UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah State Government. The Department of Administrative Services, Division of Administrative Rules produces the *Bulletin* under authority of Section 63G-3-402.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114-1201, telephone 801-538-3764, FAX 801-359-0759. Additional rulemaking information, and electronic versions of all administrative rule publications are available at: http://www.rules.utah.gov/

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

Division of Administrative Rules, Salt Lake City 84114

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

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SPECIAL NOTICES

Health
Health Care Financing, Coverage and Reimbursement Policy

Medical Care Advisory Committee Public Hearing

The Medical Care Advisory Committee will hold a public hearing to discuss the Fiscal Year 2012 Medicaid and Primary Care Network budgets. The hearing will be held on June 17, 2010, from 4 to 6 p.m., in Room 114 of the Cannon Health Building, 288 North 1460 West, Salt Lake City, Utah.

Individuals requiring an accommodation to fully participate in this meeting should contact John Strong, 801-538-6587, before June 17, 2010. Written comments may also be sent to the following mailing address: MCAC, PO Box 143101, Salt Lake City, UT 84114-3101

End of the Special Notices Section

EXECUTIVE DOCUMENTS

As part of his or her constitutional duties, the Governor periodically issues **EXECUTIVE DOCUMENTS** comprised of Executive Orders, Proclamations, and Declarations. "Executive Orders" set policy for the Executive Branch; create boards and commissions; provide for the transfer of authority; or otherwise interpret, implement, or give administrative effect to a provision of the Constitution, state law or executive policy. "Proclamations" call special or extraordinary legislative sessions; designate classes of cities; publish states-of-emergency; promulgate other official formal public announcements or functions; or publicly avow or cause certain matters of state government to be made generally known. "Declarations" designate special days, weeks or other time periods; call attention to or recognize people, groups, organizations, functions, or similar actions having a public purpose; or invoke specific legislative purposes (such as the declaration of an agricultural disaster).

The Governor's Office staff files **EXECUTIVE DOCUMENTS** that have legal effect with the Division of Administrative Rules for publication and distribution. All orders issued by the Governor not in conflict with existing laws have the full force and effect of law during a state of emergency when a copy of the order is filed with the Division of Administrative Rules. (See Section 63K-4-401).

Governor's Executive Order EO/004/2010: Wildland Fire Management

EXECUTIVE ORDER

Wildland Fire Management

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

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

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

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

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

NOW THEREFORE, I, Gary R. Herbert, Governor of the State of Utah by virtue of the power vested in me by the constitution and the laws of the State of Utah, do hereby order that:

It is found, determined and declared that a "State of Emergency" exists statewide due to the threat to public safety, property, natural resources and the environment for thirty days, effective as of May 10, 2010 requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

IN TESTIMONY, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 10th day of May 2010.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Lieutenant Governor
Greg Bell

EO/004/2010

End of the Executive Documents Section

NOTICES OF
PROPOSED RULES

A state agency may file a **Proposed Rule** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between May 01, 2010, 12:00 a.m., and May 14, 2010, 11:59 p.m. are included in this, the June 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 July 1, 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 September 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** or a **Change in Proposed Rule**, the **Proposed Rule** lapses and the agency must start the process over.

The public, interest groups, and governmental agencies are invited to review and comment on **Proposed Rules**. *Comment may be directed to the contact person identified on the* Rule Analysis *for each rule.*

Proposed Rules are governed by Section 63G-3-301; Rule R15-2; and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page

Administrative Services, Facilities Construction and Management
R23-1
Procurement of Construction

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33621
FILED: 05/06/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change to Section R23-1-20 increases the amount regarding small purchases for construction from $10,000 to $25,000 and allows the Division of Facilities Construction and Management (DFCM) Director to procure small purchases for professional services related to construction including cost estimators, project schedulers, building inspectors, code inspectors, special inspectors, and testing entities if the cost of such professional service is $100,000 or less in any manner that the Director shall deem to be adequate and reasonable, which is a similar amount currently for architectural and engineer services.

SUMMARY OF THE RULE OR CHANGE: The change to Section R23-1-20 increases the amount regarding small purchases for construction from $10,000 to $25,000 and allows the DFCM Director to procure small purchases for professional services related to construction including cost estimators, project schedulers, building inspectors, code inspectors, special inspectors, and testing entities if the cost of such professional service is $100,000 or less in any manner that the Director shall deem to be adequate and reasonable, which is a similar amount currently for architectural and engineer services.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-6-101

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: It is anticipated this change to Section R23-1-20 could result in a minimal savings to the state budget. The minimal savings will be a result of less state employee staff time spent on procurement of professional services related to construction. The actual amount of these savings is unknown until this rule is implemented.

♦ LOCAL GOVERNMENTS: It is not anticipated that there could be either a cost or savings to local government because local governments do not have any jurisdiction or costs associated with state facilities and grounds owned, occupied, or leased by the state for the use of its departments and/or agencies.

♦ SMALL BUSINESSES: It is anticipated there could be minimal savings to small businesses employing fewer than 50 persons if the business is involved in construction or provides professional services related to construction, including cost estimators and project schedulers, architects, and engineers. This savings could result due to a decrease in staff time spent on proposals and bids and obtaining signatures on said proposals. It is not possible to know an actual amount of these savings until this rule is implemented and each business would be different depending on business size and the scope of work of each project.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is not anticipated there could be any costs to other than small businesses, businesses, or local government entities because Section R23-1-20 applies to DFCM State construction projects and the procurement of professional services related to construction. The rule changes do not include services from any individual, partnership, corporation, association, governmental entity, or public or private organization other than those who provide professional services for construction.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is not anticipated there will be any anticipated compliance costs to implement this change to Section R23-1-20. There could be a cost savings for affected persons due to the reduction of staff time spent on State construction projects.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact on businesses could be a minimal cost savings in staff time and compensation.

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
ROOM 4110 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:

♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@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
♦ Priscilla Anderson by phone at 801-538-9595, by FAX at 801-538-3378, or by Internet E-mail at phanderson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: D. Gregg Buxton, Director

R23. Administrative Services, Facilities Construction and Management.

R23-1. Procurement of Construction.

R23-1-1. Purpose and Authority.

(1) In accordance with Subsection 63G-6-208, this rule establishes procedures for the procurement of construction by the Division.

(2) The statutory provisions governing the procurement of construction by the Division are contained in [~~Title~~]Section 63G-6-208 and Title 63A, Chapter 5.

R23-1-2. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63G-6-103.

(2) In addition:

(a) "Acceptable Bid Security" means a bid bond meeting the requirements of Subsection R23-1-40(4).

(b) "Board" means the State Building Board established pursuant to Section 63A-5-101.

(c) "Cost Data" means factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(d) "Director" means the Director of the Division, including, unless otherwise stated, his duly authorized designee.

(e) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(f) "Established Market Price" means a current price, established in the usual and ordinary course of trade between buyers and sellers, which can be substantiated from sources independent of the manufacturer or supplier.

(g) "Price Data" means factual information concerning prices for supplies, services, or construction substantially identical to those being procured. Prices in this definition refer to offered or proposed selling prices and includes data relevant to both prime and subcontract prices.

(h) "Procuring Agencies" means, individually or collectively, the state, the Division, the owner and the using agency.

(i) "Products" means and includes materials, systems and equipment.

(j) "Proprietary Specification" means a specification which uses a brand name to describe the standard of quality, performance, and other characteristics needed to meet the procuring agencies' requirements or which is written in such a manner that restricts the procurement to one brand.

(k) "Public Notice" means the notice that is publicized pursuant to this rule to notify contractors of Invitations For Bids and Requests For Proposals.

(l) "Record" shall have the meaning defined in Section 63G-2-103 of the Government Records Access and Management Act (GRAMA).

(m) "Specification" means any description of the physical, functional or performance characteristics of a supply or construction item. It may include requirements for inspecting, testing, or preparing a supply or construction item for delivery or use.

(n) "State" means the State of Utah.

(o) "Subcontractor" means any person who has a contract with any person other than the procuring agency to perform any portion of the work on a project.

(p) "Using Agency" means any state agency or any political subdivision of the state which utilizes any services or construction procured under these rules.

(q) "Work" means the furnishing of labor or materials, or both.

R23-1-5. Competitive Sealed Bidding.

(1) Use. Competitive sealed bidding, which includes multi-step sealed bidding, shall be used for the procurement of construction if the design-bid-build method of construction contract management described in Subsection R23-1-45(5)(b) is used unless a determination is made by the Director in accordance with Subsection R23-1-15(1)(c) that the competitive sealed proposals procurement method should be used.

(2) Public Notice of Invitations For Bids.

(a) Public notice of Invitations For Bids shall be publicized electronically on the Internet; and may be publicized in any or all of the following as determined appropriate:

(i) In a newspaper having general circulation in the area in which the project is located;

(ii) In appropriate trade publications;

(iii) In a newspaper having general circulation in the state;

(iv) By any other method determined appropriate.

(b) A copy of the public notice shall be available for public inspection at the principal office of the Division in Salt Lake City, Utah.

(3) Content of the Public Notice. The public notice of Invitation For Bids shall include the following:

(a) The closing time and date for the submission of bids;

(b) The location to which bids are to be delivered;

(c) Directions for obtaining the bidding documents;

(d) A brief description of the project;

(e) Notice of any mandatory pre-bid meetings.

(4) Bidding Time. Bidding time is the period of time between the date of the first publication of the public notice and the final date and time set for the receipt of bids by the Division. Bidding time shall be set to provide bidders with reasonable time to prepare their bids and shall be not less than ten calendar days, unless a shorter time is deemed necessary for a particular project as determined in writing by the Director.

(5) Bidding Documents. The bidding documents for an Invitation For Bids:

(a) shall include a bid form having a space in which the bid prices shall be inserted and which the bidder shall sign and submit along with all other required documents and materials; and

(b) may include qualification requirements as appropriate.

(6) Addenda to the Bidding Documents.

(a) Addenda shall be distributed or otherwise made available to all entities known to have obtained the bidding documents.

(b) Addenda shall be distributed or otherwise made available within a reasonable time to allow all prospective bidders to consider them in preparing bids. If the time set for the final receipt of bids will not permit appropriate consideration, the bidding time shall be extended to allow proper consideration of the addenda.

(7) Pre-Opening Modification or Withdrawal of Bids.

(a) Bids may be modified or withdrawn by the bidder by written notice delivered to the location designated in the public notice where bids are to be delivered prior to the time set for the opening of bids.

(b) Bid security, if any, shall be returned to the bidder when withdrawal of the bid is permitted.

(c) All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate project file.

(8) Late Bids, Late Withdrawals, and Late Modifications. Any bid, withdrawal of bid, or modification of bid received after the time and date set for the submission of bids at the location designated in the notice shall be deemed to be late and shall not be considered, unless it is the only bid received in which case it may be considered.

(9) Receipt, Opening, and Recording of Bids.

(a) Upon receipt, all bids and modifications shall be stored in a secure place until the time for bid opening.

(b) Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the notice. The names of the bidders, the bid price, and other information deemed appropriate by the Director shall be read aloud or otherwise made available to the public. After the bid opening, the bids shall be tabulated or a bid abstract made. The opened bids shall be available for public inspection.

(10) Mistakes in Bids.

(a) If a mistake is attributable to an error in judgment, the bid may not be corrected. Bid correction or withdrawal by reason of an inadvertent, nonjudgmental mistake is permissible but only at the discretion of the Director and only to the extent it is not contrary to the interest of the procuring agencies or the fair treatment of other bidders.

(b) When it appears from a review of the bid that a mistake may have been made, the Director may request the bidder to confirm the bid in writing. Situations in which confirmation may be requested include obvious, apparent errors on the face of the bid or a bid substantially lower than the other bids submitted.

(c) This subsection sets forth procedures to be applied in three situations described below in which mistakes in bids are discovered after opening but before award.

(i) Minor formalities are matters which, in the discretion of the Director, are of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders and with respect to which, in the Director's discretion, the effect on price, quantity, quality, delivery, or contractual conditions is not or will not be significant. The Director, in his sole discretion, may waive minor formalities or allow the bidder to correct them depending on which is in the best interest of the procuring agencies. Examples include the failure of a bidder to:

(A) Sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound;

(B) Acknowledge receipt of any addenda to the Invitation For Bids, but only if it is clear from the bid that the bidder received the addenda and intended to be bound by its terms; the addenda involved had a negligible effect on price, quantity, quality, or delivery; or the bidder acknowledged receipt of the addenda at the bid opening.

(ii) If the Director determines that the mistake and the intended bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.

(iii) A bidder may be permitted to withdraw a low bid if the Director determines a mistake is clearly evident on the face of the bid document but the intended amount of the bid is not similarly evident, or the bidder submits to the Division proof which, in the Director's judgment, demonstrates that a mistake was made.

(d) No bidder shall be allowed to correct a mistake or withdraw a bid because of a mistake discovered after award of the contract; provided, that mistakes of the types described in this Subsection (10) may be corrected or the award of the contract canceled if the Director determines that correction or cancellation will not prejudice the interests of the procuring agencies or fair competition.

(e) The Director shall approve or deny in writing all requests to correct or withdraw a bid.

(11) Bid Evaluation and Award. Except as provided in the following sentence, the contract is to be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the bidding documents and no bid shall be evaluated for any requirements or criteria that are not disclosed in the bidding documents. A reciprocal preference shall be granted to a resident contractor if the provisions of Section 63G-6-405 are met.

(12) Cancellation of Invitations For Bids; Rejection Of Bids in Whole or In Part.

(a) Although issuance of an Invitation For Bids does not compel award of a contract, the Division may cancel an Invitation For Bids or reject bids received in whole or in part only when the Director determines that it is in the best interests of the procuring agencies to do so.

(b) The reasons for cancellation or rejection shall be made a part of the project file and available for public inspection.

(c) Any determination of nonresponsibility of a bidder shall be made by the Director in writing and shall be based upon the criteria that the Director shall establish as relevant to this determination with respect to the particular project. An unreasonable failure of the bidder or to promptly supply information regarding responsibility may be grounds for a determination of nonresponsibility. Any bidder or determined to be nonresponsible shall be provided with a copy of the written determination within a reasonable time. The Board finds that it would impair governmental procurement proceedings by creating a disincentive for bidders to respond to inquiries of nonresponsibility. Therefore information furnished by a bidder or pursuant to any inquiry concerning responsibility shall be classified as a protected record pursuant to Section 63G-2-305 and may be disclosed only as provided for in Subsection R23-1-35.

(13) Tie Bids. Tie bids shall be resolved in accordance with Section 63G-6-426.

(14) Subcontractor Lists. For purposes of this Subsection (14), the definitions of Section 63A-5-208 shall be applicable. Within 24 hours after the bid opening time, not including Saturdays, Sundays and state holidays, the apparent lowest three bidders, as well as other bidders that desire to be considered, shall submit to the Division a list of their first-tier subcontractors that are in excess of the dollar amounts stated in Subsection 63-A-5-208(3)(a)(i)(A).

(a) The subcontractor list shall include the following:

(i) the type of work the subcontractor is to perform;

(ii) the subcontractor's name;

(iii) the subcontractor's bid amount;

(iv) the license number of the subcontractor issued by the Utah Division of Occupational and Professional Licensing, if such license is required under Utah law; and

(v) the impact that the selection of any alternate included in the solicitation would have on the information required by this Subsection (14).

(b) The contract documents for a specific project may require that additional information be provided regarding any contractor, subcontractor, or supplier.

(c) If pursuant to Subsection 63A-5-208(4)a, a bidder intends to perform the work of a subcontractor or obtain, at a later date, a bid from a qualified subcontractor, the bidder shall:

(i) comply with the requirements of Section 63A-5-208 and

(ii) clearly list himself on the subcontractor list form.

(d) Errors on the subcontractor list will not disqualify the bidder if the bidder can demonstrate that the error is a result of his reasonable reliance on information that was provided by the subcontractor and was used to meet the requirements of this section, and, provided that this does not result in an adjustment to the bidder's contract amount.

(e) Pursuant to Sections 63A-5-208 and 63G-2-305, information contained in the subcontractor list submitted to the Division shall be classified public except for the amount of subcontractor bids which shall be classified as protected until a contract has been awarded to the bidder at which time the subcontractor bid amounts shall be classified as public. During the time that the subcontractor bids are classified protected, they may only be made available to procurement and other officials involved with the review and approval of bids.

(15) Change of Listed Subcontractors. Subsequent to twenty-four hours after the bid opening, the contractor may change his listed subcontractors only after receiving written permission from the Director based on complying with all of the following:

(a) The contractor has established in writing that the change is in the best interest of the State and that the contractor establishes an appropriate reason for the change, which may include, but is not limited to, the following reasons:

(i) the original subcontractor has failed to perform, or is not qualified or capable of performing,

(ii) the subcontractor has requested in writing to be released;

(b) The circumstances related to the request for the change do not indicate any bad faith in the original listing of the subcontractors;

(c) Any requirement set forth by the Director to ensure that the process used to select a new subcontractor does not give rise to bid shopping;

(d) Any increase in the cost of the subject subcontractor work shall be borne by the contractor; and

(e) Any decrease in the cost of the subject subcontractor work shall result in a deductive change order being issued for the contract for such decreased amount.

R23-1-10. Multi-Step Sealed Bidding.

(1) Description. Multi-step sealed bidding is a two-phase process. In the first phase bidders submit unpriced technical offers to be evaluated. In the second phase, bids submitted by bidders whose technical offers are determined to be acceptable during the first phase are considered. It is designed to obtain the benefits of competitive sealed bidding by award of a contract to the lowest responsive, responsible bidder, and at the same time obtain the benefits of the competitive sealed proposals procedure through the solicitation of technical offers and the conduct of discussions to arrive at technical offers and terms acceptable to the Division and suitable for competitive pricing.

(2) Use. The multi-step sealed bidding method may be used when the Director deems it to the advantage of the state. Multi-step sealed bidding may be used when it is considered desirable:

(a) to invite and evaluate technical offers or statements of qualifications to determine their acceptability to fulfill the purchase description requirements;

(b) to conduct discussions for the purposes of facilitating understanding of the technical offer and purchase description requirements and, where appropriate, obtain supplemental information, permit amendments of technical offers, or amend the purchase description;

(c) to accomplish (a) or (b) prior to soliciting bids; and

(d) to award the contract to the lowest responsive and responsible bidder in accordance with the competitive sealed bidding procedures.

(3) Pre-Bid Conferences In Multi-Step Sealed Bidding. The Division may hold one or more pre-bid conferences prior to the submission of unpriced technical offers or at any time during the evaluation of the unpriced technical offers.

(4) Procedure for Phase One of Multi-Step Sealed Bidding.

(a) Public Notice. Multi-step sealed bidding shall be initiated by the issuance of a Public Notice in the form required by Subsections R23-1-5(2) and (3).

(b) Invitation for Bids. The multi-step Invitation for Bids shall state:

(i) that unpriced technical offers are requested;

(ii) when bids are to be submitted (if they are to be submitted at the same time as the unpriced technical offers, the bids shall be submitted in a separate sealed envelope);

(iii) that it is a multi-step sealed bid procurement, and bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;

(iv) the criteria to be used in the evaluation of the unpriced technical offers;

(v) that the Division, to the extent the Director finds necessary, may conduct oral or written discussions of the unpriced technical offers;

(vi) that the item being procured shall be furnished in accordance with the bidders technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids; and

(vii) that bidders may designate those portions of the unpriced technical offers which the bidder believes qualifies as a protected record as provided in Section R23-1-35. Such designated portions may be disclosed only as provided for in Section R23-1-35.

(c) Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers and they shall be allowed to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the Director, a contemplated amendment will significantly change the nature of the procurement, the Invitation for Bids shall be canceled in accordance with Subsection R23-1-5(12) and a new Invitation for Bids may be issued.

(d) Receipt and Handling of Unpriced Technical Offers. After the date and time established for the receipt of unpriced technical offers, a register of bidders shall be open to public inspection. Prior to award, unpriced technical offers shall be shown only to those involved with the evaluation of the offers who shall adhere to the requirements of GRAMA and this rule. Except for those portions classified as protected under Section R23-1-35 or otherwise subject to non-disclosure under applicable law, unpriced technical offers shall be open to public inspection after award of the contract.

(e) Evaluation of Unpriced Technical Offers. The unpriced technical offers submitted by bidders shall be evaluated solely in accordance with the criteria set forth in the Invitation for Bids which may include an evaluation of the past performance of the bidder. The unpriced technical offers shall be categorized as acceptable or unacceptable. The Director shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

(f) Discussion of Unpriced Technical Offers. Discussion of technical offers may be conducted with bidders who submit an acceptable technical offer. During the course of discussions, any information derived from one unpriced technical offer shall not be disclosed to any other bidder. Once discussions are begun, any bidder who has not been notified that its offer has been found unacceptable may submit supplemental information modifying or otherwise amending its technical offer until the closing date established by the Director. Submission may be made at the request of the Director or upon the bidder's own initiative.

(g) Notice of Unacceptable Unpriced Technical Offer. When the Director determines a bidder's unpriced technical offer to be unacceptable, he shall notify the bidder in writing. Such bidders shall not be afforded an additional opportunity to supplement technical offers.

(h) Confidentiality of Past Performance and Reference Information. Confidentiality of past performance and reference information shall be maintained in accordance with Subsection R23-1-15(10).

(5) Mistakes During Multi-Step Sealed Bidding. Mistakes may be corrected or bids may be withdrawn during phase one:

(a) before unpriced technical offers are considered;

(b) after any discussions have commenced under Subsection R23-1-10(4)(f); or

(c) when responding to any amendment of the Invitation for Bids. Otherwise mistakes may be corrected or withdrawal permitted in accordance with Subsection R23-1-5(10).

(6) Carrying Out Phase Two.

(a) Initiation. Upon the completion of phase one, the Director shall either:

(i) open bids submitted in phase one (if bids were required to be submitted) from bidders whose unpriced technical offers were found to be acceptable; provided, however, that the offers have remained unchanged, and the Invitation for Bids has not been amended subsequent to the submittal of bids; or

(ii) invite each acceptable bidder to submit a bid.

(b) Conduct. Phase two is to be conducted as any other competitive sealed bid procurement except:

(i) as specifically set forth in Section R23-1-10; and

(ii) no public notice is given of this invitation to submit.

R23-1-15. Competitive Sealed Proposals.

(1) Use.

(a) Construction Management. The competitive sealed proposals procurement method shall be used in the procurement of a construction manager under the construction manager/general contractor method of construction contract management described in [~~s~~]Subsection R23-1-45(5)(d) due to the need to consider qualifications, past performance and services offered in addition to the cost of the services and because only a small portion of the ultimate construction cost is typically considered in this selection.

(b) Design-Build. In order to meet the requirements of Section 63G-6-703, competitive sealed proposals shall be used to procure design-build contracts.

(c) Design-Bid-Build. The competitive sealed proposals procurement method may be used for procuring a contractor under the design-bid-build method of construction contract management described in [~~s~~]Subsection R23-1-45(5)(b) only after the Director makes a determination that it is in the best interests of the state to use the competitive sealed proposals method due to unique aspects of the project that warrant the consideration of qualifications, past performance, schedule or other factors in addition to cost.

(2) Documentation. The Director's determination made under [~~s~~]Subsection R23-1-15(1)(c) shall be documented in writing and retained in the project file.

(3) Public Notice.

(a) Public notice of the Request for Proposals shall be publicized in the same manner provided for giving public notice of an Invitation for Bids, as provided in Subsection R23-1-5(2).

(b) The public notice shall include:

(i) a brief description of the project;

(ii) directions on how to obtain the Request for Proposal documents;

(iii) notice of any mandatory pre-proposal meetings; and

(iv) the closing date and time by which the first submittal of information is required;

(4) Proposal Preparation Time. Proposal preparation time is the period of time between the date of first publication of the public notice and the date and time set for the receipt of proposals by the Division. In each case, the proposal preparation time shall be set to provide offerors a reasonable time to prepare their proposals. The time between the first publication of the public notice and the earlier of the first required submittal of information or any mandatory pre-proposal meeting shall be not less than ten calendar days, unless a shorter time is deemed necessary for a particular procurement as determined, in writing, by the Director.

(5) Form of Proposal. The Request for Proposals may state the manner in which proposals are to be submitted, including any forms for that purpose.

(6) Addenda to Requests for Proposals. Addenda to the requests for proposals may be made in the same manner provided for addenda to the bidding documents in connection with Invitations for Bids set forth in Subsection R23-1-5(6) except that addenda may be issued to qualified offerors until the deadline for best and final offers.

(7) Modification or Withdrawal of Proposals.

(a) Proposals may be modified prior to the due dates established in the Request for Proposals.

(b) Proposals may be withdrawn until the notice of selection is issued.

(8) Late Proposals, and Late Modifications. Except for modifications allowed pursuant to negotiation, any proposal, or modification received at the location designated for receipt of proposals after the due dates established in the Request for Proposals shall be deemed to be late and shall not be considered unless there are no other offerors.

(9) Receipt and Registration of Proposals.

After the date established for the first receipt of proposals or other required information, a register of offerors shall be prepared and open to public inspection. Prior to award, proposals and modifications shall be shown only to procurement and other officials involved with the review and selection of proposals who shall adhere to the requirements of GRAMA and this rule.

(10) Confidentiality of Performance Evaluations and Reference Information. The Board finds that it is necessary to maintain the confidentiality of performance evaluations and reference information in order to avoid competitive injury and to encourage those persons providing the information to respond in an open and honest manner without fear of retribution. Accordingly, records containing performance evaluations and reference information are classified as protected records under the provisions of [~~Subsections~~]Section 63G-2-305 and shall be disclosed only to those persons involved with the performance evaluation, the contractor that the information addresses and procurement and other officials involved with the review and selection of proposals. The Division may, however, provide reference information to other governmental entities for use in their procurement activities and to other parties when requested by the contractor that is the subject of the information. Any other disclosure of such performance evaluations and reference information shall only be as required by applicable law.

(11) Evaluation of Proposals.

(a) The evaluation of proposals shall be conducted by an evaluation committee appointed by the Director that may include representatives of the Division, the Board, other procuring agencies, and contractors, architects, engineers, and others of the general public. Each member of the selection committee shall certify as to his lack of conflicts of interest.

(b) The Request for Proposals shall state all of the evaluation factors and the relative importance of price and other evaluation factors.

(c) The evaluation shall be based on the evaluation factors set forth in the request for proposals. Numerical rating systems may be used but are not required. Factors not specified in the request for proposals shall not be considered.

(d) Proposals may be initially classified as potentially acceptable or unacceptable. Offerors whose proposals are unacceptable shall be so notified by the Director in writing and they may not continue to participate in the selection process.

(e) This classification of proposals may occur at any time during the selection process once sufficient information is received to consider the potential acceptability of the offeror.

(f) The request for proposals may provide for a limited number of offerors who may be classified as potentially acceptable. In this case, the offerors considered to be most acceptable, up to the number of offerors allowed, shall be considered acceptable.

(12) Proposal Discussions with Individual Offerors.

(a) Unless only one proposal is received, proposal discussions with individual offerors, if held, shall be conducted with no less than the offerors submitting the two best proposals.

(b) Discussions are held to:

(i) Promote understanding of the procuring agency's requirements and the offerors' proposals; and

(ii) Facilitate arriving at a contract that will be most advantageous to the procuring agencies taking into consideration price and the other evaluation factors set forth in the request for proposals.

(c) Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors. Any oral clarification or change of a proposal shall be reduced to writing by the offeror.

(13) Best and Final Offers. If utilized, the Director shall establish a common time and date to submit best and final offers. Best and final offers shall be submitted only once unless the Director makes a written determination before each subsequent round of best and final offers demonstrating that another round is in the best interest of the procuring agencies and additional discussions will be conducted or the procuring agencies' requirements may be changed. Otherwise, no discussion of, or changes in, the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

(14) Mistakes in Proposals.

(a) Mistakes discovered before the established due date. An offeror may correct mistakes discovered before the time and date established in the Request for Proposals for receipt of that information by withdrawing or correcting the proposal as provided in Subsection R23-1-15(7).

(b) Confirmation of proposal. When it appears from a review of the proposal before award that a mistake has been made, the offeror may be asked to confirm the proposal. Situations in

which confirmation may be requested include obvious, apparent errors on the face of the proposal or a proposal amount that is substantially lower than the other proposals submitted. If the offeror alleges mistake, the proposal may be corrected or withdrawn as provided for in this section.

(c) Minor formalities. Minor formalities, unless otherwise corrected by an offeror as provided in this section, shall be treated as they are under Subsection R23-1-5(10)(c).

(d) Mistakes discovered after award. Offeror shall be bound to all terms, conditions and statements in offeror's proposal after award of the contract.

(15) Award.

(a) Award Documentation. A brief written justification statement shall be made showing the basis on which the award was found to be most advantageous to the state taking into consideration price and the other evaluation factors set forth in the Request for Proposals.

(b) One proposal received. If only one proposal is received in response to a Request for Proposals, the Director may, as he deems appropriate, make an award or, if time permits, resolicit for the purpose of obtaining additional competitive sealed proposals.

(16) Publicizing Awards.

(a) Notice. After the selection of the successful offeror(s), notice of award shall be available in the principal office of the Division in Salt Lake City, Utah and may be available on the Internet.

(b) Information Disclosed. The following shall be disclosed with the notice of award:

(i) the rankings of the proposals;

(ii) the names of the selection committee members;

(iii) the amount of each offeror's cost proposal;

(iv) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores; and

(v) the written justification statement supporting the selection.

(c) Information Classified as Protected. After due consideration and public input, the following has been determined by the Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract with the Division and shall be classified as protected records:

(i) the names of individual selection committee scorers in relation to their individual scores or rankings; and

(ii) non-public financial statements.

R23-1-17. Bids Over Budget.

(1) In the event all bids for a construction project exceed available funds as certified by the appropriate fiscal officer, and the low responsive and responsible bid does not exceed those funds by more than 5%, the Director may, where time or economic considerations preclude resolicitation of work of a reduced scope, negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive and responsible bidder in order to bring the bid within the amount of available funds.

(2) As an alternative to the procedure authorized in Subsection (1), when all bids for a construction project exceed available funds as certified by the Director, and the Director finds that due to time or economic considerations the re-solicitation of a reduced scope of work would not be in the interest of the state, the Director may negotiate an adjustment in the bid price using one of the following methods:

(a) reducing the scope of work in specific subcontract areas and supervising the re-bid of those subcontracts by the low responsive and responsible bidder;

(b) negotiating with the low responsive and responsible bidder for a reduction in scope and cost with the value of those reductions validated in accordance with Section R23-1-50; or

(c) revising the contract documents and soliciting new bids only from bidders who submitted a responsive bid on the original solicitation. This re-solicitation may have a shorter bid response time than otherwise required.

(3) The use of one of the alternative procedures provided for in this subsection (2) must provide for the fair and equitable treatment of bidders.

(4) The Director's written determination, including a brief explanation of the basis for the decision shall be included in the contact file.

(5) This section does not restrict in any way, the right of the Director to use any emergency or sole source procurement provisions, or any other applicable provisions of State law or rule which may be used to award the construction project.

R23-1-20. Small Purchases.

(1) Procurements of $100,000 or Less.

(a) The Director may make procurements of construction estimated to cost $100,000 or less by soliciting at least two firms to submit written quotations. The award shall be made to the firm offering the lowest acceptable quotation.

(b) The names of the persons submitting quotations and the date and amount of each quotation shall be recorded and maintained as a public record by the Division.

(c) If the Director determines that other factors in addition to cost should be considered in a procurement of construction estimated to cost $100,000 or less, the Director shall solicit proposals from at least two firms. The award shall be made to the firm offering the best proposal as determined through application of the procedures provided for in Section R23-1-15 except that a public notice is not required and only invited firms may submit proposals.

(2) Procurements of [~~$10,000~~]$25,000 or Less. The Director may make small purchases of construction of [~~$10,000~~]$25,000 or less in any manner that the Director shall deem to be adequate and reasonable.

(3) Professional Services related to Construction. Small purchases for Architect or Engineer services may be procured as a small purchase in accordance with Rule R23-2-20. For other professional services related to construction, including cost estimators, project schedulers, building inspectors, code inspectors, special inspectors and testing entities; the Director may make small purchases of such professional services if the cost of such professional service is $100,000 or less in any manner that the Director shall deem to be adequate and reasonable.

[~~(3)~~](4) Division of Procurements. Procurements shall not be divided in order to qualify for the procedures outlined in this section.

R23-1-25. Sole Source Procurement.

(1) Conditions for Use of Sole Source Procurement.

The procedures concerning sole source procurement in this Section may be used if, in the discretion of the Director, a requirement is reasonably available only from a single source. Examples of circumstances which could also necessitate sole source procurement are:

(a) where the compatibility of product design, equipment, accessories, or replacement parts is the paramount consideration;

(b) where a sole supplier's item is needed for trial use or testing;

(c) procurement of public utility services;

(d) when it is a condition of a donation that will fund the full cost of the supply, material, equipment, service, or construction item.

(2) Written Determination. The determination as to whether a procurement shall be made as a sole source shall be made by the Director in writing and may cover more than one procurement. In cases of reasonable doubt, competition shall be solicited.

(3) Negotiation in Sole Source Procurement. The Director shall negotiate with the sole source vendor for considerations of price, delivery, and other terms.

R23-1-30. Emergency Procurements.

(1) Application. This section shall apply to every procurement of construction made under emergency conditions that will not permit other source selection methods to be used.

(2) Definition of Emergency Conditions. An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, natural disasters, wars, destruction of property, building or equipment failures, or any emergency proclaimed by governmental authorities.

(3) Scope of Emergency Procurements. Emergency procurements shall be limited to only those construction items necessary to meet the emergency.

(4) Authority to Make Emergency Procurements.

(a) The Division makes emergency procurements of construction when, in the Director's determination, an emergency condition exists or will exist and the need cannot be met through other procurement methods.

(b) The procurement process shall be considered unsuccessful when all bids or proposals received pursuant to an Invitation For Bids or Request For Proposals are nonresponsive, unreasonable, noncompetitive, or exceed available funds as certified by the appropriate fiscal officer, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids or proposals. If emergency conditions exist after or are brought about by an unsuccessful procurement process, an emergency procurement may be made.

(5) Source Selection Methods. The source selection method used for emergency procurement shall be selected by the Director with a view to assuring that the required services of construction items are procured in time to meet the emergency. Given this constraint, as much competition as the Director determines to be practicable shall be obtained.

(6) Specifications. The Director may use any appropriate specifications without being subject to the requirements of Section R23-1-55.

(7) Required Construction Contract Clauses. The Director may modify or not use the construction contract clauses otherwise required by Section R23-1-60.

(8) Written Determination. The Director shall make a written determination stating the basis for each emergency procurement and for the selection of the particular source. This determination shall be included in the project file.

R23-1-35. Protected Records.

(1) General Classification. Records submitted to the Division in a procurement process are classified as public unless a different classification is determined in accordance with Title 63G, Chapter 2, U.C.A., Government Records Access and Management Act, hereinafter referred to as GRAMA.

(2) Protected Records. Records meeting the requirements of Section 63G-2-305 will be treated as protected records if the procedural requirements of GRAMA are met. Examples of protected records include the following:

(a) trade secrets, as defined in Section 13-24-2, if the requirements of Subsection R23-1-35(3) are met;

(b) commercial information or nonindividual financial information if the requirements of Subsection 63G-2-305(2) and Subsection R23-1-35(3) are met; and

(c) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract with the Division, including, but not limited to, those records for which such a determination is made in this rule R23-1, Procurement of Construction, or [~~r~~]Rule R23-2, Procurement of Architect-Engineer Services.

(3) Requests for Protected Status. Persons who believe that a submitted record, or portion thereof, should be protected under the classifications listed in Subsections R23-1-35(2)(a) and R23-1-35(2)(b) shall provide with the record a written claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality. Such statements must address each portion of a document for which protected status is requested.

(4) Notification. A person who complies with this Section R23-1-35 shall be notified by the Division prior to the Division's public release of any information for which business confidentiality has been asserted.

(5) Disclosure of Records and Appeal. The records access determination and any further appeal of such determination shall be made in accordance with the provisions of Sections 63G-2-309 and 63G-2-401 et seq., GRAMA.

(6) Not Limit Rights. Nothing in this rule shall be construed to limit the right of the Division to protect a record from public disclosure where such protection is allowed by law.

R23-1-40. Acceptable Bid Security; Performance and Payment Bonds.

(1) Application. This section shall govern bonding and bid security requirements for the award of construction contracts by

the Division in excess of $50,000; although the Division may require acceptable bid security and performance and payment bonds on smaller contracts. Bidding Documents shall state whether acceptable bid security, performance bonds or payment bonds are required.

(2) Acceptable Bid Security.

(a) Invitations for Bids and Requests For Proposals shall require the submission of acceptable bid security in an amount equal to at least five percent of the bid, at the time the bid is submitted. If a contractor fails to accompany its bid with acceptable bid security, the bid shall be deemed nonresponsive, unless this failure is found to be nonsubstantial as hereinafter provided.

(b) If acceptable bid security is not furnished, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the Director to be nonsubstantial. Failure to submit an acceptable bid security may be deemed nonsubstantial if:

(i)(A) the bid security is submitted on a form other than the Division's required bid bond form and the bid security meets all other requirements including being issued by a surety meeting the requirements of Subsection (5); and

(B) the contractor provides acceptable bid security by the close of business of the next succeeding business day after the Division notified the contractor of the defective bid security; or

(ii) only one bid is received.

(3) Payment and Performance Bonds. Payment and performance bonds in the amount of 100% of the contract price are required for all contracts in excess of $50,000. These bonds shall cover the procuring agencies and be delivered by the contractor to the Division at the same time the contract is executed. If a contractor fails to deliver the required bonds, the contractor's bid shall be found nonresponsive and its bid security shall be forfeited.

(4) Forms of Bonds. Bid Bonds, Payment Bonds and Performance Bonds must be from sureties meeting the requirements of Subsection (5) and must be on the exact bond forms most recently adopted by the Board and on file with the Division.

(5) Surety firm requirements. All surety firms must be authorized to do business in the State of Utah and be listed in the U.S. Department of the Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies for an amount not less than the amount of the bond to be issued. A co-surety may be utilized to satisfy this requirement.

(6) Waiver. The Director may waive the bonding requirement if the Director finds, in writing, that bonds cannot be reasonably obtained for the work involved.

R23-1-45. Methods of Construction Contract Management.

(1) Application. This section contains provisions applicable to the selection of the appropriate type of construction contract management.

(2) Flexibility. The Director shall have sufficient flexibility in formulating the construction contract management method for a particular project to fulfill the needs of the procuring agencies. In each instance consideration commensurate with the project's size and importance should be given to all the appropriate and effective means of obtaining both the design and construction of the project. The methods for achieving the purposes set forth in this rule are not to be construed as an exclusive list.

(3) Selecting the Method of Construction Contracting. In selecting the construction contracting method, the Director shall consider the results achieved on similar projects in the past, the methods used, and other appropriate and effective methods and how they might be adapted or combined to fulfill the needs of the procuring agencies. The use of the design-bid-build method is an appropriate contracting method for the majority of construction contracts entered into by the Division with a cost equal to or less than $1,500,000 and the construction manager/general contractor method is an appropriate contracting method for the majority of construction contracts entered into by the Division with a cost greater than $1,500,000. The Director shall include a statement in the project file setting forth the basis for using any construction contracting method other than those suggested in the preceding sentence.

(4) Criteria for Selecting Construction Contracting Methods. Before choosing the construction contracting method to use, the Director shall consider the factors outlined in Subsection 63G-6-501(1)(c).

(5) General Descriptions.

(a) Application of Descriptions. The following descriptions are provided for the more common contracting methods. The methods described are not all mutually exclusive and may be combined on a project. These descriptions are not intended to be fixed for all construction projects of the State. In each project, these descriptions may be adapted to fit the circumstances of that project.

(b) Design-Bid-Build. The design-bid-build method is typified by one business, acting as a general contractor, contracting with the state to complete a construction project in accordance with drawings and specifications provided by the state within a defined time period. Generally the drawings and specifications are prepared by an architectural or engineering firm under contract with the state. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.

(c) Design-Build. In a design-build project, a business contracts directly with the Division to meet requirements described in a set of performance specifications. The design-build contractor is responsible for both design and construction. This method can include instances where the design-build contractor supplies the site as part of the package.

(d) Construction Manager/General Contractor. A construction manager/general contractor is a firm experienced in construction that provides professional services to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the administration of change orders. The Division may contract with the construction manager/general contractor early in a project to assist in the development of a cost effective design. The construction manager/general contractor will generally become the general contractor for the project and procure subcontract work at a later date. The procurement of a construction manager/general contractor may be based, among other criteria, on proposals for a management fee which is either a lump sum or a percentage of construction costs with a guaranteed maximum cost. If the design is sufficiently developed prior to the selection of a construction manager/general contractor, the procurement may be

based on proposals for a lump sum or guaranteed maximum cost for the construction of the project. The contract with the construction manager/general contractor may provide for a sharing of any savings which are achieved below the guaranteed maximum cost. When entering into any subcontract that was not specifically included in the Construction Manager/General Contractor's cost proposal submitted in the original procurement of the Construction Manager/General Contractor's services, the Construction Manager/ General Contractor shall procure that subcontractor by using one of the source selection methods provided for in Sections 63G-6-401 through 63G-6-426, in a similar manner as if the subcontract work was procured directly by the Division.

R23-1-50. Cost or Pricing Data and Analysis; Audits.

(1) Applicability. Cost or pricing data shall be required when negotiating contracts and adjustments to contracts if:

(a) adequate price competition is not obtained as provided in Subsection (2); and

(b) the amounts set forth in Subsection (3) are exceeded.

(2) Adequate Price Competition. Adequate price competition is achieved for portions of contracts or entire contracts when one of the following is met:

(a) When a contract is awarded based on competitive sealed bidding;

(b) When a contractor is selected from competitive sealed proposals and cost was one of the selection criteria;

(c) For that portion of a contract that is for a lump sum amount or a fixed percentage of other costs when the contractor was selected from competitive sealed proposals and the cost of the lump sum or percentage amount was one of the selection criteria;

(d) For that portion of a contract for which adequate price competition was not otherwise obtained when competitive bids were obtained and documented by either the Division or the contractor;

(e) When costs are based upon established catalogue or market prices;

(f) When costs are set by law or rule;

(g) When the Director makes a written determination that other circumstances have resulted in adequate price competition.

(3) Amounts. This section does not apply to:

(a) Contracts or portions of contracts costing less than $100,000, and

(b) Change orders and other price adjustments of less than $25,000.

(4) Other Applications. The Director may apply the requirements of this section to any contract or price adjustment when he determines that it would be in the best interest of the state.

(5) Submission of Cost or Pricing Data and Certification. When cost or pricing data is required, the data shall be submitted prior to beginning price negotiation. The offeror or contractor shall keep the data current throughout the negotiations certify as soon as practicable after agreement is reached on price that the cost or pricing data submitted are accurate, complete, and current as of a mutually determined date.

(6) Refusal to Submit. If the offeror refuses to submit the required data, the Director shall determine in writing whether to disqualify the noncomplying offeror, to defer award pending further investigation, or to enter into the contract. If a contractor refuses to submit the required data to support a price adjustment, the Director shall determine in writing whether to further investigate the price adjustment, to not allow any price adjustment, or to set the amount of the price adjustment.

(7) Defective Cost or Pricing Data. If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the Division shall be entitled to an adjustment of the contract price to exclude any significant sum, including profit or fee, to the extent the contract sum was increased because of the defective data. It is assumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee; therefore, unless there is a clear indication that the defective data were not used or relied upon, the price should be reduced by this amount. In establishing that the defective data caused an increase in the contract price, the Director shall not be required to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

(8) Audit. The Director may, at his discretion, and at reasonable times and places, audit or cause to be audited the books and information of a contractor, prospective contractor, subcontractor, or prospective subcontractor which are related to the cost or pricing data submitted.

(9) Retention of Books and Information. Any contractor who receives a contract or price adjustment for which cost or pricing data is required shall maintain all books and information that relate to the cost or pricing data for three years from the date of final payment under the contract. This requirement shall also extend to any subcontractors of the contractor.

R23-1-55. Specifications.

(1) General Provisions.

(a) Purpose. The purpose of a specification is to serve as a basis for obtaining a supply or construction item adequate and suitable for the procuring agencies' needs and the requirements of the project, in a cost-effective manner, taking into account, the costs of ownership and operation as well as initial acquisition costs. Specifications shall permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the procuring agencies' requirements.

(b) Preference for Commercially Available Products. Recognized, commercially-available products shall be procured wherever practicable. In developing specifications, accepted commercial standards shall be used and unique products shall be avoided, to the extent practicable.

(c) Nonrestrictiveness Requirements. All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply, or construction item, or procurement from a sole source, unless no other manner of description will suffice. In that event, a written determination shall be made that it is not practicable to use a less restrictive specification.

(2) Director's Responsibilities.

(a) The Director is responsible for the preparation of all specifications.

(b) The Division may enter into contracts with others to prepare construction specifications when there will not be a

substantial conflict of interest. The Director shall retain the authority to approve all specifications.

(c) Whenever specifications are prepared by persons other than Division personnel, the contract for the preparation of specifications shall require the specification writer to adhere to the requirements of this section.

(3) Types of Specifications. The Director may use any method of specifying construction items which he considers to be in the best interest of the state including the following:

(a) By a performance specification stating the results to be achieved with the contractor choosing the means.

(b) By a prescriptive specification describing a means for achieving desired, but normally unstated, ends. Prescriptive specifications include the following:

(i) Descriptive specifications, providing a detailed written description of the required properties of a product and the workmanship required to fabricate, erect and install without using trade names; or

(ii) Proprietary specifications, identifying the desired product by using manufacturers, brand names, model or type designation or important characteristics. This is further divided into two classes:

(A) Sole Source, where a rigid standard is specified and there are no allowed substitutions due to the nature of the conditions to be met. This may only be used when very restrictive standards are necessary and there is only one proprietary product known that will meet the rigid standards needed. A sole source proprietary specification must be approved by the Director.

(B) Or Equal, which allows substitutions if properly approved.

(c) By a reference standard specification where documents or publications are incorporated by reference as though included in their entirety.

(d) By a nonrestrictive specification which may describe elements of prescriptive or performance specifications, or both, in order to describe the end result, thereby giving the contractor latitude in methods, materials, delivery, conditions, cost or other characteristics or considerations to be satisfied.

(4) Procedures for the Development of Specifications.

(a) Specifications may designate alternate supplies or construction items where two or more design, functional, or proprietary performance criteria will satisfactorily meet the procuring agencies' requirements.

(b) The specification shall contain a nontechnical section to include any solicitation or contract term or condition such as a requirement for the time and place of bid opening, time of delivery, payment, liquidated damages, and similar contract matters.

(c) Use of Proprietary Specifications.

(i) The Director shall seek to designate three brands as a standard reference and shall state that substantially equivalent products to those designated will be considered for award, with particular conditions of approval being described in the specification.

(ii) Unless the Director determines that the essential characteristics of the brand names included in the proprietary specifications are commonly known in the industry or trade, proprietary specifications shall include a description of the particular design, functional, or performance characteristics which are required.

(iii) Where a proprietary specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

(iv) The Division shall solicit sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made in accordance with Section R23-1-25.

R23-1-60. Construction Contract Clauses.

(1) Required Contract Clauses. Pursuant to Section 63G-6-601, the document entitled "Required Construction Contract Clauses", Dated May 25, 2005, and on file with the Division, is hereby incorporated by reference. Except as provided in Subsections R23-1-30(7) and R23-1-60(2), the Division shall include these clauses in all construction contracts.

(2) Revisions to Contract Clauses. The clauses required by this section may be modified for use in any particular contract when, pursuant to Subsection 63G-6-601(5), the Director makes a written determination describing the circumstances justifying the variation or variations. Notice of any material variations from the contract clauses required by this section shall be included in any invitation for bids or request for proposals. Examples of changes that are not material variations include, but are not limited to, the following: grammatical corrections; corrections made that resolve conflicts in favor of the intent of the document as a whole; and changes that reflect State law or rule and applicable court case law.

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Notice of Continuation: May 24, 2007

Administrative Services, Facilities Construction and Management
R23-7
State Construction Contracts and Drug and Alcohol Testing

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 33622
FILED: 05/06/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule is to comply with S.B. 13 of the 2010 Utah Legislative Session which enacts Section 63G-6-604. Said statute requires that a state construction

contract impose requirements related to drug and alcohol testing. The new rule: addresses penalties for non-compliance; clarifies that monitoring activities are not required of the state; provides that the state is not liable in actions related to drug and alcohol testing; provides exemptions; and addresses the scope of the provision. (DAR NOTE: S.B. 13 (2010) is found at Chapter 18, Laws of Utah 2010, and will be effective 07/01/2010.)

SUMMARY OF THE RULE OR CHANGE: S.B. 13 of the 2010 Utah State Legislative Session enacted Section 63G-6-604 and modified the Utah Procurement Code to address requirements for drug and alcohol testing for state construction contracts. This rule is being implemented to comply with S.B. 13 and requires that a state construction contract impose requirements related to drug and alcohol testing. The new rule: addresses penalties; clarifies that monitoring activities are not required of the state; provides that the state is not liable in actions related to drug and alcohol testing; provides exemptions; and addresses the scope of the provision.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-6-604

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The statute itself created the fiscal impacts. The rule does not add additional burdens than already provided by the statute. The rule will not impact the costs.
♦ LOCAL GOVERNMENTS: The statute itself created the fiscal impacts. No costs or savings are anticipated for local governments with this new rule. No new requirements were created with this new rule that impact local governments.
♦ SMALL BUSINESSES: The statute itself created any fiscal impacts to small businesses. The implementation of this Rule R23-7 does not add additional burdens than already provided by the statute.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The statute itself created any fiscal impacts to persons other than small businesses, businesses, or local government entities. The implementation of this Rule R23-7 does not add additional burdens than already provided by the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The statute itself created any compliance costs, if any, for affected persons. Implementation of Rule R23-7 does not create any compliance costs other than those that were created by the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of implementing Rule R23-7 is to be in compliance with S.B. 13 and state statute. The statute created the fiscal impacts and implementation of this rule does not add additional burdens than already provided by the statute. The rule will not impact the costs.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
ROOM 4110 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:
♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@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
♦ Priscilla Anderson by phone at 801-538-9595, by FAX at 801-538-3378, or by Internet E-mail at phanderson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: D. Gregg Buxton, Director

R23. Administrative Services, Facilities Construction and Management.
R23-7. State Construction Contracts and Drug and Alcohol Testing.
R23-7-1. Purpose.
The purpose of this rule is to comply with the provisions of Section 63G-6-604.

R23-7-2. Authority.
This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Utah State Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management as well as Subsection 63G-6-604(4).

R23-7-3. Definitions.
(1) The following definitions of Section 63G-6-604 shall apply to any term used in this Rule R23-7:
(a) "Contractor" means a person who is or may be awarded a state construction contract.
(b) "Covered individual" means an individual who:
(i) on behalf of a contractor or subcontractor provides services directly related to design or construction under a state construction contract; and
(ii) is in a safety sensitive position, including a design position that has responsibilities that directly affect the safety of an improvement to real property that is the subject of a state construction contract.
(c) "Drug and alcohol testing policy" means a policy under which a contractor or subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:
(i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol, except the medically prescribed possession and use of a drug; or

(ii) the impairment of judgment or physical abilities due to the use of drugs or alcohol.

(d) "Random testing" means that a covered individual is subject to periodic testing for drugs and alcohol:

(i) in accordance with a drug and alcohol testing policy; and

(ii) on the basis of a random selection process.

(e) For purposes of Subsection R23-7-4(5), "state" includes any of the following of the state:

(i) a department;

(ii) a division including the Division of Facilities Construction and Management;

(iii) an agency;

(iv) a board;

(v) a commission;

(vi) a council;

(vii) a committee; and

(viii) an institution, including a state institution of higher education, as defined under Section 53B-3-102.

(f) "State construction contract" means a contract for design or construction entered into by the Division.

(g)(i) "Subcontractor" means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction.

(ii) "Subcontractor" includes a trade contractor or specialty contractor.

(iii) "Subcontractor" does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor.

(2) In addition:

(a) "Board" means the State Building Board established pursuant to Section 63A-5-101.

(b) "Director" means the Director of the Division, including, unless otherwise stated, the Director's duly authorized designee.

(c) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201 as well as entities entering into state construction contracts under delegation authority by the Board or Director.

(d) "State" as used throughout Rule R23-7 means the State of Utah except that it also includes those entities described in Subsection R23-7-3(1)(e) as the term "state" is used in Subsection R23-7-4(5).

R23-7-4. Applicability.

(1) Except as provided in Section R23-7-5, on and after July 1, 2010, the Division may not enter into a state construction contract (includes a contract for design or construction) unless the state construction contract requires the following:

(a) A contractor shall demonstrate to the state public procurement unit that the contractor:

(i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the contractor;

(ii) posts in one or more conspicuous places notice to covered individuals hired by the contractor that the contractor has the drug and alcohol testing policy described in Subsection R23-7-4(1)(a)(i); and

(iii) subjects the covered individuals to random testing under the drug and alcohol testing policy described in Subsection R23-7-4(1)(a)(i) if at any time during the period of the state construction contract there are ten or more individuals who are covered individuals hired by the contractor.

(b) A contractor shall demonstrate to the Division, which shall be demonstrated by a provision in the contract where the contractor acknowledges this Rule R23-7 and agrees to comply with all aspects of this Rule R23-7, that the contractor requires that as a condition of contracting with the contractor, a subcontractor, which includes consultants under contract with the designer:

(i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the subcontractor;

(ii) posts in one or more conspicuous places notice to covered individuals hired by the subcontractor that the subcontractor has the drug and alcohol testing policy described in Subsection R23-7-4(1)(b)(i); and

(iii) subjects the covered individuals hired by the subcontractor to random testing under the drug and alcohol testing policy described in Subsection R23-7-4(1)(b)(i) if at any time during the period of the state construction contract there are ten or more individuals who are covered individuals hired by the subcontractor.

(2)(a) Except as otherwise provided in this Subsection R23-7-4(2), if a contractor or subcontractor fails to comply with Subsection R23-7-4(1), the contractor or subcontractor may be suspended or debarred in accordance with this Rule R23-7.

(b) On and after July 1, 2010, the Division shall include in a state construction contract a reference to this Rule R23-7.

(c)(i) A contractor is not subject to penalties for the failure of a subcontractor to comply with Subsection R23-7-4(1).

(ii) A subcontractor is not subject to penalties for the failure of a contractor to comply with Subsection R23-7-4(1).

(3)(a) The requirements and procedures a contractor shall follow to comply with Subsection R23-7-4(1)is that the contractor, by executing the construction contract with the Division, is deemed to certify to the Division that the contractor, and all subcontractors under the contractor that are subject to Rule R23-7-4(1), shall comply with all provisions of this Rule R23-7 as well as Section 63G-6-604; and that the contractor shall on a semi-annual basis throughout the term of the contract, report to the Division in writing information that indicates compliance with the provisions of Rule R23-7 and Section 63G-6-604.

(b) A contractor or subcontractor may be suspended or debarred in accordance with the applicable Utah statutes and rules, if the contractor or subcontractor violates a provision of Section 63G-6-604. The contractor or subcontractor shall be provided reasonable notice and opportunity to cure a violation of Section 63G-6-604 before suspension or debarment of the contractor or subcontractor in light of the circumstances of the state construction contract or the violation. The greater the risk to person(s) or property as a result of noncompliance, the shorter this notice and opportunity to cure shall be, including the possibility that the notice may provide for immediate compliance if necessary to protect person(s) or property.

(4) The failure of a contractor or subcontractor to meet the requirements of Subsection R23-7-4(1):

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Part 8, Legal and Contractual Remedies; and

(b) may not be used by a state public procurement unit, a prospective bidder, an offeror, a contractor, or a subcontractor as a basis for an action that would suspend, disrupt, or terminate the design or construction under a state construction contract.

(5)(a) After the Division enters into a state construction contract in compliance with Section 63G-6-604, the state is not required to audit, monitor, or take any other action to ensure compliance with Section 63G-6-604.

(b) The state is not liable in any action related to Section 63G-6-604 and this Rule R23-7, including not being liable in relation to:

(i) a contractor or subcontractor having or not having a drug and alcohol testing policy;

(ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and alcohol testing policy;

(iii) the requirements of a contractor's or subcontractor's drug and alcohol testing policy;

(iv) a contractor's or subcontractor's implementation of a drug and alcohol testing policy, including procedures for:

(A) collection of a sample;

(B) testing of a sample;

(C) evaluation of a test; or

(D) disciplinary or rehabilitative action on the basis of a test result;

(v) an individual being under the influence of drugs or alcohol; or

(vi) an individual under the influence of drugs or alcohol harming another person or causing property damage.

R23-7-5. Non-applicability.

(1) This Rule R23-7 and Section 63G-6-604 does not apply if the Division determines that the application of this Rule R23-7 or Section 63G-6-604 would severely disrupt the operation of a state agency to the detriment of the state agency or the general public, including:

(a) jeopardizing the receipt of federal funds;

(b) the state construction contract being a sole source contract; or

(c) the state construction contract being an emergency procurement.

R23-7-6. Not Limit Other Lawful Policies.

(1) If a contractor or subcontractor meets the requirements of Section 63G-6-604 and this Rule R23-7, this Rule R23-7 may not be construed to restrict the contractor's or subcontractor's ability to impose or implement an otherwise lawful provision as part of a drug and alcohol testing policy.

KEY: drug and alcohol testing, contracts, contractors
Date of Enactment or Last Substantive Amendment: July 8, 2010
Authorizing, and Implemented or Interpreted Law: 63G-6

Administrative Services, Facilities Construction and Management
R23-22
General Procedures for Acquisition and Selling of Real Property

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33623
FILED: 05/06/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to comply with H.B. 370 of the 2010 Utah Legislative Session and is intended to implement the requirements of Section 63A-5-401, as well as Subsection 63A-5-103(1)(e)(iii).

SUMMARY OF THE RULE OR CHANGE: These changes to Rule R23-22 requires the State Building Board to establish a rule to govern the disposition of real property including property that is of historical significance and defines what is considered historical significant property. This rule also addresses which appraising authority is needed for dispositions of real property.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-5-103 and Section 63A-5-401

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There are no anticipated costs; however, there is some anticipated savings to the state budget by making these changes to Rule R23-22 . These changes streamline the process for the disposition of property which can save money for the state and other entities involved in real estate transactions with the state.

♦ LOCAL GOVERNMENTS: There are no anticipated costs; however, there is some anticipated savings to the local governments by making these changes to Rule R23-22. These changes streamline the process for the disposition of property which can save money for other entities including local government involved in real estate transactions with the state.

♦ SMALL BUSINESSES: There are no anticipated costs; however, there is some anticipated savings to small businesses by making these changes to Rule R23-22. These changes streamline the process for the disposition of property which can save money for other entities including small businesses involved in real estate transactions with the state.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule change to Rule R23-22 is only procedural to govern

the disposition of real property and does not affect persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to Rule R23-22 will not require any compliance costs for affected persons as they are only procedural changes that govern the disposition of real property.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated costs; however, there is some fiscal impact in the way of anticipated savings to businesses by making these changes to Rule R23-22. These changes streamline the process for the disposition of property which can save money for other entities including businesses involved in real estate transactions with the state.

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

ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
ROOM 4110 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:

♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@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
♦ Priscilla Anderson by phone at 801-538-9595, by FAX at 801-538-3378, or by Internet E-mail at phanderson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: D. Gregg Buxton, Director

R23. Administrative Services, Facilities Construction and Management.

R23-22. General Procedures for Acquisition and Selling of Real Property.

R23-22-1. Purpose.

This rule defines the procedures of the Division of Facilities Construction and Management for acquisition and selling of real property.

R23-22-2. Authority.

(1) This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management (hereinafter referred to as the "Division")[~~, as well as pursuant to H.B. 354 of the 2008 General Session of the Utah Legislature~~].

(2) This rule is also authorized and intended to implement the requirements of Section 63A-5-401, as well as Subsection 63A-5-103(1)(e)(iii).

R23-22-3. Policy.

It is the general policy of the Board that, except as otherwise allowed by the Utah Code, the Division shall buy, sell or exchange real property in accordance with this Rule to ensure that the value of the real property is congruent with the proposed price and other terms of the purchase, sale or exchange.

R23-22-4. Scope of This Rule.

This Rule shall apply to all purchases, sales, donations and exchanges of DFCM, as applicable in this Rule, except as otherwise allowed by the Utah Code. The requirements of this Rule shall also not apply to a contract or other written agreement prior to May 5, 2008; or to any contract or to any purchase, sale or exchange of real property where the value is determined to be less than $100,000 as estimated by DFCM.

R23-22-5. Requirements for Purchase or Exchanges of Real Property.

DFCM shall comply with the following in regard to the purchase or exchange of real property that is subject to this Rule:

(1) DFCM must find that all necessary approvals have been obtained from State and other applicable authorities. DFCM will assist other State agencies in obtaining these approvals when it is deemed by DFCM to be in the interest of the State.

(2) DFCM shall coordinate as required any necessary financing requirements through the State Building Ownership Authority, or other relevant bonding authority, as authorized by the Legislature.

(3) DFCM shall assist other State agencies in accordance with DFCM's governing statutes, through financial analysis and other appropriate means, in selecting the appropriate or particular real property to be purchased and/or exchanged.

(4) DFCM shall, in accordance with DFCM's governing statutes, negotiate, draft and execute the applicable Real Estate Contract with due consideration to the State agency's comments. The State agency may be required by DFCM to be a signatory to the Contract.

(5) DFCM shall obtain and review the following documents when such is determined by DFCM to be customary in the industry for the size and type of transaction or if required by another provision of this Rule or State law:

a. title insurance commitment;
b. an environmental assessment;
c. an engineering assessment;
d. a code review;
e. an appraisal;
f. an analysis of past maintenance and operational expenses, when available and relevant;
g. the situs, zoning and planning information;
h. an ALTA land survey;[~~ and~~]
i. an historic property assessment under Section 9-8-404; and

[~~i~~]j. other requirements determined necessary by DFCM, this Rule or State law.

(6) DFCM shall review, approve and execute when in the interest of the State, closing documents as prepared by the selected title company.

(7) DFCM may use boiler plate documents approved as to form by the Utah Attorney General or shall consult with the Utah Attorney General regarding provisions of the sale or significant changes to the boiler plate documents approved as to the form by the Utah Attorney General.

(8) DFCM shall endeavor to monitor the distribution of closing documents.

R23-22-6. Additional Requirements Regarding R23-22-5(5).

DFCM shall comply with the provisions below. None of the provisions below shall restrict the Director from requiring or not requiring any of the following if in the Director's opinion such is advantageous to the State or if such is required or allowed by State law:

(1) Title insurance commitment. The following applies to real property that may become State property by purchase, donation or exchange: DFCM shall obtain an Owner's Policy of Title Insurance for real property valued by DFCM at $500,000 or above. For real property valued by DFCM at less than $500,000, DFCM shall obtain a title report and may obtain an Owner's Policy of Title Insurance if, in the judgment of DFCM, title insurance is advantageous to the State.

(2) Phase I Environmental Assessment or Greater. The following applies to real property that may become State property by purchase, donation or exchange: A Phase I or greater Environmental Assessment may be required by DFCM prior to a purchase or exchange of real property when the property considered to become State property has a use and/or occupancy history which in the opinion of DFCM indicates the possibility of environmental issues that would materially affect the DFCM's purchase of the property or the State agency's use of the property.

(3) Engineering Assessment. The following applies to real property that may become State property by purchase, donation or exchange: For all improved real property valued by DFCM at $250,000 or above, DFCM shall obtain an engineering assessment of mechanical systems and structural integrity of improvements located on the property. An engineering assessment may be waived by the DFCM Director if an engineering assessment has already been performed within the past 12 months or if the land is unimproved. The State may perform an engineering assessment for real property valued at less than $250,000 if, in the judgment of the Director, such an assessment is advantageous to the State.

(4) Code and Requirements Review. DFCM shall review the real property that may potentially become State property through purchase, donation or exchange to ascertain its suitability under all applicable codes and requirements, including any applicable provisions of State law.

(5) Appraisal. For real property that may potentially become State property through purchase or exchange, the State shall arrive at a fair market valuation of the property prior to purchase that is agreeable to the seller and the State. The fair market value determination used by DFCM in the negotiation shall be based upon an appraisal completed by an appraiser that specializes in the type of the subject real property and is a state-certified general appraiser under Section 61-2B-2 or by a State of Utah licensed MAI appraiser who also has such a certificate, except as follows:

(a) When this rule is not applicable under its scope;

(b) When State law otherwise provides that DFCM does not have to use fair market value; or

(c) When the Director has determined by a writing filed with DFCM, that the cost of obtaining the appraisal is not justified in the economic interest of the State of Utah.

(6) Past maintenance and operational expenses. DFCM shall endeavor to obtain, past maintenance and operational expense histories attached to any real property that may be acquired by the State, including real property that is acquired by purchase, donation or exchange, unless it is determined by the Director that the obtaining of such records is not justified in the economic interest of the State of Utah.

(7) Situs, zoning and planning information. DFCM shall endeavor to obtain preexisting situs, zoning and planning information regarding the real property that may be acquired by purchase, donation or exchange when required by State law, or if the Director determines that the obtaining of such information is advantageous to the State.

(8) ALTA land survey. For all real property acquired by DFCM through purchase, donation or exchange, and the property to become State property is valued by DFCM at $250,000 or above, DFCM shall obtain an ALTA/ACSM Land Title Survey, current revision, of the subject property. An ALTA survey shall not be required if an ALTA survey has already been performed within the past 12 months unless otherwise determined by the Director. The State may perform an ALTA survey for real property valued less than $250,000 if the Director determines that such a survey is in the interest of the State.

R23-22-[6]7. Requirements for the Disposition of Real Property by DFCM.

(1) Determination of disposition of real property.

(a) Notwithstanding, any other provision of this Rule R23-22, any real property that is of historical significance to the State of Utah shall not be disposed by the Division, regardless of the value amount of the property, unless approval has been obtained by the Legislative Management Committee of the Utah Legislature.

(i) "Historical significance" for the purposes of this Rule R23-22 includes real property, including any structures, statues or other improvements on the real property, that is listed on the National Register of Historic Places or the State Register.

(ii) The Division, after consultation with the State Historic Preservation Officer, shall make a recommendation to the Board as to whether a property proposed to be declared as surplus property, is historically significant based on the definition of "historically significant" in this Rule. The Board, after considering the recommendation of the Division as well as any other interested persons or entities, shall determine whether or not the property is historically significant.

(iii) A copy of the determination regarding Historical Significance shall be sent to the State Historic Preservation Officer as well as the Chair and Vice-Chair of the Legislative Management Committee, any of which may within ten (10) working days of the receipt of the determination by the Board, decide that the issue should be considered by the Legislative Management Committee and that the Division shall not proceed with the disposition of the

property until the Legislative Management Committee approves the disposition.

(b) If the Board has not determined that the real property is historically significant, then the Building Board may declare the real property to be surplus under the procedures described in this Rule.

(i) Thereafter, if the appraised value of the real property is estimated by the Director to be $500,000 or below, then the Board may authorize the Division to dispose of the real property in accordance with the provisions of this Rule.

(ii) If the appraised value as estimated by the Director is above $500,000, then the Board shall refer consideration of the sale of the real property to the Legislative Management Committee.

(c) Nothing in the rule shall prohibit the Director from proceeding with easements, lot line and other minor, incidental adjustments with other State entities or other public/private persons or entities, as long as the Director reasonably determines that such property is not historically significant after consultation with the State Historic Preservation Officer, that the adjustment is in the public interest, and that the value of the adjustment as determined by the Director is less than $100,000.

(2) Determination of surplus property. If the real property is determined to not be historically significant under this rule and in[~~h~~] addition to the policy of Section R23-22-3, it is the policy of this Board to efficiently and economically dispose of real property that is determined by DFCM or the State to be surplus in accordance with State law. In accordance with State law, DFCM may recommend to the Board that certain real property be declared as surplus. The Board shall consider the following factors in the determination of declaring the property to be surplus:

(i) the input of the Division;

(ii) the input of State agencies;

(iii) any other input received from concerned persons or entities; and

(iv) the appraised value of the property.

(3) Detailed disposition procedures. After the appropriate determination is made that the real property is surplus, and it is determined that the property is not historically significant under this rule, then DFCM shall endeavor to sell the surplus real property on the open market, unless such property is to be conveyed to another State agency or public entity in accordance with Utah law. If there is such a sale, it shall be as follows:

([~~1~~])(a) DFCM shall confirm that all necessary approvals have been sought for the declaration of surplus property.

([~~2~~])(b) Unless otherwise allowed by State law, DFCM shall obtain at least fair market value for the real property to be sold. This shall be accomplished by the following:

([~~a~~])(i) DFCM shall determine a fair market valuation of the property prior to the offer for sale. The fair market value determination used by DFCM in offer for sale shall be based upon an appraisal completed by an appraiser that specializes in the type of the subject real property and is a state-certified general appraiser under Section 61-2B-2, or by a Utah licensed MAI appraiser who also has such a certificate, except as follows:

([~~i~~])A When this rule is not applicable under its scope;

([~~ii~~])B When State law otherwise provides that DFCM does not have to use fair market value; or

([~~iii~~])(C) When the Director has determined by a writing filed with DFCM, that the cost of obtaining the appraisal is not justified in the economic interest of the State of Utah.

([~~b~~])(c) DFCM shall establish a listing price based on the appraisal obtained under this Rule or, if there is no appraisal based on the above, based upon DFCM's knowledge of prevailing market conditions and other circumstances customarily used in the industry for such sales.

([e])(d) DFCM shall advertise the property for sale in such a manner that is commercially reasonable in the discretion of the Director. DFCM may set a time deadline for the submission of bids for the real property based upon the economic conditions at the time of the sale.

([~~d~~])(e) DFCM shall endeavor to enter into a contract for sale to the highest reasonable bidder, unless the DFCM Director files a written justification statement as to why a lower bidder is more advantageous to the State or if there is a sole bidder, that such bid is unreasonable. If after a reasonable timeline set by the Director of public advertisement, no acceptable bid is submitted, then DFCM may sell the property through a private negotiated sale, provided that any sale below the fair market value initially established by DFCM for the subject property is accompanied by a written justification statement filed by the Director and a copy of which is provided to the Board prior to execution of the contract for sale.

([e])(f) DFCM shall, in accordance with DFCM's governing statutes, negotiate, draft and execute the applicable Real Estate Contract, with due consideration to the comments of the affected State agency. The affected State agency may be required by DFCM to be a signatory to the Contract.

([~~f~~])(g) DFCM shall review, approve, and execute when appropriate, closing documents as prepared by the selected title company.

([~~g~~])(h) DFCM may use boiler plate documents approved as to form by the Utah Attorney General or shall consult with the Utah Attorney General regarding provisions of the sale or significant changes to the boiler plate documents approved as to the form by the Utah Attorney General.

([~~h~~])(i) DFCM shall endeavor to monitor the distribution of the closing documents.

KEY: real estate, historical significance, property transactions
Date of Enactment or Last Substantive Amendment: [~~September 11, 2008~~]2010
Authorizing, and Implemented or Interpreted Law: [~~63A-5-501~~]63A-5-401; 63A-5-103

Administrative Services, Facilities Construction and Management
R23-23
Health Reform -- Health Insurance Coverage in State Contracts -- Implementation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33634
FILED: 05/11/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended to comply with H.B. 20 of the 2010 Utah Legislative Session which clarified and amended Section 63A-5-205. H.B. 20 amends provisions related to the requirement that contractors with certain state entities must provide qualified health insurance to their employees and the dependents of the employees who work or reside in the state. H.B. 20 clarified the waiting period; clarified that health insurance coverage must be offered to employees and dependents who work or reside in the state; clarified that the coverage that must be offered is a minimum standard and an employer may offer greater coverage; amended the definition of qualified health insurance coverage to clarify the standards; amended the enforcement provisions to provide protections for good faith compliance and clarified how an employer offering a defined contribution arrangement may comply with state contract requirements. Therefore, this rule change is being done to be consistent with state statute. (DAR NOTE: H.B. 20 (2010) is found at Chapter 229, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: These rule changes implement the following changes to comply with H.B. 20 of the 2010 Utah Legislative Session: clarify and amend provisions related to the requirement that contractors with certain state entities must provide qualified health insurance to their employees and the dependents of the employees who work or reside in the state. The changes also clarify the waiting period; clarify that health insurance coverage must be offered to employees and dependents who work or reside in the state; clarify that the coverage that must be offered is a minimum standard and an employer may offer greater coverage; amend the definition of qualified health insurance coverage to clarify the standards. The rule change also amends the enforcement provisions to provide protections for good faith compliance and clarifies how an employer offering a defined contribution arrangement may comply with state contract requirements. Therefore, this rule change is being done to be consistent with state statute.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-5-205

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The statute itself created the fiscal impacts. This rule does not add additional burdens than already provided by the statute. The rule will not impact the costs.
♦ LOCAL GOVERNMENTS: No costs or savings are anticipated for local governments with this new rule. No new requirements were created with this new rule that impact local governments.
♦ SMALL BUSINESSES: No costs or savings are anticipated for small businesses with this new rule. No new requirements were created with this new rule that impact small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: These changes may benefit individuals working for contractors that contract with the State as they and their dependents who live and/or work in the State of Utah will be offered health insurance coverage.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Any cost increases to contractors will likely be passed on as part of the costs of the contract that the State pays. The statute already provides the requirements that may cause cost increases. This rule itself merely complies with the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Any fiscal impacts on businesses would have been incurred when Section 63A-5-205 and Rule R23-23 were enacted in 2009. This rule change is being done to be consistent with state statutes. This rule only amends provisions related to the requirement that contractors with certain state entities must provide qualified health insurance to their employees and the dependents of the employees who work or reside in the state. These amendments also clarify the waiting period; clarify that the coverage that must be offered is a minimum standard and an employer may offer greater coverage; amend the definition of qualified health insurance coverage to clarify the standards; amend the enforcement provisions to provide protections for good faith compliance and clarify how an employer offering a defined contribution arrangement may comply with state contract requirements.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FACILITIES CONSTRUCTION AND MANAGEMENT
ROOM 4110 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:
♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@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
♦ Priscilla Anderson by phone at 801-538-9595, by FAX at 801-538-3378, or by Internet E-mail at phanderson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: D. Gregg Buxton, Director

R23. Administrative Services, Facilities Construction and Management.
R23-23. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation.
R23-23-1. Purpose.

The purpose of this rule is to comply with the provisions of Section 63A-5-205.

R23-23-2. Authority.

This rule is authorized under Subsection 63A-5-103(1)(e), which directs the Utah State Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management as well as Section 63A-5-205 which requires this rule related to health insurance provisions in certain design and/or construction contracts.

R23-23-3. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63A-5-205.

(2) In addition:

(a) "Board" means the State Building Board established pursuant to Section 63A-5-101.

(b) "Director" means the Director of the Division, including, unless otherwise stated, the Director's duly authorized designee.

(c) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(d) "Employee(s)" is as defined in Subsection 63A-5-205(1)(c) and includes only those employees that live and/or work in the State of Utah along with their dependents. "Employee" for purposes of this rule, shall not be construed as to be broader than the use of the term employee for purposes of State of Utah Workers' Compensation laws along with their dependents.

(e) "State" means the State of Utah.

R23-23-4. Applicability of Rule.

(1) Except as provided in [~~Rule~~]Subsection R23-23-4(2) below, this Rule R23-23 applies to all design or construction contracts entered into by the Division or the Board on or after July 1, 2009, [~~if.~~]and

[~~(a) the contract is for design and/or construction; and~~

~~(b) the prime contract is in the amount of $1,500,000 or greater; or~~

~~(i) a subcontract, at any tier, is in the amount of $750,000 or greater.~~](a) applies to a prime contractor if the prime contract is in the amount of $1,500,000 or greater; and

(b) applies to a subcontractor if the subcontract is in the amount of $750,000 or greater.

(2) This Rule R23-23 does not apply if:

(a) the application of this Rule R23-23 jeopardizes the receipt of federal funds,

(b) the contract is a sole source contract,

(c) the contract is an emergency procurement.

(3) This Rule R23-23 does not apply to a change order as defined in Section 63G-6-103, or a modification to a contract, when the contract does not meet the initial threshold required by [~~Rule~~]Subsection R23-23-4(1).

(4) A person who intentionally uses change orders or contract modifications to circumvent the requirements of subsection (1) is guilty of an infraction.

R23-23-5. Contractor to Comply with Section 63A-5-205.

All contractors and subcontractors that are subject to the requirements of Section 63A-5-205 shall comply with all the requirements, penalties and liabilities of Section 63A-5-205.

R23-23-6. Not Basis for Protest or Suspend, Disrupt, or Terminate Design or Construction.

(1) The failure of a contractor or subcontractor to provide qualified health insurance coverage as required by this [~~to comply with this R~~]rule or Section 63A-5-205:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor as a basis for any action or suit that would suspend, disrupt or terminate the design or construction.

R23-23-7. Requirements and Procedures a Contractor Must Follow.

A contractor (including consultants and designers) must comply with the following requirements and procedures in order to demonstrate compliance with Section 63A-5-205.

(1) Demonstrating Compliance with Health Insurance Requirements. The following requirements must be met by a contractor (including consultants, designers and others under contract with the Division) that is subject to the requirements of this Rule no later than the time [~~of execution of the contract~~]the contract is entered into or renewed:

(a) demonstrate compliance by a written certification to the Director that the contractor has and will maintain for the duration of the contract an offer of qualified health insurance coverage for the contractor's employees; and

(b) The contractor shall also provide such written certification prior to the execution of the contract, in regard to all subcontractors (including subconsultants) at any tier that is subject to the requirements of this Rule.

(2) Recertification. The Director shall have the right to request a recertification by the contractor by submitting a written request to the contractor, and the contractor shall so comply with the written request within ten (10) working days of receipt of the written request; however, in no case may the contractor be required to demonstrate such compliance more than twice in any 12-month period.

(3) Demonstrating Compliance with Actuarially Equivalent Determination. The actuarially equivalent determination required by Subsections 63A-5-205(1)(e)(i) and (iii) is met by the contractor if the contractor provides the Director with a written statement of actuarial equivalency from either the Utah Insurance Department; [~~or~~]an actuary selected by the contractor or the contractor's insurer; or an underwriter who is responsible for developing the employer group's premium rates.

For purposes of this [~~Rule~~]Subsection R23-23-7(3), actuarially equivalency is achieved by meeting or exceeding any of the following:

[~~(a) In accordance with Section 26-40-106(2)(a), the largest insured commercial enrollment offered by a health maintenance organization in the State, which details of the plan are provided on the website of the Division at http://dfcm.utah.gov/downloads/Health%20Insurance %20Benchmark.pdf; or~~

~~(b) provides coverage that is actuarially equivalent to 75 percent of the benefit plan determined under Rule R23-23-7(3)(a) above and employer's premium contribution as required by statute.~~]

(a) As delineated on the DFCM website at http://dfcm.utah.gov/downloads/Health%20Insurance %20Benchmark.pdf, a health benefit plan and employer contribution level with a combined actuarial value at least actuarially equivalent to the combined actuarial value of the benchmark plan determined by the Children's Health Insurance Program under Subsection 26-40-106(2)(a), and a contribution level of 50% of the premium for the employee and the dependents of the employee who reside or work in the State, in which:

(i) The employer pays at least 50% of the premium for the employee and the dependents of the employee who reside or work in the State; and

(ii) for purposes of calculating actuarial equivalency under this Subsection R23-23-7(3)(a):

(A) rather than the benchmark plan's deductible, and the benchmark plan's out-of-pocket maximum based on income levels, the deductible is $750 per individual and $2,250 per family; and the out-of-pocket maximum is $3,000 per individual and $9,000 per family;

(B) dental coverage is not required; and

(C) other than Subsection 26-40-106(2)(a), the provisions of Section 26-40-106 do not apply; or

(b)(i) is a federally qualified high deductible health plan that, at a minimum, has a deductible that is either;

(A) the lowest deductible permitted for a federally qualified high deductible health plan; or

(B) a deductible that is higher than the lowest deductible permitted for a federally qualified high deductible health plan, but includes an employer contribution to a health savings account in a dollar amount at least equal to the dollar amount difference between the lowest deductible permitted for a federally qualified high deductible plan and the deductible for the employer offered federally qualified high deductible plan;

(ii) an out-of pocket maximum that does not exceed three times the amount of the annual deductible; and

(iii) under which the employer pays 75% of the premium for the employee and the dependents of the employee who work or reside in the State.

(4) The health insurance must be available upon the first day of the calendar month following the initial ninety (90) days from the [~~beginning of employment~~]date of hire.

(5) Architect and Engineer Compliance Process. Architects and engineers that are subject to this Rule must demonstrate compliance with this Rule in any annual submittal under Section 63G-6-702. During the procurement process and no later than the execution of the contract with the architect or engineer, the architect or engineer shall confirm that their applicable subcontractors or subconsultants meet the requirements of this Rule.

(6) General (Prime) Contractors Compliance Process. Contractors that are subject to this Rule must demonstrate compliance with this Rule for their own firm and any applicable subcontractors, in any pre-qualification process that may be used for the procurement. At the time of execution of the contract, the contractor shall confirm that their applicable subcontractors or subconsultants meet the requirements of this Rule.

(7) Notwithstanding any prequalification process, any contract subject to this Rule shall contain a provision requiring compliance with this Rule from the time of execution and throughout the duration of the contract.

(8) Hearing and Penalties.

(a) Hearing. Any hearing for any penalty under this Rule conducted by the Board or the Division shall be conducted in the same manner as any hearing required for a suspension or debarment.

(b) Penalties that may be imposed by Board or Division. The penalties that may be imposed by the Board or the Division if a contractor, consultant, subcontractor or subconsultant, at any tier, intentionally violates the provisions of this Rule R23-23, may include:

(i) a three-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the first violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(ii) a six-month suspension of the contractor or subcontractor from entering into future contracts with the State upon the second violation, regardless of which tier the contractor or subcontractor is involved with the future design and/or construction contract;

(iii) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6-804 upon the third or subsequent violation; and

(iv) monetary penalties which may not exceed 50 percent of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who was not offered qualified health insurance coverage during the duration of the contract.

(c)(i) In addition to the penalties imposed above, a contractor, consultant, subcontractor or subconsultant who intentionally violates the provisions of this [~~R~~]rule shall be liable to

the employee for health care costs [~~not covered by insurance~~]that would have been covered by qualified health insurance coverage.

(ii) An employer has an affirmative defense to a cause of action under Subsection R23-23-7(8)(c)(i) as provided in Subsection 63A-5-205(3)(g)(ii).

R23-23-8. Not Create any Contractual Relationship with any Subcontractor or Subconsultant.

Nothing in this Rule shall be construed as to create any contractual relationship whatsoever between the State of Utah, the Board, or the Division with any subcontractor or subconsultant at any tier.

KEY: contractors, contracts, health insurance, contract requirements
Date of Enactment or Last Substantive Amendment: [~~October 8, 2009~~]2010
Authorizing, and Implemented or Interpreted Law: 63A-5-103(1)(e); 63A-5-205

Administrative Services, Finance
R25-7
Travel-Related Reimbursements for State Employees

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 33618
FILED: 05/05/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is amended to: 1) add additional cities to the list of premium cites which have an approved lodging rate that is higher than the standard reimbursement rate; and 2) modify the rates of two existing cities on the list.

SUMMARY OF THE RULE OR CHANGE: The following cities with the accompanying rates (before tax) have been added to the list: Bullfrog-$70, Cedar City-$70, Delta-$70, Fillmore-$70, Nephi-$70, Payson-$70, Lehi-$75, Torrey-$70, and Tremonton-$70. All other Utah cities not specified on the list will be rated at $65 plus tax a night. The rate for Moab is increased to $90 from $80. Springville is reduced from $75 to $70.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-3-106 and Section 63A-3-107

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Amending this rule may result in a cost to the state budget. State agencies will spend more to reimburse travel to the new cities added to the list. The Division of Finance does not know how many total nights' lodging agencies will be required to reimburse nor how many employees will use the rule for premium cities.
♦ LOCAL GOVERNMENTS: This rule applies only to state agencies and state employees and therefore, will have no impact on local government.
♦ SMALL BUSINESSES: This rule applies only to state agencies and state employees and therefore, will have no impact on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The amendments to this rule may result in additional reimbursement to persons acting on behalf of the state but not employed directly by the state. The Division of Finance does not know how many individuals in this category will be reimbursed.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this amendment. If an agency chooses to permit employees to travel, any other costs resulting from compliance with this amendment will be paid by the agency.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendment to Section R25-7-8 applies only to state agencies and state employees and will have no impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
FINANCE
ROOM 2110 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:
♦ Marilee Richins by phone at 801-538-3450, by FAX at 801-538-3244, or by Internet E-mail at mprichins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: Kimberly Hood, Executive Director

R25. Administrative Services, Finance.
R25-7. Travel-Related Reimbursements for State Employees.
R25-7-5. Approvals.

(1) For insurance purposes, all state business travel, whether reimbursed by the state or not, must have prior approval by an appropriate authority. This also includes non-state employees where the state is paying for the travel expenses.

(2) Both in-state and out-of-state travel must be approved by the department head or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 - "Request for Out-of[~~-~~]-State Travel Authorization".

(3) Exceptions to the prior approval for out-of-state travel must be justified in the comments section of the Request for Out-of-State Travel Authorization, form FI 5, or on an attachment, and must be approved by the Department Director or the designee.

(4) The Department Director, the Executive Director, or the designee must approve all travel to out-of-state functions where more than two employees from the same department are attending the same function at the same time.

R25-7-8. Reimbursement for Lodging.

State employees who travel on state business may be eligible for a lodging reimbursement.

(1) For stays at a conference hotel, the state will reimburse the actual cost plus tax for both in-state and out-of-state travel. The traveler must include the conference registration brochure with the Travel Reimbursement Request, form FI 51A or FI 51B.

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to $65 per night for single occupancy plus tax except as noted in the table below:

TABLE 5

Cities with Differing Rates

~~[Altamont~~	~~$70 plus tax~~
~~Boulder~~	~~$70 plus tax~~
~~Bryce~~	~~$70 plus tax~~
~~Green River~~	~~$70 plus tax~~
~~Kanab~~	~~$75 plus tax~~
~~Layton~~	~~$70 plus tax~~
~~Logan~~	~~$75 plus tax~~
~~Mexican Hat~~	~~$70 plus tax~~
~~Moab~~	~~$80 plus tax~~
~~Ogden~~	~~$70 plus tax~~
~~Panguitch~~	~~$70 plus tax~~
~~Park City~~	~~$90 plus tax~~
~~Heber City/Midway~~	~~$90 plus tax~~
~~Price~~	~~$70 plus tax~~
~~Provo/Orem/Springville/Lehi~~	~~$75 plus tax~~
~~Metropolitan Salt Lake City (Draper to Centerville), Tooele~~	~~$90 plus tax~~
~~St. George/Washington/Springdale~~	~~$70 plus tax~~
~~Vernal/Roosevelt~~	~~$90 plus tax~~]
Altamont	$70 plus tax
Boulder	$70 plus tax
Bryce	$70 plus tax
Bullfrog	$70 plus tax
Cedar City	$70 plus tax
Delta	$70 plus tax
Fillmore	$70 plus tax
Heber City/Midway	$90 plus tax
Kanab	$75 plus tax
Layton	$70 plus tax
Logan	$75 plus tax
Mexican Hat	$70 plus tax
Moab	$90 plus tax
Nephi	$70 plus tax
Ogden	$70 plus tax
Panguitch	$70 plus tax
Park City	$90 plus tax
Payson	$70 plus tax
Price	$70 plus tax
Provo/Orem/Lehi	$75 plus tax
Salt Lake City/Tooele	$90 plus tax
Springville	$70 plus tax
St George/Washington/Springdale	$70 plus tax
Torrey	$70 plus tax
Tremonton	$70 plus tax
Vernal/Roosevelt	$90 plus tax
All Other Utah Cities	$65 plus tax

(3) For out-of-state travel stays at a non-conference hotel, the state will reimburse the actual cost per night plus tax, not to exceed the federal lodging rate for the location.

(4) The state will reimburse the actual cost per night plus tax for in-state or out-of-state travel stays where the department/traveler makes reservations through the State Travel Office.

(5) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double state employee occupancy, add $20, for triple state employee occupancy, add $40, for quadruple state employee occupancy, add $60.

(6) Exceptions will be allowed for unusual circumstances when approved in writing by the Department Director or designee prior to the trip.

(a) For out-of-state travel, the approval may be on the form FI 5.

(b) Attach the written approval to the Travel Reimbursement Request, form FI 51B or FI 51D.

(7) A proper receipt for lodging accommodations must accompany each request for reimbursement.

(a) The tissue copy of the charge receipt is not acceptable.

(b) A proper receipt is a copy of the registration form generally used by motels and hotels which includes the following information: name of motel/hotel, street address, town and state, telephone number, current date, name of person/persons staying at the motel/hotel, date of occupancy, amount and date paid, signature of agent, number in the party, and single or double occupancy.

(8) Travelers may also elect to stay with friends or relatives or use their personal campers or trailer homes instead of staying in a hotel.

(a) With proof of staying overnight away from home on approved state business, the traveler will be reimbursed the following:

(i) $25 per night with no receipts required or

(ii) Actual cost up to $40 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

(9) Travelers who are on assignment away from their home base for longer than 90 days will be reimbursed as follows:

(a) First 30 days - follow regular rules for lodging and meals. Lodging receipt is required.

(b) After 30 days - $46 per day for lodging and meals. No receipt is required.

KEY: air travel, per diem allowances, state employees, transportation
Date of Enactment or Last Substantive Amendment: [~~April 21,~~]2010
Notice of Continuation: April 29, 2008
Authorizing, and Implemented or Interpreted Law: 63A-3-107; 63A-3-106

Administrative Services, Purchasing and General Services
R33-3
Source Selection and Contract Formulation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33650
FILED: 05/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the change to Rule R33-3 is to tighten restrictions on prepayments so that the state does not prepay for the services without obtaining the services. It also requires a performance bond in the amount of 100% of the prepayment amount.

SUMMARY OF THE RULE OR CHANGE: This rule change to Rule R33-3 is to tighten restrictions on prepayment so that the state does not prepay for the services without obtaining the services. It also requires a performance bond in the amount of 100% of the prepayment amount.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63G, Chapter 6

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: It is anticipated that this change to Rule R33-3 will save the state money by assuring that prepayments are only made when the circumstances are really necessary and any prepayments are under proper monitoring. The extent of such savings is currently unknown.
♦ LOCAL GOVERNMENTS: No costs or savings are anticipated for local governments with this change to Rule R33-3. No new requirements were created with this change that impact local governments.
♦ SMALL BUSINESSES: There may be a fiscal impact to costs for small businesses as a result of this change if they have to secure a payment bond. The extent of such costs is currently unknown.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There may be a fiscal impact to costs for persons other than small businesses, businesses, or local government entities if they have to secure a payment bond. The extent of such costs is currently unknown.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The change to Rule R33-3 does not affect compliance costs for affected persons unless they have to secure a payment bond if they wish to enter into a prepayment arrangement. The extent of such costs is currently unknown.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is anticipated that this change to Rule R33-3 will save the state money by assuring that prepayments are only made when the circumstances are really necessary and any prepayments are under proper monitoring.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 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:
♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
♦ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@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
♦ Nancy Orton by phone at 801-538-3148, by FAX at 801-538-3882, or by Internet E-mail at nancyo@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.
R33-3. Source Selection and Contract Formation.

. . . . . .

R33-3-2. Competitive Sealed Proposals.

3-201 Use of Competitive Sealed Proposals.

(1) Appropriateness. Competitive sealed proposals may be a more appropriate method for a particular procurement or type of procurement than competitive sealed bidding, after consideration of factors such as:

(a) whether there may be a need for price and service negotiation;

(b) whether there may be a need for negotiation during performance of the contract;

(c) whether the relative skills or expertise of the offerors will have to be evaluated;

(d) whether cost is secondary to the characteristics of the product or service sought, as in a work of art; and

(e) whether the conditions of the service, product or delivery conditions are unable to be sufficiently described in the Invitation for Bids.

(2) Determinations.

(a) Except as provided in Section 63G-6-408 of the Utah Procurement Code, before a solicitation may be issued for competitive sealed proposals, the procurement officer shall determine in writing that competitive sealed proposals is a more appropriate method for contracting than competitive sealed bidding.

(b) The procurement officer may make determinations by category of supply, service, or construction item rather than by individual procurement. Procurement of the types of supplies, services, or construction so designated may then be made by competitive sealed proposals without making the determination competitive sealed bidding is either not practicable or not advantageous. The officer who made the determination may modify or revoke it at any time and the determination should be reviewed for current applicability from time to time.

(3) Professional Services. For procurement of professional services, whenever practicable, the competitive sealed proposal process shall be used. Examples of professional services generally best procured through the RFP process are accounting and auditing, court reporters, x-ray technicians, legal, medical, nursing, education, actuarial, veterinarians, and research. The procurement officer will make the determination. Architecture and engineering professional services are to be procured in compliance with R33-5-510.

3-202 Content of the Request for Proposals.

The Request for Proposals shall be prepared in accordance with section 3-101 provided that it shall also include:

(a) a statement that discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award, but that proposals may be accepted without discussions; and

(b) a statement of when and how price should be submitted.

3-203 Proposal Preparation Time.

Proposal preparation time shall be set to provide offerors a reasonable time to prepare their proposals. A minimum of 10 calendar days shall be provided unless a shorter time is deemed necessary for a particular procurement as determined in writing by the procurement officer.

3-204 Form of Proposal.

The manner in which proposals are to be submitted, including any forms for that purpose, may be designated as a part of the Request for Proposals.

3-204.1 Protected Records.

The following are protected records and will be redacted subject to the procedures described below. From any public disclosure of records as allowed by the Governmental Records Access and Management [~~acte~~]Act (GRAMA) Title 63G, Chapter 2 of the Utah Code. The protections below apply to the various procurement records including records submitted by offerors and their subcontractors or consultants at any tier.

(a) Trade Secrets. Trade Secrets, as defined in Section 13-24-2, will be protected and not be subject to public disclosure if the procedures of R33-3-204.2 are met.

(b) Certain commercial information or nonindividual financial information. Commercial information or nonindividual financial information subject to the provisions of Section 63G-2-305(2) will be a protected record and not be subject to public disclosure if the procedures of R33-3-204.2 are met.

(c) Other Protected Records under GRAMA. There will be no public disclosure of other submitted records that are subject to non-disclosure or being a protected record under a GRAMA statute provided that the requirements of R33-3-204.2 are met unless GRAMA requires such nondisclosure without any preconditions.

3-204.2 Process For Requesting Non-Disclosure. Any person (firm) who believes that a record should be protected under R33-3-204.1 shall include with their proposal or submitted document:

(a) a written indication of which provisions of the submittal(s) are claimed to be considered for business confidentiality (including trade secret or other reason for non-disclosure under GRAMA; and

(b) a concise statement of reasons supporting each claimed provision of business confidentiality.

3-204.3 Notification. The person who complies with R33-3-204.2 shall be notified by the governmental entity prior to the public release of any information for which business confidentiality has been asserted.

3.204.4 Non-Disclosure and Dispute Process. Except as provided by court order, the governmental entity to whom the request for a record is made under GRAMA, may not disclose a record claimed to be protected under R33-3-204.1 but which the governmental entity or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal. This R33-3-204-4 does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the records committee. To the extent provided by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

3-204.5 Timing of Public Disclosure. Any allowed public disclosure of records submitted in the competitive sealed proposal process will only be made after the selection of the successful offeror(s) has been made public.

3-205 Public Notice.

Public notice shall be given by distributing the Request for Proposals in the same manner provided for distributing an Invitation for Bids under section 3-104.

3-206 Pre-Proposal Conferences.

Pre-proposal conferences may be conducted in accordance with section 3-106. Any conference should be held prior to submission of initial proposals.

3-207 Amendments to Request for Proposals.

Amendments to the Request for Proposals may be made in accordance with section 3-107 prior to submission of proposals. After submission of proposals, amendments to the Request for Proposals shall be distributed only to offerors who submitted proposals and they shall be allowed to submit new proposals or to amend those submitted. An amendment to the Request for Proposals may be issued through a request for submission of Best and Final Offers. If, in the opinion of the procurement officer, a contemplated amendment will significantly change the nature of the procurement, the Request for Proposals shall be canceled and a new Request for Proposals issued.

3-208 Modification or Withdrawal of Proposals.

Proposals may be modified or withdrawn prior to the established due date in accordance with section 3-108. For the purposes of this section and section 3-209, the established due date is either the date and time announced for receipt of proposals or receipt of modifications to proposals, if any; or if discussions have begun, it is the date and time by which best and final offers must be submitted, provided that only offerors who submitted proposals by the time announced for receipt of proposals may submit best and final offers.

3-209 Late Proposals, Late Withdrawals, and Late Modifications.

(1) Definition. Except for modification allowed pursuant to negotiation, any proposal, withdrawal, or modification received after the established due date and time at the place designated for receipt of proposals is late.

(2) Treatment. No late proposal, late modification, or late withdrawal will be considered unless received before contract award, and the late proposal would have been timely but for the action or inaction of personnel directly serving the procurement activity.

(3) Records. All documents shall be kept relating to the acceptance of any late proposal, modification or withdrawal.

3-210 Receipt and Registration of Proposals.

(1) Proposals shall be opened publicly, identifying only the names of the offerors. Proposals submitted through electronic means shall be received in such a manner that the time and date of submittal, along with the contents of such proposals shall be securely stored until the time and date set for opening. Proposals and modifications shall be time stamped upon receipt and held in a secure place until the established due date. After the date established for receipt of proposals, a register of proposals shall be open to public inspection and shall include for all proposals the name of each offeror, the number of modifications received, if any, and a description sufficient to identify the supply, service, or construction item offered. Prior to award proposals and modifications shall be shown only to purchasing agency personnel having a legitimate interest in them.

3-211 Evaluation of Proposals.

(1) Evaluation Factors in the Request for Proposals. The Request for Proposals shall state all of the evaluation factors and their relative importance, including price.

(2) Evaluation. The evaluation shall be based on the evaluation factors set forth in the Request for Proposals. Numerical rating systems may be used but are not required. Factors not specified in the Request for Proposals shall not be considered in determining award of contract.

(3) Classifying Proposals. For the purpose of conducting discussions under section 3-212, proposals shall be initially classified as:

(a) acceptable;

(b) potentially acceptable, that is, reasonably susceptible of being made acceptable; or

(c) unacceptable.

3-212 Proposal Discussion with Individual Offerors.

(1) "Offerors" Defined. For the purposes of this section, the term "offerors" includes only those businesses submitting proposals that are acceptable or potentially acceptable. The term shall not include businesses which submitted unacceptable proposals.

(2) Purposes of Discussions. Discussions are held to facilitate and encourage an adequate number of potential contractors to offer their best proposals, by amending their original offers, if needed.

(3) Conduct of Discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. The procurement officer should establish procedures and schedules for conducting discussions. If before, or during discussions there is a need for clarification or change of the Request for Proposals, it shall be amended in compliance with R33-3-2(3-207) to incorporate this clarification or change. Auction techniques and disclosure of any information derived from competing proposals are prohibited. Any oral clarification or change of a proposal shall be reduced to writing by the offeror.

(4) Best and Final Offers. The procurement officer shall establish a common time and date for submission of best and final offers. Best and final offers shall be submitted only once unless the procurement officer makes a written determination before each subsequent round of best and final offers demonstrating another round is in the purchasing agency's interest, and additional discussions will be conducted or the purchasing agency's requirements will be changed. Otherwise, no discussion of, or changes in, the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer.

3-213 Mistakes in Proposals.

(1) Mistakes Discovered Before the Established Due Date. An offeror may correct mistakes discovered before the time and date established for receipt of proposals by withdrawing or correcting the proposal as provided in section 3-208.

(2) Confirmation of Proposal. When it appears from a review of the proposal before award that a mistake has been made, the offeror should be asked to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn during any discussions that are held or if the conditions set forth in subsection (3) of this section are met.

(3) Mistakes Discovered After Receipt But Before Award. This subsection sets forth procedures to be applied in four situations in which mistakes in proposals are discovered after receipt of proposals but before award.

(a) During Discussions; Prior to Best and Final Offers. Once discussions are commenced with any offeror or after best and final offers are requested, any offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

(b) Minor Informalities. Minor informalities, unless otherwise corrected by an offeror as provided in this section, shall be treated as they are under competitive sealed bidding.

(c) Correction of Mistakes. If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the correct offer considered only if:

(i) the mistake and the correct offer are clearly evident on the face of the proposal in which event the proposal may not be withdrawn; or

(ii) the mistake is not clearly evident on the face of the proposal, but the offeror submits proof of evidentiary value which clearly and convincingly demonstrates both the existence of a mistake and the correct offer and the correction would not be contrary to the fair and equal treatment of other offerors.

(d) Withdrawal of Proposals. If discussions are not held, or if the best and final offers upon which award will be made have been received, the offeror may be permitted to withdraw the proposal if:

(i) the mistake is clearly evident on the face of the proposal and the correct offer is not; or

(ii) the offeror submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made but does not demonstrate the correct offer or, if the correct offer is also demonstrated, to allow correction on the basis that the proof would be contrary to the fair and equal treatment of other offerors.

(4) Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract.

3-214 Award.

(1) Award Documentation. A brief written justification statement shall be made showing the basis on which the award was found to be most advantageous to the state taking into consideration price and the other evaluation factors set forth in the Request for Proposals.

(2) One Proposal Received. If only one proposal is received in response to a Request for Proposals, the procurement officer may, as the officer deems appropriate, either make an award or, if time permits, resolicit for the purpose of obtaining additional competitive sealed proposals.

3-215 Publicizing Awards.

(1) After the selection of the successful offeror(s), notice of award shall be available in the purchasing agency's office and may be available on the internet.

(2) The following shall be disclosed to the public after notice of the selection of the successful offeror(s) and after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:

(a) the contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that are to be non-disclosed under R33-3-204;

(b) the unsuccessful proposals, except for those portions that are to be non-disclosed under R33-3-204;

(c) the rankings of the proposals;

(d) the names of the members of any selection committee (reviewing authority);

(e) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores or rankings.

(f) the written justification statement supporting the selection, except for those portions that are to be non-disclosed under R33-3-204.

(3) After due consideration and public input, the following has been determined by the Procurement Policy Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, and will not be disclosed by the governmental entity at any time to the public including under any GRAMA request:

(a) the names of individual scorers in relation to their individual scores or rankings;

(b) non-public financial statements; and

(c) past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the governmental entity. To the extent such past performance or reference information is included in the written justification statement, it is subject to public disclosure.

3-216 Exceptions to Competitive Sealed Proposal Process.

(1) As authorized by Section 63G-6-408(1) the Chief Procurement Officer or designee may determine that for a given request it is either not practicable or not advantageous for the state to procure a commodity or service referenced in section 3-201 above by soliciting competitive sealed proposals. When making this determination, the Chief Procurement Officer may take into consideration whether the potential cost of preparing, soliciting and evaluating competitive sealed proposals is expected to exceed the benefits normally associated with such solicitations. In the event of that it is so determined, the Chief Procurement Officer, head of a purchasing agency or designee may elect to utilize an alternative, more cost effective procurement method, which may include direct negotiations with a qualified vendor or contractor.

(2) Documentation of the alternative procurement method selected shall state the reasons for selection and shall be made a part of the contract file.

3-217 Multiple Award Contracts for Human Service Provider Services.

The Chief Procurement Officer, head of a purchasing agency or designee may elect to award multiple contracts for Human Service Provider Services through a competitive sealed proposal process by first determining the appropriate fee to be paid to providers and then contracting with all providers meeting the criteria established in the RFP. However this specialized system of contracting for human service provider services may only be used when:

(1) The agency has performed an appropriate analysis to determine appropriate rates to be paid;

(2) The agency files contain adequate documentation of the reasons the contractor was awarded the contract and the reasons for selecting a particular contractor to provide the service to each client; and

(3) The agency has a formal written complaint and appeal process, notice of which is provided to the contractors, and an internal audit function to insure that selection of the contractor from the list of awarded contractors was fair, equitable and appropriate.

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R33-3-7. Types of Contracts.

3-701 Policy Regarding Selection of Contract Types.

(1) General. The selection of an appropriate contract type depends on factors such as the nature of the supplies, services, or construction to be procured, the uncertainties which may be involved in contract performance, and the extent to which the purchasing agency or the contractor is to assume the risk of the cost of performance of the contract. Contract types differ in the degree of responsibility assumed by the contractor for the costs of

performance and the amount and kind of profit incentive offered the contractor to achieve or exceed specified standards or goals.

Among the factors to be considered in selecting any type of contract are:

(a) the type and complexity of the supply, service, or construction item being procured;

(b) the difficulty of estimating performance costs such as the inability of the purchasing agency to develop definitive specifications, to identify the risks to the contractor inherent in the nature of the work to be performed, or otherwise to establish clearly the requirements of the contract;

(c) the administrative costs to both parties;

(d) the degree to which the purchasing agency must provide technical coordination during the performance of the contract;

(e) the effect of the choice of the type of contract on the amount of competition to be expected;

(f) the stability of material or commodity market prices or wage levels;

(g) the urgency of the requirement;

(h) the length of contract performance; and

(i) federal requirements.

The purchasing agency should not contract in a manner that would place an unreasonable economic risk on the contractor, since this action would tend to jeopardize satisfactory performance on the contract.

(2) Use of Unlisted Contract Types. The provisions of this subpart list and define the principal contract types. In addition, any other type of contract, except cost-plus-a-percentage-of-cost, may be used provided the procurement officer determines in writing that this use is in the purchasing agency's best interest.

(3) Prepayments.

(a) In general, it is the policy of the state that payments to contractors and vendors cannot be made until after services are actually rendered or goods are actually received. It may be necessary or beneficial to the state in certain instances to pay for goods or services before delivery.

(b) Prepayments are allowable in any of the following circumstances when approved by the Chief Procurement Officer or Head of a Purchasing Agency, or any of their authorized designees, and the using agency has policies and procedures that ensure that prepaid goods or services are actually received in the condition as required by the contract or purchase order:

(i) When it is the customary practice for the type of goods or services involved, including insurance, rent, certain maintenance contracts, seminars, or subscriptions.

(ii) When the using agency will receive additional benefit for prepayment, including price breaks on prepaid maintenance contracts, or registrations which would not be available if the charge was paid after delivery, and other benefits which are identifiable.

(c) All prepaid expenditures must be supported by documentation, which states the goods or services to be furnished, the date of delivery, the payment terms, and remedies for non-compliance.

(d) The Chief Procurement Officer or Head of a Purchasing Agency, or any of their authorized designees, may:

(i) Authorize the use of prepayments upon receipt of a written request from the using agency. The request must acknowledge that the using agency understands the liability and risk associated with the failure of a vendor or contractor to perform the prepaid services or provide the prepaid goods.

(ii) Require a performance bond in an amount up to 100% of the prepayment amount. The performance bond must be delivered to the state prior to the time the contract is executed or a purchase order is issued. Performance bonds must be from sureties meeting the requirements of Subsection R33-5-341(b) and be on forms acceptable to the state. If a contractor or vendor fails to deliver a required performance bond, the original award may be cancelled and the award may thereafter be made in accordance with the applicable provision of Rule R33-3.

3-702 Fixed-Price Contracts.

(1) General. A fixed-price contract is the preferred and generally utilized type of contract. A fixed-price contract places responsibility on the contractor for the delivery of the product or the complete performance of the services or construction in accordance with the contract terms at a price that may be firm or subject to contractually specified adjustments. The fixed-price contract is appropriate for use when there is a reasonably definitive requirement, as in the case of construction or standard commercial products. The use of a fixed-price contract when risks are unknown or not readily measurable in terms of cost can result in inflated prices and inadequate competition; poor performance, disputes, and claims when performance proves difficult; or excessive profits when anticipated contingencies do not occur.

(2) Firm Fixed-Price Contract. A firm fixed-price contract provides a price that is not subject to adjustment.

(3) Fixed-Price Contract with Price Adjustment.

(a) A fixed-price contract with price adjustment provides for variation in the contract price under special conditions defined in the contract, other than customary provisions authorizing price adjustments due to modifications to the work. The formula or other basis by which the adjustment in contract price can be made shall be specified in the solicitation and the resulting contract. However, clauses providing for most-favored-customer prices for the purchasing agency, that is, the price to the purchasing agency will be lowered to the lowest priced sales to any other customer made during the contract period, shall not be used. Examples of conditions under which adjustments may be provided in fixed-price contracts are:

(i) changes in the contractor's labor contract rates;

(ii) changes due to rapid and substantial price fluctuations, which can be related to an accepted index; and

(iii) when a general price change alters the base price.

(b) If the contract permits unilateral action by the contractor to bring about the condition under which a price increase may occur, the contract shall reserve to the purchasing agency the right to reject the price increase and terminate the contract without cost or damages. Notice of the price increase shall be given by the contractor in the manner and within the time specified in the contract.

3-703 Cost-Reimbursement Contracts.

(1) General. The cost-reimbursement contract provides for payment to the contractor of allowable costs incurred in the performance of the contract as determined in accordance with part 7 of these rules and provided in the contract. This type of contract establishes at the outset an estimated cost for the performance of the contract and a dollar ceiling which the contractor may not exceed without prior approval of subsequent ratification by the

procurement officer and, in addition, may provide for payment of a fee. The contractor agrees to perform as specified in the contract until the contract is completed or until the costs reach the specified ceiling, whichever occurs first.

This contract type is appropriate when the uncertainties involved in contract performance are of a magnitude that the cost of contract performance cannot be estimated with sufficient reasonableness to permit use of any type of fixed-price contract. In addition, a cost-reimbursement contract necessitates appropriate monitoring by purchasing agency personnel during performance so as to give reasonable assurance that the objectives of the contract are being met. It is particularly suitable for research, development, and study-type contracts.

(2) Determination Prior to Use. A cost-reimbursement contract may be used only when the procurement officer determines in writing that:

(a) a contract is likely to be less costly to the purchasing agency than any other type or that it is impracticable to obtain otherwise, the supplies, services, or construction;

(b) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

(c) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

(3) Cost Contract. A cost contract provides that the contractor will be reimbursed for allowable costs incurred in performing the contract.

(4) Cost-Plus-Fixed-Fee Contract. This is a cost-reimbursement type contract which provides for payment to the contractor of an agreed fixed fee in addition to reimbursement of allowable, incurred costs. The fee is established at the time of contract award and does not vary whether the actual cost of contract performance is greater or less than the initial estimated cost established for the work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee is subject to adjustment only if the contract is modified to provide for an increase or decrease in the work specified in the contract.

3-704 Cost Incentive Contracts.

(1) General. Cost incentive contracts provide for the sharing of cost risks between the purchasing agency and the contractor. This type of contract provides for the reimbursement to the contractor of allowable costs incurred up to a ceiling amount and establishes a formula in which the contractor is rewarded for performing at less than target cost or is penalized if it exceeds target cost. Profit or fee is dependent on how effectively the contractor controls cost in the performance of the contract.

(2) Fixed-Price Cost Incentive Contract.

(a) Description. In a fixed-price cost incentive contract, the parties establish at the outset a target cost, a target profit, a cost-sharing formula which provides a percentage increase or decrease of the target profit depending on whether the cost of performance is less than or exceeds the target cost, and a ceiling price. After performance of the contract, the actual cost of performance is arrived at based on the total incurred allowable cost as determined in accordance with part 7 of these rules and as provided in the contract. The final contract price is then established in accordance with the cost-sharing formula using the actual cost of performance. The final contract price may not exceed the ceiling price. The contractor is obligated to complete performance of the contract, and, if actual cost exceeds the ceiling price, the contractor suffers a loss.

(b) Objective. The fixed-price cost incentive contract serves three objectives. It permits the establishment of a firm ceiling price for performance of the contract which takes into account uncertainties and contingencies in the cost of performance. It motivates the contractor to perform the contract economically since cost is in inverse relation to profit; the lower the cost, the higher the profit. It provides a flexible pricing mechanism for establishing a cost sharing responsibility between the purchasing agency and contractor depending on the nature of the supplies, services, or construction being procured, the length of the contract performance, and the performance risks involved.

(3) Cost-Plus Contract with Cost Incentive Fee. In a cost-plus contract with cost incentive fee, the parties establish at the outset a target cost; a target fee; a cost-sharing formula for increase or decrease of fee depending on whether actual cost of performance is less than or exceeds the target cost, with maximum and minimum fee limitations; and a cost ceiling which represents the maximum amount which the purchasing agency is obligated to reimburse the contractor. The contractor continues performance until the work is complete or costs reach the ceiling specified in the contract, whichever first occurs. After performance is complete or costs reach the ceiling, the total incurred, allowable costs reimbursed in accordance with part 7 of these rules and as provided in the contract are applied in the cost-sharing formula to establish the incentive fee payable to the contractor. This type contract gives the contractor a stronger incentive to efficiently manage the contract than a cost-plus-fixed-fee contract provides.

(4) Determinations Required. Prior to entering into any cost incentive contract, the procurement officer shall make the written determination required by subsections 3-703(2)(b) and (c) of these rules. In addition, prior to entering any cost-plus contract with cost incentive fee, the procurement officer shall include in the written determination the determination required by subsection 3-703(2)(a) of these rules.

3-705 Performance Incentive Contracts.

In a performance incentive contract, the parties establish at the outset a pricing basis for the contract, performance goals, and a formula for increasing or decreasing the compensation if the specified performance goals are exceeded or not met. For example, early completion may entitle the contractor to a bonus while late completion may entitle the purchasing agency to a price decrease.

3-706 Time and Materials Contracts; Labor Hour Contracts.

(1) Time and Materials Contracts. Time and materials contracts provide for payment for materials at cost and labor performed at an hourly rate which includes overhead and profit. These contracts provide no incentives to minimize costs or effectively manage the contract work. Consequently, all such contracts shall contain a stated cost ceiling and shall be entered into only after the procurement officer determines in writing that:

(a) personnel have been assigned to closely monitor the performance of the work; and

(b) no other type of contract will suitably serve the purchasing agency's purpose.

(2) Labor Hour Contracts. A labor hour contract is the same as a time and materials contract except the contractor supplies no material. It is subject to the same considerations, and the procurement officer shall make the same determinations before it is used.

3-707 Definite Quantity and Indefinite Quantity Contracts.

(1) Definite Quantity. A definite quantity contract is a fixed-price contract that provides for delivery of a specified quantity of supplies or services either at specified times or when ordered.

(2) Indefinite Quantity. An indefinite quantity contract is a contract for an indefinite amount of supplies or services to be furnished as ordered that establishes unit prices of a fixed-price type. Generally an approximate quantity or the best information available is stated in the solicitation. The contract may provide a minimum quantity the purchasing agency is obligated to order and may also provide for a maximum quantity provision that limits the purchasing agency's obligation to order. The time of performance of an indefinite quantity contract may be extended upon agreement of the parties provided the extension is for 90 days or less and the procurement officer determines in writing that it is not practical to award another contract at the time of the extension.

(3) Requirements Contracts. A requirements contract is an indefinite quantity contract for supplies or services that obligates the purchasing agency to order all the actual, normal requirements of designated using agencies during a specified period of time; and for the protection of the purchasing agency and the contractor. Invitations for Bids and resulting requirements contracts shall include a provision. However, the purchasing agency may reserve in the solicitation and in the resulting contract the right to take bids separately if a particular quantity requirement arises which exceeds an amount specified in the contract. Requirements contracts shall contain an exemption from ordering under the contract when the procurement officer approves a finding that the supply or service available under the contract will not meet a nonrecurring, special need of the purchasing agency.

3-708 Progressive and Multiple Awards.

(1) Progressive Award. A progressive award is an award of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity procured. A progressive award may be in the purchasing agency's best interest when awards to more than one bidder or offeror for different amounts of the same item are needed to obtain the total quantity or the time or times of delivery required.

(2) Multiple Award. A multiple award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror, and the purchasing agency is obligated to order all of its actual, normal requirements for the specified supplies or services from those contractors. A multiple award may be in the purchasing agency's best interest when award to two or more bidders or offerors for similar products is needed for adequate delivery, service, or availability, or for product compatibility. In making a multiple award, care shall be exercised to protect and promote the principles of competitive solicitation. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the requirements of the users that can be met under the contract be obtained in accordance with the contract, provided, that:

(a) the purchasing agency shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds an amount specified in the contract; or

(b) the purchasing agency shall reserve the right to take bids separately if the procurement officer approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the agency.

(3) Intent to Use. If a progressive or multiple award is anticipated prior to issuing a solicitation, the method of award shall be stated in the solicitation.

3-709 Leases.

(1) Use. A lease may be entered into provided:

(a) it is in the best interest of the purchasing agency;

(b) all conditions for renewal and costs of termination are set forth in the lease; and

(c) the lease is not used to avoid a competitive procurement.

(2) Competition. Lease and lease-purchase contracts are subject to the requirements of competition which govern the procurement of supplies.

(3) Lease with Purchase Option. A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive bidding or competitive proposals, unless the requirement can be met only by the supply or facility being leased as determined in writing by the procurement officer. Before exercising this option, the procurement officer shall:

(a) investigate alternative means of procuring comparable supplies or facilities; and

(b) compare estimated costs and benefits associated with the alternative means and the exercise of the option, for example, the benefit of buying new state of the art data processing equipment compared to the estimated, initial savings associated with exercise of a purchase option.

3-710 Multi-Year Contracts; Installment Payments.

(1) Use. A contract may be entered into which extends beyond the current fiscal period provided any obligation for payment in a succeeding fiscal period is subject to the availability of funds.

(2) Termination. A multi-year contract may be terminated without cost to the purchasing agency by reason of unavailability of funds for the purpose or for lack of performance by the contractor. Termination for other reason shall be as provided by the contract.

(3) Installment Payments. Supply contracts may provide for installment purchase payments, including interest charges, over a period of time. Installment payments, however, should be used judiciously in order to achieve economy and not to avoid budgetary restraints, and shall be justified in writing by the head of the using agency. Heads of using agencies shall be responsible for ensuring that statutory or other prohibitions are not violated by use of installment provisions and that all budgetary or other required prior approvals are obtained. No agreement shall be used unless provision for installment payments is included in the solicitation document.

3-711 Contract Option.

(1) Provision. Any contract subject to an option for renewal, extension, or purchase, shall have had a provision included in the solicitation. When a contract is awarded by competitive

sealed bidding, exercise of the option shall be at the purchasing agency's discretion only, and not subject to agreement or acceptance by the contractor.

(2) Exercise of Option. Before exercising any option for renewal, extension, or purchase, the procurement officer should attempt to ascertain whether a competitive procurement is practical, in terms of pertinent competitive and cost factors, and would be more advantageous to the purchasing agency than renewal or extension of the existing contract.

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KEY: government purchasing
Date of Enactment or Last Substantive Amendment: [~~August 1, 2008~~]2010
Notice of Continuation: November 23, 2007
Authorizing, and Implemented or Interpreted Law: 63G-6

Administrative Services, Purchasing and General Services
R33-5
Construction and Architect-Engineer Selection

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33635
FILED: 05/11/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change to Rule R33-5 increases the amount regarding small purchases for construction from $10,000 to $25,000 and allows the Procurement Officer to procure small purchases for professional services related to construction including cost estimators, project schedulers, building inspectors, code inspectors, special inspectors, and testing entities if the cost of such professional service is $100,000 or less in any manner that the Procurement Officer shall deem to be adequate and reasonable, which is a similar amount currently for architectural and engineer services. Grammatical errors and small changes for consistency were also made throughout the rule.

SUMMARY OF THE RULE OR CHANGE: The rule change to Rule R33-5: increases the amount regarding small purchases for construction from $10,000 to $25,000 and allows the Procurement Officer to procure small purchases for professional services related to construction including cost estimators, project schedulers, building inspectors, code inspectors, special inspectors, and testing entities if the cost of such professional service is $100,000 or less in any manner that the Procurement Officer shall deem to be adequate and reasonable, which is a similar amount currently for architectural and engineer services. Grammatical errors and small changes for consistency were also made throughout the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-6-101

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: It is anticipated this change to Rule R33-5 could result in a minimal savings to the state budget. The minimal savings will be a result of less state employee staff time spent on procurement of professional services related to construction. The actual amount of these savings is unknown until this rule is implemented.
♦ LOCAL GOVERNMENTS: It is not anticipated that there could be either a cost or savings to local government because local governments do not have any jurisdiction or costs associated with state facilities and grounds owned, occupied, or leased by the State for the use of its departments and/or agencies.
♦ SMALL BUSINESSES: It is anticipated there could be minimal savings to small businesses employing fewer than 50 persons if the business is involved in construction or provides professional services related to construction, including cost estimators and project schedulers, architects, and engineers. This savings could result due to a decrease in staff time spent on proposals and bids and obtaining signatures on said proposals. It is not possible to know an actual amount of these savings until this rule is implemented and each business would be different depending on business size and the scope of work of each project.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is not anticipated there could be any costs to other than small businesses, businesses, or local government entities because Rule R33-5 applies to state construction projects and the procurement of professional services related to construction. The rule changes do not include services from any individual, partnership, corporation, association, governmental entity or public or private organization other than those who provide professional services for construction.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is not anticipated there will be any anticipated compliance costs to implement this change to Rule R33-5. There could be a cost savings for affected persons due to the reduction of staff time spent on state construction projects.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact on businesses could be a minimal cost savings in staff time and compensation.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES

ROOM 3150 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:
♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
♦ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@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
♦ Nancy Orton by phone at 801-538-3148, by FAX at 801-538-3882, or by Internet E-mail at nancyo@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.
R33-5. Construction and Architect-Engineer Selection.
R33-5-101. Purpose and Authority.

As required by Sections 63G-6-501, 63G-6-504(2), 63G-6-506 and 63G-6-601, this rule contains provisions applicable to:

(1) selecting the appropriate method of management for construction contracts, that is, the contracting method and configuration that will most likely result in timely, economical, and otherwise successful completion of the construction project.

(2) establishing appropriate bid, performance, and payment bond requirements including criteria allowing for waiver of these requirements.

(3) governing appropriate contract provisions.

R33-5-102. Application.

The provisions of this chapter shall apply to all procurements of construction which are estimated to be greater than $50,000. Procurement of construction expected to be less than $50,000 shall be made in accordance with Section R33-3-3 (Small Purchases) except bid, performance and payment bonds shall be required unless waived in accordance with Section R33-5-355 (Waiver of Bonding Requirements on Small Projects).

R33-5-201. Methods of Construction Contract Management.

(1) Application. This section contains provisions applicable to the selection of the appropriate type of construction contract management.

(2) Flexibility. It is intended that the Procurement Officer have sufficient flexibility in formulating the construction contract management method for a particular project to fulfill the needs of the procuring agencies. In each instance, consideration commensurate with the project's size and importance should be given to all the appropriate and effective means of obtaining both the design and construction of the project. The methods for achieving the purposes set forth in this rule are not to be construed as an exclusive list.

(3) Selecting the Method of Construction Contracting. In selecting the construction contracting method, the Procurement Officer should consider the results achieved on similar projects in the past and the methods used. Consideration should be given to all appropriate and effective methods and their comparative advantages and disadvantages and how they might be adapted or combined to fulfill the needs of the procuring agencies.

(4) Criteria for Selecting Construction Contracting Methods. Before choosing the construction contracting method to use, a careful assessment must be made by the Procurement Officer of requirements the project must satisfy and those other characteristics that would be desirable. Some of the factors to consider are:

(a) when the project must be ready to be occupied;

(b) the type of project, for example, housing, offices, labs, heavy or specialized construction;

(c) the extent to which the requirements of the procuring agencies and the ways in which they are to be met are known;

(d) the location of the project;

(e) the size, scope, complexity, and economics of the project;

(f) the amount and type of financing available for the project, including whether the budget is fixed or what the source of funding is, for example, general or special appropriation, federal assistance moneys, general obligation bonds or revenue bonds, lapsing/nonlapsing status and legislative intent language;

(g) the availability, qualification, and experience of State personnel to be assigned to the project and how much time the State personnel can devote to the project;

(h) the availability, experience and qualifications of outside consultants and contractors to complete the project under the various methods being considered.

(5) General Descriptions.

(a) Use of Descriptions. The following descriptions are provided for the more common contracting methods. The methods described are not all mutually exclusive and may be combined on a project. These descriptions are not intended to be fixed in respect to all construction projects of the State. In each project, these descriptions may be adapted to fit the circumstances of that project. However, the Procurement Officer should endeavor to ensure that these terms are described adequately in the appropriate contracts, are not used in a misleading manner, and are understood by all relevant parties.

(b) Single Prime Contractor. The single prime contractor method is typified by one business, acting as a general contractor, contracting with the state to timely complete an entire construction project in accordance with drawings and specifications provided by the state. Generally the drawings and specifications are prepared by an architectural or engineering firm under contract with the state. Further, while the general contractor may take responsibility for successful completion of the project, much of the work may be performed by specialty contractors with whom the prime contractor has entered into subcontracts.

(c) Multiple Prime Contractors. Under the multiple prime contractor method, the State or the State's agent contracts directly with a number of specialty contractors to complete portions

of the project in accordance with the State's drawings and specifications. The State or its agent may have primary responsibility for successful completion of the entire project, or the contracts may provide that one of the multiple prime contractors has this responsibility.

(d) Design-Build. In a design-build project, a business contracts directly with the State to meet the State's requirements as described in a set of performance specifications. Design responsibility and construction responsibility both rest with the design-build contractor. This method can include instances where the design-build contractor supplies the site as part of the package.

(e) Construction Manager. A construction manager is a person experienced in construction that has the ability to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the administration of change orders. The State may contract with the construction manager early in a project to assist in the development of a cost effective design. The construction manager may become the single prime contractor, or may guarantee that the project will be completed on time and will not exceed a specified maximum price. This method is frequently used on fast track projects with the construction manager obtaining subcontractors through the issuance of multiple bid packages as the design is developed. The procurement of a construction manager may be based, among other criteria, on proposals for a management fee which is either a lump sum or a percentage of construction costs with a guaranteed maximum cost. If the design is sufficiently developed prior to the selection of a construction manager, the procurement may be based on proposals for a lump sum or guaranteed maximum cost for the construction of the project. The contract with the construction manager may provide for a sharing of any savings which are achieved below the guaranteed maximum cost.

(f) Sequential Design and Construction. Sequential design and construction denotes a method in which design of substantially the entire structure is completed prior to beginning the construction process.

(g) Phased Design and Construction. Phased design and construction denotes a method in which construction is begun when appropriate portions have been designed but before design of the entire structure has been completed. This method is also known as fast track construction.

. . . . . .

R33-5-260. Construction Manager: Use.

(1) The State may contract with the construction manager early in a project to assist in the development of a cost effective design. The construction manager may become the single prime contractor, or may guarantee that the project will be completed on time and will not exceed a specified maximum price. This method is frequently used on fast track projects with the construction manager obtaining subcontractors through the issuance of multiple bid packages as the design is developed. The procurement of a construction manager may be based, among other criteria, on proposals for a management fee which is either a lump sum or a percentage of construction costs with a guaranteed maximum cost. If the design is sufficiently developed prior to the selection of a construction manager, the procurement may be based on proposals for a lump sum or guaranteed maximum cost for the construction of the project. The contract with the construction manager may provide for a sharing of any savings which are achieved below the guaranteed maximum cost.

(2) When entering into any subcontract that was not specifically included in the construction manager's cost proposal submitted at the time the contract manager was selected, the construction manager shall procure that subcontractor by using one of the source selection methods authorized by these rules in the same manner as if the subcontract work was procured directly by the state.

R33-5-262. Construction Manager: Contractual Provisions.

The construction manager's contract shall clearly set forth the duties and authority of the construction manager in respect to all the participants in the project. The contract shall also define the liability of the State and the construction manager for failure to properly coordinate specialty contractors' work.

R33-5-270. Sequential Design and Construction: Use.

When the state selects the sequential design and construction method, it shall gather a team to design the project and provide a complete set of drawings and specifications to use in awarding the construction contract or contracts. When this team uses a construction manager he may, in addition to reviewing the drawings and specifications, assist in separating them into packets when multiple prime contractors are used. Except for redesign necessitated by changes in State requirements or problems encountered during construction, design is complete at the time construction has begun.

R33-5-280. Phased Design and Construction: Use.

When the phased design and construction method is used, the architect-engineer, and construction manager, (if one is used) shall resolve major design decisions, and shall prepare the detail design work in the sequence necessary to construct the project. Thus, construction can begin before design is complete for the entire project. Construction shall only begin after the State's requirements are set, the overall (schematic) design is complete, and the complete drawings and specifications for the first construction phase are ready. The construction manager may also assist in packaging the various specialty contracts and to [~~managing~~]manage the work under those contracts.

R33-5-281. Phased Design and Construction: Contractual Provisions.

Contracts shall clearly establish:

(1) architect-engineer's obligation to design the project in a manner that allows for phased construction to allow phasing of project design.

(2) specialty contractor's scope of work and duties to other contractors and the State.

(3) the management rights of the State and its construction manager when used.

R33-5-311. Bid Security: General.

Invitations for Bids on State construction contracts estimated to exceed $50,000 shall require the submission of bid security in an amount equal to at least 5% of the bid, at the time the

bid is submitted. If a contractor fails to accompany its bid with the required bid security, the bid shall be deemed nonresponsive, in accordance with Section R33-3-112 (Bid Evaluation and Award, Responsibility and Responsiveness) except as provided by Section R33-5-313 (Nonsubstantial Failure to Comply).

R33-5-312. Bid Security: Acceptable Bid Security.

Acceptable bid security shall be limited to:

(a) a bid bond in a form satisfactory to the State underwritten by a company licensed to issue bid bonds in this State;

(b) a cashier's, certified, or official check drawn by a federally insured financial institution; or

(c) cash.

R33-5-313. Bid Security: Nonsubstantial Failure to Comply.

If a bid does not comply with the security requirements of this Rule, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the Chief Procurement Officer, the head of a Purchasing Agency, or the designee of such officer to be nonsubstantial where:

(a) only one bid is received, and there is not sufficient time to rebid the contract;

(b) the amount of the bid security submitted, though less than the amount required by the Invitation for Bids, is equal to or greater than the difference in the price stated in the next higher acceptable bid; or

(c) the bid guarantee becomes inadequate as a result of the correction of a mistake in the bid or bid modification in accordance with Section R33-3-111 (Mistakes in Bids), if the bidder increases the amount of guarantee to required limits within 48 hours after the bid opening.

R33-5-321. Performance Bonds: General.

A performance bond is required for all construction contracts in excess of $50,000, in the amount of 100% of the contract price. The performance bond shall be delivered by the contractor to the State at the same time the contract is executed. If a contractor fails to deliver the required performance bond, the contractor's bid shall be rejected, its bid security shall be enforced, and award of the contract shall be made to the next lowest bidder in accordance with Section R33-3-112 (Bid Evaluation and Award, Responsibility and Responsiveness).

R33-5-331. Payment Bonds: General.

A payment bond is required for all construction contracts in excess of $50,000, in the amount of 100% of the contract price. The payment bond shall be delivered by the contractor to the State at the same time the contract is executed. If a contractor fails to deliver the required payment bond, the contractor's bid shall be rejected, its bid security shall be enforced, and award of the contract shall be made to the next lowest bidder in accordance with Section R33-3-112 (Bid Evaluation and Award, Responsibility and Responsiveness).

R33-5-341. Bond Forms.

(a) Bid Bonds, Payment Bonds and Performance Bonds must be from sureties meeting the requirements of Subsection R33-5-341(b) and must be on the exact bond forms most recently adopted by the Board and on file with the [~~e~~]Chief [~~p~~]Procurement [~~o~~]Officer, except bid bonds for projects under $1,000,000 as provided by subparagraph (c).

(b) Surety firm requirements. All surety firms must be authorized to do business in the State of Utah and be listed in the U.S. Department of the Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Securities on Federal Bonds and as Acceptable Reinsuring Companies for an amount not less than the amount of the bond to be issued. A cosurety may be utilized to satisfy this requirement.

(c) For projects estimated to cost less than $1,000,000, the State may accept bid bonds on forms provided by appropriately licensed sureties. For projects estimated to exceed $1,000,000, the bid bond shall be on the exact bid bond forms adopted by the board as required by Subsection R33-5-341(a).

R33-5-350. Waiver of Bonding Requirements on Any Project.

The [~~e~~]Chief [~~p~~]Procurement [~~o~~]Officer, or head of the purchasing agency, may waive the bonding requirement if he finds, in writing, that bonds cannot reasonably be obtained for the work involved. Prior to waiver of the bonding requirement, the head of the requesting agency or designee shall agree in writing to the waiver. The agency will also be advised that the State cannot waive the liability associated with a judgment against the State, in the event of non-payment to a subcontractor or supplier. In the event of a judgment, the requesting agency would be required to make payment to the injured party.

R33-5-355. Waiver of Bonding Requirements on Small Projects.

The Chief Procurement Officer, or designated procurement official, may elect not to require a Performance or Payment Bond as required under Section 63G-6-504 Utah Code Annotated, 1953 as amended, if the estimated total procurement does not exceed $50,000. Prior to waiver of the bonding requirement, the head of the requesting agency or designee shall agree in writing to the waiver. The agency will also be advised that the State cannot waive the liability associated with a judgment against the State, in the event of non-payment to a subcontractor or supplier. In the event of a judgment, the requesting agency would be required to make payment to the injured party.

R33-5-401. Construction Contract Clauses: Introduction.

The contract clauses presented in this rule are promulgated for use in construction contracts in accordance with Section 63G-6-601(Contract Clauses) of the Utah Procurement Code. Alternative clauses are provided in one instance to permit accommodation of differing contract situations.

R33-5-402. Mandatory Construction Contract Clauses.

The following construction contract clauses shall be included in all construction contracts: Section R33-5-420 Changes Clause; Section R33-5-440 Suspension of Work Clause; Section R33-5-460 Price Adjustment Clause; Section R33-5-470 Claims Based on a Procurement Officer's Actions or Omissions Clause; Section R33-5-480 Default Delay - Time Extension Clause; Section R33-5-495 Termination for Convenience Clause; Section R33-5-497 Remedies Clause.

R33-5-403. Optional Construction Contract Clauses.

The following construction contract clauses may optionally be used in appropriate contracting situations: Section R33-5-430 Variations in Estimated Quantities Clause; Section R33-5-450 Differing Site Conditions Clause; Section R33-5-490 Liquidated Damages Clause.

R33-5-410. Construction Contract Clauses: Revisions to Contract Clauses.

The clauses set forth in this rule may be varied for use in a particular contract when, pursuant to the provisions of Section 63G-6-601 (Contract Clauses) of the Utah Procurement Code, the Chief Procurement Officer or the head of a Purchasing Agency makes a written determination describing the circumstances justifying the variation or variations.

Any material variation from these clauses shall be described in the solicitation documents in substantially the following form:

"Clause No. ....., entitled ....., is not a part of the general terms and conditions of this contract, and has been replaced by Special Clause No. ....., entitled ..... Your attention is specifically directed to this clause."

. . . . . .

R33-5-450. Construction Contract Clauses: Differing Site Conditions Clause.

Set forth below are alternative differing site conditions clauses to be used as appropriate.

(ALTERNATIVE A)

"DIFFERING SITE CONDITIONS: PRICE ADJUSTMENTS

(1) Notice. The contractor shall promptly, and before such conditions are disturbed, notify the Procurement Officer of:

(a) subsurface or latent physical conditions at the site differing materially from those indicated in this contract; or

(b) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this contract.

(2) Adjustments of Price or Time for Performance. After receipt of such notice, the Procurement Officer shall promptly investigate the site, and if it is found that such conditions do materially so differ and cause an increase in the contractor's cost of, or the time required for, performance of any part of the work under this contract, whether or not changed as a result of such conditions, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

(3) Timeliness of Claim. No claim of the contractor under this clause shall be allowed unless the contractor has given the notice required in this clause; provided, however, that the time prescribed therefor may be extended by the Procurement Officer in writing.

(4) No Claim After Final Payment. No claim by the contractor for an adjustment thereunder shall be allowed if asserted after final payment under this contract.

(5) Knowledge. Nothing contained in this clause shall be grounds for an adjustment in compensation if the contractor had actual knowledge of the existence of such conditions prior to the submission of bids."

(END OF ALTERNATIVE A)

(ALTERNATIVE B)

"SITE CONDITIONS CONTRACTOR'S RESPONSIBILITY

The contractor accepts the conditions at the construction site as they eventually may be found to exist and warrants and represents that the contract can and will be performed under such conditions, and that all materials, equipment, labor, and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at the contractor's own cost and expense, anything in this contract to the contrary notwithstanding."

(END OF ALTERNATIVE B)

R33-5-460. Construction Contract Clauses: Price Adjustment Clause.

"PRICE ADJUSTMENT

(1) Price Adjustment Methods. Any adjustment in contract price pursuant to clauses in this contract shall be made in one or more of the following ways:

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(b) by unit prices specified in the contract or subsequently agreed upon;

(c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;

(d) in such other manner as the parties may mutually agree; or

(e) in the absence of agreement between the parties, by a unilateral determination by the Procurement Officer of costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the Procurement Officer in accordance with generally accepted accounting principles and applicable sections of the rules promulgated under Section 63G-6-415(Cost Principles) and subject to the provisions of Part H (Legal and Contractual Remedies) of the Utah Procurement Code.

(2) Submission of Cost or Pricing Data. The contractor shall submit cost or pricing data for any price adjustments subject to the provisions of Section 63G-6-415 (Cost Principles) of the Utah Procurement Code."

R33-5-470. Construction Contract Clauses: Claims Based on a Procurement Officer's Actions or Omissions Clause.

"CLAIMS BASED ON A PROCUREMENT OFFICER'S ACTIONS OR OMISSIONS

(1) Notice of Claim. If any action or omission on the part of a Procurement Officer or designee of such officer, requiring performance changes within the scope of the contract constitutes the basis for a claim by the contractor for additional compensation, damages, or an extension of time for completion, the contractor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, the contractor shall not be deemed to have prejudiced any claim for

additional compensation, damages, or an extension of time for completion; provided:

(a) the contractor shall have given written notice to the Procurement Officer or designee of such officer:

(i) prior to the commencement of the work involved, if at that time the contractor knows of the occurrence of such action or omission;

(ii) within 30 days after the contractor knows of the occurrence of such action or omission, if the contractor did not have such knowledge prior to the commencement of the work; or

(iii) within such further time as may be allowed by the Procurement Officer in writing.

This notice shall state that the contractor regards the act or omission as a reason which may entitle the contractor to additional compensation, damages, or an extension of time. The Procurement Officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Procurement Officer or designee of such officer;

(b) the notice required by Subparagraph (a) of this Paragraph describes as clearly as practicable at the time the reasons why the contractor believes that additional compensation, damages, or an extension of time may be remedies to which the contractor is entitled; and

(c) the contractor maintains and, upon request, makes available to the Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

(2) Limitation of Clause. Nothing herein contained, however, shall excuse the contractor from compliance with any rules of law precluding any State officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

(3) Adjustments of Price. Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract."

R33-5-480. Construction Contract Clauses: Default-Delay-Time Extensions Clause.

"TERMINATION FOR DEFAULT FOR NONPERFORMANCE OR DELAY DAMAGES FOR DELAY-TIME EXTENSIONS

(1) Default. If the contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will assure its completion within the time specified in this contract, or any extension thereof, fails to complete said work within such time, or commits any other substantial breach of this contract, and further fails within (14) days after receipt of written notice from the Procurement Officer to commence and continue correction of such refusal or failure with diligence and promptness, the Procurement Officer may, by written notice to the contractor, declare the contractor in breach and terminate the contractor's right to proceed with the work or such part of the work as to which there has been delay. In such event, the State may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the work, such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the contractor's right to proceed with the work is terminated, the contractor and the contractor's sureties shall be liable for any damage to the State resulting from the contractor's refusal or failure to complete the work within the specified time.

(2) Liquidated Damages Upon Termination. If fixed and agreed liquidated damages are provided in the contract, and if the State so terminates the contractor's right to proceed, the resulting damage will consist of such liquidated damages for such reasonable time as may be required for final completion of the work.

(3) Liquidated Damages in Absence of Termination. If fixed and agreed liquidated damages are provided in the contract, and if the State does not terminate the contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

(4) Time Extension. The contractor's right to proceed shall not be so terminated nor the contractor charged with resulting damage if:

(a) the delay in the completion of the work arises from causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in either a sovereign or contractual capacity; acts of another contractor in the performance of a contract with the State; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; delays of subcontractors due to causes similar to those set forth above; or shortage of materials; provided, however, that no extension of time will be granted for a delay caused by a shortage of materials, unless the contractor furnishes to the Procurement Officer proof that the contractor has diligently made every effort to obtain such materials from all known sources within reasonable reach of the work, and further proof that the inability to obtain such materials when originally planned did in fact cause a delay in final completion of the entire work which could not be compensated for by revising the sequence of the contractor's operations; and

(b) the contractor, within ten days from the beginning of any such delay (unless the Procurement Officer grants a further period of time before the date of final payment under the contract), notifies the Procurement Officer in writing of the causes of delay. The Procurement Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in the judgment of the Procurement Officer, the findings of fact justify such an extension.

(5) Erroneous Termination for Default. If, after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the State, the contract shall be adjusted to compensate for such termination and the contract modified accordingly.

(6) Additional Rights and Remedies. The rights and remedies of the (State) provided in this clause are in addition to any other rights and remedies provided by law or under this contract."

R33-5-490. Construction Contract Clauses: Liquidated Damages Clause.

The following clause may be used in construction contracts when it is difficult to determine with reasonable accuracy damage to the State due to delays caused by late contractor performance or nonperformance.

"LIQUIDATED DAMAGES

When the contractor fails to complete the work or any portion of the work within the time or times fixed in the contract or any extension thereof, the contractor shall pay to the State ($) per calendar day of delay pursuant to the clause of this contract entitled, 'Termination for Default for Nonperformance or Delay-Damages for Delay-Time Extensions.'"

R33-5-495. Construction Contract Clauses: Termination for Convenience Clause.

"TERMINATION FOR CONVENIENCE

(1) Termination. The Procurement Officer may, when the interests of this State so require, terminate this contract in whole or in part, for the convenience of the State. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective,

(2) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination, the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to the State. The contractor shall still complete the work not terminated by the notice of termination and may incur obligations as necessary to do so.

(3) Right to Construction and Supplies. The Procurement Officer may require the contractor to transfer title and deliver to the State in the manner and to the extent directed by the Procurement Officer:

(a) any completed construction; and

(b) such partially completed construction, supplies, materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "construction material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

The contractor shall protect and preserve property in the possession of the contractor in which the State has an interest. If the Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such construction, supplies, and construction materials in accordance with the standards of Uniform Commercial Code Section 2-706. (U.C.C. SS2-706 is quoted in the Editorial Note at the end of this Section.) This in no way implies that the State has breached the contract by exercise of the Termination for Convenience Clause.

(4) Compensation.

(a) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by Section 63G-6-415 (Cost or Pricing Data) of the Utah Procurement Code, bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Procurement [~~o~~]Officer may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

(b) The Procurement Officer and the contractor may agree to a settlement provided the contractor has filed a termination claim supported by cost or pricing data submitted as required by Section 63G-6-601(Cost or Pricing Data) of the Utah Procurement Code and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the proceeds of any sales of construction, supplies, and construction materials under Paragraph (3) of this clause, and the contract price of the work not terminated.

(c) Absent complete agreement under Subparagraph (b) of this paragraph, the Procurement Officer shall pay the contractor the following amounts, provided payments under Subparagraph (b) shall not duplicate payments under this paragraph:

(i) with respect to all contract work performed prior to the effective date of the notice of termination, the total (without duplication of any items) of:

(A) the cost of such work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for completed portions of such work; provided, however, that if it appears that the contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(B) costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to paragraph (2) of this clause. These costs shall not include costs paid in accordance with subparagraph (c)(i)(A) of this paragraph;

(C) the reasonable settlement costs of the contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract.

The total sum to be paid the contractor under this paragraph shall not exceed the total contract price plus the reasonable settlement costs of the contractor reduced by the amount of any sales of construction, supplies, and construction materials under paragraph (3) of this clause, and the contract price of work not terminated.

(d) Cost claimed, agreed to, or established under subparagraphs (b) and (c) of this paragraph shall be in accordance with Section R33-3-8."

R33-5-497. Construction Contract Clauses: Remedies Clause.

"REMEDIES

Any dispute arising under or out of this contract is subject to the provisions of Part H (Legal and Contractual Remedies) of the Utah Procurement Code."

R33-5-498. Small Purchases Related to Construction.

This Section R33-5-498 shall supersede any small purchase provision(s) within Title R33, in regard to construction.

(1) Procurements of $100,000 or Less.

(a) The Procurement Officer may make procurements of construction estimated to cost $100,000 or less by soliciting at least two firms to submit written quotations. The award shall be made to the firm offering the lowest acceptable quotation.

(b) The names of the persons submitting quotations and the date and amount of each quotation shall be recorded and maintained as a public record by the Procurement Officer.

(c) If the Procurement Officer determines that other factors in addition to cost should be considered in a procurement of construction estimated to cost $100,000 or less, the Procurement Officer shall solicit proposals from at least two firms. The award shall be made to the firm offering the best proposal as determined through application of the procedures provided for in Section R33-3-2 except that a public notice is not required and only invited firms may submit proposals.

(2) Procurements of $25,000 or Less. The Procurement Officer may make small purchases of construction of $25,000 or less in any manner that the Procurement Officer shall deem to be adequate and reasonable.

(3) Professional Services related to Construction. Small purchases for Architect or Engineer services may be procured as a small purchase in accordance with Section R33-5-530. For other professional services related to construction, including cost estimators, project schedulers, building inspectors, code inspectors, special inspectors and testing entities; the Procurement Officer may make small purchases of such professional services if the cost of such professional service is $100,000 or less in any manner that the Procurement Officer shall deem to be adequate and reasonable.

(4) Division of Procurements. Procurements shall not be divided in order to qualify for the procedures outlined in this section.

R33-5-510. Application.

The provisions of this section apply to every procurement of services within the scope of the practice of architecture as defined by Section 58-3a-102, or professional engineering as defined in Section 58-22-102, except as authorized by Section R33-3-4 and R33-3-5.

R33-5-520. Policy.

It is the policy of this State to:

(a) give public notice of all requirements for architect-engineer services except as noted in Sections R33-5-510 and R33-5-530; and

(b) negotiate contracts for these services on the basis of demonstrated competence and qualification for the type of service required, and at fair and reasonable prices.

R33-5-525. Annual Statement of Qualifications and Performance Data.

The Chief Procurement Officer, the head of a Purchasing Agency, or a designee of either officer shall request firms engaged in providing architect-engineer services to annually submit a statement of qualifications and performance data which should include the following:

(a) the name of the firm and the location of all of its offices, specifically indicating the principal place of business,

(b) the age of the firm and its average number of employees over the past five years,

(c) the education, training, and qualifications of members of the firm and key employees,

(d) the experience of the firm reflecting technical capabilities and project experience,

(e) the names of five clients who may be contacted, including at least two for whom services were rendered in the last year,

(f) any other pertinent information regarding qualifications and performance data requested by the Procurement Officer.

A standard form or format may be developed for these statements of qualifications and performance data. Firms may amend statements of qualifications and performance data at any time by filing a new statement.

R33-5-527. Billing Rate Survey.

The Consulting Engineers Council of Utah and the local chapter of the American Institute of Architects will provide the results of an annual survey on billing rates within their respective disciplines to the [~~e~~]Chief [~~p~~]Procurement [~~o~~]Officer prior to April 1 each year. This information will then be made available to all public procurement units.

R33-5-530. Small Purchases of Architect-Engineer Services.

When the procurement of Architect-Engineer Services is estimated to be less than [~~$50,000~~]$100,000 for the Architect-Engineer's fee, the [~~p~~]Procurement [~~o~~]Officer may select the provider directly from either the list of firms who have submitted annual statements of qualifications and performance data, or from other qualified firms if necessary. If the procurement is estimated to [~~exceed~~]be [~~$50,000~~]$100,000 or more for the Architect-Engineer's fee, then the selection method prescribed by the following sections apply.

R33-5-540. Architect-Engineer Selection Committee.

The Chief Procurement Officer, or designee, shall designate members of the Architect-Engineer Selection Committee. The selection committee must consist of at least three members, where possible at least one of which is well qualified in the professions of architecture or engineering, as appropriate.

The Chief Procurement Officer, or designee, shall designate one member of the committee as chair and to act as the Procurement Officer to coordinate the negotiations of a contract with the most qualified firm in accordance with Section 63G-6-704 of the Utah Procurement Code.

R33-5-550. Public Notice.

Public notice for architect-engineer services shall be given by the Procurement Officer as provided in Section R33-3-104. The notice shall be published sufficiently in advance of when responses must be received in order that firms have an adequate opportunity to respond to the solicitation, but not less than the time required by Section R33-3-102. The notice shall contain a brief statement of the services required which adequately describes the project, the

closing date for submissions and how specific information on the project may be obtained.

R33-5-560. Request for Statements of Interest.

A request for statements of interest (SOI) shall be prepared which describes the state's requirements and sets forth the evaluation criteria. It shall be distributed upon request and payment of a fee.

The request for statements of interest (SOI) shall include notice of any conference to be held and the criteria to be used in evaluating the statements of interest, qualifications and performance data and selecting firms, including:

(a) competence to perform the services as reflected by technical training and education, general experience, experience in providing the required services and the qualifications and competence of persons who would be assigned to perform the services.

(b) ability to perform the services as reflected by workload and the availability of adequate personnel, equipment, and facilities to perform the services expeditiously, and

(c) past performance as reflected by the evaluations of private persons and officials of other governmental entities that have retained the services of the firm with respect to factors such as control of costs, quality of work, and an ability to meet deadlines.

R33-5-570. Definition of Scope of Work.

Prior to initiating a request for SOI for architect-engineer services, the using agency shall define the scope of the services. The scope definition shall be sufficient to define the work expected, as detailed as possible and the scope definition shall be the basis for the negotiation process. However, the scope may be modified if necessary during final negotiations.

R33-5-580. Evaluation of Statements of Interest, Qualifications and Performance Data.

The selection committee shall evaluate:

(a) annual statement of qualifications and performance data submitted under Section R33-5-525;

(b) statements that may be submitted in response to the request for SOI for architect-engineer services, including proposals for joint ventures; and

(c) supplemental statements of qualifications and performance data, if their submission was required.

All statements and supplemental statements of qualifications and performance data shall be evaluated in light of the criteria set forth in the request for SOI for architect-engineering services.

R33-5-590. Selection of Firms for Discussions.

The selection committee shall select for discussions no fewer than three firms evaluated as being professionally and technically qualified unless fewer than three firms responded to the request for SOI. The Procurement Officer shall notify each firm in writing of the date, time, and place of discussions, and, if necessary, shall provide each firm with additional information on the project and the services required. This discussion phase may be waived if the evaluation of the statements of interest, qualifications and performance data indicate that one firm is clearly most qualified and if the scope and nature of the services are clearly defined.

R33-5-600. Discussions.

Following evaluation of the statements of interest, qualifications and performance data, the selection committee shall hold discussions with the firms selected pursuant to [~~s~~]Section R33-45-590 regarding the proposed contract. The purposes of these discussions shall be to:

(a) determine each firm's general capabilities and qualifications for performing the contract; and

(b) explore the scope and nature of the required services and the relative utility of alternative methods of approach.

R33-5-610. Selection of the Most Qualified Firms.

After discussions, the selection committee shall reevaluate and select, in order of preference, the firms which it deems to be the most highly qualified to provide the required services. The selection committee shall document the selection process indicating how the evaluation criteria were applied to determine the ranking of the most highly qualified firms.

R33-5-620. Negotiation and Award of Contract.

The Procurement Officer shall negotiate a contract with the most qualified firm for the required services at compensation determined to be fair and reasonable to the State. Contract negotiations shall be directed toward:

(a) making certain that the firm has a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;

(b) determining that the firm will make available the necessary personnel and facilities to perform the services within the required time, and

(c) agreeing upon compensation which is fair and reasonable, taking into account the estimated value, scope, complexity, and nature of the required services.

R33-5-630. Failure to Negotiate Contract with the Most Qualified Firm.

(a) If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the most qualified firm, the Procurement Officer shall advise the firm in writing of the termination of negotiations.

(b) Upon failure to negotiate a contract with the most qualified firm, the Procurement Officer shall enter into negotiations with the next most qualified firm. If fair and reasonable compensation, contract requirements, and contract documents can be agreed upon, then the contract shall be awarded to that firm. If negotiations again fail, negotiations shall be terminated as provided in Subsection R33-5-630(a) of this section and commenced with the next most qualified firm.

R33-5-640. Notice of Award.

Written notice of the award shall be sent to the firm with whom the contract is successfully negotiated. Each firm with whom discussions were held shall be notified of the award. Notice of the award shall be made available to the public.

R33-5-650. Failure to Negotiate Contract with Firms Initially Selected as Most Qualified.

Should the Procurement Officer be unable to negotiate a contract with any of the firms initially selected as the most highly

qualified firms[~~.~~]**,** additional firms shall be selected in preferential order based on their respective qualifications, and negotiations shall continue in accordance with [~~s~~]Section R33-5-630 until an agreement is reached and the contract awarded.

KEY: government purchasing, procurement
Date of Enactment or Last Substantive Amendment: [~~August 1, 2008~~]2010
Authorizing, and Implemented or Interpreted Law: 63G-6-101 et seq.
Notice of Continuation: November 23, 2007

Administrative Services, Purchasing and General Services
R33-10
State Construction Contracts and Drugs and Alcohol Testing

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 33656
FILED: 05/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the Rule is to comply with S.B. 13 of the 2010 Utah Legislative Session which enacts Section 63G-6-604. Said statute requires that a state construction contract impose requirements related to drug and alcohol testing. This rule addresses penalties for non-compliance; clarifies that monitoring activities are not required of the state; provides that the state is not liable in actions related to drug and alcohol testing; provides exemptions; and addresses the scope of the provision. (DAR NOTE: S.B. 13 (2010) is found at Chapter 18, Laws of Utah 2010, and will be effective 07/01/2010.)

SUMMARY OF THE RULE OR CHANGE: S.B. 13 of the 2010 Utah State Legislative Session enacted Section 63G-6-604 and modified the Utah Procurement Code to address requirements for drug and alcohol testing for state construction contracts. This rule is being implemented to comply with S.B. 13 and requires that a state construction contract impose requirements related to drug and alcohol testing; addresses penalties; clarifies that monitoring activities are not required of the state; provides that the state is not liable in actions related to drug and alcohol testing; provides exemptions and addresses the scope of the provision.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-6-604

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The statute itself created the fiscal impacts. The rule does not add additional burdens than already provided by the statute. The rule will not impact the costs.
♦ LOCAL GOVERNMENTS: The statute itself created the fiscal impacts. No costs or savings are anticipated for local governments with this new rule. No new requirements were created with this new rule that impact local governments.
♦ SMALL BUSINESSES: The statute itself created any fiscal impacts to small businesses. The implementation of Rule R33-10 does not add additional burdens than already provided by the statute.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The statute itself created any fiscal impacts to persons other than small businesses, businesses, or local government entities. The implementation of Rule R33-10 does not add additional burdens than already provided by the statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The statute itself created any compliance costs, if any, for affected persons. Implementation of Rule R33-10 does not create any compliance costs other than those that were created by the statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The purpose of implementing Rule R33-10 is to be in compliance with S.B. 13, 2010 Legislative Session and state statute. The statute created the fiscal impacts and implementation of this rule does not add additional burdens than already provided by the statute. The rule will not impact the costs.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 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:
♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
♦ Kent Beers by phone at 801-538-3143, by FAX at 801-538-3882, or by Internet E-mail at kbeers@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
♦ Nancy Orton by phone at 801-538-3148, by FAX at 801-538-3882, or by Internet E-mail at nancyo@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: Kent Beers, Director

R33. Administrative Services, Purchasing and General Services.

R33-10. State Construction Contracts and Drug and Alcohol Testing.

R33-10-1. Purpose.

The purpose of this rule is to comply with the provisions of Section 63G-6-604.

R33-10-2. Authority.

This rule is authorized under Subsection 63G-6-202 as well as Subsection 63G-6-604(4).

R33-10-3. Definitions.

(1) The following definitions of Section 63G-6-604 shall apply to any term used in this Rule R33-10:

(a) "Contractor" means a person who is or may be awarded a state construction contract.

(b) "Covered individual" means an individual who:

(i) on behalf of a contractor or subcontractor provides services directly related to design or construction under a state construction contract; and

(ii) is in a safety sensitive position, including a design position, that has responsibilities that directly affect the safety of an improvement to real property that is the subject of a state construction contract.

(c) "Drug and alcohol testing policy" means a policy under which a contractor or subcontractor tests a covered individual to establish, maintain, or enforce the prohibition of:

(i) the manufacture, distribution, dispensing, possession, or use of drugs or alcohol, except the medically prescribed possession and use of a drug; or

(ii) the impairment of judgment or physical abilities due to the use of drugs or alcohol.

(d) "Random testing" means that a covered individual is subject to periodic testing for drugs and alcohol:

(i) in accordance with a drug and alcohol testing policy; and

(ii) on the basis of a random selection process.

(e) For purposes of Subsection R33-10-4(5), "state" includes any of the following of the state:

(i) a department;

(ii) a division;

(iii) an agency;

(iv) a board including the Procurement Policy Board;

(v) a commission;

(vi) a council;

(vii) a committee; and

(viii) an institution, including a state institution of higher education, as defined under Section 53B-3-102.

(f) "State construction contract" means a contract for design or construction entered into by a state public procurement unit that is subject to this Rule R33-10.

(g)(i) "Subcontractor" means a person under contract with a contractor or another subcontractor to provide services or labor for design or construction.

(ii) "Subcontractor" includes a trade contractor or specialty contractor.

(iii) "Subcontractor" does not include a supplier who provides only materials, equipment, or supplies to a contractor or subcontractor.

(2) In addition:

(a) "Board" means the Procurement Policy Board created under provisions of the Utah Procurement Code.

(b) "State Public Procurement Unit" means a State of Utah public procurement unit that is subject to Section 63G-6-604.

(c) "State" as used throughout this Rule R33-10 means the State of Utah except that it also includes those entities described in Subsection R33-10-3(1)(e) as the term "state" is used in Subsection R33-10-4(5).

R33-10-4. Applicability.

(1) Except as provided in Section R33-10-5, on and after July 1, 2010, a State Public Procurement Unit may not enter into a state construction contract (includes a contract for design or construction) unless the state construction contract requires the following:

(a) A contractor shall demonstrate to the State Public Procurement Unit that the contractor:

(i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the contractor;

(ii) posts in one or more conspicuous places notice to covered individuals hired by the contractor that the contractor has the drug and alcohol testing policy described in Subsection R33-10-4(1)(a)(i); and

(iii) subjects the covered individuals to random testing under the drug and alcohol testing policy described in Subsection R33-10-4(1)(a)(i) if at any time during the period of the state construction contract there are ten or more individuals who are covered individuals hired by the contractor.

(b) A contractor shall demonstrate to the State Public Procurement Unit, which shall be demonstrated by a provision in the contract where the contractor acknowledges this Rule R33-10 and agrees to comply with all aspects of this Rule R33-10, that the contractor requires that as a condition of contracting with the contractor, a subcontractor, which includes consultants under contract with the designer:

(i) has and will maintain a drug and alcohol testing policy during the period of the state construction contract that applies to the covered individuals hired by the subcontractor;

(ii) posts in one or more conspicuous places notice to covered individuals hired by the subcontractor that the subcontractor has the drug and alcohol testing policy described in Subsection R33-10-4(1)(b)(i); and

(iii) subjects the covered individuals hired by the subcontractor to random testing under the drug and alcohol testing policy described in Subsection R33-10-4(1)(b)(i) if at any time during the period of the state construction contract there are ten or more individuals who are covered individuals hired by the subcontractor.

(2)(a) Except as otherwise provided in this Subsection R33-10-4(2), if a contractor or subcontractor fails to comply with Subsection R33-10-4(1), the contractor or subcontractor may be suspended or debarred in accordance with this Rule R33-10.

(b) On and after July 1, 2010, a State Public Procurement Unit shall include in a state construction contract a reference to this Rule R33-10.

(c)(i) A contractor is not subject to penalties for the failure of a subcontractor to comply with Subsection R33-10-4(1).

(ii) A subcontractor is not subject to penalties for the failure of a contractor to comply with Subsection R33-10-4(1).

(3)(a) The requirements and procedures a contractor shall follow to comply with Subsection R33-10-(4)(1) is that the contractor, by executing the construction contract with the State Public Procurement Unit, is deemed to certify to the State Public Procurement Unit that the contractor, and all subcontractors under the contractor that are subject to Subsection R33-10-4(1), shall comply with all provisions of this Rule R33-10 as well as Section 63G-6-604; and that the contractor shall on a semi-annual basis throughout the term of the contract, report to the State Public Procurement Unit in writing information that indicates compliance with the provisions of Rule R33-10 and Section 63G-6-604.

(b) A contractor or subcontractor may be suspended or debarred in accordance with the applicable Utah statutes and rules, if the contractor or subcontractor violates a provision of Section 63G-6-604. The contractor or subcontractor shall be provided reasonable notice and opportunity to cure a violation of Section 63G-6-604 before suspension or debarment of the contractor or subcontractor in light of the circumstances of the state construction contract or the violation. The greater the risk to person(s) or property as a result of noncompliance, the shorter this notice and opportunity to cure shall be, including the possibility that the notice may provide for immediate compliance if necessary to protect person(s) or property.

(4) The failure of a contractor or subcontractor to meet the requirements of Subsection R33-10-4(1):

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor under Part 8, Legal and Contractual Remedies or the similar rules of the Board; and

(b) may not be used by a State Public Procurement Unit, a prospective bidder, an offeror, a contractor, or a subcontractor as a basis for an action that would suspend, disrupt, or terminate the design or construction under a state construction contract.

(5)(a) After a State Public Procurement Unit enters into a state construction contract in compliance with Section 63G-6-604, the state is not required to audit, monitor, or take any other action to ensure compliance with Section 63G-6-604.

(b) The state is not liable in any action related to Section 63G-6-604 and this Rule R33-10, including not being liable in relation to:

(i) a contractor or subcontractor having or not having a drug and alcohol testing policy;

(ii) failure to test for a drug or alcohol under a contractor's or subcontractor's drug and alcohol testing policy;

(iii) the requirements of a contractor's or subcontractor's drug and alcohol testing policy;

(iv) a contractor's or subcontractor's implementation of a drug and alcohol testing policy, including procedures for:

(A) collection of a sample;

(B) testing of a sample;

(C) evaluation of a test; or

(D) disciplinary or rehabilitative action on the basis of a test result;

(v) an individual being under the influence of drugs or alcohol; or

(vi) an individual under the influence of drugs or alcohol harming another person or causing property damage.

R33-10-5. Non-applicability.

(1) This Rule R33-10 and Section 63G-6-604 does not apply if the State Public Procurement Unit determines that the application of this Rule R33-10 or Section 63G-6-604 would severely disrupt the operation of a state agency to the detriment of the state agency or the general public, including:

(a) jeopardizing the receipt of federal funds;

(b) the state construction contract being a sole source contract; or

(c) the state construction contract being an emergency procurement.

R33-10-6. Not Limit Other Lawful Policies.

(1) If a contractor or subcontractor meets the requirements of Section 63G-6-604 and this Rule R33-10, this Rule R33-10 may not be construed to restrict the contractor's or subcontractor's ability to impose or implement an otherwise lawful provision as part of a drug and alcohol testing policy.

KEY: drug and alcohol testing, contractors, contracts
Notice of Enactment of Last Substantive Amendment: July 8, 2010
Authorizing and Implemented or Interpreted Law: 63G-6

Commerce, Administration
R151-46b
Department of Commerce
Administrative Procedures Act Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33616
FILED: 05/03/2010

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule filing clarifies that orders subsequent to an emergency hearing shall be issued within 15 days after conclusion of the hearing. It also makes clarifying amendments as to the numbering system for agency pleadings.

SUMMARY OF THE RULE OR CHANGE: This rule filing clarifies that orders subsequent to an emergency hearing shall be issued within 15 days after conclusion of the hearing. It also makes clarifying amendments as to the numbering system for agency pleadings.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: No costs to the state budget are anticipated in this filing which clarifies the time frame for issuance of an order in an emergency proceeding and makes other clarifying amendments as to how pleadings are numbered.
♦ LOCAL GOVERNMENTS: Local governments are not affected by emergency proceedings by this agency, and even if they were, this rule filing clarifies the time frame for issuance of an order in an emergency proceeding, which should not result in any costs.
♦ SMALL BUSINESSES: In the event that small businesses are involved in any emergency proceeding, this rule filing could result in some costs savings to small businesses in that it requires an order subsequent to an emergency hearing to be issued within 15 days.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: In the event that persons other than small businesses, businesses or local government entities are involved in any emergency proceeding, this rule filing could result in some costs savings to these persons in that it requires an order subsequent to an emergency hearing to be issued within 15 days.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Affected persons involved in any emergency proceeding could see some cost savings from this rule filing, as an order in their case would be entered within 15 days after conclusion of the hearing. The amount of that cost savings, however, is difficult to determine.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The only anticipated fiscal impact to businesses from this filing would be cost savings resulting from a quicker process.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Masuda Medcalf by phone at 801-530-7663, by FAX at 801-530-6446, or by Internet E-mail at mmedcalf@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: Francine Giani, Executive Director

R151. Commerce, Administration.
R151-46b. Department of Commerce Administrative Procedures Act Rules.
R151-46b-7. Pleadings.

(1) Docket Number and Title.

An agency shall assign a docket number to each notice of agency action and, where appropriate, to each request for agency action. The docket number shall consist of a letter code identifying the agency in which the matter originated (CORP-Corporations; CP-Consumer Protection; CCS-Committee of Consumer Services; DOPL-Occupational and Professional Licensing; D-Diversion; NAFA-New Automobile Franchise Act; PVFA-Powersport Vehicle Franchise Act; RE-Real Estate, AP-Real Estate Appraisers; MG-Mortgage; SD-Securities), a numerical code indicating the year the matter arose, and another number indicating chronological position among notices of agency action or requests for agency action filed during the year. The department shall give each adjudicative proceeding a title that shall be in substantially the following form:

TABLE I

BEFORE THE (DIVISION/COMMITTEE) OF THE DEPARTMENT OF COMMERCE OF THE STATE OF UTAH	
In the Matter of (the application, petition or license of John Doe)	(Notice of Agency Action) (Request for Agency Action) No. AA-2000-001

(2) Content and Size of Pleadings.

Pleadings shall be double-spaced, typewritten and presented on standard 8 1/2 x 11 inch white paper. Pleadings shall contain a clear and concise statement of the allegations or facts relied upon as the basis for the pleading, together with an appropriate prayer for relief when relief is sought.

(3) Signing of Pleadings.

Pleadings shall be signed by the party or the party's representative and shall show the signer's address. The signature shall be deemed to be a certification that the signer has read the pleading and that, to the best of his knowledge and belief, there is good ground to support it.

(4) Amendments to Pleadings.

A party may amend a pleading once as a matter of course at any time before a responsive pleading is served. Otherwise, a party may amend a pleading only by leave of the presiding officer or by written consent of the adverse party. Leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten days after service of the amended pleading, whichever period may be longer, unless the presiding officer otherwise orders. Defects in a pleading that do not affect

substantial rights of a party need not be amended and shall be disregarded.

(5) Response to a Notice of Agency Action.

(a) Formal Adjudicative Proceedings.

In accordance with Subsection 63G-4-201(2)(a)(vi), a respondent in a formal adjudicative proceeding shall file a response to the notice of agency action.

(b) Informal Adjudicative Proceedings.

(i) In accordance with Subsection 63G-4-203(1)(a), a respondent in an informal adjudicative proceeding may file, but is not required to file except as provided in Subsection (ii), a response to a notice of agency action.

(ii) The presiding officer may, upon a determination of good cause, require a person against whom an informal adjudicative proceeding has been initiated to submit a response by so ordering in the notice of agency action or the notice of receipt of request for agency action.

(c) Time Period for Filing a Response.

Unless a different date is established by law, rule, or by the presiding officer, a response to a notice of agency action or a notice of receipt of request for agency action shall be filed within 30 days of the mailing date of the notice.

(6) Motions.

(a) General. Any motion that is relevant to an adjudicative proceeding and is timely may be filed. All motions shall be filed in writing, unless the necessity for a motion arises at a hearing and could not have been anticipated prior to the hearing. Subsection 63G-4-102(4)(b) shall not be construed to prohibit a presiding officer from granting a timely motion to dismiss for failure to prosecute, failure to comply with these rules, failure to establish a claim upon which relief may be granted, or any other good cause basis.

(b) Time for Filing Motions to Dismiss.

Any motion to dismiss on a ground described in Rule 12(b)(1) through (7) of the Utah Rules of Civil Procedure shall be filed prior to filing a responsive pleading if such a pleading is permitted unless, subject to Subsections R151-46b-5(5)(b) and -9(9)(c)(ii), the presiding officer allows additional time upon a determination of good cause.

(c) Memoranda and Affidavits.

The presiding officer shall permit and may require memoranda and affidavits in support or contravention of a motion. Unless otherwise governed by a scheduling order issued by the presiding officer, any memorandum or affidavits in support of a motion shall be filed concurrently with the motion, any memorandum or affidavits in response to a motion shall be filed no later than ten days after service of the motion, and any final reply shall be filed no later than five days after service of the response.

(d) Oral Argument.

(i) The presiding officer may permit or require oral argument on a motion.

(ii) Any oral argument on a motion shall be scheduled to take place no more than 10 calendar days after the day on which the final submission on the motion is filed.

(e) Ruling on a motion.

(i) The presiding officer shall verbally rule on a motion at the conclusion of oral argument whenever possible.

(ii) When a presiding officer verbally rules on a motion, the presiding officer shall issue a written ruling within 30 calendar days after the day on which the presiding officer made the verbal ruling.

(iii) If the presiding officer does not verbally rule on a motion at the conclusion of oral argument, the presiding officer shall issue a written ruling on the motion no more than 30 calendar days after:

(A) oral argument; or

(B) if there was no oral argument, the final submission on the motion.

(iv) The failure of the presiding officer to comply with the requirements of this Subsection (6)(e) is not a basis for dismissal of the matter, and may not be considered an automatic denial or grant of the motion.

R151-46b-11. Orders.

(1) Requirements.

(a) All orders issued by a presiding officer shall comply with the requirements of Subsection 63G-4-203(1)(i) or Section 63G-4-208, respectively. In the case of default orders and orders issued subsequent to a default order, the requirements of Subsections 63G-4-203(1)(i)(iii) and (iv) and 63G-4-208(1)(e),(f) and (g) are satisfied if the order includes a notice of the right to seek to set aside the order as provided in Subsection 63G-4-209(3).

(b) Except as provided in Sections 63G-4-502 and R156-46b-16, as to emergency proceedings, t[~~T~~]he presiding officer shall issue an order within 45 calendar days after the day on which the hearing concludes.

(c) If the presiding officer permits the filing of any post-hearing documents, that filing shall be scheduled in a way that allows the presiding officer to issue an order within 45 calendar days after the day on which the hearing concludes.

(d) The failure of the presiding officer to comply with the requirements of this Subsection (1) is not a basis for dismissal of the matter, and may not be considered an automatic denial or grant of any motion.

(2) Effective Date.

The effective date of the final order in an adjudicative proceeding shall be 30 days after the issuance thereof unless otherwise provided in the order.

(3) Clerical Mistakes.

Clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the department on its own initiative or on the motion of any party and after such notice, if any, as the department orders. Such mistakes may be so corrected at any time prior to the docketing of a petition for judicial review or as governed by Rule 11(h) of the Utah Rules of Appellate Procedure.

R151-46b-16. Emergency Adjudicative Proceedings.

Unless otherwise provided by statute or rule:

(1) When a division commences an emergency adjudicative proceeding and issues an order in accordance with Section 63G-4-502 which results in a continued impairment of the affected party's rights or legal interests, the division that issued the emergency order shall schedule a hearing upon written request of the affected party to determine whether the emergency order should be affirmed, set aside, or modified based on the standards set forth in Section 63G-4-502. The hearing will be conducted in conformity with Section 63G-4-206.

(2) Upon request for a hearing pursuant to this rule, the Division will conduct a hearing as soon as reasonably practical but not later than 20 days from the receipt of a written request unless the Division and the party requesting the hearing agree to conduct the hearing at a later date. The Division shall have the burden of proof to establish, by a preponderance of the evidence, that the requirements of Section 63G-4-502 have been met.

(3) Except as otherwise provided by statute, the division director or his designee shall select an individual or body of individuals to act as the presiding officer at the hearing. The presiding officer shall not include any individual who directly participated in issuing the emergency order.

(4) Within 15 calendar days after the day in which the emergency hearing concludes[~~a reasonable time after the hearing~~], the presiding officer shall issue an order in accordance with the requirements of Section 63G-4-208. The order of the presiding officer shall be considered final agency action with respect to the emergency adjudicative proceeding and shall be subject to agency review in accordance with Section R151-46b-12.

KEY: administrative procedures, adjudicative proceedings, government hearings
Date of Enactment or Last Substantive Amendment: [~~January 7,~~] 2010
Notice of Continuation: May 3, 2006
Authorizing, and Implemented or Interpreted Law: 13-1-6; 63G-4-102(6)

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

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33641
FILED: 05/13/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: There are various purposes or reasons for this rule filing. It makes designation of presiding officer changes for contractor adjudicative proceedings necessitated by a companion filing to Rule R156-46b that changes the classification of contractor formal adjudicative proceedings to informal adjudicative proceedings. It addresses changes made by the 2010 Legislature, which bills are identified below. It revises the renewal notice requirements to address the current process for online renewal and enables renewal notices to be sent by email in the future. It revises the provisions governing reinstatement of licensure to eliminate a reinstatement fee for applicants applying for licensure more than two years after their expiration of licensure who have not been practicing without a license after the expiration of their license, and only requires them to pay an initial license application fee. Finally, it makes cleanup and technical changes. (DAR NOTE: The proposed amendment to Rule R156-46b is under DAR No. 33639 in this issue, June 1, 2010, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: First, this filing changes Subsection R156-1-308f(1) to be consistent with a companion filing to Rule R156-46b that in part changes the classification of adjudicative proceeding for contractors applying for renewal of licensure from a formal adjudicative proceeding to an informal adjudicative proceeding. The classification changes in the companion filing are in Subsections R156-46b-201(1) and R156-46b-202(1). Second, this filing makes changes to certain presiding officer designations in Section R156-1-109 to correlate them with the changes in classification of adjudicative proceedings made in the companion rule filing referenced above. Third, this filing make changes in the presiding officer designation for issuing notices of agency action in Subsection R156-1-109(1). Similarly, it amends the definition of "investigative subpoena authority" in current Subsection R156-1-102(14). Fourth, this filing incorporates various changes made by the 2010 Legislature. These include the following: 1) deleting the definition of "private reprimand" in current Subsection R156-1-102(20) because this concept was deleted from statute by H.B. 193 in existing Subsection 58-1-401(2); and 2) revising and adding license classification names and renewal dates including: consolidating existing "controlled substance precursor distributor" and "controlled substance precursor purchaser" license classifications into a new "controlled substance precursor" single license classification as consolidated by H.B. 89 in revised Subsection 58-37c-7(1); establishing a renewal date for new elevator mechanic license classification established by H.B. 11 in new Subsection 58-55-301(2)(s); establishing a renewal date for new "online prescriber" license classification required by S.B. 274 in new Subsection 58-83-301(2)(a); establishing a renewal date for new "online contract pharmacy" license classification required by S.B. 274 in new Subsection 58-83-301(2)(b); and establishing a renewal date for new "internet facilitator" license classification required by S.B. 274 in new Subsection 58-83-301(2)(c); changing the classification name "Certified Marriage and Family Intern" to "Associate Marriage and Family Therapist," and "Certified Professional Counselor Intern" to "Associate Professional Counselor" as changed by S.B. 90 in revised Subsections 58-60-305(2)(a) and (b); and establishing a renewal date for Certified Medical Language Interpreter required by H.B. 232 in the new Subsection 58-80a-304(1). Fifth, this filing revises the renewal notice requirements to address the current process for online renewal. Specifically, the change references a mailing rather than a letter, as the Division now sends post card renewal notices. It also replaces the

requirement that the renewal notices specify the renewal requirements with a provision that the renewal requirements be outlined in the online renewal process, and that each licensee much document or certify that they meet the requirements prior to renewal. Finally it allows for sending renewal notices by email in the future. Sixth, this filing revises the provisions governing reinstatement of licensure to eliminate a reinstatement fee for applicants applying for licensure more than two years after the expiration of their license. Applicants who have not been practicing without a license after the expiration of their license will only pay the application fee for a new applicant rather than a reinstatement fee and a renewal fee. This change better follows the intent of the statute and encompasses the Division's current policy choice and process. Finally, this filing makes cleanup and technical changes including capitalizing the word "Division" consistently throughout the rule and making other cleanup and technical changes. (DAR NOTE: H.B. 89 (2010) is found at Chapter 240, Laws of Utah 2010, and was effective 05/11/2010. H.B. 11 (2010) is found at Chapter 227, Laws of Utah 2010, and was effective 05/11/2010. S.B. 274 (2010) is found at Chapter 180, Laws of Utah 2010, and was effective 05/11/2010. S.B. 90 (2010) is found at Chapter 214, Laws of Utah 2010, and was effective 05/11/2010. H.B. 232 (2010) is found at Chapter 127, Laws of Utah 2010, and was effective 05/11/2010.)

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The proposed changes for contractor and lien recovery fund adjudicative proceedings will allow the Division to more efficiently handle these types of cases in an informal setting without unnecessarily devoting resources to formal proceedings. This savings allows the Division to more efficiently handle its increasing workload without requiring additional resources as soon as would otherwise be required or without reducing the level of service provided. These savings cannot be quantified. Changes to the renewal section will clarify the process for online renewals and allow for future use of email. The use of email will allow potential future mailing cost savings. These savings cannot be quantified. Taking out the reinstatement fee of $50 on top of the new application fee for licensees who file for a reinstatement over 2 years may result in a small decrease in state revenue. This change cannot be quantified as the Division is unable to determine how many licensees in the future will apply for reinstatement of licensure after their license has been expired for over two years. The changes necessitated by the 2010 Legislature addressed in this filing do not result in any additional impacts beyond what was addressed by the Legislature.
♦ LOCAL GOVERNMENTS: The proposed amendments only apply to licensed professions and occupations regulated by the Division and applicants for licensure in those professions and occupations. As a result, the proposed amendments do not apply to local governments.
♦ SMALL BUSINESSES: The proposed amendments only apply to licensed professions and occupations regulated by the Division and applicants for licensure in those professions and occupations. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The elimination of the reinstatement fee for licensees applying for reinstatement of licensure after their license has been expired for 2 years will result in savings of the $50 reinstatement fee. The Division is unable to determine how many licensees in the future will apply for reinstatement of licensure after their license has been expired for over two years.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments will not result in any additional costs or savings to licensees with regard to the change in classification of contractor and lien recovery fund adjudicative proceedings. Since most cases are currently resolved by informal means, those licensees will not be affected. For the more controversial cases, the overall expense to the licensee is not expected to change significantly. The changes necessitated by the 2010 Legislature addressed in this filing do not result in any additional impacts.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is not expected that there will be a cost increase to the contractor industry as a result of the changes in the designation of adjudicative proceedings, as experience has shown that such cases are able to be resolved informally. A cost savings may result to licensees from the elimination of a reinstatement fee. As more fully discussed in the rule summary, no fiscal impact to other businesses is anticipated.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ W. Ray Walker by phone at 801-530-6256, by FAX at 801-530-6511, or by Internet E-mail at raywalker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/30/2010 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-1. General Rule of the Division of Occupational and Professional Licensing.
R156-1-101. Title.

This rule is known as the "General Rule of the Division of Occupational and Professional Licensing."

R156-1-102. Definitions.

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

(1) "Active and in good standing" means a licensure status which allows the licensee full privileges to engage in the practice of the occupation or profession subject to the scope of the licensee's license classification.

(2) "Aggravating circumstances" means any consideration or factors that may justify an increase in the severity of an action to be imposed upon an applicant or licensee. Aggravating circumstances include:

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

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses;

(e) obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the Division;

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

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

(h) vulnerability of the victim;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) replaces a temporary license;

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

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

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

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

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

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

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

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

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

(a) Mitigating circumstances include:

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

(ii) [~~absence of dishonest or selfish motive;~~

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

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

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

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

(vi[~~i~~]) imposition of other penalties or sanctions if the other penalties and sanctions have alleviated threats to the public health, safety, and welfare; and

(vii[~~i~~]) remorse.

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

(i) forced or compelled restitution;

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

(iii) resignation prior to disciplinary proceedings;

(iv) failure of injured client to complain; and

(v) complainant's recommendation as to sanction.

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

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

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

~~(20)~~]"Probation" means disciplinary action placing terms and conditions upon a license;

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

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

([~~21~~]20) "Public reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a public record.

([~~22~~]21) "Regulatory authority" as used in Subsection 58-1-501(2)(d) means any governmental entity who licenses, certifies, registers, or otherwise regulates persons subject to its jurisdiction, or who grants the right to practice before or otherwise do business with the governmental entity.

([~~23~~]22) "Reinstate" or "reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (26)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.

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

([~~25~~]24) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection ([~~26~~]25)(a), placed on a license issued to an applicant for licensure.

([~~26~~]25) "Restrict" or "restriction" means disciplinary action qualifying or limiting the scope of a license:

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

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

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

([~~28~~]27) "Suspend" or "suspension" means disciplinary action by the Division removing the right to use a license for a period of time or indefinitely as indicated in the disciplinary order, with the possibility of subsequent reinstatement of the right to use the license.

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

([~~30~~]29) "Temporary license" or "temporary licensure" means a license issued by the Division on a temporary basis to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-303.

([~~31~~]30) "Unprofessional conduct" as defined in Title 58 is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-1-502.

([~~32~~]31) "Warning or final disposition letters which do not constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions of law and do not constitute a reprimand, but which may address any or all of the following:

(a) Division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of Division concerns.

R156-1-103. Authority - Purpose.

This rule is adopted by the [~~d~~]Division under the authority of Subsection 58-1-106(1)(a) to enable the [~~d~~]Division to administer Title 58.

R156-1-106. Division - Duties, Functions, and Responsibilities.

(1) In accordance with Subsection 58-1-106(2), the following responses to requests for lists of licensees may include multiple licensees per request and may include home telephone numbers and home addresses, subject to the restriction that the addresses and telephone numbers shall only be used by a requester for purposes for which the requester is properly authorized and shall not be sold or otherwise redisclosed by the requester:

(a) responses to requests from another governmental entity, government-managed corporation, a political subdivision, the

federal government, another state, or a not-for-profit regulatory association to which the [~~d~~]Division is a member;

(b) responses to requests from an occupational or professional association, private continuing education organizations, trade union, university, or school, for purposes of education programs for licensees;

(c) responses to a party to a prelitigation proceeding convened by the [~~d~~]Division under Title 78, Chapter 14;

(d) responses to universities, schools, or research facilities for the purposes of research;

(e) responses to requests from licensed health care facilities or third party credentialing services, for the purpose of verifying licensure status for issuing credentialing or reimbursement purposes; and

(f) responses to requests from a person preparing for, participating in, or responding to:

(i) a national, state or local emergency;

(ii) a public health emergency as defined in Section 26-23b-102; or

(iii) a declaration by the President of the United States or other federal official requesting public health-related activities.

(2) In accordance with Subsection 58-1-106(3)(a) and (b), the [~~d~~]Division may deny a request for an address or telephone number of a licensee to an individual who provides proper identification and the reason for the request, in writing, to the [~~d~~]Division, if the reason for the request is deemed by the [~~d~~]Division to constitute an unwarranted invasion of privacy or a threat to the public health, safety, and welfare.

(3) In accordance with Subsection 58-1-106(3)(c), proper identification of an individual who requests the address or telephone number of a licensee and the reason for the request, in writing, shall consist of the individual's name, mailing address, and daytime number, if available.

R156-1-109. Presiding Officers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Commission.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Director. [~~Unless otherwise specified in writing by the commission, t~~]The director is designated as the presiding officer [~~for conducting informal adjudicative proceedings specified in R156-46b-202(2)(b)~~]for the concurrence role on disciplinary proceedings under Subsections R156-46b-202(2)(c) as required by Subsection 58-55-103(1)(b)(iv).

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

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

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

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

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

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

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

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

R156-1-110. Issuance of Investigative Subpoenas.

(1) All requests for subpoenas in conjunction with a [~~d~~]Division investigation made pursuant to Subsection 58-1-106(1)(c), shall be made in writing to the investigative subpoena authority and shall be accompanied by an original of the proposed subpoena.

(a) Requests to the investigative subpoena authority shall contain adequate information to enable the subpoena authority to make a finding of sufficient need, including: the factual basis for the request, the relevance and necessity of the particular person, evidence, documents, etc., to the investigation, and an explanation why the subpoena is directed to the particular person upon whom it is to be served.

(b) Approved subpoenas shall be issued under the seal of the [~~d~~]Division and the signature of the subpoena authority.

(2) The investigative subpoena authority may quash or modify an investigative subpoena if it is shown to be unreasonable or oppressive.

R156-1-205. Peer or Advisory Committees - Executive Director to Appoint - Terms of Office - Vacancies in Office - Removal from Office - Quorum Requirements - Appointment of Chairman - Division to Provide Secretary - Compliance with Open and Public Meetings Act - Compliance with Utah Administrative Procedures Act - No Provision for Per Diem and Expenses.

(1) The executive director shall appoint the members of peer or advisory committees established under Title 58 or Title R156.

(2) Except for ad hoc committees whose members shall be appointed on a case-by-case basis, the term of office of peer or advisory committee members shall be for four years. The executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the peer or advisory committee is appointed every two years.

(3) No peer or advisory committee member may serve more than two full terms, and no member who ceases to serve may again serve on the peer or advisory committee until after the expiration of two years from the date of cessation of service.

(4) If a vacancy on a peer or advisory committee occurs, the executive director shall appoint a replacement to fill the unexpired term. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(5) If a peer or advisory committee member fails or refuses to fulfill the responsibilities and duties of a peer or advisory committee member, including the attendance at peer committee meetings, the executive director may remove the peer or advisory committee member and replace the member in accordance with this section. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(6) Committee meetings shall only be convened with the approval of the appropriate board and the concurrence of the [~~d~~]Division.

(7) Unless otherwise approved by the [~~d~~]Division, peer or advisory committee meetings shall be held in the building occupied by the [~~d~~]Division.

(8) A majority of the peer or advisory committee members shall constitute a quorum and may act in behalf of the peer or advisory committee.

(9) Peer or advisory committees shall annually designate one of their members to serve as peer or advisory committee chairman. The [~~d~~]Division shall provide a [~~d~~]Division employee to act as committee secretary to take minutes of committee meetings and to prepare committee correspondence.

(10) Peer or advisory committees shall comply with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings, in their meetings.

(11) Peer or advisory committees shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

(12) Peer or advisory committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in peer or advisory committees business, except as otherwise provided in Title 58 or Title R156.

R156-1-301. Application for Licensure - Filing Date - Applicable Requirements for Licensure - Issuance Date.

(1) The filing date for an application for licensure shall be the postmark date of the application or the date the application is received and date stamped by the [~~d~~]Division, whichever is earlier.

(2) Except as otherwise provided by statute, rule or order, the requirements for licensure applicable to an application for licensure shall be the requirements in effect on the filing date of the application.

(3) The issuance date for a license issued to an applicant for licensure shall be as follows:

(a) the date the approval is input into the [~~d~~]Division's electronic licensure database for applications submitted and processed manually; or

(b) the date printed on the verification of renewal certificate for renewal applications submitted and processed electronically via the [~~d~~]Division's Internet Renewal System.

R156-1-305. Inactive Licensure.

(1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee may not apply for inactive licensure status.

(2) The following licenses issued under Title 58 that are active in good standing may be placed on inactive licensure status:

(a) advanced practice registered nurse;

(b) audiologist;
(c) certified nurse midwife;
(d) certified public accountant emeritus;
(e) certified registered nurse anesthetist;
(f) certified court reporter;
(g) certified social worker;
(h) chiropractic physician;
(i) clinical social worker;
(j) contractor;
(k) deception detection examiner;
(l) deception detection intern;
(m) dental hygienist;
(n) dentist;
(o) direct-entry midwife;
(p) genetic counselor;
(q) health facility administrator;
(r) hearing instrument specialist;
(s) licensed substance abuse counselor;
(t) marriage and family therapist;
(u) naturopath/naturopathic physician;
(v) optometrist;
(w) osteopathic physician and surgeon;
(x) pharmacist;
(y) pharmacy technician;
(z) physician assistant;
(aa) physician and surgeon;
(bb) podiatric physician;
(cc) private probation provider;
(dd) professional counselor;
(ee) professional engineer;
(ff) professional land surveyor;
(gg) professional structural engineer;
(hh) psychologist;
(ii) radiology practical technician;
(jj) radiology technologist;
(kk) security personnel;
(ll) speech-language pathologist; and
(mm) veterinarian.

(3) Applicants for inactive licensure shall apply to the [~~d~~]Division in writing upon forms available from the [~~d~~]Division. Each completed application shall contain documentation of requirements for inactive licensure, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(4) If all requirements are met for inactive licensure, the [~~d~~]Division shall place the license on inactive status.

(5) A license may remain on inactive status indefinitely except as otherwise provided in Title 58 or rules which implement Title 58.

(6) An inactive license may be activated by requesting activation in writing upon forms available from the [~~d~~]Division. Unless otherwise provided in Title 58 or rules which implement Title 58, each reactivation application shall contain documentation that the applicant meets current renewal requirements, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(7) An inactive licensee whose license is activated during the last four months of a renewal cycle shall, upon payment of the appropriate fees, be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their activated license.

(8) A Controlled Substance license may be placed on inactive status if attached to a primary license listed in Subsection R156-1-305(2) and the primary license is placed on inactive status.

R156-1-308a. Renewal Dates.

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

TABLE
RENEWAL DATES

(1) Acupuncturist	May 31	even years
(2) Advanced Practice Registered Nurse	January 31	even years
(3) Alternate Dispute Resolution Provdr	September 30	even years
(4) Architect	May 31	even years
(5) Athlete Agent	September 30	even years
(6) Athletic Trainer	May 31	odd years
(7) Audiologist	May 31	odd years
(8) Barber	September 30	odd years
(9) Barber School	September 30	odd years
(10) Building Inspector	November 30	odd years
(11) Burglar Alarm Security	November 30	even years
(12) C.P.A. Firm	September 30	even years
(13) Certified Court Reporter	May 31	even years
(14) Certified Dietitian	September 30	even years
(15) Certified Medical Language Interpreter	March 31	odd years
([~~15~~]16) Certified Nurse Midwife	January 31	even years
([~~16~~]17) Certified Public Accountant	September 30	even years
([~~17~~]18) Certified Registered Nurse Anesthetist	January 31	even years
([~~18~~]19) Certified Social Worker	September 30	even years
([~~19~~]20) Chiropractic Physician	May 31	even years
([~~20~~]21) Clinical Social Worker	September 30	even years
([~~21~~]22) Construction Trades Instructor	November 30	odd years
([~~22~~]23) Contractor	November 30	odd years
(24) Controlled Substance License	Attached to primary license renewal	
([~~23~~]25) Controlled Substance Precursor[~~ Distributor~~]	May 31	odd years[
~~(24) Controlled Substance Precursor Purchaser~~	~~May 31~~	~~odd years~~]
([~~25~~]26) Controlled Substance Handler	May 31	odd years
([~~26~~]27) Cosmetologist/Barber	September 30	odd years
([~~27~~]28) Cosmetology/Barber School	September 30	odd years
([~~28~~]29) Deception Detection	November 30	even years
([~~29~~]30) Dental Hygienist	May 31	even years
([~~30~~]31) Dentist	May 31	even years
([~~31~~]32) Direct-entry Midwife	September 30	odd years
([~~32~~]33) Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	November 30	even years
([~~33~~]34) Electrologist	September 30	odd years
([~~34~~]35) Electrology School	September 30	odd years
(36) Elevator Mechanic	November 30	even years
([~~35~~]37) Environmental Health Scientist	May 31	odd years
([~~36~~]38) Esthetician	September 30	odd years
([~~37~~]39) Esthetics School	September 30	odd years
([~~38~~]40) Factory Built Housing Dealer	September 30	even years
([~~39~~]41) Funeral Service Director	May 31	even years
([~~40~~]42) Funeral Service Establishment	May 31	even years
([~~41~~]43) Genetic Counselor	September 30	even years
([~~42~~]44) Health Facility Administrator	May 31	odd years
([~~43~~]45) Hearing Instrument Specialist	September 30	even years

(46) Internet Facilitator	September 30	odd years
([~~44~~]47) Landscape Architect	May 31	even years
([~~45~~]48) Licensed Practical Nurse	January 31	even years
([~~46~~]49) Licensed Substance Abuse Counselor	May 31	odd years
([~~47~~]50) Marriage and Family Therapist	September 30	even years
([~~48~~]51) Massage Apprentice, Therapist	May 31	odd years
([~~49~~]52) Master Esthetician	September 30	odd years
([~~50~~]53) Medication Aide Certified	March 31	odd years
([~~51~~]54) Nail Technologist	September 30	odd years
([~~52~~]55) Nail Technology School	September 30	odd years
([~~53~~]56) Naturopath/Naturopathic Physician	May 31	even years
([~~54~~]57) Occupational Therapist	May 31	odd years
([~~55~~]58) Occupational Therapy Assistant	May 31	odd years
([~~56~~]59) Optometrist	September 30	even years
([~~57~~]60) Osteopathic Physician and Surgeon, Online Prescriber	May 31	even years
([~~58~~]61) Outfitter/Hunting Guide	May 31	even years
([~~59~~]62) Pharmacy [~~(~~]Class A-B-C-D-E[~~)~~], Online Contract Pharmacy	September 30	odd years
([~~60~~]63) Pharmacist	September 30	odd years
([~~61~~]64) Pharmacy Technician	September 30	odd years
([~~62~~]65) Physical Therapist	May 31	odd years
([~~63~~]66) Physical Therapist Assistant	May 31	odd years
([~~64~~]67) Physician Assistant	May 31	even years
([~~65~~]68) Physician and Surgeon, Online Prescriber	January 31	even years
([~~66~~]69) Plumber Apprentice, Journeyman, Master, Residential Master, Residential Journeyman	November 30	even years
([~~67~~]70) Podiatric Physician	September 30	even years[
~~(68) Pre Need Funeral Arrangement Provider~~	~~May 31~~	~~even years~~]
([~~69~~]71) Pre Need Funeral Arrangement Sales Agent	May 31	even years
([~~70~~]72) Private Probation Provider	May 31	odd years
([~~71~~]73) Professional Counselor	September 30	even years
([~~72~~]74) Professional Engineer	March 31	odd years
([~~73~~]75) Professional Geologist	March 31	odd years
([~~74~~]76) Professional Land Surveyor	March 31	odd years
([~~75~~]77) Professional Structural Engineer	March 31	odd years
([~~76~~]78) Psychologist	September 30	even years[
~~(77) Radiology Practical Technician~~]	~~May 31~~	~~odd years~~
([~~78~~]79) Radiology Technologist, Radiology Practical Technician	May 31	odd years
([~~79~~]80) Recreational Therapy Technician, Specialist, Master Specialist	May 31	odd years
([~~80~~]81) Registered Nurse	January 31	odd years
([~~81~~]82) Respiratory Care Practitioner	September 30	even years
([~~82~~]83) Security Personnel	November 30	even years
([~~83~~]84) Social Service Worker	September 30	even years
([~~84~~]85) Speech-Language Pathologist	May 31	odd years
([~~85~~]86) Veterinarian	September 30	even years

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

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

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

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

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

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

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

(g) Vocational Rehabilitation Counselor licenses [~~shall be issued for a one year term and are renewed annually~~]will be renewed annually on March 31.

R156-1-308c. Renewal of Licensure Procedures.

The procedures for renewal of licensure shall be as follows:

(1) The [~~d~~]Division shall [~~mail~~]send a renewal notice to each licensee at least 60 days prior to the expiration date shown on the licensee's license. The notice shall include directions for the licensee to renew the license via the Division's website.

(2)(a) [~~Renewal~~]Except as provided in Subsection (2)(b), renewal notices shall be sent by [~~letter~~]mail deposited in the post office with postage prepaid, addressed to the last mailing address shown on the [~~d~~]Division's automated license system. Such mailing shall constitute legal notice. It shall be the duty and responsibility of each licensee to maintain a current mailing address with the [~~d~~]Division.

(b) If a licensee has authorized the Division to send a renewal notice by email, a renewal notice may be sent by email to the last email address shown on the Division's automated license system. Such mailing shall constitute legal notice. It shall be the duty and responsibility of a licensee who authorizes the Division to send a renewal notice by email to maintain a current email address with the Division.

(3) Renewal notices shall [~~specify~~]provide that the renewal requirements are outlined in the online renewal process and [~~require~~]that each licensee is required to document or certify that the licensee meets the renewal requirements prior to renewal.

(4) Renewal notices shall advise each licensee that a license that is not renewed prior to the expiration date shown on the license automatically expires and that any continued practice without a license constitutes a criminal offense under Subsection 58-1-501(1)(a).

(5) Licensees licensed during the last four months of a renewal cycle shall be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their license.

R156-1-308f. Denial of Renewal of Licensure - Classification of Proceedings - Conditional Renewal of Licensure During Adjudicative Proceedings - Conditional Initial, Renewal, or Reinstatement Licensure During Audit or Investigation.

(1) Denial of renewal of licensure shall be classified as a formal adjudicative proceeding under Rule R156-46b, with allowance for exceptions.

(2) When a renewal application is denied and the applicant concerned requests a hearing to challenge the [~~d~~]Division's action as permitted by Subsection 63G-4-201(3)(d)(ii), unless the requested hearing is convened and a final order is issued prior to the expiration date shown on the applicant's current license, the [~~d~~]Division shall conditionally renew the applicant's license during the pendency of the adjudicative proceeding as permitted by Subsection 58-1-106(1)(h).

(3)(a) When an initial, renewal or reinstatement applicant under Subsections 58-1-301(2) through (3) or 58-1-308(5) or (6)(b) is selected for audit or is under investigation, the [~~d~~]Division may conditionally issue an initial license to an applicant for initial licensure, or renew or reinstate the license of an applicant pending the completion of the audit or investigation.

(b) The undetermined completion of a referenced audit or investigation rather than the established expiration date shall be indicated as the expiration date of a conditionally issued, renewed, or reinstated license.

(c) A conditional issuance, renewal, or reinstatement shall not constitute an adverse licensure action.

(d) Upon completion of the audit or investigation, the [~~d~~]Division shall notify the initial license, renewal, or reinstatement applicant whether the applicant's license is unconditionally issued, renewed, reinstated, denied, or partially denied or reinstated.

(e) A notice of unconditional denial or partial denial of licensure to an applicant the [~~d~~]Division conditionally licensed, renewed, or reinstated shall include the following:

(i) that the applicant's unconditional initial issuance, renewal, or reinstatement of licensure is denied or partially denied and the basis for such action;

(ii) the [~~d~~]Division's file or other reference number of the audit or investigation;

(iii) that the denial or partial denial of unconditional initial licensure, renewal, or reinstatement of licensure is subject to review and a description of how and when such review may be requested;

(iv) that the applicant's conditional license automatically will or did expire on the expiration date shown on the conditional license, and that the applicant will not be issued, renewed, or reinstated unless or until the applicant timely requests review; and

(v) that if the applicant timely requests review, the applicant's conditionally issued, renewed, or reinstated license does not expire until an order is issued unconditionally issuing, renewing, reinstating, denying, or partially denying the initial issuance, renewal, or reinstatement of the applicant's license.

R156-1-308g. Reinstatement of Licensure which was Active and in Good Standing at the Time of Expiration of Licensure - Requirements.

The following requirements shall apply to reinstatement of licensure which was active and in good standing at the time of expiration of licensure:

(1) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the [~~d~~]Division between the date of the expiration of the license and [~~31~~]30 days after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the [~~d~~]Division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and a late fee.

(2) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the [~~d~~]Division between 31 days after the expiration of the license and two years after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the [~~d~~]Division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and reinstatement fee.

(3) In accordance with Subsection 58-1-308(6)(a), if an application for reinstatement is received by the [~~d~~]Division more than two years after the date the license expired and the applicant has not been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States during the time the license was expired, the applicant shall:

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

(b) provide information requested by the [~~d~~]Division and board to clearly demonstrate the applicant is currently competent to engage in the occupation or profession for which reinstatement of licensure is requested;

(c) if the applicant has not been engaged in unauthorized practice of the applicant's occupation or profession following the

expiration of the applicant's license, pay the established license fee for a new applicant for licensure[~~ and the reinstatement fee~~]; and

(d) if the applicant has been engaged in unauthorized practice of the applicant's occupation or profession following the expiration of the applicant's license, pay the current license renewal fee multiplied by the number of renewal periods for which the license renewal fee has not been paid since the time of expiration of license, plus a reinstatement fee.

(4) In accordance with Subsection 58-1-308(6)(b), if an application for reinstatement is received by the [~~d~~]Division more than two years after the date the license expired but the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States shall:

(a) provide documentation of prior licensure in the State of Utah;

(b) provide documentation that the applicant has continuously, since the expiration of the applicant's license in Utah, been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;

(c) provide documentation that the applicant has completed or is in compliance with any renewal qualifications;

(d) provide documentation that the applicant's application was submitted within six months after reestablishing domicile within Utah or terminating full-time government service; and

(e) pay the established license renewal fee and the reinstatement fee.

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

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

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

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

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

(4) pay any fines or citations owe[~~s~~]d to the Division prior to the expiration of license.

R156-1-308j. Relicensure Following Revocation of Licensure - Requirements.

An applicant for relicensure following revocation of licensure shall:

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

(2) pay the established license fee for a new applicant for licensure; and

(3) provide information requested by the [~~d~~]Division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was revoked.

R156-1-308k. Relicensure Following Surrender of Licensure - Requirements.

The following requirements shall apply to relicensure applications following the surrender of licensure:

(1) An applicant who surrendered a license that was active and in good standing at the time it was surrendered shall meet the requirements for licensure listed in Sections R156-1-308a through R156-1-308l.

(2) An applicant who surrendered a license while the license was active but not in good standing as evidenced by the written agreement supporting the surrender of license shall:

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

(b) pay the established license fee for a new applicant for licensure;

(c) provide information requested by the [~~d~~]Division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was surrendered;

(d) pay any fines or citations owed to the Division prior to the surrender of license.

R156-1-308l. Reinstatement of Licensure and Relicensure - Term of Licensure.

Except as otherwise governed by the terms of an order issued by the [~~d~~]Division, a license issued to an applicant for reinstatement or relicensure issued during the last four months of a renewal cycle shall, upon payment of the appropriate fees, be issued for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than requiring the licensee to immediately renew their reinstated or relicensed license.

R156-1-310. Cheating on Examinations.

(1) Policy.

The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the [~~d~~]Division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

(2) Cheating Defined.

Cheating is defined as the use of any means or instrumentality by or for the benefit of an examinee to alter the results of an examination in any way to cause the examination results to inaccurately represent the competency of an examinee with respect to the knowledge or skills about which they are examined. Cheating includes:

(a) communication between examinees inside of the examination room or facility during the course of the examination;

(b) communication about the examination with anyone outside of the examination room or facility during the course of the examination;

(c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;

(d) permitting anyone to copy answers to the examination;

(e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;

(f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination;

(g) obtaining, using, buying, selling, possession of or having access to a copy of any portion of the examination prior to administration of the examination.

(3) Action Upon Detection of Cheating.

(a) The person responsible for administration of an examination, upon evidence that an examinee is or has been cheating on an examination shall notify the [~~d~~]Division of the circumstances in detail and the identity of the examinees involved with an assessment of the degree of involvement of each examinee;

(b) If cheating is detected prior to commencement of the examination, the examinee may be denied the privilege of taking the examination; or if permitted to take the examination, the examinee shall be notified of the evidence of cheating and shall be informed that the [~~d~~]Division may consider the examination to have been failed by the applicant or licensee because of the cheating; or

(c) If cheating is detected during the examination, the examinee may be requested to leave the examination facility and in that case the examination results shall be the same as failure of the examination; however, if the person responsible for administration of the examination determines the cheating detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further cheating shall be taken and the examinee may be permitted to continue with the examination.

(d) If cheating is detected after the examination, the [~~d~~]Division shall make appropriate inquiry to determine the facts concerning the cheating and shall thereafter take appropriate action.

(e) Upon determination that an applicant has cheated on an examination, the applicant may be denied the privilege of retaking the examination for a reasonable period of time, and the [~~d~~]Division may deny the applicant a license and may establish conditions the applicant must meet to qualify for a license including the earliest date on which the [~~d~~]Division will again consider the applicant for licensure.[

~~(4) Notification.~~

~~The division shall notify all proctors, test administrators and examinees of the rules concerning cheating.~~]

R156-1-404d. Diversion - Procedures.

(1) Diversion committees shall complete the duties described in Subsections R156-1-404b(1) and (2) no later than 60 days following the referral of a licensee to the diversion committee for possible diversion.

(2) The director shall accept or reject the diversion committee's recommendation no later than 30 days following receipt of the recommendation.

(3) If the director finds that a licensee meets the qualifications for diversion and should be diverted, the [~~d~~]Division shall prepare and serve upon the licensee a proposed diversion agreement. The licensee shall have a period of time determined by the diversion committee not to exceed 30 days from the service of the proposed diversion agreement to negotiate a final diversion agreement with the director. The final diversion agreement shall comply with Subsections 58-1-404.

(4) If a final diversion agreement is not reached with the director within 30 days from service of the proposed diversion agreement, the [~~d~~]Division shall pursue appropriate disciplinary action against the licensee in accordance with Section 58-1-108.

(5) In accordance with Subsection 58-1-404(5), a licensee may be represented, at the licensee's discretion and expense, by legal counsel during negotiations for diversion, at the time of execution of the diversion agreement and at any hearing before the director relating to a diversion program.

R156-1-404e. Diversion - Agreements for Rehabilitation, Education or Other Similar Services or Coordination of Services.

(1) The [~~d~~]Division may enter into agreements with professional or occupational organizations or associations, education institutions or organizations, testing agencies, health care facilities, health care practitioners, government agencies or other persons or organizations for the purpose of providing rehabilitation, education or any other services necessary to facilitate an effective completion of a diversion program for a licensee.

(2) The [~~d~~]Division may enter into agreements with impaired person programs to coordinate efforts in rehabilitating and educating impaired professionals.

(3) Agreements shall be in writing and shall set forth terms and conditions necessary to permit each party to properly fulfill its duties and obligations thereunder. Agreements shall address the circumstances and conditions under which information concerning the impaired licensee will be shared with the [~~d~~]Division.

(4) The cost of administering agreements and providing the services thereunder shall be borne by the licensee benefiting from the services. Fees paid by the licensee shall be reasonable and shall be in proportion to the value of the service provided. Payments of fees shall be a condition of completing the program of diversion.

(5) In selecting parties with whom the [~~d~~]Division shall enter agreements under this section, the [~~d~~]Division shall ensure the parties are competent to provide the required services. The [~~d~~]Division may limit the number of parties providing a particular service within the limits or demands for the service to permit the responsible diversion committee to conduct quality review of the programs given the committee's limited resources.

R156-1-503. Reporting Disciplinary Action.

The [~~d~~]Division may report disciplinary action to other state or federal governmental entities, state and federal data banks, the media, or any other person who is entitled to such information under the Government Records Access and Management Act.

KEY: diversion programs, licensing, occupational licensing, supervision
Date of Enactment or Last Substantive Amendment: [~~March 25,~~]2010
Notice of Continuation: March 1, 2007
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-308; 58-1-501(4)

Commerce, Occupational and Professional Licensing
R156-17b
Pharmacy Practice Act Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33630
FILED: 05/11/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Pharmacy Board reviewed the rule to identify areas needing changes or clarification. The primary issue addressed in this filing is the elimination of the supervisory ratio of pharmacist to pharmacy technicians. This ratio has been the subject of great discussion among the profession and the Division and creates a barrier to utilize pharmacy technicians as a cashier or record keeper because the technician not actively involved in dispensing medication is counted in the 1:3 ratio. The proposed amendments also define and use the acronym "PIC" for the term "pharmacist-in-charge" (PIC), thus using the term more frequently used by the profession and eliminating unnecessary verbiage.

SUMMARY OF THE RULE OR CHANGE: Throughout the rule, capitalized "Division" and "Board" where appropriate, updated statutory and rule citations and replaced "pharmacist-in-charge" with "PIC". In Section R156-17b-102, added definition of "PIC", updated the edition of the USP-NF (United States Pharmacopeia/National Formulary) books, and renumbered remaining subsections. In Section R156-17b-302, added that a foreign educated applicant shall obtain a passing score on the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination. In Section R156-17b-306, information contained in Subsection (4) is moved to Subsection R156-17b-606(1) under the requirements of a preceptor thus separating out the requirements to be a preceptor from the standards for the applicant's internship. In Section R156-17b-402, additions create penalties for the additional unprofessional conduct added in Section R156-17b-502. In Section R156-17b-502, added four more types of behavior that constitute unprofessional conduct. In Section R156-17b-601, amendments eliminate the supervisory ratio of one pharmacist to three pharmacy technicians. In Section R156-17b-603, added two additional standards including assuring the pharmacy operates with an appropriate pharmacist to pharmacy technician ratio given the practice setting and assuring the PIC assigned to a pharmacy is recorded with the Division. In Section R156-17b-606, moved the language regarding the criteria to be an approved preceptor as currently found in Subsection R!56-17b-306(4) to this section. In Section R156-17b-613, the changes provides the reference to the federal code and deletes the reference to state law and rule which does not address the issue. Section R156-17b-614 is renumbered to R156-17b-614a, and requires any Class A or B pharmacy involved in sterile compounding to follow the USP-NF Chapter 797 Standards. Old Section R156-17b-614a renumbered to Section R156-17b-614b. Old Section R156-17b-614b is deleted as the requirement is now included in Section R156-17b-614a. In Section R156-17b-614d, added specific language regarding sterile compounding and the type of licensure needed if located out of state. In Section R156-17b-616, the change requires an out-of-state mail-order pharmacy preparing sterile compounds to follow the USP-NF Chapter 797 Standards. In Section R156-17b-617, the change requires a Class E pharmacy preparing sterile compounds to follow the USP-NF Chapter 797 Standards.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-17b-101 and Section 58-37-1 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a) and Subsection 58-17b-601(1)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Division will incur minimal costs of approximately $50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. Proposed amendments which eliminate the 1:3 pharmacist to pharmacy technician ratio will eliminate the citations that are written to pharmacists exceeding the current ratio; as a result less money may be deposited into the Pharmacy Education and Enforcement Fund.
♦ LOCAL GOVERNMENTS: There should be little to no effect on local governments. Local governments do not own or operate pharmacies or employ pharmacy personnel.
♦ SMALL BUSINESSES: The elimination of the 1:3 pharmacist to pharmacy technician may benefit a small pharmacy with only one pharmacist working a shift. If the circumstances are appropriate, the pharmacist can work with more than three pharmacy technicians thus filling and dispensing more prescriptions. Exact estimates of increased monies which could be earned cannot be determined due to a wide varying degree of circumstances between pharmacies.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: A foreign-educated pharmacist seeking licensure will have the additional cost of the FPGEC examination which is approximately $500. The Division reviews and licenses fewer than 15 foreign pharmacy graduates a year, thus resulting in an aggregate yearly cost increase of $7,500. As a result of the proposed amendments, a pharmacist can utilize more than three pharmacy technicians if the circumstances are appropriate thus being able to dispense more prescriptions and receiving more money as an employee and/or an owner of a pharmacy. Exact estimates of increased monies which could be earned cannot be determined due to a wide varying degree of circumstances between pharmacies. Also an out-of-state mail-order pharmacy and a Class E pharmacy involved in sterile compounding must comply with the USP-NF standards which include using a hood when preparing sterile compounds, which may result in minimal increased costs. Licensed pharmacies will need to keep the renewal of their copy of the USP-NF books current which costs approximately $820 yearly.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There could be a cost savings by eliminating the 1:3 pharmacist to pharmacy technician ratio. A foreign-educated pharmacist seeking licensure will have the additional cost of the FPGEC examination which is approximately $500. An out-of-state mail-order pharmacy and a Class E pharmacy involved in sterile compounding must comply with the USP-NF standards which include using a hood when preparing sterile compounds, which may result in minimal increased costs. Licensed pharmacies will need to keep the renewal of their copy of USP-NF books current which costs approximately $820 yearly.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing eliminates the ratio of pharmacist to pharmacy technician requirements; requires foreign-educated applicants to pass an examination; expands the unprofessional conduct definition to include certain practices; establishes penalties for violations; and adopts standards for sterile compounding. As more fully discussed in the rule summary, except for the cost of examination for foreign educated applicants, these changes will likely result in a cost savings to licensees and to the pharmacy industry. No other fiscal impact to businesses is anticipated.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Laura Poe by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at lpoe@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/22/2010 02:00 PM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-17b. Pharmacy Practice Act Rule.
R156-17b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 17b, as used in Title 58, Chapters 1 and 17b or this rule:

(1) "ACPE" means the American Council on Pharmaceutical Education or Accreditation Council for Pharmacy Education.

(2) "Analytical laboratory":

(a) means a facility in possession of prescription drugs for the purpose of analysis; and

(b) does not include a laboratory possessing prescription drugs used as standards and controls in performing drug monitoring or drug screening analysis if the prescription drugs are pre-diluted in a human or animal body fluid, human or animal body fluid components, organic solvents, or inorganic buffers at a concentration not exceeding one milligram per milliliter when labeled or otherwise designated as being for in-vitro diagnostic use.

(3) "Authorized distributor of record" means a pharmaceutical wholesaler with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drugs. An ongoing relationship is deemed to exist between such pharmaceutical wholesaler and a manufacturer, as defined in Section 1504 of the Internal Revenue Code, when the pharmaceutical wholesaler has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship, and the pharmaceutical wholesaler is listed on the manufacturer's current list of authorized distributors of record.

(4) "Authorized personnel" means any person who is a part of the pharmacy staff who participates in the operational processes of the pharmacy and contributes to the natural flow of pharmaceutical care.

(5) "Central Order Entry" means a pharmacy where functions are performed at the request of another pharmacy to perform processing functions such as dispensing, drug review, refill authorizations, and therapeutic interventions.

(6) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of the prescription drugs to a group of chain pharmacies that have the same common ownership and control.

(7) "Co-licensed partner or product" means an instance where two or more parties have the right to engage in the manufacturing and/or marketing of a prescription drug, consistent with FDA's implementation of the Prescription Drug Marketing Act.

(8) "Cooperative pharmacy warehouse" means a physical location for drugs that acts as a central warehouse and is owned, operated or affiliated with a group purchasing organization (GPO) or pharmacy buying cooperative and distributes those drugs exclusively to its members.

(9) "Counterfeit prescription drug" has the meaning given that term in 21 USC 321(g)(2), including any amendments thereto.

(10) "Counterfeiting" means engaging in activities that create a counterfeit prescription drug.

(11) "Dispense", as defined in Subsection 58-17b-102(23), does not include transferring medications for a patient from a legally dispensed prescription for that particular patient into a daily or weekly drug container to facilitate the patient taking the correct medication.

(12) "Drop shipment" means the sale of a prescription drug to a pharmaceutical wholesaler by the manufacturer of the drug; by the manufacturer's co-licensed product partner, third party logistics provider, or exclusive distributor; or by an authorized distributor of record that purchased the product directly from the manufacturer or from one of these entities; whereby:

(a) the pharmaceutical wholesale distributor takes title to but not physical possession of such prescription drug;

(b) the pharmaceutical wholesale distributor invoices the pharmacy, pharmacy warehouse, or other person authorized by law to dispense to administer such drug; and

(c) the pharmacy, pharmacy warehouse, or other person authorized by law to dispense or administer such drug receives delivery of the prescription drug directly from the manufacturer; from the co-licensed product partner, third party logistics provider, or exclusive distributor; or from an authorized distributor of record that purchases the product directly from the manufacturer or from one of these entities.

(13) "Drug therapy management" means the review of a drug therapy regimen of a patient by one or more pharmacists for the purpose of evaluating and rendering advice to one or more practitioners regarding adjustment of the regimen.

(14) "Drugs", as used in this rule, means drugs or devices.

(15) "ExCPT", as used in this rule, means the Exam for the Certification of Pharmacy Technicians.

(16) "FDA" means the United States Food and Drug Administration and any successor agency.

(17) "High-risk, medium-risk, and low-risk drugs" refers to the risk to a patient's health from compounding sterile preparations, as referred to in USP-NF Chapter 797, for details of determining risk level.

(18) "Hospice facility pharmacy" means a pharmacy that supplies drugs to patients in a licensed healthcare facility for terminal patients.

(19) "Hospital clinic pharmacy" means a pharmacy that is located in an outpatient treatment area where a pharmacist or pharmacy intern is compounding, admixing, or dispensing prescription drugs, and where:

(a) prescription drugs or devices are under the control of the pharmacist, or the facility for administration to patients of that facility;

(b) prescription drugs or devices are dispensed by the pharmacist or pharmacy intern; or

(c) prescription drugs are administered in accordance with the order of a practitioner by an employee or agent of the facility.

(20) "Legend drug" or "prescription drug" means any drug or device that has been determined to be unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(a) "Caution: federal law prohibits dispensing without prescription";

(b) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(c) "Rx only".

(21) "Maintenance medications" means medications the patient takes on an ongoing basis.

(22) "Manufacturer's exclusive distributor" means an entity that contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the drug's sale or disposition. Such manufacturer's exclusive distributor must be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

(23) "MPJE" means the Multistate Jurisprudence Examination.

(24) "NABP" means the National Association of Boards of Pharmacy.

(25) "NAPLEX" means North American Pharmacy Licensing Examination.

(26) "Normal distribution channel" means a chain of custody for a prescription drug that goes directly, by drop shipment as defined in Subsection (12), or via intracompany transfer from a manufacturer; or from the manufacturer's co-licensed partner, third-party logistics provider, or the exclusive distributor to:

(a) a pharmacy or other designated persons authorized under this chapter to dispense or administer prescription drugs to a patient;

(b) a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control;

(c) a cooperative pharmacy warehouse to a pharmacy that is a member of the pharmacy buying cooperative or GPO to a patient;

(d) an authorized distributor of record, and then to either a pharmacy or other designated persons authorized under this chapter to dispense or administer such drug for use by a patient;

(e) an authorized distributor of record, and then to a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control; or

(f) an authorized distributor of record to another authorized distributor of record to a licensed pharmaceutical facility

or a licensed healthcare practitioner authorized under this chapter to dispense or administer such drug for use by a patient.

(27) "Parenteral" means a method of drug delivery injected into body tissues but not via the gastrointestinal tract.

(28) "Pedigree" means a document or electronic file containing information that records each distribution of any given prescription drug.

(29) "PIC", as used in this rule, means the pharmacist-in-charge.

([~~29~~]30) "Prescription files" means all hard-copy and electronic prescriptions that includes pharmacist notes or technician notes, clarifications or information written or attached that is pertinent to the prescription.

([~~30~~]31) "PTCB" means the Pharmacy Technician Certification Board.

([~~31~~]32) "Qualified continuing education", as used in this rule, means continuing education that meets the standards set forth in Section R156-17b-309.

([~~32~~]33) "Refill" means to fill again.

([~~33~~]34) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug, excluding that completed by the pharmacist responsible for dispensing the product to a patient.

([~~34~~]35) "Reverse distributor" means a person or company that retrieves unusable or outdated drugs from a pharmacy or pharmacist for the purpose of removing those drugs from stock and destroying them.

([~~35~~]36) "Sterile products preparation facility" means any facility, or portion of the facility, that compounds sterile products using aseptic technique.

([~~36~~]37) "Third party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other similar services on behalf of a manufacturer, but does not take title to the prescription drug or have any authoritative control over the prescription drug's sale. Such third party logistics provider must be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

([~~37~~]38) "Unauthorized personnel" means any person who is not participating in the operational processes of the pharmacy who in some way would interrupt the natural flow of pharmaceutical care.

([~~38~~]39) "Unit dose" means the ordered amount of a drug in a dosage form prepared for a one-time administration to an individual and indicates the name, strength, lot number and expiration date for the drug.

([~~39~~]40) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 17b, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-17b-502.

([~~40~~]41) "USP-NF" means the United States Pharmacopeia-National Formulary (USP [~~31~~]32-NF [~~26~~]27), [~~2008~~]2009 edition, which is official from May 1, [~~2008~~]2009 through Supplement 2, dated December 1, [~~2008~~]2009, which is hereby adopted and incorporated by reference.

([~~41~~]42) "Wholesaler" means a wholesale distributor who supplies or distributes drugs or medical devices that are restricted by federal law to sales based on the order of a physician to a person other than the consumer or patient.

([~~42~~]43) "Wholesale distribution" means the distribution of drugs to persons other than consumers or patients, but does not include:

(a) intracompany sales or transfers;

(b) the sale, purchase, distribution, trade, or other transfer of a prescription drug for emergency medical reasons, as defined under 21 CFR 203.3(m), including any amendments thereto;

(c) the sale, purchase, or trade of a drug pursuant to a prescription;

(d) the distribution of drug samples;

(e) the return or transfer of prescription drugs to the original manufacturer, original wholesale distributor, reverse distributor, or a third party returns processor;

(f) the sale, purchase, distribution, trade, or transfer of a prescription drug from one authorized distributor of record to one additional authorized distributor of record during a time period for which there is documentation from the manufacturer that the manufacturer is able to supply a prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had until that time been exclusively in the normal distribution channel;

(g) the sale, purchase or exchange of blood or blood components for transfusions;

(h) the sale, transfer, merger or consolidation of all or part of the business of a pharmacy;

(i) delivery of a prescription drug by a common carrier; or

(j) other transactions excluded from the definition of "wholesale distribution" under 21 CFR 203.3 (cc), including any amendments thereto.

R156-17b-105. Licensure - Administrative Inspection.

In accordance with Subsection 58-17b-103(3)(e), the procedure for disposing of any drugs or devices seized by the Division during an administrative inspection will be handled as follows:

(1) Any legal drugs or devices found and temporarily seized by the Division [~~and~~]that are found to be in compliance with this chapter will be returned to the [~~pharmacist-in-charge~~]PIC of the pharmacy involved at the conclusion of any investigative or adjudicative proceedings and appeals.

(2) Any drugs or devices that are temporarily seized by the Division [~~and~~]that are found to be unlawfully possessed, adulterated, misbranded, outdated, or otherwise in violation of this rule shall be destroyed by Division personnel at the conclusion of any investigative or adjudicative proceedings and appeals. The destruction of any seized controlled substance drugs will be witnessed by two Division individuals. A controlled substance destruction form will be completed and retained by the Division.

(3) An investigator may, upon determination that the violations observed are of a nature that pose an imminent peril to the public health, safety and welfare, recommend to the Division Director to issue an emergency licensure action, such as cease and desist.

R156-17b-301. Pharmacy Licensure Classifications - Pharmacist-in-Charge Requirements.

In accordance with Subsection 58-17b-302(4), the classification of pharmacies holding licenses are clarified as:

(1) Class A pharmacy includes all retail operations located in Utah and requires a [~~pharmacist-in-charge~~]PIC.

(2) Class B pharmacy includes an institutional pharmacy that provides services to a target population unique to the needs of the healthcare services required by the patient. All Class B pharmacies require a [~~pharmacist-in-charge~~]PIC except for pharmaceutical administration facilities and methadone clinics. Examples of Class B pharmacies include:

(a) closed door;

(b) hospital clinic pharmacy;

(c) methadone clinics;

(d) nuclear;

(e) branch;

(f) hospice facility pharmacy;

(g) veterinarian pharmaceutical facility;

(h) pharmaceutical administration facility; and

(i) sterile product preparation facility.

(j) A retail pharmacy that prepares sterile products does not require a separate license as a Class B pharmacy.

(3) Class C pharmacy includes pharmacies located in Utah that are involved in:

(a) manufacturing;

(b) producing;

(c) wholesaling;

(d) distributing; and

(e) reverse distributing.

(4) Class D pharmacy includes pharmacies located outside the state of Utah. Class D pharmacies require a [~~pharmacist-in-charge~~]PIC licensed in the state where the pharmacy is located and include Out-of-state mail order pharmacies. Facilities that have multiple locations must have licenses for each facility and every component part of a facility.

(5) Class E pharmacy includes those pharmacies that do not require a [~~pharmacist-in-charge~~]PIC and include:

(a) medical gases providers;

(b) analytical laboratories

(c) durable medical equipment providers; and

(d) central order entry pharmacies.

(6) All pharmacy licenses will be converted to the appropriate classification by the Division as identified in Section 58-17b-302.

(7) Each Class A and each Class B pharmacy required to have a [~~pharmacist-in-charge~~]PIC shall have one [~~pharmacist-in-charge~~]PIC who is employed on a full-time basis as defined by the employer, who acts as a [~~pharmacist-in-charge~~]PIC for one pharmacy. However, the [~~pharmacist-in-charge~~]PIC may be the [~~pharmacist-in-charge~~]PIC of more than one Class A pharmacy, if the additional Class A pharmacies are not open to provide pharmacy services simultaneously.

(8) The [~~pharmacist-in-charge~~]PIC shall comply with the provisions of Section R156-17b-603.

R156-17b-302. Licensure - Examinations.

(1) In accordance with Subsection 58-17b-303(1)(h), the examinations that must be successfully passed by an applicant for licensure as a pharmacist are:

(a) the NAPLEX with a passing score as established by NABP; and

(b) the Multistate Pharmacy Jurisprudence Examination (MPJE) with a minimum passing score as established by NABP.

(2) In accordance with Subsection 58-17b-303(3)(j), an applicant applying by endorsement is required to pass the MPJE.

(3) In accordance with Subsection 58-17b-305(1)(g), the examinations which must be passed by an applicant applying for licensure as a pharmacy technician are:

(a) the Utah Pharmacy Technician Law and Rule Examination with a passing score of at least 75 and taken at the time of making application for licensure; and

(b) the PTCB or ExCPT with a passing score as established by the certifying body. The certificate must exhibit a valid date and that the certification is active.

(4) A graduate of a foreign pharmacy school shall obtain a passing score on the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination.

R156-17b-304. Licensure - Education Requirements.

(1) In accordance with Subsections 58-17b-303(2) and 58-17b-304(7)(c), the credentialing agency recognized to provide certification and evaluate equivalency of a foreign educated pharmacy graduate is the Foreign Pharmacy Graduate Examination Committee (FPGEC) of the National Association of Boards of Pharmacy Foundation.

(2) In accordance with Subsection 58-17b-304(6), an applicant for a pharmacy intern license shall demonstrate that he meets one of the following education criteria:

(a) current admission in a College of Pharmacy accredited by the ACPE by written verification from the Dean of the College;

(b) a graduate degree from a school or college of pharmacy which is accredited by the ACPE; or

(c) a graduate degree from a foreign pharmacy school as established by a certificate of equivalency from an approved credentialing agency defined in Subsection (1).

(3) In accordance with Subsection 58-17b-305(1)(f), a pharmacy technician must complete an approved program of education and training that meets the following standards:

(a) The didactic training program must be approved by the Division in collaboration with the Board and must address, at a minimum, the following topics:

(i) legal aspects of pharmacy practice including federal and state laws and rules governing practice;

(ii) hygiene and aseptic techniques;

(iii) terminology, abbreviations and symbols;

(iv) pharmaceutical calculations;

(v) identification of drugs by trade and generic names, and therapeutic classifications;

(vi) filling of orders and prescriptions including packaging and labeling;

(vii) ordering, restocking, and maintaining drug inventory;

(viii) computer applications in the pharmacy; and

(ix) non-prescription products including cough and cold, nutritional, analgesics, allergy, diabetic testing supplies, first aid, ophthalmic, family planning, foot, feminine hygiene, gastrointestinal preparations, and pharmacy care over-the-counter drugs, except those over-the-counter drugs that are prescribed by a practitioner.

(b) This training program's curriculum and a copy of the final examination shall be submitted to the Division for approval by the Board prior to starting any training session with a pharmacy technician in training. The final examination must include questions covering each of the topics listed in Subsection (3)(a) above.

(c) Approval must be granted by the Division in collaboration with the Board before a student may start a program of study. An individual who completes a non-approved program is not eligible for licensure.

(d) The training program must require at least 180 hours of practical training supervised by a licensed pharmacist in good standing with the Division and must include written protocols and guidelines for the teaching pharmacist outlining the utilization and supervision of pharmacy technicians in training that includes:

(i) the specific manner in which supervision will be completed; and

(ii) an evaluative procedure to verify the accuracy and completeness of all acts, tasks and functions performed by the pharmacy technician in training.

(e) An individual must complete an approved training program and successfully pass the required examinations as listed in Subsection R156-17b-302(3) within one year from the date of the first day of the training program, unless otherwise approved by the Division in collaboration with the Board.

(i) An individual who has completed an approved program, but did not seek licensure within the one year time frame must complete a minimum of 180 hours of refresher practice in a pharmacy approved by the [~~b~~]Board if it has been more than six months since having exposure to pharmacy practice.

(ii) An individual who has been licensed as a pharmacy technician but allowed that license to expire for more than two years and wishes to renew that license must complete a minimum of 180 hours of refresher hours in an approved pharmacy under the direct supervision of a pharmacist.

(iii) An individual who has completed an approved program, but is awaiting the results of the required examinations may practice as a technician-in-training under the direct supervision of the pharmacist for a period not to exceed three months. If the individual fails the examinations, that individual can no longer work as at technician-in-training while waiting to retake the examinations. The individual shall work in the pharmacy only as supportive personnel.

(4) An applicant for licensure as a pharmacy technician is deemed to have met the qualification for licensure in Subsection 58-17b-305(f) if the applicant:

(a) is currently licensed and in good standing in another state and has not had any adverse action taken on that license;

(b) has engaged in the practice as a pharmacy technician for a minimum of 1,000 hours in that state within the past two years or equivalent experience as approved by the Division in collaboration with the Board; and

(c) has passed and maintained current PTCB or ExCPT certification and passed the Utah law exam.

R156-17b-305. Temporary Licensure.

(1) In accordance with Subsection 58-1-303(1), the [~~d~~]Division may issue a temporary pharmacist license to a person who meets all qualifications for licensure as a pharmacist except for the passing of the required examination, if the applicant:

(a) is a graduate of an ACPE accredited pharmacy school within two months immediately preceding application for licensure;

(b) submit a complete application for licensure as a pharmacist except the passing of the NABP and MJPE examinations;

(c) submits evidence of having secured employment conditioned upon issuance of the temporary license, and the employment is under the direct, on-site supervision of a pharmacist with an active, non-temporary license that may or may not include a controlled substance license; and

(d) has registered to take the required licensure examinations.

(2) A temporary pharmacist license issued under Subsection (1) expires the earlier of:

(a) six months from the date of issuance;

(b) the date upon which the [~~d~~]Division receives notice from the examination agency that the individual has failed either examination twice; or

(c) the date upon which the [~~d~~]Division issues the individual full licensure.

(3) A pharmacist temporary license issued in accordance with this section cannot be renewed or extended.

R156-17b-306. Licensure - Pharmacist - Pharmacy Internship Standards.

(1) In accordance with Subsection 58-17b-303(1)(g), the standards for the pharmacy internship required for licensure as a pharmacist include the following:

(a) At least 1500 hours of practice supervised by a pharmacy preceptor shall be obtained in Utah or another state or territory of the United States, or a combination of both.

(i) Internship hours completed in Utah shall include at least 360 hours but not more than 900 hours in a college coordinated practical experience program as an integral part of the curriculum which shall include a minimum of 120 hours in each of the following practices:

(A) community pharmacy;

(B) institutional pharmacy; and

(C) any clinical setting.

(ii) Internship hours completed in another state or territory of the United States shall be accepted based on the approval of the hours by the pharmacy board in the jurisdiction where the hours were obtained.

(b) Evidence of completed internship hours shall be documented to the Division by the pharmacy intern at the time application is made for a Utah pharmacist license.

(c) Pharmacy interns participating in internships may be credited no more than 50 hours per week of internship experience.

(d) No credit will be awarded for didactic experience.

(2) If a pharmacy intern is suspended or dismissed from an approved College of Pharmacy, the intern must notify the Division within 15 days of the suspension or dismissal.

(3) If a pharmacy intern ceases to meet all requirements for intern licensure, the pharmacy intern shall surrender [~~his~~]the pharmacy intern license to the Division within 60 days unless an extension is [~~required~~]requested and granted by the Division in collaboration with the Board.[

~~(4) In accordance with Subsections 58-17b-102(50), to be an approved preceptor, a pharmacist must meet the following criteria:~~

~~(a) hold a Utah pharmacist license that is active and in good standing;~~

~~(b) document engaging in active practice as a licensed pharmacist for not less than two years in any jurisdiction;~~

~~(c) not be currently under any sanction nor under any sanction at any time which when considered by the Division and the Board would be of such a nature that the best interests of the intern and the public would not be served;~~

~~(d) provide direct, on-site supervision to only one pharmacy intern during a working shift; and~~

~~(e) refer to the intern training guidelines as outlined in the Pharmacy Coordinating Council of Utah Internship Competencies, October 12, 2004, as information about a range of best practices for training interns.~~]

R156-17b-309. Continuing Education.

(1) In accordance with Section 58-17b-310 and Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a requirement for continuing education as a condition for renewal or reinstatement of a pharmacist or pharmacy technician license issued under Title 58, Chapter 17b.

(2) Requirements shall consist of the following number of qualified continuing education hours in each preceding renewal period:

(a) 30 hours for a pharmacist; and

(b) 20 hours for a pharmacy technician.

(3) The required number of hours of qualified continuing professional education for an individual who first becomes licensed during the two year renewal cycle shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(4) Qualified continuing professional education hours shall consist of the following:

(a) for pharmacists:

(i) institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction, and programmed learning courses, presented by an institution, individual, organization, association, corporation or agency that has been approved by ACPE;

(ii) programs approved by health-related continuing education approval organizations provided the continuing education is nationally recognized by a healthcare accrediting agency and the education is related to the practice of pharmacy;

(iii) programs of certification by qualified individuals, such as certified diabetes educator credentials, board certification in advanced therapeutic disease management or other certification as approved by the Division in consultation with the Board; and

(iv) training or educational presentations offered by the [~~d~~]Division.

(b) for pharmacy technicians:

(i) institutes, seminars, lectures, conferences, workshops, various forms of mediated instruction, and programmed learning courses, presented by an institution, individual, organization, association, corporation or agency that has been approved by ACPE;

(ii) programs approved by health-related continuing education approval organizations provided the continuing education is nationally recognized by a healthcare accrediting agency and the education is related to the practice of pharmacy; and

(iii) educational meetings that meet ACPE continuing education criteria sponsored by the Utah Pharmacist Association, the Utah Society of Health-System Pharmacists or other professional organization or association; and

(iv) training or educational presentations offered by the [~~d~~]Division.

(5) Credit for qualified continuing professional education shall be recognized in accordance with the following:

(a) Pharmacists:

(i) a minimum of 12 hours shall be obtained through attendance at live or technology enabled participation lectures, seminars or workshops;

(ii) a minimum of 15 hours shall be in drug therapy or patient management; and

(iii) a minimum of one hour shall be in pharmacy law or ethics.

(b) Pharmacy Technicians:

(i) a minimum of eight hours shall be obtained through attendance at live or technology enabled participation at lectures, seminars or workshops; and

(ii) a minimum of one hour shall be in pharmacy law or ethics.

(iii) documentation of current PTCB or ExCPT certification will count as meeting the requirement for continuing education.

(6) A licensee shall be responsible for maintaining competent records of completed qualified continuing professional education for a period of four years after the close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain such information with respect to qualified continuing professional education to demonstrate it meets the requirements under this section.

R156-17b-402. Administrative Penalties.

In accordance with Subsection 58-17b-401(6) and Sections 58-17b-501 and 58-17b-502, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply.

(1) Preventing or refusing to permit any authorized agent of the Division to conduct an inspection:

initial offense: $500 - $2,000

subsequent offense(s): $5,000

(2) Failing to deliver the license or permit or certificate to the Division upon demand:

initial offense: $100 - $1,000

subsequent offense(s): $500 - $2,000

(3) Using the title pharmacist, druggist, pharmacy intern, pharmacy technician or any other term having a similar meaning or any term having similar meaning when not licensed to do so:

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(4) Conducting or transacting business under a name which contains as part of that name the words drugstore, pharmacy, drugs, medicine store, medicines, drug shop, apothecary,

prescriptions or any other term having a similar meaning or in any manner advertising otherwise describing or referring to the place of the conducted business or profession when not licensed to do so:

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(5) Buying, selling, causing to be sold, or offering for sale any drug or device which bears the inscription sample, not for resale, investigational purposes, or experimental use only or other similar words:

initial offense: $1,000 - $5,000

subsequent offense(s): $10,000

(6) Using to the licensee's own advantage or revealing to anyone other than the Division, Board or its authorized representatives, any information acquired under the authority of this chapter concerning any method or process which is a trade secret:

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(7) Illegally procuring or attempting to procure any drug for the licensee or to have someone else procure or attempt to procure a drug:

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(8) Filling, refilling or advertising the filling or refilling of prescription drugs when not licensed do to so:

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(9) Requiring any employed pharmacist, pharmacy intern, pharmacy technician or authorized supportive personnel to engage in any conduct in violation of this chapter:

initial offense: $500 - $2,000

subsequent offense(s): $2,500 - $10,000

(10) Being in possession of a drug for an unlawful purpose:

initial offense: $500 - $1,000

subsequent offense(s): $1,500 - $5,000

(11) Dispensing a prescription drug to anyone who does not have a prescription from a practitioner or to anyone who is known or should be known as attempting to obtain drugs by fraud or misrepresentation:

initial offense: $500 - $2,000

subsequent offense(s): $2,500 - $10,000

(12) Selling, dispensing or otherwise trafficking in prescription drugs when not licensed to do so or when not exempted from licensure:

initial offense: $1,000 - $5,000

subsequent offense(s): $10,000

(13) Using a prescription drug or controlled substance for the licensee that was not lawfully prescribed for the licensee by a practitioner:

initial offense: $100 - $500

subsequent offense(s): $1,000 - $2,5000

(14) Willfully deceiving or attempting to deceive the Division, the Board or its authorized agents as to any relevant matter regarding compliance under this chapter:

initial offense: $500 - $2,000

subsequent offense(s): $2,500 - $10,000

(15) Paying rebates to practitioners or any other health care provider, or entering into any agreement with a medical practitioner or any other person for the payment or acceptance of compensation for recommending the professional services of either party:

initial offense:$2,500 - $5,000

subsequent offense(s):$5,500 - $10,000

(16) Misbranding or adulteration of any drug or device or the sale, distribution or dispensing of any outdated, misbranded, or adulterated drugs or devices:

initial offense: $1,000 - $5,000

subsequent offense(s): $10,000

(17) Accepting back and redistributing any unused drugs, with the exception as provided in Section 58-17b-503:

initial offense: $1,000 - $5,000

subsequent offense(s): $10,000

(18) Violating Federal Title II, PL 91, Controlled Substances Act or Title 58, Chapter 37, Utah Controlled Substances Act, or rules and regulations adopted under either act:

initial offense: $500 - $2,000

subsequent offense(s): $2,500 - $10,000

(19) Failure to follow USP-NF Chapter 797 guidelines:

initial offense: $500 - $2,000

subsequent offense(s): $2,500 - $10,000

(20) Failure to follow USP-NF Chapter 795 guidelines:

initial offense: $250 - $500

subsequent offense(s): $500 - $750

(21) Administering without appropriate guidelines or lawful order:

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(22) Disclosing confidential patient information in violation of the provision of the Health Insurance Portability and Accountability Act of 1996 or other applicable law:

initial offense: $100 - $500

subsequent offense(s): $500 - $1,000

(23) Engaging in the practice of pharmacy without a licensed pharmacist designated as the [~~pharmacist in charge~~]PIC:

initial offense: $100 - $500

subsequent offense(s): $2,000 - $10,000

(24) Failing to report to the Division any adverse action taken by another licensing jurisdiction, government agency, law enforcement agency or court:

initial offense: $100 - $500

subsequent offense(s): $500 - $1,000

(25) Compounding a prescription drug for sale to another pharmaceutical facility:

initial offense: $100 - $500

subsequent offense(s): $500 - $1,000

(26) Preparing a prescription drug in a dosage form which is regularly and commonly available from a manufacturer in quantities and strengths prescribed by a practitioner:

initial offense: $500 - $1,000

subsequent offense(s): $2,500 - $5,000

(27) Violating any ethical code provision of the American Pharmaceutical Association Code of Ethics for Pharmacists, October 27, 1994:

initial offense: $250 - $500

subsequent offense(s): $2,000 - $10,000

(28) Failing to comply with the continuing education requirements set forth in this rule:

initial offense: $100 - $500

subsequent offense(s): $500 - $1,000

(29) Failing to provide the Division with a current mailing address within 10 days following any change of address:

initial offense: $50 - $100

subsequent offense(s): $200 - $300

(30) Defaulting on a student loan:

initial offense: $100 - $200

subsequent offense(s): $200 - $500

(31) Failing to abide by all applicable federal and state law regarding the practice of pharmacy:

initial offense: $500 - $1,000

subsequent offense(s): $2,000 - $10,000

(32) Failing to comply with administrative inspections:

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(33) Abandoning a pharmacy and/or leaving drugs accessible to the public:

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(34) Failure to return or providing false information on a self-inspection report:

initial offense: $100 - $250

subsequent offense(s): $300 - $500

(35) Failure to pay an administrative fine:

Double the original penalty amount up to $10,000

(36) Any other conduct which constitutes unprofessional or unlawful conduct:

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(37) Failure to maintain an appropriate ratio of personnel:

Pharmacist initial offense: $100 - $250

Pharmacist subsequent offense(s): $500 - $2,500

Pharmacy initial offense: $250 - $1,000

Pharmacy subsequent offense(s): $500 - $5,000

(38) Unauthorized people in the pharmacy:

Pharmacist initial offense: $50 - $100

Pharmacist subsequent offense(s): $250 - $500

Pharmacy initial offense: $250 - $500

Pharmacy subsequent offense(s): $1,000 - $2,000

(39) Failure to offer to counsel:

Pharmacy personnel initial offense: $500 - $2,500

Pharmacy personnel subsequent offense(s): $5,000 - $10,000

Pharmacy: $2,000 per occurrence

(40) Violations of the laws and rules regulating operating standards in a pharmacy discovered upon inspection by the Division:

initial violation: $50 - $100

failure to comply within determined time: $250 - $500

subsequent violations: $250 - $500

failure to comply within established time: $750 - $1,000

(41) Practicing or attempting to practice as a pharmacist, pharmacist intern, or pharmacy technician or operating a pharmacy without a license:

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(42) Impersonating a licensee or practicing under a false name:

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(43) Knowingly employing an unlicensed person:

initial offense: $500 - $1,000

subsequent offense(s): $1,000 - $5,000

(44) Knowingly permitting the use of a license by another person:

initial offense: $500 - $1,000

subsequent offense(s): $1,000 - $5,000

(45) Obtaining a passing score, applying for or obtaining a license or otherwise dealing with the Division or Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission:

initial offense: $100 - $2,000

subsequent offense(s): $2,000 - $10,000

(46) Violating or aiding or abetting any other person to violate any statute, rule or order regulating pharmacy:

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(47) Violating or aiding or abetting any other person to violate any generally accepted professional or ethical standard:

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(48) Engaging in conduct that results in conviction of, or a plea of nolo contendere, or a plea of guilty or nolo contendere held in abeyance to a crime:

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(49) Engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority:

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(50) Engaging in conduct, including the use of intoxicants or drugs, to the extent that the conduct does or may impair the ability to safely engage in practice as a pharmacist, pharmacy intern or pharmacy technician:

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(51) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician when physically or mentally unfit to do so:

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(52) Practicing or attempting to practice as a pharmacist, pharmacy intern, or pharmacy technician through gross incompetence, gross negligence or a pattern of incompetency or negligence:

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(53) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician by any form of action or communication which is false, misleading, deceptive or fraudulent:

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(54) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the individual's scope of competency, abilities or education:

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(55) Practicing or attempting to practice as a pharmacist, pharmacy intern or pharmacy technician beyond the scope of licensure:

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(56) Verbally, physically or mentally abusing or exploiting any person through conduct connected with the licensee's practice:

initial offense: $100 - $1,000

subsequent offense(s): $500 - $2,000

(57) Failure to comply with the [~~pharmacist-in-charge~~]PIC standards:

initial offense: $500 - $2,000

subsequent offense(s) $2,000 - $10,000

(58) Failure to resolve identified drug therapy management problems:

initial offense: $500 - $2,500

subsequent offense: $5,000 - $10,000

(59) Dispensing a medication that has been discontinued by the FDA:

initial offense: $500 - $1,000

subsequent offense: $2,500 - $5,000

(60) Failing to keep or report accurate records of training hours:

initial offense: $100 - $500

subsequent offense: $200 - $1,000

(61) Failing to provide PIC information to the Division:

initial offense: $100 - $500

subsequent offense: $200 - $1,000

(62) Requiring a pharmacist to operate a pharmacy with unsafe personnel ratio:

initial offense: $500 - $2,000

subsequent offense: $2,000 - $10,000

R156-17b-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violating any provision of the American Pharmaceutical Association (APhA) Code of Ethics for Pharmacists, October 27, 1994, which is hereby incorporated by reference;

(2) failing to comply with the USP-NF Chapters 795 and 797;

(3) failing to comply with the continuing education requirements set forth in these rules;

(4) failing to provide the Division with a current mailing address within a 10 business day period of time following any change of address;

(5) defaulting on a student loan;

(6) failing to abide by all applicable federal and state law regarding the practice of pharmacy;

(7) failing to comply with administrative inspections;

(8) abandoning a pharmacy or leaving prescription drugs accessible to the public;

(9) failing to identify licensure classification when communicating by any means;

(10) the practice of pharmacy with an inappropriate pharmacist to pharmacy intern ratio established by Subsection R156-17b-306(4)(d) or pharmacist to pharmacy technician ratio as established by Subsection R156-17b-601(3);

(11) allowing any unauthorized persons in the pharmacy;

(12) failing to offer to counsel any person receiving a prescription medication;

(13) failing to pay an administrative fine that has been assessed in the time designated by the Division;

(14) failing to comply with the [~~pharmacist-in-charge~~]PIC standards as established in Section R156-17b-603;[~~and~~]

(15) failing to take appropriate steps to avoid or resolve identified drug therapy management problems as referenced in Subsection R156-17b-611(3);

(16) dispensing medication that has been discontinued by the FDA;

(17) failing to keep or report accurate records of training hours;

(18) failing to provide PIC information to the Division within 30 days of a change in PIC; and

(19) requiring a pharmacy, PIC, or any other pharmacist to operate the pharmacy or allow operation of the pharmacy with a ratio of supervising pharmacist to pharmacy technician/pharmacy intern/support personnel which, under the circumstances of the particular practice setting, results in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare.

R156-17b-601. Operating Standards - Pharmacy Technician[~~- Scope of Practice~~].

In accordance with Subsection 58-17b-102([~~56~~]55), [~~the scope of~~]practice [~~of a~~]as a licensed pharmacy technician is defined as follows:

(1) The pharmacy technician may perform any task associated with the physical preparation and processing of prescription and medication orders including:

(a) receiving written prescriptions;

(b) taking refill orders;

(c) entering and retrieving information into and from a database or patient profile;

(d) preparing labels;

(e) retrieving medications from inventory;

(f) counting and pouring into containers;

(g) placing medications into patient storage containers;

(h) affixing labels;

(i) compounding;

(j) counseling for over-the-counter drugs and dietary supplements under the direction of the supervising pharmacist as referenced in Subsection R156-17b-304(3)(ix);

(k) accepting new prescription drug orders telephonically or electronically submitted for a pharmacist to review; and

(l) additional tasks not requiring the judgment of a pharmacist.

(2) The pharmacy technician shall not receive new verbal prescriptions or medication orders, clarify prescriptions or medication orders nor perform drug utilization reviews.

(3) [~~The licensed pharmacist on duty can, at his discretion, provide on-site supervision for up to three pharmacy technicians, who are actually on duty at any one time, and only one of the three technicians can be unlicensed.~~]Pharmacy technicians, including no more than one pharmacy technician-in-training, shall be supervised on-site by a pharmacist in accordance with Subsection R156-17b-603(19).

R156-17b-602. Operating Standards - Pharmacy Intern[~~ - Scope of Practice~~].

A pharmacy intern may provide services including the practice of pharmacy under the supervision of an approved preceptor, as defined in Subsection 58-17b-102([~~51~~]50), provided the pharmacy intern met the criteria as established in Subsection R156-17b-[~~304(2)~~]306.

R156-17b-603. Operating Standards - Pharmacist-in-charge.

The [~~pharmacist-in-charge~~]PIC shall have the responsibility to oversee the implementation and adherence to pharmacy policies that address the following:

(1) assuring that pharmacists and pharmacy interns dispense drugs or devices, including:

(a) packaging, preparation, compounding and labeling; and

(b) ensuring that drugs are dispensed safely and accurately as prescribed;

(2) assuring that pharmacy personnel deliver drugs to the patient or the patient's agent, including ensuring that drugs are delivered safely and accurately as prescribed;

(3) assuring that a pharmacist, pharmacy intern or pharmacy technician communicates to the patient or the patient's agent information about the prescription drug or device or non-prescription products;

(4) assuring that a pharmacist or pharmacy intern communicates to the patient or the patient's agent, at their request, information concerning any prescription drugs dispensed to the patient by the pharmacist or pharmacy intern;

(5) assuring that a reasonable effort is made to obtain, record and maintain patient medication records;

(6) education and training of pharmacy technicians;

(7) establishment of policies for procurement of prescription drugs and devices and other products dispensed from the pharmacy;

(8) disposal and distribution of drugs from the pharmacy;

(9) bulk compounding of drugs;

(10) storage of all materials, including drugs, chemicals and biologicals;

(11) maintenance of records of all transactions of the pharmacy necessary to maintain accurate control over and accountability for all pharmaceutical materials required by applicable state and federal laws and regulations;

(12) establishment and maintenance of effective controls against theft or diversion of prescription drugs and records for such drugs;

(13) if records are kept on a data processing system, the maintenance of records stored in that system shall be in compliance with pharmacy requirements;

(14) legal operation of the pharmacy including meeting all inspection and other requirements of all state and federal laws, rules and regulations governing the practice of pharmacy;

(15) assuring that any automated pharmacy system is in good working order and accurately dispenses the correct strength, dosage form and quantity of the drug prescribed while maintaining appropriate record keeping and security safeguards;

(16) implementation of an ongoing quality assurance program that monitors performance of the automated pharmacy system, which is evidenced by written policies and procedures developed for pharmaceutical care;

(17) assuring that all relevant information is submitted to the Controlled Substance Database in the appropriate format and in a timely manner;[~~ and~~]

(18) assuring that all personnel working in the pharmacy have the appropriate licensure; and

(19) assuring that no pharmacy or pharmacist operates the pharmacy or allows operation of the pharmacy with a ratio of pharmacist to pharmacy technician/pharmacy intern/support personnel which, under the circumstances of the particular practice setting, results in, or reasonably would be expected to result in, an unreasonable risk of harm to public health, safety, and welfare; and

(20) assuring that the PIC assigned to the pharmacy is recorded with the Division.

R156-17b-604. Operating Standards - Closing a Pharmacy.

At least 14 days prior to the closing of a pharmacy, the [~~pharmacist-in-charge~~]PIC shall comply with the following:

(1) If the pharmacy is registered to possess controlled substances, send a written notification to the appropriate regional office of the Drug Enforcement Administration (DEA) containing the following information:

(a) the name, address and DEA registration number of the pharmacy;

(b) the anticipated date of closing;

(c) the name, address and DEA registration number of the pharmacy acquiring the controlled substances; and

(d) the date on which the transfer of controlled substances will occur.

(2) If the pharmacy dispenses prescription drug orders, post a closing notice sign in a conspicuous place in the front of the prescription department and at all public entrance doors to the pharmacy. Such closing notice shall contain the following information:

(a) the date of closing; and

(b) the name, address and telephone number of the pharmacy acquiring the prescription drug orders, including refill information and patient medication records of the pharmacy.

(3) On the date of closing, the [~~pharmacist-in-charge~~]PIC shall remove all prescription drugs from the pharmacy by one or a combination of the following methods:

(a) return prescription drugs to manufacturer or supplier for credit or disposal; or

(b) transfer, sell or give away prescription drugs to a person who is legally entitled to possess drugs, such as a hospital or another pharmacy.

(4) If the pharmacy dispenses prescription drug orders:

(a) transfer the prescription drug order files, including refill information and patient medication records, to a licensed pharmacy within a reasonable distance of the closing pharmacy; and

(b) move all signs or notify the landlord or owner of the property that it is unlawful to use the word "pharmacy", or any other word or combination of words of the same or similar meaning, or any graphic representation that would mislead or tend to mislead the public that a pharmacy is located at this address.

(5) Within 10 days of the closing of the pharmacy, the [~~pharmacist-in-charge~~]PIC shall forward to the Division a written notice of the closing that includes the following information:

(a) the actual date of closing;

(b) the license issued to the pharmacy;

(c) a statement attesting:

(i) that an inventory as specified in Subsection R156-17b-605(6) has been conducted; and

(ii) the manner in which the legend drugs and controlled substances possessed by the pharmacy were transferred or disposed;

(d) if the pharmacy dispenses prescription drug orders, the name and address of the pharmacy to which the prescription drug orders, including refill information and patient medication records, were transferred.

(6) If the pharmacy is registered to possess controlled substances, a letter must be sent to the appropriate DEA regional office explaining that the pharmacy has closed. The letter shall include the following items:

(a) DEA registration certificate;

(b) all unused DEA order forms (Form 222) with the word "VOID" written on the face of each order form; and

(c) copy #2 of any DEA order forms (Form 222) used to transfer Schedule II controlled substances from the closed pharmacy.

(7) If the pharmacy is closed suddenly due to fire, destruction, natural disaster, death, property seizure, eviction, bankruptcy or other emergency circumstances and the [~~pharmacist-in-charge~~]PIC cannot provide notification 14 days prior to the closing, the [~~pharmacist-in-charge~~]PIC shall comply with the provisions of Subsection (1) as far in advance of the closing as allowed by the circumstances.

(8) If the [~~pharmacist-in-charge~~]PIC is not available to comply with the requirements of this section, the owner or legal representative shall be responsible for compliance with the provisions of this section.

R156-17b-605. Operating Standards - Inventory Requirements.

(1) General requirements for inventory of a pharmacy shall include the following:

(a) the [~~pharmacist-in-charge~~]PIC shall be responsible for taking all required inventories, but may delegate the performance of the inventory to another person or persons;

(b) the inventory records must be maintained for a period of five years and be readily available for inspection;

(c) the inventory records shall be filed separately from all other records;

(d) the inventory records shall be in a typewritten or printed form and include all stocks of controlled substances on hand on the date of the inventory including any that are out of date drugs and drugs in automated pharmacy systems. An inventory taken by use of a verbal recording device must be promptly transcribed;

(e) the inventory may be taken either as of the opening of the business or the close of business on the inventory date;

(f) the person taking the inventory and the [~~pharmacist-in-charge~~]PIC shall indicate the time the inventory was taken and shall sign and date the inventory with the date the inventory was taken. The signature of the [~~pharmacist-in-charge~~]PIC and the date of the inventory shall be documented within 72 hours or three working days of the completed initial, annual, change of ownership and closing inventory;

(g) the person taking the inventory shall make an exact count or measure all controlled substances listed in Schedule I or II;

(h) the person taking the inventory shall make an estimated count or measure all Schedule III, IV or V controlled substances, unless the container holds more than 1,000 tablets or capsules in which case an exact count of the contents must be made;

(i) the inventory of Schedule I and II controlled substances shall be listed separately from the inventory of Schedule III, IV and V controlled substances; and

(j) if the pharmacy maintains a perpetual inventory of any of the drugs required to be inventoried, the perpetual inventory shall be reconciled on the date of the inventory.

(2) Requirement for taking the initial inventory shall include the following:

(a) all pharmacies having any stock of controlled substances shall take an inventory on the opening day of business. Such inventory shall include all controlled substances including any out-of-date drugs and drugs in automated pharmacy systems;

(b) in the event a pharmacy commences business with none of the drugs specified in paragraph (2)(a) of this section on hand, the pharmacy shall record this fact as the initial inventory; and

(c) the initial inventory shall serve as the pharmacy's inventory until the next completed inventory as specified in Subsection (3) of this section.

(3) Requirement for annual inventory shall be within 12 months following the inventory date of each year and may be taken within four days of the specified inventory date and shall include all stocks including out-of-date drugs and drugs in automated pharmacy systems.

(4) Requirements for change of ownership shall include the following:

(a) a pharmacy that changes ownership shall take an inventory of all legend drugs and controlled substances including out-of-date drugs and drugs in automated pharmacy systems on the date of the change of ownership;

(b) such inventory shall constitute, for the purpose of this section, the closing inventory for the seller and the initial inventory for the buyer; and

(c) transfer of Schedule I and II controlled substances shall require the use of official DEA order forms (Form 222).

(5) Requirement for taking inventory when closing a pharmacy includes the [~~pharmacist-in-charge~~]PIC, owner, or the legal representative of a pharmacy that ceases to operate as a pharmacy shall forward to the Division, within ten days of cessation of operation, a statement attesting that an inventory has been conducted, the date of closing and a statement attesting the manner by which legend drugs and controlled substances possessed by the pharmacy were transferred or disposed.

(6) Requirements specific to taking inventory in a Class B pharmacy shall include the following:

(a) all Class B pharmacies shall maintain a perpetual inventory of all Schedule II controlled substances which shall be reconciled according to facility policy; and

(b) the inventory of the institution shall be maintained in the pharmacy; if an inventory is conducted in other departments within the institution, the inventory shall be listed separately as follows:

(i) the inventory of drugs on hand in the pharmacy shall be listed separately from the inventory of drugs on hand in the other areas of the institution; and

(ii) the inventory of the drugs on hand in all other departments shall be identified by department.

(7) All out of date legend drugs and controlled substances shall be removed from the inventory at regular intervals and in correlation to the date of expiration imprinted on the label.

R156-17b-606. Operating Standards - Approved Preceptor.

In accordance with Subsection 58-17b-601(1), the operating standards for a pharmacist acting as a preceptor include[~~s~~]:

(1) [~~supervising more than one intern; however, a preceptor may supervise only one intern actually on duty who is working for compensation in the practice of pharmacy at any one time. Interns who are doing educational, observational rotations can be supervised at two interns to one pharmacist ratio;~~]meeting the following criteria:

(a) hold a Utah pharmacist license that is active and in good standing;

(b) document engaging in active practice as a licensed pharmacist for not less than two years in any jurisdiction;

(c) not be under any sanction which, when considered by the Division and Board, would be of such a nature that the best interests of the intern and the public would not be served;

(d) provide direct, on-site supervision to no more than two pharmacy interns during a working shift; and

(e) refer to the intern training guidelines as outlined in the Pharmacy Coordinating Council of Utah Internship Competencies, October 12, 2004, as information about a range of best practices for training interns;

(2) maintaining adequate records to document the number of internship hours completed by the intern and evaluating the quality of the intern's performance during the internship;

(3) completing the preceptor section of a Utah Pharmacy Intern Experience Affidavit found in the application packet at the conclusion of the preceptor/intern relationship regardless of the time or circumstances under which that relationship is concluded; and

(4) being responsible for the intern's actions related to the practice of pharmacy while practicing as a pharmacy intern under supervision.

R156-17b-613. Operating Standards - Issuing Prescription Orders by Electronic Means.

In accordance with Subsections 58-17b-102(3) and 58-17b-601(1), prescription orders may be issued by electronic means of communication according to the following standards:

(1) Prescription orders for Schedule II - V controlled substances received by electronic means of communication shall be handled according to [~~Title 58, Chapter 37, Utah Controlled Substances Act and R156-37, Utah Controlled Substances Act Rules~~]Part 1304.04 of Section 21 of the CFR.

(2) Prescription orders for non-controlled substances received by electronic means of communication may be dispensed by a pharmacist or pharmacy intern only if all of the following conditions are satisfied:

(a) all electronically transmitted prescription orders shall include the following:

(i) all information that is required to be contained in a prescription order pursuant to Section 58-17b-602;

(ii) the time and date of the transmission, and if a facsimile transmission, the electronically encoded date, time and fax number of the sender; and

(iii) the name of the pharmacy intended to receive the transmission;

(b) the prescription order shall be transmitted under the direct supervision of the prescribing practitioner or his designated agent;

(c) the pharmacist shall exercise professional judgment regarding the accuracy and authenticity of the transmitted prescription. Practitioners or their agents transmitting medication orders using electronic equipment are to provide voice verification when requested by the pharmacist receiving the medication order. The pharmacist is responsible for assuring that each electronically transferred prescription order is valid and shall authenticate a prescription order issued by a prescribing practitioner which has been transmitted to the dispensing pharmacy before filling it, whenever there is a question;

(d) a practitioner may authorize an agent to electronically transmit a prescription provided that the identifying information of the transmitting agent is included on the transmission. The practitioner's electronic signature, or other secure method of validation, shall be provided with the electronic prescription; and

(e) an electronically transmitted prescription order that meets the requirements above shall be deemed to be the original prescription.

(3) This section does not apply to the use of electronic equipment to transmit prescription orders within inpatient medical facilities.

(4) No agreement between a prescribing practitioner and a pharmacy shall require that prescription orders be transmitted by electronic means from the prescribing practitioner to that pharmacy only.

(5) The pharmacist shall retain a printed copy of an electronic prescription, or a record of an electronic prescription that is readily retrievable and printable, for a minimum of five years. The printed copy shall be of non-fading legibility.

(6) Wholesalers, distributors, manufacturers, pharmacists and pharmacies shall not supply electronic equipment to any prescriber for transmitting prescription orders.

(7) An electronically transmitted prescription order shall be transmitted to the pharmacy of the patient's choice.

(8) Prescription orders electronically transmitted to the pharmacy by the patient shall not be filled or dispensed.

(9) A prescription order for a legend drug or controlled substance in Schedule III through V may be transferred up to the maximum refills permitted by law or by the prescriber by electronic transmission providing the pharmacies share a real-time, on-line database provided that:

(a) the information required to be on the transferred prescription has the same information as described in Subsection R156-17b-612(5)(a) through (f); and

(b) pharmacists, pharmacy interns or pharmacy technicians electronically accessing the same prescription drug order records may electronically transfer prescription information if the data processing system has a mechanism to send a message to the transferring pharmacy containing the following information:

(i) the fact that the prescription drug order was transferred;

(ii) the unique identification number of the prescription drug order transferred;

(iii) the name of the pharmacy to which it was transferred; and

(iv) the date and time of the transfer.

R156-17b-614a. Operating Standards - Operating Standards, Class A and B Pharmacy.

(1) In accordance with Subsection 58-17b-601(1), standards for the operations for a Class A and Class B pharmacy include:

(a) shall be well lighted, well ventilated, clean and sanitary;

(b) the dispensing area, if any, shall have a sink with hot and cold culinary water separate and apart from any restroom facilities. This does not apply to clean rooms where sterile products are prepared. Clean rooms should not have sinks or floor drains that expose the area to an open sewer. All required equipment shall be clean and in good operating condition;

(c) be equipped to permit the orderly storage of prescription drugs and devices in a manner to permit clear identification, separation and easy retrieval of products and an environment necessary to maintain the integrity of the product inventory;

(d) be equipped to permit practice within the standards and ethics of the profession as dictated by the usual and ordinary scope of practice to be conducted within that facility;

(e) be stocked with the quality and quantity of product necessary for the facility to meet its scope of practice in a manner consistent with the public health, safety and welfare; and

(f) be equipped with a security system to permit detection of entry at all times when the facility is closed.

(2) The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator and freezer shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration or freezing.

(3) Facilities engaged in extensive compounding activities shall be required to maintain proper records and procedure manuals and establish quality control measures to ensure stability, equivalency where applicable and sterility. The following requirements shall be met:

(a) must follow USP-NF Chapter 795, compounding of non-sterile preparations, and USP-NF Chapter 797 if compounding sterile preparations;

(b) may compound in anticipation of receiving prescriptions in limited amounts;

(c) bulk active ingredients must be component of FDA approved drugs listed in the approved drug products prepared by the Center for Drug Evaluation and Research of the FDA;

(d) compounding using drugs that are not part of a FDA approved drug listed in the approved drug products prepared by the Center for Drug Evaluation and Research of the FDA requires an investigational new drug application (IND). The IND approval shall be kept in the pharmacy for five years for inspection;

(e) a master worksheet sheet shall be developed and approved by a pharmacist for each batch of sterile or non-sterile pharmaceuticals to be prepared. Once approved, a duplicate of the master worksheet sheet shall be used as the preparation worksheet sheet from which each batch is prepared and on which all documentation for that batch occurs. The master worksheet sheet shall contain at a minimum:

(i) the formula;

(ii) the components;

(iii) the compounding directions;

(iv) a sample label;

(v) evaluation and testing requirements;

(vi) sterilization methods, if applicable;

(vii) specific equipment used during preparation such as specific compounding device; and

(viii) storage requirements;

(f) a preparation worksheet sheet for each batch of sterile or non-sterile pharmaceuticals shall document the following:

(i) identity of all solutions and ingredients and their corresponding amounts, concentrations, or volumes;

(ii) manufacturer lot number for each component;

(iii) component manufacturer or suitable identifying number;

(iv) container specifications (e.g. syringe, pump cassette);

(v) unique lot or control number assigned to batch;

(vi) expiration date of batch prepared products;

(vii) date of preparation;

(viii) name, initials or electronic signature of the person or persons involved in the preparation;

(ix) names, initials or electronic signature of the responsible pharmacist;

(x) end-product evaluation and testing specifications, if applicable; and

(xi) comparison of actual yield to anticipated yield, when appropriate;

(g) the label of each batch prepared of sterile or non-sterile pharmaceuticals shall bear at a minimum:

(i) the unique lot number assigned to the batch;

(ii) all solution and ingredient names, amounts, strengths and concentrations, when applicable;

(iii) quantity;

(iv) expiration date and time, when applicable;

(v) appropriate ancillary instructions, such as storage instructions or cautionary statements, including cytotoxic warning labels where appropriate; and

(vi) device-specific instructions, where appropriate;

(h) the expiration date assigned shall be based on currently available drug stability information and sterility considerations or appropriate in-house or contract service stability testing;

(i) sources of drug stability information shall include the following:

(A) references can be found in Trissel's "Handbook on Injectable Drugs", 13th Edition, 2004;

(B) manufacturer recommendations; and

(C) reliable, published research;

(ii) when interpreting published drug stability information, the pharmacist shall consider all aspects of the final sterile product being prepared such as drug reservoir, drug concentration and storage conditions; and

(iii) methods for establishing expiration dates shall be documented; and

(i) there shall be a documented, ongoing quality control program that monitors and evaluates personnel performance, equipment and facilities that follows the USP-NF Chapters 795 and 797 standards.

(4) The facility shall have current and retrievable editions of the following reference publications in print or electronic format and readily available and retrievable to facility personnel:

(a) Title 58, Chapter 1, Division of Occupational and Professional Licensing Act'

(b) R156-1, General Rules of the Division of Occupational and Professional Licensing;

(c) Title 58, Chapter 17b, Pharmacy Practice Act;

(d) R156-17b, Utah Pharmacy Practice Act Rule;

(e) Title 58, Chapter 37, Utah Controlled Substances Act;

(f) R156-37, Utah Controlled Substances Act Rules;

(g) Code of Federal Regulations (CFR) 21, Food and Drugs, Part 1300 to end or equivalent such as the USP DI Drug Reference Guides;

(h) current FDA Approved Drug Products (orange book); and

(i) any other general drug references necessary to permit practice dictated by the usual and ordinary scope of practice to be conducted within that facility.

(5) The facility shall post the license of the facility and the license or a copy of the license of each pharmacist, pharmacy intern and pharmacy technician who is employed in the facility, but may not post the license of any pharmacist, pharmacy intern or pharmacy technician not actually employed in the facility.

(6) Facilities shall have a counseling area to allow for confidential patient counseling, where applicable.

(7) If the pharmacy is located within a larger facility such as a grocery or department store, and a licensed Utah pharmacist is not immediately available in the facility, the pharmacy shall not remain open to pharmacy patients and shall be locked in such a way as to bar entry to the public or any non-pharmacy personnel. All pharmacies located within a larger facility shall be locked and enclosed in such a way as to bar entry by the public or any non-pharmacy personnel when the pharmacy is closed.

(8) Only a licensed Utah pharmacist or authorized pharmacy personnel shall have access to the pharmacy when the pharmacy is closed.

(9) The facility shall maintain a permanent log of the initials or identification codes which identify each dispensing pharmacist by name. The initials or identification code shall be unique to ensure that each pharmacist can be identified; therefore identical initials or identification codes shall not be used.

(10) The pharmacy facility must maintain copy 3 of DEA order form (Form 222) which has been properly dated, initialed and filed and all copies of each unaccepted or defective order form and any attached statements or other documents.

(11) If applicable, a hard copy of the power of attorney authorizing a pharmacist to sign DEA order forms (Form 222) must be available to the Division whenever necessary.

(12) Pharmacists or other responsible individuals shall verify that the suppliers' invoices of legend drugs, including controlled substances, are listed on the invoices and were actually received by clearly recording their initials and the actual date of receipt of the controlled substances.

(13) The pharmacy facility must maintain a record of suppliers' credit memos for controlled substances and legend drugs.

(14) A copy of inventories required under Section R156-17b-605 must be made available to the Division when requested.

(15) The pharmacy facility must maintain hard copy reports of surrender or destruction of controlled substances and legend drugs submitted to appropriate state or federal agencies.

R156-17b-614[~~a~~]b. Operating Standards - Class B pharmacy designated as a Branch Pharmacy.

In accordance with Subsections 58-17b-102(7) and 58-1-301(3), the qualifications for designation as a branch pharmacy include the following:

(1) The Division, in collaboration with the Board, shall approve the location of each branch pharmacy. The following shall be considered in granting such designation:

(a) the distance between or from nearby alternative pharmacies and all other factors affecting access of persons in the area to alternative pharmacy resources;

(b) the availability at the location of qualified persons to staff the pharmacy, including the physician, physician assistant or advanced practice registered nurse;

(c) the availability and willingness of a parent pharmacy and supervising pharmacist to assume responsibility for the branch pharmacy;

(d) the availability of satisfactory physical facilities in which the branch pharmacy may operate; and

(e) the totality of conditions and circumstances which surround the request for designation.

(2) A branch pharmacy shall be licensed as a pharmacy branch of an existing Class A or B pharmacy licensed by the Division.

(3) The application for designation of a branch pharmacy shall be submitted by the licensed parent pharmacy seeking such designation. In the event that more than one licensed pharmacy makes application for designation of a branch pharmacy location at a previously undesignated location, the Division in collaboration with the Board shall review all applications for designation of the branch pharmacy and, if the location is approved, shall approve for licensure the applicant determined best able to serve the public interest as identified in Subsection (1).

(4) The application shall include the following:

(a) complete identifying information concerning the applying parent pharmacy;

(b) complete identifying information concerning the designated supervising pharmacist employed at the parent pharmacy;

(c) address and description of the facility in which the branch pharmacy is to be located;

(d) specific formulary to be stocked indicating with respect to each prescription drug, the name, the dosage strength and dosage units in which the drug will be prepackaged;

(e) complete identifying information concerning each person located at the branch pharmacy who will dispense prescription drugs in accordance with the approved protocol; and

(f) protocols under which the branch pharmacy will operate and its relationship with the parent pharmacy to include the following:

(i) the conditions under which prescription drugs will be stored, used and accounted for;

(ii) the method by which the drugs will be transported from parent pharmacy to the branch pharmacy and accounted for by the branch pharmacy; and

(iii) a description of how records will be kept with respect to:

(A) formulary;

(B) changes in formulary;

(C) record of drugs sent by the parent pharmacy;

(D) record of drugs received by the branch pharmacy;

(E) record of drugs dispensed;

(F) periodic inventories; and

(G) any other record contributing to an effective audit trail with respect to prescription drugs provided to the branch pharmacy.[

~~**R156-17b-614b. Operating Standards - Class B - Sterile Pharmaceuticals.**~~

~~In accordance with Subsection 58-17b-601(1), the USP-NF Chapter 797, Compounding for Sterile Preparations, shall apply to all pharmacies preparing sterile pharmaceuticals.~~]

R156-17b-614d. Operating Standards - Class B - Nuclear Pharmacy.

In accordance with Subsection 58-17b-601(1), the operating standards for a Class B pharmacy designated as a nuclear pharmacy shall have the following:

(1) A nuclear pharmacy shall have the following:

(a) have applied for or possess a current Utah Radioactive Materials License; and

(b) adequate space and equipment commensurate with the scope of services required and provided.

(2) Nuclear pharmacies shall only dispense radiopharmaceuticals that comply with acceptable standards of quality assurance.

(3) Nuclear pharmacies shall maintain a library commensurate with the level of radiopharmaceutical service to be provided.

(4) A licensed Utah pharmacist shall be immediately available on the premises at all times when the facility is open or available to engage in the practice of pharmacy.

(5) In addition to Utah licensure, the pharmacist shall have classroom and laboratory training and experience as required by the Utah Radiation Control Rules.

(6) This rule does not prohibit:

(a) a licensed pharmacy intern or technician from acting under the direct supervision of an approved preceptor who meets the requirements to supervise a nuclear pharmacy; or

(b) a Utah Radioactive Materials license from possessing and using radiopharmaceuticals for medical use.

(7) A hospital nuclear medicine department or an office of a physician/surgeon, osteopathic physician/surgeon, veterinarian, pediatric physician or dentist that has a current Utah Radioactive Materials License does not require licensure as a Class B pharmacy.

(8) A nuclear pharmacy preparing sterile compounds must follow the USP-NF Chapter 797 Compound for sterile preparations.

(9) A nuclear pharmacy preparing medications for a specific person shall be licensed as a Class B - nuclear pharmacy if located in Utah, and as a Class D pharmacy if located outside of Utah.

R156-17b-616. Operating Standards - Class D Pharmacy - Out of State Mail Order Pharmacies.

(1) In accordance with Subsections 58-1-301(3) and 58-17b-306(2), an application for licensure as a Class D pharmacy shall include:

(a) a pharmacy care protocol that includes the operating standards established in Subsections R156-17b-610(1) and (8) and R156-17b-614(1) through (4);

(b) a copy of the pharmacist's license for the [~~pharmacist-in-charge~~]PIC; and

(c) a copy of the most recent state inspection showing the status of compliance with the laws and regulations for physical facility, records and operations.

(2) An out of state mail order pharmacy that compounds must follow the USP-NF Chapter 795 Compounding of non-sterile preparations and Chapter 797 Compounding of sterile preparations.

R156-17b-617. Operating Standards - Class E pharmacy.

(1) In accordance with Section 58-17b-302 and Subsection 58-17b-601(1), the operating standards for a Class E pharmacy shall include a written pharmacy care protocol which includes:

(a) the identity of the supervisor or director;

(b) a detailed plan of care;

(c) identity of the drugs that will be purchased, stored, used and accounted for; and

(d) identity of any licensed healthcare provider associated with operation.

(2) A Class E pharmacy preparing sterile compounds must follow the USP-NF Chapter 797 Compounding for sterile preparations.

R156-17b-618. Change in Ownership or Location.

(1)(a) In accordance with Section 58-17b-614, except for changes in ownership caused by a change in the stockholders in corporations which are publicly listed and whose stock is publicly traded, a licensed pharmaceutical facility that proposes to change its location or ownership shall make application for a new license and receive approval from the [~~d~~]Division prior to the proposed change.

(b) Upon approval of the change in ownership or location, the original licenses shall be surrendered to the [~~d~~]Division.

(2)(a) In accordance with Section 58-17b-614, a licensed pharmaceutical facility that proposes to change its names without a change in ownership shall submit the request in writing upon a form provided by the [~~d~~]Division, no later than ten business days before the proposed name change. The request for a name change must be approved by the [~~d~~]Division prior to implementing the change.

(b) Upon approval of the name change, the original licenses shall be surrendered to the [~~d~~]Division.

R156-17b-620. Operating Standards - Automated Pharmacy System.

In accordance with Section 58-17b-621, automated pharmacy systems can be utilized in licensed pharmacies, remote locations under the jurisdiction of the Division and licensed health care facilities where legally permissible and shall comply with the following provisions:

(1) Documentation as to type of equipment, serial numbers, content, policies and procedures and location shall be maintained on site in the pharmacy for review upon request of the Division. Such documentation shall include:

(a) name and address of the pharmacy or licensed health care facility where the automated pharmacy system is being used;

(b) manufacturer's name and model;

(c) description of how the device is used;

(d) quality assurance procedures to determine continued appropriate use of the automated device; and

(e) policies and procedures for system operation, safety, security, accuracy, patient confidentiality, access and malfunction.

(2) Automated pharmacy systems should be used only in settings where there is an established program of pharmaceutical care that ensures that before dispensing, or removal from an automated storage and distribution device, a pharmacist reviews all prescription or medication orders unless a licensed independent practitioner controls the ordering, preparation and administration of the medication; or in urgent situations when the resulting delay would harm the patient including situations in which the patient experiences a sudden change in clinical status.

(3) All policies and procedures must be maintained in the pharmacy responsible for the system and, if the system is not located within the facility where the pharmacy is located, at the location where the system is being used.

(4) Automated pharmacy systems shall have:

(a) adequate security systems and procedures to:

(i) prevent unauthorized access;

(ii) comply with federal and state regulations; and

(iii) prevent the illegal use or disclosure of protected health information;

(b) written policies and procedures in place prior to installation to ensure safety, accuracy, security, training of personnel, and patient confidentiality and to define access and limits to access to equipment and medications.

(5) Records and electronic data kept by automated pharmacy systems shall meet the following requirements:

(a) all events involving the contents of the automated pharmacy system must be recorded electronically;

(b) records must be maintained by the pharmacy for a period of five years and must be readily available to the Division. Such records shall include:

(i) identity of system accessed;

(ii) identify of the individual accessing the system;

(iii) type of transaction;

(iv) name, strength, dosage form and quantity of the drug accessed;

(v) name of the patient for whom the drug was ordered; and

(vi) such additional information as the [~~pharmacist-in-charge~~]PIC may deem necessary.

(6) Access to and limits on access to the automated pharmacy system must be defined by policy and procedures and must comply with state and federal regulations.

(7) The [~~pharmacist-in-charge~~]PIC or pharmacist designee shall have the sole responsibility to:

(a) assign, discontinue or change access to the system;

(b) ensure that access to the medications comply with state and federal regulations; and

(c) ensure that the automated pharmacy system is filled and stocked accurately and in accordance with established written policies and procedures.

(8) The filling and stocking of all medications in the automated pharmacy system shall be accomplished by qualified licensed healthcare personnel under the supervision of a licensed pharmacist.

(9) A record of medications filled and stocked into an automated pharmacy system shall be maintained for a period of five years and shall include the identification of the persons filling, stocking and checking for accuracy.

(10) All containers of medications stored in the automated pharmacy system shall be packaged and labeled in accordance with federal and state laws and regulations.

(11) All aspects of handling controlled substances shall meet the requirements of all state and federal laws and regulations.

(12) The automated pharmacy system shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the automated pharmacy system, all in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system remain unused and must be secured and accounted for.

(13) The automated pharmacy system shall provide a mechanism for securing and accounting for wasted medications or discarded medications in accordance with existing state and federal law. Written policies and procedures shall address situations in which medications removed from the system are wasted or discarded and must be secured.

R156-17b-621. Operating Standards - Pharmacist Administration - Training.

(1) In accordance with Subsection 58-17b-502(9), appropriate training for the administration of a prescription drug includes:

(a) current Basic Life Support (BLS) certification; and

(b) successful completion of a training program which includes at a minimum:

(i) didactic and practical training for administering injectable drugs;

(ii) the current Advisory Committee on Immunization Practices (ACIP) of the United States Center for Disease Control and Prevention guidelines for the administration of immunizations; and

(iii) the management of an anaphylactic reaction.

(2) Sources for the appropriate training include:

(a) ACPE approved programs; and

(b) curriculum-based programs from an ACPE accredited college of pharmacy, state or local health department programs and other [~~b~~]Board recognized providers.

(3) Training is to be supplemented by documentation of two hours of continuing education related to the area of practice in each preceding renewal period.

KEY: pharmacists, licensing, pharmacies
Date of Enactment or Last Substantive Amendment: [~~July 9, 2009~~]2010
Notice of Continuation: February 23, 2010
Authorizing, and Implemented or Interpreted Law: 58-17b-101; 58-17b-601(1); 58-37-1; 58-1-106(1)(a); 58-1-202(1)(a)

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

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33631
FILED: 05/11/2010

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Nursing Board have indicated there are two primary purposes for this rule filing. First, to establish a process whereby an approved nursing education program could propose an innovative approach to nursing education. Second, to provide nursing education programs more latitude regarding the use of preceptors and high definition simulation for clinical experience. An amendment is also being proposed to provide that an application for licensure submitted to the Division and the required criminal background check are only considered current and acceptable for six months from the date received by the Division.

SUMMARY OF THE RULE OR CHANGE: Throughout the rule, capitalized "Division" and "Board" where appropriate, and updated rule citations. In Section R156-31b-102, added definition for "innovative approach to nursing education" and renumbered remaining subsections. In Section R156-31b-302c, the proposed change increases either the number of times an applicant can take the NCLEX (National Council Licensure Examination of the National Council of State Boards of Nursing) licensure examinations or the length of time an applicant has to pass the NCLEX examinations. In Section R156-31b-302d, a change is being proposed to provide that an application for licensure submitted to the Division and the required criminal background check are only considered current and acceptable for six months from the date received by the Division. In Section R156-31b-602, the proposed changes include compliance to the new Section R156-31b-607 as a criterion for full approval status if the education program has been approved to offer an innovative approach to education. It also adds non-compliance with an approved innovative approach to nursing education as a reason to issue a probationary approval status. Finally, the proposed amendments add the standards in the new Section R156-31b-607 if applicable to the standards that must be met while on or obtaining provisional approval. Section R156-31b-607 is a new section and is being added to provide a process and standards that an approved nursing education program must meet to request a waiver from one or more of the standards established in Section R156-31b-603 in order to implement an innovative approach to nursing education. The current Sections R156-31b-607 and R156-31b-608 have been renumbered to R156-31b-608 and R156-31b-609.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Division will incur minimal costs of approximately $50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. State-funded schools which are or want to offer an innovative approach to nursing education will need to obtain the necessary equipment/expertise to develop and implement the proposed approach, such as a high fidelity simulated mannequin and clinical practice scenarios. Existing budgets and/or grant money would be required to purchase the equipment. No additional state money has been allocated to implement these proposed amendments or innovative approaches to education. The costs to a nursing education program cannot be estimated.
♦ LOCAL GOVERNMENTS: The proposed amendments only apply to licensed nurses, applicants for licensure in those classifications, and nursing education programs. As a result, the proposed amendments do not apply to local governments.
♦ SMALL BUSINESSES: The proposed amendments only apply to licensed nurses, applicants for licensure in those classifications, and nursing education programs. If an applicant for a nursing license is working for a small health care facility, such as an assisted living or nursing care facility, the ability to take the examination four times or within three years of graduation whichever is later, may help the applicant/employee to pass the examination and obtain licensure. The facility would then have a licensed nurse whose salary would be anywhere from $5 - $10 per hour more than a nurse aide salary.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments only apply to licensed nurses, applicants for licensure in those classifications, and nursing education programs. The application and the information submitted with the application, such as the criminal background check, is only current for a time period of up to

six months. After that timeframe, a new application and application fee of $95 must be submitted to the Division. By allowing an applicant who is unable to pass the examination more flexibility and time to retake the exam, the applicant will incur additional examination costs of $200 and potentially the $95 application fee. However, if the applicant is successful after additional attempts and becomes licensed, the potential to find a good paying job is much greater than without the license. The Division is not able to determine how many applicants may fall into this scenario. Non-state-funded schools which are or want to offer an innovative approach to nursing education will need to obtain the necessary equipment/expertise to develop and implement the proposed approach, such as a high fidelity simulated mannequin and clinical practice scenarios. Existing budgets and/or grant money would be required to purchase the equipment. Exact costs to a non-state-funded nursing education program cannot be estimated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed nurses, applicants for licensure in those classifications, and nursing education programs. The application and the information submitted with the application, such as the criminal background check, is only current for a time period of up to six months. After that timeframe, a new application and application fee of $95 must be submitted to the Division. By allowing an applicant who is unable to pass the examination more flexibility and time to retake the exam, the applicant will incur additional examination costs of $200 and potentially the $95 application fee. However, if the applicant is successful after additional attempts and becomes licensed, the potential to find a good paying job is much greater than without the license. Non-state funded schools which are or want to offer an innovative approach to nursing education will need to obtain the necessary equipment/expertise to develop and implement the proposed approach, such as a high fidelity simulated mannequin and clinical practice scenarios. Existing budgets and/or grant money would be required to purchase the equipment. Exact costs to a non-state-funded nursing education program cannot be estimated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing establishes a process in which a nursing education program may obtain a waiver of the existing standards in order to implement an innovative approach to nursing education; it also relaxes the examination requirement, allowing four attempts to pass the examination or three years after graduation, whichever is later; and makes other technical amendments. No fiscal impact to businesses is anticipated from these changes beyond those addressed in the rule summary.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Laura Poe by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at lpoe@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/10/2010 01:00 PM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: Mark Steinagel, Director

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

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

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

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

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

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

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

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

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

(c) health related course work taken from an educational institution accredited by a regional or national institutional accrediting body recognized by the U.S. Department of Education; and

(d) training or educational presentations offered by the [~~d~~]Division.

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

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

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

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

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

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

(12) "Contact hour" means 60 minutes.

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

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

(15) "Delegator", as used in Sections R156-31b-701 and 701a, means the nurse making the delegation.

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

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

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

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

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

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

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

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

(22) "Innovative approach to nursing education", as used in Section R156-31b-607, means a creative nursing education strategy that departs from the program standards established in Section R156-31b-603 and requires approval from the Division in collaboration with the Board for implementation.

([~~22~~]23) "Licensure by equivalency" as used in this rule means licensure as a licensed practical nurse after successful completion of course work in a registered nurse program which meets the criteria established in Sections R156-31b-601 and R156-31b-603.

([~~23~~]24) "LPN" means a licensed practical nurse.

([~~24~~]25) "MA-C" means a medication aide - certified.

([~~25~~]26) "Medication", as used in Sections R156-31b-701 and 701a, means any prescription or nonprescription drug as defined in Subsections 58-17b-102(39) and (61) of the Pharmacy Practice Act.

([~~26~~]27) "NLNAC" means the National League for Nursing Accrediting Commission.

([~~27~~]28) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

([~~28~~]29) "Non-approved education program" means any foreign nurse education program.

([~~29~~]30) "Nurse", as used in this rule, means an individual licensed under Title 58, Chapter 31b as a licensed practical nurse, registered nurse, advanced practice registered nurse, or advanced practice registered nurse-certified registered nurse anesthetist, or a certified nurse midwife licensed under Title 58, Chapter 44a.

([~~30~~]31) "Nurse accredited", as used in this rule, means accreditation issued by NLNAC, CCNE or COA.

([~~31~~]32) "Other specified health care professionals", as used in Subsection 58-31b-102(15), who may direct the licensed practical nurse means:

(a) advanced practice registered nurse;

(b) certified nurse midwife;

(c) chiropractic physician;

(d) dentist;

(e) osteopathic physician;

(f) physician assistant;

(g) podiatric physician;

(h) optometrist;

(i) naturopathic physician; or

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

([~~32~~]33) "Parent academic institution", as used in this rule, means the educational institution which grants the academic degree or awards the certificate of completion.

([~~33~~]34) "Parent nursing education-program", as used in Section R156-31b-607, means a nationally accredited, Board of Nursing approved nursing education program that is providing nursing education (didactic, clinical or both) to a student and is responsible for the education program curriculum, and program and student policies.

([~~34~~]35) "Patient", as used in this rule, means a recipient of nursing care and includes students in a school setting or clients of a health care facility, clinic, or practitioner.

([~~35~~]36) "Patient surrogate", as used in Subsection R156-31b-502(1)(d), means an individual who has legal authority to act on behalf of the patient when the patient is unable to act or decide for himself, including a parent, foster parent, legal guardian, or a person designated in a power of attorney.

([~~36~~]37) "Psychiatric mental health nursing specialty", as used in Subsection 58-31b-302(4)(g), includes psychiatric mental health nurse specialists and psychiatric mental health nurse practitioners.

([~~37~~]38) "Practitioner", as used in Sections R156-31b-701 and 701a, means a person authorized by law to prescribe treatment, medication, or medical devices, and who acts within the scope of such authority.

([~~38~~]39) "RN" means a registered nurse.

([~~39~~]40) "School", as used in Section R156-31b-701a, means any private or public institution of primary or secondary education, including charter schools, pre-school, kindergarten, and special education programs.

([~~40~~]41) "Supervision", as used in this rule, means the provision of guidance and review by a licensed nurse for the accomplishment of a nursing task or activity, including the provision for the initial direction of the task, periodic inspection of the actual act of accomplishing the task or activity, and evaluation of the outcome.

([~~41~~]42) "Supervisory clinical faculty", as used in Section R156-31b-608, means one or more individuals employed by an approved nursing education program who meet the accreditation and Board of Nursing specific requirements to be a faculty member and are responsible for the overall clinical experiences of nursing students and may supervise and coordinate clinical preceptors who provide the actual direct clinical experience.

([~~42~~]43) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 31b, is further defined in Section R156-31b-502.

R156-31b-103. Authority - Purpose.

This rule is adopted by the [~~d~~]Division under the authority of Subsection 58-1-106(1)(a) to enable the [~~d~~]Division to administer Title 58, Chapter 31b.

R156-31b-202. Advisory Peer Committee created - Membership - Duties.

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

(2) The duties and responsibilities of the Nursing Education Peer Committee are to:

(a) review applications for approval of nursing education programs;

(b) advise the [~~b~~]Board and [~~d~~]Division regarding standards for approval of nursing education programs; and

(c) assist the [~~b~~]Board and [~~d~~]Division to conduct site visits of nursing education programs.

(3) The composition of the Nursing Education Peer Committee shall be:

(a) five RNs or APRNs actively involved in nursing education; and

(b) members of the [~~b~~]Board may also serve on this committee.

R156-31b-302b. Qualifications for Licensure - Experience Requirements for APRNs Specializing in Psychiatric Mental Health Nursing.

(1) In accordance with Subsection 58-31b-302(4)(g), the supervised clinical practice in mental health therapy and psychiatric and mental health nursing shall consist of a minimum of 4,000 hours of psychiatric mental health nursing education and clinical practice (including mental health therapy).

(a) 1,000 hours shall be credited for completion of clinical experience in an approved education program in psychiatric mental health nursing.

(b) The remaining 3,000 hours shall:

(i) include a minimum of 1,000 hours of mental health therapy and one hour of face to face supervision for every 20 hours of mental therapy services provided;

(ii) be completed while an employee, unless otherwise approved by the [~~b~~]Board and [~~d~~]Division, under the supervision of an approved supervisor; and

(iii) be completed under a program of supervision by a supervisor who meets the requirements under Subsection (3).

(c) At least 2,000 hours must be under the supervision of an APRN specializing in psychiatric mental health nursing. An APRN working in collaboration with a licensed mental health therapist may delegate selected clinical experiences to be supervised by that mental health therapist with general supervision by the APRN.

(2) An applicant who has obtained all or part of the clinical practice hours outside of the state, may receive credit for that experience if it is demonstrated by the applicant that the training completed is equivalent to and in all respects meets the requirements under this section.

(3) An approved supervisor shall verify practice as a licensee engaged in the practice of mental health therapy for not less than 4,000 hours in a period of not less than two years.

(4) Duties and responsibilities of a supervisor include:

(a) being independent from control by the supervisee such that the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(b) supervising not more than three supervisees unless otherwise approved by the [~~d~~]Division in collaboration with the [~~b~~]Board; and

(c) submitting appropriate documentation to the [~~d~~]Division with respect to all work completed by the supervisee, including the supervisor's evaluation of the supervisee's competence to practice.

(5) An applicant for licensure by endorsement as an APRN specializing in psychiatric mental health nursing under the provisions of Section 58-1-302 shall demonstrate compliance with the clinical practice in psychiatric and mental health nursing requirement under Subsection 58-31b-302(4)(g) by demonstrating that the applicant has successfully engaged in active practice in psychiatric mental health nursing for not less than 4,000 hours in the three years immediately preceding the application for licensure.

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

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

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

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

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

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

(A) Adult Nurse Practitioner;

(B) Family Nurse Practitioner;

(C) Pediatric Nurse Practitioner;

(D) Gerontological Nurse Practitioner;

(E) Acute Care Nurse Practitioner;

(F) Clinical Specialist in Medical-Surgical Nursing;

(G) Clinical Specialist in Gerontological Nursing;

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

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

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

(ii) Pediatric Nursing Certification Board;

(iii) American Academy of Nurse Practitioners;

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

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

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

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

(B) the Acute Care Nurse Practitioner Certification;

(vii) the national certifying examination administered by the American Midwifery Certification Board, Inc.; or

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

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

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

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

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

R156-31b-302d. Qualifications for Licensure - Criminal Background Checks.

(1) In accordance with Subsection 58-31b-302(5), an applicant for licensure under this chapter who is applying for licensure from a foreign country shall meet the fingerprint requirement by submitting:

(a) a visa issued within six months of making application to Utah; or

(b) a copy of a criminal background check from the country in which the applicant has immigrated, provided the check was completed within six months of making application to Utah.

(2) A criminal background check conducted during the application process is considered current and acceptable for a period of six months. An application for licensure under Title 58, Chapter 31b and this rule will be valid for a period of six months from the date received by the Division. Thereafter, a new application for licensure with all the required documentation and fees is required.

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

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

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

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

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

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

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

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

(b) An APRN shall complete the following:

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

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

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

R156-31b-309. Intern Licensure.

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

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

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

(c) upon issuance of an APRN license.

(2) Regardless of the provisions of Subsection (1) of this section, the [~~d~~]Division in collaboration with the [~~b~~]Board may extend the term of any intern license upon a showing of extraordinary circumstances beyond the control of the applicant.

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

R156-31b-401. Disciplinary Proceedings.

(1) An individual licensed as a LPN who is currently under disciplinary action and qualifies for licensure as an RN may be issued an RN license under the same restrictions as the LPN.

(2) A nurse whose license is suspended, may under Subsection 58-31b-401 petition the [~~d~~]Division at any time that the licensee can demonstrate that the licensee can resume competent practice.

(3) An individual who has had any license issued under Title 58, Chapter 31b revoked or surrendered two times or more as a result of unlawful or unprofessional conduct is ineligible to apply for relicensure.

R156-31b-402. Administrative Penalties.

In accordance with Subsections 58-31b-102(1) and 58-31b-402(1), unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

(1) Using a protected title:

initial offense: $100 - $300

subsequent offense(s): $250 - $500

(2) Using any title that would cause a reasonable person to believe the user is licensed under this chapter:

initial offense: $50 - $250

subsequent offense(s): $200 - $500

(3) Conducting a nursing education program in the state for the purpose of qualifying individuals for licensure without [~~b~~]Board approval:

initial offense: $1,000 - $3,000

subsequent offense(s): $5,000 - $10,000

(4) Practicing or attempting to practice nursing without a license or with a restricted license:

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(5) Impersonating a licensee, or practicing under a false name:

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(6) Knowingly employing an unlicensed person:

initial offense: $500 - $1,000

subsequent offense(s): $1,000 - $5,000

(7) Knowingly permitting the use of a license by another person:

initial offense: $500 - $1,000

subsequent offense(s): $1,000 - $5,000

(8) Obtaining a passing score, applying for or obtaining a license, or otherwise dealing with the [~~d~~]Division or [~~b~~]Board through the use of fraud, forgery, intentional deception, misrepresentation, misstatement, or omission:

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(9) violating or aiding or abetting any other person to violate any statute, rule, or order regulating nursing:

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(10) violating, or aiding or abetting any other person to violate any generally accepted professional or ethical standard:

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(11) Engaging in conduct that results in convictions of, or a plea of nolo contendere, or a plea of guilty or nolo contendere held in abeyance to a crime of moral turpitude or other crime:

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(12) Engaging in conduct that results in disciplinary action by any other jurisdiction or regulatory authority:

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(13) Engaging in conduct, including the use of intoxicants, drugs to the extent that the conduct does or may impair the ability to safely engage in practice as a nurse:

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(14) Practicing or attempting to practice as a nurse when physically or mentally unfit to do so:

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(15) Practicing or attempting to practice as a nurse through gross incompetence, gross negligence, or a pattern of incompetency or negligence:

initial offense: $500 - $2,000

subsequent offense(s): $2,000 - $10,000

(16) Practicing or attempting to practice as a nurse by any form of action or communication which is false, misleading, deceptive, or fraudulent:

initial offense: $100 - $500

subsequent offense(s): $200 - $1,000

(17) Practicing or attempting to practice as a nurse beyond the individual's scope of competency, abilities, or education:

initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(18) Practicing or attempting to practice as a nurse beyond the scope of licensure:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(19) Verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(20) Failure to safeguard a patient's right to privacy:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(21) Failure to provide nursing service in a manner that demonstrates respect for the patient's human dignity:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(22) Engaging in sexual relations with a patient:
initial offense: $5,000 - $10,000
subsequent offense(s): $10,000
(23) Unlawfully obtaining, possessing, or using any prescription drug or illicit drug:
initial offense: $200 - $1,000
subsequent offense(s): $500 - $2,000
(24) Unauthorized taking or personal use of nursing supplies from an employer:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(25) Unauthorized taking or personal use of a patient's personal property:
initial offense: $200 - $1,000
subsequent offense(s): $500 - $2,000
(26) Knowingly entering false or misleading information into a medical record or altering a medical record:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(27) Unlawful or inappropriate delegation of nursing care:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(28) Failure to exercise appropriate supervision:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(29) Employing or aiding and abetting the employment of unqualified or unlicensed person to practice:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(30) Failure to file or impeding the filing of required reports:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(31) Breach of confidentiality:
initial offense: $200 - $1,000
subsequent offense(s): $500 - $2,000
(32) Failure to pay a penalty:
Double the original penalty amount up to $10,000
(33) Prescribing a schedule II-III controlled substance without a consulting physician or outside of a consultation and referral plan:
initial offense: $500 - $1,000
subsequent offense(s): $500 - $2,000
(34) Failure to confine practice within the limits of competency:
initial offense: $500 - $1,000
subsequent offense(s): $500 - $2,000
(35) Any other conduct which constitutes unprofessional or unlawful conduct:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000
(36) Engaging in a sexual relationship with a patient surrogate:
initial offense: $1,000 - $5,000
subsequent offense(s): $5,000 - $10,000
(37) Engaging in practice in a disruptive manner:
initial offense: $100 - $500
subsequent offense(s): $200 - $1,000.

R156-31b-602. Categories of Nursing Education Programs Approval Status.

(1) Full approval status of a nursing program shall be granted and maintained by adherence to the following:

(a) current accreditation by the NLNAC, CCNE, or COA; and

(b) compliance with the standards of the nurse accrediting body under Subsection (1)(a), and the standards established in Sections R156-31b-601 and R156-31b-603, and R156-31b-607 if the program has been approved to conduct an innovative approach to education[~~the nurse accrediting body in which the program chooses to become accredited~~].

(2) The Division may place on probationary approval status a nursing education program for a period not to exceed three years provided the program:

(a) is located or available within the state;

(b) is found to be out of compliance with the established standards for approval or with an approved innovative approach to education to the extent that the ability of the program to competently educate nursing students is impaired; and

(c) provides a plan of correction which is reasonable and includes an adequate safeguard of the student and public.

(3) The Division may grant provisional approval status to a nursing education program for a period not to exceed two years after the date of the first graduating class, provided the program:

(a) is located or available within the state;

(b) is newly organized;

(c) meets all standards established in Sections R156-31b-601 and R156-31b-603, and R156-31b-607 if the program has been approved to conduct an innovative approach to education; and

(d) is progressing in a timely manner to qualify for full approval status by obtaining accreditation from a nurse accrediting body.

(4)(a) A nursing education program seeking accreditation from NLNAC shall demonstrate progression toward accreditation and qualifying for full approval status by becoming a Candidate for

Accreditation by the NLNAC no later than six months from the date of the first day a nursing course is offered.

(b) A program that fails to obtain NLNAC Candidacy Status as required in this Subsection shall:

(i) immediately cease accepting any new students;

(ii) the approval status of the program shall be changed to "Probationary" and if the program fails to become a Candidate for NLNAC accreditation within one year from the date of the first day a nursing course is offered, the program shall cease operation at the end of the current academic term such as at the end of the current semester or quarter; and

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

(5) A nursing education program that has been granted provisional approval status and fails to become accredited by a nurse accrediting body within two years of the first graduating class, shall cease operation at the end of the two year period of time and the academic term, such as a semester or quarter, of that time period.

(6) After receiving notification from a nurse accrediting body of a failed site visit or denied application for accreditation by the nurse accrediting body, a nursing education program on provisional approval status shall:

(i) notify the Division and Board within 10 days of being notified of the failed site visit or denied application for accreditation;

(ii) cease operation at the end of the current academic term; and

(iii) be eligible to submit a new application for approval status of a nursing education program to the Division for review and action no sooner than one calendar year from the date the program ceased operation.

(7)(a) A nursing education program on provisional approval status shall schedule a nurse accreditation site visit no later than one calendar year from the graduation date of the first graduating class.

(b) A program that fails to schedule a site visit within one year of the first graduating class shall:

(i) cease to accept any new students;

(ii) no later than two years after the first graduating class, cease operation; and

(iii) if ceasing operation under this Subsection, be eligible to submit a new application for approval status of a nursing education program to the Division for review and action no sooner than one calendar year from the date the program ceased operation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) students' achievement of program outcomes;

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

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

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

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

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

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

(3) The curriculum of the nursing education program shall enable the student to develop the nursing knowledge, skills

and competencies necessary for the level, scope and standards of nursing practice consistent with the level of licensure. The curriculum shall include:

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

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

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

(d) coursework including, but not limited to:

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

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

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

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

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

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

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

(3) coordinating and managing continuous patient care; and

(4) promoting healthy lifestyles for patients and populations;

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

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

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

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

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

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

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

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

(ii) a clinical preceptor shall:

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

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

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

(D) not be used to replace clinical faculty;

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

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

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

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

(4) Students rights and responsibilities:

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

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

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

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

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

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

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

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

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

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

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

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

(iii) have academic preparation in curriculum and instruction;

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

(v) have knowledge of current LPN practice; and

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

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

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

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

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

(iii) have academic preparation in curriculum and instruction;

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

(v) have knowledge of current RN practice; and

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

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

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

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

(iii) have academic preparation in curriculum and instruction;

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

(v) have knowledge of current nursing practice;

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

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

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

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

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

(iii) have educational preparation in curriculum and instruction;

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

(v) have knowledge of current APRN practice; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

R156-31b-605. Nursing Education Program Notification of Change.

(1) Educational institutions wishing to begin a new nursing education program shall submit an application to the [~~d~~]Division for approval status at least one year prior to the implementation of the program.

(2) An approved program that expands onto a satellite campus or implements an outreach program shall notify the Division at least one semester before the intended change.

R156-31b-607. Innovative Approaches in Nursing Education Program.

An approved nursing education program may request a waiver from one or more of the standards established in Section R156-31b-603 in order to implement an innovative approach to nursing education.

(1) To be eligible to request a waiver from the education standards in Section R156-31b-603, a nursing education program shall:

(a) have full or provisional approval status from the Division in collaboration with the Board to offer a nursing education program and be accredited by a nurse accrediting body;

(b) have had no substantiated complaints in the two years immediately preceding the request for a waiver; and

(c) have no documented rule violations in the two years immediately preceding the waiver request.

(2) A written request to implement an innovative approach to nursing education shall be submitted to the Division at least four months prior to the proposed implementation date. The request shall include the following:

(a) a one-page executive summary;

(b) identifying information including the name of the nursing education program, responsible party and contact information;

(c) a brief description of the current program, including the nurse accrediting body which has accredited the program and the status of that accreditation;

(d) identification of the standards affected by the proposed innovative approach;

(e) length of time for which the innovative approach is requested;

(f) description of the innovative approach including objectives;

(g) brief explanation of why the program desires to implement an innovative approach at this time;

(h) explanation of how the proposed innovation differs from approaches in the current program;

(i) rationale with available evidence supporting the innovative approach;

(j) identification of resources that support the proposed innovative approach;

(k) expected impact the innovative approach will have on the program, including administration, students, faculty, and other program resources;

(l) plan for implementation, including timeline;

(m) plan for evaluation of the proposed innovation, including measurable criteria/outcomes, method of evaluation, and frequency of evaluation; and

(n) any additional information requested by the Board.

(3) The standards for approval of a request to implement an innovative approach are established as follows:

(a) the innovative approach will not compromise the quality of education or safe practice of students;

(b) resources are sufficient to support the innovative approach;

(c) rationale with available evidence supports the implementation of the innovative approach;

(d) implementation plan is reasonable to achieve the desired outcomes of the innovative approach;

(e) timeline provides for a sufficient period to implement and evaluate the innovative approach; and

(f) plan for periodic evaluation is comprehensive and supported by appropriate methodology.

(4) The Division in collaboration with the Board may rescind the approval of an innovative approach or may require a nursing education program to make modification to the innovative approach if the Board receives evidence indicating adverse impact, or the nursing program fails to implement the innovative approach as presented and approved.

(5) Periodic evaluation shall be conducted by a nursing program that has implemented an innovative approach. The evaluations shall include:

(a) submitting progress reports conforming to the evaluation plan annually or as requested by the Division or Board;

(b) providing documentation of corrective measures and their effectiveness if any report indicates that students are or were adversely impacted by the innovative approach; and

(c) maintaining their eligibility as outlined in Subsection (1).

(6) The program shall submit a final evaluation report which conforms to the evaluation plan, detailing and analyzing the outcomes data.

(7) If the innovative approach has achieved the desired outcomes and the final evaluation has been submitted, the program may request in writing to have the innovative approach continue, or the program may request to have the innovative approach become an ongoing part of the education program.

(8) A nurse accredited education program based solely on one or more innovative approaches to nursing education may request to be granted provisional approval status by the Division in collaboration with the Board under this section and Sections R156-31b-601 and R156-31b-603.

R156-31b-60[~~7~~|8]. Approved Nursing Education Programs Located Outside of Utah.

(1) In accordance with Section 58-31b-302, an approved nursing education program located outside of Utah must meet the following requirements in order for a graduate to meet the educational requirement for licensure in this state:

(a) be accredited by the CCNE, NLNAC or COA; or

(b) be approved by the Board of Nursing or an equivalent agency in the state in which the nursing education program is offered.

R156-31b-60[~~8~~|9]. Standards for Out-of-State Programs Providing Clinical Experiences in Utah.

In accordance with Subsection 58-31b-601(2), the minimum standards that a nursing education program which is

located outside the state must meet to allow students to obtain clinical experiences in Utah are set forth as follows.

(1) An entry level distance learning nursing education program which leads to licensure utilizing precepted clinical experiences in Utah must meet the following criteria:

(a) parent nursing education-program must be Board of Nursing approved in the state of primary location (business), be nationally accredited by either NLNAC, CCNE, or COA, and must be affiliated with an institution of higher education;

(b) parent nursing education-program clinical faculty supervisor must be licensed in Utah or a Compact state;

(c) preceptors within the health care facilities must be licensed in good standing, in Utah or a Compact State;

(d) parent nursing education-program must have a contract with the Utah health care facilities that provide the clinical sites; and

(e) parent nursing education-program must document compliance with the above stated criteria, along with a request to be approved to have a student who is exempt from licensure under Subsection 58-1-307(c).

(2) A nursing education program located in another state that desires to use Utah health care facilities for clinical experiences for one or more students must meet the following criteria:

(a) be approved by the home state Board of Nursing, be nationally accredited by NLNAC, CCNE, or COA and be affiliated with an institution of higher education;

(b) clinical faculty must be employed by the nursing education program, meet the requirements to be a faculty member as established by the accrediting body and the program's Board of Nursing, and must be licensed, in good standing in Utah or a Compact state;

(c) preceptors within the health care facilities must be licensed, in good standing, in Utah or a Compact state;

(d) have a contract with the Utah health care facilities that provide the clinical sites;

(e) submit an annual report on forms provided by the Division of Occupational and Professional Licensing and Utah Board of Nursing; and

(f) document compliance with the above stated criteria, along with a request to be approved to have a student(s) who is exempt from licensure under Subsection 58-1-307(c).

(3) A distance learning didactic nursing education program with a Utah based postsecondary school which provides tutoring services, facilitates clinical site selection, and provides clinical site faculty must meet the following criteria:

(a) parent nursing education-program must be approved by the Board of Nursing in the state of primary location (business), be nationally accredited by NLNAC, CCNE, or COA and must be affiliated with an institution of higher education;

(b) a formal contract must be in place between the parent nursing education-program and the Utah postsecondary school;

(c) parent nursing education-program and Utah postsecondary school must submit an application for program approval status by the Division of Occupational and Professional Licensing in collaboration with the Board of Nursing in Utah, utilizing the parent-program's existing curriculum. Approval status is granted to the parent nursing education-program, not to the postsecondary school;

(d) clinical faculty must be employed by the parent nursing education-program (this can be as a contractual faculty member), meet the requirements to be a faculty member as established by the accrediting body and the parent nursing education-program's Board of Nursing, and must be licensed, in good standing in Utah or a Compact state;

(e) clinical faculty supervisor(s) located at the parent nurse education-program must be licensed, in Utah or a Compact state;

(f) parent nursing education-program shall be responsible for conducting the nursing education program, the program's policies and procedures, and the selection of the students;

(g) parent nursing education-program must have a contract with the Utah health care facilities that provide the clinical sites; and

(h) the parent nursing education-program shall submit an annual report on forms provided by the Division of Occupational and Professional Licensing and Utah Board of Nursing.

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

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

(1) Under the supervision of a licensed nurse as defined in Subsection R156-31b-102([~~40~~]41), an MA-C may:

(a) administer medication:

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

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

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

(b) destroy medications per facility policy;

(c) assist a patient with self administration; and

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

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

(a) central lines;

(b) colostomy;

(c) intramuscular;

(d) subcutaneous;

(e) intrathecal;

(f) intravenous;

(g) nasogastric;

(h) nonmetered inhaler;

(i) intradermal;

(j) urethral;

(k) epidural;

(l) endotracheal; or

(m) gastronomy or jejunostomy tubes.

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

(a) barium and other diagnostic contrast;

(b) chemotherapeutic agents except oral maintenance chemotherapy;

(c) medication pumps including client controlled analgesia; and

(d) nitroglycerin paste.

(4) An MA-C shall not:

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

(b) receive written or verbal orders;

(c) transcribe orders from the medical record;

(d) conduct patient or resident assessments or evaluations;

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

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

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

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

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

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

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

KEY: licensing, nurses
Date of Enactment or Last Substantive Amendment: [~~March 29,~~]2010
Notice of Continuation: April 1, 2008
Authorizing, and Implemented or Interpreted Law: 58-31b-101; 58-1-106(1)(a); 58-1-202(1)(a)

Commerce, Occupational And Professional Licensing

R156-46b

Division Utah Administrative Procedures Act Rule

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 33639
FILED: 05/13/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose or reason for this filing is to change the classification of certain formal adjudicative proceedings to informal adjudicative proceedings and to make other technical changes. Also, H.B. 193 passed during the 2010 Legislative Session deleted the disciplinary option of a "private reprimand". As a result, a similar change needs to be made to this rule. (DAR NOTE: H.B. 193 (2010) is found at Chapter 372, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: First, the proposed amendments in this filing change the classification of adjudicative proceedings for contractors applying for renewal or reinstatement of licensure and contractor disciplinary actions from formal adjudicative proceedings to informal adjudicative proceedings. This is done in Subsections R156-46b-201(1) and R156-46b-202(1). Contractors applying for initial licensure are already reviewed under informal adjudicative proceedings. Contractors applying for renewal of licensure have the same issues reviewed at the time of application for renewal but currently are subject to a formal adjudicative proceeding. The most common issue needing review in contractor renewal applications is financial responsibility. The same issue is involved in the vast majority of contractor disciplinary cases currently handled in formal adjudicative proceedings. Over 95 percent of disciplinary cases referred to the Attorney General's Office for financial responsibility are resolved by informal methods, such as a Stipulation and Order or the licensee resolves the financial problem and the action is dismissed. Less than 5 percent of these cases result in a formal adjudicative hearing. For those that have gone to a formal hearing, the outcome has been comparable to the outcome of cases that have been settled by informal methods. The Division of Real Estate has been successfully handling denial of renewal and disciplinary actions as informal adjudicative proceedings for several years. Changing the classifications of these proceedings to informal proceedings will not cause any detrimental effect on licensees who are able to demonstrate they are qualified and will conserve scarce Division resources. In short, the requirements of Subsection 63G-4-202(1) are met. A case can be converted to a formal adjudicative proceeding, if the case involves issues that may merit a formal proceeding. The standard is set forth in Subsection 63G-4-202(3). Applicants who are denied licensure or have disciplinary action taken against them in an informal adjudicative proceeding are entitled to a trial de novo on judicial appeal and would have their formal day in court at that level. Second, this filing also changes the classification of adjudicative proceeding for the Lien Recovery Fund claims where the claimant is precluded from obtaining the required civil judgment or administrative order against the nonpaying party involved in the claim because of a filing of bankruptcy. The classification is changed from a formal adjudicative proceeding to an informal adjudicative proceeding. Past experience has shown that formal hearings in these cases are almost always

unnecessary. This is done in Subsections R156-46b-201(1) and R156-46b-202(1). It should be noted that a companion rule filing that includes revisions to Section R156-1-109 makes correlating changes to the designation of presiding officer to address the changes to the designation of adjudicative proceedings made by this rule filing. Finally, this filing makes other cleanup and technical changes including capitalizing the word "Division" consistently throughout the rule and deleting the reference to a private reprimand in Section R156-46b-202. (DAR NOTE: The proposed amendment to Rule R156-1 is under DAR No. 33641 in this issue, June 1, 2010, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 58-1-106(1)(a) and Subsection 63G-4-102(6)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Division does not anticipate any increased costs as a result of the proposed amendments. The changes will allow the Division to more efficiently handle these types of cases in an informal setting without unnecessarily devoting resources to formal proceedings. The savings allow the Division to more efficiently handle its increasing workload without requiring additional resources as soon as would otherwise be required or without reducing the level of service provided. The changes necessitated by the 2010 Legislature addressed in this filing do not result in any additional impacts.
♦ LOCAL GOVERNMENTS: The proposed amendments only apply to adjudicative proceedings in the Division with respect to contractors and Lien Recovery Fund claims. As a result, the proposed amendments do not apply to local governments.
♦ SMALL BUSINESSES: The proposed amendments only apply to adjudicative proceedings in the Division with respect to contractors and Lien Recovery Fund claims. Contractors and companies who file a Lien Recovery Fund claim may qualify as a small business; however, these proposed amendments would not directly affect the business.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments will not result in any additional costs or savings to licensees with regard to the change in classification of contractor adjudicative proceedings. Since most cases are currently resolved by informal means, those licensees will not be affected. For the more controversial cases, the overall expense to the licensee is not expected to change significantly. The changes necessitated by the 2010 Legislature addressed in this filing do not result in any additional impacts.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments will not result in any additional costs or savings to licensees with regard to the change in classification of contractor adjudicative proceedings. Since most cases are currently resolved by informal means, those licensees will not be affected. For the more controversial cases, the overall expense to the licensee is not expected to change significantly. The changes necessitated by the 2010 Legislature addressed in this filing do not result in any additional impacts.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is not expected that there will be a cost increase to the contractor industry as a result of the changes in the designation of adjudicative proceedings, as experience has shown that such cases are able to be resolved informally. No fiscal impact to other businesses is anticipated by such change of procedures.

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:
♦ Dan Jones by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dansjones@utah.gov
♦ Dane Ishihara by phone at 801-530-7632, by FAX at 801-530-6511, or by Internet E-mail at dishihara@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/30/2010 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-46b. Division Utah Administrative Procedures Act Rule.
R156-46b-103. Authority - Purpose.

This rule is adopted by the [~~d~~]Division under the authority of Title 63G, Chapter 4, Subsection 58-1-108(1), and Subsection 58-1-106(1)(a). The purposes of this rule include:

(a) classifying [~~d~~]Division adjudicative proceedings;

(b) clarifying the identity of presiding officers at [~~d~~]Division adjudicative proceedings; and

(c) defining procedures for [~~d~~]Division adjudicative proceedings which are consistent with the requirements of Titles 58 and 63G and Rule R151-46b.

R156-46b-201. Formal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by a request for agency action are classified as formal adjudicative proceedings:

(a) denial of application for renewal of licensure, except denial of an application for renewal of a contractor license under Title 58, Chapter 55;

(b) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(5), except denial of an application for reinstatement of a contractor license under Title 58, Chapter 55;

(c) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(6)(b), except denial of an application for reinstatement of a contractor license under Title 58, Chapter 55;

(d) special appeals board held in accordance with Section 58-1-402;

(e) [~~approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11, in which the claimant is precluded from obtaining the required civil judgment or administrative order against the nonpaying party involved in the claim because the nonpaying party filed bankruptcy;~~

~~(f) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (e);~~

~~(g)~~]declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as a formal adjudicative proceeding; and

([~~h~~]f) board of appeal held in accordance with Subsection 58-56-8(3).

(2) The following adjudicative proceedings initiated by a Notice of Agency Action are classified as formal adjudicative proceedings:

(a) disciplinary proceedings, except disciplinary proceedings against a contractor licensed under Title 58, Chapter 55, which result in the following sanctions:

(i) revocation of licensure[~~, except a proceeding requesting revocation of licensure for failure to maintain a qualifier under Subsections 58-55-304(6) and (7) or a proceeding requesting revocation of licensure for failure to maintain liability insurance under Subsection 58-55-302(2)(b)~~];

(ii) suspension of licensure;

(iii) restricted licensure;

(iv) probationary licensure;

(v) issuance of a cease and desist order except when imposed by citation or by an order in a contested citation hearing;

(vi) administrative fine except when imposed by citation or by an order in a contested citation hearing; and

(vii) issuance of a public reprimand;

(b) unilateral modification of a disciplinary order; and

(c) termination of diversion agreements.

R156-46b-202. Informal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by a request for agency action are classified as informal adjudicative proceedings:

(a) approval of application for initial licensure, renewal or reinstatement of licensure, or relicensure;

(b) denial of application for initial licensure or relicensure;

(c) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(6)(a);

(d) denial of application for reinstatement of restricted, suspended, or probationary licensure during the term of the restriction, suspension, or probation;

(e) approval or denial of application for inactive or emeritus licensure status;

(f) board of appeal under Subsection 58-56-8(3);

(g) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11[~~, except those in which the claimant is precluded from obtaining the required civil judgment or administrative order against the nonpaying party involved in the claim because the nonpaying party filed bankruptcy~~];

(h) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (g);

(i) approval or denial of request to surrender licensure;

(j) approval or denial of request for entry into diversion program under Section 58-1-404;

(k) matters relating to diversion program;

(l) contested citation hearings held in accordance with Subsection 58-55-503(4)(b);

(m) approval or denial of request for modification of disciplinary order;

(n) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as an informal adjudicative proceeding;

(o) approval or denial of request for correction of procedural or clerical mistakes;

(p) approval or denial of request for correction of other than procedural or clerical mistakes;[~~ and~~]

(q) denial of application for renewal of licensure as a contractor under Title 58, Chapter 55;

(r) denial of application for reinstatement of licensure as a contractor under Title 58, Chapter 55;

(s) disciplinary proceedings against a contractor licensed under Title 58, Chapter 55; and

([~~c~~]t) all other requests for agency action permitted by statute or rule governing the Division not specifically classified as formal adjudicative proceedings in Subsection R156-46b-201(1).

(2) The following adjudicative proceedings initiated by a notice of agency action or request for agency action are classified as informal adjudicative proceedings:

(a) [~~disciplinary proceeding seeking exclusively the issuance of a private reprimand;~~

~~(b)~~]nondisciplinary proceeding which results in cancellation of licensure;

([e]b) disciplinary sanctions imposed in a memorandum of understanding with an applicant for licensure; and

(c) disciplinary proceedings against a contractor licensed under Title 58, Chapter 55.[

~~(d) a proceeding requesting revocation of licensure for failure to maintain a qualifier under Subsections 58-55-304(6) and (7); and~~

~~(c) a proceeding requesting revocation of licensure for failure to maintain liability insurance under Subsection 58-55-302(2)(b).~~]

R156-46b-301. Designation.

The presiding officers for [~~d~~]Division adjudicative proceedings are as defined at Subsection 63G-4-103(1)(h) and as specifically established by Section 58-1-109 and by Section R156-1-109.

R156-46b-401. In General.

(1) The procedures for formal [~~d~~]Division adjudicative proceedings are set forth in Sections 63G-4-204 through 63G-4-208, Rule R151-46b-1, and this rule.

(2) The procedures for informal [~~d~~]Division adjudicative proceedings are set forth in Section 63G-4-203, Rule R151-46b-1, and this rule.

R156-46b-403. Evidentiary Hearings in Informal Adjudicative Proceedings.

(1) Evidentiary hearings are not required for informal [~~d~~]Division adjudicative proceedings unless required by statute or rule, or permitted by rule and requested by a party within the time prescribed by rule.

(2) Unless otherwise provided, a request for an evidentiary hearing permitted by rule must be submitted in writing no later than 20 days following the issuance of the notice of agency action if the proceeding was initiated by the [~~d~~]Division, or together with the request for agency action if the proceeding was not initiated by the [~~d~~]Division.

(3) [~~E~~]An evidentiary hearing[~~s are~~] is required for the following informal proceedings:

(a) R156-46b-202(1)(l), contested citation hearings held in accordance with [~~Subsection 58-55-503(4)(b)~~]Title 58; and

(b) R156-46b-202(1)(f), board of appeal held in accordance with Subsection 58-56-8(3).

(4) [~~E~~]An evidentiary hearing[~~s are~~] is permitted for [~~the following~~]an informal proceeding[~~s~~:] pertaining to matters relating to a diversion program in accordance with R156-46b-202(1)(k).[

~~(a) R156-46b-202(1)(k), matters relating to a diversion program; and~~

~~(b) R156-46b-202(2)(a), issuance of a private reprimand.~~]

(5) Unless otherwise agreed by the parties, no evidentiary hearing shall be held in an informal adjudicative proceeding unless timely notice of the hearing has been served upon the parties as required by Subsection 63G-4-203(1)(d). Timely notice means service of a Notice of Hearing upon all parties not later than ten days prior to any scheduled evidentiary hearing.

(6) Parties shall be permitted to testify, present evidence, and comment on the issues at an evidentiary hearing in a [~~d~~]Division informal adjudicative proceeding.

R156-46b-404. Orders in Informal Adjudicative Proceedings.

(1) Orders issued in [~~d~~]Division informal adjudicative proceedings shall comply with Subsection 63G-4-203(1)(i).

(2) Issuance of a license or approval of related requests in response to a request for agency action is sufficient to satisfy the requirements of Subsection 63G-4-203(1)(i).

(3) Issuance of a letter denying a license or related requests is sufficient to satisfy the requirements of Subsection 63G-4-203(1)(i). The letter must explain the reasons for the denial and the rights of the parties to seek agency review, including the time limits for requesting review.

(4) Unless otherwise specified by the director, the fact finder who serves as the presiding officer at an evidentiary hearing convened in [~~d~~]Division informal adjudicative proceedings shall issue a final order.

(5) Orders issued in [~~d~~]Division informal adjudicative proceedings in which an evidentiary hearing is convened shall comply with the requirements of Subsection 63G-4-208(1).

R156-46b-405. Informal Agency Advice.

(1) The [~~d~~]Division may issue an informal guidance letter in response to a request for advice unless the request specifically seeks a declaratory order.

(2) A notice shall appear in the informal guidance letter notifying the subject of the letter that the letter is an informal guidance letter only and is not intended as a formal declaratory order. The notice shall also provide the citation where the requirements which govern declaratory orders are found.

KEY: administrative procedures, government hearings, occupational licensing
Date of Enactment or Last Substantive Amendment: [~~October 23, 2008~~]2010
Notice of Continuation: April 25, 2006
Authorizing, and Implemented or Interpreted Law: 63G-4-102(6); 58-1-106(1)(a)

Commerce, Occupational and Professional Licensing
R156-60a
Social Worker Licensing Act Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33615
FILED: 05/03/2010

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 90, which was passed during the 2010 General Session of the Legislature, made several amendments to the Social Worker Licensing Act which in turn required proposed amendments to this rule. In addition, the Division and the Social Worker Licensing Board determined the continuing education requirement section needs to be updated, as well as other technical corrections. (DAR NOTE: S.B. 90 (2010) is found at Chapter 214, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: Throughout the rule, capitalized "Division" and "Board" where appropriate, various statutory citations have been updated and grammatical changes have been made. In Section R156-60a-102, added definition of "social work practice methods" as required by S.B. 90. In Subsection R156-60a-102(7), the phrase "under the general supervision" is added to emphasize the level of supervision under which a certified social worker (CSW) may practice. In Section R156-60a-302b, S.B. 90 modified the qualifications for supervision of a social service worker (SSW) and the proposed amendments reflects that change. The SSW license experience requirement is clarified to require that the 2,000 hours of qualified experience be completed in not less than one year. In Subsection R156-60a-302c(4), the term "general" is added to clarify the level of supervision under which the 4,000 hours of training must be completed. In Section R156-60a-302d, a deadline for passing the Association of Social Work Boards (ASWB) exam is set one year from the date that the Division approves an applicant to take the exam. Section R156-60a-304 is entirely rewritten with language that is easier to understand. Proposed amendments add that not fewer than three hours in ethics/ law of the 40 hours required every two years for licensed clinical social workers (LCSW) are required. Amendments also clarify that SSWs are required to complete not fewer than 20 continuing education hours every two years and not fewer than three hours in ethics/law must be included in the 20 hours. In Subsection R156-60a-304(2), modifications are made to the standards for acceptable continuing education. Limits are placed on the credit that licensees may receive for lecturing or instructing continuing education courses. A listing of acceptable course types is added. Limits on the number of continuing education contact hours in various course types are established. Information to be included in documentation that will verify completion of continuing education is established. In Subsection R156-60a-602(1), the term "general" is added to clarify the level of supervision under which a SSW must practice.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-60-201 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Division will incur minimal costs of approximately $50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
♦ LOCAL GOVERNMENTS: The proposed amendments only apply to licensed social worker classifications applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.
♦ SMALL BUSINESSES: The proposed amendments only apply to licensed social worker classifications and applicants for licensure in those classifications. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments only apply to licensed social worker classifications and applicants for licensure in those classifications. In accordance with Section R156-60a-302d, the Division is granted authority to deny a license application if the application has been pending for over one year due to an applicant's failure to pass the ASWB examination. Paying a $120 application fee a second time will be a cost for the small number of applicants who do not pass the ASWB exam within one year. It is anticipated that only a few applicants will fall into this group. Section R156-60a-304 clarifies new continuing education requirements for LCSWs and SSWs. The proposed amendments require LCSWs and SSWs to complete not fewer than three hours of continuing education in the area of ethics/law. As a result, some licensees may end up paying more money for continuing education. However, if a continuing education course a licensee takes now is more expensive than an ethics/law course which will be required, the licensee will actually save money. The Division is not able to determine an exact amount of savings or additional cost due to a wide varying degree of different circumstances.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed social worker classifications and applicants for licensure in those classifications. In accordance with Section R156-60a-302d, the Division is granted authority to deny a license application if the application has been pending for over one year due to an applicant's failure to pass the ASWB examination. Paying a $120 application fee a second time will be a cost for the small number of applicants who do not pass the ASWB exam within one year. It is anticipated that only a few applicants will fall into this group. Section R156-60a-304 clarifies new continuing education requirements for LCSWs and SSWs. The proposed amendments require LCSWs and SSWs to complete not fewer than three hours of continuing education in the area of ethics/law. As a result, some licensees may end up paying more money for continuing education. However, if a continuing education course a licensee takes now is more expensive than an ethics/law course which will be required, the licensee will actually save money. The Division is not able to determine an exact amount of savings or additional cost due to a wide varying degree of different circumstances.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing conforms the rule to recent statutory amendments that amended definitions, changed the qualifications for supervision of social service workers, etc. It updates statutory references, changes the continuing education provision to require courses in ethics/law, clarifies continuing education credit for lectures and instruction, and makes other technical changes. No fiscal impact to businesses is anticipated beyond those addressed by recent statutory amendments and beyond those addressed in the rule summary.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Rich Oborn by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at roborn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/03/2010 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-60a. Social Worker Licensing Act Rule.
R156-60a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or this rule:

(1) "ASWB" means the Association of Social Work Boards.

(2) "CSW" means a licensed certified social worker.

(3) "Clinical social work concentration and practicum", "clinical concentration and practicum" "case work", "group work", or "family treatment course sequence with a clinical practicum", "clinical practicum" or "practicum", as used in Subsections 58-60-205(1)(g) and (2)(d)(ii), means a track of professional education which is specifically established to prepare an individual to practice or engage in mental health therapy.

(4) "LCSW" means a licensed clinical social worker.

(5) "Social work practice methods", as used in Subsection 58-60-205(4)(d)(iii)(A), means a course at an accredited college or university that includes emphasis on the following:

(a) generalist social work practice at the individual, family, group, organization, and community levels;

(b) planned client change process and social work roles at various levels;

(c) application of key values and principles of the National Association of Social Workers (NASW) Code of Ethics and resolution of ethical dilemmas; and

(d) evaluation of programs and direct practice in the social work field.

([~~5~~]6) "SSW" means a licensed social service worker.

([~~6~~]7) "Supervised practice of mental health therapy by a clinical social worker", as used in Subsection 58-60-202([~~3~~]4)(a), means that the CSW is under the general supervision of [~~supervised by~~]an LCSW meeting the requirements of Sections R156-60a-302e and R156-60a-601.

R156-60a-302a. Education Requirements for Licensure as an SSW.

In accordance with Subsection 58-60-205(3)(d)(ii), a master's degree qualifying an applicant for licensure as an SSW shall be in a field of social work, psychology, marriage and family therapy, or professional counseling.

R156-60a-302b. Experience Requirements for Licensure as an SSW.

In accordance with Subsection 58-60-205(4)(d)(iii)[~~, and (iv)~~], the 2,000 hours of supervised [~~social work activity or the one year of~~]qualifying experience for licensure as an SSW shall:

(1) be performed as an employee of an agency providing social work services and activities;[~~, and~~]

(2) be performed according to a written social work job description approved by the [~~LCSW or CSW~~]licensed mental health therapist supervisor;

(3) be completed over a duration of not less than one year.

R156-60a-302c. Training Requirements for Licensure as an LCSW.

In accordance with Subsections 58-60-205(1)[~~(d),~~](e),(f) and (g), and 58-60-202([~~3~~]4)(a), the 4,000 hours of clinical social work and mental health therapy training qualifying an applicant for licensure as an LCSW shall:

(1) be obtained after completion of the education requirement set forth in Subsections 58-60-205(1)(d) and (g) and shall not include any clinical practicum hours obtained as part of the education program;

(2) be completed over a duration of not less than two years;

(3) be completed while the CSW is an employee of a public or private agency engaged in mental health therapy;

(4) be completed under a program of general supervision by an LCSW meeting the requirements of Sections R156-60a-302e and R156-60a-601; and

(5) include the following training requirements:

(a) individual, family, and group therapy;

(b) crisis intervention;

(c) intermediate treatment; and

(d) long term treatment.

R156-60a-302d. Examination Requirements.

(1) In accordance with Subsection 58-60-205(1)(h), the examination requirements for licensure as an LCSW include passing the Clinical Examination of the ASWB or the Clinical Social Workers Examination of the State of California.

(2) In accordance with Subsection 58-60-205(2)(e), the examination requirements for licensure as a CSW shall include passing the Masters, Advanced Generalist, or Clinical Examination of the ASWB.

(3) In accordance with Subsection 58-60-205([~~3~~]4)(e), the examination requirements for licensure as an SSW shall include passing the Bachelors Examination of the ASWB.

(4) Applicants for any ASWB exam must pass the exam within one year from date of the Division's approval for the applicant to take the exam. If the applicant does not pass the required exam within one year, the pending license application shall be denied.

R156-60a-302e. Requirements to Become an LCSW Supervisor.

In accordance with Subsections 58-60-202(2)(c), 58-60-202(3)(a) and 58-60-205(1)(e) and (f), in order for an LCSW to supervise a CSW, the LCSW shall:

(1) be currently licensed in good standing as an LCSW; and

(2) have engaged in active practice as an LCSW, including mental health therapy, for a period of not less than two years prior to supervising a CSW.

R156-60a-304. Continuing Education[~~Requirements for LCSW~~].

[~~In accordance with Subsection 58-60-105(1), the continuing education requirements for LCSWs are defined, clarified and established as follows:~~

~~(1) During each two year period commencing October 1st of each even numbered year, a LCSW shall be required to complete not less than 40 hours of continuing education.~~

~~(2) The required number of hours of continuing education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.~~

~~(3) Continuing education under this section shall:~~

~~(a) be relevant to the licensee's professional practice;~~

~~(b) be prepared and presented by individuals who are qualified by education, training, and experience to provide social work continuing education; and~~

~~(c) have a method of verification of attendance.~~

~~(4) Credit for continuing education shall be recognized in accordance with the following:~~

~~(a) unlimited hours shall be recognized for continuing education completed in blocks of time of not less than 50 minutes in formally established classroom courses, seminars, lectures, conferences, or training sessions which meet the criteria listed in Subsection (3) above, and which are approved by, conducted by or under sponsorship of:~~

~~(i) the National Association of Social Workers;~~

~~(ii) community mental health agencies or entities providing mental health services under the auspices of the State of Utah;~~

~~(iii) recognized universities and colleges;~~

~~(iv) professional associations, societies and organizations representing a licensed profession whose program objectives relate to the practice of social work; and~~

~~(v) the Division of Occupational and Professional Licensing; and~~

~~(b) a maximum of ten hours per two year period may be recognized for teaching continuing education relevant to clinical social work or mental health therapy; and~~

~~(c) a maximum of ten hours per two year period may be recognized for continuing education that is provided via Internet or through home study which meets the criteria listed in Subsection (3) above.~~

~~(5) A licensee is responsible to complete relevant continuing education, to document completion of the continuing education, and to maintain the records of the continuing education completed for a period of four years after close of the two year period to which the records pertain.~~

~~(6) A licensee who documents the licensee is engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing education requirements established under this section may be excused from the requirement for a period of up to three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.~~

~~(7) If more than 40 hours of continuing education is completed during the two year period specified in Subsection (1), up to ten hours of the excess over 40 hours may be carried over to the next two year period. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted.~~](1) Required Hours. In accordance with Subsection 58-60-105(1) and Section 58-60-205.5, during each two year renewal cycle commencing on October 1 of each even numbered year:

(a) An LCSW shall be required to complete not fewer than 40 hours of continuing education. Beginning October 1, 2010, a minimum of three of the 40 hours shall be completed in ethics and/or law.

(b) Beginning October 1, 2010, an SSW shall be required to complete not fewer than 20 hours of continuing education of which a minimum of three contact hours shall be completed in ethics and/or law.

(c) The required number of hours of continuing education for an individual who first becomes licensed during the two year renewal cycle shall be decreased in a pro-rata amount.

(d) The Division may defer or waive the continuing education requirements as provided in Section R156-1-308d.

(2) A continuing education course shall meet the following standards:

(a) Time. Each hour of continuing education course credit shall consist of not fewer than 50 minutes of education. Licensees shall only receive credit for lecturing or instructing the same course up to two times. Licensees shall receive one hour of continuing education for every one hour of time spent lecturing or instructing a continuing education course;

(b) Course Content and Type. A course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the course;

(i) The content of the course shall be relevant to the practice of social work and shall be completed in the form of any of the following course types:

(A) seminar;

(B) lecture;

(C) conference;

(D) training session;

(E) webinar;

(F) internet course;

(G) distance learning course;

(H) specialty certification; or

(I) lecturing or instructing of a continuing education course;

(ii) The following limits apply to the number of hours recognized in the following course types during a two year license renewal cycle:

(A) a maximum of ten hours for lecturing or instructing of continuing education courses meeting these requirements; and

(B) a maximum of 15 hours for online, distance learning, or home study courses that include examination and issuance of a completion certificate;

(c) Course Provider or Sponsor. The course shall be approved by, conducted by, or under the sponsorship of one of the following:

(i) a recognized accredited college or university;

(ii) a community mental health agency or entity providing mental health services under the auspices of the State of Utah;

(iii) a professional association or society involved in the practice of social work; or

(iv) the Division of Occupational and Professional Licensing;

(d) Objectives. The learning objectives of the course shall be clearly stated in course material;

(e) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training and experience;

(f) Documentation. Each licensee shall maintain adequate documentation as proof of compliance with this Section, such as a certificate of completion, school transcript, course description, or other course materials. The licensee shall retain this proof for a period of three years after the end of the renewal cycle for which the continuing education is due; and

(i) At a minimum, the documentation shall contain the following:

(A) date of the course;

(B) name of the course provider;

(C) name of the instructor;

(D) course title;

(E) number of hours of continuing education credit; and

(F) course objectives.

(3) Extra Hours of Continuing Education. If a licensee completes more than the required number of hours of continuing education during a two year renewal cycle specified in Subsection (1), up to ten hours of the excess over the required number may be carried over to the next two year renewal cycle. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted.

R156-60a-308. Reinstatement of an LCSW License which has Expired Beyond Two Years.

In accordance with Subsection 58-1-308(6) and Section R156-1-308e, an applicant for reinstatement for licensure as an LCSW, whose license expired after two years following the expiration of that license, shall:

(1) upon request, meet with the [~~b~~]Board to evaluate the applicant's ability to safely and competently practice clinical social work and mental health therapy;

(2) upon recommendation of the [~~b~~]Board, establish a plan of supervision under an approved supervisor which may include up to 4,000 hours of clinical social work and mental health therapy training as a CSW before qualifying for reinstatement of the LCSW license;

(3) pass the Clinical Examination of the ASWB if it is determined by the [~~b~~]Board that examination or reexamination is necessary to demonstrate the applicant's ability to safely and competently practice clinical social work and mental health therapy; and

(4) complete a minimum of 40 hours of continuing education in subjects determined by the [~~b~~]Board as necessary to ensure the applicant's ability to safely and competently practice clinical social work and mental health therapy.

R156-60a-309. Exemption from Licensure Clarified.

The exemption specified in Subsection 58-60-107(5) does not permit an individual to engage in the 4,000 hours of clinical social work and mental health therapy training without first becoming licensed as a CSW.

R156-60a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) using the abbreviated title of LCSW unless licensed as an LCSW;

(2) using the abbreviated title of CSW unless licensed as a CSW;

(3) using the abbreviated title of SSW unless licensed as an SSW;

(4) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60a-302c and R156-60a-601.

(5) engaging in the supervised practice of mental health therapy as a licensed CSW unless:

(a) the licensee has completed a clinical practicum as part of the Council on Social Work Education (CSWE) accredited master's degree program; and

(b) the scope of practice is otherwise within the licensee's competency, abilities and education;

(6) engaging in the supervised practice of mental health therapy when not in compliance with Section R156-60a-302c and Subsection R156-60a-601(7);

(7) engaging in or aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(8) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(9) failing to establish and maintain professional boundaries with a client or former client;

(10) engaging in dual or multiple relationships with a client or former client in which there is a risk of or potential harm to the client;

(11) engaging in sexual activities or sexual contact with a client with or without client consent;

(12) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services even when there is no risk of exploitation or potential harm to the client;

(13) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a personal relationship when there is a risk of exploitation or potential harm to the client;

(14) embracing, massaging, cuddling, caressing, or performing any other act of physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(15) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(16) failing to exercise professional discretion and impartial judgement required for the performance of professional activities, duties and functions;

(17) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(18) exploiting a client or former client for personal gain;

(19) exploiting a person who has a personal relationship with a client for personal gain;

(20) failing to maintain client records including records of assessment, treatment, progress notes and billing information for a period of not less than ten years from the documented termination of services to the client;

(21) failing to provide client records in a reasonable time upon written request of the client, or legal guardian;

(22) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client activities or records;

(23) failing to protect the confidences of other persons named or contained in the client records; and

(24) failing to abide by the provisions of the Code of Ethics of the National Association of Social Workers (NASW) as approved by the NASW 1996 Delegate Assembly and revised by the 1999 NASW Delegate Assembly, which is adopted and incorporated by reference.

R156-60a-601. Duties and Responsibilities of an LCSW Supervisor.

The duties and responsibilities of an LCSW supervisor[~~,~~] are further [~~defined, clarified or~~]established as follows:

(1) be professionally responsible for the acts and practices of the supervisee;

(2) be engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee or is not compromised;

(3) be available for advice, consultation, and direction consistent with the standards and ethics of the profession;

(4) provide periodic review of the client records assigned to the supervisee;

(5) comply with the confidentiality requirements of Section 58-60-114;

(6) monitor the performance of the supervisee for compliance with laws, rules, standards and ethics applicable to the practice of social work;

(7) supervise only a supervisee who is an employee of a public or private mental health agency;

(8) supervise not more than three individuals who are lawfully engaged in mental health therapy training, unless otherwise approved by the Division in collaboration with the [~~b~~]Board;

(9) not begin supervision of a CSW until having met the requirements of Section R156-60a-302e; and

(10) in accordance with Subsections 58-60-205(1)(e) and (f), submit to the [~~d~~]Division on forms made available by the [~~d~~]Division:

(a) documentation of the training hours completed by the CSW; and

(b) an evaluation of the CSW, with respect to the quality of the work performed and the competency of the CSW to practice clinical social work and mental health therapy.

R156-60a-602. Supervision - Scope of Practice - SSW.

In accordance with Subsections 58-60-202([~~4~~]2) and ([~~5~~]6), supervision and scope of practice of an SSW is further defined[~~, clarified and established~~] as follows:

(1) general supervision of an SSW by a licensed mental health therapist is only required where mental health therapy services are provided; and

(2) the scope of practice of the SSW shall be in accordance with a written social work job description approved by the licensed mental health therap[~~y~~]ist supervisor, except that the SSW may not engage in the supervised or unsupervised practice of mental health therapy.

KEY: licensing, social workers
Date of Enactment or Last Substantive Amendment: [~~October 22, 2009~~]2010
Notice of Continuation: August 31, 2009
Authorizing, and Implemented or Interpreted Law: 58-60-201; 58-1-106(1)(a); 58-1-202(1)(a)

Commerce, Occupational and Professional Licensing
R156-83
Online Prescribing, Dispensing, and Facilitation Licensing Act Rule

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 33638
FILED: 05/13/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule filing is to implement S.B. 274 which was passed during the 2010 Legislative Session. The proposed rule provides for the licensure and regulation of

online prescribers, online contract pharmacies, and Internet facilitators. (DAR NOTE: S.B. 274 (2010) is found at Chapter 180, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: Section R156-83-101 establishes the title of the rule. Section R156-83-102 defines the following terms "active and in good standing", "licensed in good standing", "submit a copy of the internet facilitator's website", and "unprofessional conduct". Section R156-83-103, provides the statutory basis for establishing the rule. Section R156-83-104 references the rule section which explains the organization and relationship between this rule and Rule R156-1. Section R156-83-302 establishes the process by which an Internet facilitator documents minimum liability insurance. Section R156-83-303 includes Division model rule language referencing other Division rules which establish the renewal cycle for licensees under this chapter. Section R156-83-306 adds five legend, non-controlled drugs that can be prescribed by a licensed online prescriber. Section R156-83-308 requires Internet facilitators to submit reports to the Division on a quarterly basis. Section R156-83-502 provides three additional types of conduct that would be unprofessional and the basis for administrative disciplinary action.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-83-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Division will incur minimal costs of approximately $50 to print and distribute the rule once the proposed amendments are made effective. Also, according to the fiscal note for S.B. 274, the enactment of the bill will generate $1,200 in revenue to the General Fund annually. One FTE (full time employee) and a new board are estimated to cost $80,800 per year from the Commerce Service Fund. License fee revenue is estimated at $82,000 per year. There will be a $40 pass through fee to BCI (Bureau of Criminal Investigation) to conduct criminal background checks for each owner, officer, or manager of the applicant online contract pharmacy.
♦ LOCAL GOVERNMENTS: As was indicated on the fiscal note for S.B. 274, the regulation of online prescribing will not likely result in direct, measurable costs and/or benefits for local governments.
♦ SMALL BUSINESSES: Individuals and businesses that are eligible for licensure will need to pay the application/renewal fee for that license. Proposed fees are as follows: 1) online prescribers: $200/initial application, $183/renewal; 2) online contract pharmacies: $200/initial application, $183/renewal; and 3) Internet facilitators: $7,000/initial application, $7,000/renewal. However, the ability to prescribe online will allow prescribing practitioners to broaden their patient base thus increasing the revenue of the practice. This would also be true for the online contract pharmacy. The Division is unable to determine how many new applicants to expect in each of the license classifications, thus precise estimates are unavailable. The start up costs for an online Internet facilitator are unknown but would be significant; however, those who have been involved in online prescription services have indicated the Internet facilitator is able to recoup their costs as the client base grows. Again, the Division is unable to determine precise estimates of those start up costs due to a wide degree of circumstances.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Individuals and businesses that are eligible for licensure will need to pay the fees for that license as outlined above.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Individuals and businesses that are eligible for licensure will need to pay the fees for that license as outlined above.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing adopts a rule to administer the Online Prescribing, Dispensing, and Facilitation Licensing Act passed in the 2010 Legislative Session. No fiscal impact to businesses is anticipated beyond those addressed in the passage of the statute.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Laura Poe by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at lpoe@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/15/2010 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 475, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-83. Online Prescribing, Dispensing, and Facilitation Licensing Act Rule.
R156-83-101. Title.
This rule is known as the "Online Prescribing, Dispensing, and Facilitation Licensing Act".

R156-83-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 83, as used in this rule:

(1) "Active and in good standing", as used in Subsections 58-83-302(1)(d), 58-83-302(2) and 58-83-302(3)(g), and "licensed in good standing", as used in Subsection 58-83-302(3)(a), is as defined in Subsection R156-1-102(1) and also includes that the license has not been subject to disciplinary action in the past three years.

(2) "Submit a copy of the internet facilitator's website", as used in Subsection 58-83-302(4)(g), means submitting the URL for the Internet facilitator's website, a site map, and a printout of the main pages.

(3) "Unprofessional conduct" is further defined, in accordance with Subsections 58-1-203(1)(e) and 58-83-102(9), in Section R156-83-502.

R156-83-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 83.

R156-83-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-107.

R156-83-302. Qualifications for Licensure - Liability Insurance Requirements.

In accordance with the provisions of Subsection 58-83-302(3)(e), an applicant who is approved for licensure as an online contract pharmacy shall submit proof of public liability insurance in coverage amounts of at least $1,000,000 per occurrence with a policy limit of not less than $3,000,000 by means of a certificate of insurance naming the Division as a certificate holder.

R155-83-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 83 is established by rule in Subsection R156-1-308a(1).

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

R156-83-306. Drugs Approved for Online Prescribing, Dispensing, and Facilitation.

In accordance with Subsection 58-83-306(1)(c), the following legend, non-controlled drugs are approved for prescribing by an online prescriber:

(1) finasteride;

(2) sildenafil citrate;

(3) tadalafil;

(4) vardenafil hydrochlorid; and

(5) hormonal based contraception.

R156-83-308. Audit Reports.

In accordance with Subsection 58-83-308(3), an Internet facilitator licensed under this chapter shall provide quarterly reports to the Division containing the information listed in Subsection 58-83-308(3). The report is due on the fifteenth day of each quarter, i.e. January 15, April 15, July 15, and October 15.

R156-83-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing as an online facilitator to timely submit quarterly reports to the Division as established in Section R156-83-308;

(2) prescribing any medication to a patient while engaged in practice as an online prescriber without first reviewing a comprehensive health history, making an assessment, or establishing a diagnosis; and

(3) prescribing a drug listed in Section R156-83-306 for diagnosis that is not recognized by the Federal Food and Drug Administration to be treated by that prescribed drug.

KEY: licensing, online prescribing, internet facilitators
Date of Enactment or Last Substantive Amendment: 2010
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-83-101

Education, Administration
R277-109
One-time Signing Bonuses

NOTICE OF PROPOSED RULE

(Repeal)
DAR FILE NO.: 33651
FILED: 05/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is repealed because the funding was discontinued.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The program was based on an appropriation which was discontinued.

♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The program was based on an appropriation which was discontinued.

♦ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. The program was based on an appropriation which was discontinued.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The program was based on an appropriation which was discontinued.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The program was based on an appropriation which has now been discontinued.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

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

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R277. Education, Administration.

[~~**R277-109. One-time Signing Bonuses.**~~

~~**R277-109-1. Definitions.**~~

~~A. "90 days" means 90 calendar days beginning with the first educator work day.~~

~~B. "Board" means the Utah State Board of Education.~~

~~C. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes information such as:~~

~~(1) personal directory information;~~

~~(2) educational background;~~

~~(3) endorsements;~~

~~(4) employment history;~~

~~(5) professional development information; and~~

~~(6) a record of disciplinary action taken against the educator.~~

~~D. "Did not work as an educator" means did not work under contract in a position requiring an educator license during the 2007-08 school year.~~

~~E. "Qualifying educator" means a person employed:~~

~~(1) in one of the following positions:~~

~~(a) classroom teacher;~~

~~(b) speech pathologist;~~

~~(c) librarian or media specialist;~~

~~(d) preschool teacher;~~

~~(e) mentor teacher;~~

~~(f) teacher specialist or teacher leader;~~

~~(g) guidance counselor;~~

~~(h) audiologist;~~

~~(i) psychologist; or~~

~~(j) social worker.~~

~~(2) who holds a current and valid Level 1, 2, or 3 Utah Educator License or is a participant in the Utah Alternative Routes to Licensure Program consistent with R277-503.~~

~~F. "USOE" means the Utah State Office of Education.~~

~~**R277-109-2. Authority and Purpose.**~~

~~A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-153(6) which permits the Board to make rules as necessary to administer the program.~~

~~B. The purpose of this rule is to establish definitions and procedures for the implementation of 2008-09 one-time signing bonuses.~~

~~**R277-109-3. Qualifying Educator Responsibilities.**~~

~~A. Each qualifying educator shall sign an affidavit affirming eligibility for the signing bonus.~~

~~B. An educator who receives funds fraudulently or mistakenly shall be responsible for reimbursing funds to school districts or charter schools.~~

~~C. Qualifying educators acknowledge that if total signing bonus funds are reduced, funds may be reclaimed from qualifying educators in subsequent school district and charter school salary payments.~~

~~**R277-109-4. Public School District and Charter School Responsibilities.**~~

~~A. School districts and charter schools shall submit the names of qualifying educators who are hired and who begin work prior to September 1, 2008 to the Board on December 1, 2008.~~

~~B. School districts or charter schools shall submit the names of qualifying educators who are hired and begin work after September 2, 2008 but before October 1, 2008 to the Board on or after January 2, 2009.~~

~~C. Additional names may not be submitted to the Board for program participation by school districts or charter schools after January 15, 2009.~~

~~D. The submission of qualifying educators to the Board shall include the following information:~~

~~(1) qualifying educator name;~~

~~(2) qualifying educator CACTUS number; and~~

~~(3) percentage of full time equivalent employment (FTE), such as 1.0 FTE, .50 FTE, for each qualifying educator.~~

~~E. School districts and charter schools shall not receive funding for an individual who:~~

~~(1) is hired and whose first work day was on or after October 1, 2008;~~

~~(2) was employed and worked as an educator in any Utah public school district or charter school during the 2007-08 school year;~~

~~(3) works less than 90 days during the 2008-09 school year; or~~

~~(4) is employed less than one-half time.~~

~~F. School districts and charter schools may combine the signing bonus under Section 53A-17a-148 with other state or local signing bonus programs for the 2008-09 school year.~~

~~G. School districts and charter schools shall provide payment of the salary supplement to qualifying educators as follows:~~

~~(1) School districts and charter schools shall pay a signing bonus under this program consistent with bonuses set by the Board;~~

~~(2) School districts and charter schools shall make the signing bonus payment to qualifying educators in any regular or other salary distribution prior to January 15, 2009;~~

~~(3) School districts and charter schools shall use program funds to pay the required employer contributions to retirement, workers compensation, Social Security, and Medicare as provided in Section 53A-17a-148(3)(a);~~

~~(4) If the amount of the signing bonus program funds distributed to school districts and charter schools is reduced consistent with the allowance for pro rata reduction under Section 53A-17a-148(4)(b), school districts and charter schools may make adjustments to payroll distributions to qualifying educators so that the total signing bonus amount paid to individual qualifying educators does not exceed the actual amount school districts and charter schools received from the Board.~~

~~H. All school districts and charter schools shall participate in the 2008-09 signing bonus program.~~

~~I. School districts shall maintain qualifying educator affidavits on file for USOE or legislative review upon request.~~

~~**R277-109-5. Board Responsibilities.**~~

~~A. The Board shall provide a form to school districts and charter schools for the required submissions for participation in this program.~~

~~B. Signing bonus amount:~~

~~(1) The signing bonus paid to the qualifying educator is $1,000 unless the amount is reduced consistent with Section 53A-17a-148(4).~~

~~(2) School districts and charter schools shall receive funds beyond the $1,000 signing bonus to pay employer costs required under Section 53A-17a-148(3)(a).~~

~~(3) All qualifying educators hired under this program shall receive the same $1,000 signing bonus.~~

~~C. Upon receiving the submissions of qualifying educator names, the Board shall review the information to ensure conformity to the requirements for bonuses and payments.~~

~~D. The Board shall distribute funds to school districts and charter schools after reviewing required submissions.~~

~~E. The distribution of funds shall be included in the regular minimum school program transfers in December and February.~~

~~F. The Board shall provide a report to school districts and charter schools of the number of qualifying educators submitted after the December 1 and January 2 submissions.~~

~~**KEY: one-time signing bonuses**~~
~~**Date of Enactment or Last Substantive Amendment: January 7, 2009**~~
~~**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-17a-153(6)]**~~

Education, Administration
R277-113
One-time Performance-based Compensation Program

NOTICE OF PROPOSED RULE

(Repeal)
DAR FILE NO.: 33652
FILED: 05/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is repealed because the funding was discontinued.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The program was based on an appropriation which was discontinued.

♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The program was based on an appropriation which was discontinued.

♦ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. The program was based on an appropriation which was discontinued.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The program was based on an appropriation which was discontinued.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The program was based on an appropriation which was discontinued.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

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

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R277. Education, Administration.

[~~R277-113. One-time Performance-based Compensation Program.~~

~~R277-113-1. Definitions.~~

~~A. "Board" means the Utah State Board of Education.~~

~~B. "Employee" means an individual receiving compensation from a qualifying education entity, not including short term substitute employees or volunteers.~~

~~C. "Qualifying education entity" means a school district or charter school that has met all of the requirements of this rule, including timely submission of the required performance-based compensation plan to the Board.~~

~~R277-113-2. Authority and Purpose.~~

~~A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-148(6) which permits the Board to make rules as necessary to administer the program.~~

~~B. The purpose of this rule is to provide criteria for school district and charter school participation in the Performance-based Compensation Program and for distribution of funds to eligible participants.~~

~~R277-113-3. School District and Charter School Responsibilities.~~

~~A. School districts and charter schools that elect to participate in the one-time performance-based compensation program shall submit performance-based compensation plans to the Board. Plans of qualifying education entities shall include all the elements required under Section 53A-17a-148(5)(b)(ii).~~

~~B. The plan applies to the 2008-09 school year only.~~

~~C. Plans shall provide for distribution of performance-based compensation only for employee performance during the 2008-09 school year.~~

~~D. School districts and charter schools are encouraged to include additional elements in submitted plans such as:~~

~~(1) measures of student academic progress or growth;~~

~~(2) specific measures of instructional quality;~~

~~(3) measures of quality or efficiency in education support functions;~~

~~(4) measures of parent and student satisfaction;~~

~~(5) measures of school and school district progress; and~~

~~(6) other measures that demonstrate improved academic, instructional, or education support performance.~~

~~E. School districts and charter schools are encouraged to include employees, employee association representatives, parents, and others in the development of performance-based compensation plans.~~

~~F. Local school boards and charter school governing boards shall review and approve performance-based plans prior to the submission of plans to the Board.~~

~~G. Participating school districts and charter schools shall provide reports related to this program as requested by the Board and shall provide summary evaluations of the plans including the plans' effectiveness by July 1, 2009.~~

~~H. Participating school districts and charter schools shall submit plans to the USOE prior to July 1, 2008.~~

~~R277-113-4. Board Responsibilities.~~

~~A. The Board shall approve plans that include the elements required under Section 53A-17a-148(5)(b)(ii).~~

~~B. The Board shall immediately notify any school district or charter school that submits a plan that is deemed deficient or ineligible or both and may allow for resubmission of plans before July 1, 2008.~~

~~C. Plans shall be sent to the Education Interim Committee for review on or before August 1, 2008.~~

~~D. Funds shall be distributed to participating school districts and charter schools on a per-pupil basis in a one-time transfer prior to December 1, 2008.~~

~~E. The Board shall collect information from participating school districts and charter schools as needed to enable a complete and accurate report to the Legislature as required, including an assessment of the effectiveness of school district and charter school plans.~~

~~KEY: performance-based compensation program~~
~~Date of Enactment or Last Substantive Amendment: July 8, 2008~~
~~Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-17a-148(6)~~]

Education, Administration
R277-517
Athletic Coaching Certification

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 33653
FILED: 05/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is repealed because H.B. 81, 2010 Legislature, made the rule unnecessary. A database for coaches was being maintained jointly among the Utah State Office of Education (USOE), Utah High School Activities Association, school districts, and charter schools to track athletic coaching training and certification. H.B. 81 requires school districts and charter schools to require background checks on all school district/charter school employees. School districts/charter schools will maintain certification and training information on their own employees. (DAR NOTE: H.B. 81 (2010) is found at Chapter 362, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The responsibility to track and maintain athletic coaching training and certification will now be managed by school districts and charter schools.
♦ LOCAL GOVERNMENTS: There may be additional responsibilities and time for school district/charter school employees to maintain the database to for athletic coaching training and certification among other school district/charter school employees. The responsibility will likely be managed using existing school district/charter school staff within existing budgets.
♦ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. This rule and shifting responsibility relates specifically to public schools. Small businesses are not involved in any way.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to small businesses, businesses, or local government entities. School district/charter school staff will be responsible for developing and maintaining athletic coaching training and certification information.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. H.B. 81 shifted the responsibility to developing and maintaining athletic coaching training and certification information to school districts/charter schools.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

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

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R277. Education, Administration.
[~~R277-517. Athletic Coaching Certification.~~
~~R277-517-1. Definitions.~~

~~A. "American Sport Education Program (ASEP)" offers training programs for coaches, officials, sport administrators, athletes and parents of athletes.~~

~~B. "Athletic coach" means any paid individual whose responsibilities include coaching or advising an athletic team, including both men's and women's baseball, basketball, cross-country/track, football, golf, soccer, softball, swimming and diving, tennis, volleyball, and wrestling.~~

~~C. "Athletic coaching training" means the training required of head coaches and paid assistant coaches of all sports. The training requires completion of a Board-approved in-service program covering the basic competencies outlined in R277-517-4, Athletic Coaching Preparation Criteria. A basic first aid course and CPR training shall be in addition to the required training.~~

~~D. "Board" means the Utah State Board of Education.~~

~~E. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes such information as:~~

~~(1) personal directory information;~~

~~(2) educational background;~~

(3) endorsements;
(4) employment history;
(5) professional development information; and
(6) a record of disciplinary action taken against the educator.

All information contained in an individual's CACTUS file is available to the individual, but is classified private or protected under Section 63G-2-302 or 305 and is accessible only to specific designated individuals.

F. "NFHS" means the National Federation of State High School Associations.

G. "NFHS Coaches Education Program" offers professional ethics, physical conditioning, interpersonal skills and sports safety training programs for coaches, officials, sport administrators, athletes and parents of athletes.

H. "Paid" means receiving any compensation, remuneration, or gift to which monetary value can be attached as a result of service as a coach.

I. "School Coaches Official Registry (SCORE)" means a statewide database containing information about Utah coaches' training and qualifications.

J. "Standards" means criteria that are applied uniformly and which shall be observed in the operation of a program. They are criteria against which the goals, objectives, and operation of a program will be evaluated. Following standards is a mandatory action.

K. "USOE" means the Utah State Office of Education.

L. "Utah High School Activities Association" means an Association of Utah school districts that includes representation from the Board and USOE that administers and supervises interscholastic activities among its member schools according to the Association constitution and by-laws.

R277-517-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution, Article X, Section 3 which vests the general control and supervision of the public schools in the Board, by Section 53A-3-602.5(2)(j) which requires the Board to develop a school performance report to inform the state's residents of the quality of schools and the educational achievement of students in the state's public education system regarding staff qualifications, by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, by Section 53A-1-402(1)(a) which directs the Board to make rules regarding the licensing of educators, and by Section 53A-6-101 through 109 which discusses educator licensing.

B. The purpose of this rule is to mandate training for individuals employed or acting as coaches in the public schools and to establish criteria for licensed educators assigned to athletic coaching positions in Utah secondary schools.

C. It is the Board's intent that athletics and extracurricular activities remain supplemental to the Core Curriculum. It is the preference of the Board that school districts hire licensed educators as coaches and ensure that athletic coaches needed in addition to licensed educators receive training consistent with this rule. It is the Board's preference that all athletic coaches, including volunteer coaches, are trained consistent with this rule.

R277-517-3. Athletic Coaching Training and Certification.

A. All athletic head coaches and assistant coaches shall submit to a criminal background check consistent with Section 53A-3-410 as a condition for employment or appointment.

B. All other individuals who have significant and unsupervised access to students, including coaches (both paid and volunteer) and extracurricular activity advisors, shall have criminal background checks consistent with Section 53A-3-410 as a condition for employment or appointment or participation with students.

C. All athletic head coaches and paid assistant coaches of public high school sports should have completed Board-approved Athletic Coaching Training prior to beginning coaching responsibilities.

(1) Athletic coaches shall complete required training at the first available opportunity and no later than the first school year that they are employed or volunteer as public school coaches;

(2) Athletic coaches may not coach a second school year without completing training consistent with this rule; and

(3) Prior to coaching, athletic coaches shall complete basic first aid and adult CPR training through an approved or recognized program consistent with Red Cross standards available from the American Red Cross offices or school district offices.

R277-517-4. Compliance - SCORE Program.

A. Schools or school districts shall verify compliance with this rule by:

(1) reporting to the Utah High School Activities Association and the Board, utilizing the SCORE database, the following information:

(a) the names of Utah public school athletic coaches participating with public school students; and

(b) the school and specific assignment of the school athletic coach; and

(c) whether or not the school athletic coach is a licensed educator; and

(d) documentation of the training received by the coaches identified in R277-517-1B; and

(e) documentation of the completion of a criminal background check required under Section 53A-3-410, including resolution of any relevant problems.

B. Documentation of the qualification and preparation of coaches shall be provided in the activity disclosure statement required under Section 53A-3-420 no later than two weeks after the completion of tryouts for a specific sport and shall be public information.

C. School districts, as supervisors and employers of coaches, are responsible to ensure that their coaches' behavior and activities are consistent with state law and district policies.

D. Athletic coaches whose records are on CACTUS and whose CACTUS records do not identify unresolved allegations as of January 1, 2003, shall not be required to complete a criminal background check.

R277-517-5. Athletic Coaching Training Program Criteria.

A. The USOE shall review and compare the National Standards for Athletic Coaches, Levels 1-3, with the American

~~Sport Education Program (ASEP), the NFHS Coaches Education Program and other equivalent programs to develop and determine a Utah coaching preparation program.~~

~~B. The National Standards for Athletic Coaches and the ASEP training program and NFHS Coaches Education Program are available from the USOE and the Utah High School Activities Association.~~

~~C. A Board-approved coaching preparation program shall include, at a minimum, knowledge and understanding in all of the following areas:~~

~~(1) the prevention and care of athletic injuries;~~

~~(2) bio-physiology including nutrition, drugs, biomechanics and conditioning;~~

~~(3) emergency life support skills, to include advanced first aid and CPR;~~

~~(4) pedagogy of coaching including skill analysis, learning theories and progressions;~~

~~(5) psycho-social aspects of sports, competition, and coaching including the psychology of performance, role modeling, leadership, sportsmanship, competition, human relationships, and public relations;~~

~~(6) motor learning including adolescent growth and development, physical, social, and emotional stress and limitations, external social and emotional pressures; and~~

~~(7) sports management and philosophy including sports law, risk management and team management.~~

~~D. School districts may add training about officiating at athletic events, training about local district rules and regulations, and information about legal issues in sports and school activities.~~

~~KEY: coach certification, athletics~~
~~Date of Enactment or Last Substantive Amendment: March 27, 2007~~
~~Notice of Continuation: May 1, 2006~~
~~Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1-402(1)(a); 53A-6-101 through 109~~]

Education, Administration
R277-603
Basic Skills Education Program

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 33654
FILED: 05/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is repealed because the required Utah Basic Skills Competency Test (UBSCT) was suspended making the Basic Skills Education Program unnecessary. Also, funding for the program was discontinued.

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-1-612 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The UBSCT was suspended making the Basic Skills Education Program unnecessary. Also, funding was discontinued.
♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The UBSCT was suspended making the Basic Skills Education Program unnecessary. Also, funding was discontinued.
♦ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses. No small businesses participated in the program.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The UBSCT was suspended making the Basic Skills Education Program unnecessary. Also, funding was discontinued.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The UBSCT was suspended making the Basic Skills Education Program unnecessary. Also, funding was discontinued.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

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

R277. Education, Administration.
[~~R277-603. Basic Skills Education Program.~~
~~R277-603-1. Definitions.~~

~~A. "Accredited public or private educational institution" means an institution accredited by the Northwest Association of Accredited Schools or a regional accrediting association as a high school, a K-12 school, a special purpose school, a supplementary education school, or a distance education school.~~

~~B. "Basic Skills Education Program (BSEP)" means a program created to provide students who have not passed the UBSCT, with supplemental instruction in the skills and knowledge necessary to pass the test.~~

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

~~D. "Charter schools" means schools acknowledged as charter schools by local boards of education under Section 53A-1a-515 and this rule or by the Board under Section 53A-1a-505.~~

~~E. "Disclosure to parents" means the express acknowledgments and acceptance required for parents or legal guardians under Sections 53A-1-612(10)(b)(ii) and 53A-1-612(12)(c) and this rule.~~

~~F. "Distance basic skills education provider" means a Utah-based on-line or correspondence program provided by a public school/school district, the USOE, or an institution of higher education that satisfies the requirements of R277-603-1H.~~

~~G. "Enrolled full time" means the student is registered and attending the number of courses a school or school district requires for full-time enrollment for funding purposes. Notwithstanding school district/school policies, a student shall be enrolled in a minimum of five courses for credit to be enrolled full time.~~

~~H. "Other basic skills provider" means an education program that:~~

~~(1) has a current business license;~~

~~(2) meets the requirements of Section 53A-3-410 regarding criminal background checks; and~~

~~(3) agrees not to discriminate against stipend recipients on the basis of race, color, national origin, gender, economic status, language proficiency or disability;~~

~~(4) submits evidence of expertise and capacity to provide basic skills education which may include most employees providing education services have educator licenses, employees have more than three years of teaching experience in public or private schools, evidence of specific skills or training, accreditation by Northwest or a regional accrediting association, and evidence of curriculum materials aligned to the Core and the UBSCT; and~~

~~(5) agrees, if the basic skills provider is an individual employed by a school district or charter school, to abide by all rules pertaining to conflict of interest of educators working in their own fields, consistent with Section 53A-1-402.5 and R277-107, Educational Services Outside of Educator's Regular Employment.~~

~~I. "Passing UBSCT results" means a scaled score that is in the sufficient or substantial range that is obtained by a stipend recipient student in any subsequent administration of the UBSCT.~~

~~J. "Qualified basic skills education provider" means a school district, a charter school, an accredited public or private educational program, or other entity that has met the following criteria:~~

~~(1) The program has a physical location in Utah where students and stipend recipients attend classes and have direct contact with the program's teachers;~~

~~(2) the program has applied for eligibility to and been approved by the USOE to enroll BSEP stipend recipients;~~

~~(3) the program has provided an affidavit to the USOE affirming its willingness and intention to comply with the requirements and rules of the BSEP; and~~

~~(4) satisfies all other requirements of the law and this rule.~~

~~K. "Qualifying UBSCT result" means the student's highest previous scaled score on the UBSCT when submitting the voucher that falls into one of the following ranges:~~

~~(1) below the midpoint of the partial mastery range but above the minimal mastery range;~~

~~(2) below the partial mastery range but above or at the midpoint of the minimal master range; or~~

~~(3) below the midpoint of the minimal mastery range.~~

~~L. "School district" means a Utah public school district.~~

~~M. "Stipend" means the amount that a student's parent/guardian may receive to be applied to charges for basic skills education from a qualified provider. A stipend has no value unless assigned to a basic skills education provider, and is only payable upon the submission of a voucher by a provider and Board verification of a passing UBSCT result pursuant to the provisions of Section 53A-1-612, and R277-603-4 and 5.~~

~~O. "Stipend recipient" means a student who:~~

~~(1) meets the qualifications of Section 53A-1-612(4); and~~

~~(2) has submitted a voucher to a qualified provider.~~

~~O. "Utah Basic Skills Competency Test (UBSCT)" means a test to be administered to Utah students beginning in the tenth grade to include components in English, language arts, reading and mathematics. Utah students shall satisfy the requirements of the UBSCT in addition to state and school district/charter school graduation requirements prior to receiving a high school diploma indicating a passing score on all UBSCT subtests.~~

~~P. "Voucher" means a statement signed by the student's parent/legal guardian assigning the student's stipend to a BSEP provider. The following information shall be provided on the Board-designated form:~~

~~(1) student name;~~

~~(2) student birthdate;~~

~~(3) parent/guardian name;~~

~~(4) State Student Identification Number (SSID);~~

~~(5) required parent and student acknowledgments under Section 53A-1-612 and this rule; and~~

~~(7) parent/guardian and student signatures.~~

~~R277-603-2. Authority and Purpose.~~

~~A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, Section 53A-1-612 which requires the Board to make rules to initiate, manage and monitor the BSEP, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.~~

~~B. The purpose of this rule is to provide necessary standards and procedures for the Basic Skills Education Program as directed by the Legislature to assist students in passing the Utah Basic Skills Competency Test.~~

R277-603-3. State Board of Education Responsibilities.

A. The Board shall provide school districts and charter schools with a copy of this rule, required forms, templates, and model procedures.

B. The Board shall provide applications annually to Basic Skills Education providers no later than May 1 prior to the year in which eligibility to serve BSEP stipend recipients is sought (June 1 for the 2006-2007 school year).

C. The Board shall provide a determination that an applicant meets the requirements of R277-603 and Section 53A-1-612(1)(b) to be a BSEP provider as soon as possible but no more than 30 days after the applicant submits the required application and materials. The Board may:

(1) provide reasonable timelines for satisfaction of eligibility requirements;

(2) issue letters of warning, require a provider to take corrective action within a time frame set by the Board, suspend a provider from BSEP participation or eligibility, or impose such other penalties as the Board determines appropriate under the circumstances;

(3) make available acknowledgment forms required under Section 53A-1-612(12)(c);

(4) establish appropriate consequences or penalties for providers that:

(a) fail to provide services to eligible students;

(b) fails to act in accordance with provisions of the law and this rule.

D. The Board shall maintain a list of qualified providers updated continuously as provider applications are received and approved.

E. For vouchers submitted to the Board prior to September 30 of the student's junior or senior year, the Board shall:

(1) verify student information and qualification for the stipend; and

(2) check results of all successive administrations of the UBSCT, starting with the October administration of that year, for passing UBSCT results; and

(3) within 60 days of final posting of UBSCT results to the data warehouse stipend payments shall be sent directly to qualified providers upon verification of a passing UBSCT result for voucher recipients registered with that provider.

F. For vouchers submitted to the Board after September 30 of the student's junior or senior year but prior to January 31 of the same year, the Board shall:

(1) verify student information and qualification for the stipend; and

(2) check results of all successive administrations of the UBSCT, starting with the February administration of that year, for passing UBSCT results; and

(3) within 60 days of final posting of UBSCT results to the data warehouse stipend payments shall be sent directly to qualified providers upon verification of a passing UBSCT result for voucher recipients registered with that provider.

G. The Board shall honor only vouchers submitted with all necessary documentation received consistent with R277-603-3E and R277-603-3F.

H. If an annual appropriation is inadequate to cover all stipend payments, the Board shall pay stipends on a first submitted/first paid basis or on a proportional basis as circumstances dictate.

I. The Board shall verify student UBSCT results and other program information as necessary or warranted with reasonable notice to assure compliance by a stipend recipient/BSEP provider with the provisions of Section 53A-1-602 and this rule.

R277-603-4. School Districts and Charter School Responsibilities.

A. School districts and charter schools shall provide students who have qualifying UBSCT results with voucher applications and information about how to access a list of approved public and private providers for BSEP stipends:

(1) after the students' first UBSCT attempt;

(2) to students new to the school district; and

(3) to students who change providers under R277-603-6E.

B. School districts and charter schools that intend to be qualified providers shall notify the Board of their intention and provide the Board with the following information:

(1) a brief description of the BSEP that shall be available to stipend recipients.

(2) a description of amounts, if any, that stipend recipients will be charged in addition to the amount paid by the Board.

(3) a statement of additional charges will be accompanied by an explanation to parents/students of the school district's policies consistent with Section 53A-13-104.

(4) a statement that all those who provide BSEP instruction shall be employees of the school district or charter school.

C. School districts and charter schools may not make any charge or refund of a charge contingent upon a student's passing or failing a test. Charges relative to the BSEP are subject to the provisions of Section 53A-12-103(1)(b), and it is presumed that the student will be responsible for any fees associated with a remediation program with exceptions provided for in Section 53A-13-104.

D. School districts and charter schools shall provide to the Board a list of all school district or charter school students who are qualified for stipends.

E. School districts and charter schools shall submit vouchers for all students who have chosen to receive BSEP services from the school district/charter school consistent with R277-603-3E and R277-603-3F.

F. If a student stops receiving basic skills education from the provider, for any reason, the school district or charter school shall notify the Board within 15 days.

R277-603-5. Accredited Public and Private Providers and Other Provider Responsibilities.

A. Accredited public and private providers and other providers that intend to participate in the BSEP shall notify the Board of their intention and provide the following information/materials to the Board to be used to determine eligibility:

(1) a brief description of the BSEP services that will be provided to stipend recipients by the provider;

~~(2) a description of amounts (if any) that stipend recipients shall be charged in addition to amounts paid by the Board;~~

~~(3) a statement that private providers shall not make any charge or refund contingent on a student passing or failing a test; and~~

~~(4) a statement that all employees of a BSEP who will be providing remediation services to public school students have had criminal background checks and results have been reviewed and approved by the applicant BSEP.~~

~~B. Upon a stipend recipient's presentation to the provider of a voucher, the provider shall submit the voucher to the Board consistent with R277-603-3E and R277-603-3F. This voucher shall be submitted to the Board in such format as the Board may determine.~~

~~C. Accredited public and private providers and other providers shall submit vouchers only for students who are stipend recipients and who are qualified to receive basic skills education from the provider.~~

~~D. If a student stops receiving basic skills education from the provider, for any reason, the provider shall notify the Board within 15 days.~~

~~R277-603-6. Parent and Student Responsibilities.~~

~~A. Students with UBSCT results in the ranges identified in Section 53A-1-612(5) shall qualify for stipends upon a parent/guardian signing the voucher application provided by the school district or charter school and then presenting that voucher application to the chosen provider. If the chosen provider is not the student's school district or charter school, a copy of the student's UBSCT results for every UBSCT attempt made by the student shall be included with the voucher application. The voucher application and UBSCT results, if applicable, constitute a BSEP voucher.~~

~~B. A parent may not give a voucher to more than one BSEP provider. Violation of this part may result in invalidation of the voucher and disqualification from further BSEP participation.~~

~~C. Parents are entirely responsible for the choice of a BSEP provider from among those listed as qualified by the Board.~~

~~D. Parents are responsible for payment of any amounts providers may charge stipend recipients in addition to that paid by the Board.~~

~~E. Stipend applicants may choose to change providers at the end of the student's junior year if the student's best UBSCT result on one or more subtest(s) is in the qualifying range defined in Section 53A-1-612(5). This change shall require a new voucher to be submitted to the Board.~~

~~R277-603-7. Miscellaneous Provisions.~~

~~Educators who are employed by Utah public and charter schools may qualify as BSEP providers consistent with Section 53A-1-402.5 and R277-107.~~

~~KEY: basic skills competency, stipends~~
~~Date of Enactment or Last Substantive Amendment: July 9, 2007~~
~~Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-612(12); 53A-1-401(3)]~~

Human Resource Management, Administration
R477-3-5
Position Classification Grievances

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 33633
FILED: 05/11/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment replaces lengthy procedural details with simple statements about service of classification grievance communication.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-3-5(2) is simplified to state that service of classification grievance communication will be delivered via certified mail and email.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-12 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
♦ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.
♦ SMALL BUSINESSES: This rule only affects the executive branch of state government and will have no impact on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule only affects the executive branch of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment is administrative and does not impact cost.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 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:
♦ J.J. Acker by phone at 801-537-9096, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-3. Classification.
R477-3-5. Position Classification Grievances.

(1) An agency or a career service employee may grieve formal classification decisions regarding the classification of a position.

(a) This rule refers to grievances concerning the assignment of individual positions to appropriate jobs based on duties and responsibilities. The assignment of salary ranges is not included in this rule.

(b) An employee may only grieve a formal classification decision regarding the employee's own position.

(2) Formal service for classification grievance communication to employees shall be made by:

(a) certified mail to the employee's address of record, and

(b) email to the employee's state email account.

[~~(2) DHRM shall follow the first level classification hearing service of process as follows:~~

~~(a) An employee filing a classification grievance shall submit a completed Position Classification Grievance form along with required information to the Executive Director, DHRM.~~

~~(i) If the classification form is incomplete, the employee is notified of the discrepancy via both certified and electronic mail within seven calendar days from DHRM's receipt of the grievance.~~

~~(A) The employee shall be given 14 calendar days, from the date the employee receives the electronic mail notice, to submit requested additional information.~~

~~(ii) If the classification form is complete, the employee is notified via both certified and electronic mail within seven calendar days that the grievance has been received.~~

~~(b) The DHRM employee who made the initial classification decision is notified of receipt of the grievance within seven calendar days and is provided a copy of the grievance .~~

~~(i) The DHRM employee is given 14 calendar days to review the initial decision and return the completed paperwork to the grievance panel chairperson.~~

~~(c) The chairperson has 14 calendar days from receipt of the completed paperwork to:~~

~~(i) contact assigned grievance panel members;~~

~~(ii) provide copies of all grievance materials to the panel members; and~~

~~(iii) to electronically notify the employee of possible hearing dates.~~

~~(d) The employee shall be given seven calendar days from the date the employee receives the electronic mail notice to respond with a selected hearing date.~~

~~(e) An employee may withdraw the grievance at any time.~~

~~(f) The grievance panel has 30 days from the date the employee's response is received to prepare findings and recommendations and present them to the Executive Director, DHRM. The Executive Director, DHRM, shall make the classification decision and notify the grievant.~~

]

KEY: administrative procedures, grievances, job descriptions, position classifications
Date of Enactment or Last Substantive Amendment: 2010
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-12

Human Resource Management, Administration
R477-11-1
Disciplinary Action

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33647
FILED: 05/13/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment gives discretion to the Attorney General's Office in determining which discipline issues they will require to be consulted on.

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-11-1(2)(a) the words "if necessary" are added to allow the Attorney General's Office discretion on which discipline cases they require consultation for.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-2-3 and Section 67-19-18 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.

♦ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.
♦ SMALL BUSINESSES: This rule only affects the executive branch of state government and will have no impact on small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule only affects the executive branch of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance cost anticipated. This rule only affects agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 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:
♦ J.J. Acker by phone at 801-537-9096, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-11. Discipline.
R477-11-1. Disciplinary Action.

(1) Agency management may discipline any employee for any of the following causes or reasons:

(a) noncompliance with these rules, agency or other applicable policies, including but not limited to safety policies, agency professional standards, standards of conduct and workplace policies;

(b) work performance that is inefficient or incompetent;

(c) failure to maintain skills and adequate performance levels;

(d) insubordination or disloyalty to the orders of a superior;

(e) misfeasance, malfeasance, or nonfeasance;

(f) any incident involving intimidation, physical harm, or threats of physical harm against co-workers, management, or the public;

(g) no longer meets the requirements of the position;

(h) conduct, on or off duty, which creates a conflict of interest with the employee's public responsibilities or impacts that employee's ability to perform job assignments;

(i) failure to advance the good of the public service, including conduct on or off duty which demeans or harms the effectiveness or ability of the agency to fulfill its mission;

(j) dishonesty; or

(k) misconduct.

(2) Agency management shall consult with DHRM prior to disciplining an employee

(a) DHRM shall consult with the Office of the Attorney General, if necessary, prior to agency management imposing discipline on an employee that is grievable to the Career Service Review Office.

(3) All disciplinary actions of career service employees shall be governed by principles of due process and Title 67, Chapter 19a. The disciplinary process shall include all of the following, except as provided under Subsection 67-19-18(4):

(a) The agency representative notifies the employee in writing of the proposed discipline and the underlying reasons supporting the intended action.

(b) The employee's reply shall be received within five working days in order to have the agency representative consider the reply before discipline is imposed.

(c) If an employee waives the right to respond or does not reply within the time frame established by the agency representative or within five days, whichever is longer, discipline may be imposed in accordance with these rules.

(4) After a career service employee has been informed of the reasons for the proposed discipline and has been given an opportunity to respond and be responded to, the agency representative may discipline that employee, or any career service exempt employee not subject to the same procedural rights, by imposing one or more of the following:

(a) written reprimand;

(b) suspension without pay up to 30 calendar days per incident requiring discipline;

(c) demotion of any employee through one of the following actions:

(i) An employee may be moved from a position in one job to a position in another job having a lower maximum salary range and shall receive a reduction in the current actual wage.

(ii) An employee's current actual wage may be lowered within the current salary range, as determined by the agency head or designee.

(d) dismissal.

An agency head shall dismiss or demote a career service employee only in accordance with Subsection 67-19-18(5) and Section R477-11-2.

(5) If agency management determines that a career service employee endangers or threatens the peace and safety of others or poses a grave threat to the public service or is charged with aggravated or repeated misconduct, the agency may impose the following actions, under Subsection 67-19-18(4), pending an investigation and determination of facts:

(a) paid administrative leave; or

(b) temporary reassignment to another position or work location at the same current actual wage.

(6) At the time disciplinary action is imposed, the employee shall be notified in writing of the discipline, the reasons for the discipline, the effective date and length of the discipline.

(7) Disciplinary actions are subject to the grievance and appeals procedure by law for career service employees only. The employee and the agency representative may agree in writing to waive or extend any grievance step, or the time limits specified for any grievance step.

KEY: discipline of employees, dismissal of employees, grievances, government hearings
Date of Enactment or Last Substantive Amendment: 2010
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 63G-2-3

Human Services, Recovery Services
R527-201
Medical Support Services

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33627
FILED: 05/10/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To clarify how the Office of Recovery Services will designate in administrative orders which parent's health, hospital, or dental insurance plan is primary and which parent's health, hospital, or dental insurance plan is secondary in accordance with Sections 30-3-5 and 30-3.5.5. This provision will take effect if, at any time, a dependent child is covered by both parents' health, hospital, or dental insurance plans.

SUMMARY OF THE RULE OR CHANGE: This change adds a new section, R527-201-10, Coordination of Health Insurance Benefits, which clarifies that the parent whose birthday occurs first in the calendar year will carry the primary insurance coverage for the child, if at any time a dependent child is covered by both parents' health, hospital, or dental insurance plans. Also, adding the law reference for Sections 30-3-5 and 30-3-5.5 to the Authorizing, and Implemented or Interpreted Law section.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 45 CFR 303.30 and 45 CFR 303.31 and 45 CFR 303.32 and Section 62A-1-111 and Section 62A-11-107 and Section 62A-11-326 and Section 62A-11-326.1 and Section 62A-11-326.2 and Section 62A-11-326.3 and Section 63G-4-102 et seq. and Section 78B-12-212 and Subsection 35A-7-105(2) and Subsection 62A-11-103(2) and Subsection 62A-11-406(9) and Subsection 78B-12-102(6)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no anticipated costs or saving to the state because the changes to the rule affect documents that are already being generated for other reasons. The office has been and is still required to provide the same services pursuant to federal regulations and state law.
♦ LOCAL GOVERNMENTS: Administrative rules of the Office of Recovery Services/Child Support Services (ORS/CSS) do not apply to local government; therefore, there are no anticipated costs or savings for any local businesses due to this amendment.
♦ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses because the changes to the rule do not affect the ways that employers administer insurance policies. The changes to the rule are consistent with the way insurance companies currently determine the primary insurance carrier when/if both parents provide health, hospital, or dental insurance for the child.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to other persons because the changes to the rule are consistent with the way insurance companies currently determine the primary insurance carrier when/if both parents provide health, hospital, or dental insurance for the child.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs or savings to affected persons because the changes to the rule do not affect the way that the Office of Recovery Services does business. The changes to the rule only designate which parent's insurance will be designated in administrative orders issued by the Office of Recovery Services as the primary coverage when/if both parents provide heath, hospital, or dental insurance for a minor child. The designation is consistent with the way insurance companies currently determine the primary insurance carrier.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated costs or savings to affected persons because the changes to the rule do not affect the way that employers administer insurance policies. The changes to the rule only designate which parent's insurance will be

designated in administrative orders issued by the Office of Recovery Services as the primary coverage when/if both parents provide heath, hospital, or dental insurance for a minor child. The designation is consistent with the way insurance companies currently determine the primary insurance carrier.

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

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY, UT 84102-4211
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ LeAnn Wilber by phone at 801-536-8950, by FAX at 801-536-8833, or by Internet E-mail at lwilber@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: Mark Brasher , Director

R527. Human Services, Recovery Services.
R527-201. Medical Support Services.
R527-201-1. Authority and Purpose.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111 and 62A-11-107.

2. The purpose of this rule is to specify the responsibilities and procedures for the Office of Recovery Services/ Child Support Services for providing medical support services.

R527-201-2. Federal Requirements.

The Office of Recovery Services/Child Support Services, (ORS/CSS), adopts the federal regulations as published in 45 CFR 303.30, 303.31, and 303.32 (2008)which are incorporated by reference in this rule.

R527-201-3. Definitions.

1. Accessibility: Insurance is considered accessible to the child if non-emergency services covered by the health plan are available to the child within 90 minutes or 90 miles of the child's primary residence.

2.National Medical Support Notice (NMSN) is the federally approved form that ORS/CSS shall use, when appropriate, to notify an employer to enroll dependent children in an employment-related group health insurance plan in accordance with a child support order.

3. Cash Medical Support: An obligation to equally share all reasonable and necessary medical and dental expenses of children.

R527-201-4. Limitation of Services.

ORS/CSS shall not:

1. pursue establishment of specific amounts for ongoing medical support,

2. initiate an action to obtain a judgment for uninsured medical expenses, or

3. collect and disburse premium payments to insurance companies.

R527-201-5. Conditions Under Which Non-IV-A Medicaid Recipients May Decline Support Services.

ORS/CSS shall provide child and spousal support services; however, a Non-IV-A Medicaid recipient may decline child and spousal support services if paternity is not an issue and there is an order for the non-custodial parent to provide medical support.

R527-201-6. Securing a Medical Support Provision in the Support Order.

1. Notice to potentially obligated parents: The notice to potentially obligated parents shall include a provision that an administrative or judicial proceeding will occur to:

a. order either parent to purchase and maintain appropriate medical insurance for the children, and

b. order both parents to pay cash medical support. This notification shall be provided when either of the following conditions is met:

a. the state initiates an action to establish a final support order or to adjust an existing child support order; or

b. the state joins a divorce or modification action initiated by either the custodial or the non-custodial parent.

2. If a judicial support order does not include a medical support provision, ORS/CSS shall commence judicial action to modify the order to include a medical support provision.

R527-201-7. Reasonable Cost of Insurance Premiums.

Employment-related or other group coverage that does not exceed 5% of the obligated parent's monthly gross income is generally considered reasonable in cost. However, an employer may not withhold more than the lesser of the amount allowed under the Consumer Credit Protection Act, the amount allowed by the state of the employee's principal place of employment, or the amount allowed for health insurance premiums by the child support order. If the combined child support and medical support obligations exceed the allowable deduction amount, the employer shall withhold according to the law, if any, of the state of the employee's principal place of employment requiring prioritization between child support and medical support. If the employee's principal place of employment is in Utah, the employer shall deduct current child support before deducting amounts for health insurance coverage. If the amount necessary to cover the health insurance premiums cannot be deducted due to prioritization or limitations on withholding, the employer shall notify ORS/CSS.

R527-201-8. Credit for Premium Payments and Effect of Changes to the Premium Amount Subsequent to the Order.

1. If the order or underlying worksheet does not mention a specific credit for insurance premiums, ORS/CSS shall give credit

for the child(ren)'s portion of the insurance premium when the obligated parent provides the necessary verification coverage.

2. ORS/CSS shall notify both parents in writing whenever the credit is changed.

R527-201-9. Enforcement of Obligation to Maintain Medical and Dental Insurance.

1. In Non-IV-A cases and in IV-A Medicaid cases, appropriate steps shall be taken to ensure compliance with orders which require the obligated parent to maintain insurance. Obligated parents shall demonstrate compliance by providing ORS/CSS with policy numbers and the insurance provider name for the dependent children for whom the medical support is ordered.

2. In Non-IV-A cases and in IV-A Medicaid cases, if an obligated parent has been ordered to maintain insurance and insurance is accessible and available at a reasonable cost, ORS/CSS shall use the NMSN to transfer notice of the insurance provision to the obligated parent's employer unless ORS/CSS is notified pursuant to Section 62A-11-326.1 that the children are already enrolled in an insurance plan in accordance with the order.

3. When appropriate, ORS/CSS shall send the NMSN to the obligated parent's employer within two business days after the name of the obligated parent has been entered into the registry of the State Directory of New Hires, matched with ORS/CSS records, and reported to ORS/CSS in accordance with Subsection 35A-7-105(2).

4. The employer shall transfer the NMSN to the appropriate group health plan for which the children are eligible within twenty business days of the date of the NMSN if all of the following criteria are met:

a. the obligated parent is still employed by the employer;

b. the employer maintains or contributes to plans providing dependent or family health coverage;

c. the obligated parent is eligible for the coverage available through the employer; and

d. state or federal withholding limitations, prioritization, or both, do not prevent withholding the amount required to obtain coverage.

5. If more than one coverage option is available under a group insurance plan and the obligated parent is not already enrolled, ORS/CSS in consultation with the custodial parent may select the least expensive option if the option complies with the child support order and benefits the children. The insurer shall enroll the children in the plan's default option or least expensive option in accordance with Subsection 62A-11-326.2(1)(b) unless another option is specified by ORS/CSS.

6. The employer shall determine if the necessary employee contributions for the insurance coverage are available. If the amounts necessary are available, the employer shall begin withholding when appropriate and remit directly to the plan.

7. In accordance with Subsections 62A-11-326.1(2) and (3), the obligated parent may contest withholding insurance premiums based on a mistake of fact. The employer shall continue withholding under the NMSN until notified by ORS/CSS to terminate withholding insurance premiums.

8. If a parent successfully contests the action to enroll the children in a group health plan based on a mistake of fact, ORS/CSS shall notify the employer to discontinue enrollment and withholding insurance premiums for the children.

9. In accordance with Subsection 62A-11-406(9), the employer shall:

a. notify ORS/CSS within five days after the obligated parent terminates employment;

b. provide the office with the obligated parent's last-known address; and

c. the name and address of any new employer, if known.

10. ORS/CSS shall promptly notify the employer when a current order for medical support is no longer in effect for which ORS/CSS is responsible.

R527-201-10. Coordination of Health Insurance Benefits.

If, at any point in time, a dependent child is covered by the health, hospital, or dental insurance plans of both parents, the health, hospital, or dental insurance plan of the parent whose birthday occurs first in the calendar year, shall be designated as primary coverage for the dependent child. The health, hospital, or dental insurance plan of the other parent shall be designated as secondary coverage for the dependent child.

R527-201-11. Obligated Parent Receiving Medicaid.

In an unestablished paternity case, if the father's income was taken into consideration when determining the household's eligibility for Medicaid, ORS/CSS shall not enforce payment of medical expenses regardless of the medical support provisions in the order, but shall enforce the health insurance provision.

KEY: child support, health insurance, Medicaid
Date of Enactment or Last Substantive Amendment: [~~November 10, 2009~~]2010
Notice of Continuation: January 16, 2007
Authorizing, and Implemented or Interpreted Law: 30-3-5; 30-3-5.5; 62A-1-111; 62A-11-103(2); 62A-11-107; 62A-11-326; 62A-11-326.1; 62A-11-326.2; 62A-11-326.3; 62A-11-406(9); 63G-4-102 et seq.; 78B-12-102(6); 78B-12-212; 35A-7-105(2); 45 CFR 303.30; 45 CFR 303.31; 45 CFR 303.32

Insurance, Administration
R590-172
Notice to Uninsurable Applicants for Health Insurance

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 33642
FILED: 05/13/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes to this rule have been requested by HIPUtah to collect data about individuals denied coverage by insurance companies.

SUMMARY OF THE RULE OR CHANGE: The changes require health insurers to provide notice and information to HIPUtah about applicants they deny coverage to who do not have individual insurance coverage. The rule states what information is to be collected and when it should be sent electronically to HIPUtah.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-29-116

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The changes to this rule will have no effect on the department or state budgets. It will not require any filings to the department and so no additional work load. The changes require health insurers to collect and submit information to HIPUtah.
♦ LOCAL GOVERNMENTS: The changes to this rule will have no fiscal impact on local government since the rule changes deals with the relationship between insurers and HIPUtah.
♦ SMALL BUSINESSES: The changes will have no fiscal impact on small businesses. It will only impact insurers who are required to collect data regarding applicants they deny coverage to.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Health insurers will be required to collect and send information electronically to HIPUtah about applicants they deny coverage to. Costs to insurers will be in the time it takes to collect and transmit the information. HIPUtah will also have some cost in time to sort and analyze the information. There should be no cost filtered down to those insured by HIPUtah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Health insurers will be required to collect and send information electronically to HIPUtah about applicants who are denied coverage by them. Costs to insurers will be in the time it takes to collect and transmit the information. HIPUtah will also have some cost in time to sort and analyze the information.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There should be no fiscal impact on Utah businesses resulting from the changes to this rule.

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 07/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-172. Notice to Uninsurable Applicants for Health Insurance.
R590-172-1. Authority.

This rule is adopted pursuant to the provisions of Section 31A-29-116.

R590-172-2. Scope.

This rule applies to all health insurers doing business in the State of Utah.

R590-172-3. Definitions.

For the purpose of this rule the commissioner adopts the definitions as particularly set forth in Section 31A-1-301 and in addition, the following:

The term, "health insurance," is defined in Subsection 31A-29-103(5)(a) as any hospital and medical expense-incurred policy; nonprofit health care service plan contract, and health maintenance organization subscriber contract. It does not include workers' compensation insurance, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and which is required by law to be contained in any liability insurance policy.

R590-172-4. Rule.

(1) Notification of Denial to Applicants.

Every health insurer writing health insurance in the State of Utah will provide a written notice containing the requirements in R590-176-5(3)(a), Health Benefit Plan Enrollment, and the following language to each applicant for health insurance coverage that is denied coverage by the insurer for reasons relating to health:

"You have been denied health insurance coverage due to a health condition which is uninsurable. The Utah Comprehensive Health Insurance Pool (HIPUtah) was created to provide health insurance to residents of Utah who are denied health insurance and who are considered uninsurable. If you have lived in the State of Utah for 12 consecutive months prior to applying for insurance with this company you may be eligible for health insurance coverage with HIPUtah.

"However, if you have not lived in the state of Utah for 12 consecutive months, but you are a Utah resident and you are coming from another State's high risk pool or have had 18 months of continuous coverage with the most recent coverage being through a group health plan, you may still be eligible for health insurance coverage with the Utah Comprehensive Insurance Pool.

"Part or all of the preexisting waiting period will be waived if you are an eligible individual according to the Health Insurance Portability and Accountability Act (HIPAA) or your previous coverage was involuntarily terminated for reasons other than for nonpayment of premium or fraud, and application for

HIPUtah is made within 63 days of that termination. The amount of credit given will depend on the length of time an applicant was previously covered under that health insurance.

"If application for coverage with HIPUtah is made within 30 days of this denial letter and you are declined coverage with the pool, HIPUtah will issue a certificate of insurability and you may reapply for coverage with this company within 30 days of the certificate date.

"To find out whether you qualify for pool coverage or to make application for pool coverage, Salt Lake City area residents should call 442-6660. Residents of other areas in Utah should call 1-800-638-5038, ext. 6660, toll free. The HIPUtah's mailing address is P.O. Box 30192, Salt Lake City, Utah 84130-0192."

(2) Notification of Denial to HIPUtah.

(a) Every health insurer writing health insurance in the State of Utah shall provide written notice to HIPUtah for each application in which applicant does not have current individual coverage, for insurance the insurer has denied.

(b) The notice to HIPUtah shall contain the name and address of the applicant who was denied insurance, and no other personal information. If the applicant applied for the insurance through an insurance producer, the written notice shall provide the name and the address of the insurance producer. The information must be presented in an excel spreadsheet in the format; Applicant, Last Name, First Name, Mailing Address, Producer, Last Name, First Name, Mailing Address.

(c) The notice shall be submitted to HIPUtah on the 1st and 15th of each month. The notice shall be transmitted electronically to HIPUtah through a secure email address at hiputah@exchangeforum.utah.gov.

R590-172-5. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 45 days from the effective date of the rule

R590-172-6. Severability.

If a provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of such provisions are not affected.

KEY: health insurance
Date of Enactment or Last Substantive Amendment: [~~April 29,~~]2010
Notice of Continuation: May 5, 2005
Authorizing, and Implemented or Interpreted Law: 31A-29-116

Insurance, Administration
R590-234
Single Risk Limitation

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 33648
FILED: 05/13/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule was written to regulate unlimited health insurance policies as defined in Section 31A-20-108. With the passage in 2009 of H.B. 52, health insurance has been exempted from regulation under this section of the Code. (DAR NOTE: H.B. 52 (2009) is found at Chapter 349, Laws of Utah 2009, and was effective 05/12/2009.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 31A-2-201(3) and Subsection 31A-20-108(2)(b)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The repeal of this rule will have no fiscal impact on the department since there is no fee involved in it and the rule just sets a limit for unlimited insurance policies.
♦ LOCAL GOVERNMENTS: This rule has no impact on local governments. It deals solely with the relationship between the department and their licensees.
♦ SMALL BUSINESSES: The repeal of this rule will have no effect on small businesses, especially since the provisions of the rule deal with policies purchased by larger employers.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no cost to insurers or their insureds due to the withdrawal of the previous restrictions and requirements on health insurers who sell unlimited insurance policies.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no cost to insurers or their insureds due to the withdrawal of the previous restrictions and requirements on health insurers who sell unlimited insurance policies.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is very unlikely there will be any cost to Utah Businesses as a result of the repeal of this rule.

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 07/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
[~~R590-234. Single Risk Limitation.~~
~~R590-234-1. Authority.~~
~~This rule is promulgated by the insurance commissioner pursuant to Subsection 31A-2-201(3) and 31A-20-108(2)(b).~~

~~R590-234-2. Purpose and Scope.~~
~~(1) The purpose of this rule is to set forth procedures necessary to determine compliance with 31A-20-108, in cases where unlimited insurance policies are issued.~~
~~(2) This rule applies to all entities that write unlimited insurance policies, except title, workers' compensation, occupational disease, and employers' liability insurance policies.~~

~~R590-234-3. Definitions.~~
~~In addition to the definitions of Section 31A-1-301, the following definitions shall apply for the purpose of this rule:~~
~~(1) "Unlimited Insurance Policy" means an insurance policy that does not specify a maximum limit for benefits to be paid under the policy.~~
~~(2) "Single risk" includes all losses reasonably expected as a result of the same event.~~
~~(3) "Single Risk Limitation" is 10% of capital and surplus, as prescribed by 31A-20-108(2).~~

~~R590-234-4. Calculation of Single Risk Limitation for Unlimited Insurance Policies.~~
~~In cases where unlimited insurance policies are issued, the insurer shall use $2,000,000 as the maximum potential risk, for purposes of determining compliance with the single risk limitation.~~

~~R590-234-5. Enforcement Date.~~
~~The commissioner will begin enforcing the provisions of this rule 45 days from the rule's effective date.~~

~~R590-234-6. Severability.~~
~~If any provision of this rule or the application of it to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected by it.~~

~~KEY: single risk limitation~~
~~Date of Enactment or Last Substantive Amendment: March 22, 2006~~
~~Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-20-108~~]

Insurance, Administration
R590-247-3
General Instructions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33644
FILED: 05/13/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 294, Health System Reform Amendments, was passed by the Utah Legislature and put into effect 03/22/2010. The bill includes a change to Section 31A-22-635. The changes deal with what can be required for employees waiving coverage. New wording requires the use of a uniform waiver of coverage form that limits what can be asked. The department has developed this waiver form with the health insurance industry. The rule will provide needed guidelines to the health care industry in Utah. The new wording also requires the department to shorten the application. (DAR NOTE: H.B. 294 (2010) is found at Chapter 68, Laws of Utah 2010, and was effective 03/22/2010.)

SUMMARY OF THE RULE OR CHANGE: Changes to the rule require health insurers to shorten the uniform health insurance application and create a uniform waiver as now required in Subsection 31A-22-635(2)(a)(ii).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-22-635 and Section 31A-30-102

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The change to this rule will create no additional work or revenue, nor will there be a cost savings for the department. The rule simply revises the application and creates a waiver form when an employee waives coverage.
♦ LOCAL GOVERNMENTS: This rule deals solely with the relationship between the department and its health insurance licensees. It will have no impact on local governments.
♦ SMALL BUSINESSES: This change affects health insurance policies sold to small employers with less than 50 employees. It will affect the questions an employee will have to answer in relation to an insurance waiver they fill out. The change in the questions to be asked will have no fiscal impact on the employer or the employee except that there will be fewer questions to answer. The waiver applies to employees that waive health insurance coverage. The changes also simplify the application for persons applying for coverage.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule does not apply to large employers. It applies to employees waiving health coverage so there is no cost to them. Depending on how the insurer makes the changes to their waiver form there may be some minor cost.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Small employers will not be impacted financially. The insured will have fewer questions to answer. The insurer will have costs associated with the changes that will need to be made to their applications to comply with the new law.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will have no fiscal impact on small employers. It may have a minor fiscal impact on health insurers doing business in Utah.

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 07/01/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 06/21/2010 01:00 PM, Senate Bldg, 420 N State St, The Copper Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-247. Universal Health Insurance Application Rule.
R590-247-3. General Instructions.

(1) Use of the Utah Individual Health Insurance Application and the Utah Small Employer Health Insurance Application by insurers or by health insurance producers is mandatory.

(2) The Utah Individual Health Insurance Application and Utah Small Employer Health Insurance Application must be used without insurer identifying logos or addresses to facilitate multiple insurer submissions using a single application.

(3) The Utah Individual Health Insurance Application and Utah Small Employer Health Insurance Application can be downloaded from the Department's website at www.insurance.utah.gov.

(4) The Utah Individual Health Insurance Application and Utah Small Employer Health Insurance Application may only be altered for:

(a) purposes of electronic application and submission, including electronic signature disclaimers;

(b) languages other than English; and

(c) reasons specifically approved by the commissioner.

(5) The use of the Utah Individual Health Insurance Application and the Utah Small Employer Health Insurance Application does not limit the ability of an insurer to obtain additional information for underwriting purposes.

(6) Section L, Producer Agreement and Compensation Disclosure section on the Utah Individual Health Insurance Application must include all information to be disclosed as required by Section 31A-23a-501.

(7) Question number 40 on the Utah Individual Health Insurance Application and Utah Small Employer Health Insurance Application may not be used for purposes of Sections 31A-8-402.3, 31A-8-402.5, 31A-21-105, 31A-22-721, 31A-30-107, 31A-30-107.1, or R590-247-3(5), unless the information was disclosed or should have been disclosed in another question on the application.

(8)[~~(a) Starting July 1, 2009, insurers shall accept the Utah Individual Health Insurance Application and Utah Small Employer Health Insurance Application.~~

~~(b) An insurer may accept an application other than the Utah Individual Health Insurance Application and Utah Small Employer Health Insurance Application until December 31, 2009.~~

~~(9)~~] No later than July 1, 2010, all insurers shall offer compatible systems for electronic submission of the Utah Individual Health Insurance Application and the Utah Small Employer Health Insurance Application.

(9) Effective March 22, 2010, if an employee chooses to waive coverage, an insurer shall not require such employee to complete any section of the Utah Small Employer Health Insurance Application other than sections A, B, D, E, questions 1 and 2 of section G, and J.

(10) Starting October 1, 2010, small employer insurers shall use the Utah Small Employer Health Insurance Application dated October 2010.

KEY: universal health insurance application
Date of Enactment or Last Substantive Amendment: [~~July 1, 2009~~]2010
Authorizing, and Implemented or Interpreted Law: 31A-30-102

Natural Resources, Wildlife Resources
R657-5
Taking Big Game

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 33626
FILED: 05/10/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the big game rule.

SUMMARY OF THE RULE OR CHANGE: The proposed revision to the above listed rule removes the primitive weapon restriction for taking antlerless elk in conjunction with an antlered tag and allows the opportunity to holders with any legal weapon permits.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This amendment removes the primitive weapon restriction for taking antlerless elk in conjunction with an antlered tag. It does not make any changes to division processes; therefore, the Division of Wildlife Resources (DWR) determines that this amendment does not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.
♦ LOCAL GOVERNMENTS: Since this amendment has no impact on individual hunters or the local governments, the division finds that this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.
♦ SMALL BUSINESSES: This amendment removes the primitive weapon restriction for taking antlerless elk in conjunction with an antlered tag and will allow more hunters the opportunity to take both animals at the same time; however, it does not have the potential to generate a cost or savings impact to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This amendment removes the primitive weapon restriction for taking antlerless elk in conjunction with an antlered tag and will allow more hunters the opportunity to take both animals at the same time however it does not have the potential to generate a cost or savings impact to sportsmen or the other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that this amendment will not create additional costs for those who participate in wildlife related activities in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not have a potential to create an impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.
R657-5. Taking Big Game.
R657-5-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation and the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

R657-5-34. Antlerless Elk Hunts.

(1) To hunt an antlerless elk, a hunter must obtain an antlerless elk permit.

(2)(a) An antlerless elk permit allows a person to take one antlerless elk using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless elk permit for a cooperative wildlife management unit as specified on the permit.

(3)(a) A person may obtain two elk permits each year, provided one or both of the elk permits is an antlerless elk permit.

(b) For the purposes of obtaining two elk permits, a hunter's choice elk permit may not be considered an antlerless elk permit.

(4)(a) A person who obtains an antlerless elk permit and any of the permits listed in Subsection (b) may use the antlerless elk permit during the established season for the antlerless elk permit and during the established season for the permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used if hunting with an archery permit;

(iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.

(b)(i) General buck deer for archery[~~-deer~~], muzzleloader or any legal weapon;

(ii) general bull elk for archery[~~-elk~~], muzzleloader or any legal weapon;

(iii) [~~general muzzleloader deer;~~

~~(iv) general muzzleloader elk;~~

~~(v)~~]limited entry buck deer for archery[~~-deer;~~], muzzleloader or any legal weapon; or

[~~(vi)~~](iv) limited entry bull elk for archery[~~-elk;~~

~~(vii) limited entry~~], muzzleloader[~~-deer;~~] or[

~~(viii) limited entry muzzleloader elk~~] any legal weapon.

KEY: wildlife, game laws, big game seasons
Date of Enactment or Last Substantive Amendment: [~~February~~ 8], 2010
Notice of Continuation: November 21, 2005
Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-16-5; 23-16-6

Tax Commission, Auditing

R865-9I-13

Nonresident's Share of Pass-Through Entity Income Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2, and 59-10-1405

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 33645
FILED: 05/13/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendments provide further guidance on the withholding responsibilities of a pass-through entity.

SUMMARY OF THE RULE OR CHANGE: The proposed amendments indicate when a pass-through entity is not required to withhold Utah income tax on a pass-through entity taxpayer; clarifies how the income is determined for purposes of withholding; and includes provisions for withholding when the pass-through entity is an S Corporation, at the same, repealing the rule that had contained those provisions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: enterprise zones and historic preservation and income tax and tax returns

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None--Any fiscal impacts were taken into account in S.B. 23 (2009). (DAR NOTE: S.B. 23 (2009) is found at Chapter 312, Laws of Utah 2009, and was effective 03/25/2009.)
♦ LOCAL GOVERNMENTS: None--Any fiscal impacts were taken into account in S.B. 23 (2009).
♦ SMALL BUSINESSES: None--Any fiscal impacts were taken into account in S.B. 23 (2009).
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Any fiscal impacts were taken into account in S.B. 23 (2009).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendments clarify when a pass-through entity is not required to withhold Utah income tax on a pass-through entity taxpayer.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None.

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 07/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: R. Bruce Johnson, Tax Commission Chair

R865. Tax Commission, Auditing.
R865-9I. Income Tax.
R865-9I-13. [~~Nonresident's Share of~~]Pass-Through Entity [~~Income~~]Withholding Pursuant to Utah Code Ann. Sections 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2, and 59-10-1405.

(1) [~~The provisions of this rule apply to a pass-through entity that is not an S corporation. For provisions that apply to a pass-through entity that is an S corporation, see rule R865-9I-56.~~]A pass-through entity must withhold and pay over to the state a tax on:

(a) the business income of the pass-through entity to the extent the business income is derived from Utah sources in accordance with Section 59-10-116; and

(b) the nonbusiness income of the pass-through entity derived from or connected with Utah sources.

(i) "Nonbusiness income of the pass-through entity derived from or connected with Utah sources" does not include passive investment income if the income would not be reportable to Utah on the pass-through entity taxpayer's Utah state tax return or the Utah state tax return of any downstream pass-through entity taxpayer.

(ii) "Downstream pass-through entity taxpayer" means a pass-through entity taxpayer that is a pass-through entity taxpayer of any entity that is itself a pass-through entity taxpayer.

(2) A schedule shall be included with the return listing all of the following information for each nonresident pass-through entity taxpayer:

(a) name;

(b) address;

(c) social security number;

(d) percentage of ownership in pass-through entity;

(e) Utah income attributable to that pass-through entity taxpayer; and

(f) amount of Utah tax withheld on behalf of that pass-through entity taxpayer .

(3) The income of a pass-through entity that is an S corporation shall be calculated by:

(a) adding back to the line on the federal Schedule K labeled "Income/loss reconciliation" the amount included on that schedule for:

(i) charitable contributions;

(ii) total foreign taxes paid or accrued; and

(iii) recapture of a benefit derived from a deduction under Section 179, Internal Revenue Code; or

(b) if the pass-through entity that is an S corporation was not required to complete the line labeled "Income/loss reconciliation" on the federal Schedule K, a pro forma calculation of the amounts for charitable contributions and foreign taxes paid or accrued, and of the amount that would have been entered on the Income/loss reconciliation" line shall be used for purposes of this rule.

[~~(3)~~](4) A pass-through entity shall calculate the tax it [~~withholds~~]is required to withhold on behalf of [~~its nonresident~~] pass-through entity taxpayers by:

(a) multiplying the income of the pass-through entity [~~attributable to nonresident pass-through entity taxpayers~~]computed in Subsection (1) by the tax rate in effect under Section 59-10-104; and

(b) subtracting from the amount calculated in Subsection [~~(3)~~](4)(a) any amounts withheld from the pass-through entity under Section 59-6-102 [~~attributable to nonresident pass-through entity taxpayers~~]that are attributable to pass-through entity taxpayers for whom the pass-through entity is required to withhold.

[~~(4)~~](5)(a) A pass-through entity is not required to withhold a tax on behalf of a pass-through entity taxpayer [~~that~~]of that pass-through entity if the pass-through entity taxpayer is:

(i) exempt from taxation under S[~~ubs~~]ection 59-7-102 and the income from the pass-through entity is not unrelated business income to the pass-through entity taxpayer;

(ii) an individual retirement account as defined under Section 408(a), Internal Revenue Code and the income from the pass-through entity is not unrelated business income to the pass-through entity taxpayer;

(iii) a real estate investment trust if all of the earnings of the real estate investment trust are distributed to the owners of the real estate investment trust; or

(iv) a person exempt from state income tax under Section 59-10-104.1.

(6)(a) Subject to Subsection (6)(b), and for purposes of Subsection 59-10-1403.2(5), a pass-through entity shall apply to the commission for a waiver of penalty or interest, on an amount the pass-through entity fails to pay or withhold and for which the pass-through entity taxpayer files and pays in a timely manner, by checking the box on the tax return requesting the waiver for required withholding.

(b) The provisions of Subsection (6)(a) shall be effective for taxable years beginning on or after January 1, 2010.

(7) An entity that is disregarded for federal tax purposes is disregarded for purposes of pass-through entity withholding.

[~~(5)~~](8) The pass-through entity's federal identification number shall be used on the form TC-65 in place of a social security number.

(9) Examples.

(a) Partnership A has two partners, both of whom are nonresident individuals exempt from state income tax under Section 59-10-104.1. Partnership A is not required to withhold Utah tax for these partners.

(b) For tax year 2010, Partnership C has two partners, Partnerships D and E. Partnership D has two partners, both Utah resident individuals. Partnership E has three nonresident partners, all of whom are subject to Utah state tax. Partnership C's responsibility for withholding is based on Partnerships D and E, not the partners of Partnerships D and E. Accordingly, Partnership C must withhold tax on behalf of Partnerships D and E. If, however, both Partnership D and the partners of Partnership D file returns and pay any tax due by the filing due date for Partnership C, including extensions, Partnership C may elect to not withhold those amounts and may apply to the Tax Commission, by checking the box on the tax return requesting the waiver for required withholding, for a waiver of tax, penalty, and interest on amounts Partnership C should have collected and remitted for Partnership D, but did not.

KEY: historic preservation, income tax, tax returns, enterprise zones
Date of Enactment or Last Substantive Amendment: [~~April 8~~], 2010
Notice of Continuation: March 20, 2007
Authorizing, and Implemented or Interpreted Law: 59-10-116; 59-10-117; 59-10-118; 59-10-1403.2; 59-10-1405

Tax Commission, Auditing
R865-9I-21
Return By Partnership Pursuant to Utah Code Ann. Sections 59-10-507 and 59-10-514

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33646
FILED: 05/13/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment is necessary to complete the implementation of S.B. 23 (2009). (DAR NOTE: S.B. 23 (2009) is found at Chapter 312, Laws of Utah 2009, and was effective 03/25/2009.)

SUMMARY OF THE RULE OR CHANGE: The proposed amendments indicate the forms a partnership is required to file with the commission; and modify the provision allowing a partnership to satisfy the return filing requirements by simply maintaining records to apply only if the partnership is not a pass-through entity taxpayer.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-10-507 and Section 59-10-514

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None--Any fiscal impacts were taken into account in S.B. 23 (2009).
♦ LOCAL GOVERNMENTS: None--Any fiscal impacts were taken into account in S.B. 23 (2009).
♦ SMALL BUSINESSES: None--Any fiscal impacts were taken into account in S.B. 23 (2009).
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Any fiscal impacts were taken into account in S.B. 23 (2009).

COMPLIANCE COSTS FOR AFFECTED PERSONS: A partnership that met the filing requirements by simply maintaining records may now be required to file a return with the commission; in addition, partnerships will now file different schedules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Implements new schedules, some may be required to file returns.

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 07/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: R. Bruce Johnson, Tax Commission Chair

R865. Tax Commission, Auditing.
R865-9I. Income Tax.
R865-9I-21. Return By Partnership Pursuant to Utah Code Ann. Sections 59-10-507 and 59-10-514.

(1) Every partnership having a nonresident partner and income derived from sources in this state shall file a return in accordance with forms and instructions provided by the Tax Commission.

(2) If the partnership has income derived from or connected with sources both inside and outside Utah and if any partner was not a resident of Utah, the portion derived from or connected with sources in this state must be determined and shown on the Utah forms TC-65 Schedule K and Schedule K-1.

[~~(a) The Utah portion must be determined and shown for each item of the partnership's, and each nonresident partner's, distributive shares of income, credits, deductions, etc., shown on Schedules K and K-1 of the federal return.~~

~~(b) The Utah portion may be shown:~~

~~(i) alongside the total for each item on the federal schedules K and K-1; or~~

~~(ii) on an attachment to the Utah return.~~

] (3) A partnership[~~, all of whose partners are resident individuals, shall~~] may satisfy the requirement to file a return with the commission by[~~:~~

~~(a)~~] maintaining records that show each partner's share of income, losses, credits, and other distributive items[~~;~~], and[

~~(b)~~] making those records available for audit if:

(a) all of the partnership's partners are resident individuals; and

(b) the partnership is not a pass-through entity taxpayer .

KEY: historic preservation, income tax, tax returns, enterprise zones
Date of Enactment or Last Substantive Amendment: [~~April 8~~], 2010
Notice of Continuation: March 20, 2007
Authorizing, and Implemented or Interpreted Law: 59-10-507; 59-10-514

Tax Commission, Auditing
R865-9I-56
Determination of Amounts Withheld by a Pass-Though Entity that is an S Corporation Pursuant to Utah Code Ann. Section 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2, and 59-10-1405

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 33640
FILED: 05/13/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section is removed since the language has been consolidated into another section.

SUMMARY OF THE RULE OR CHANGE: This section is removed because the language in the section is being amended into Section R865-9I-13, and the same amendments made in that section will apply to an S Corporation. (DAR NOTE: The amendment to Section R865-9I-13 is under DAR No. 33645 in this issue, June 1, 2010, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-10-116 and Section 59-10-117 and Section 59-10-118 and Section 59-10-1403.2 and Section 59-10-1405

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: None--Any fiscal impacts were taken into account in S.B. 23 (2009). (DAR NOTE: S.B. 23 (2009) is found at Chapter 312, Laws of Utah 2009, and was effective 03/25/2009.)
♦ LOCAL GOVERNMENTS: None--Any fiscal impacts were taken into account in S.B. 23 (2009).
♦ SMALL BUSINESSES: None--Any fiscal impacts were taken into account in S.B. 23 (2009).
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Any fiscal impacts were taken into account in S.B. 23 (2009).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment reflects moving the language into another section.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None.

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 07/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: R. Bruce Johnson, Tax Commission Chair

R865. Tax Commission, Auditing.
R865-9I. Income Tax.
[~~R865-9I-56. Determination of Amounts Withheld by a Pass-Through Entity that is an S Corporation Pursuant to Utah Code Ann. Section 59-10-116, 59-10-117, 59-10-118, 59-10-1403.2, and 59-10-1405.~~

~~(1) The provisions of this rule apply to a pass-through entity that is an S corporation. For provisions that apply to a pass-through entity that is not an S corporation, see rule R865-9I-13.~~

~~(2) A pass-through entity that is an S corporation with nonresident shareholders shall complete Schedule N of form TC-20S, and shall provide the following information for each nonresident pass-through entity taxpayer:~~

~~(a) name;~~

~~(b) address;~~

~~(c) social security number;~~

~~(d) percentage of S corporation held; and~~

~~(e) amount of Utah tax paid or withheld on behalf of that pass-through entity taxpayer.~~

~~(3) The income of a pass-through entity that is an S corporation shall be calculated by:~~

~~(a) adding back to the line on the Schedule K labeled Income/loss reconciliation" the amount included on that schedule for:~~

~~(i) charitable contributions;~~

~~(ii) total foreign taxes paid or accrued; and~~

~~(iii) recapture of a benefit derived from a deduction under Section 179, Internal Revenue Code; or~~

~~(b) if the pass-through entity that is an S corporation was not required to complete the line labeled Income/loss reconciliation" on the Schedule K, a pro forma calculation of the amounts for charitable contributions and foreign taxes paid or accrued, and of the amount that would have been entered on the Income/loss reconciliation" line shall be used for purposes of this rule.~~

~~(4) A pass-through entity that is an S corporation shall calculate the tax it withholds on behalf of its nonresident pass-through entity taxpayers by:~~

~~(a) multiplying the income of the pass-through entity by the rate in effect under Section 59-10-104; and~~

~~(b) subtracting from the amount calculated in Subsection (4)(a) any amounts withheld under Section 59-6-102.~~

~~(5) A pass-through entity that is an S corporation is not required to withhold a tax on behalf of a pass-through entity taxpayer that is exempt from taxation under Subsection 59-7-102.~~

]

KEY: historic preservation, income tax, tax returns, enterprise zones

Date of Enactment or Last Substantive Amendment: [~~April 8~~], 2010

Notice of Continuation: March 20, 2007

Authorizing, and Implemented or Interpreted Law: [~~59-10-108 through 59-10-122; 59-10-1403.2; 59-10-1405~~]

Transportation, Operations, Construction
R916-5
Health Reform -- Health Insurance Coverage in State Contracts -- Implementation

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 33649
FILED: 05/13/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to comply with the new provisions of Section 72-6-107.5 enacted by H.B. 20 in the 2010 general legislative session. (DAR NOTE: H.B. 20 (2010) is found at Chapter 229, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: The proposed changes clarify the applicability of the rule, add that an underwriter may determine actuarial equivalency, and include various grammatical and stylistic changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-6-107.5

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There is no anticipated cost or savings to the state budget because compliance is already required and the changes only clarify the obligations of contractors, subcontractors, consultants, and subconsultants.

♦ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government because compliance is only required in state construction contracts and the changes only clarify the obligations of contractors, subcontractors, consultants, and subconsultants.

♦ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses because compliance is already required and the changes only clarify the obligations of contractors, subcontractors, consultants, and subconsultants.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because compliance is already required and the changes only clarify the obligations of contractors, subcontractors, consultants, and subconsultants.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no anticipated cost or savings to affected persons because compliance is already required and the changes only clarify the obligations of contractors, subcontractors, consultants, and subconsultants and make it easier to obtain a determination of actuarial equivalency.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact on businesses because the compliance is already required and the changes only clarify the obligations of contractors, subcontractors, consultants, and subconsultants.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/01/2010

THIS RULE MAY BECOME EFFECTIVE ON: 07/08/2010

AUTHORIZED BY: John Njord, Executive Director

R916. Transportation, Operations, Construction.
R916-5. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation.
R916-5-1. Purpose.

The purpose of this [~~R~~]rule is to comply with [~~Utah Code Annotated~~]Section 72-6-107.5 and establish the requirements and procedures a contractor, subcontractor, consultant and subconsultant must follow to demonstrate they will maintain an offer of health insurance as required by Section 72-6-107.5. This[~~e~~] [~~R~~]rule also establishes penalties for intentional violations[~~anyone covered by this Rule if they intentionally violate the provisions~~] of Section 72-6-107.5.

R916-5-2. Authority.

This [~~R~~]rule is authorized under Section 72-6-107.5 which requires the Utah Department of Transportation to make rules related to health insurance in certain design and construction contracts.

R916-5-3. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 72-6-107.5

(2) In addition:

(a) "Executive Director" means the Executive Director of the Department of Transportation, including, unless otherwise stated, the Executive Director's duly authorized designee.

(b) "Department" means the Department of Transportation established pursuant to Section 72-1-201.

(c) "Employee(s)" is as defined in 72-6-107.5 and includes only those employees that live and/or work in the State of Utah along with their dependents. "Employee" for purposes of this rule, shall not be construed as to be broader than that the use of the term employee for purposes of State of Utah Workers' Compensation laws.

(d) "State" means the State of Utah.[~~The definitions found in Section 72-6-107.5 shall apply to Rule 916-5.~~]

R916-5-4. Applicability of Rule.

(1) Except as provided in [~~Rule R916-5-4~~]Subsection (2) below, this [~~R~~]rule [~~R916-5~~]applies to all contracts entered into by the Department on or after July 1, 2009, and is applicable to a prime contractor if its contract is in the amount of $1,500,000 or greater, and to a subcontractor if its subcontract is in the amount of $750,000 or greater.[~~if:~~

~~(a) the contract is for design and/or construction; and~~

~~(b)(i) the prime contract is in the amount of $1,500,000 or greater; or~~

~~(ii) a subcontract, at any tier, is in the amount of $750,000 or greater.~~]

(2) This [~~R~~]rule [~~R916-5~~]does not apply if:

(a) the application of this [~~R~~]rule [~~916-5~~]jeopardizes the receipt of federal funds;

(b) the contract is a sole source contract; or

(c) the contract is an emergency procurement; or

(d) the [~~R~~]ule is in conflict with federal law.

(3) This [~~R~~]rule [~~R916-5~~]does not apply to a change order as defined in Section 63G-6-103, or a modification to a contract, when the contract does not meet the initial threshold required by [~~Rule R~~]Subsection R916-5-4(1).

(4) A person who intentionally uses change orders or contract modifications to circumvent the requirements of subsection (1) is guilty of an infraction.

R916-5-5. Contractors or Consultants to Comply with Section 72-6-107.5.

All contractors, subcontractors, consultants or subconsultants that are subject to the requirements of Section 72-6-107.5 shall comply with all the requirements, and be subject to the penalties and liabilities of Section 72-6-107.5.

R916-5-6. Not Basis for Protest, Suspension, Disruption, or Termination Design or Construction.

(1) The failure of contractors, subcontractors, consultants, or subconsultants to comply with Section 72-6-107.5:

(a) may not be the basis for a protest or other action from a prospective bidder, offeror, or contractor or consultant under Section 63G-6-801 or any other provision in Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies; and

(b) may not be used by the procurement entity or a prospective bidder, offeror, or contractor or consultant as a basis for any action or suit that would suspend, disrupt or terminate the design or construction.

(2) A contractor who is unable to demonstrate compliance within 14 calendar days of bid opening or when proposals are due may be declared non-responsive and the Department may award the contract to the lowest responsive bidder.

(3) A consultant who is unable to demonstrate compliance within 14 calendar days of being ranked first during the consultant selection process, may be declared non-responsive and the Department may enter negotiations with the new first-ranked responsive consultant.

R916-5-7. Requirements and Procedures a Contractor or Consultant Must Follow.

(1) A contractor, or consultant, subcontractors or subconsultants must comply with the following requirements and procedures, and [~~in order to~~]demonstrate, no later than the time of execution of the contract, compliance with Section 72-6-107.5:[~~-~~]

([~~1~~]a) [~~Demonstrating Compliance with Health Insurance Requirements. The following requirements must be met by a contractor, consultants, subcontractors, and subconsultants that are subject to the requirements of this Rule no later than the time of execution of the contract:~~

~~(a) demonstrate compliance~~]by providing a written certification to the Executive Director that the contractor, consultants, subcontractors, and subconsultants ha[~~s~~]ve and will maintain for the duration of the contract an offer of qualified health insurance coverage for the employees[~~, as such employees are defined in Section 34A-2-104 for employees~~'] who live and/or work within the State, along with their dependents[~~. Employee, for purposes of this Rule, shall be no broader than the use of the term employee for purposes of the State's Worker's Compensation requirements~~]; and

(b) [~~T~~]the contractor or consultant shall also provide such written certification prior to the execution of the contract, in regard to all subcontractors or subconsultants at any tier that are subject to the requirements of this [~~R~~]rule.

(2) Recertification. The Executive Director shall have the right to request a recertification by the contractor or consultant by submitting a written request to the contractor or consultant, and the contractor or consultant shall so comply with the written request within ten (10) working days of receipt of the written request; however, in no case may the contractor or consultant be required to demonstrate such compliance more than twice in any 12-month period.

(3) Demonstrating Compliance with Actuarially Equivalent Determination. The actuarially equivalent determination required by Subsection (1) of 72-6-107.5 is met by the contractor or consultant if the contractor or consultant provides the Executive Director with a written statement of actuarial equivalency from either the Utah Insurance Department[~~or~~], an actuary selected by the contractor or the contractor's insurer[~~or~~], an actuary selected by the consultant or the consultant's insurer, or an underwriter who is responsible for developing the employer groups premium rates.

(a) [~~f~~]For purposes of this,[~~R~~]rule, [~~R916-5,~~] actuar[~~y~~]ial equivalency, or greater is achieved by meeting or exceeding the requirements of qualified health insurance coverage as defined in Subsection 72-6-107.5(1)(c).[~~a federally qualified health care plan.~~] The benchmark plan referred to in Subsection 72-6-107.5(1)(c), [~~is the Children's Health Insurance Program. The insurance program~~]may be found at: http://dfcm.utah.gov/downloads/Health %20Insurance%20Benchmark.pdf.[~~— The plan may be used for evaluating the offered health plan to determine if it is actuarial equivalent or superior.~~]

(4) [~~Time Frame Availability for Health Insurance.—~~]The health insurance must be available upon the first day of the calendar month following the initial [~~ninety (~~]90[~~)~~] days from the [~~beginning of employment~~]date of hire.

(5) Consultant Compliance Process. Consultants who are subject to this [~~R~~]rule must demonstrate compliance with this [~~R~~]rule in their initial Financial Screening Application. The consultant's will then be required to demonstrate the offer of health insurance that meets the requirements outlined in Section 72-6-107.5. During the procurement process and no later than the execution of the contract with the consultant, the consultant will confirm the prime is still in compliance with this [~~R~~]rule and the subconsultants of the consultant will certify through their prime consultant they meet the requirements of this [~~R~~]rule. The written contract will contain a provision where the consultant confirms compliance with this [~~R~~]rule by both the consultant and applicable subconsultants.

(6) Contractor[~~s~~] Compliance Process. Contractors who are subject to this [~~R~~]rule must demonstrate compliance with this [~~R~~]rule. The contractor will indicate in the Pre-qualification Application that the contractor will offer health insurance which meets the requirements outline[~~s~~]d in Section 72-6-107.5. When a contract is written, contractors [~~may~~]will confirm the prime contractor is still in compliance with this [~~R~~]rule and their subcontractors will certify through their contractor that they meet the requirements of this [~~R~~]rule. The written contract shall contain a provision where the contractor confirms compliance with this [~~R~~]rule by both the contractor and applicable subcontractors.

(7) Must be in Compliance at the Time the Contract is executed. Notwithstanding any prequalification of a contractor, subcontractor, consultant or subconsultant that is subject to this [~~R~~]rule, the contractor subcontractor, consultant or subconsultant must agree to the language in the executed contract that requires the contractor to be in compliance with this [~~R~~]rule at the time of the execution of the contract and throughout the duration of the contract.

R916-5-8. Department Hearing and Penalties.

(1) Hearing. Any hearing regarding the failure to comply with this [~~R~~]rule shall be held in accordance with the Utah Administrative Procedures Act and Rule 907-1 unless specifically stated otherwise in a governing statute.

(2) Penalties. The penalties that may be imposed if a contractor, consultant, subcontractor or subconsultant, at any tier intentionally violates [~~the provisions of~~]this [~~R~~]rule[~~. May~~] include:

(a) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation, regardless of which tier the contractor or subcontractor is involved[~~— with the future design and/or construction contract~~];

(b) a six-month suspension of the contractor, subcontractor, consultant or subconsultant from entering into future contracts with the state upon the second violation, regardless of which tier the contractor or subcontractor is involved[~~— with the future design and/or construction contract~~];

(c) an action for debarment of the contractor, subcontractor , consultant or subconsultant in accordance with Section 63G-6-804 upon the third or subsequent violation; and

(d) monetary penalties which may not exceed 50% of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor, subcontractor, consultant or subconsultant who was not offered qualified health insurance coverage during the duration of the contract.

(e) [~~a~~]A prime contractor or consultant will not be subject to penalties for the failure of a subcontractor or subconsultant to meet the requirement of maintaining their offer of qualified health care coverage.

R916-5-9. Does Not Create Any Contractual Relationship With Any Subcontractor or Subconsultant.

Nothing in this [~~R~~]rule shall be construed as to create any contractual relationship whatsoever between the Department or the State with any subcontractor or subconsultant at any tier.

KEY: contracts, health insurance, health insurance in state contracts, health reform
Date of Enactment or Last Substantive Amendment: [~~September 21, 2009~~]2010
Authorizing, and Implemented or Interpreted Law: 72-6-107.5

End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to remove obsolete rules from the Utah Administrative Code. Upon reviewing a rule, an agency may: repeal the rule by filing a **Proposed Rule**; continue the rule as it is by filing a **Notice of Review and Statement of Continuation (Notice)**; or amend the rule by filing a **Proposed Rule** and by filing a **Notice**. By filing a Notice, the agency indicates that the rule is still necessary.

Notices are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. **Notices** are effective upon filing.

Notices are governed by Section 63G-3-305.

Insurance, Administration
R590-231
Workers' Compensation Market of Last Resort

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33617
FILED: 05/04/2010

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 31A-19a-404 provides rulemaking authority for the recording and reporting of statistical data and experience rating data. Section 31A-20-103 provides authority to define lines and classes of insurance. Section 31A-22-1010 sets reporting requirements for workers' compensation deductible policies. Section 31A-2-201 provides general rulemaking authority to implement the provisions of Title 31A.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received any written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides a definition of "Market of Last Resort" and provides eligibility criteria for employer. The definition is required to monitor assignment to the market of last resort. Therefore, this rule should be continued.

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

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 05/04/2010

Money Management Council, Administration
R628-15
Certification as an Investment Adviser

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33620
FILED: 05/05/2010

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: The definition of an investment adviser under Section 51-7-3 requires that any adviser wishing to become certified to do business with Utah public treasurers meet criteria of Council Rule. Section 51-7-11.5 requires certified investment advisers to meet requirements of Council Rule. In addition, Subsection 51-7-18(2) gives the Money Management Council the authority to make rules governing certified investment advisers and provide standings and requirements for the regulation and qualification of certified investment advisers.

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 has been in place for five years and has provided the Council with the ability to watch over certified investment advisers to make sure that the advisers are investing public funds in accordance with the Money Management Act, Title 51, Chapter 7. The rule needs to be continued to provide requirements for certification, which include insurance coverage, minimum accounting standards, forum and methods for dispute resolution, and requiring the investment adviser to be familiar with the Act and Rules of the Council, as there are several public treasurers utilizing Certified investment advisers at this time.

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

MONEY MANAGEMENT COUNCIL
ADMINISTRATION
ROOM 180 UTAH STATE CAPITOL COMPLEX
350 N STATE ST
STE 180
SALT LAKE CITY, UT 84114
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Ann Pedroza by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at apedroza@utah.gov

AUTHORIZED BY: William Wallace , Chair

EFFECTIVE: 05/05/2010

Public Safety, Criminal Investigations and Technical Services, Criminal Identification

R722-310

Regulation of Bail Bond Recovery and Enforcement Agents

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33636
FILED: 05/12/2010

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 53-11-103(5) requires the Commissioner of Public Safety to make rules and establish procedures for issuing licenses to and regulation of Bail Bond Recovery and Enforcement Agents.

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 is needed to establish procedures for determining applicant eligibility to receive a license for Bail Bond Recovery and Enforcement Agents. Therefore, this rule should be continued.

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

PUBLIC SAFETY
CRIMINAL INVESTIGATIONS AND TECHNICAL SERVICES, CRIMINAL IDENTIFICATION
3888 W 5400 S
TAYLORSVILLE, UT 84118
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Alice Erickson by phone at 801-965-4939, by FAX at 801-965-4944, or by Internet E-mail at aerickso@utah.gov

AUTHORIZED BY: Alice Erickson , Bureau Chief

EFFECTIVE: 05/12/2010

NOTICES OF
LEGISLATIVE NONREAUTHORIZATION

Section 63G-3-502 provides that "every agency rule that is in effect on February 28 of any calendar year expires on May 1 of that year unless it has been reauthorized by the Legislature." To do this, the Legislature's Administrative Rules Review Committee prepares omnibus legislation each year. As part of this legislation, the Legislature may elect not to reauthorize a rule or a part of a rule down to the complete paragraph level. When this occurs, the rule or part of a rule is removed from the Code. The list below represents rules that the Legislature has elected not to reauthorize.

Legislative nonreauthorization of administrative rules is governed by Section 63G-3-502.

Human Services, Administration
R495-888
Department of Human Services
Related Parties Conflict Investigation Procedure

LEGISLATIVE NONREAUTHORIZATION
DAR FILE NO.: 33628
FILED: 05/10/2010

SUMMARY: S.B. 31 (2010) did not reauthorize Rule R495-888. (DAR NOTE: S.B. 31 (2010) is found at Chapter 80, Laws of Utah 2010, and was effective 05/01/2010.)

EFFECTIVE: 05/01/2010

End of the Notices of Legislative Nonreauthorization 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

Education
Administration
No. 33440 (NEW): R277-114. Corrective Action and Withdrawal or Reduction of Program Funds
Published: 04/01/2010
Effective: 05/12/2010

No. 33441 (AMD): R277-419-3. Minimum School Days, LEA Records, and Audits
Published: 04/01/2010
Effective: 05/12/2010

No. 33442 (AMD): R277-470. Charter Schools
Published: 04/01/2010
Effective: 05/12/2010

No. 33443 (AMD): R277-484. Data Standards
Published: 04/01/2010
Effective: 05/12/2010

Environmental Quality
Drinking Water
No. 33462 (AMD): R309-515-6. Ground Water - Wells
Published: 04/01/2010
Effective: 05/13/2010

Natural Resources
Wildlife Resources
No. 33451 (AMD): R657-17. Lifetime Hunting and Fishing License
Published: 04/01/2010
Effective: 05/10/2010

No. 33449 (AMD): R657-53. Amphibian and Reptile Collection, Importation, Transportation, and Possession
Published: 04/01/2010
Effective: 05/10/2010

No. 33450 (AMD): R657-62. Drawing Application Procedures
Published: 04/01/2010
Effective: 05/10/2010

Regents (Board Of)
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No. 33461 (AMD): R765-604. New Century Scholarship
Published: 04/01/2010
Effective: 05/11/2010

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 through May 14, 2010. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division’s web site (http://www.rules.utah.gov/).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment
CPR = Change in proposed rule
EMR = Emergency rule (120 day)
NEW = New rule
EXD = Expired
NSC = Nonsubstantive rule change
REP = Repeal
R&R = Repeal and reenact
5YR = Five-Year Review

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
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ABBREVIATIONS

AMD = Amendment
CPR = Change in proposed rule
EMR = Emergency rule (120 day)
NEW = New rule
EXD = Expired
NSC = Nonsubstantive rule change
REP = Repeal
R&R = Repeal and reenact
5YR = Five-Year Review

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