 in this issue, March 1, 2010, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: Rule R162-211 is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2c-103(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: This rule is moot. The state incurs no costs or savings in repealing it.
- ◆ LOCAL GOVERNMENTS: Local governments do not license with the division and were never subject to this rule. Repealing it will have no fiscal impact on local governments.
- ◆ SMALL BUSINESSES: Small businesses licensed with the division have been issued replacement licenses with expiration dates of December 31. The purpose of the rule has been satisfied, and it no longer has any effect on small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons licensed with the division have been issued replacement licenses with expiration dates of December 31. The purpose of the rule has been satisfied, and it no longer has any effect on any persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In repealing this rule, the division relieves affected persons of any obligation to comply with it. There are no 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 repeal as a transition to the nationwide database has been made and the current rule is no longer needed.

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.

~~Authorizing, and Implemented or Interpreted Law:
61-2c-205(1)(b)]~~

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 03/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2010

AUTHORIZED BY: Deanna Sabey, Director

Environmental Quality, Radiation Control **R313-34-3** Clarifications or Exemptions

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 33368
FILED: 02/10/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the process to complete a five-year review of this rule, it was noted that the rule referred to the 2001 edition of the Code of Federal Regulations. The incorporated material was updated to the 2010 edition. The federal requirements did not have any changes since the 2001 edition was incorporated by reference.

SUMMARY OF THE RULE OR CHANGE: References to the 2001 edition of 10 CFR 36 and Appendix B of 10 CFR 20 were updated to the 2010 edition.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 10 CFR 36 and Appendix B of 10 CFR 20 and Subsection 19-3-104(4)

MATERIALS INCORPORATED BY REFERENCES:

- ♦ Updates 10 CFR 36, published by GPO, 01/01/2010
- ♦ Updates App. B of 10 CFR 20, published by GPO, 01/01/2010

ANTICIPATED COST OR SAVINGS TO:

- ♦ THE STATE BUDGET: The Division of Radiation Control will have a small cost to acquire a copy of the applicable Code of Federal Regulations. This cost is estimated to be less than \$75.
- ♦ LOCAL GOVERNMENTS: There are no local governmental agencies licensed to receive, possess, or use radioactive materials in an irradiator.
- ♦ SMALL BUSINESSES: One regulated entity will need to acquire a copy of the applicable Code of Federal Regulations. This cost is estimated to be less than \$75.
- ♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Utah Radiation Control Board is not aware of any direct impact on other entities.

R162. Commerce, Real Estate.

~~[R162-21H. Adjusted License Terms.~~

~~R162-211-1. Adjusted License Terms to Comply with Nationwide Mortgage Licensing System.~~

~~(1) Notwithstanding other provisions in R162, Sections R162-201 through R162-210, licensing terms for a license issued under the authority of Title 61, Chapter 2c, and rules made by the Division shall be adjusted according to the following schedule:~~

~~(a)(i) An applicant for license renewal whose license expires between January 1, 2008, and December 31, 2008, and who applies for and qualifies for renewal under Title 61, Chapter 2c, and rules made by the Division shall be issued a license for a term that expires December 31, 2010.~~

~~(ii) An applicant between January 1, 2008, and December 31, 2008, and who applies for and qualifies for licensure under Title 61, Chapter 2c, and rules made by the Division shall be issued a license for a term that expires December 31, 2010.~~

~~(iii) The Division shall issue a new license with the new expiration date to a licensee who was issued a mortgage license during 2008 prior to the enactment of this rule.~~

~~(b) An applicant for license renewal whose license expires between January 1, 2009, and December 31, 2009, and who applies for and qualifies for renewal under Title 61, Chapter 2c, and rules made by the Division shall be issued a license for a term that expires December 31, 2010.~~

~~(c) An applicant for licensure who applies for licensure between January 1, 2009, and December 31, 2009, and who qualifies for licensure under Title 61, Chapter 2c, and rules made by the Division shall be issued a license for a term that expires December 31, 2010.~~

~~(d) An applicant for licensure who applies for licensure between January 1, 2010, and December 31, 2010, shall comply with the procedures for licensure under Title 61, Chapter 2c, and rules made by the Division existing at time of licensure or license renewal.~~

~~(2) This rule does not affect any provisions under Rules R162-201 through R162-210 regarding licensee discipline.~~

~~KEY: mortgage renewal license term~~

~~Date of Enactment or Last Substantive Amendment: April 29, 2009~~

COMPLIANCE COSTS FOR AFFECTED PERSONS: Since the rule changes will not add or remove any regulatory requirements, there are no additional compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is one Utah business currently affected by this rule. The fiscal impact is minimal and is associated with the need to obtain a copy of the applicable Code of Federal Regulations.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 RADIATION CONTROLROOM 212
 168 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Craig Jones by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at cwjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 04/15/2010

AUTHORIZED BY: Dane Finerfrock, Director

R313. Environmental Quality, Radiation Control.

R313-34. Requirements for Irradiators.

R313-34-3. Clarifications or Exemptions.

For purposes of Rule R313-34, 10 CFR 36, 20[0]10 ed., is incorporated by reference with the following clarifications or exceptions:

- (1) The exclusion of the following 10 CFR sections: 36.1, 36.5, 36.8, 36.11, 36.17, 36.19(a), 36.91, and 36.93;
- (2) The substitution of the following:
 - (a) Radiation Control Act for Atomic Energy Act of 1954;
 - (b) Utah Radiation Control Rules for the reference to NRC regulations and the Commission's regulations;
 - (c) The Executive Secretary or the Executive Secretary's for the Commission or the Commission's, and NRC in the following 10 CFR sections: 36.13, 36.13(f), 36.15, 36.19(b), 36.53(c), 36.69, and 36.81(a), 36.81(d) and 36.81(e); and
 - (d) In 10 CFR 36.51(a)(1), Rule R313-15 for NRC;
- (3) Appendix B of 10 CFR Part 20 refers to the 20[0]10 ed. of 10 CFR; and
- (4) The substitution of Title R313 references for the following 10 CFR references:
 - (a) Section R313-12-51 for reference to 10 CFR 30.51;
 - (b) Rule R313-15 for the reference to 10 CFR 20;
 - (c) Subsection R313-15-501(3) for the reference to 10 CFR 20.1501(c);
 - (d) Section R313-15-902 for the reference to 10 CFR 20.1902;

- (e) Rule R313-18 for the reference to 10 CFR 19;
- (f) Section R313-19-41 for the reference to 10 CFR 30.41;
- (g) Section R313-19-50 for the reference to 10 CFR 30.50;
- (h) Section R313-22-33 for the reference to 10 CFR 30.33;
- (i) Section R313-22-210 for the reference to 10 CFR 32.210;
- (j) Section R313-22-35 for the reference to 10 CFR 30.35; and
- (k) Rule R313-70 for the reference to 10 CFR 170.31.

KEY: irradiator, survey, radiation, radiation safety
Date of Enactment or Last Substantive Amendment: ~~September 14, 2001~~ 2010
Notice of Continuation: March 8, 2005
Authorizing, and Implemented or Interpreted Law: 19-3-104(4); 19-3-104(8)

Insurance, Administration
R590-196
Bail Bond Surety Fee Standards,
Collateral Standards, and Disclosure
Form

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 33387
 FILED: 02/16/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed at the request of the Bail Bond Oversight Board and the Utah bail bond industry. The change sets a minimum premium percentage for bail bonds at 10%. Currently, there is no minimum.

SUMMARY OF THE RULE OR CHANGE: The changes goes from no minimum premium for a bail bond to a minimum premium of 10% of the bond amount.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-35-104

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** The changes to this rule will have no effect on department or state budgets. It will not change revenues or increase expenses. It will increase workload for a time while the department reviews bail bond form filings showing the change in the minimum fee. However, this

increased work will not require the hiring of part time or full time help.

◆ LOCAL GOVERNMENTS: The changes to this rule will affect the relationship between the bail bond licensee and the department but will have no effect on their relationship with local governments.

◆ SMALL BUSINESSES: The changes to this rule will affect bail bond agencies and some surety companies. The 19 bail bond agencies that financially back themselves and are not backed by surety companies will need to change their bail bond forms to show the change in the minimum premium percentage. This would be a fairly minor change in the form but result in costs for printing and paper costs. The 21 agencies backed by surety companies will not be responsible for changing and filing the forms with the department. Bail bond agencies who have charged less than 10% of the bond amount will have to increase their premiums thus potentially increasing their revenues. Agencies that have not charged less than the 10% will probably see little, if any difference in revenues. What the change in the minimum bond premium will do to competition in the bail bond marketplace is yet to be seen. It could have a positive effect on the financial stability of bail bond agencies.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Surety companies that provide financial backing for the 21 bail bond agencies will be required to change and refile their bail bond forms with the department. They will also need to provide the agencies they back with these forms which will incur costs to the company. Consumers will no longer be able to purchase bail bonds for less than 10%.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Surety companies and agencies who create policy forms will need to change them to show the new minimum premium then publish and file a sample with the department. Those charging less than 10% of the bond amount for premium will have to increase their premium.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The impact of this change will vary among agencies and companies. It will depend upon whether or not the agency is backed by a surety company; how much surplus stock bond forms an agency has on hand and will have to replace; and on how frequently the agency charged less than 10% for a bail bond.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 03/17/2010 11:00 AM, Senate Building (behind the Capitol), Beehive Room, 420 N State Street, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2010

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-196. Bail Bond Surety Fee Standards, Collateral Standards, and Disclosure Form.

R590-196-4. Fee Standards.

- (1) Initial bail bond fees.
 - (a) Bail bond premium:
 - (i) minimum fee: ~~[none]~~ not less than 10% of bond amount;
 - (ii) maximum fee: not to exceed 20% of bond amount.
 - (b) Document preparation fee may not exceed \$20 per set of forms pertaining to one bail bond.
 - (c) Credit card fee may not exceed 5% of the amount charged to the credit card.
 - (2) Additional fees.
 - (a) These fees are limited to actual and reasonable expenses incurred by the bail bond surety because:
 - (i) the defendant fails to appear before the court at any designated dates and times;
 - (ii) the defendant fails to comply with the court order; or
 - (iii) the defendant or the co-signer fails to comply with the terms of the bail bond agreement and any promissory notes pertaining to that agreement.
 - (b) Reasonable expense fee for mileage is the Internal Revenue Service standard for business mileage.
 - (c) Apprehension expenses such as meals, lodging, commercial travel, communications, whether or not the defendant is apprehended, are limited to actual expenses incurred and must be reasonable, i.e., meals at mid-range restaurants, lodging at mid-range hotels, commercial travel in coach class, etc.
 - (d) Reasonable collateral expense fees:
 - (i) actual expenses to obtain collateral; and
 - (ii) storage expenses if in a secured storage area, limited to actual expenses.
 - (e) A late payment fee of \$20 or 5% of the delinquent periodic payment whichever is less.
 - (f) If a fee is charged by the court or the jail to process a bail bond, the actual fee charged may be passed through to the defendant or the co-signer.

R590-196-6. Disclosure Form.

The bail bond surety and its agents will use the following disclosure form or a form that contains similar language.

TABLE

XYZ Bail Bonds Disclosure Form
1234 South 1234 East, Salt Lake City, UT 84444:
801-123-4567 fax: 801-098-7654

Defendant.....	Co-Signer.....	
Court.....	Charge.....	
Bond amount \$.....	Bond number.....	
Initial Fees, non-refundable.		
...bond premium, maximum: no more than 20%;		
minimum: [none] <u>not less than 10%;</u>		\$.....
...document preparation, not to exceed \$20		
per set of bond forms.		\$.....
...credit card fee, not to exceed 5% of amount		
charged to credit card		\$.....
	total initial fees	\$.....

Additional Fees.

(1) Limited to actual and reasonable expenses required because the defendant fails to appear before the court at any designated times, or fails to comply with the court order, or fails to comply with the terms of the bail bond agreement or any promissory notes pertaining to that agreement. The following are some reasonable expense fees:

- (i) reasonable expense fee for mileage is IRS mileage reimbursement standard for business miles;
- (ii) reasonable apprehension expense fees include meals at mid-range restaurants, lodging at mid-range hotels, transportation at no more than coach fares; and
- (iii) reasonable collateral expense fees: actual expenses to obtain collateral and, actual storage expenses, if collateral is in a secured storage area.

(2) A late payment fee of \$20 or 5% of the delinquent periodic payment whichever is less.

(3) If a fee is charged by the court or the jail to process a bail bond, the actual fee charged may be passed through to the defendant or the co-signer.

Grounds for revocation of bond.

Should the defendant violate any of the following, the defendant shall be subject to immediate bond revocation and the defendant, or the co-signer, or both, shall be subject to all the costs incurred to return the defendant to the court.

Grounds for revocation include the following:

- (a) the defendant or co-signer providing materially false information on bail bond application;
- (b) the court's increasing the amount of bail beyond sound underwriting criteria employed by the bail bond agent or bail bond surety;
- (c) a material and detrimental change in the collateral posted by the defendant or one acting on defendant's behalf;
- (d) the defendant changes their address or telephone number or employer without giving reasonable notice to the bail bond agent or bail bond surety;
- (e) the defendant is arrested for another crime, other than a minor traffic violation, while on bail;
- (f) the defendant is back in jail in any jurisdiction and revocations can be served prior to the defendant being released;
- (g) failure by the defendant to appear in court at any appointed times;
- (h) finding of guilt against the defendant by a court of competent jurisdiction;
- (i) a request by the co-signer based on reasons (a) through (h) above. Items (a) through (h) pertain to the defendant; items (a), (c), (e) (g) and (i) pertain to co-signers, if any.

Collateral.

The following has been given as collateral to guarantee all court appearances of the defendant until the bond is exonerated:

.....
.....
.....

The following has been given as collateral to guarantee payment of bond fees:

.....
.....

In the event judgment is entered against the surety or the bonding fee is not paid according to the terms of the bail bond agreement and its promissory note, if any, following written notice to the undersigned of such judgment or non-payment, the undersigned authorize XYZ Bail Bonds to convert the appropriate collateral to collect the judgment or the unpaid bond fees. Should proceeds from the sale of the appropriate collateral be insufficient to cover the outstanding balance due, the defendant, the co-signer, or both, agree to be personally liable for the difference. Should proceeds from the sale exceed the outstanding balance, the difference will be returned to the depositor of the collateral. The depositor's signature below constitutes acknowledgment of a Bill of Sale for the collateral. The depositor accepts this agreement as a bill of sale for the collateral.

By signing below I certify that I have read and understand this disclosure form, the bail bond agreement and its attached promissory note, if any. I certify under penalty of perjury that all information given to XYZ Bail Bonds verbally and in writing on all documents relevant to this bond are true and accurate. The co-signer agrees that should the co-signer request XYZ Bail Bonds to revoke the defendant's bond, with or without probable cause, the co-signer will be responsible to pay XYZ Bail Bonds and their agents for the time returning the defendant to jail at the rates stated above in additional fees. If requested by the co-signer to revoke the bond without probable cause, the co-signer will be responsible to reimburse the defendant his bond fees.

Date.....Defendant.....
Date.....Co-signer.....
Date.....Depositor.....
I,....., agent of XYZ Bail Bonds, certify that I have given a copy of all documents pertaining to this bail bond agreement to the defendant, the co-signer, the depositor, or any of the above, at the time and date said bail bond agreement was executed.
Date.....Bail Bond Agent.....

KEY: insurance, bail bonds
Date of Enactment or Last Substantive Amendment: [October 22, 2009]2010
Notice of Continuation: December 30, 2009
Authorizing, and Implemented or Interpreted Law: 31A-35-104

**Judicial Performance Evaluation
Commission, Administration
R597-3
Judicial Performance Evaluations**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33385

FILED: 02/11/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purposes of the rule are: to make permanent minor changes first promulgated by emergency rule; to more specifically define the terms "court staff," "litigant," and "witness;" to create a new category of survey respondents called Juvenile Court Professionals; and to define "anonymity", "confidentiality", "raw form of survey results", and "summary form of survey results" as those terms are used in the statute.

SUMMARY OF THE RULE OR CHANGE: The amendment defines terms used generally in the statute, creates a new category of survey respondents, and makes permanent date changes promulgated at the end of 2009 by emergency rule. (DAR NOTE: The corresponding 120-day (emergency) rule was published in the January 15, 2010, issue of the Bulletin under DAR No. 33289, and was effective 12/22/2009.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 78A-12-101 through 78A-12-206

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Theoretically, adding a new survey respondent category could cost approximately \$20,000. In practice, however, it should be cost neutral because S.B. 210, currently before the 2010 legislature (with no opposition), proposes to eliminate another category of survey respondents. Thus, eliminating one category and adding another should have no impact at all on the state budget.

◆ LOCAL GOVERNMENTS: Because the commission has no authority with respect to local government, there is no anticipated cost or savings to local government.

◆ SMALL BUSINESSES: Because the commission has no authority with respect to small businesses, there is no anticipated cost or savings to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Because the commission has no authority with respect to persons other than small businesses, businesses, or local government entities, there is no anticipated cost or savings to those entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The commission assumes all compliance costs. Any affected persons do not assume compliance costs of the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because the commission does not regulate business, there is no fiscal impact on business.

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

JUDICIAL PERFORMANCE EVALUATION

COMMISSION

ADMINISTRATION

ROOM B-330 SENATE BUILDING

420 N STATE ST

SENATE BUILDING B-330

SALT LAKE CITY, UT 84114

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Joanne Slotnik by phone at 801-538-1652, by FAX at 801-538-1024, or by Internet E-mail at jslotnik@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2010

AUTHORIZED BY: V. Lowry Snow , Chair

R597. Judicial Performance Evaluation Commission, Administration.

R597-3. Judicial Performance Evaluations.

R597-3-1. Evaluation Cycles.

(1) For judges not serving on the supreme court:

(a) The mid-term evaluation cycle. The mid-term evaluation cycle begins upon the appointment of the judge or on the first Monday in January following the retention election of the judge and ends 2 1/2 years later, on June 30th of the third year preceding the year of the judge's next retention election.

(b) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the judge's next retention election.

(2) For justices serving on the supreme court:

(a) The initial evaluation cycle. The initial evaluation cycle begins upon the appointment of the justice or on the first Monday in January following the retention election of the justice and ends 2 1/2 years later, on June 30th of the seventh year preceding the year of the justice's next retention election.

(b) The mid-term evaluation cycle. The mid-term evaluation cycle begins the day after the initial evaluation cycle is finished and ends four years later, on June 30th of the third year preceding the year of the justice's next retention election.

(c) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the justice's next retention election.

(3) Transition Evaluation Cycles

(a) For judges standing for retention election in 2012:

(i) [The mid-term evaluation cycle shall be conducted in 2009, ending on December 31, 2009.]The mid-term evaluation cycle for attorney surveys shall begin on January 1, 2008 and end on December 31, 2009.

(ii) The mid-term evaluation cycle for all other survey categories shall begin in 2009 and end on January 31, 2010.

(iii) The retention evaluation cycle for all surveys shall begin no later than July 1, 2010, and end on June 30, 2011.

(b) For judges not on the supreme court standing for retention election in 2014:

(i) The mid-term evaluation cycle for surveys of attorneys and jurors shall begin in 2009 and finish on June 30, 2011.

(ii) The mid-term evaluation cycle for all pilot program categories shall begin no later than July 1, 2010, and end on June 30, 2011.

(iii) The retention evaluation cycle will be as described in R597-3-1(1)(b), supra.

(c) For supreme court justices standing for retention election in 2014:

(i) The mid-term evaluation cycle for surveys of attorneys shall begin in 2009 and end on June 30, 2011.

(ii) The mid-term evaluation cycle for relevant pilot programs categories shall begin no later than July 1, 2010, and end on June 30, 2011.

(iii) The retention evaluation cycle shall be as described in R597-3-1(2)(b)-(c).

(d) For supreme court justices standing for retention election in 2016:

(i) The initial evaluation cycle shall be combined with the mid-term evaluation, beginning in 2009 and ending on June 30, 2013.

(ii) The combined initial/mid-term evaluation cycle for surveys of attorneys shall begin in 2009 and end on June 30, 2013.

(iii) The combined initial/mid-term evaluation cycle for relevant pilot programs categories shall begin no later than July 1, 2010.

(iv) The retention evaluation cycle shall be as described in R597-3-1(2)(c).

R597-3-2. Survey.

(1) General provisions.

(a) All surveys shall be conducted according to the evaluation cycles described in R597-3-1, supra.

(b) The commission shall distribute the survey questionnaires upon which the judge shall be evaluated to each judge at the beginning of the survey cycle. ~~Within a single evaluation cycle, all survey questions shall remain the same.~~

(c) In 2010, the commission shall finalize survey questionnaires and implementation procedures for each respondent classification.

(2) Respondent Classifications

(a) Attorneys

(i) Identification of survey respondents. Within 10 business days of the end of the evaluation cycle, the clerk for the judge or the Administrative Office of the Courts shall identify as potential respondents all attorneys who have appeared before the judge who is being evaluated at a minimum of one hearing or trial during the evaluation cycle.

(ii) Number of survey respondents. For each judge who is the subject of a survey, the surveyor shall identify 180 potential respondents or all attorneys appearing before the judge, whichever is less.

(iii) Sampling. The surveyor shall make a random selection of respondents and shall otherwise design the survey to comply with generally-accepted principles of surveying.

(iv) Distribution of surveys. Surveys shall be distributed by the third-party contractor engaged by the commission to conduct the survey.

(b) Jurors

(i) Identification and number of survey respondents. All jurors who participate in deliberation shall be given a juror questionnaire.

(ii) Distribution of surveys. Prior to the jury being dismissed, the bailiff or clerk in charge of the jury shall distribute surveys to the jurors. The bailiff or clerk shall collect completed surveys, seal them in an envelope, and mail them to the surveyor. The surveyor shall deliver survey results electronically to each judge.

(c) Court Staff

(i) Definition of court staff who have worked with the judge. Court staff who have worked with the judge refers to employees of the judiciary who have regular contact with the judge as the judge performs judicial duties and those who are not employed by the judiciary but who have ongoing administrative duties in the courtroom.

(ii) Identification of survey respondents. Court staff who have worked with the judge shall include, where applicable:

(A) ~~court clerks;~~ judicial assistants;

(B) case managers;

(C) clerks of court;

(D) trial court executives;

(E) interpreters;

(F) ~~(F)~~ bailiffs;

(G) ~~(G)~~ law clerks;

(H) ~~(H)~~ juvenile probation and intake officers;

(I) ~~(I)~~ other courthouse staff, as appropriate;

(J) ~~(J)~~ Administrative Office of the Courts staff.

(ii) Pilot program. The commission shall run a pilot program ~~in 2009~~ to evaluate the methodology, content, and administrative feasibility of surveying court staff.

(d) Litigants

(i) Identification of survey respondents. ~~[A litigant is a party to a cause of action before a judge who is being evaluated.~~

~~(A)]The following categories ~~of~~ are litigants for purposes of the judicial performance evaluation survey ~~may be surveyed~~]:~~

~~(A) any named party to an action;~~

~~(B) any ~~competent~~ person 14 years of age or older;~~

~~(C) the parent, foster parent, guardian, or legal custodian of any minor;~~

~~(D) the designated representative of a corporate or like entity[-];~~

~~(E) an executor, administrator, guardian, or like person representing a real party in interest.~~

~~(B)(ii) The representative of the prosecuting entity in a criminal case shall be surveyed as an attorney. Prosecutor responses to the judicial temperament part of the survey shall be reported in both the attorney and litigant portions of the judicial evaluation report.~~

(ii) Pilot Program. The commission shall run a pilot program ~~[in 2009]~~ to evaluate the methodology, content, and administrative feasibility of surveying litigants.

(e) Witnesses

(i) Identification of survey respondents.

(A) District and Justice Court. A witness is anyone not surveyed as a litigant who is sworn and testifies in court before a judge who is being evaluated. Any witness ~~[who is competent and]~~ who is 14 years of age or older is qualified as a witness survey respondent.

(B) Juvenile Court. A witness is anyone who does not fall within another survey respondent group and who proffers or testifies in court before a judge who is being evaluated.

(ii) Pilot Program. The commission shall run a pilot program ~~[in 2009]~~ to evaluate the methodology, content, and administrative feasibility of surveying witnesses.

(f) Juvenile Court Professionals

(i) Definition of juvenile court professional. A juvenile court professional is someone whose professional duties place that individual in court on a regular and continuing basis to provide substantive input to the court.

(ii) Identification of survey respondents. Juvenile court professionals shall include, where applicable:

(A) Division of Child and Family Services ("DCFS") child protection services workers;

(B) Division of Child and Family Services ("DCFS") case workers;

(C) Juvenile Justice Services ("JJS") Observation & Assessment Staff;

(D) Juvenile Justice Services ("JJS") case managers;

(E) Juvenile Justice Services ("JJS") secure care staff;

(F) Others who provide substantive professional services on a regular basis to the juvenile court.

(iii) The commission shall run a pilot program to evaluate the methodology, content, and administrative feasibility of surveying juvenile court professionals.

(3) Anonymity and Confidentiality

(a) Definitions

(i) Anonymous.

(A) "Anonymous" means that the identity of the individual who authors any survey response, including comments, will be protected from disclosure.

(B) The independent contractor conducting the surveys shall provide to the commission all written comments from the surveys, redacted to remove any information that identifies the person commenting. The contractor shall also redact any information that discloses the identity of any crime victims referenced in a written comment.

(C) The submission of a survey form containing an anonymous narrative comment does not preclude any survey respondent from submitting a public comment in writing pursuant to the Judicial Performance Evaluation Commission Act.

(ii) Confidentiality: Confidentiality means information obtained from a survey respondent that the respondent may reasonably expect will not be disclosed other than as indicated in the survey instrument.

(iii) The raw form of survey results consists of all quantitative survey data that contributes to the minimum score on the judicial performance survey.

(iv) The summary form of survey results consists of quantitative survey data in aggregated form.

KEY: judicial performance evaluations, judges, evaluation cycles, surveys

Date of Enactment or Last Substantive Amendment: ~~[December 16, 2009]~~ 2010

Authorizing, and Implemented or Interpreted Law: 78A-12

Labor Commission, Boiler and Elevator Safety R616-2-3 Safety Codes and Rules for Boilers and Pressure Vessels

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 33362

FILED: 02/04/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to adopt the most current American Society of Mechanical Engineers (ASME) codes and National Fire Protection Association (NFPA) codes for application to the design and installation of boilers and pressure vessels in Utah. The Utah Labor Commission's intent is to maintain uniformity between state standards and national standards.

SUMMARY OF THE RULE OR CHANGE: The 2009b ASME addenda and the 2007 edition of the NFPA codes make relatively minor technical and editorial changes, such as: material specifications; testing; inspection; and administrative dialog.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-7-101 et seq.

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 85 Boiler and Combustion Systems Hazard Code, published by National Fire Protection Association,
- ◆ Updates Boiler and Pressure Vessel Code, Section VIII 2009b Addenda, published by American Society of Mechanical Engineers,
- ◆ Updates Boiler and Pressure Vessel Code, Section IV Rules for Construction of Heating Boilers 2009b Addenda, published by American Society of Mechanical Engineers,
- ◆ Updates Boiler and Pressure Vessel Code, Section I Rules for Construction of Power Boilers, 2009b

Addenda, published by American Society of Mechanical Engineers,

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Although the 2009b ASME addenda and 2007 NFPA code address several technical and editorial changes, these changes taken as a whole will not result in net costs or savings. The ASME code is purchased every three years and the addenda are included in the purchase price. The 2007 NFPA code costs \$65.

◆ LOCAL GOVERNMENTS: Although the 2009b ASME addenda and 2007 NFPA code address several technical and editorial changes, these changes taken as a whole will not result in net costs or savings. The ASME code is purchased every three years and the addenda are included in the purchase price. The 2007 NFPA code costs \$65.

◆ SMALL BUSINESSES: Although the 2009b ASME addenda and 2007 NFPA code address several technical and editorial changes, these changes taken as a whole will not result in net costs or savings. The ASME code is purchased every three years and the addenda are included in the purchase price. The 2007 NFPA code costs \$65.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No persons other than businesses and government are affected.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Although the 2009b ASME addenda and 2007 NFPA code address several technical and editorial changes, these changes taken as a whole will not result in net costs or savings. The ASME code is purchased every three years and the addenda are included in the purchase price. The 2007 NFPA code costs \$65. On balance, the proposed rule will not result in significant expense or savings to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes required by this proposed rule will have no net fiscal impact on business; however businesses enjoy competitive benefits by maintaining conformity between Utah and national standards.

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

LABOR COMMISSION
BOILER AND ELEVATOR SAFETY
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Pete Hackford by phone at 801-530-7605, by FAX at 801-530-6871, or by Internet E-mail at phackford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 04/08/2010

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R616. Labor Commission, Boiler and Elevator Safety.

R616-2. Boiler and Pressure Vessel Rules.

R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels.

The following safety codes and rules shall apply to all boilers and pressure vessels in Utah, except those exempted pursuant to Section 34A-7-101, and are incorporated herein by this reference in this rule.

A. ASME Boiler and Pressure Vessel Code (2007).

1. Section I Rules for Construction of Power Boilers published July 1, 2007, [~~and~~]the 2008 addenda published July 1, 2008, and the 2009b addenda published July 1, 2009.

2. Section IV Rules for Construction of Heating Boilers published July 1, 2007, [~~and~~]the 2008 addenda published July 1, 2008, and the 2009b addenda published July 1, 2009.

3. Section VIII Rules for Construction of Pressure Vessels published July 1, 2007, [~~and~~]the 2008 addenda published July 1, 2008, and the 2009b addenda published July 1, 2009.

B. Power Piping ASME B31.1 (2004), issued August 16, 2004.

C. Controls and Safety Devices for Automatically Fired Boilers ASME CSD-1-1998; the ASME CSD-1a-1999 addenda, issued March 10, 2000; and the ASME CSD-1b (2001) addenda, issued November 30, 2001.

D. National Board Inspection Code ANSI/NB-23 (2007) issued December 31, 2007.

E. NFPA 85 Boiler and Combustion Systems Hazard Code [~~2004~~]2007 Edition.

F. Recommended Administrative Boiler and Pressure Vessel Safety Rules and Regulations NB-132 Rev. 4.

G. Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair and Alteration API 510 Ninth Edition, June 2006. Except:

1. Section-8, and
2. Appendix-A.

KEY: boilers, certification, safety

Date of Enactment or Last Substantive Amendment: [~~February 24, 2009~~]2010

Notice of Continuation: November 30, 2006

Authorizing, and Implemented or Interpreted Law: 34A-7-101 et seq.

Pardons (Board of), Administration
R671-303
 Information Received, Maintained or
 Used by the Board

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33371

FILED: 02/10/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Changes to Rule R671-303 clarify what offenders and their attorneys can submit for consideration at Board hearings and when they can submit it, as well as amending material submission time limits for all involved legal parties, including the Attorney General's Office.

SUMMARY OF THE RULE OR CHANGE: This rule amendment alters what and when offenders and/or their legal counsel, as well as opposing counsel, can submit for consideration at Board hearings.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 2

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--The changes do not introduce costs to the state as they simply relate to submission requirements.
- ◆ LOCAL GOVERNMENTS: None--The changes do not introduce costs to local government as they simply relate to submission requirements.
- ◆ SMALL BUSINESSES: None--The changes do not introduce costs to small businesses as they simply relate to submission requirements.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--The changes do not introduce costs to affected persons as they simply relate to submission requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The changes do not introduce compliance costs to affected persons as they simply relate to submission requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Enactment of the proposed rule changes will have no fiscal impact on state government, small businesses, local government or any other person.

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

PARDONS (BOARD OF)
 ADMINISTRATIONROOM 300

448 E 6400 S
 SALT LAKE CITY, UT 84107-8530
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2010

AUTHORIZED BY: Curtis Garner, Chairman

R671. Pardons (Board of), Administration.

R671-303. ~~[Offender Access to]~~ Information Received, Maintained or Used by the Board.

R671-303-1. ~~[Offender Access to]~~ Information Received, Maintained or Used by the Board.

(1) Offender Access to Information

Absent a ~~[legitimate]~~ security or safety concern, as determined by the Board, an offender will be provided access to the information being considered by the Board and given an opportunity to respond to such information, whenever the Board ~~fixes sets~~ or extends the offender's parole or release date. If the Board determines offender access to information presents a security or safety concern ~~[is an issue]~~, the offender will be provided a written summary of the material information being considered.

The Board, upon request or upon its own motion, may continue a hearing to allow submission of additional documentation or information. The Board will consider any relevant facts obtained at the hearing or later submitted by the offender, provided such later submitted information is received within five (5) days following the hearing.

The Board will also provide an offender with a copy of the records contained in the offender's file at least three days prior to any personal appearance hearing in which a parole or ~~[an early]~~ release date may be fixed or extended by the Board. Any additional information obtained by the Board after this initial disclosure will be provided to the offender at the beginning of the hearing. In such event, the offender will be given an opportunity to review the supplemental information before proceeding. If no additional time is requested by the offender, the hearing will proceed as scheduled.

For administrative routings to fix an original hearing date, the ~~[b]~~ Board will only consider information available to the court at the time of sentencing. This information will not be disclosed to the offender until the time of his/her original hearing, as it has already been disclosed in court.

(2) Submission of Information

Other than concise and brief letters, or statements by the offender, all other materials, briefs or written memoranda or argument submitted by or on behalf of any person, in preparation for a hearing (excluding commutation hearings governed by Rule R671-312), shall be limited to no more than five (5) pages in length.

Submissions by legal counsel for or on behalf of an offender must be received by the Board no later than seven (7) days prior to any scheduled hearing.

The Board reserves the right to strike from the offender's file, and to refuse to accept or consider any material or submissions which are irrelevant, defamatory, or which do not otherwise conform to this rule.

KEY: inmates' rights, inmates, parole, records

Date of Enactment or Last Substantive Amendment:
[November 22, 2002]2010

Notice of Continuation: July 25, 2007

Authorizing, and Implemented or Interpreted Law: 63G-2

Tax Commission, Auditing R865-91-7

Change of Status as Resident or Nonresident Pursuant to Utah Code Ann. Section 59-10-120

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33384

FILED: 02/11/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section is updated to reflect changes in statutory terminology and to clarify the taxable income of a part-year resident.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment provides that income received, as well as income earned, while a part-year resident is subject to tax in Utah; updates statutory terminology.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-10-120

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** None--This amendment clarifies a statutory change from H.B. 359 (2008). (DAR NOTE: H.B. 359 (2008) is found at Chapter 389, Laws of Utah 2008, and was effective 05/05/2008.)
- ◆ **LOCAL GOVERNMENTS:** None--All income tax goes into the Education Fund.
- ◆ **SMALL BUSINESSES:** None--This amendment clarifies a statutory change from H.B. 359 (2008).
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--This amendment clarifies a statutory change from H.B. 359 (2008).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Taxpayers in Utah, whether part-year or full-time residents, must file a Utah tax return. The amendment will impact what the taxpayer would include in income.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--This rule clarifies statutory changes.

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

TAX COMMISSION

AUDITING

210 N 1950 W

SALT LAKE CITY, UT 84134

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Michael Cragun by phone at 801-297-3907, by FAX at 801-297-3919, or by Internet E-mail at mcragun@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2010

AUTHORIZED BY: R. Bruce Johnson, Tax Commission Chair

R865. Tax Commission, Auditing.

R865-91. Income Tax.

R865-91-7. Change of Status As Resident or Nonresident Pursuant to Utah Code Ann. Section 59-10-120.

[A-](1) Definitions.

(a) "AGI" means adjusted gross income, as defined by Section 59-10-103.

[+](b) "Part-year resident" means an individual that changes status during the taxable year from resident to nonresident or from nonresident to resident.

[2-] "FAGI" means federal adjusted gross income, as defined by Section 62, Internal Revenue Code.

[B-](2) The state taxable income of a part-year resident shall be a percentage of the amount that would have been state taxable income if the taxpayer had been a full-year resident as [determined]defined under Section [59-10-112]59-10-103. This percentage is the Utah portion of [FAGI]AGI divided by the total [FAGI]AGI, not to exceed 100 percent.

[E-](3) The Utah portion of a part-year resident's [FAGI]AGI shall be determined as follows:

[+](a) Income from wages, salaries, tips and other compensation earned or received while in a resident status and included in the total [FAGI]AGI shall be included in the Utah portion of the [FAGI]AGI.

[2-](b) Dividends actually or constructively received while in resident status shall be included in the Utah portion of [FAGI]AGI. Any dividend exclusion shall be deducted from the Utah portion of [FAGI]AGI using the percentage of excludable

dividends received while in resident status, compared to the total excludable dividends.

~~[3-]~~(c) All interest actually or constructively received while in resident status shall be included in the Utah portion of the ~~[FAGH]AGI~~.

~~[4-]~~(d) All ~~[FAGH]AGI~~ derived from Utah sources while in a nonresident status, as determined under Section 59-10-117, shall be included in the Utah portion of ~~[FAGH]AGI~~.

~~[D-]~~(4)(a) Income or loss from businesses, rents, royalties, partnerships, estates or trusts, small business corporations as defined by Internal Revenue Code Section 1371(b), and farming shall be included in the Utah portion of ~~[FAGH]AGI~~:

~~[4-]~~(i) if the activities involved were concluded, or the taxpayer's connection with them terminated before or at the time of change from resident to nonresident status; or

~~[2-]~~(ii) if the activities were commenced or the taxpayer joined them at the time or after the change from nonresident to resident status.

~~(b)~~ ~~[Otherwise, such income]~~ Income or loss that does not meet Subsection (4)(a) shall be included in the Utah portion of ~~[FAGH]AGI~~ only to the extent the income or loss is derived from Utah sources as determined under Section 59-10-117.

~~[E-]~~(5) Moving expenses deducted on the federal return may be deducted from the Utah portion of ~~[FAGH]AGI~~ only to the extent that they are for moving into Utah and within Utah.

~~[F-]~~(6) Employee business expenses may be deducted from the Utah portion of ~~[FAGH]AGI~~ only to the extent that they pertain to the production of income included in the Utah portion of ~~[FAGH]AGI~~.

~~[G-]~~(7) Payments by a self-employed person to a retirement plan that reduce the total ~~[FAGH]AGI~~ may be deducted from the Utah portion of ~~[FAGH]AGI~~ in the same proportion that the related self-employment income is included in the Utah portion of FAGI.

~~[H-]~~(8) Other income, losses or adjustments applicable in determining total ~~[FAGH]AGI~~ may be allowed or included in the Utah portion of ~~[his FAGH]AGI~~ only when the allowance or inclusion is fair, equitable, and would be consistent with other requirements of ~~[the act]~~ Title 59, Chapter 10, Individual Income Tax Act, or these rules as determined by the ~~[Tax Commission]~~ commission.

KEY: historic preservation, income tax, tax returns, enterprise zones

Date of Enactment or Last Substantive Amendment: ~~[September 17, 2009]~~ **2010**

Notice of Continuation: March 20, 2007

Authorizing, and Implemented or Interpreted Law: 59-10-108 through 59-10-122

Transportation Commission,
Administration
R940-1-3
Base Toll Rate and Range for HOT
Lanes

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33386

FILED: 02/11/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the change is to establish toll rates for the dynamically priced electronic payment system currently in development for the High Occupancy Toll (HOT) Lanes on I-15.

SUMMARY OF THE RULE OR CHANGE: The change establishes a toll rate of \$0.25 to \$1 per payment zone under a dynamically priced electronic payment system. As the High Occupancy Toll (HOT) Lane is converted from the monthly sticker program to an electronic payment system, the Utah Department of Transportation will manage the amount of the toll necessary to keep the HOT lane freely flowing. (DAR NOTE: A corresponding 120-day (emergency) rule is under DAR No. 33369 in this issue, March 1, 2010, of the Bulletin, and was effective 02/10/2010.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 23 USC 166(b)(4) and Section 72-6-118

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** No impact to state budget--A contract has already been awarded to convert the HOT lane to a dynamically priced electronic payment system. Only persons choosing to access the HOT lane with a single occupant vehicle will be required to pay a toll. The amount of the toll will vary by the number of payment zones accessed and the level of congestion in the HOT lane. If state agencies provide money for their drivers to pay tolls, then they may be affected; otherwise they will not.

♦ **LOCAL GOVERNMENTS:** Only persons choosing to access the HOT lane with a single occupant vehicle will be required to pay a toll. The amount of the toll will vary by the number of payment zones accessed and the level of congestion in the HOT lane. If local governments provide money for their drivers to pay tolls, then they may be affected; otherwise they will not.

♦ **SMALL BUSINESSES:** Only persons choosing to access the HOT lane with a single occupant vehicle will be required to pay a toll. The amount of the toll will vary by the number of payment zones accessed and the level of congestion in the HOT lane. If small businesses provide money for their drivers to pay tolls, then they may be affected; otherwise they will not.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Only persons choosing to access the HOT lane with a single occupant vehicle will be required to pay a toll. The amount of the toll will vary by the number of payment zones accessed and the level of congestion in the HOT lane.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs will vary for persons driving single occupant vehicles who choose to access the HOT lane, depending on the number of zones accessed and the level of traffic congestion in the HOT lane.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department does not believe the rule change will have a substantial fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 TRANSPORTATION COMMISSION
 ADMINISTRATION
 CALVIN L RAMPTON COMPLEX
 4501 S 2700 W
 SALT LAKE CITY, UT 84119
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Maureen Short by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at maureenshort@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2010

AUTHORIZED BY: John Njord, Executive Director

**R940. Transportation Commission, Administration.
 R940-1. Establishment of Toll Rates.
 R940-1-3. Base Toll Rate and Range for HOT Lanes.**

(1) In deciding what Toll is appropriate for HOT Lanes that are not subject to tollway development agreements, the Commission balances the need to obtain revenue against the effect that a certain Toll amount will have on demand. The goal is to set a price that encourages optimal use of the HOT Lane.

(2) For HOT Lanes under a monthly sticker program that are not subject to a tollway development agreement, the initial toll for the HOT Lane is \$50 per month.

([3]a) With the Commission's approval, the Department may increase the toll described in subsection (2) from \$50 per month if it finds that demand on the HOT Lane is too high and needs to be reduced in order to keep the lane freely flowing. Evidence of demand can be shown by traffic counts and evidence of traffic congestion.

(3) For HOT lanes under a dynamically priced electronic payment system that are not subject to a tollway development agreement, the toll is \$0.25 to \$1.00 per payment zone. The Department will manage the amount of the toll necessary to keep the lane freely flowing.

(4) Toll rates for HOT Lanes that are subject to a tollway development agreement shall be set in the tollway development agreement.

KEY: transportation, tolls, HOT Lanes, tollways
Date of Enactment or Last Substantive Amendment: [~~October 16, 2008~~2010]
Authorizing, and Implemented or Interpreted Law: 72-2-120; 72-6-118

Workforce Services, Employment
 Development
R986-700
 Child Care Assistance

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 33383
 FILED: 02/11/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to align the sanctions for providers.

SUMMARY OF THE RULE OR CHANGE: If a provider takes funds he or she is not eligible to receive, the provider incurs an overpayment and the Department will remove that provider from the approved provider list. There are several ways overpayments can occur and the sanctions are different under the current rule. For ease of administration and to make the system more fair, the sanctions under this proposed amendment will be the same.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-3-310(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: This applies to federally-funded programs so there are no costs or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to the local government.
- ◆ SMALL BUSINESSES: There will be no costs to small businesses to comply with these changes because this is a federally-funded program.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no costs of any persons to comply with these changes because there are no costs or fees associated with these proposed changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with these changes for any persons because this is a federally-funded program and there are no fees or costs associated with these proposed changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 03/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 04/07/2010

AUTHORIZED BY: Kristen Cox, Executive Director

R986. Workforce Services, Employment Development.**R986-700. Child Care Assistance.****R986-700-706. Provider Rights and Responsibilities.**

(1) Providers assume the responsibility to collect payment for child care services rendered. Neither the Department nor the state of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers must keep accurate records of subsidized child care payments, time and attendance. The Department has the right to investigate child care providers and audit their records. Time and attendance records for all subsidized clients must be kept for at least one year. If a provider fails to cooperate with a Department investigation or audit, or fails to keep records for one year, the provider will no longer be an approved provider.

(4) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider may be referred for criminal prosecution and will no longer be an approved provider following the procedure outlined in section R986-700-718. This is true even if the funds were authorized under R986-700-718.

(5) If an overpayment is established and it is determined that the provider was at fault in the creation of the overpayment, the provider is responsible for repayment of the overpayment.

(6) Records will be kept by the Department for individuals who are not approved providers and against whom a referral or complaint is received.

R986-700-718. Provider Disqualification.

(1) A child care provider removing child care subsidy funds from a client's account by way of electronic benefit transfer (EBT), which includes the Horizon card and interactive voice response (IVR), can only remove those funds from a client's account that are authorized by the Department for that provider. All providers receiving payment for child care services through an EBT may learn the exact amount authorized for that provider for each client by accessing the Department's Provider Payment Authorization website. Providers who remove more funds than authorized will be required to reimburse the Department for the excess funds and will be disqualified from receipt of further CC subsidy funds as follows;

(a) if the provider has never removed unauthorized CC subsidy funds before, the Department will send a demand letter to the provider's last known address informing the provider of the unauthorized access and establishing an overpayment in the amount of the excess funds. If the provider repays the overpayment within six months of the date of the demand letter, no further action will be taken on that overpayment,

(b) if the provider removes funds in excess of those authorized by the Department a second time, and the provider repaid the previous overpayment or is making a good faith effort to repay the overpayment, a second demand letter will be sent to the provider's last known address. The second letter will establish an overpayment in the amount of the excess funds removed and inform the provider that any further unauthorized access will result in disqualification. If the provider removes unauthorized funds and has not repaid the first overpayment, or is not making a good faith effort to repay the first overpayment to the Department, no second demand letter will be sent and the provider will be disqualified for a period of one year from the date the Department issues its letter, or in the case of an appeal, from the date the ALJ issues his or her determination. A good faith effort to repay the overpayment means the provider is repaying at least 10% of the overpayment due each month,

(c) if a child care provider removes unauthorized funds a third time, or a second time without repayment of the first overpayment as provided in paragraph (1)(b) of this subsection, the provider will be disqualified and is ineligible for receipt of further CC subsidy funds for a period of one year from the date the Department issues its letter, or in the case of an appeal, from the date the ALJ issues his or her determination,

(d) a CC provider previously disqualified for one year from receipt of CC subsidy funds due to unauthorized removal of funds in paragraph (1)(c) of this subsection, will be disqualified for a period of two years if the provider removes unauthorized funds again. Warning letters under paragraphs (a) and (b) of this subsection will not be sent if a provider was previously disqualified for receipt of CC subsidy funds,

(e) a CC provider previously disqualified for a two year period due to unauthorized removal of funds in paragraph (1)(d) of this subsection will be permanently disqualified if the provider removes unauthorized funds again. Warning letters under paragraphs (a) and (b) of this subsection will not be sent if a provider was previously disqualified for receipt of CC subsidy funds.

(2) Even if CC funds are authorized under this section, a CC provider cannot remove, accept and/or retain funds for any month during which no CC services were provided. If authorized or unauthorized subsidy funds were accepted from a client or removed from a client's account as provided in this section but no CC services were provided during the month, the provider will be required to reimburse the Department for the excess funds and will be disqualified from receipt of further CC subsidy funds in the same manner as provided in subsection (1) of this section.

~~(2)3~~ CC providers disqualified under subsections (1) or (2) of this section will be ineligible for receipt of quality grants awarded by the Department during the period of disqualification.

~~(3)4~~ A CC provider overpayment not paid in full within six months will be referred to collection and will be collected in the

same manner as all public assistance overpayments. Payment of provider overpayments must be made to the Department and not to the client.

~~(4)5~~ A CC provider may appeal an overpayment or disqualification as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of letter establishing the overpayment or disqualification. A provider who has been found ineligible may continue to receive CC subsidy funds pending appeal until a decision is issued by the ALJ. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ.]

~~(5) Even if CC funds are authorized under this section, a CC provider cannot remove, accept and/or retain funds for any month during which no CC services were provided. If authorized funds were accepted from a client or taken as provided in this section but no CC services were provided during the month, the Department will send a demand letter to the provide establishing the overpayment and the provider will be given 30 days repay the Department or enter into an installment payment agreement. Under an installment agreement, the provider must agree to make monthly payments and pay the full amount within a maximum of six months of the date of the demand letter. If full payment is not received within six months, the provider may be referred for criminal prosecution and will no longer be an approved provider as provided under R986-700-706(4). This is true even if the provider has never removed or retained CC funds in the past.]~~

KEY: child care

Date of Enactment or Last Substantive Amendment: ~~[July 2, 2008]~~2010

Notice of Continuation: September 14, 2005

Authorizing, and Implemented or Interpreted Law: 35A-3-310

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 March 31, 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 June 29, 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

**NATURAL RESOURCES
WATER RIGHTS
R655-16**

**Administrative Procedures for
Declaring Beneficial Use Limitations for
Supplemental Water Rights**

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 33066

FILED: 02/16/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to define procedures for resolving supplemental water right beneficial use quantification issues by agreement among the water right owners. The rule also defines state engineer assistance in apportioning beneficial use among water rights in a water use group.

SUMMARY OF THE RULE OR CHANGE: The rule provides for a "Declaration of Beneficial Use Amounts" form to enable water right holders to declare beneficial use information and document agreement with that declaration by those with supplemental water rights. The rule provides conditions under which a water user may petition the state engineer for assistance in apportioning beneficial use among water rights in a water use group. The rule formalizes the procedure the state engineer will follow in the apportioning beneficial use among water rights in a water use group. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the November 1, 2009, issue of the Utah State Bulletin, on page 62. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-4-101 et seq. and Section 73-1-3 and Section 73-2-1 and Section 73-2-1 and Section 73-3-14 and Section 73-3-16 and Section 73-3-20 and Section 73-3-3 and Section 73-4-1 et seq. and Section 73-5-8

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The state engineer currently assists the public with issues and questions related to the apportionment of beneficial use. This rule will formalize and standardize that process. The rule will require more effort on the part of the water user before state engineer assistance

can be requested, so the water user may provide more of the information needed for an apportionment and also there may be fewer requests for assistance. However, in those cases where the state engineer is not requested to apportion the beneficial uses, the state engineer will still be required to review all of the beneficial use information submitted by water users to determine if it is in agreement with the water right record. Overall, there probably will not be a reduction in effort required and no increased costs incurred or savings made.

♦ **LOCAL GOVERNMENTS:** Local government will not be affected unless the government entity is an owner of water right involved in a water use group that required quantification of the beneficial uses. In this case, the effect will be as described under "other persons" below.

♦ **SMALL BUSINESSES:** Small business in general will not be affected unless the business is an owner of water right involved in a water use group that required quantification of the beneficial uses. In this case, the effect will be as described under "other persons" below.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule will provide a defined process to assure all impacted parties have an opportunity to participate in the quantification of supplemental water right beneficial use. It also creates an obligation for individual water right holders to participate.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be a cost if the water users choose to hire professional help in completing a Declaration of Individual Beneficial Use Amounts. The cost will vary depending upon the complexity of the water right involved.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No impact on businesses.

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

NATURAL RESOURCES
WATER RIGHTSROOM 220
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Marianne Burbidge by phone at 801-538-7370, by FAX at 801-538-7467, or by Internet E-mail at marianneburbidge@utah.gov

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

THIS RULE MAY BECOME EFFECTIVE ON: 03/31/2010

AUTHORIZED BY: Kent Jones, State Engineer/Director

R655. Natural Resources, Water Rights.**[R655-16. Administrative Procedures for Declaring Beneficial Use Limitations for Supplemental Water Rights.****R655-16-1. Authority.**

Section 73-1-3 declares, "Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state."

Subsection 73-2-1(3) declares, "The State Engineer shall be responsible for the general administrative supervision of the waters of the state and the measurement, appropriation, apportionment, and distribution of those waters."

Subsection 73-2-1(5)(c) authorizes the State Engineer to make rules governing the form and content of applications and related documents, maps and reports.

Subsection 73-3-3(4)(b)(vii) requires the State Engineer to supply an application form for the permanent or temporary change of a water right which shall set forth, among other information, "the place, purpose, and extent of the present use."

Section 73-5-8 states, "Every person using water from any river system or water source, when requested by the State Engineer, shall within 30 days after such request report to the State Engineer in writing: (1) the nature of the use of any such water; (2) the area on which it is used; (3) the kind of crops grown; and (4) water elevations on wells or tunnels and quantity of underground water used."

R655-16-2. Justification.

Proper water right administration requires a quantification of the beneficial use(s) to which the holder of a water right is entitled. To facilitate record keeping, each unique beneficial use or set of beneficial uses is assigned a water use group number in the State Engineer's records. Some such records indicate the beneficial uses in a water use group are authorized under two or more water rights (supplemental rights), but do not quantify the amount of beneficial use authorized under each individual right. Administrative activities requiring an evaluation of the beneficial use of a water right may necessitate the quantification of the beneficial use allowed under each supplemental water right in a water use group.

This rule provides for a "Declaration of Individual Beneficial Use Amounts" form to enable water right holders to declare beneficial use information and document agreement with that declaration by those with supplemental water rights.

R655-16-3. Purpose.

The purpose of this rule is to allow water right holders to declare the amount of beneficial use that each water right contributes to the total beneficial use of a water use group. To accomplish this, a Declaration of Individual Beneficial Use Amounts form may be completed and submitted to the State Engineer. To complete the form, the water right holders must quantify, by agreement, the amount of beneficial use that each supplemental water right contributes to the water use group within which it is listed.

R655-16-4. Application of Rule.

This rule applies to all water use groups defined in the State Engineer's water right records for which no individual beneficial use amounts have been established.

R655-16-5. Definitions.

(1) Terms used in this rule are defined as follows:

(a) "Application for Apportionment of Beneficial Use Amounts" means an application requesting that the State Engineer apportion the beneficial uses of a water use group among the supplemental water rights that make up the water use group.

(b) "Beneficial use" means the purpose to which water diverted under a water right is applied and the amount of that beneficial use. Examples include irrigation (amounts measured in acres); stock watering (amounts measured in numbers of animals); domestic (indoor residential - amounts measured in numbers of families); commercial, industrial, municipal (amounts measured in acre-feet); power generation (amounts measured in cubic-feet-per-second diversion rate); and fish culture (amounts measured in acre-foot or cubic-feet-per-second flow rate). By statute, the established and continued beneficial use of a water right will define the basis, measure and limit of that right.

(c) "Change application" means an application for permanent or temporary change of a water right as defined in Section 73-3-3.

(d) "Declaration of Individual Beneficial Use Amounts" (DIBUA) means either a form provided by the State Engineer, or an alternative document containing the same information, for use by water right holders to declare the individual beneficial use amount of each of the individual water rights to a water use group.

(e) "Individual Beneficial Use Amount" means the amount of beneficial use a water right contributes to a water use group that includes the subject water right.

(f) "Party" means only the applicant and other water right holders within the water use group.

(g) "Proof" means proof of beneficial use for an appropriation or permanent change as described in Section 73-3-16 or as may be required by the State Engineer under 73-3-20(2).

(h) "Sole supply" means the amount of beneficial use allowed under a particular water right when used alone and separate from all supplemental rights. If a water right has been assigned to more than one water use group, the sole supply of the water right is the sum of its individual beneficial use amounts.

(i) "Supplemental right" means a water right that is used together with one or more other water rights for a common beneficial use.

(j) "Water right holder" means the entity, person, or persons documented as owning a water right in the records of the State Engineer.

(k) "Water use group" means one or more water rights listed and assigned a unique number in the records of the State Engineer as being applied to a common beneficial use.

R655-16-6. Declaration of Individual Beneficial Use Amounts.

(1) A DIBUA shall be prepared by water right holders using either a form provided by the State Engineer or an alternative document containing the same information.

(a) To be considered acceptably complete, a DIBUA must:

(i) declare the individual beneficial use amount of each and every water right in the water use group; and

(ii) be signed by all water right holders in the water use group; and

~~_____ (iii) include documentation supporting the individual beneficial use amounts declared.~~

~~_____ (b) A DIBUA shall apportion the individual beneficial use amount of a water right in the water use group according to the average annual individual beneficial use of each water right in the water use group on a long-term basis or by any other evaluation method consistent with the information contained in the State Engineer's records.~~

~~_____ (c) The DIBUA form shall include a statement acknowledged by those signing the form and recognizing that the individual beneficial use amounts declared by the DIBUA is not a general adjudication of the water rights involved under Section 73-4.~~

~~_____ (d) The State Engineer may require additional documentation to support the individual beneficial use amounts declared in a DIBUA.~~

~~_____ (e) The State Engineer will review and evaluate a DIBUA as described in Section R655-16-7 of this rule.~~

~~_____ (2) A DIBUA filed in connection with a change application~~

~~_____ (a) shall be required in situations where:~~

~~_____ (i) the change application is filed on fewer than all of the water rights in a water use group;~~

~~_____ (ii) the change application seeks to remove a water right from a water use group;~~

~~_____ (iii) the individual beneficial use amount of a water right to be removed from the water use group has not been quantified; and~~

~~_____ (iv) the nature of the change requires a quantification of the sole supply of the water right being changed.~~

~~_____ (b) shall be prepared for each water use group to which the water right or the portion of the water right to be changed has been assigned.~~

~~_____ (c) must, together with any other DIBUAs required by the change application, declare the sole supply of the water right or the portion of the water right to be changed.~~

~~_____ (3) A DIBUA to declare the individual beneficial use amount of a water right for which proof has been filed:~~

~~_____ (a) may be required in situations where:~~

~~_____ (i) the individual beneficial use amount has not been quantified for the water right in the water use group for which proof has been filed; and~~

~~_____ (ii) the proof is filed on fewer than all of the water rights in the water use group; or~~

~~_____ (iii) the water right holder who has filed proof does not hold all the water rights in the water use group.~~

~~_____ (b) shall be prepared for each water use group to which the water right for which proof has been filed belongs.~~

~~_____ (c) must, together with any other DIBUAs required for the proof, declare the sole supply of the water right for which proof has been filed.~~

~~_____ (4) The filing of a DIBUA does not limit the ability of a water right holder to continue to use the water rights together supplementally as they have historically been used. Regardless of the individual beneficial use amounts declared in a DIBUA, the previous supplemental use of the water rights may continue, with the exclusion of any water right removed from the group through an approved change application; lapsed through a water right~~

~~administrative process; or disallowed (the disallowance published and unprotested) through the water right adjudication process.~~

~~_____ (5) Once accepted for filing, a DIBUA may only be revised by filing a new DIBUA:~~

~~_____ (a) that is signed by at least all water right holders within the water use group affected by the revision and whose individual beneficial use amounts were previously declared by the filing of a DIBUA; and~~

~~_____ (b) that addresses only water rights that have not been previously removed from the water use group through an approved change application or invalidated through other legal or administrative process.~~

R655-16-7. State Engineer Review and Evaluation:

~~_____ (1) If a DIBUA is filed with the State Engineer:~~

~~_____ (a) The State Engineer shall review the DIBUA for consistency with the water right information contained in the State Engineer's records.~~

~~_____ (b) If the DIBUA is inconsistent with the water right information contained in the State Engineer's records, it will be returned without further action to the water right holder who submitted the DIBUA with an explanation of the inconsistencies.~~

~~_____ (c) If there is reason to believe the DIBUA is consistent with the State Engineer's records, the State Engineer shall update the water right records of all water rights listed in the DIBUA, consistent with the individual beneficial use amounts included in the DIBUA.~~

~~_____ (2) A water right holder may request, by writing to the State Engineer, a review of the database entries and the documentary records of a water use group.~~

~~_____ (a) Such a review is not a request for agency action pursuant to Section 63G-4-101 et seq and shall be limited to a determination as to whether the database entries are consistent with official documentary records for the rights in the group.~~

~~_____ (b) A request for a records review filed pursuant to this rule shall set forth a statement as to how the submitter believes the electronic record should be modified to be consistent with the official documentary records and shall include acceptable copies of any documentation believed to be absent from the current record.~~

~~_____ (c) The State Engineer shall complete a review of the record within a reasonable time from receipt of the written request and shall notify the requester in writing when the review has been completed.~~

~~_____ (d) A copy of the State Engineer's reply to the request for a records review shall be placed on the water right file for each water right in the water use group reviewed.~~

~~_____ (3) The State Engineer may modify water use group records at any time to resolve errors, deficiencies, or ambiguities.~~

R655-16-8. Application to State Engineer for Apportionment of Beneficial Use Amounts:

~~_____ (1) An applicant may submit an application to the State Engineer requesting an informal adjudicative proceeding pursuant to Section 63G-4-101, et seq, for the apportionment of the beneficial use amounts of the water rights in the water use group if:~~

~~_____ (a) an apportionment is necessary for an administrative action on a change application or proof of beneficial use; and~~

~~(b) the applicant has exhausted all reasonable efforts and has been unable to produce a DIBUA because:~~

~~(i) It is impossible to identify and/or contact one or more of the parties or their successors in interest in the water use group. In this case the applicant must document:~~

~~(A) the attempts to identify and contact the parties or their successors in interest; and~~

~~(B) the reasons why the parties or their successors in interest cannot be identified or no contact can be made.~~

~~(ii) One or more of the parties or their successors in interest refuses to participate in completing the DIBUA or refuses to sign the DIBUA. In this case the applicant must document:~~

~~(A) the attempts to reach agreement with the parties or their successors in interest; and~~

~~(B) the reasons, in detail, why no agreement could be reached.~~

~~(iii) Any other reason or reasons the applicant cannot cure, which prevents the completion of the DIBUA. In this case the applicant must document why the DIBUA cannot be completed.~~

~~(2) An application for Apportionment of Beneficial Use Amounts shall be made on a form provided by the State Engineer and shall comply with Section 63G-4-201 as a request for agency action:~~

~~(a) The applicant shall provide all information requested on the form provided by the State Engineer including all affidavits and documentation gathered in the effort to prepare a DIBUA.~~

~~(b) The application form shall include a statement acknowledged by the applicant signing the form and recognizing that the State Engineer's apportionment of the beneficial use amounts of the water rights within the water use group is not a general adjudication of the water rights involved under Section 73-4.~~

~~(c) To the extent possible, the applicant shall provide notice to the other parties pursuant to Section 63G-4-201(3)(b).~~

~~(3) The State Engineer shall review the application for completeness and compliance with the criteria described in (1). As part of the review, the State Engineer shall determine whether the applicants effort to complete a DIBUA without success has been sufficient.~~

~~(4) If the application is incomplete or does not meet the criteria described in (1), or if the State Engineer believes the applicant should make additional effort to complete the DIBUA, the State Engineer shall return the application to the applicant without further action.~~

~~(5) If the application is complete and does meet the criteria described in (1), and if the State Engineer believes the applicant has exerted all reasonable efforts to complete the DIBUA without success, the State Engineer shall accept the application for filing and apportion the beneficial uses of the water rights in the water use group accordingly.~~

~~(6) For the purposes of this rule, the State Engineer shall apportion the individual beneficial use amounts of the water rights in the water use group according to the following procedure:~~

~~(a) The State Engineer shall notify all parties in accordance with Section 63G-4-201(3)(d)(iii) and (e)(ii) and shall issue a request for information to each party as authorized in Section 73-5-8.~~

~~(b) The parties will be allowed at least thirty (30) days for submittal of the requested information:~~

~~(c) Upon expiration of the allotted response time, the State Engineer will review:~~

~~(i) all information received with the application; and~~

~~(ii) all information received pursuant to the State Engineer's request (including historical records of flows diverted, historical water use patterns, etc.); and~~

~~(iii) any other pertinent information from a reliable source, including the State Engineer's water right records (such as, relative priority and water flow limitations, distribution records, etc.) of the water rights in the water use group.~~

~~(d) Based upon a review of the information described in (c), the State Engineer shall make a preliminary apportionment of the individual beneficial use amount for each of the water rights in the water use group.~~

~~(7) The State Engineer shall notify all parties by regular mail of the preliminary apportionment of the individual beneficial use amounts apportioned to each of the water rights in the water use group. This notification is not a final agency action.~~

~~(a) The parties shall be advised of their right to protest the preliminary individual beneficial use amounts apportioned by the State Engineer.~~

~~(b) The parties will be allowed at least thirty (30) days for submittal of protests or other information.~~

~~(8) The State Engineer may hold a hearing if deemed necessary to obtain further information regarding the apportionment of the individual beneficial use amounts of the water rights within the water use group.~~

~~(9) The State Engineer shall review any further information obtained either through protest or the hearing process and may revise the preliminary apportionment of the individual beneficial use amounts if necessary to ensure a proper apportionment of the beneficial use among the water rights in the water use group.~~

~~(10) The State Engineer shall issue an Order, which shall be the agency's final action, setting forth the individual beneficial use amount of each water right in the water use group consistent with the apportionment.~~

~~(11) Orders of the State Engineer regarding the apportionment of beneficial use shall be subject to the provisions of Rule R655-6-17 of the Division of Water Rights and to Sections 63G-4-302, 63G-4-402, and 73-3-14 which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of the Order. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of the Order, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken within 20 days after the request is filed.~~

~~(12) Once the time to seek de novo review of a State Engineer Order has passed, or if such review has been sought, once the courts have issued a final, non-appealable order, the State Engineer shall update the Division's documentary and electronic records for each of the water rights in the water use group consistent with the State Engineer's Order, or the court order if one has been issued.~~

R655-16-9. Exceptions.

~~(1) At any time during a change application or proof process, if it becomes apparent, through State Engineer review, protest, or otherwise, that a DIBUA is necessary to complete the administrative process, the State Engineer may require the water right holder to submit a DIBUA.~~

~~(2) A water right holder who wishes to declare that a water right contributes no individual beneficial use amount to a water use group, where the holder is the sole owner of the non-contributing water right, may make that declaration by filing a partial DIBUA signed only by that water right holder. The partial DIBUA may address only those rights declared to be non-contributing. Once accepted for filing, a partial DIBUA filed to declare no individual beneficial use amount may not be withdrawn or modified by the water right holder. No effort will be made to contact the other water right holders in the water use group concerning such filing.~~

~~(3) If the individual beneficial use amount of a water right has been quantified by a court order or other legal instrument of equivalent effect, and which instrument is not a part of the State Engineer's documentary records, such instrument may be submitted by any person for consideration by the State Engineer.~~

~~(4) The State Engineer may administratively cancel the assignment of a water right to a water use group if the water right is owned by a mutual irrigation company, a water-supplying entity, a municipal water system, or a federal agency and if such action provides for more efficient or proper water right administration.~~

KEY: beneficial use, supplemental water rights, water rights**Date of Enactment or Last Substantive Amendment: 2009****Authorizing, and Implemented or Interpreted Law: 73-1-3; 73-2-1(3); 73-2-1(5)(e); 73-3-3(4)(b)(vii); 73-5-8]****R655-16. Administrative Procedures for Declaring Beneficial Use Limitations for Supplemental Water Rights.****R655-16-1. Authority.**

~~Section 73-1-3 declares, "Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state."~~

~~Subsection 73-2-1(3) declares, "The State Engineer shall be responsible for the general administrative supervision of the waters of the state and the measurement, appropriation, apportionment, and distribution of those waters."~~

~~Subsection 73-2-1(5)(e) authorizes the State Engineer to make rules governing the form and content of applications and related documents, maps and reports.~~

~~Subsection 73-3-3(4)(b)(vii) requires the State Engineer to supply an application form for the permanent or temporary change of a water right which shall set forth, among other information, "the place, purpose, and extent of the present use."~~

~~Section 73-3-16 requires applicants to submit proof of appropriation or permanent change including, among other information, "a map showing the place of use", "the nature and extent of the completed works" and "the method of applying the water to beneficial use".~~

~~Section 73-3-20(2) states "The state engineer may require the owner of record of an approved exchange application to provide information concerning ... the extent to which the development under the exchange has occurred and other information the state~~

~~engineer considers necessary ... to arrive at the quantity of water being exchanged."~~

~~Section 73-5-8 states, "Every person using water from any river system or water source, when requested by the State Engineer, shall within 30 days after such request report to the State Engineer in writing: (1) the nature of the use of any such water; (2) the area on which it is used; (3) the kind of crops grown; and (4) water elevations on wells or tunnels and quantity of underground water used."~~

R655-16-2. Justification.

~~Proper water right administration requires a quantification of the Beneficial Use(s) to which the holder of a water right is entitled. To facilitate record keeping, each unique Beneficial Use or set of Beneficial Uses is assigned a Water Use Group number in the State Engineer's records. Some of the State Engineer's records indicate the Beneficial Uses in a Water Use Group are authorized under two or more water rights (Supplemental Rights), but do not quantify the Beneficial Use Amount authorized under each individual right. Administrative activities requiring an evaluation of the Beneficial Use of a water right may necessitate the quantification of the Beneficial Use allowed under each supplemental water right in a Water Use Group.~~

~~This rule provides for a "Declaration of Beneficial Use Amounts" form to enable Water Right Holders to declare Beneficial Use information and document agreement with that declaration by those with supplemental water rights.~~

R655-16-3. Purpose.

~~The purpose of this rule is to allow Water Right Holders to determine and declare the amount of Beneficial Use that each water right contributes to the total Beneficial Use of a Water Use Group. To accomplish this, a Declaration of Beneficial Use Amounts form may be completed and submitted to the State Engineer. To complete the form, the Water Right Holders must quantify, by agreement, the amount of Beneficial Use that some or all of the supplemental water right contributes to the Water Use Group.~~

R655-16-4. Application of Rule.

~~This rule applies to all Water Use Groups defined in the State Engineer's water right records for which Beneficial Use Amounts of each of the individual water rights have not been established.~~

R655-16-5. Definitions.

~~(1) Terms used in this rule are defined as follows:~~

~~(a) "Application for Apportionment of Beneficial Use Amounts" means an application requesting that the State Engineer apportion the Beneficial Uses of a Water Use Group among the supplemental water rights that make up the Water Use Group.~~

~~(b) "Beneficial Use" means the purpose to which water diverted under a water right is applied and the amount of that Beneficial Use. Examples include but are not limited to irrigation (amounts measured in acres); stock watering (amounts measured in numbers of equivalent livestock units); domestic (indoor residential - amounts measured in numbers of equivalent domestic units); and commercial, industrial, municipal (amounts measured in acre-feet).~~

(c) "Beneficial Use Amount" means the amount of Beneficial Use a water right contributes to a Water Use Group that includes the subject water right.

(d) "Change Application" means an application for permanent or temporary change of a water right as defined in Section 73-3-3.

(e) "Declaration of Beneficial Use Amounts" (Declaration) means either a form provided by the State Engineer, or an alternative document containing the same information, for use by Water Right Holders to declare the Beneficial Use Amount of some or all of the individual water rights in a Water Use Group.

(f) "Party" means only the applicant and other Water Right Holders within the Water Use Group.

(g) "Proof" means Proof of Beneficial Use for an appropriation or permanent change as described in Section 73-3-16 or as may be required by the State Engineer under 73-3-20(2).

(h) "Sole Supply" means the amount of Beneficial Use allowed under a particular water right when used alone and separate from all Supplemental Rights. If a water right has been assigned to more than one Water Use Group, the Sole Supply of the water right is the sum of its Beneficial Use Amounts.

(i) "Supplemental Right" means a water right that is used together with one or more other water rights for a common Beneficial Use.

(j) "Water Right Holder" means the entity, person, or persons documented as owning a water right in the records of the State Engineer.

(k) "Water Use Group" means one or more water rights listed and assigned a unique number in the records of the State Engineer as being applied to a common Beneficial Use.

R655-16-6. Declaration of Beneficial Use Amounts.

(1) A Declaration shall be prepared by Water Right Holders using either a form provided by the State Engineer or an alternative document containing the same information.

(a) To be considered acceptably complete, a Declaration must:

(i) be signed by all Water Right Holders in the Water Use Group; and

(ii) include documentation supporting the Beneficial Use Amounts declared.

(b) A Declaration shall apportion the Beneficial Use Amount of a water right in the Water Use Group according to the average annual Beneficial Use of each water right being quantified on a long-term basis or by any other evaluation method consistent with the information contained in the State Engineer's records.

(c) The Declaration form shall include a statement acknowledged by those signing the form and recognizing that the Beneficial Use Amounts declared by the Declaration is not a general adjudication of the water rights involved under Chapter 73-4.

(d) The State Engineer may require additional documentation to support the Beneficial Use Amounts declared in a Declaration.

(e) The State Engineer will review and evaluate a Declaration as described in R655-16-7.

(2) A Declaration filed in connection with a Change Application.

(a) Shall be required in situations where:

(i) the Change Application is filed on fewer than all of the water rights in a Water Use Group;

(ii) the Change Application seeks to remove a water right from a Water Use Group;

(iii) the Beneficial Use Amount of a water right to be removed from the Water Use Group has not been quantified; and

(iv) the nature of the change requires a quantification of the Sole Supply of the water right being changed.

(b) Shall be prepared for each Water Use Group to which the water right or the portion of the water right to be changed has been assigned.

(c) May quantify only the Beneficial Use Amount of the water right that would be the subject of a Change Application.

(d) Must, together with any other Declarations required by the Change Application, if the water right has been assigned to more than one Water Use Group, declare the Sole Supply of the water right or the portion of the water right to be changed.

(3) A Declaration to declare the Beneficial Use Amount of a water right for which Proof has been filed;

(a) May be required in situations where:

(i) the Beneficial Use Amount has not been quantified for the water right in the Water Use Group for which Proof has been filed; and

(ii) the Proof is filed on fewer than all of the water rights in the Water Use Group; or

(iii) the Water Right Holder who has filed Proof does not hold all the water rights in the Water Use Group.

(b) Shall be prepared for each Water Use Group to which the water right for which Proof has been filed belongs.

(c) May quantify only the Beneficial Use Amount of the water right that would be the subject of the Proof.

(d) Must, together with any other Declarations required for the Proof, if the water right has been assigned to more than one Water Use Group, declare the Sole Supply of the water right for which Proof has been filed.

(4) The filing of a Declaration does not limit the ability of a Water Right Holder to continue to use the water rights together supplementally as they have historically been used. Regardless of the Beneficial Use Amounts declared in a Declaration, the previous supplemental use of the water rights may continue, with the exclusion of any water right removed from the group through an approved Change Application or invalidated through other legal or administrative process.

(5) Once accepted for filing, a Declaration may only be revised by filing a new Declaration:

(a) That is signed by at least all Water Right Holders within the Water Use Group affected by the revision and whose Beneficial Use Amounts were previously declared by the filing of a Declaration; and

(b) That addresses only water rights that have not been previously removed from the Water Use Group through an approved Change Application or invalidated through other legal or administrative process.

R655-16-7. State Engineer Review and Evaluation.

(1) If a Declaration is filed with the State Engineer:

(a) The State Engineer shall review the Declaration for consistency with the water right information contained in the State Engineer's records.

(b) If the Declaration is inconsistent with the water right information contained in the State Engineer's records, it will be returned without further action to the Water Right Holder who submitted the Declaration with an explanation of the inconsistencies.

(c) If there is reason to believe the Declaration is consistent with the State Engineer's records, the State Engineer shall update the water right records of all water rights listed in the Declaration, consistent with the Beneficial Use Amounts included in the Declaration. With the update, a memo documenting the Beneficial Use declarations shall be placed on the file of each affected water right.

(2) A Water Right Holder may request, in writing to the State Engineer, a review of the State Engineer's Water Right Database entries and the State Engineer's Water Right Files related to a Water Use Group.

(a) Such a request is not a request for agency action pursuant to Chapter 63G-4 because the review shall be limited to a determination as to whether the State Engineer's Water Right Database entries are consistent with the State Engineer's Water Right Files for the water rights in the Water Use Group.

(b) A request for a records review filed pursuant to this rule shall set forth a statement as to how the submitter believes the State Engineer's Water Right Database should be modified to be consistent with the State Engineer's Water Right Files for the water rights in the Water Use Group.

(c) The State Engineer shall complete a review of the Water Rights Database and the Water Right Files within a reasonable time from receipt of the written request and shall notify the requester in writing when the review has been completed.

(d) A copy of the State Engineer's reply to the request for a records review shall be placed on the water right file for each water right in the Water Use Group reviewed.

(3) The State Engineer may modify Water Use Group records at any time to resolve errors, deficiencies, or ambiguities. With the modification, a memo documenting the change in the Water Use Group shall be placed on the file of each affected water right.

R655-16-8. Application to State Engineer for Apportionment of Beneficial Use Amounts.

(1) An applicant may submit an application to the State Engineer requesting an informal adjudicative proceeding pursuant to Chapter 63G-4 for the apportionment of the Beneficial Use Amounts of the water rights in the Water Use Group if:

(a) An apportionment is necessary for an administrative action on a Change Application or Proof of Beneficial Use; and

(b) The applicant has exhausted all reasonable efforts and has been unable to produce a Declaration because:

(i) It is impossible to identify and/or contact one or more of the parties or their successors in interest in the Water Use Group. In this case the applicant must document:

(A) the attempts to identify and contact the parties or their successors in interest; and

(B) the reasons why the parties or their successors in interest cannot be identified or no contact can be made.

(ii) One or more of the parties or their successors in interest refuses to participate in completing the Declaration or

refuses to sign the Declaration. In this case the applicant must document:

(A) the attempts to reach agreement with the parties or their successors in interest; and

(B) the reasons, in detail, why no agreement could be reached.

(iii) Any other reason or reasons the applicant cannot cure, which prevents the completion of the Declaration. In this case the applicant must document why the Declaration cannot be completed.

(2) An Application for Apportionment of Beneficial Use Amounts shall be made on a form provided by the State Engineer and shall comply with Section 63G-4-201 as a request for agency action.

(a) The applicant shall provide all information requested on the form provided by the State Engineer including all affidavits and documentation gathered in the effort to prepare a Declaration.

(b) The application form shall include a statement acknowledged by the applicant signing the form and recognizing that the State Engineer's apportionment of the Beneficial Use Amounts of the water rights within the Water Use Group is not a general adjudication of the water rights involved under Chapter 73-4.

(c) To the extent possible, the applicant shall provide notice to the other parties pursuant to Section 63G-4-201(3)(b).

(3) The State Engineer shall review the application for completeness and compliance with the criteria described in (1). As part of the review, the State Engineer shall determine whether the applicant's effort to complete a Declaration without success has been sufficient.

(4) If the application is incomplete or does not meet the criteria described in (1), or if the State Engineer believes the applicant should make additional effort to complete the Declaration, the State Engineer shall return the application to the applicant without further action with an explanation of the inadequacies. Returning an incomplete or inadequate application is not a final agency action; it is an intermediate step instructing the applicant regarding further steps that must be taken before the application can be accepted for filing.

(5) If the application is complete and does meet the criteria described in (1), and if the State Engineer believes the applicant has exerted all reasonable efforts to complete the Declaration without success, the State Engineer shall accept the application for filing and apportion the Beneficial Uses of the water rights in the Water Use Group accordingly.

(6) For the purposes of this rule, the State Engineer shall apportion the Beneficial Use Amounts of the water rights in the Water Use Group according to the following procedure:

(a) The State Engineer shall notify all parties in accordance with Section 63G-4-201(3)(d)(iii) and (e)(ii) and shall issue a request for information to each Party as authorized in Section 73-5-8.

(b) The parties will be allowed at least thirty (30) days for submittal of the requested information.

(c) Upon expiration of the allotted response time, the State Engineer will review:

(i) all information received with the application; and

(ii) all information received pursuant to the State Engineer's request (including historical records of flows diverted, historical water use patterns, etc.); and

(iii) any other information relevant to the water rights in the Water Use Group, including the State Engineer's water right records (such as, relative priority and water flow limitations, distribution records, etc.).

(d) Based upon a review of the information described in (c), the State Engineer shall make a preliminary apportionment. The State Engineer may determine whether to make a preliminary apportionment of the Beneficial Use Amount for each of the water rights in the Water Use Group or an apportionment of only the Beneficial Use Amount of the water right involved in the administrative action.

(7) The State Engineer shall notify all parties by regular mail of the preliminary apportionment of the Beneficial Use Amounts apportioned. This notification is an intermediate rather than a final agency action.

(a) The parties shall be advised of their right to protest the preliminary Beneficial Use Amounts apportioned by the State Engineer.

(b) The parties will be allowed at least thirty (30) days for submittal of protests or other information.

(8) The State Engineer may hold a hearing if deemed necessary to obtain further information regarding the apportionment of the Beneficial Use Amounts of the water rights within the Water Use Group.

(9) The State Engineer shall review any further information obtained either through protest or the hearing process and may revise the preliminary apportionment of the Beneficial Use Amounts if necessary to ensure a proper apportionment of the Beneficial Use among the water rights in the Water Use Group.

(10) The State Engineer shall issue an Order, which shall be the agency's final action, setting forth the Beneficial Use Amount of each water right apportioned consistent with the apportionment.

(11) Orders of the State Engineer regarding the apportionment of Beneficial Use shall be subject to the applicable law including provisions of Rule R655-6-17 of the Division of Water Rights and to Sections 63G-4-302, 63G-4-401, 63G-4-402, and 73-3-14 which provide for filing either a Request for Reconsideration with the State Engineer or de novo review in the appropriate district court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of the Order. However, a Request for Reconsideration is not a prerequisite to filing for de novo review. De novo review must be sought within 30 days after the date of the Order, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied or deemed denied. A Request for Reconsideration is deemed denied when no action is taken within 20 days after the request is filed.

(12) Once the time to seek de novo review of a State Engineer Order has passed, or if such review has been sought, once the courts have issued a final, non-appealable order, the State Engineer shall update the Division's documentary and electronic records for each of the water rights apportioned consistent with the

State Engineer's Order, or the court order if one has been issued. With the update, a memo documenting the Beneficial Use apportionment shall be placed on the file of each affected water right.

R655-16-9. Exceptions.

(1) Water Use Groups created for public water suppliers that do not describe the extent of the Beneficial Uses but rather group water rights within a use area will not require a Declaration.

(2) At any time during a Change Application or Proof process, if it becomes apparent, through State Engineer review, protest, or otherwise, that a Declaration is necessary to complete the administrative process, the State Engineer may require Declaration be completed consistent with this rule.

(3) A Water Right Holder who wishes to declare that a water right contributes no Beneficial Use amount to a Water Use Group, where the holder is the sole owner of the non-contributing water right, may make that declaration by filing a Declaration signed only by that Water Right Holder. The Declaration may address only those rights declared to be non-contributing. Once accepted for filing, a Declaration filed to declare no Beneficial Use amount may not be withdrawn or modified by the Water Right Holder. No effort will be made to contact the other Water Right Holders in the Water Use Group concerning such filing. Once a Declaration of no Beneficial Use has been accepted for filing, the State Engineer shall update the water right records of all water rights listed in the Declaration, consistent with the Declaration. With the update a memo documenting the no Beneficial Use declarations shall be placed on the file of each affected water right.

(4) If the Beneficial Use Amount of a water right has been quantified by a court order or other legal instrument of equivalent effect, and which instrument is not a part of the State Engineer's documentary records, such instrument may be submitted by any person for consideration by the State Engineer.

(5) The State Engineer may administratively cancel the assignment of a water right to a Water Use Group if such action provides for more efficient or proper water right administration. When the database is updated to cancel the assignment, a memo documenting the cancellation shall be placed on the file of each affected water right.

(6) The State Engineer may waive the filing of a Declaration for a temporary Change Application when he believes sufficient water and Beneficial Use Amounts are available for the purposes of the change.

KEY: beneficial use, supplemental water rights, water rights
Date of Enactment or Last Substantive Amendment: 2010
Authorizing, and Implemented or Interpreted Law: 73-1-3;
73-2-1(3); 73-2-1(5)(e); 73-3-3(4)(b)(vii); 73-5-8; 73-3-14;
73-3-16; 73-3-20(2); 63G-4; 73-4

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End of the Notices of Changes in Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-Day (EMERGENCY) RULE** when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-Day RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-Day RULE** including the name of a contact person, justification for filing a **120-Day RULE**, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-Day RULE** is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A **120-Day RULE** is effective for 120 days or until it is superseded by a permanent rule.

Because **120-Day RULES** are effective immediately, the law does not require a public comment period. However, when an agency files a **120-Day RULE**, it usually files a **PROPOSED RULE** at the same time, to make the requirements permanent. Comments may be made on the **PROPOSED RULE**. Emergency or **120-Day RULES** are governed by Section 63G-3-304; and Section R15-4-8.

TRANSPORTATION COMMISSION ADMINISTRATION **R940-1-3** Base Toll Rate and Range for HOT Lanes

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 33369
FILED: 02/10/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the change is to establish toll rates for the dynamically priced electronic payment system currently in development for the High Occupancy Toll (HOT) Lanes on I-15.

SUMMARY OF THE RULE OR CHANGE: The change establishes a toll rate of \$0.25 to \$1 per payment zone under a dynamically priced electronic payment system. As the High Occupancy Toll (HOT) Lane is converted from the monthly sticker program to an electronic payment system, the Utah Department of Transportation will manage the amount of the toll necessary to keep the HOT lane freely flowing. (DAR NOTE: A corresponding amendment is under DAR No. 33386 in this issue, March 1, 2010, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 23 USC 166(b)(4) and Section 72-6-118

REGULAR RULEMAKING WOULD place the agency in violation of federal or state law.

Regular rulemaking procedures would place the agency in violation of federal and state law. Federal law (23 USC 166(b)(4)) requires that HOT Lane programs be variably priced to manage the demand to use the facility. Therefore, the state must make the conversion from a monthly sticker program to an electronic payment system. State law requires that the Transportation Commission establish toll rates through rulemaking.

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** No impact to state budget--A contract has already been awarded to convert the HOT lane to a dynamically priced electronic payment system. Only persons choosing to access the HOT lane with a single occupant in the vehicle will be required to pay a toll. The amount of the toll will vary by the number of payment zones accessed and the level of congestion in the HOT lane. If government agencies provide money for their drivers to pay tolls, then they may be affected; otherwise they will not.

♦ **LOCAL GOVERNMENTS:** Only persons choosing to access the HOT lane with a single occupant in the vehicle will be required to pay a toll. The amount of the toll will vary by the number of payment zones accessed and the level of congestion in the HOT lane. If local governments provide money for their drivers to pay tolls, then they may be affected; otherwise they will not.

♦ **SMALL BUSINESSES:** Only persons choosing to access the HOT lane with a single occupant in the vehicle will be required to pay a toll. The amount of the toll will vary by the number of payment zones accessed and the level of congestion in the HOT lane. If small businesses provide money for their drivers to pay tolls, then they may be affected; otherwise they will not.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Only persons choosing to access the HOT lane with a single occupant in the vehicle will be required to pay a toll. The amount of the toll will vary by the number of payment zones accessed and the level of congestion in the HOT lane.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs will vary for persons driving single occupant vehicles who choose to access the HOT lane, depending on the number of zones accessed and the level of traffic congestion.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department does not believe the rule change will have a substantial fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 TRANSPORTATION COMMISSION
 ADMINISTRATION
 CALVIN L RAMPTON COMPLEX
 4501 S 2700 W
 SALT LAKE CITY, UT 84119
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Maureen Short by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at maureenshort@utah.gov

EFFECTIVE: 02/10/2010

AUTHORIZED BY: John Njord, Executive Director

R940. Transportation Commission, Administration.

R940-1. Establishment of Toll Rates.

R940-1-3. Base Toll Rate and Range for HOT Lanes.

(1) In deciding what Toll is appropriate for HOT Lanes that are not subject to tollway development agreements, the Commission balances the need to obtain revenue against the effect that a certain Toll amount will have on demand. The goal is to set a price that encourages optimal use of the HOT Lane.

(2) For HOT Lanes under a monthly sticker program that are not subject to a tollway development agreement, the initial toll for the HOT Lane is \$50 per month.

(3)a With the Commission's approval, the Department may increase the toll described in subsection (2) from \$50 per month if it finds that demand on the HOT Lane is too high and needs to be reduced in order to keep the lane freely flowing. Evidence of demand can be shown by traffic counts and evidence of traffic congestion.

(3) For HOT lanes under a dynamically priced electronic payment system that are not subject to a tollway development agreement, the toll is \$0.25 to \$1.00 per payment zone. The Department will manage the amount of the toll necessary to keep the lane freely flowing.

(4) Toll rates for HOT Lanes that are subject to a tollway development agreement shall be set in the tollway development agreement.

KEY: transportation, tolls, HOT Lanes, tollways

Date of Enactment or Last Substantive Amendment: February 10, 2010

Authorizing, and Implemented or Interpreted Law: 72-2-120; 72-6-118

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the 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.

Commerce, Occupational and Professional Licensing **R156-38b** State Construction Registry Rules

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33366
FILED: 02/08/2010

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: Sections 38-1-27 and 38-1-30 through 38-1-37 provide for the State Construction Registry. Subsection 38-1-27(2)(b) provides that the State Construction Registry is to be overseen by the Division of Occupational and Professional Licensing. Subsection 38-1-30(3) provides that the Division shall establish procedures by rule with respect to the State Construction Registry. This rule was enacted to clarify the provisions of Sections 38-1-27 and 38-1-30 through 38-1-37 with respect to the State Construction Registry.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was first enacted in April 2005, it has been amended once in August 2006 due to related statutory amendments. The Division has received no written comments with respect to 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 should be continued as it provides a mechanism to inform persons and companies who utilize the State Construction Registry of requirements as allowed under statutory authority provided in Title 38, Chapter 1.

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:

♦ Tom Harper by phone at 801-530-6288, by FAX at 801-530-6511, or by Internet E-mail at tharper@utah.gov

AUTHORIZED BY: Mark Steinagel , Director

EFFECTIVE: 02/08/2010

Commerce, Securities **R164-2** Investment Adviser - Unlawful Acts

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33389
FILED: 02/16/2010

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 61-1-2 describes the acts of investment advisers which are deemed to be unlawful, and provides that the Division may, by rule, adopt exemptions from the section's requirements for investment advisory contracts. Section 61-1-24 allows the Division to make rules when necessary to carry out provisions of the chapter.

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 defines the circumstances under which an exception to the prohibition against performance-based fees contained in Section 61-1-2 is permissible. It protects the public by ensuring that specific requirements are met before an investment adviser may receive performance-based compensation for investment advisory services. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 COMMERCE
 SECURITIES
 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:
 ♦ Charles Lyons by phone at 801-530-6940, by FAX at 801-530-6980, or by Internet E-mail at clyons@utah.gov
 ♦ Keith Woodwell by phone at 801-530-6606, by FAX at 801-530-6980, or by Internet E-mail at kwoodwell@utah.gov

AUTHORIZED BY: Keith Woodwell , Director

EFFECTIVE: 02/16/2010

**Environmental Quality, Radiation
 Control
 R313-34
 Requirements for Irradiators**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33367
 FILED: 02/10/2010

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 19-1-106(1) created the Radiation Control Board within the Department of Environmental Quality. Subsection 19-3-104(4) provides that the Board may make rules necessary for controlling exposure to sources of radiation that constitute a significant health hazard and to meet the requirements of federal law relating to radiation control.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This has not been a controversial rule. The Radiation Control Board recommends the continuation of this rule. No other 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 must be continued because it establishes the requirements for the possession and use of sealed sources containing radioactive materials in irradiators. These devices use gamma radiation to irradiate objects or materials. The rules provide for protection of public health and safety by controlling the use of panoramic irradiators that have either dry or wet storage of the radioactive sealed sources; underwater irradiators in which both the source and object being irradiated are under water; and irradiators whose dose rate exceeds 500 rad per hour at one meter from the radioactive source in air or in water.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 RADIATION CONTROLROOM 212
 168 N 1950 W
 SALT LAKE CITY, UT 84116-3085
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Craig Jones by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at cwjones@utah.gov

AUTHORIZED BY: Dane Finerfrock, Director

EFFECTIVE: 02/10/2010

**Environmental Quality, Water Quality
R317-4
Onsite Wastewater Systems**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 33370
FILED: 02/10/2010

**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 19-5-104(1)(f)(iv) authorizes the Utah Water Quality Board to adopt rules to protect the public health for the design, construction, operation, and maintenance of individual wastewater disposal systems.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This rule was last amended on 10/23/2007. The limited comments which were received on the rule were of a technical and noncontroversial nature. Comments received during hearings and public comment periods for rule changes were addressed through preparation of responsiveness summaries by the Division of Water

Quality staff and have been presented to the Water Quality Board for their consideration during the rulemaking process. All changes to this rule are reviewed by a technical review committee consisting of the regulated community and other interested and affected parties that was formed to provide input to the Division of Water Quality and the Board.

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 is required to protect the public health for the design, construction, operation, and maintenance of individual wastewater disposal systems; and therefore, the rule should be continued.

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

AUTHORIZED BY: Walter Baker , Director

EFFECTIVE: 02/10/2010

End of the Five-Year Notices of Review and Statements of Continuation Section

**NOTICES OF
FIVE-YEAR REVIEW EXTENSIONS**

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules. The extension permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed extensions for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

The five-year review extension is governed by Subsections 63G-3-305(4) and (5).

**Capitol Preservation Board (State),
Administration
R131-1
Procurement of Architectural and
Engineering Services**

**FIVE-YEAR REVIEW EXTENSION
DAR FILE NO.: 33363
FILED: 02/08/2010**

EXTENSION REASON AND NEW DEADLINE: The former Capitol Preservation Board (CPB) Director resigned the end of December 2009. The new Director received notification on 01/25/2010 that this rule was due for a five-year review on 02/16/2010. The CPB is not scheduled to meet until March or April of 2010, and they need to approve the five-year reviews. Therefore, an extension is necessary to prevent the rule from expiring. New deadline is 06/16/2010.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
- ◆ Allyson Gamble by phone at 801-537-9156, by FAX at 801-538-3221, or by Internet E-mail at agamble@utah.gov
- ◆ La Priel Dye by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at ldye@utah.gov
- ◆ Sarah Whitney by phone at 801-538-3074, by FAX at 801-538-3221, or by Internet E-mail at swhitney@utah.gov

AUTHORIZED BY: Allyson Gamble, Acting Executive Director

EFFECTIVE: 02/08/2010

**Capitol Preservation Board (State),
Administration
R131-2
Capitol Hill Complex Facility Use**

**FIVE-YEAR REVIEW EXTENSION
DAR FILE NO.: 33364
FILED: 02/08/2010**

EXTENSION REASON AND NEW DEADLINE: The former Capitol Preservation Board (CPB) Director resigned the end of December 2009. The new Director received notification on 01/25/2010 that this rule was due for a five-year review on 02/16/2010. The CPB is not scheduled to meet until March or April of 2010, and they need to approve the five-year reviews. Therefore, an extension is necessary to prevent the rule from expiring. New deadline is 06/16/2010.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
- ◆ Allyson Gamble by phone at 801-537-9156, by FAX at 801-538-3221, or by Internet E-mail at agamble@utah.gov
- ◆ La Priel Dye by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at ldye@utah.gov
- ◆ Sarah Whitney by phone at 801-538-3074, by FAX at 801-538-3221, or by Internet E-mail at swhitney@utah.gov

AUTHORIZED BY: Allyson Gamble, Acting Executive Director

EFFECTIVE: 02/08/2010

Capitol Preservation Board (State),
Administration
R131-7

State Capitol Preservation Board
Master Planning Policy

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 33365

FILED: 02/08/2010

EXTENSION REASON AND NEW DEADLINE: The former Capitol Preservation Board (CPB) Director resigned the end of December 2009. The new Director received notification on 01/25/2010 that this rule was due for a five-year review on 02/16/2010. The CPB is not scheduled to meet until March or

April of 2010, and they need to approve the five-year reviews. Therefore, an extension is necessary to prevent the rule from expiring. New deadline is 06/16/2010.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
- ◆ Allyson Gamble by phone at 801-537-9156, by FAX at 801-538-3221, or by Internet E-mail at agamble@utah.gov
- ◆ La Priel Dye by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at ldye@utah.gov
- ◆ Sarah Whitney by phone at 801-538-3074, by FAX at 801-538-3221, or by Internet E-mail at swhitney@utah.gov

AUTHORIZED BY: Allyson Gamble, Acting Executive Director

EFFECTIVE: 02/08/2010

End of the Notices of Five-Year Review Extensions 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

Consumer Protection

No. 33238 (AMD): R152-11-1. Purposes, Rules of Construction

Published: 01/01/2010

Effective: 02/08/2010

No. 33239 (AMD): R152-11-5. Repairs and Services

Published: 01/01/2010

Effective: 02/08/2010

Occupational and Professional Licensing

No. 33264 (AMD): R156-37-301. License Classifications - Restrictions

Published: 01/01/2010

Effective: 02/08/2010

No. 33263 (AMD): R156-77-102. Definitions

Published: 01/01/2010

Effective: 02/08/2010

No. 33265 (AMD): R156-79. Hunting Guides and Outfitters Licensing Act Rule

Published: 01/01/2010

Effective: 02/08/2010

Real Estate

No. 33226 (AMD): R162-106-1. Uniform Standards

Published: 12/15/2009

Effective: 02/03/2010

Securities

No. 33010 (AMD): R164-9. Registration by Coordination

Published: 10/15/2009

Effective: 02/02/2010

No. 33011 (AMD): R164-10-2. Registration Statements

Published: 10/15/2009

Effective: 02/02/2010

No. 33012 (AMD): R164-11-1. General Registration Provisions

Published: 10/15/2009

Effective: 02/02/2010

No. 33013 (AMD): R164-12-1f. Commissions on Sales of Securities

Published: 10/15/2009

Effective: 02/02/2010

No. 33014 (REP): R164-13. Definitions

Published: 10/15/2009

Effective: 02/02/2010

No. 33016 (AMD): R164-18-6. Procedures for Administrative Actions

Published: 10/15/2009

Effective: 02/02/2010

Environmental Quality

Administration

No. 33102 (NEW): R305-5. Health Reform -- Health Insurance Coverage in DEQ State Contracts -- Implementation

Published: 11/15/2009

Effective: 02/16/2010

No. 33102 (CPR): R305-5. Health Reform -- Health Insurance Coverage in DEQ State Contracts -- Implementation

Published: 01/15/2010

Effective: 02/16/2010

Effective: 02/16/2010

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 33215 (REP): R414-5. Reduction in Hospital Payments

Published: 12/15/2009

Effective: 02/16/2010

No. 32925 (AMD): R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver
Published: 09/15/2009
Effective: 02/16/2010

No. 32925 (CPR): R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver
Published: 12/15/2009
Effective: 02/16/2010

Health Systems Improvement, Licensing
No. 33186 (AMD): R432-4-26. Penalties
Published: 12/15/2009
Effective: 02/04/2010

No. 33187 (AMD): R432-5-17. Penalties
Published: 12/15/2009
Effective: 02/04/2010

No. 33189 (AMD): R432-6-211. Penalties
Published: 12/15/2009
Effective: 02/04/2010

No. 33190 (AMD): R432-7-7. Penalties
Published: 12/15/2009
Effective: 02/04/2010

No. 33191 (AMD): R432-8-8. Penalties
Published: 12/15/2009
Effective: 02/04/2010

No. 33184 (AMD): R432-9-7. Special Hospital-Rehabilitation Construction Penalties
Published: 12/15/2009
Effective: 02/04/2010

Human Resource Management

Administration

No. 33278 (AMD): R477-7-2. Holiday Leave
Published: 01/01/2010
Effective: 02/08/2010

Human Services

Child and Family Services

No. 33256 (AMD): R512-10. Youth Advocate Program
Published: 01/01/2010
Effective: 02/09/2010

No. 33257 (AMD): R512-31. Foster Parent Due Process
Published: 01/01/2010
Effective: 02/09/2010

No. 33258 (AMD): R512-42. Adoption by Relatives
Published: 01/01/2010
Effective: 02/09/2010

Recovery Services

No. 33261 (AMD): R527-332. Unreimbursed Assistance Calculation
Published: 01/01/2010
Effective: 02/09/2010

No. 33243 (AMD): R527-412. Intercept of Unemployment Compensation
Published: 01/01/2010
Effective: 02/09/2010

Insurance

Administration

No. 33260 (NEW): R590-255. Utah NetCare Alternative Coverage Notification Rule
Published: 01/01/2010
Effective: 02/09/2010

Natural Resources

Wildlife Resources

No. 33271 (AMD): R657-5-13. Areas With Special Restrictions
Published: 01/01/2010
Effective: 02/08/2010

No. 33272 (AMD): R657-37-9. Permit Allocation
Published: 01/01/2010
Effective: 02/08/2010

Transportation

Preconstruction

No. 33274 (R&R): R930-5. Establishment and Regulation of At-Grade Railroad Crossings
Published: 01/01/2010
Effective: 02/08/2010

End of the Notices of Rule Effective Dates Section

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2010, including notices of effective date received through February 16, 2010. 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).

Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate.

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/>).

Rules Index - by Agency (Code Number)

Abbreviations

5YR = Five-Year Notice of Review and Statement of Continuation (Five-Year Review)
 AMD = Notice of Proposed Rule - Amendment
 CPR = Change in Proposed Rule
 EMR = Notice of 120-Day (Emergency) Rule
 EXD = Notice of Expired Rule
 EXP = Notice of Expedited Rule

EXT = Notice of Five-Year Review Extension
 GEX = Notice of Governor's Extension
 LNR = Notice of Legislative Nonreauthorization
 NEW = Notice of Proposed Rule - New Rule
 NSC = Nonsubstantive Change
 REP = Notice of Proposed Rule - Repeal
 R&R = Notice of Proposed Rule - Repeal and Reenact

DEPARTMENT	AGENCY NAME	TITLE (CATCHLINE)	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES						
<u>FACILITIES CONSTRUCTION AND MANAGEMENT</u>						
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Abbreviations

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 AMD = Notice of Proposed Rule - Amendment
 CPR = Change in Proposed Rule
 EMR = Notice of 120-Day (Emergency) Rule
 EXD = Notice of Expired Rule
 EXP = Notice of Expedited Rule

EXT = Notice of Five-Year Review Extension
 GEX = Notice of Governor's Extension
 LNR = Notice of Legislative Nonreauthorization
 NEW = Notice of Proposed Rule - New Rule
 NSC = Nonsubstantive Change
 REP = Notice of Proposed Rule - Repeal
 R&R = Notice of Proposed Rule - Repeal and Reenact

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<u>disease control</u> Agriculture and Food; Animal Industry	R58-21	33340	5YR	01/27/2010	2010-4/79
<u>disputes</u> Administrative Services; Facilities Construction and Management	R23-26	33360	5YR	02/01/2010	2010-4/79
<u>disruptive behavior</u> Regents (Board Of); University of Utah, Administration	R805-4	33146	NEW	01/07/2010	2009-23/27
<u>due process</u> Human Services; Child and Family Services Human Services; Substance Abuse and Mental Health	R512-31 R523-1-25	33257 33333	AMD NSC	02/09/2010 02/11/2010	2010-1/35 Not Printed
E					
<u>educational administration</u> Education; Administration	R277-800	33254	NSC	01/04/2010	Not Printed
<u>elderly</u> Human Services; Aging and Adult Services	R510-401	33027	R&R	01/19/2010	2009-21/35
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F					
<u>facilities use</u> Capitol Preservation Board (State); Administration	R131-2 R131-2-11	33364 33151	EXT AMD	02/08/2010 01/07/2010	2010-5/73 2009-23/6
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<u>financial statements</u> Commerce; Securities	R164-10-2	33011	AMD	02/02/2010	2009-20/16
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G					
<u>game laws</u> Natural Resources; Wildlife Resources	R657-5-13	33271	AMD	02/08/2010	2010-1/46
<u>gifted children</u> Education; Administration	R277-711-4	33234	NSC	01/04/2010	Not Printed
<u>government hearings</u> Commerce; Administration	R151-46b R151-46b-5	33150 33149	AMD AMD	01/07/2010 01/07/2010	2009-23/7 2009-23/11
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<u>grievance procedures</u> Tax Commission; Administration	R861-1A-23 R861-1A-43	33313 33231	NSC AMD	01/28/2010 01/21/2010	Not Printed 2009-24/90

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L					
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<u>licensing</u> Commerce; Occupational and Professional Licensing	R156-37-30 1	33264	AMD	02/08/2010	2010-1/11
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<u>loans</u> Agriculture and Food; Conservation and Resource Management	R64-1	33305	5YR	01/07/2010	2010-3/89
M					
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<u>medical malpractice</u> Commerce; Occupational and Professional Licensing	R156-78B-4	33175	AMD	01/21/2010	2009-24/28

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P					
<u>PCN (Primary Care Network)</u> Health; Health Care Financing, Coverage and Reimbursement Policy	R414-320	32925	AMD	02/16/2010 see CPR in 12/15/2009 Bulletin	2009-18/36
	R414-320	32925	CPR	02/16/2010	2009-24/94
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R					
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<u>respite</u> Human Services; Aging and Adult Services	R510-401	33027	R&R	01/19/2010	2009-21/35
S					
<u>safety</u> Transportation; Preconstruction	R930-5	33274	R&R	02/08/2010	2010-1/49
<u>securities</u> Commerce; Securities	R164-2	33389	5YR	02/16/2010	2010-5/69
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<u>securities regulation</u> Commerce; Securities	R164-4-9	33006	AMD	01/06/2010	2009-20/12
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<u>settlements</u> Administrative Services; Facilities Construction and Management	R23-26	33360	5YR	02/01/2010	2010-4/79
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<u>sobriety tests</u> Health; Epidemiology and Laboratory Services, Laboratory Services	R438-12-2	33087	AMD	01/06/2010	2009-22/82
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T					
<u>tax returns</u> Tax Commission; Auditing	R865-9I-17	33113	AMD	01/21/2010	2009-22/86
<u>taxation</u> Tax Commission; Administration	R861-1A-23	33313	NSC	01/28/2010	Not Printed
	R861-1A-43	33231	AMD	01/21/2010	2009-24/90
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<u>tollways</u> Transportation Commission; Administration	R940-1-3	33369	EMR	02/10/2010	2010-5/67
<u>trainees</u> Commerce; Real Estate	R162-110	33148	NEW	01/07/2010	2009-23/13
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<u>training</u> Education; Administration	R277-613-1	33253	NSC	01/04/2010	Not Printed
<u>transportation</u> Transportation Commission; Administration	R940-1-3	33369	EMR	02/10/2010	2010-5/67
	R930-5	33274	R&R	02/08/2010	2010-1/49
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U					
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	04				
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W					
<u>waste disposal</u> Environmental Quality; Solid and Hazardous Waste	R315-316	33145	AMD	01/15/2010	2009-23/17
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<u>workers' compensation</u> Labor Commission; Industrial Accidents	R612-13	33230	NEW	01/21/2010	2009-24/89
Y					
<u>youth mentor</u> Human Services; Child and Family Services	R512-10	33256	AMD	02/09/2010	2010-1/33