

UTAH STATE BULLETIN

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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

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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/007/2010: Wildland Fire Management

EXECUTIVE ORDER

Wildland Fire Management

WHEREAS, the danger from wildland fires is extremely 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 July 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 July 2010

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Greg S Bell
Lieutenant Governor

EO/007/2010

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 July 02, 2010, 12:00 a.m., and July 15, 2010, 11:59 p.m. are included in this, the August 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 August 31, 2010. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through November 29, 2010, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF a CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses and the agency must start the process over.

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

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

The Proposed Rules Begin on the Following Page

**Commerce, Occupational and
Professional Licensing
R156-38a
Residence Lien Restriction and Lien
Recovery Fund Rule**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33811

FILED: 07/06/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this filing is to: 1) include in rule precedents which have been established by the Division and the Residence Lien Recovery Fund Board; 2) clarify statutory amendments which were made during the 2010 Legislative Session in S.B. 107; 3) amend existing rule to expedite the application process; and 4) make minor corrections and technical changes. (DAR NOTE: S.B. 107 (2010) is found at Chapter 31, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: Throughout the rule the term "division" has been updated to "Division" and "board" to "Board". In Subsection R156-38a-102(1), the amendment adds a new definitions for "affidavit"; the definition is a result of S.B. 107 that grants the Division authority to define the affidavit required by Subsection 38-11-110(2)(a). In Subsection R156-38a-201(2), the amendment adds a new definition for "affidavit of compliance"; the definition clarifies the two types of certificates of compliance. In Subsection R156-38a-102(7), the amendment adds a new definition for "during the construction"; the definition codifies Board precedent and is designed to parallel Subsection 58-55-501(8) which establishes that it is unlawful conduct for a person that is not licensed or exempt from licensure to submit a bid for any work for which a license is required. In Subsection R156-38a-102(14), the amendment adds a new definition for "totals no more" as used in Subsection 38-11-107(1)(b)(ii)(A), which was added by S.B. 107. The proposed definition is designed to parallel Subsection 58-55-305(1)(h), the "handyman" exemption from licensure. In Subsection R156-38a-105a(7), the amendment clarifies what action a permissive party must take in order to dispute an application for certificate of compliance under Subsection 38-11-110(1)(a)(ii). In Section R156-38a-105b, the amendments modify the requirements allowing an applicant for certificate of compliance to be granted prolonged status. The modification will allow the Division to more efficiently process applications. Section R156-38a-107 is a new section and is added to establish the date after which the amended requirements for

a certificate of compliance under Subsection 38-11-110(1)(a)(ii) are applicable. In Section R156-38a-108, the amendments change the required notification of rights under Title 38, Chapter 11, to comply with legislative changes made by S.B. 107. In Section R156-38a-109, the amendments change the title of the section and the language to maintain consistency with the requirements of Subsection 38-1-11(6). Section R156-38a-110a is a new section that is added which moves Section R156-38a-204a to this section and modifies the language. S.B. 107 modified Subsection 38-11-204(3) in that the issuance of certificates of compliance are now governed by Section 38-11-110. This new section maintains consistency and avoids confusion. Subsection R156-38a-110a(4) amends the requirements to obtain a certificate of compliance under Subsection 38-11-110(1)(a)(i) by requiring an applicant to establish the ownership of the owner-occupied residence and the date the written contract between the owner and the contracting entity was entered. Subsection R156-38a-110a(5) amends the requirements to obtain a certificate of compliance under Subsection 38-11-110(1)(a)(i) by requiring the project completion date. Section R156-38a-110b is a new section and is added to establish the requirements to obtain a certificate of compliance under Subsection 38-11-110(1)(a)(ii). Section R156-38a-204a is deleted in its entirety as its contents have been moved to the new Section R156-38a-110a. Section R156-38a-204b is renumbered to Section R156-38a-204a. The amendments require an applicant submitting a claim application to submit a notice of lien if filed. Amendment also removes the requirement that an applicant establish the project completion date. Section R156-38a-204c is renumbered to R156-38a-204b. The amendments make technical and clarifying amendments. Section R156-38a-204d is renumbered to R156-38a-204c. Technical changes are made in this section. Section R156-38a-204e is deleted as it is no longer necessary. In Section R156-38a-301a, the amendments clarify that a licensee who holds a license classification requiring registration in the Lien Recovery Fund ("Fund") who places their license on inactive status is not required to pay the special assessment while on inactive status, but that in order to subsequently reactivate the license, the licensee must pay any special assessment(s) levied within the two years prior to the reactivation date. In Section R156-38a-302, the amendments clarify that a registrant is required to maintain a current mailing address with the Division. It allows a licensee to authorize the Division to send renewal notices by email specifying that such constitutes legal notice, and that if a licensee directs email notices it is the licensee's duty to maintain a current email address with the Division.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 38-11-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division anticipates a savings due to the Division's ability to more efficiently handle claim

and certificate of compliance applications as a result of the proposed changes in Section R156-38a-105b, Subsection R156-38a-110a(5), and Section R156-38a-204a. The Fund pays interest on qualified services claimed against the Fund. Thus, a decrease in processing time of claim applications will result in a decrease in interest paid from the Fund. If processing time were reduced by 15 days, the amount of savings during FY 2009 would have been \$3,092.22. The proposed amendment to Section R156-38a-105b limits the reasons a certificate of compliance application can be placed on prolonged status. Currently, applications for certificate of compliance can be placed on prolonged status for any reason, which can result in applications for payment associated with the certificate of compliance accruing interest during the time frame the certificate of compliance is on prolonged status. The amount of this savings cannot be determined. The proposed amendments to Subsection R156-38a-110a(5) and Section R156-38a-204a move the project completion date documentation from the claimant's responsibility to the homeowner's responsibility for those cases when a certificate of compliance is issued. The proposed amendment will expedite the claim process because the homeowner has direct access to the documentation, wherein a claimant has to go through the process of gathering the information from a third party. The Fund pays attorney's fees and costs associated with claim applications. The proposed amendments to Subsection R156-38a-110a(5) and Section R156-38a-204a will decrease the amount of documentation that most claimants will have to submit to collect from the Fund. The majority of claimants use legal services to gather evidence and collect from the Fund. Thus, the attorney's fees and costs incurred by claimants will be reduced and in turn the attorney's fees and costs paid from the Fund decreased. The amount of this savings cannot be determined.

♦ **LOCAL GOVERNMENTS:** The proposed amendments have no cost or saving impact on local government because the amendments apply to the Division's processing of applications, renewals, and reinstatements and the burden of proof placed on applicants.

♦ **SMALL BUSINESSES:** Companies who file with the Lien Recovery Fund may qualify as a small business. The proposed amendments in Sections R156-38a-110a and R156-38a-204a, in the vast majority of cases, will decrease the amount of documentation that a claimant will have to submit to collect from the Fund. The majority of claimants use legal services to gather evidence and collect from the Fund. Thus, the attorney's fees and costs incurred by claimants will be reduced. The changes will not cause any detrimental effect to homeowners applying for a certificate of compliance because they have direct access to the documentation that the proposed changes would require. Currently, the claimant has to request the same documentation through homeowners, local governments, or other resources. The amount of savings cannot be determined.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments in Sections R156-38a-110a and

R156-38a-204a, in the vast majority of cases, will decrease the amount of documentation that a claimant will have to submit to collect from the Fund. The majority of claimants use legal services to gather evidence and collect from the Fund. Thus, the attorney's fees and costs incurred by claimants will be reduced. The changes will not cause any detrimental effect to homeowners applying for a certificate of compliance because they have direct access to the documentation that the proposed changes would require. Currently, the claimant has to request the same documentation through homeowners, local governments, or other resources. The amount of savings cannot be determined.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments in Sections R156-38a-110a and R156-38a-204a, in the vast majority of cases, will decrease the amount of documentation that a claimant will have to submit to collect from the Fund. The majority of claimants use legal services to gather evidence and collect from the Fund. Thus, the attorney's fees and costs incurred by claimants will be reduced. The changes will not cause any detrimental effect to homeowners applying for a certificate of compliance because they have direct access to the documentation that the proposed changes would require. Currently, the claimant has to request the same documentation through homeowners, local governments, or other resources. The amount of savings cannot be determined.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing makes various amendments to meet the requirements of S.B. 107, and further to simplify the processing of applications and claims. The rule summary has expressed the cost impact in detail and the majority of claimants will experience a cost savings. No fiscal impacts to businesses is anticipated beyond that considered in passage of S.B. 107 and beyond that discussed in the rule filing.

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:

♦ 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 08/31/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 08/11/2010 09:00 AM, Heber Wells Bldg, 160 E 300 S, North Conference Room (first floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-38a. Residence Lien Restriction and Lien Recovery Fund Rule.

R156-38a-101. Title.

This rule is known as the "Residence Lien Restriction and Lien Recovery Fund Act Rule."

R156-38a-102. Definitions.

In addition to the definitions in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; Title 58, Chapter 1, Division of Occupational and Professional Licensing Act; and Rule R156-1, General Rule[s] of the Division of Occupational and Professional Licensing, which shall apply to this rule, as used in this rule:

(1) "Affidavit", as required by Subsection 38-11-110(2)(a), means a form affidavit approved by the Division and posted on the Division's website or otherwise made available for public inspection, that establishes the following:

(a) the applicant is an owner as defined in Subsection 38-11-102(17);

(b) the residence is an owner-occupied residence as defined in Subsection 38-11-102(18);

(c) the amount of the general contract as defined in Subsection 38-11-107(1)(b)(i)(B) and clarified in Subsection R156-38a-102(14);

(d) the original contractor as defined in Subsection 38-11-102(16);

(e) the location of the residence; and

(f) any other information necessary to establish eligibility for the issuance of a certificate of compliance under Subsection 38-11-110(2)(a), as determined by the Division.

(2) "Affidavit of Compliance" means the affidavit submitted by the owner seeking issuance of a certificate of compliance under Subsection 38-11-110(1)(a)(ii).

(3) "Applicant" means either a claimant, as defined in Subsection (2)4, or a homeowner, as defined in Subsection (5)8, who submits an application for a certificate of compliance.

(4) "Claimant" means a person who submits an application or claim for payment from the fund.

(5) "Construction project", as used in Subsection 38-11-203(4), means all qualified services related to the written contract required by Subsection 38-11-204(4)(a).

(6) "Contracting entity" means an original contractor, a factory built housing retailer, or a real estate developer that contracts with a homeowner.

(7) "During the construction", as used in Subsection 38-11-204(1)(c)(ii), means beginning at the time the claimant first provides qualified services and throughout the time frame the claimant provides qualified services.

(8) "Homeowner" means the owner of an owner-occupied residence.

(9) "Licensed or exempt from licensure", as used in Subsection 38-11-204(4) means that, on the date the written contract was entered into, the contractor held a valid, active license issued by the Division pursuant to Title 58, Chapter 55 of the Utah Code in any classification or met any of the exemptions to licensure given in Title 58, Chapters 1 and 55.

(10) "Necessary party" includes the Division, on behalf of the fund, and the applicant.

(11) "Owner", as defined in Subsection 38-11-102(17), does not include any person or developer who builds residences that are offered for sale to the public.

(12) "Permissive party" includes:

(a) with respect to claims for payment: the nonpaying party, the homeowner, and any entity who may be required to reimburse the fund if a claimant's claim is paid from the fund;

(b) with respect to an application for a certificate of compliance: the original contractor and any entity who has demanded from the homeowner payment for qualified services.

(13) "Qualified services", as used in Subsection 38-11-102(20) do not include:

(a) services provided by the claimant to cure a breach of the contract between the claimant and the nonpaying party; or

(b) services provided by the claimant under a warranty or similar arrangement.

(14) "Totals no more", as used in Subsection 38-11-107(1)(b)(ii)(A), means the inclusion of all changes or additions.

(15) "Written contract", as used in Subsection 38-11-204(4)(a)(i), means one or more documents for the same construction project which collectively contain all of the following:

(a) an offer or agreement conveyed for qualified services that will be performed in the future;

(b) an acceptance of the offer or agreement conveyed prior to the commencement of any qualified services; and

(c) identification of the residence, the parties to the agreement, the qualified services that are to be performed, and an amount to be paid for the qualified services that will be performed.

R156-38a-103a. Authority - Purpose - Organization.

(1) This rule is adopted by the Division under the authority of Section 38-11-103 to enable the Division to administer Title 38, Chapter 11, the Residence Lien Restriction and Lien Recovery Fund Act.

(2) The organization of this rule is patterned after the organization of Title 38, Chapter 11.

R156-38a-103b. Duties, Functions, and Responsibilities of the Division.

The duties, functions and responsibilities of the Division with respect to the administration of Title 38, Chapter 11, shall, to the extent applicable and not in conflict with the Act or this rule, be in accordance with Section 58-1-106.

R156-38a-104. Board.

Board meetings shall comply with the requirements set forth in Section R156-1-205.

R156-38a-105a. Adjudicative Proceedings.

(1) Except as provided in Subsection 38-1-11(4)(d), the classification of adjudicative proceedings initiated under Title 38, Chapter 11 is set forth at Sections R156-46b-201 and R156-46b-202.

(2) The identity and role of presiding officers for adjudicative proceedings initiated under Title 38, Chapter 11, is set forth in Sections 58-1-109 and R156-1-109.

(3) Issuance of investigative subpoenas under Title 38, Chapter 11 shall be in accordance with Subsection R156-1-110.

(4) Adjudicative proceedings initiated under Title 38, Chapter 11, shall be conducted in accordance with Title 63G, Chapter 4, Utah Administrative Procedures Act, and Rules R151-46b and R156-46b, Utah Administrative Procedures Act Rules for the Department of Commerce and the Division of Occupational and Professional Licensing, respectively, except as otherwise provided by Title 38, Chapter 11 or this rule.

(5) Claims for payment and applications for a certificate of compliance shall be filed with the [d]Division and served upon all necessary and permissive parties.

(6) Service of claims, applications for a certificate of compliance, or other pleadings by mail to a qualified beneficiary of the fund addressed to the address shown on the [d]Division's records with a certificate of service as required by R151-46b-8, shall constitute proper service. It shall be the responsibility of each applicant or registrant to maintain a current address with the [d]Division.

(7) A permissive party is required to file a response to a claim or application for certificate of compliance within 30 days of notification by the [d]Division of the filing of the claim or application for certificate of compliance, to perfect the party's right to participate in the adjudicative proceeding to adjudicate the claim or application. The response of a permissive party seeking to dispute an owner's affidavit of compliance shall clearly state the basis for the dispute.

(8)(a) For claims wherein the claimant has had judgment entered against the nonpaying party, findings of fact and conclusions of law entered by a civil court or state agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication in an adjudicative proceeding to adjudicate the claim.

(b) For claims wherein the nonpaying party's bankruptcy filing precluded the claimant from having judgment entered against the nonpaying party, a claim or issue resolved by a prior judgment, order, findings of fact, or conclusions of law entered in by a civil court or a state agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication with respect to the parties to the judgment, order, findings of fact, or conclusions of law.

(9) A party to the adjudication of a claim against the fund may be granted a stay of the adjudicative proceeding during the pendency of a judicial appeal of a judgment entered by a civil court or the administrative or judicial appeal of an order entered by an administrative agency provided:

(a) the administrative or judicial appeal is directly related to the adjudication of the claim; and

(b) the request for the stay of proceedings is filed with the presiding officer conducting the adjudicative proceeding and

concurrently served upon all parties to the adjudicative proceeding, no later than the deadline for filing the appeal.

(10) Notice pursuant to Subsection 38-1-11(4)(f) shall be accomplished by sending a copy of the [d]Division's order by first class, postage paid United States Postal Service mail to each lien claimant listed on the application for certificate of compliance. The address for the lien claimant shall be:

(a) if the lien claimant is a licensee of the [d]Division or a registrant of the fund, the notice shall be mailed to the current mailing address shown on the [d]Division's records; or

(b) if the lien claimant is not a licensee of the [d]Division or a registrant of the fund, the notice shall be mailed to the registered agent address shown on the records of the Division of Corporations and Commercial Code.

R156-38a-105b. Notices of Denial - Notices of Incomplete Application - Conditional Denial of Claims - Extensions of Time to Correct Claims - Prolonged Status.

(1)(a) A written notice of denial of a claim or certificate of compliance shall be provided to an applicant who submits a complete application if the [d]Division determines that the application does not meet the requirements of Section 38-11-204 or Subsection 38-11-110(1)(a), respectively.

(b) A written notice of incomplete application shall be provided to an applicant who submits an incomplete application. The notice shall advise the applicant that the application is incomplete and that the application ~~[is]will be~~ denied, unless the applicant corrects the deficiencies within the time period specified in the notice and the application otherwise meets all qualifications for approval.

(2) An applicant may upon written request receive a single 30 day extension of the time period specified in the notice of incomplete application, ~~in Subsection (1)(b). Additional extensions of the time period shall only be granted if the applicant makes the request in writing and demonstrates, with adequate documentation, that the applicant:~~

~~_____ (a) has made all reasonable efforts to complete the application;~~

~~_____ (b) has been prevented from completing the application because of unusual and extraordinary circumstances entirely beyond its control; and~~

~~_____ (c) can be reasonably expected to complete the application if an additional extension is granted.]~~

(3) (a) ~~A[n applicant] claimant~~ may for any reason be granted a single request for prolonged status; ~~[that its application be prolonged.]~~

(b) A homeowner seeking issuance of a certificate of compliance may be granted prolonged status if the homeowner submits a written request documenting that the homeowner:

(i) can be reasonably expected to complete the application if an additional extension is granted; or

(ii) has filed a pending action in small claims or district court to resolve a dispute of the affidavit of compliance.

~~_____ (b)c~~ An application under (3)(a) or (3)(b) that is granted prolonged status shall be inactive for a period of one year or until reactivated by the applicant, whichever comes first.

~~_____ (e)d~~ At the end of the one year period, the applicant under (3)(a) or (3)(b) shall be required to either complete the

application or demonstrate reasonable cause for prolonged status to be renewed for another one year period. The following shall constitute valid causes for renewing prolonged status:

(i) continuing litigation the outcome of which will affect whether the applicant can demonstrate compliance with Section 38-11-110 or 38-11-204;

(ii) ongoing bankruptcy proceedings involving the nonpaying party or contracting entity that would prevent the applicant from complying with Section 38-11-204;

(iii) continuing compliance by the nonpaying party with a payment agreement between the claimant and the nonpaying party; or

(iv) other reasonable cause as determined by the presiding officer.

([d]e) Upon expiration of the one year prolonged status of an application, the [d]Division shall issue to the applicant an updated notice of incomplete application pursuant to Subsection (1) (b). Included with that notice shall be a form that provides the applicant an opportunity to:

(i) reactivate the application [~~by submitting documentation necessary to complete the application~~];

(ii) withdraw the application; or

(iii) request prolonged status be renewed pursuant to Subsection (3)([e]d).

([f]g) A [ny] request for renewal of prolonged status made under Subsection (3)([e]iv)(d) shall include evidence sufficient to demonstrate the validity of the reasons given as justification for renewal.

([f]g) If an applicant's request for prolonged status or renewal of prolonged status is denied, the applicant may request agency review.

([g]h) An application which has been reactivated from prolonged status may not be again prolonged unless the applicant can establish compliance with the requirements of Subsection (3) ([e]d).

R156-38a-107. Application of Requirements under Subsection 38-11-107(1)(b).

The provisions of Subsection 38-11-107(1)(b) shall apply only to general contracts entered into after May 10, 2010.

R156-38a-108. Notification of Rights under Title 38, Chapter 11.

A notice in substantially the following form shall prominently appear in an easy-to-read type style and size in every contract between an original contractor and homeowner and in every notice of intent to hold and claim lien filed under Section 38-1-7 against a homeowner or against an owner-occupied residence:

"X. PROTECTION AGAINST LIENS AND CIVIL ACTION. Notice is hereby provided in accordance with Section 38-11-108 of the Utah Code that under Utah law an "owner" may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as a part of this contract, if [~~and only if the following conditions are satisfied~~]either section (1) or (2) is met:

(1)(a) the owner entered into a written contract with an original contractor, a factory built housing retailer, or a real estate developer;

([2]b) the original contractor was properly licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act at the time the contract was executed; and

([3]c) the owner paid in full the [~~original contractor, factory built housing retailer, or real estate developer or their successors or assigns~~]contracting entity in accordance with the written contract and any written or oral amendments to the contract[~~;~~ or["

(2) the amount of the general contract between the owner and the original contractor totals no more than \$5,000."

([4]3) An owner who can establish compliance with either section (1) or (2) may perfect the owner's protection[~~has satisfied all of these conditions may perfect his protection from liens~~] by applying for a Certificate of Compliance with the Division of Occupational and Professional Licensing [~~by calling (801) 530-6628 or toll free in Utah only (866) 275-3675 and requesting to speak to the Lien Recovery Fund~~]. The application is available at www.dopl.utah.gov/rllf.

R156-38a-109. Format for Instruction and Form Required under Subsection 38-1-11(6)[Form Affidavit and Motion].

The instructions and form [~~affidavit~~]required under Subsection 38-1-11([4]6) shall be the Homeowner's Application for Certificate of Compliance prepared by the Division.

R156-38a-110a. Applications by Homeowners seeking issuance of Certificate of Compliance under Subsection 38-11-110(1)(a)(i) - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each homeowner application for a certificate of compliance seeking protection under Subsection 38-11-110(1)(a)(i):

(1) a copy of the written contract between the homeowner and the contracting entity;

(2)(a) if the homeowner contracted with an original contractor, documentation issued by the Division that the original contractor was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, on the date the contract was entered into;

(b) if the homeowner contracted with a real estate developer:

(i) a copy of the contract between the real estate developer and the licensed contractor with whom the real estate developer contracted for construction of the residence or other credible evidence showing the existence of such a contract and setting forth a description of the services provided to the real estate developer by the contractor;

(ii) credible evidence that the real estate developer offered the residence for sale to the public; and

(iii) documentation issued by the Division that the contractor with whom the real estate developer contracted for construction of the residence was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, on the date the contract was entered into;

(c) if the real estate developer is a licensed contractor under Title 58, Chapter 55, Utah Construction Trades Licensing Act, who engages in the construction of a residence that is offered for sale to the public;

(i) a copy of the contract between the homeowner and the contractor real estate developer;

(ii) credible evidence that the contractor real estate developer offered the residence for sale to the public; and

(iii) documentation issued by the Division showing that the contractor real estate developer with whom the homeowner contracted for construction of the residence was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, on the date the contract was entered into;

(d) if the homeowner contracted with a manufactured housing retailer, a copy of the completed retail purchase contract;

(3) one of the following:

(a) except as provided in Subsection (7), an affidavit from the contracting entity acknowledging that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; or

(b) other credible evidence establishing that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; and

(4) credible evidence establishing ownership of the incident residence on the date the written contract between the owner and the contracting entity was entered;

(5) one of the following:

(a) a copy of the certificate of occupancy issued by the local government entity having jurisdiction over the incident residence;

(b) if no occupancy permit was required by the local government entity but a final inspection was required, a copy of the final inspection approval issued by the local government entity; or

(c) if neither Subsection (5)(a) nor (b) applies, an affidavit from the homeowner or other credible evidence establishing the date on which the original contractor substantially completed the written contract;

(6)(a) an affidavit from the homeowner establishing that the residence is an owner-occupied residence as defined in Subsection 38-11-102(18); or

(b) other credible evidence establishing that the residence is an owner-occupied residence as defined in Subsection 38-11-102(18).

(7) If any of the following apply, the affidavit described in Subsection (3)(a) shall not be accepted as evidence of payment in full unless that affidavit is accompanied by independent, credible evidence substantiating the statements made in the affidavit:

(a) the affiant is the homeowner;

(b) the homeowner is an owner, member, partner, shareholder, employee, or qualifier of the contracting entity;

(c) the homeowner has a familial relationship with an owner, member, partner, shareholder, employee, or qualifier of the contracting entity;

(d) the homeowner has a familial relationship with the affiant;

(e) an owner, member, partner, shareholder, employee, or qualifier of the contracting entity is also an owner, member, partner, shareholder, employee, or qualifier of the homeowner;

(f) the contracting entity is an owner, member, partner, shareholder, employee, or qualifier of the homeowner; or

(g) the affiant stands to benefit in any way from approval of the claim or application for certificate of compliance.

R156-38a-110b. Applications by Homeowners seeking issuance of a Certificate of Compliance under Subsection 38-11-110(1)(a)(ii) - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each homeowner application for a certificate of compliance seeking protection under Subsection 38-11-110(1)(a)(ii):

(1)(a) the original affidavit of compliance; and

(b) a list of known subcontractors who provided service, labor, or materials under the general contractor.

(2) When an affidavit of compliance is disputed, the owner must submit evidence demonstrating compliance with the requirements specified in Subsection 38-11-110(2)(c)(ii).

R156-38a-202b. Special Assessment Procedures.

(1) Special assessments shall take into consideration the claims history against the fund.

(2) The amount of special assessments shall be established by the [d]Division and [b]Board in accordance with the procedures set forth in Section 38-11-206.

R156-38a-203. Limitation on Payment of Claims.

(1) Claims may be paid prior to the pro-rata adjustment required by Subsection 38-11-203(4)(b) if the [d]Division determines that a pro-rata payment will likely not be required.

(2) If any claims have been paid before the [d]Division determines a pro-rata payment will likely be required, the [d]Division will notify the claimants of the likely adjustment and that the claimants will be required to reimburse the [d]Division when the final pro-rata amounts are determined.

(3) The pro-rata payment amount required by Subsection 38-11-203(4)(b) shall be calculated as follows:

(a) determine the total claim amount each claimant would be entitled to without consideration of the limit set in Subsection 38-11-203(4)(b);

(b) sum the amounts each claimant would be entitled to without consideration of the limit to determine the total amount payable to all claimants without consideration of the limit;

(c) divide the limit amount by the total amount payable to all claimants without consideration of the limit to find the claim allocation ratio; and

(d) for each claim, multiply the total claim amount without consideration of the limit by the claim allocation ratio to find the net payment for each claim.[

R156-38a-204a. Applications for Certificate of Compliance by Homeowners - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each homeowner application for a certificate of compliance:

(1) a copy of the written contract between the homeowner and the contracting entity;

~~(2)(a) if the homeowner contracted with an original contractor, documentation issued by the division that the original contractor was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, on the date the contract was entered into;~~

~~(b) if the homeowner contracted with a real estate developer:~~

~~(i) credible evidence that the real estate developer had an ownership interest in the property;~~

~~(ii) a copy of the contract between the real estate developer and the licensed contractor with whom the real estate developer contracted for construction of the residence or other credible evidence showing the existence of such a contract and setting forth a description of the services provided to the real estate developer by the contractor;~~

~~(iii) credible evidence that the real estate developer offered the residence for sale to the public; and~~

~~(iv) documentation issued by the division that the contractor with whom the real estate developer contracted for construction of the residence was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, on the date the contract was entered into;~~

~~(e) if the real estate developer is a licensed contractor under Title 58, Chapter 55, Utah Construction Trades Licensing Act who engages in the construction of a residence that is offered for sale to the public:~~

~~(i) credible evidence that the contractor real estate developer has an ownership interest in the property;~~

~~(ii) a copy of the contract between the homeowner and the contractor real estate developer;~~

~~(iii) credible evidence that the contractor real estate developer offered the residence for sale to the public; and~~

~~(iv) documentation issued by the Division showing that the contractor real estate developer with whom the homeowner contracted for construction of the residence was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, on the date the contract was entered into;~~

~~(d) if the homeowner contracted with a manufactured housing retailer, a copy of the completed retail purchase contract;~~

~~(3) one of the following:~~

~~(a) except as provided in Subsection (5), an affidavit from the contracting entity acknowledging that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; or~~

~~(b) other credible evidence establishing that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; and~~

~~(4) an affidavit from the homeowner establishing that he is an owner as defined in Subsection 38-11-102(17) and that the residence is an owner-occupied residence as defined in Subsection 38-11-102(18).~~

~~(5) If any of the following apply, the affidavit described in Subsection (3)(a) shall not be accepted as evidence of payment in full unless that affidavit is accompanied by independent, credible evidence substantiating the statements made in the affidavit:~~

~~(a) the affiant is the homeowner;~~

~~(b) the homeowner is an owner, member, partner, shareholder, employee, or qualifier of the contracting entity;~~

~~(c) the homeowner has a familial relationship with an owner, member, partner, shareholder, employee, or qualifier of the contracting entity;~~

~~(d) the homeowner has a familial relationship with the affiant;~~

~~(e) an owner, member, partner, shareholder, employee, or qualifier of the contracting entity is also an owner, member, partner, shareholder, employee, or qualifier of the homeowner;~~

~~(f) the contracting entity is an owner, member, partner, shareholder, employee, or qualifier of the homeowner; or~~

~~(g) the affiant stands to benefit in any way from approval of the claim or application for certificate of compliance.]~~

R156-38a-204[b]a. Claims Against the Fund by Nonlaborers - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

(1) one of the following:

(a) a copy of the certificate of compliance issued by the ~~[d]Division~~ establishing that the owner is in compliance with Subsection 38-11-204(4)(a) and (b) for the residence at issue in the claim;

(b) the documents required in Section R156-38a-~~[204a]~~110a; or

(c) a copy of a civil judgment containing findings of fact that:

(i) the homeowner entered a written contract in compliance with Subsection 38-11-204(4)(a);

(ii) the contracting entity was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

(iii) the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; and

(iv) the homeowner is an owner as defined in Subsection 38-11-102(17) and the residence is an owner-occupied residence as defined in Subsection 38-11-102(18);

(2) ~~[(a) a copy of the applicant's notice to hold and claim lien recorded against the incident residence pursuant to Section 38-1-7; or] if the applicant recorded a notice of claim under Section 38-1-7, a copy of that notice establishing the date that notice was filed.~~

~~[(b) if the applicant did not record notice to hold and claim lien, one of the following as applicable:~~

~~(i) a copy of the certificate of occupancy issued by the local government entity having jurisdiction over the incident residence;~~

~~(ii) if no occupancy permit was required by the local government entity but a final inspection was required, a copy of the final inspection approval issued by the local government entity; or~~

~~(iii) if neither Subsection(2)(b)(i) nor (2)(b)(ii) applies, an affidavit from the homeowner or other credible evidence establishing the date on which the original contractor substantially completed the written contract;]~~

(3) one of the following as applicable:

(a) a copy of an action date stamped by a court of competent jurisdiction filed by the claimant against the nonpaying party to recover monies owed for qualified services performed on the owner-occupied residence; or

(b) documentation that a bankruptcy filing by the nonpaying party prevented the claimant from satisfying Subsection (a);

(4) one of the following:

(a) a copy of a civil judgment entered in favor of the claimant against the nonpaying party containing a finding that the nonpaying party failed to pay the claimant pursuant to their contract; or

(b) documentation that a bankruptcy filing by the nonpaying party prevented the claimant from obtaining a civil judgment, including a copy of the proof of claim filed by the claimant with the bankruptcy court, together with credible evidence establishing that the nonpaying party failed to pay the claimant pursuant to their contract;

(5) one or more of the following as applicable:

(a) a copy of a supplemental order issued following the civil judgment entered in favor of the claimant and a copy of the return of service of the supplemental order indicating either that service was accomplished on the nonpaying party or that said nonpaying party could not be located or served;

(b) a writ of execution issued if any assets are identified through the supplemental order or other process, which have sufficient value to reasonably justify the expenditure of costs and legal fees which would be incurred in preparing, issuing, and serving execution papers and in holding an execution sale; or

(c) documentation that a bankruptcy filing or other action by the nonpaying party prevented the claimant from satisfying Subparagraphs (a) and (b);

(6) certification that the claimant is not entitled to reimbursement from any other person at the time the claim is filed and that the claimant will immediately notify the presiding officer if the claimant becomes entitled to reimbursement from any other person after the date the claim is filed; and

(7) one or more of the following:

(a) a copy of invoices setting forth a description of, the location of, the performance dates of, and the value of the qualified services claimed;

(b) a copy of a civil judgment containing a finding setting forth a description of, the location of, the performance dates of, and the value of the qualified services claimed; or

(c) credible evidence setting forth a description of, the location of, the performance dates of, and the value of the qualified services claimed.

(8) If the claimant is requesting payment of costs and attorney fees other than those specifically enumerated in the judgment against the nonpaying party, the claim shall include documentation of those costs and fees adequate for the [d]Division to apply the requirements set forth in Section R156-38a-204d.

(9) In claims in which the presiding officer determines that the claimant has made a reasonable but unsuccessful effort to produce all documentation specified under this rule to satisfy any requirement to recover from the fund, the presiding officer may elect to accept the evidence submitted by the claimant if the requirements to recover from the fund can be established by that evidence.

(10) A separate claim must be filed for each residence and a separate filing fee must be paid for each claim.

R156-38a-204[e]b. Claims Against the Fund by Laborers - Supporting Documents.

(1) The following supporting documents shall, at a minimum, accompany each laborer claim for recovery from the fund:

(a) one of the following:

(i) a copy of a wage claim assignment filed with the Employment Standards Bureau of the Antidiscrimination and Labor Division of the Labor Commission of Utah for the amount of the claim, together with all supporting documents submitted in conjunction therewith; or

(ii) a copy of an action filed by claimant against claimant's employer to recover wages owed;

(b) one of the following:

(i) a copy of a final administrative order for payment issued by the Employment Standards Bureau of the Antidiscrimination and Labor Division of the Labor Commission of Utah containing a finding that the claimant is an employee and that the claimant has not been paid wages due for work performed at the site of construction on an owner-occupied residence;

(ii) a copy of a civil judgment entered in favor of claimant against the employer containing a finding that the employer failed to pay the claimant wages due for work performed at the site of construction on an owner-occupied residence; or

(iii) a copy of a bankruptcy filing by the employer which prevented the entry of an order or a judgment against the employer;

(c) one of the following:

(i) a copy of the certificate of compliance issued by the [d]Division establishing that the owner is in compliance with Subsection 38-11-204(4)(a) and (b) for the residence at issue in the claim;

(ii) an affidavit from the homeowner establishing that he is an owner as defined in Subsection 38-11-102(17) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(18);

(iii) a copy of a civil judgment containing a finding that the homeowner is an owner as defined by Subsection 38-11-102(17) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(18); or

(iv) other credible evidence establishing that the owner is an owner as defined by Subsection 38-11-102(17) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(18).

(2) When a laborer makes claim on multiple residences as a result of a single incident of nonpayment by the same employer, the [d]Division must require payment of at least one application fee required under Section 38-11-204(1)(b) and at least one registration fee required under Subsection 38-11-204(7), but may waive additional application and registration fees for claims for the additional residences, where no legitimate purpose would be served by requiring separate filings.

R156-38a-204[d]c. Calculation of Costs, Attorney Fees and Interest for Payable Claims.

(1) Payment for qualified services, costs, attorney fees, and interest shall be made as specified in Section 38-11-203.

(2) When a claimant provides qualified service on multiple properties, irrespective of whether those properties are owner-occupied residences, and files claim for payment on some or all of those properties and the claims are supported by a single judgment or other common documentation and the judgment or documentation does not differentiate costs and attorney fees by property, the amount of costs and attorney fees shall be allocated among the related properties using the following formula: (Qualified services attributable to the owner-occupied residence at issue in the claim divided by Total qualified services awarded as judgment principal or total documented qualified services) x Total costs or total attorney fees.

(3)(a) For claims wherein the claimant has had judgment entered against the nonpaying party, post-judgment costs shall be limited to those costs allowable by a district court, such as costs of service, garnishments, or executions, and shall not include postage, copy expenses, telephone expenses, or other costs related to the preparation and filing of the claim application.

(b) For claims wherein the nonpaying party's bankruptcy filing precluded the claimant from having judgment entered against the nonpaying party, total costs shall be limited to those costs that would have been allowable by the district court had judgment been entered, such as, but not limited to, costs of services, garnishments, or executions, and shall not include postage, copy expenses, telephone expenses, or other costs related to the preparation and filing of the claim application.

(4) The interest rate or rates applicable to a claim shall be the rate for the year or years in which payment for the qualified services was due.

(5) If the evidence submitted in fulfillment of Subsection R156-38a-204b(7) does not specify the date or dates upon which payment was due, the [d]Division shall assume payment was due 30 calendar days after the date on which the claimant billed the nonpaying party for the qualified services.

(6) If the qualified services at issue in a claim were billed in two or more installments and payment was due on two or more dates, the claimant shall provide documentation sufficient for the [d]Division to determine each payment due date and the attendant portion of qualified services for which payment was due on that date. If the claimant does not provide sufficient documentation, the [d]Division shall assume the nonpaying party's debt accrued evenly throughout the period so an equal portion of the qualified services balance shall be applied to each billing installment.

(7) If a claimant receives partial payment for qualified services between the time judgment is entered and the claim is filed, the [d]Division shall calculate payment amounts by accruing costs, attorney fees and interest to the date of the payment then reducing the individual balances of first interest, then costs, then attorney fees, and finally qualified services to a zero balance until the entire payment is applied. The [d]Division shall then make payment of the remaining balances plus additional accrued interest on the remaining qualified services balance. [

~~R156-38a-204c. Application of Requirement that Nonpaying Party be Licensed.~~

~~The provisions of Subsection 38-11-204(4)(f) shall apply only to qualified services provided by the claimant on or after May 3, 2004.]~~

R156-38a-301a. Contractor Registration as a Qualified Beneficiary - All License Classifications Required to Register Unless Specifically Exempted - Exempted Classifications.

(1) All license classifications of contractors are determined to be regularly engaged in providing qualified services for purposes of automatic registration as a qualified beneficiary, as set forth in Subsections 38-11-301(1) and (2), with the exception of the following license classifications:

TABLE II

Primary Classification Number	Subclassification Number	Classification
E100	S211	General Engineering Contractor
	S213	Boiler Installation Contractor
	S262	Industrial Piping Contractor
		Granite and Pressure Grouting Contractor
S320	S321	Steel Erection Contractor
	S322	Steel Reinforcing Contractor
		Metal Building Erection Contractor
S340	S323	Structural Stud Erection Contractor
		Sheet Metal Contractor
S360		Refrigeration Contractor
S440	S441	Sign Installation Contractor
		Non Electrical Outdoor Advertising Sign Contractor
S450		Mechanical Insulation Contractor
S470		Petroleum System Contractor
S480		Piers and Foundations Contractor
I101		General Engineering Trades Instructor
		General Building Trades Instructor
I102		General Electrical Trades Instructor
I103		General Plumbing Trades Instructor
I104		General Mechanical Trades Instructor
I105		General Mechanical Trades Instructor

(2) ~~A [ny person holding a license requiring] licensee with a license classification that requires registration in the fund [that]whose license is on inactive status on the assessment date of any special assessment of the fund, [may defer payment of that]is not required to pay the special assessment [and any assessment made]during the time the license remains on inactive status[and the licensee does not engage in the licensed occupation or profession].~~

(3) Before a licensee can ~~[be reinstated to an active status]reactivate the license~~, the licensee must pay[:

~~(a) the initial assessment of \$195 assessed July 1, 1995, if that assessment has never been paid by that licensee; and~~

~~(b) all unpaid special assessments] any special assessment or assessments within the two years prior to the reactivation date.~~

R156-38a-301b. Event Necessitating Registration - Name Change by Qualified Beneficiary - Reorganization of Registrant's Business Type - Transferability of Registration.

(1) Any change in entity status by a registrant requires registration with the Fund by the new or surviving entity before that entity is a qualified beneficiary.

(2) The following constitute a change of entity status for purposes of Subsection (1):

- (a) creation of a new legal entity as a successor or related-party entity of the registrant;
- (b) change from one form of legal entity to another by the registrant; or
- (c) merger or other similar transaction wherein the existing registrant is acquired by or assumed into another entity and no longer conducts business as its own legal entity.

(3) A qualified beneficiary registrant shall notify the [d]Division in writing of a name change within 30 days of the change becoming effective. The notice shall provide the following:

- (a) the registrant's prior name;
- (b) the registrant's new name;
- (c) the registrant's registration number; and
- (d) proof of registration with the Division of Corporations and Commercial Code as required by state law.

(4) A registration shall not be transferred, lent, borrowed, sold, exchanged for consideration, assigned, or made available for use by any entity other than the registrant for any reason.

(5) A claimant shall not be considered a qualified beneficiary registrant merely by virtue of owning or being owned by an entity that is a qualified beneficiary.

R156-38a-302. Renewal and Reinstatement Procedures.

(1) Renewal notices required in connection with a special assessment shall be ~~mailed~~sent to each registrant at least 30 days prior to the expiration date for the existing registration established in the renewal notice. Unless the registrant pays the special assessment by the expiration date shown on the renewal notice, the registrant's registration in the fund automatically expires on the expiration date.

(2)(a) Renewal notices shall be sent by letter deposited in the post office with postage prepaid, addressed to the last address shown on the [d]Division's records. Such mailing shall constitute legal notice. It shall be the duty and responsibility of ~~each~~the registrant to maintain a current mailing address with the [d]Division; or

(b) If a registrant has authorized the Division to send a renewal notice by email, the email shall be sent to the last email address shown on the Division's records. Such mailing shall constitute legal notice. It shall be the duty and responsibility of the registrant to maintain a current email address with the Division.

(3) Renewal notices shall specify the amount of the special assessment, the application requirement, and other renewal requirements, if any; shall require that each registrant document or certify that the registrant meets the renewal requirements; and shall advise the registrant of the consequences of failing to renew a registration.

(4) Renewal applications must be received by the [d]Division in its ordinary course of business on or before the renewal application due date in order to be processed as a renewal application. Late applications will be processed as reinstatement applications.

(5) A registrant whose registration has expired may have the registration reinstated by complying with the requirements and procedures specified in Subsection 38-11-302(5).

KEY: licensing, contractors, liens

Date of Enactment or Last Substantive Amendment: [~~January 7, 2008~~2010]

Notice of Continuation: January 7, 2010

Authorizing, and Implemented or Interpreted Law: 38-11-101; 58-1-106(1)(a); 58-1-202(1)(a)

**Human Services, Child and Family Services
R512-1**

Description of Division Services, Eligibility, and Service Access

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33834

FILED: 07/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to add a purpose and authority section, add specific language about rights of parents, update terminology, and make minor formatting changes.

SUMMARY OF THE RULE OR CHANGE: The proposed changes to this rule add the statutory authority for Child and Family Services to perform rulemaking duties, add language specifying that caseworkers recognize the rights of parents to raise, manage, train, educate, provide for, and reasonably discipline their children, make revisions to update terminology, and make minor formatting changes for consistency.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-103 and Section 62A-4a-105

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will be no increase in cost or savings to the state budget because these proposed changes clarify practice, but do not increase workload that would require additional staff or other costs.
- ◆ **LOCAL GOVERNMENTS:** There will be no increase in costs or savings to local government because it was determined that this rule does not apply to local government.
- ◆ **SMALL BUSINESSES:** There will be no increase in costs or savings to small businesses because it was determined that this rule does not apply to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no increase in costs or savings to persons other than small businesses, businesses, or local government entities because it was determined that this rule does not apply to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with implementing the changes to this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no costs or savings on businesses.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
◆ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2010

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.

R512-1. Description of Division Services, Eligibility, and Service Access.

R512-1-1. Purpose and Authority.

(1) The purpose of this rule is to clarify the scope of services the Division of Child and Family Services (Child and Family Services) provides to families in Utah.

(2) This rule is authorized by Section 62A-4a-102.

R512-1-1-2. Introduction.

~~[A-](1)~~ Pursuant to Sections 62A-4a-103 and 62A-4a-105, ~~[the Division of]~~Child and Family Services~~[-(DCFS)]~~ is authorized to provide programs and services which support the strengthening of family values, including services which preserve and enhance family life and relationships; protect children, youth, and families; and ~~[which]~~advocate and defend family values established by public policy and advocacy and education.

~~[B-](2)~~ Child Welfare Services shall be made available for children who are abused, neglected, exploited, abandoned; for those whose parents are unable to care for them; and for the

assisting of youth who are ungovernable or who are runaways. ~~[Spouse-abuse]~~Domestic violence services shall be made available to assist adult victims who have been abused or threatened by their partners.

~~[C-](3)~~ ~~[The Division]~~Child and Family Services shall provide protective services, services given in the family home, short-term temporary ~~[shelter-care]~~crisis placement services, ~~[and-]~~ out-of-home placement, and adoption services. The "Best Interest of the Child" shall be the guiding principle used in making decisions for those served by ~~[the Division]~~Child and Family Services.

~~[D-](4)~~ The programs administered by ~~[the Division of-]~~ Child and Family Services have been established to help children remain with their families, to solve ~~[any appropriate-]~~problems in their homes, and, if that is not possible, to place them in ~~[substitute]~~out-of-home care for as short a time as possible. When ~~[the Division]~~Child and Family Services finds that return of a child to the family will never be possible, adoption or guardianship shall be sought to insure a permanent family for the child. ~~[The Spouse Abuse]~~Domestic violence services shall provide comprehensive assistance to adult victims of ~~[abuse]~~domestic violence, their dependent children, and in some cases, to the abusive ~~[spouse or-]~~ partner so that families can be restored to harmony or helped to develop new, more productive ways of life.

~~[E-](5)~~ ~~[The Division]~~Child and Family Services shall provide its services through local offices situated throughout the state. These offices are listed in telephone directories under Utah State Department of Human Services, Division of Child and Family Services and also on Child and Family Services' website.

~~[F-](6)~~ The State ~~[Division]~~Office of Child and Family Services located in Salt Lake City shall operate as the central office to administer Child Welfare programs, which include:

(a) ~~(+)~~ ~~[p]~~Program planning,

(b) ~~(2)~~ ~~[policy]~~Practice guideline development,

(c) ~~(3)~~ ~~[t]~~Training and consultation,

(d) ~~(4)~~ ~~[p]~~Program financing,

(e) ~~(5)~~ ~~[a]~~Administration of the Interstate Compact on Placement of Children (ICPC) and the Interstate Compact on Adoption and Medical Assistance (ICAMA),

(f) ~~(6)~~ ~~[l]~~Legislative and federal liaison, and

(g) ~~(7)~~ ~~[i]~~Information and referral.

R512-1-2-3. Prevention Services.

~~[The Division]~~Child and Family Services will either provide for, or contract for, any of several child abuse and neglect prevention services. Most prevention services shall be provided and funded according to the requirements of Section 62A-4a-309, known as the Children's Trust Account legislation.

R512-1-3-4. Intervention Services.

~~[A-](1)~~ Protective Services. Child abuse and neglect investigation and services shall be provided to eligible clients. All referrals received alleging child abuse and neglect will be screened for assessment and/or investigation~~[investigated]~~ in accordance with the provisions of Section 62A-4a-409. ~~[The Division]~~Child and Family Services' caseworkers recognize that parents have the right, obligation, responsibility, and authority to raise, manage, train, educate, provide for, and reasonably discipline their children. They also recognize that removal affects these rights, creating a long-term

impact on children. Child and Family Services' caseworkers are dedicated to maintaining children with their family when circumstances and services can make it safe for the children to remain home. Child and Family Services will determine whether or not a child has been abused or neglected, or is in danger thereof, and shall take necessary action to protect the child from potential danger. Temporary care of children in ~~shelter homes~~ crisis placements may be provided when children cannot be returned home due to the likelihood of further abuse or neglect. The parents of a child in ~~shelter care~~ a crisis placement will be kept informed of the child's health and safety and will be involved in developing plans for themselves and their child. If parents desire to visit their child in ~~shelter care~~ a crisis placement, ~~shelter~~ staff will arrange, as appropriate, visits with the child at the location designated by ~~shelter~~ staff ~~but not at the shelter home~~. Assessment and treatment services will be provided to victims of child sexual abuse and their families.

[1-](a) Access. Investigations and/or assessments will be conducted using all appropriate referrals of alleged child abuse or neglect.

[2-](b) Eligibility. A report of occurrence of child abuse or that a child is at risk thereof will constitute sufficient eligibility.

[B-](2) Youth Services. Short-term crisis counseling services and shelter to runaway, homeless, and ungovernable youth and their families~~;~~ may be provided in order to stabilize the family.

[1-](a) Access. Any youth, family, or other agency can access services defined in this rule, as long as the child is determined to be homeless, ~~or~~ ungovernable, or a runaway.

[2-](b) Eligibility. Youth who are either homeless~~;~~ or ungovernable~~;~~ or who have run away shall be eligible.

R512-1-[4]5. [Home-Based]In-Home Services.

[A-](1) In-Home Services. [~~The Division~~]Child and Family Services ~~shall~~ may offer services to families whose children are in their own homes, yet who are at a risk of or who have suffered from abuse or neglect. Services will be voluntary or court ordered, and shall be intensive to avoid unnecessary placement of children in ~~substitute care~~ protective custody. These services ~~shall~~ may include~~;~~ ~~but not be limited to~~:

(a)[(+)] ~~[h]~~Homemaker,

(b)[(2)] ~~[e]~~Child day care,

(c)[(3)] ~~[d]~~Day treatment for preschool children,

(d)[(4)] ~~[t]~~Treatment for children who have been sexually

abused,

(e)[(5)] ~~[p]~~Protective supervision, and

(f)[(6)] ~~[f]~~Family preservation services.

[1-](a) Access. Only families referred by [~~DCFS~~]Child and Family Services staff shall be provided these services.

[2-](b) Eligibility. A family must be determined to be in a state of crisis and children shall be at risk of abuse or neglect. Clients receiving treatment for preschool children and sexual abuse treatment may be required to pay a fee based on the family's ability to pay. Fees shall be calculated as a percentage of family income up to the total cost of the service. Clients receiving child care as a protective service shall not be assessed a fee; however, if the family is receiving child care and paying a fee prior to protective services, they will continue to pay day care fees.

[B-](2) Custody Studies. Upon an order of the District Court, [~~the Division~~]Child and Family Services may engage in and complete child custody studies.

[1-](a) Access. Access shall be authorized by receipt of a District Court Order.

[2-](b) Eligibility. A District Court Order will provide eligibility. The parties to the action shall be assessed a fee based upon income. Fees shall be determined from the Department fee schedule #1 for low income families. A separate fee schedule shall provide for parents to pay up to the total cost of the study based upon income for families above 150% of the median income.

[C-](3) [~~Family~~]Domestic Violence Services. For adult victims of [~~family~~]domestic violence and their minor children, shelter care facilities may be provided in order to protect the adult victim and their children from further violence. Short-term counseling may be provided to the family while in shelter, and treatment services ~~shall~~ may be offered to the perpetrator of the abuse in order to stop the violence and maintain the family as a unit. Children of abused [~~spouses~~]partners eligible for [~~D~~]domestic [~~V~~]violence services may receive child care without a fee as part of the protective services provided to the family.

[1-](a) Access. The adult victim of family violence shall have access to the services listed above by requesting protection or by referral.

[2-](b) Eligibility. The only eligibility factor is that the adult victim shall have been abused by their [~~spouse~~]partner or some other member of the family. The perpetrator may be assessed, through court order, for the costs of [~~the Division's~~]Child and Family Services providing these services.

R512-1-[5]6. Out-of-Home Care Services.

[A-](1) The following definitions apply to this section:

[1-](a) "Cohabiting" means residing with another person and being involved in a sexual relationship.

[2-](b) "Involved in a sexual relationship" means any sexual activity and conduct between persons.

[3-](c) "Residing" means living in the same household on an uninterrupted or an intermittent basis.

[B-](2) Foster [~~C~~]care and [~~G~~]group [~~C~~]care. Child placement services may be provided when parents are unable to meet their children's needs within the family. [~~The Division~~]Child and Family Services has authority to place a child when the state has been granted custody through a court order, or when a voluntary agreement has been signed by the parents, or when the child is from another state and is covered by the [~~Interstate Compact for the Placement of Children~~]ICPC. The intent of foster care or group care is to insure a permanent home for each child. This may be achieved through a return to the home, or through adoption, [~~emancipation,~~—]guardianship, or [~~permanent~~—]foster care]individualized permanency services. A [~~P~~]permanency [~~P~~]plan for each foster child, defining the goal and steps to be taken to achieve permanency, shall be formulated. Periodic reviews shall be held at least once every six months to assess progress achieved within the [~~P~~]permanency [~~P~~]plan, and to project a likely date for returning the [~~youth~~]child to the family home or to another permanent home arrangement. A dispositional hearing shall be held every [~~18~~]12 months from the date of placement to determine the

future status of the child. Foster care shall be provided in licensed family homes. A foster parent or foster parents must complete a declaration of compliance with Section 78B-6-~~137~~117 that they are not cohabiting with another person in a sexual relationship. ~~[Beginning May 1, 2000, the division]~~Child and Family Services gives priority for foster care placements to families in which both a man and a woman are legally married or valid proof that a court or administrative order has established a valid common law marriage, Section 30-1-4.5. An individual who is not cohabiting may also be a foster parent if the ~~[R]~~region ~~[D]~~director determines it is in the best interest of the child. Legally married couples and individuals who are not cohabiting and are blood relatives of the child in ~~[the divisions]~~the custody of Child and Family Services may be foster parents ~~[pursuant to Section 78A-6-307]~~. Group care shall be provided in licensed facilities which offer a more structured treatment environment than a family home. Foster homes are licensed in accordance with Rule R501-12. Residential Treatment Programs, also known as group homes, are licensed in accordance with ~~[R501-2 and R501-3-3]~~Rule R501-19.

~~[4-]~~(a) Access. Referrals can be made from Child Protective Services or from Juvenile Court and other agencies. Parents can request placement services by contacting the local ~~[DFS]~~Child and Family Services ~~[O]~~office. Referrals for foster care or group care may be screened to determine whether placement is the best option. In most cases, services which are intended to prevent placement must be first provided, before foster care or group care will be considered by ~~[the Division]~~Child and Family Services.

~~[2-]~~(b) Eligibility. Temporary child custody must be given to the ~~[S]~~state by court order, or by voluntary agreement, and most parents shall be obligated to pay support while their child is in foster care. Youth can be served in foster care or group care until age 18, or until age 21 when ordered by the court.

~~[E-]~~(3) ~~[Independent]~~Transition to Adult Living. Services may be given to older teenage foster children to teach self-sufficiency skills in order to increase their ability to be self-reliant in the future. Some who do not return to living with their parents upon leaving foster care will be allowed to live on their own. All foster children age ~~[+6]~~14 and older shall be required to be working toward at least one objective in developing independent living skills in their ~~[P]~~permanency ~~[P]~~plans.

~~[+]~~(a) Access. Access shall be given only by a referral from the foster care caseworker.

~~[2-]~~(b) Eligibility. Foster children who are at least ~~[+6]~~14 years old and who are in the custody of the [S]state shall be eligible.

~~[D-]~~(4) Adoption. This service provides adoptive homes for children in custody of the ~~[S]~~state who are legally available because the birth parents have been permanently deprived of parental rights by court action, or who have voluntarily relinquished their children for adoption. ~~[The choice of an adoptive home is based on the best interests of the child. When the children placed for adoption are hard to place because of their special needs, a subsidy payment can be approved to enable adoptions by a family needing assistance in caring for the child. Independent adoption home studies shall be completed only by direct order of a District Court.]~~

~~1.~~ Access. Access is available only by a referral from foster care staff. Adults wishing to adopt a child may apply to their

local DCFS Office for consideration. Receipt of applications can be suspended by a local office based on the number of approved homes waiting for a placement and the number of children available.

~~2.~~ Eligibility. To be eligible, the child must be in custody of the State, be legally freed for adoption, and the Division must determine that adoption is the best Permanency option for the child. Persons approved to be adoptive parents must meet certain standards before approval. Application and placement fees may be charged, or may be waived for families adopting a hard-to-place child. Fees, based on a sliding fee schedule, shall be charged for home studies sent to the U.S. Immigration Service and for completed Independent Adoption Home Studies. Authorization of subsidies for hard-to-place children shall be determined by the Division which shall assess the resources of the adoptive family to meet the child's need for maintenance or treatment.]

~~(a)~~ The choice of an adoptive home is based on the best interests of the child.

~~(b)~~ Adults who are residents of Utah who wish to adopt a child in State custody in Utah may apply to the Utah Foster Care Foundation for consideration.

~~(c)~~ Adults who are residents of other states who wish to adopt a child in State custody in Utah must meet the standards to adopt a child in their state custody as well as to comply with ICPC requirements.

~~(d)~~ Children whose special needs make it more difficult to find appropriate adoptive homes may be eligible for adoption assistance that may include Medicaid and a monthly subsidy payment based on federal qualifying factors.

~~(e)~~ To be eligible, the child must be in custody of the state and be legally freed for adoption, and the court must determine that adoption is the best permanency option for the child. Persons approved to be adoptive parents must meet certain standards before approval based on Rule R512-41-3-5. Authorization of adoption assistance for children with special needs shall be determined by Child and Family Services based on federal law.

~~[E-]~~(5) Provider Services. Persons applying to be foster care or emergency care parents shall be given information and a home study will be completed. For those approved as meeting program standards, basic training will be provided, as well as any additional training which may be required for some types of care. Annual reapproval is required.

~~[+]~~(a) Access. Persons interested in becoming foster parents or who wish to provide emergency care, such as ~~[shelter care]~~crisis placements, may apply ~~[to their local DCFS Office]~~at the Utah Foster Care Foundation.

~~[2-]~~(b) Eligibility. Any adult may apply for consideration. Persons approved to be providers must meet certain standards ~~[of the Division]~~ before approval is granted.

R512-1-~~[6]~~7. Collection of Fees.

~~[The]~~Child and Family Services regional office staff shall collect any assessed fees for services. Failure of a family to pay the assessed fee may result in the termination of the service and a referral to the Office of Recovery Services for collection. For hardship situations, a fee reduction can be considered by the ~~[D]~~director of [the Division]Child and Family Services. ~~[An appeal of any decision may be made according to the provisions of R503-5.]~~

R512-1-[7]8. Civil Rights and Due Process.

~~[The Division]~~Child and Family Services shall comply with the Department of Human Services policy of Civil Rights. ~~[The Division]~~Child and Family Services seeks to provide equal opportunity and to insure due process in all actions taken pursuant to these rules. Consumers have the right to be notified about decisions made about their eligibility for any service which is requested and received through ~~[the Division of]~~Child and Family Services, and to request a hearing if they disagree with any decision. Notice of a decision shall be sent by ~~[the Division]~~Child and Family Services when an application for service or a service payment is denied, or if a service is reduced or terminated. Consumers must make a request for any hearings regarding services and decisions specified in this rule in writing.

KEY: social services, child welfare, domestic violence, eligibility
Date of Enactment or Last Substantive Amendment: ~~[July 20, 2000]~~2010

Notice of Continuation: August 7, 2007

Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-103; 62A-4a-105

Human Services, Child and Family Services

R512-2

Title IV-B Child Welfare/Family Preservation and Support Services and Title IV-E Foster Care, Adoption, and Independent Living

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33823

FILED: 07/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to update citations to law, add a purpose and authority section, and make minor formatting changes.

SUMMARY OF THE RULE OR CHANGE: The proposed changes to this rule update citations to law, add the statutory authority for Child and Family Services to perform rulemaking duties, and make minor formatting changes for consistency.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-105

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds Title 45, Chapter XIII, Parts 1355-1357, published by Government Printing Office, 10/01/2008
- ◆ Adds Title 42, Chapter 7, Sections 620-626, 629a-629e, 670-677, 679, published by Government Printing Office, 01/03/2007
- ◆ Adds Pub. L. No. 110-351, published by Government Printing Office, 10/07/2008

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will be no increase in cost or savings to the state budget because these proposed changes add rulemaking authority for Child and Family Services, but do not increase workload that would require additional staff or other costs.
- ◆ **LOCAL GOVERNMENTS:** There will be no increase in costs or savings to local government because it was determined that this rule does not apply to local government.
- ◆ **SMALL BUSINESSES:** There will be no increase in costs or savings to small businesses because it was determined that this rule does not apply to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no increase in costs or savings to persons other than small businesses, businesses, or local government entities because it was determined that this rule does not apply to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with implementing the changes to this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no costs or savings on businesses.

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

HUMAN SERVICES

CHILD AND FAMILY SERVICES

195 N 1950 W

SALT LAKE CITY, UT 84116

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
- ◆ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2010

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.

R512-2. Title IV-B Child Welfare/Family Preservation and Support Services and Title IV-E Foster Care, Adoption, and Independent Living.

R512-2-1. Purpose and Authority.

(1) The purpose of this rule is to adopt federal requirements applicable to Titles IV-B and IV-E of the Social Security Act.

(2) This rule is authorized by Section 62A-4a-102.

R512-2-2. Child Welfare/Family Preservation and Support Services.

(1) The Division of Child and Family Services (Child and Family Services) adopts the following federal requirements applicable to Title IV-B, Subparts 1 and 2 for child welfare and family preservation and support services:

(a) 42 USC 620, 621, 622, 623, 624, 625, 626, 629, 629a, 629b, 629c, 629d, 629e [~~as updated through January 3, 2005~~] as amended by Public Law 110-351 (October 7, 2008), incorporated by reference; and

(b) 45 CFR Parts 1355 and 1357 as updated through October 1, 200[7]9, incorporated by reference.

R512-2-3. Title IV-E Foster Care, Adoption, and Independent Living.

(1) Child and Family Services adopts the following federal requirements applicable to Title IV-E Foster Care, Adoption, and Independent Living:

(a) 42 USC 670, 671, 672, 673, 674, 675, 676, 677, and 679, [~~as updated through January 3, 2005~~] as amended by Public Law 110-351 (October 7, 2008), incorporated by reference; and

(b) 45 CFR Part 1356, as updated through October 1, 200[7]9, incorporated by reference.

KEY: child welfare, foster care, adoption, eligibility[[§]]

Date of Enactment or Last Substantive Amendment: [~~May 27, 2009~~]2010

Notice of Continuation: August 7, 2007

Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 62A-4a-105

Human Services, Child and Family
Services
R512-11
Accommodation of Moral and Religious
Beliefs and Culture

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33824

FILED: 07/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to add a purpose and authority section and to make minor formatting changes.

SUMMARY OF THE RULE OR CHANGE: The proposed changes to this rule add the statutory authority for Child and Family Services to perform rulemaking duties and make minor formatting changes for consistency.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-105 and Section 62A-4a-106 and Section 62A-4a-120

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There will be no increase in cost or savings to the state budget because these proposed changes add rulemaking authority for Child and Family Services, but do not increase workload that would require additional staff or other costs.

♦ **LOCAL GOVERNMENTS:** There will be no increase in costs or savings to local government because it was determined that this rule does not apply to local government.

♦ **SMALL BUSINESSES:** There will be no increase in costs or savings to small businesses because it was determined that this rule does not apply to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no increase in costs or savings to persons other than small businesses, businesses, or local government entities because it was determined that this rule does not apply to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with implementing the changes to this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no costs or savings on businesses.

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THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2010

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.

R512-11. Accommodation of Moral and Religious Beliefs and Culture.

R512-11-1. Purpose and Authority.

(1) The purpose of this rule is to define procedures to accommodate the moral beliefs, religious beliefs, and culture of children and families served by the Division of Child and Family Services (Child and Family Services) according to Section 62A-4a-120.

(2) This rule is authorized by Section 62A-4a-102. [A-] The Division establishes by the authority of Section 62A-4a-120 a rule to define the Division's procedures to accommodate the moral beliefs, religious beliefs, and culture of the children and families it serves. The Division incorporates by reference the following Federal statutes: 42 U.S.C. 1996b; 25 U.S.C. 1901-63; 42 U.S.C. 1305; 42 U.S.C. 2000bb1-4.

R512-11-2. Definitions.

[A-](1) "Accommodate" means to adapt, adjust, or make provision to support.

(2) "Child and Family Assessment" means a document that is a collection of formal and informal assessments pertaining to the child and family identifying the strengths, resources, and needs of the family. The Child and Family Assessment is a working document used to record information, draw conclusions, and inform the Child and Family Plan.

[B-](3) "Child and Family Plan" means the collective intentions of the Child and Family Team documenting specific goals, roles, strategies, resources, and schedules for coordinated provision of assistance, supports, supervision, and services for the child, caregiver, and parents, or guardians.

[C-](4) "Child and Family Team" means a group that may consist of the child, the child's family, the [Division]Child and Family Services caseworker, the out-of-home provider, relatives, representatives of the family's moral beliefs, religious beliefs, and culture, representatives from education, health care, and law enforcement, the [g]Guardian ad [h]Litem, the parents' attorney, the [a]Attorney [g]General, and other supportive individuals as designated by the family.

[D-](5) "Culture" means the totality of socially transmitted behavior patterns characteristic of a family and includes moral beliefs and religious beliefs.

(6) "Moral beliefs" means ideas of what is right and what is wrong that shape one's outward behavior. Moral beliefs define what is decent and honorable.

[E-](7) "Religious beliefs" means faith or conviction in a system of principles or worship relating to the sacred and uniting its adherents in a community.

R512-11-3. [Division]Child and Family Services Responsibilities.

[A-](1) [The Division]Child and Family Services recognizes that children and families have the right to be understood within the context of their family's moral beliefs, religious beliefs, and culture.

[B-](2) When intervening with a family, [Division]Child and Family Services caseworkers shall ask the family to identify aspects of the family's moral beliefs, religious beliefs, and culture that are relevant to the care and placement of the child.

[C-](3) [The Division]Child and Family Services shall [convene]develop a Child and Family Team when engaging children and families.

[4-](a) The Child and Family Team shall discuss with the child and family any aspects of their moral beliefs, religious beliefs, and culture that they wish to have accommodated.

[2-](b) The Child and Family [Plan]Assessment shall document the moral beliefs, religious beliefs, and culture of the child and family and the accommodations requested by the child and family. It shall document the method [the Division]that Child and Family Services will employ to make the accommodation or the reasons that such accommodation is not reasonable or proper. Accommodations shall be reflected in the Child and Family Plan.

[3-](c) The decisions of the Child and Family Team related to accommodations of moral beliefs, religious beliefs, and culture shall be documented in the Child and Family [Plan]Assessment and reflected in the services and provisions made in the Child and Family Plan. Any accommodation that cannot be provided shall be explained to the child and family and noted in the Child and Family Plan.

[4-](d) When [the Division]Child and Family Services is not able to accommodate exactly some aspect of the family's moral beliefs, religious beliefs, or culture, the Child and Family Team may explore the best way to accommodate the moral beliefs, religious beliefs, or culture of the child and family.

[5-](e) The accommodations in the Child and Family Assessment and Child and Family Plan shall be periodically reviewed with the parents or caregivers, along with all other requirements, to assure that the moral beliefs, religious beliefs, and culture of the child and family are met according to the [requirements of]decisions made by the Child and Family [Plan]Team.

[D-](4) The planning and implementation of all other activities provided by [the Division]Child and Family Services [that do not require a Child and Family Team] shall identify in the Child and Family Assessment and the Child and Family Plan aspects of the family's moral beliefs, religious beliefs, and culture that are relevant to the service. Documentation shall identify any requested accommodation and the method [the Division]Child and Family Services employs to make accommodation for the child and family or the reasons accommodation is not reasonable or appropriate.

KEY: child welfare**Date of Enactment or Last Substantive Amendment:** ~~[June 1, 2006]~~2010**Authorizing, and Implemented or Interpreted Law:** ~~62A-4a-102; 62A-4a-105; 62A-4a-106; 62A-4a-120~~

Human Services, Child and Family
Services
R512-41
Qualifying Adoptive Families and
Adoption Placement

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33833

FILED: 07/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to add a purpose and authority section and to make minor formatting changes.

SUMMARY OF THE RULE OR CHANGE: The proposed changes to this rule add the statutory authority for Child and Family Services to perform rulemaking duties, make revisions to update terminology, and make minor formatting changes for consistency.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-105 and Section 62A-4a-205.6

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds Pub. L. No. 110-351, published by Government Printing Office, 10/07/2008

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will be no increase in cost or savings to the state budget because these proposed changes add rulemaking authority for Child and Family Services and make revisions to update terminology, but do not increase workload that would require additional staff or other costs.
- ◆ **LOCAL GOVERNMENTS:** There will be no increase in costs or savings to local government because it was determined that this rule does not apply to local government.
- ◆ **SMALL BUSINESSES:** There will be no increase in costs or savings to small businesses because it was determined that this rule does not apply to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no increase in costs or savings to persons other than small businesses, businesses, or local government

entities because it was determined that this rule does not apply to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with implementing the changes to this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no costs or savings on businesses.

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

HUMAN SERVICES

CHILD AND FAMILY SERVICES

195 N 1950 W

SALT LAKE CITY, UT 84116

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
- ◆ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2010

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.**R512-41. Qualifying Adoptive Families and Adoption Placement.****R512-41-1. Purpose and Authority.**

(1) The purpose of this rule is to define the requirements used to qualify adoptive parents or individuals and the criteria for adoption placement used by the Division of Child and Family Services (Child and Family Services).

(2) This rule is authorized by Section 62A-4a-102. This rule also incorporates by reference Public Law 110-351 (2008). [As authorized by Sections 62A-4a-102, 62A-4a-105, and 62A-4a-205.6, Child and Family Services qualifies adoptive parents and individuals for the adoption of children in the custody of Child and Family Services. This rule specifies the requirements used to qualify adoptive parents or individuals and the criteria for adoption placement.]

R512-41-2. Definitions.

[A:] (1) For the purpose of this rule the following definitions apply:

[+:] (a) "Adoptive parent(s)" means a family or individual who completes Child and Family Services training for prospective adoptive parent(s) and is approved by a licensed child placement agency or by Child and Family Services.

[2-](b) "Cohabiting" means residing with another person and being involved in a sexual relationship.

[3-](c) "Involved in a sexual relationship" means any sexual activity and conduct between persons.

[4-](d) "Permanency" means the establishment and maintenance of a permanent living situation for a child to give the child an internal sense of family stability and belonging and a sense of self that connects the child to his or her past, present, and future.

[5-](e) "Residing" means living in the same household on an uninterrupted or an intermittent basis.

R512-41-3. Requirements for Adoptive Parent(s).

[A-](1) Prospective adoptive parent(s) who apply to adopt a child in the custody of Child and Family Services, including kin or Child and Family Services employees, must meet all of the following requirements, pursuant to Rule R512-40[4]:

[1-](a) [e]Complete the adoption training program approved by Child and Family Services;

[2-](b) [b]Be assessed and approved as adoptive parent(s) following completion of a home study by a licensed child placement agency or by Child and Family Services;

[3-](c) [e]Obtain a foster care license issued by the Department of Human Services, Office of Licensing, or meet the same standards, or receive a written waiver from Child and Family Services of a standard;

[4-](d) [f]Receive a determination by Child and Family Services that no conflict of interest exists in the adoption process.

R512-41-4. Adoption [Assessment]Evaluation Requirements.

[A-](1) An adoption [assessment]evaluation must be consistent with the standards of the Child Welfare League of America (the [assessment]evaluation may be done by a licensed child placement agency or Child and Family Services) and must include the following:

[1-](a) [a]An autobiography or psychosocial [inventory-ef]information gathered from the prospective adoptive parent(s) and family members;

[2-](b) [a]A behavioral assessment of the prospective adoptive parent(s) and children living at home;

[3-](c) [a]A declaration that applicants are not cohabiting in a relationship that is not a legal marriage and are in compliance with Section 78B-6-[137]117;

[4-](d) [a]A health status verification of the prospective adoptive parent(s) and children living at home;

[5-](e) [a]A verification of financial status;

[6-](f) [a]An assessment of home safety and health;

[7-](g) [a]A criminal background check of all adults present in the home, including a national fingerprint-based check of prospective adoptive parents that is approved according to criteria specified in Section 62A-2-120;

[8-](h) [a]A screening of all adults present in the home against the child abuse data base, including for prospective adoptive parents a check of child abuse registries in any states in which the prospective adoptive parents have resided in the five years prior to application to adopt;

[9-](i) [a]An assessment of the prospective adoptive parent(s) parenting skills;

[10-](k) [f]Recommendation of the types of children that may be appropriate for the prospective adoptive parent(s).

R512-41-5. Matching the Child and the Adoptive Parent(s).

[A-](1) In the matching process, the selection of the adoptive parent(s) will be in the best interest of the child.

[B-](2) The decision must be based on a thorough assessment of the child's current and potential development, medical, emotional, and educational needs.

[C-](3) The capacity of the prospective adoptive parent(s) to successfully meet the child's needs and to love and accept the child as a fully integrated member of the family must be considered.

[D-](4) The child's preference may be considered, if the child has the capacity to express a preference.

[E-](5) ~~When possible and appropriate, s~~Sibling groups should not be separated.

~~(a) If siblings are not placed together and there are no safety concerns that preclude the siblings being together, the adoption committee should reconsider a family for all the siblings to be adopted together.~~

~~(b) If the siblings are not able to be adopted together or if being taken from a current family would create undue trauma to the child, arrangements should be made to allow life-long contact to be pursued between the adoptive families of the separated siblings.~~

[F-](6) Foster care parent(s) (or other caregiver with physical custody) of the child may be given preferential consideration for adoption if the child has substantial emotional ties with the foster parent(s)/caregiver and if removal of the child from the foster parent(s)/caregiver would be detrimental to the child's well-being.

[G-](7) Geographic boundaries alone should not present barriers or delays to the selection of adoptive parent(s).

[H-](8) The Indian Child Welfare Act, 25 USC [1901-1963]1915 (January 3, 2007), takes precedent for an adoption of an Indian child who is a member of a federally recognized tribe or Alaskan native village.

[I-](9) Placements will be made in accordance with the Interethnic Adoption Act, 42 USC 1996b (January 3, 2007).

~~J- Child and Family Services observes the following priorities for adoption of children in Child and Family Services' custody:~~

~~1- (10) Child and Family Services gives priority for adoptive placements to families in which both a man and a woman are legally married under the laws of this state or valid proof that a court or administrative order has established a valid common law marriage as specified in Section 30-1-4.5. An individual who is not cohabiting may also be considered as an adoptive parent, if the Region Director determines it is in the best interest of the child.~~

R512-41-6. Adoption Decision.

[A-](1) Permanency decisions should be made in a timely manner, recognizing the child's developmental needs and sense of time. Child and Family Services shall make intensive efforts to place the child with the adoptive parent(s) within 30 days after the court has freed the child for adoption.

[B-](2) When the child is not residing with the family that will adopt the child, Child and Family Services will appoint and convene an adoption committee or committees to select adoptive parent(s) in the best interest of the child and to determine the level of adoption assistance, if any. The adoption committee is also responsible for recommending removal of the child from a placement.

~~[C-]~~(3) The adoption committee will consist of at least three members to include senior-level Child and Family Services staff and one or more members from an outside agency with expertise in adoption or foster care.

~~[D-]~~(4) Anyone who has information regarding the child and the potential matching families may be invited by the adoption committee to present information but not to participate in the deliberations. The adoption committee will reach its decision through consensus. If consensus cannot be reached, the adoption committee will submit their recommendation to the Region Director. The Region Director may confer with the Child and Family Services Director for the final decision.

~~[E-]~~(5) The adoption committee will make and retain a written record of their proceedings. All proceedings are confidential.

~~[F-]~~(6) Any member of the adoption committee who has a potential conflict of interest must recuse himself or herself from the proceeding.

~~[G-]~~(7) Child and Family Services will send written notification of selection to the adoptive parent(s).

~~[H-]~~(8) Child and Family Services shall provide detailed information about the child to the prospective adoptive parent(s), allowing sufficient time for the prospective adoptive parent(s) to make an informed decision regarding placement of the child. The information given to the prospective adoptive parent(s) must ~~[be a full disclosure]~~ include detailed ~~[of all]~~ information available in writing that is important to raise the child ~~[and committed to writing]~~. Release of all documents is subject to the Government Records Management Act. The prospective adoptive parent(s) shall be advised of possible financial and medical assistance available to meet the special needs of the child. Child and Family Services and the prospective adoptive parent(s) will acknowledge receipt of the information by signing a Child and Family Services' information disclosure form. Child and Family Services shall respond to questions or concerns of the potential adoptive parent(s). The prospective adoptive parent(s) shall have the opportunity to meet the child prior to permanent placement.

~~[I-]~~(9) A family or individual that is not selected for an adoption placement of a specific child shall have no right to appeal the decision, unless the parent(s) not selected for the adoptive placement is the child's current foster parent(s) and the foster parent(s) have completed all requirements. If the foster parent(s) are not selected for the adoptive placement, the foster parent(s) due process rights for removal of a child apply ~~[Foster Parents Due Process, Utah Administrative Code, Human Services Rule,] (Rule R512-31)~~.

~~[J-]~~(10) When the approved adoptive parent(s) agree to accept the placement of a child for adoption, the adoptive parent(s) and a representative from Child and Family Services shall sign an ~~[adoption]~~ agreement for the intent to adopt a specific child on a form provided by Child and Family Services.

~~[K-]~~(11) When the adoptive parent(s) agree to accept the placement of a child who is not free for adoption, the parent(s) shall sign Child and Family Services' ~~[Foster Child Adoption]~~ foster care agreement.

R512-41-7. Information Regarding the Adoptive Parent(s).

~~(1)~~ No identifying information regarding the adoptive parent(s) shall be released to birth families without the written consent of the adoptive parent(s).

R512-41-8. Placement.

~~[A-]~~(1) Child and Family Services will make every effort to make a smooth and effective transition of the child to the adoptive parent(s) with the cooperation of the foster family and others who have a supportive relationship with the child. All out-of-home requirements continue to be applicable until the adoption is finalized.

~~[B-]~~(2) The ~~[A]~~ adoptive parent(s) will have access to all relevant information in the case record to help them understand and accept the child and preserve the child's history. Child and Family Services will inform the adoptive parent(s) of community services and adoption assistance available before and after the adoption is final.

~~[C-]~~(3) Child and Family Services will develop a ~~[service plan]~~ Child and Family Plan within 30 days of placement and supervise the adoptive parent(s), including frequent visits with the child for at least the first six months after placement.

~~[D-]~~(4) Child and Family Services' supervision will continue until the adoption is final.

R512-41-9. Adoption Disruption/Removal of a Child from Adoptive Parent(s) Prior to Finalization.

~~[A-]~~(1) Child and Family Services shall consider removal of a child before an adoption is finalized if the adoptive parent(s) request removal or if serious circumstances impair the child's security or development.

~~[B-]~~(2) Prior to removal, Child and Family Services shall respond to the adoptive parent(s)' concerns in a timely manner, counsel with the adoptive parent(s), and, if possible and appropriate, offer further treatment, including intensive in-home services or temporary removal of the child from the home for respite purposes.

~~[C-]~~(3) When removal is recommended, the adoption committee shall review the placement progress ~~[and]~~ present situation, and shall decide to either continue placement with further services or to remove the child from the home. The Region Director will review and approve the decision.

~~[D-]~~(4) If the adoption committee decides to remove the child, a Notice of Agency Action shall be sent to the adoptive parent(s), notifying them of their due process rights. The adoptive parent(s) shall be offered the same rights as those offered a foster family regarding removal of a child ~~[Utah Administrative Code, Human Services,] (Rule R512-31)~~.

~~(5)~~ Child and Family Services will reconsider any potential kinship caregivers if the child is disrupted or removed from an adoptive placement or a permanent placement has not been identified.

R512-41-10. Adoption Finalization and Post Adoption.

~~[Before an adoption is final, the adoption committee shall review the placement, authorize finalization, and approve adoption assistance, when appropriate. Utah Administrative Code, Human~~

Services, R512-43:](1) Before an adoption is final, the adoption assistance committee shall assess if the child qualifies for adoption assistance and, when appropriate, what level of monthly subsidy the child is eligible to receive (Rule R512-43).

(2) The prospective adoptive family shall be made aware of available post adoption resources.

R512-41-11. Adult Adoptee or Adoptive Parent(s) Request for Records.

(1) The adoption records of Child and Family Services shall be made available to the adoptive parent(s) or adult adoptee upon written request in accordance with the Government Records Access Management Act, Title 63G, Chapter 2. An adult adoptee may also register with the Utah Department of Health Adoption Registry, Section 78B-6-144.

KEY: child welfare, adoption

Date of Enactment or Last Substantive Amendment:
[September 23, 2008]2010

Notice of Continuation: May 7, 2009

Authorizing, and Implemented or Interpreted Law:
62A-4a-102; 62A-4a-105; 62A-4a-205.6

Human Services, Child and Family
Services
R512-43
Adoption Assistance

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33825

FILED: 07/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to update citations to law and correct language around the termination of adoption assistance requirements.

SUMMARY OF THE RULE OR CHANGE: The proposed changes to this rule update citations to law and specify when termination of adoption assistance will occur.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-106 and Section 62A-4a-901 and Section 62A-4a-902 and Section 62A-4a-903 and Section 62A-4a-904 and Section 62A-4a-905 and Section 62A-4a-906 and Section 62A-4a-907

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds Title 45, Chapter XIII, Part 1356.40, published by Government Printing Office, 10/01/2009
- ◆ Adds Title 42, Chapter 7, Section 673, published by Government Printing Office, 01/03/2007
- ◆ Adds Pub. L. No. 110-351, published by Government Printing Office, 10/07/2008
- ◆ Adds Title 45, Chapter XIII, Part 1356.41, published by Government Printing Office, 01/03/2007

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will be no increase in cost or savings to the state budget because these proposed changes add rulemaking authority for Child and Family Services, but do not increase workload that would require additional staff or other costs.
- ◆ **LOCAL GOVERNMENTS:** There will be no increase in costs or savings to local government because it was determined that this rule does not apply to local government.
- ◆ **SMALL BUSINESSES:** There will be no increase in costs or savings to small businesses because it was determined that this rule does not apply to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no increase in costs or savings to persons other than small businesses, businesses, or local government entities because it was determined that this rule does not apply to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with implementing the changes to this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no costs or savings on businesses.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
- ◆ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2010

AUTHORIZED BY: Brent Platt, Director

R512. Human Services, Child and Family Services.

R512-43. Adoption Assistance.

R512-43-[2]1. Purpose and Authority.

(1) The purpose of the adoption assistance program is to aid an adoptive family to establish and maintain a permanent adoptive living arrangement for a child who qualifies for the program under state and federal law.

(2) The adoption assistance program is intended to provide a permanent family for a child in public foster care or who receives Supplemental Security Income (SSI) by providing financial and medical assistance for the child's benefit and best interest to the family who adopts the child.

(3) Section 62A-4a-901, et seq. authorizes the state to provide adoption assistance and supplemental adoption assistance and Section 473, Social Security Act, authorizes federal adoption assistance. Section 473, Social Security Act (42 USC 673) [(2004)]as amended by Public Law 110-351 (October 7, 2008), 45 CFR 1356.40[-] [(2000)](October 1, 2009), and 45 CFR 1356.41 [(2000)](October 1, 2009) are incorporated by reference.

(4) This rule is authorized by Section 62A-4a-102.

R512-43-[4]2. Definitions.

In addition to terms defined in Section 62A-4a-902, the following terms are defined for purposes of this rule:

(1) Initiation of adoption proceedings means the earlier of (a) the date an Adoption Agreement is signed with Child and Family Services for placement of a child in the home, or (b) the date an adoption petition is filed.

(2) Child in public foster care means a judicially removed child whose placement resulting in adoption was immediately preceded by protective, temporary, or legal custody with a State IV-E agency, or a child who was placed with a State IV-E agency through a Voluntary Placement Agreement, or the child of a minor parent in foster care.

(3) A child or youth who was taken into protective custody and, as a result of the protective episode, was placed with a relative who was given legal custody meets the definition of a child in public foster care.

(a) If the court orders Child and Family Services to continue to provide Protective Supervision Services for the family in making safety and permanency decisions for the child, including placement decisions and permanency goals, the child is eligible for adoption assistance if the child's permanency goal becomes adoption, if all other criteria in R512-43-3(1-4) are met.

(i) This may include a change in placement to another relative while the Protective Supervision Services continue to be court ordered.

(4) State IV-E agency means Child and Family Services or a public agency or tribal organization with whom Child and Family Services has an agreement in effect for foster care maintenance payments in accordance with Title IV-E, Section 42 USC 672.

(5) AFDC means the Aid to Families with Dependent Children program that was in effect on July 16, 1996.

(6) Child with a previous IV-E agreement means a child who was Title IV-E eligible in a previous adoption with a fully executed adoption assistance agreement originating in any state, and the previous adoption was legally dissolved or ended due to the death of both of the adoptive parents.

R512-43-3. General Requirements for Adoption Assistance.

(1) Qualification for adoption assistance is based upon the child meeting qualifying factors, not the adoptive family.

(2) A child qualifies for adoption assistance if all of the following are met:

(a) The state has determined that the child cannot or should not be returned home.

(b) The state can document that reasonable efforts were made to place the child for adoption without providing adoption assistance. An exception applies if the child has significant emotional ties with the adoptive family and it is not in the child's best interest to consider a different adoptive placement.

(c) The state determines the child meets the definition of a child with a special need in accordance with Section 62A-4a-901, et seq.

(i) A child under age five in public foster care meets the special need definition of "a child with a physical, emotional or mental disability" when the child is at risk to develop such a condition due to specific factors identified in the child's or birth parents' health and social histories.

(3) In determining eligibility for adoption assistance, there is no income eligibility requirement or means test for the adoptive parents.

(4) A child must be a U.S. citizen or qualified alien to receive adoption assistance.

(5) An application for adoption assistance is submitted to the regional adoption [subsidy]assistance committee on a form provided by Child and Family Services.

(6) Application for adoption assistance, approval, and completion of the adoption assistance agreement, including signatures of an adoptive parent and a representative from Child and Family Services, are to be completed prior to finalization of the adoption.

(7) Adoptive parents may request adoption assistance after an adoption is finalized by requesting a fair hearing through the Office of Administrative Hearings. Adoption assistance may only be granted after finalization when the conditions stated in R512-43-11-2(a) are met.

(8) Adoption assistance usually begins after finalization of an adoption. However, adoption assistance may be initiated at the time of placement if the child is legally free for adoption, the adoptive home is approved, adoption proceedings are initiated, an adoption assistance agreement is fully executed prior to placement, and foster care maintenance payments are not being provided for the child.

(9) An adoption assistance agreement shall be approved and have all required signatures before any payments may be made to an adoptive family or before state medical assistance may be initiated.

(10) A qualified child shall continue to be eligible to receive adoption assistance until a child reaches age 18 unless causes for termination apply as stated in R512-43-10. Assistance may be extended until a child reaches age 21 when the regional

adoption [subsidy]assistance committee has determined that the child has a mental or physical disability that warrants continuing assistance.

(a) An extension of adoption assistance beyond age 18 is warranted if the child meets the criteria for services in the Department of Human Services, Division of Services for People with Disabilities.

(11) Child and Family Services is responsible for notifying a prospective adoptive family of the availability of adoption assistance when the family begins an adoptive placement of a qualified child in public foster care.

(12) The adoptive parents are responsible to notify Child and Family Services of any circumstances that may affect the child's eligibility for adoption assistance or eligibility for adoption assistance in a different amount.

R512-43-4. Reimbursement of Non-Recurring Adoption Expenses.

(1) A parent who adopts a child meeting all of the qualifying factors for adoption assistance listed in R512-43-3(2) may be reimbursed for non-recurring adoption expenses on behalf of the child.

(2) A parent may be reimbursed up to \$2,000 per child for allowable non-recurring expenses directly related to the legal adoption of a child with a special need. Reimbursement shall be limited to costs approved by the regional adoption [subsidy]assistance committee.

(3) Expenses may include reasonable and necessary adoption fees, court costs, adoption-related attorney fees, [adoption home study]pre-placement adoptive evaluation, health and psychological examinations of adoptive parents, [supervision of the placement]post-placement adoptive evaluation prior to adoption, and transportation and reasonable costs of lodging and food for the child and/or adoptive parents during the placement or adoption process.

(4) Adoptive parents are responsible to provide necessary receipts for reimbursement.

(5) Only costs that are incurred in accordance with State and Federal law and that have not been reimbursed from other sources or funds may be included.

(6) Non-recurring adoption expenses are reimbursable through Title IV-E Adoption Assistance. The child does not have to be determined Title IV-E eligible for the parents to receive this reimbursement.

R512-43-5. Monthly Subsidy.

(1) Qualifying for a Monthly Subsidy.

A child qualifies for a monthly subsidy when the following requirements are met:

(a) The child meets all of the qualifying factors for adoption assistance listed in R512-43-3(2), and

(b) The child meets the definition of child in public foster care, qualifies for SSI, or the child had a previous IV-E agreement or Utah state adoption assistance agreement.

(c) The child's eligibility for SSI benefits is established no later than the time adoption proceedings are initiated.

(2) Guiding Principles for Monthly Subsidies.

(a) The amount of monthly subsidy to be paid for a child is based on the child's present and long-term treatment and care

needs and available resources, including the family's ability to meet the needs of the child. A combination of the parents' resources and subsidy should cover the ordinary and special needs expenses of the child projected over an extended period of time.

(b) The amount of the monthly subsidy may not exceed the payment that would be made if the child was placed in a foster family home at the point in time when the agreement is being initiated or revised.

(c) The amount of monthly subsidy may increase or decrease when the child's level of need or the family's ability to meet those needs changes. The family or the caseworker may initiate a change in the amount of subsidy at any time when needs or resources change.

(d) For a child in public foster care, the requested amount of monthly subsidy is negotiated between the adoptive parent and caseworker. The Adoptive Parent Statement of Disclosure items must be reviewed in depth by the caseworker and adoptive parent prior to subsidy negotiation.

(e) The amount of the monthly subsidy is subject to the approval of the regional adoption [subsidy]assistance committee. If the requested amount is not granted, the adoptive parent has a right to appeal as stated in R512-43-11.

(3) Process for Determining Monthly Subsidy Amount.

(a) Utilizing the level of need criteria specified in R512-43-5(4), the caseworker and adoptive family identify the child's level of need.

(b) The caseworker and adoptive family identify the applicable monthly subsidy payment range, according to the child's specified level of need, as specified in R512-43-5(5).

(c) The caseworker and adoptive family negotiate the amount of monthly subsidy to be requested from the regional adoption [subsidy]assistance committee. The requested monthly subsidy amount may not exceed the maximum amount for the specific level of need identified for the child nor the maximum amount that the child would receive if placed in a foster family home.

(d) The identified need level for the child and requested amount of monthly subsidy is presented to the regional adoption [subsidy]assistance committee for approval. If the requested amount is not approved or is reduced by the committee, Child and Family Services must send a written notice to the adoptive parents within 30 days informing them of the process to request a fair hearing.

(4) Determining Child's Level of Need.

(a) The level of need is determined by considering the child's age, history, physical, mental, emotional, and social functioning and needs, and any other relevant factors. Frequency of occurrence, duration, severity, and number of needs or problem areas are also considered.

(b) The presence of a particular issue listed within a designated level does not mandate that the child be categorized at that level. The child's needs, taken as a whole, determine the level selected for the child.

(c) Level of need is classified into three categories.

(i) Level One applies to a child with a minimal number and severity of needs. It is expected that most of these issues will improve with time, and significant improvement may be anticipated over the course of the adoption. For children ages five and under issues may include, but are not limited to: feeding problems,

aggressive or self destructive behavior, victimization from sexual abuse, victimization from physical abuse; or no more than one developmental delay in fine motor, gross motor, cognitive or social/emotional domains. For children ages 6-18, issues may include but are not limited to: social conflict, physical aggression, minor sexual reactivity, need for education resource classes or tutoring, some minor medical problems requiring ongoing monitoring, or mental health issues requiring time limited counseling.

(ii) Level Two applies to a child with a moderate number and severity of needs. It is expected that a number of these issues are long-term in nature and the adoptive family and child will be working with them over the course of the adoption, and some may intensify or worsen if not managed carefully. Outside provider support will probably continue to be needed during the course of the adoption. For children ages five and under, issues may include, but are not limited to: developmental delays in two or more areas of fine motor, gross motor, cognitive or social/emotional domains; diagnosis of failure to thrive; moderate genetic disease or physical handicapping condition; or physical aggression expressed several times a week, including superficial injury to self or others. For children ages 6-18, issues may include, but are not limited to: daily social conflict or serious withdrawn behavior; moderate risk of harm to self or others due to physically aggressive behavior; emotional or psychological issues with a DSM-IV diagnosis requiring ongoing counseling sessions over an extended period of time; moderate sexual reactivity or perpetration; chronic patterns of being destructive to items or property; cruelty to animals; mild mental retardation or autism, with ongoing need for special education services; and physical disabilities requiring ongoing attendant care or other caretaker support.

(iii) Level Three applies to a child with a significant number or high severity of needs. It is expected that these issues will not moderate and may become more severe over time. The child's level of need may at some time require personal attendant care or specialized care outside of the home, when prescribed by a professional. For children ages five and under issues may include, but are not limited to: severe life threatening medical issues; moderate or severe retardation or autism; serious developmental delays in three or more areas of fine or gross motor, cognitive or social/emotional domains; anticipated need for ongoing support for activities of daily living, such as feeding, dressing and self care; or high levels of threat for harm to self or others due to aggressive behaviors. For children ages 6-18 issues may include, but are not limited to: moderate or severe retardation or autism; life threatening medical issues; severe physical disabilities not expected to improve over time; predatory sexual perpetration; high risk of serious injury to self or others due to aggressive behavior; serious attempts or threats of suicide; severely inhibiting DSM-IV diagnosed mental health disorders diagnosed within the past year that limit normal social and emotional development, such as an Axis 5 GAF score under 50; or need for ongoing self contained or special education services.

(d) The regional adoption [subsidy]assistance committee must approve the level of need identified for the child.

(5) Identifying Amount for Monthly Subsidy Based Upon the Child's Level of Need.

(a) Each level of need corresponds to a dollar range in the amount of monthly subsidy that may be paid for a child, with the

specific amount based upon the individual child's needs and the family's ability to meet those needs.

(b) The monthly subsidy amount for an individual child may not exceed the maximum amount for the payment range applicable to the child's level of need. A family may choose to defer receipt of a monthly subsidy for which a child qualifies, with the option to initiate a monthly subsidy at a later date, or to receive a lesser amount than would be allowable for the level of need at a given point in time.

(c) Monthly subsidy payments for a child's needs categorized as Level One range from zero to 40 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(d) Monthly subsidy payments for a child's needs categorized as Level Two range from 41 to 70 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(e) Monthly subsidy payments for a child's needs categorized as Level Three range from 71 to 100 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(f) For extraordinary, infrequent, or uncommon documented needs that cannot be covered by a monthly subsidy or state medical assistance, refer to supplemental adoption assistance in R512-43-7.

(6) Funding Sources and Eligibility for Monthly Subsidy.

(a) The two funding sources for the monthly subsidy are Title IV-E Adoption Assistance and state adoption assistance funds. The child's eligibility determines which funding source is used for payment.

(b) Title IV-E Adoption Assistance shall be considered first for the monthly subsidy. To receive Title IV-E Adoption Assistance, a child with special needs shall meet at least one of the following Federal requirements:

(i) A child is determined eligible for SSI by the Social Security Administration prior to the initiation of adoption proceedings.

(ii) The removal home for the child in public foster care received, or would have been eligible to receive, AFDC prior to removal, and the child was removed from the home as a result of a judicial determination that remaining in the home would be contrary to the child's welfare.

(iii) The child was voluntarily placed for foster care with the state and:

(A) Was or would have been AFDC eligible at the time of removal if application had been made,

(B) The child lived with a specified relative within the six months prior to the voluntary placement, and

(C) Title IV-E foster care maintenance payments were made on behalf of the child.

(iv) The child's needs were met through foster care maintenance payments made to and for the child's minor parents as provided by Subsection 475(4)(B) of the Social Security Act.

(v) The child had a previous IV-E adoption assistance agreement.

(c) State adoption assistance funds may be used for the monthly subsidy if the qualified child is not eligible for Title IV-E Adoption Assistance.

(7) Use of the monthly subsidy. The monthly subsidy may be used according to the parents' discretion. Some examples of the uses of the monthly subsidy payment are medical, dental, or mental health services not paid for by the state medical assistance or family insurance, special equipment for physically or mentally challenged children, respite care, ~~day~~child care, therapeutic equipment, minor renovation of the home to meet special needs of the child, damage and repairs, speech therapy, tutoring, specialized preschool based on needs of the child, private school, exceptional basic needs such as special food, clothing, and/or shelter, visitations with biological relatives, cultural and heritage activities and information.

R512-43-6. State Medical Assistance.

(1) A child qualifies for state medical assistance as a component of adoption assistance when all of the following requirements are met:

- (a) The child meets all of the qualifying factors for adoption assistance listed in R512-43-3(2), and
- (b) The child meets the definition of child in public foster care, qualifies for SSI, or the child had a previous IV-E adoption assistance agreement or Utah state adoption assistance agreement.
 - (i) The child's eligibility for SSI benefits is established no later than the time adoption proceedings are initiated.
- (c) The child meets state medical assistance citizenship requirements.

(2) A qualified child may receive state medical assistance through an adoption assistance agreement without also receiving a monthly subsidy payment.

(3) The adoptive family must meet all Medicaid requirements, including application, citizenship verification, and annual review requirements in order for Medicaid to be initiated and continue throughout the period of the adoption assistance agreement.

R512-43-7. Supplemental Adoption Assistance.

(1) A child meeting all qualifying criteria for a monthly subsidy and for whom an adoption assistance agreement for a monthly subsidy or state medical assistance is in effect may qualify for supplemental adoption assistance.

(2) Supplemental adoption assistance may only be used for extraordinary, infrequent, or uncommon documented needs not otherwise covered by a monthly subsidy, state medical assistance, or other public benefits for which a child who has a special need is eligible.

(3) Supplemental adoption assistance is not an entitlement, and will be granted only when justified by unique needs of the child and when all other resources for which a child is eligible have been exhausted.

(4) Supplemental adoption assistance requests up to \$3,000 will be considered and are subject to the approval of the regional adoption ~~subsidy~~assistance committee.

(5) Supplemental adoption assistance requests from \$3,001 to \$10,000 shall be considered by the appropriate regional advisory committee established under Subsection 62A-4a-905(2).

(6) Supplemental adoption assistance requests exceeding \$10,001 shall be considered by a state level advisory committee with the same membership composition as the regional advisory committees.

(7) Recommendations from the advisory committee are subject to the approval of the Region Director or designee.

(8) Any obligation made or expense incurred by a family prior to approval shall not be reimbursed with supplemental adoption assistance funds unless approval is granted by the Region Director.

(9) A request for an amendment or extension of an existing supplemental adoption assistance agreement will be reviewed by the same committee that reviewed the initial request. If the total amount of multiple requests in a year is \$3,000 to \$10,000, the request shall be submitted to the appropriate regional advisory committee. If the request exceeds \$10,000, the request shall be submitted to the state level advisory committee.

(10) Supplemental adoption assistance is subject to the availability of state funds appropriated for adoption assistance.

R512-43-8. Regional Adoption ~~Subsidy~~Assistance Committee.

(1) Each region shall establish at least one regional adoption ~~subsidy~~assistance committee.

(2) The regional adoption ~~subsidy~~assistance committee shall be comprised of at least five members, and a minimum of three members must be present for making decisions regarding adoption assistance. Decisions shall be made by consensus.

(3) Members of the committee may include the following:

- (a) Chairperson;
- (b) Clinical consultant or casework supervisor;
- (c) Regional budget officer or fiscal representative;
- (d) Allied agency representative from agencies such as a community mental health center, private adoption agency, or other agencies within the department;
- (e) Regional administrator or other staff with relevant responsibilities;
- (f) Adoptive or foster parent.

(4) Responsibilities of the regional adoption assistance committee include:

- (a) Verification that a child qualifies for adoption assistance,
- (b) Approval for reimbursement of allowable, reasonable non-recurring costs,
- (c) Approval of level of need and amount of monthly subsidy for initial requests, changes, and renewals,
- (d) Approval of supplemental adoption assistance up to \$3,000,
- (e) Extension of adoption assistance up to age 21 for a qualifying child,
- (f) Renewal of adoption assistance, and
- (g) Documentation of committee decisions.

R512-43-9. Adoption Assistance Review.

(1) The adoption assistance agreement for a monthly subsidy or state medical assistance shall continue until the month of the adopted child's 18th birthday.

(2) An agreement for supplemental adoption assistance exceeding \$3,000 shall be reviewed according to a time frame determined on a case by case basis by the appropriate regional advisory committee.

R512-43-10. Termination of Adoption Assistance.

(1) An adoption assistance agreement for a monthly subsidy or state medical assistance shall be terminated if any of the following occur:

- (a) The terms of the adoption assistance agreement are concluded.
- (b) The adoptive parents request termination.
- (c) The ~~month following the child's 18th birthday~~~~[child reaches age 18]~~, unless approval has been given by the adoption ~~[subsidy]assistance~~ committee to continue until ~~the month following the child's 21st birthday~~~~[age 21]~~ due to mental or physical disability.
- (d) The child dies.
- (e) The adoptive parents die.
- (f) The adoptive parents' legal responsibility for the child ceases.
- (g) The state determines that the child is no longer receiving financial support from the adoptive parents.

(h) The child enters the military.

(i) The child marries.

(2) Termination of state medical assistance is subject to the policies of the Division of Health Care Financing.

(3) Supplemental adoption assistance shall terminate when an adoption assistance agreement for a monthly subsidy or state medical assistance is terminated, the terms of the agreement are concluded, the authorizing committee determines that the services funded with supplemental funds are no longer effective or appropriate based upon an independent review by a qualified provider, or if lack of availability of state funding prevents continuation. Written notice as described in R512-43-10(4) shall be provided at least 30 days before funding is discontinued due to lack of availability of state funding appropriated for adoption assistance or due to determination that services are no longer effective or appropriate.[]

~~(4) Adoption assistance shall not be terminated for an adoptive parent's failure to respond to a renewal request for the agreement unless Child and Family Services has given the adoptive parents adequate notice of the potential termination. Adequate notice means that a letter shall be sent to the adoptive parents notifying them of the need to renew the adoption assistance agreement, specifying a date by which the adoptive parents shall respond. If the adoptive parents do not respond to the original request, Child and Family Services shall send a certified letter to the family explaining the importance of renewing the adoption assistance agreement and the potential consequences of failing to renew the agreement. If the certified letter is returned unclaimed, additional efforts shall be pursued to locate the family such as a phone call or home visit before the assistance may be terminated. If the certified letter is returned undeliverable, the adoption assistance may be terminated.]~~

R512-43-11. Fair Hearings.

(1) Fair Hearing Request.

A written request for a fair hearing may be submitted within 10 working days after receiving a Department of Human Services/Child and Family Services decision to the Department of Human Services if:

- (a) The adoption assistance application is denied;
 - (b) The adoption assistance application is not acted upon with reasonable promptness;
 - (c) Adoption assistance or supplemental adoption assistance is reduced, terminated, or changed without the concurrence of the adoptive parents;
 - (d) The amount of adoption assistance or supplemental adoption assistance approved was less than the amount requested by adoptive parents;
 - (e) Adoption assistance was not requested prior to finalization of the adoption and one of the criteria in R512-43-11(2) (a) applies.
- (2) Post Finalization Request Fair Hearing.
- (a) The fair hearing officer may approve appropriate state or federal adoption assistance for post finalization requests if one of the following is met:
- (i) Relevant facts regarding the child, the biological family, or child's background were known but not presented to adoptive parents prior to finalization.
 - (ii) A denial of assistance was based upon a means test of the adoptive family.
 - (iii) An erroneous state determination was utilized to find a child ineligible for assistance.
 - (iv) The state or adoption agency failed to advise adoptive parents of the availability of assistance.
- (b) The adoptive parents bear the burden of documenting that the child meets the definition of a child with a special need and that one of the criteria in R512-43-11(2)(a) applies. The state may provide corroborating facts to the family or the fair hearing officer.

R512-43-12. Interstate Adoption Assistance.

(1) Child and Family Services is responsible to determine if a child in Utah public foster care qualifies for adoption assistance when the child is placed in an adoptive home in another state. If the child qualifies, Child and Family Services provides adoption assistance regardless of the state of residence of the adoptive family and child.

(2) If a child with a previous IV-E adoption assistance agreement enters public foster care because the adoption was dissolved or ended due to the result of the death of the parents, the state in which the child is taken into custody in public foster care is responsible to provide adoption assistance in a subsequent adoption.

(3) If a child with a previous IV-E adoption assistance agreement does not enter public foster care when the adoption dissolved or ended due to the death of both parents, the new adoptive parent is responsible to apply for adoption assistance in the new adoptive parent's state of residence.

(4) A parent desiring to adopt an out-of-state child who is not in public foster care but is receiving SSI shall apply for adoption assistance in the parent's state of residence.

(5) An adoption assistance agreement remains in effect regardless of the state of residence of the adoptive parents as long as the child continues to qualify for adoption assistance.

(6) If a needed service specified in the agreement is not funded by the new state of residence, the state making the original adoption assistance payment remains financially responsible for paying for the specific service.

KEY: adoption, child welfare, foster care
Date of Enactment or Last Substantive Amendment:
[September 23, 2008]2010
Notice of Continuation: January 3, 2007
Authorizing, and Implemented or Interpreted Law:
62A-4a-102; 62A-4a-106; 62A-4a-901 through 62-4a-907

**Human Services, Child and Family
 Services
 R512-75**

**Rules Governing Adjudication of
 Consumer Complaints**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33826

FILED: 07/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to add a purpose and authority section and to makes language modifications.

SUMMARY OF THE RULE OR CHANGE: The proposed changes to this rule add the statutory authority for Child and Family Services to perform rulemaking duties revises language to bring the rule in-line with current practice.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-4a-102 and Section 62A-4a-103 and Section 62G-2-305 and Section 63G-2-304 and Section 63G-2-604 and Section 63G-4 et seq.

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will be no increase in cost or savings to the state budget because these proposed changes add rulemaking authority for Child and Family Services, but do not increase workload that would require additional staff or other costs.
- ◆ **LOCAL GOVERNMENTS:** There will be no increase in costs or savings to local government because it was determined that this rule does not apply to local government.
- ◆ **SMALL BUSINESSES:** There will be no increase in costs or savings to small businesses because it was determined that this rule does not apply to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no increase in costs or savings to persons other than small businesses, businesses, or local government entities because it was determined that this rule does not apply to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons associated with implementing the changes to this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no costs or savings on businesses.

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

HUMAN SERVICES
 CHILD AND FAMILY SERVICES
 195 N 1950 W
 SALT LAKE CITY, UT 84116
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
- ◆ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2010

AUTHORIZED BY: Brent Platt, Director

**R512. Human Services, Child and Family Services.
 R512-75. Rules Governing Adjudication of Consumer Complaints.**

R512-75-1. Introductory Provisions.

- (1) Purpose and Authority [~~and Purpose~~].
 - (a) ~~The purpose of this rule is to define [This rule defines] consumer complaint procedures, [in accordance with Subsection 62A-4a-102(4). These procedures are] intended to provide for the prompt and equitable resolution of a consumer complaint filed in accordance with this rule.~~

~~(b) This rule is authorized by Section 62A-4a-102.~~

(2) Definitions.

(a) The definitions contained in Section 63G-4-103 apply.

In addition, the following terms are defined for the purposes of this section:

- (i) "Absorbable within [~~the Division's]Child and Family Services' appropriation authority" means those expenditures that fall within [~~the Division's]Child and Family Services' budgetary parameters.~~~~
- (ii) "Aggrieved Person" or "Complainant" means any person who is alleged to have been adversely affected by an act or omission of [~~the Division]Child and Family Services~~ or its employees.

(iii) [(+)] [~~The "Division"]"Child and Family Services" means the Division of Child and Family Services of the Department of Human Services, including its regional offices.~~

(iv) [(+++)] The "Department" means the Department of Human Services.

(v) ~~(iv)~~ The "Director" means the Director of ~~the Division~~ Child and Family Services.

(vi) "Office of the Child Protection Ombudsman" means the office, separate from ~~the Division of~~ Child and Family Services, designated by the Department to investigate a consumer complaint regarding ~~the Division of~~ Child and Family Services.

(vii) "Ombudsman Service Review Analyst" means the representative from the Office of the Child Protection Ombudsman designated to investigate a consumer complaint.

(viii) "Reasonable time" means the time specified in the action plan.

R512-75-2. Procedures for Filing an Initial Informal Non-adjudicative Complaint With ~~the Division~~ Child and Family Services.

(1) An aggrieved person shall first make a reasonable attempt to resolve a complaint with a caseworker and the caseworker's supervisor. If resolution is not reached, a complaint may be filed with the regional office.

(2) If there is a filing of an initial complaint with a ~~[R]~~regional ~~[O]~~office:

(a) The complainant or aggrieved person shall make a complaint within six months~~[no later than 180 days]~~ from the date of the alleged circumstances giving rise to the complaint. ~~[Written complaints are preferred but a]~~A complaint may be made in any form.

(b) Each complaint shall:

(i) include the aggrieved person's name, address, and phone number~~;~~ ~~and the names and addresses of all persons to whom a copy of the complaint shall be sent~~;

(ii) describe ~~the Division's~~ Child and Family Services' alleged act or omission in sufficient detail to inform ~~the Division~~ Child and Family Services of the nature and date of the alleged event.

(iii) describe the action desired; and

(c) The complaint shall be provided to the ~~[DCFS]~~ Child and Family Services ~~[R]~~regional designee~~[-staff named in the complaint and filed with a regional office of the Division]~~. The ~~[DCFS]~~ region ~~[staff named in the complaint]~~ shall have ten working days from the date of the filing of the complaint to submit a response to the complaint.

(3) Investigation of the Complaint by the Regional Office.

(a) Complaints received by ~~the Division's~~ Child and Family Services' Constituent Services Office will be forwarded to the regional office or appropriate ~~[DCFS]~~ Child and Family Services staff to address the complaint. The regional office or state specialist will contact the complainant and address the complaint. The ~~[DCFS]~~ Child and Family Services regional office or ~~[DCFS]~~ Child and Family Services staff may hold meetings of the concerned parties. The review shall be conducted to the extent necessary to assure that all relevant facts are reviewed~~[determined and documented]~~. ~~[Minutes and/or tape recordings shall be taken at the meetings.]~~ If the complaint is resolved no further action is necessary.

(b) Within 20 calendar days of receiving the complaint, the regional office or ~~[DCFS]~~ Child and Family Services staff shall issue a written decision to the ~~[Division's]~~ Child and Family Services Constituent Services Office, setting forth its action plan to address the complaint.

(c) If a complaint filed with a regional office is not adequately addressed, the complaint shall be forwarded to the ~~[Division's]~~ Child and Family Services Constituent Services Office.

(d) ~~A~~ complaint filed with the ~~[Division's]~~ Child and Family Services Constituent Services Office that is not resolved ~~[within a reasonable amount of time]~~ to the satisfaction of the complainant shall be forwarded to the Office of the Child Protection Ombudsman. ~~[DCFS]~~ Child and Family Services shall immediately notify the aggrieved person in writing that the complaint is being forwarded to the Office of Child Protection Ombudsman. ~~[The Division]~~ Child and Family Services will forward copies of all correspondence regarding the steps taken by ~~the Division~~ Child and Family Services to address the complaint to the Office of Child Protection Ombudsman.

R512-75-3. Procedures for Filing an Informal Non-adjudicative Complaint With the Office of the Child Protection Ombudsman.

(1) An aggrieved person may file a complaint to decision rendered by a regional office to the Office of the Child Protection Ombudsman, or if ~~the Division~~ Child and Family Services is unable to resolve the complaint, it shall be forwarded to the Office of Child Protection Ombudsman according to the requirements of R515-1, Processing Complaints Regarding the Utah Division of Child and Family Services.

R512-75-4. Compliance with and Appeal of Recommendations of the Office of the Child Protection Ombudsman.

(1) Once ~~[OCPO]~~ the Office of the Child Protection Ombudsman completes an investigation according to the provisions of R515-1 and if recommendations are made to ~~the Division~~ Child and Family Services, ~~the Division~~ Child and Family Services has ten calendar days to agree with the recommendations.

(2) If ~~the Division~~ Child and Family Services does not agree with the recommendation, ~~the Division~~ Child and Family Services may file an appeal to the recommendations of the Office of the Child Protection Ombudsman within ~~[40]~~ ten calendar[s] days of receipt of the recommendations from the Office of Child Protection Ombudsman. The appeal shall be filed with the Department Executive Director and request that the recommendations be amended.

KEY: consumer hearing panel, grievance procedures

Date of Enactment or Last Substantive Amendment: ~~August 3, 2005~~ 2010

Notice of Continuation: December 2, 2009

Authorizing, and Implemented or Interpreted Law: 62A-4a-102; 63G-2-304; 63G-2-305; 63G-2-603; 63G-4 et seq.

Insurance, Administration
R590-244
Individual and Agency Licensing
Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33821

FILED: 07/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the change to this rule is to update the license processing requirements.

SUMMARY OF THE RULE OR CHANGE: Section R590-244-2 no longer exempts title insurance licensees from the requirements of this rule. Section R590-244-4 requires documents in a criminal prosecution or administrative action to be filed electronically. Hard copies of documents relating to an application are no longer required to be filed. Incomplete submissions are given 45 days to be completed before they may be rejected by the department. Section R590-244-7 sets the renewal/expiration date for bail bond agency licenses to July 15. Renewal notices will now be sent electronically to the licensees' business email address rather than their mailing address. Email notices sent to licensee by the department are considered received. Those failing to notify the department of changes to their email address may be subject to penalties. Section R590-244-8 sets a timetable for submitting reinstatement applications after an incomplete renewal application has been filed. Section R590-244-11 requires certain licensing amendments be done electronically by fax or PDF, or be submitted through SIRCON or NIPR.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 31A-23a-104 and Section 31A-23a-110 and Section 31A-23a-111 and Section 31A-23a-115 and Section 31A-23a-302 and Section 31A-25-201 and Section 31A-25-208 and Section 31A-26-202 and Section 31A-26-210 and Section 31A-26-213 and Section 31A-35-104 and Section 31A-35-301 and Section 31A-35-401 and Section 31A-35-406

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Title agents are already following the provisions of this rule so their inclusion in its requirements will have no impact on the department. Since the department will no longer be required to mail renewal letters annually to around 45,000 licensees, the department will save on paper, envelopes, mailing costs and communication time. There will also be a savings in time spent by employees each month to send license renewal notices to licensees.

◆ **LOCAL GOVERNMENTS:** This rule and change will have no affect on local governments since it deals solely with the relationship between the department and its licensees.

◆ **SMALL BUSINESSES:** Organizations licensed with the department will not be financially impacted. In the past when they have received renewal notice they have gone on-line to apply for the renewal, which will remain the same. There may be some savings for those that will apply for certain amendments to their licenses, which can be done electronically now versus by mail.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Individuals and organizations licensed with the Department will experience no financial impact. In the past when they have received renewal notice they have gone on-line to apply for renewal, which will remain the same. There may be some savings for those that will apply for certain amendments to their licenses, which can be done electronically now versus by mail.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should be no additional compliance costs resulting from these rule changes. With the turn to paperless communication, paper, printing and mailing costs should be reduced significantly. This will greatly reduce costs for the Department if it is no longer required to mail renewal notices to around 90,000 licensees every two years, 45,000 yearly. There will also be a time savings factor for all parties involved with the quick and efficient transferral of information offered by email.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will create a cost savings to the department with the elimination of mailing costs for license renewal notices. It will have a negligible effect on licensees.

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 08/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2010

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.**R590-244. Individual and Agency Licensing Requirements.****R590-244-1. Authority.**

This rule is promulgated pursuant to:

(1) Subsection 31A-2-201(3) that authorizes the commissioner to adopt rules to implement the provisions of the Utah Insurance Code;

(2) Subsections 31A-23a-104(2), 31A-23a-110(1), 31A-25-201(1), 31A-26-202(1), 31A-35-104, 301(1) and 401(2) that authorize the commissioner to prescribe the forms and manner in which an initial or renewal individual or agency license application under Chapters 23a, 25, 26 and 35 is to be made to the commissioner;

(3) Subsections 31A-23a-111(10), 31A-25-208(9), 31A-26-213(10), and 31A-35-406(1) that authorize the commissioner to adopt a rule prescribing license renewal and reinstatement requirements for individual and agency licensees under Chapters 23a, 25, 26, and 35;

(4) Subsection 31A-23a-115(1) that authorizes the commissioner to adopt a rule prescribing reporting requirements to be utilized by an insurer for the initial appointment or the termination of appointment of a person authorized to act on behalf of the insurer under Chapter[s] 23a; and

(5) Subsections 31A-23a-302(2) and 31A-26-210(1) that authorize the commissioner to adopt a rule prescribing reporting requirements to be utilized by an agency for the initial designation or the termination of designation of a person authorized to act on behalf of the agency under Chapters 23a and 26.

R590-244-2. Purpose and Scope.

(1) The purpose of this rule is to provide standards for:

(a) an individual or agency licensee for:

(i) obtaining, renewing or reinstating a license; and

(ii) making other miscellaneous license amendments;

(b) an insurer for the initial appointment or the termination of an appointment of an individual or agency licensee; and

(c) an agency for the initial designation or the termination of a designation of an individual licensee to the agency's license.

(2) Scope.

(a) This rule applies to all individuals and agencies licensed under Chapters 23a, 25, 26 and 35.

(b) This rule applies to all admitted insurers doing business in Utah.[]

~~(c) Title insurance licensees are exempt from this rule on the effective date of a rule addressing licensing for title licensees adopted by the Title and Escrow Commission pursuant to Section 31A-2-404(2)(a)(ii).[]~~

R590-244-3. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in Subsections 31A-1-301, 31A-23a-102, 31A-26-102, and 31A-35-102 and the following:

(1) "Active license" means a license under which a licensee has been granted authority by the commissioner to engage in some activity that is part of or related to the insurance business.

(2) "Inactive license" means a formerly active license where a licensee is no longer authorized by the commissioner to

engage in some activity that is part of or related to the insurance business.

(3) "Lapse" means the inactivation of an active license by expiration of the period for which the license was issued or by operation of law.

(4) "License application" means information submitted by a license applicant to provide information about the license applicant that is used by the commissioner to evaluate the applicant's qualifications and decide whether to:

(a) issue or decline to issue a license;

(b) add or decline to add an additional line of authority to an active license;

(c) renew or decline to renew an active license; or

(d) reinstate or decline to reinstate an inactive license.

(5) "Line of authority" means a line of insurance of a particular subject matter area within a license type for which the commissioner may grant authority to do business.

(6) "License type" means a category of license identifying a specific functional area of insurance activity for which the commissioner may grant authority to do business.

(7) "NIPR" means an electronic application software provided by the National Insurance Producer Registry (NIPR).

(8) "Reinstate" means the activation of an inactive license within 365 days of the inactivation date.

(9) "Renewal" means the continuation of an active license from one two-year licensing period to another, except that the licensing period for a bail bond agency is one year.

(10) "SIRCON" means an electronic application software provided by SIRCON.

(11) "Termination for cause" means

(a) an insurer or an agency has ended its relationship with a licensee or has cancelled the licensee's authority to act on behalf of the insurer or agency for one of the reasons identified in 31A-23a-111(5); or

(b) a licensee has been found to have engaged in any of the activities identified in 31A-23a-111(5) by a court, government body, or self-regulatory organization authorized by law.

R590-244-4. Requirement to Electronically Submit License Applications, Appointments, Designations, and License Amendments.

(1) Except as otherwise provided in this rule the following shall be submitted electronically to the department using <http://www.sircon.com/utah> (SIRCON) or <http://www.nipr.com/> (NIPR):

(a) all individual and agency license applications under chapters 23a, 25, 26, and 35 as prescribed in R590-244-6, 7, and 8 for:

(i) a new license;

(ii) an additional license type or line of authority;

(iii) a license renewal; or

(iv) a license reinstatement;

(b) all appointments, termination of appointments, designations, and terminations of designations as prescribed in R590-244-9 and 10;

(c) all miscellaneous license amendments pertaining to individual and agency licenses under Chapters 23a, 25, 26 and 35 as prescribed in R590-244-11;[~~and~~]

(d) all documents related to reporting to the commissioner of criminal prosecution or administrative action taken against a licensee as required under Chapters 23a, 25, 26 and 35; and

[(d)](e) any additional documentation required in connection with an application, except as shown in (iv) below, including but not limited to:

(i) written explanation and documentation for positive responses to background questions on a license application;

(ii) evidence of meeting specific experience, bonding, or other requirements for certain license types or lines of authority; or

(iii) evidence of meeting continuing education requirements for a renewal or reinstatement application when there is a question regarding the number of course hours completed.

(iv) If an electronic attachment of a document required in connection with an application is not available in the attachment utility from SIRCON or NIPR, ~~and the document consists of:~~

~~(A) 20 pages or less;~~ the document shall be submitted electronically via a facsimile or as a PDF attachment to an email, until such time that an electronic attachment of the document to the application becomes available from SIRCON or NIPR; ~~or~~

~~(B) more than 20 pages, the document must be submitted as a hard copy via regular mail, until such time that an electronic attachment of the document to the application becomes available from SIRCON or NIPR.~~

(2) Attestation. Submission of an electronic application or other form under this Rule constitutes the applicant's or submitter's attestation under penalties of perjury that the information contained in the application or form is true and correct.

(3) Any submission subject to this rule that does not comply with this rule may be rejected as incomplete and returned to the submitter without being processed, with any paid fees forfeited to the State.

R590-244-5. Requirement of an Active License to Sell, Solicit, or Negotiate Insurance.

(1) A person must have the following to sell, solicit, or negotiate insurance:

(a) an active license matching the type and line of insurance being sold, solicited, or negotiated; and

(b) an appointment from an insurer or a designation from an agency.

(2) A licensee whose license is inactivated for any reason shall not sell, solicit, or negotiate insurance from the date the active license is inactivated until the date the inactive license is reactivated.

R590-244-6. New License Application.

(1) A resident license application for a new license, or for the addition of an additional license type or line of authority, shall be submitted using SIRCON.

(2) A non-resident license application for a new license, or for the addition of an additional license type or line of authority, shall be submitted using either SIRCON or NIPR, except as stated in (3) below.

(3) A non-resident license application for a license type or line of authority not offered in the person's home state shall be submitted to the commissioner via facsimile or as a PDF attachment to an email using a form available through the Department's

website, until such time that an electronic application becomes available from SIRCON or NIPR.

R590-244-7. Renewal and Non-renewal of an Active License.

(1) An active license shall be renewed on or before the license expiration date as shown below:

(a) A resident license renewal application shall be submitted online via SIRCON.

(b) A non-resident license renewal application shall be submitted online via SIRCON or NIPR.

(2) A new individual license shall expire on the last day of the licensee's birth month following the two-year anniversary of the license issue date, unless renewed.

(3) A renewed individual license shall expire on the last day of the licensee's birth month every two years, unless renewed.

(4) An agency license shall expire on the last day of the month every two years from the most recent license issue or renewal date, unless renewed, except as shown in (5) below.

(5) A bail bond agency license shall expire annually on ~~[the last day of the month from the most recent license issue or renewal date]~~ July 15th, unless renewed.

(6) Renewal Notice.

(a) Prior to the license expiration date, the commissioner ~~[shall]~~ may, as a courtesy, send a renewal notice to the licensee's ~~[mailing address or]~~ business email address as shown on the records of the Department.

(b) A renewal notice sent by the commissioner to the business email address, as shown on the records of the department, shall be considered received by the licensee.

~~[(b)](c)~~ A licensee who fails to properly ~~[submit an address change to the commissioner]~~ submit to, and maintain with, the commissioner a valid business email address ~~[may not receive a renewal notice and]~~ may be subject to administrative penalties.

(7) A license shall non-renew effective the license expiration date if it is not renewed on or before the expiration date, and:

(a) the non-renewed license shall be inactivated;

(b) all agency designations and insurer appointments shall be terminated; and

(c) a lapse license notice will be sent to the affected ~~[agencies and insurers]~~ licensee.

(8) An active licensee who fails to renew a license shall not engage in the business of insurance during the period of time from the expiration date of the license until the date the inactive license is reinstated or a new license is issued.

R590-244-8. Reinstatement of Inactive License.

(1) An inactive license that has been inactive for a period of one year or less following the license expiration date can be reinstated as stated in (3) through (7) below.

(2) An inactive license that has not been reinstated within one year following its expiration date shall not be reinstated and the inactive licensee shall apply as a new license applicant.

(3) A reinstatement applicant shall:

(a) comply with all requirements for renewal of a license, including any applicable continuing education requirements if the reinstatement applicant is an individual; and

(b) pay a reinstatement fee as shown in R590-102.

(4) A resident license application for reinstatement of an inactive license shall be submitted using SIRCON, except as shown in (6) below.

(5) A non-resident license application for reinstatement of an inactive license shall be submitted using either SIRCON or NIPR, except as stated in (6) below.

(6) The following license applications for reinstatement of an inactive license must be submitted to the department via facsimile or as a PDF attachment to an email using a form available through the department's website, until such time that an electronic application becomes available from SIRCON or NIPR:

~~(b)~~(a) a non-resident ~~[license]~~reinstatement application for a person whose license has been inactivated for failure to maintain an active license in the person's home state[-];

~~(a)~~(b) a resident or non-resident ~~[license]~~reinstatement application for a person whose license has been voluntarily surrendered; and

(c) a resident or non-resident reinstatement application for a person whose license has been inactivated due to an incomplete renewal application, except as stated in (i) below.

(i) If a resident license has been inactivated due to a renewal application that was incomplete solely for failure to meet the continuing education requirements, a resident reinstatement application must be submitted to the department:

(A) during the first 30 days after a license expiration date as a facsimile or as a PDF attachment to an email using a form available through the department's website; or

(B) 31 days to one year after a license expiration date through SIRCON.

(7) A license that has been voluntarily surrendered:

(a) may be reinstated:

(i) during the license period in which the license was surrendered; and

(ii) no later than one year from the date the license was surrendered; and

(b) must comply with the reinstatement requirements stated in (3) above, except that no continuing education requirement will apply for an individual license applicant because the reinstatement is within the current license period.

(8) A reinstated license shall expire on the same date it would have expired had the license not become inactive.

(9) A person with a reinstated license must complete any required new contracts and appointments with insurers or new agency designations before the reinstated licensee can resume doing business.

R590-244-9. Appointments and Termination of Appointments by Insurers.

(1) Initial Appointments.

(a) An insurer shall electronically appoint an individual or agency licensee with whom the insurer has a contract.

(b) Appointments are continuous until terminated by the insurer or canceled by the department.

(c) It is not necessary for an insurer to appoint an individual who is listed as a designee on an appointed agency's license.

(d) To appoint a person, an insurer shall:

(i) identify the date the appointment is to be effective; and

(ii) submit the electronic appointment to the commissioner no later than 15 days after the identified effective date of appointment or receipt of the first insurance application, using SIRCON or NIPR, except as stated in (iii) below.

(iii) A motor club insurer must submit the appointment to the commissioner via facsimile or as a PDF attachment to an email using a form available through the department's website, until such time that an electronic appointment becomes available from SIRCON or NIPR.

(2) Termination of Appointment.

(a) An insurer shall electronically terminate the appointment of any previously appointed individual or agency no longer authorized to conduct business on behalf of the insurer in this state.

(b) To terminate a person's appointment an insurer shall:

(i) identify the date the termination of appointment is to be effective; and

(ii) submit the termination of appointment to the department no later than 30 days after the identified effective date of termination, using SIRCON or NIPR, except as stated in (iii) below.

(iii) A motor club insurer must submit the termination of appointment as a facsimile or as a PDF attachment to an email using a form available through the department's website, until such time that an electronic termination of appointment becomes available from SIRCON or NIPR.

(3) Termination for Cause.

(a) In addition to electronically terminating the individual or agency licensee's appointment, an insurer that terminates an individual or agency licensee for cause must send the following information to the department via facsimile or as a PDF attachment to an email:

(a) the insurer must state that the termination was for cause; and

(b) provide the specific circumstances causing the termination for cause.

R590-244-10. Designations and Termination of Designations by Agencies.

(1) Designations.

(a) An agency shall electronically designate a licensed individual to the agency license to do business on behalf of the agency in this state.

(b) Designations are continuous until terminated by the agency or canceled by the department.

(c) To designate an individual on its license, an agency shall:

(i) identify the date the designation is to be effective; and

(ii) submit the designation to the commissioner no later than 15 days after the identified effective date of designation using SIRCON or NIPR.

(2) Termination of designations.

(a) An agency shall electronically terminate the designation of any previously designated individual no longer authorized to conduct business on behalf of the agency in this state.

(b) To terminate an individual's designation an agency shall:

(i) identify the date the termination of designation is to be effective; and

(ii) submit the termination of designation to the department no later than 30 days after the identified effective date of termination using SIRCON or NIPR.

(3) Termination for Cause.

(a) In addition to electronically terminating the individual licensee's designation, an agency that terminates an individual licensee for cause must send the following information to the department via facsimile or as a PDF attachment to an email:

(a) the agency must state that the termination was for cause; and

(b) provide the specific circumstances causing the termination for cause.

R590-244-11. Miscellaneous License Amendments and Changes to an Agency's Employer Identification Number (EIN).

(1) All miscellaneous license amendments shall be submitted electronically.

(2) The following four miscellaneous license amendments shall be submitted via SIRCON or NIPR:

(a) a change of residence, business, or mailing address within the same state;

(b) a change of email address;

(c) a change of telephone number; or

(d) a change of an individual licensee's name.

(3) The following six miscellaneous license amendments shall be submitted electronically via facsimile~~[-email;]~~ or as a PDF attachment to an email~~[-]~~, except that a license amendment identified in (d), (e) and (f) shall be submitted via SIRCON or NIPR once the amendment becomes available electronically from SIRCON or NIPR:

(a) a voluntary surrender of a license or line or authority;

(b) a clearance letter request;

~~(c)~~~~(c)~~ a change of an agency name;

~~(d)~~~~(d)~~ a change of residence, business, or mailing address from one state to another state;

(e) a change of position or title of an owner, partner, officer, or director of an agency; or

(f) a change of the licensed individual designated as the person responsible for the regulatory compliance of the agency.

(4) A miscellaneous license amendment submitted in accordance with ~~[R590-244-11(3)]~~this section shall contain:

(a) the name and title of the individual submitting the amendment;

(b) the relationship to the licensee of the individual submitting the amendment; and

(c) the following attestation made by the individual submitting the amendment: "I hereby attest that all of the information submitted is true and correct, and that I am the individual licensee for whom the requested change is being submitted, or an authorized responsible representative of the individual or agency licensee for whom the requested change is being submitted."

(5) A change of Employer Identification Number (EIN):

(a) cannot be processed as a miscellaneous license amendment; and

(b) the entity must apply as a new license applicant.

R590-244-12. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-244-13. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-244-14. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance licensing requirements

Date of Enactment or Last Substantive Amendment: ~~[July 1, 2009]~~2010

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-104; 31A-23a-110; 31A-23a-111; 31A-23a-115; 31A-23a-302; 31A-25-201; 31A-25-208; 31A-26-202; 31A-26-210; 31A-26-213; 31A-35-104; 31A-35-301; 31A-35-401; 31A-35-406

**Insurance, Administration
R590-258
Email Address Requirement**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 33822

FILED: 07/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to require licensees and registered persons to provide the Department with their current business email address to reduce mailing expense, promote paperless interaction, support the Utah Health Exchange and improve accuracy, reliability, and promptness of communication.

SUMMARY OF THE RULE OR CHANGE: This rule requires licensees to submit and maintain a valid business email address. These email addresses will be used by the Department to communicate general information, license renewal notices, billing invoices, consumer complaints, requests for information, or other correspondence. Violators of this rule may be penalized according to Section 31A-2-308. The rule will be enforced 45 days after its effective date.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-2-201 and Section 46-4-501

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** To submit or update an email address, individuals or organizations will go on-line to SIRCON or NIPR and insurers will go on-line through another source. These changes will automatically update the Department's database without the involvement of Department personnel. This is going to be a cost and time savings communication tool between the Department and its licensees.

◆ **LOCAL GOVERNMENTS:** This rule will have no effect local governments since it deals solely with the relationship between the Department and its licensees and registered persons.

◆ **SMALL BUSINESSES:** This rule will cut mailing costs and processing time for the Department and its licensees and registered persons when dealing with licensing, complaints, requests for information, invoices, and other general correspondence which will be done electronically rather than by mail.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule will cut mailing costs and processing time for the Department and its licensees and registered persons when dealing with licensing, complaints, requests for information, billings, and other general correspondence which will be done electronically rather than by mail.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs for licensees. Instead of corresponding by mail to the Department, they will be corresponding in most cases by email.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Currently, the Department has around 85,000 licensees. To move from communicating with them via the mail to email for licensing, complaints, invoices, and other correspondence will be a significant cost and time savings tool for the Department and the licensees.

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 08/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2010

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-258. Email Address Requirement.

R590-258-1. Authority.

This rule is promulgated pursuant to Subsection 31A-2-201(3), which authorizes the commissioner to adopt rules to implement the provisions of Title 31A, and Subsection 46-4-501(1), which authorizes state governmental agencies to make rules relating to electronic transactions and records.

R590-258-2. Purpose and Scope.

(1) The purpose of this rule is to require a licensed or registered person to have a current valid email address on file with the commissioner in order to:

(a) improve the accuracy, reliability, and promptness of communications between the department and those persons to whom the rule applies;

(b) reduce mailing expense;

(c) promote paperless interaction with a licensed or registered person; and

(d) support the Utah Health Exchange.

(2) Scope. This rule applies to an individual, agency, provider, insurer, and other organization licensed or registered by the commissioner to do business in Utah.

R590-258-3. Requirement to Submit and Maintain a Valid Email Address.

(1) A person to whom this rule applies shall submit to, and maintain with, the commissioner a valid business email address where the person can receive from the department, communication which includes, but is not limited to:

(a) a general notification;

(b) a license renewal notice;

(c) a billing invoice;

(d) a consumer complaint;

(e) a request for information; or

(f) other correspondence.

(2) A person to whom this rule applies must confirm that the spam filter for the email address required in Subsection (1) above will accept email correspondence from the department.

(3) Correspondence sent by the department to the email address required in Subsection (1) above shall be considered received by the person.

(4) A change of email address shall be submitted electronically at no cost to the licensed or registered person:

(a) an individual or agency licensee shall submit the change at <http://www.sircon.com/utah> or <http://www.nipr.com/>; and

(b) a licensed or registered person, other than an individual or agency licensee shall, submit the change at <http://clr.utah.gov/>.

R590-258-4. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-258-5. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-258-6. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance

Date of Enactment or Last Substantive Amendment: 2010

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 46-4-501

Lieutenant Governor, Elections
R623-4
Electronic Signatures in Initiatives and
Referenda

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 33827

FILED: 07/14/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide a framework by which those seeking to qualify a statewide initiative or referendum for the ballot may submit electronic signatures to comply with the signature requirements contained in the Elections Code. The intent of the rule is to maintain the statutory precautions and provisions in the initiative or referendum statutes protecting against fraud and mistake and provide for accountability in the use of electronic signatures. In the recent opinion by the Utah Supreme Court in the Anderson v. Bell case, the Court ruled that electronic signatures may be used in certificate of nomination petitions. The Court's decision highlights the need to develop rules to accommodate electronic signatures while still ensuring the integrity of the initiative and referendum process.

SUMMARY OF THE RULE OR CHANGE: The rule will authorize the Lieutenant Governor to allow the use of electronic signatures in statewide initiatives and referenda petitions if the sponsors' process allows for accommodation of the statutory precautions to protect against fraud and mistake. (DAR NOTE: A corresponding 120-day

(emergency) rule is under DAR No. 33815 in this issue, August 1, 2010, of the Bulletin and is effective as of 07/08/2010.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Anderson v. Bell 2010 UT 47 and Article VII Sections 1 and 14 and Section 46-4-102 and Section 46-4-501 and Section 63G-3-201 and Section 63G-3-304 and Sections 20A-7-201 through 20A-7-214 and Subsection 67-1a-2(2)(a)(i)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** It is anticipated to have no cost or saving to the state budget. There is no cost difference between electronic signatures and holographic signatures when processing them at state level.

♦ **LOCAL GOVERNMENTS:** Depending on how the sponsors meet the requirements and submit the completed petitions to the county clerks for certification, there could be either a cost or a savings.

♦ **SMALL BUSINESSES:** It is anticipated to have no cost or saving to small businesses. The rule should not affect small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is anticipated to have cost savings to the sponsors of initiatives and referenda. Depending on how the requirements are met, electronic petitions may be more cost effective than paper petitions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The cost for compliance will vary depending on how the sponsors meet the requirements of the rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is anticipated there will be no fiscal impact on businesses.

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

LIEUTENANT GOVERNOR
 ELECTIONS
 ROOM 220 UTAH STATE CAPITOL
 SALT LAKE CITY, UT 84114
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Mark Thomas by phone at 801-538-1041, by FAX at 801-538-1133, or by Internet E-mail at mjthomas@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 09/08/2010

AUTHORIZED BY: Greg Bell, Lieutenant Governor

R623. Lieutenant Governor, Elections.**R623-4. Electronic Signatures In Initiatives and Referenda.****R623-4-1. Purpose.**

The purpose of this rule is to provide a framework by which those seeking to qualify a statewide initiative or referendum for the ballot may submit electronic signatures to comply with the signature requirements contained in the Elections Code. The rule is intended to maintain the statutory precautions and provisions in the initiative or referendum statutes protecting against fraud and mistake and providing for accountability in the use of electronic signatures.

R623-4-2. Authority.

Authority for the adoption of this rule is Utah Constitution Article VII, Sections 1 and 14, Utah Code Subsections 67-1a-2(2)(a)(i) and (ii), Section 46-4-501, Section 63G-3-201, and Section 63G-3-304.

R623-4-3. Definitions.

"Electronic Record" and "Electronic Signature" have the same meaning as in the Utah Uniform Electronic Transactions Act, Utah Code Section 46-4-102.

R623-4-4. Application of the Rule.

This rule applies to and governs the use or recognition of an electronic signature in the initiative and referenda process by the Lieutenant Governor's Office and his staff. It is also applicable to and governs the use, recognition, or allowance of electronic signatures in the initiative and referendum process by county clerks in statewide initiatives and referenda.

R623-4-5. Policy of the Rule.

It is the policy of this rule to allow the use and recognition of electronic signatures in initiatives and referenda to the extent that this can be done while maintaining the Legislature's recognized precautions to protect against fraud or mistake in the signature gathering process.

R623-4-6. Authorization to Use Electronic Signatures in Initiative and Referenda.

In order to preserve the integrity, security and auditability of the signature gathering process while using electronic signatures, and to maintain the Legislature's precautions and provisions to protect against fraud and mistake in that process, electronic signatures are authorized to be used and counted in initiatives and referenda if the processes for gathering electronic signatures meet the following standards:

1. For electronic signatures gathered after this rule takes effect, the Lieutenant Governor shall have authorized the creation of electronic packets and assigned a range of unique numbers to be applied to those packets prior to their circulation, execution, or signing, Utah Code Subsection 20A-7-204(5);

2. Communication and an exchange of information shall have occurred between the sponsor and any proposed circulator sufficient for the sponsor to satisfy his duty that the individual is of 18 years of age and a resident of the State of Utah, Utah Code Subsection 20A-7-205(2);

3. The circulator shall have circulated the petition to other legal voters, Utah Code Section 20A-7-203, and Subsection 20A-7-101(3);

4. The person electronically signing the petition shall have done so in the circulator's presence, Utah Code Subsection 20A-7-203(3); and

5. The person signing the petition under Utah Code Subsection 20A-7-203(1) is a different person than the one signing under Subsection 20A-7-203(3) verifying that the persons who signed the packet did so in his or her presence.

R623-4-7. Effective Date.

This rule is effective immediately. In order to ensure that electronic signatures may be recognized and counted and avoid imminent peril to the public welfare and comply with state law, the Lieutenant Governor has determined that there is a need for immediate implementation of this rule.

The Lieutenant Governor will publish this Interim Rule and will solicit public comment on its provisions for thirty days. The Lieutenant Governor will review those comments to determine if a public hearing on the rule is necessary and whether any changes need to be made. He will then finalize its provisions.

KEY: electronic signatures, statewide initiatives and referenda, ballot propositions, petitions

Date of Enactment or Last Substantive Amendment: 2010

Authorizing, and Implemented or Interpreted Law: Article VII Sections 1 and 14; 46-4-102; 46-4-501; 20A-7-201 through 214; 67-1a-2(2)(a)(i); 63G-3-201; 63G-3-304; Anderson v. Bell 2010 UT 47

Public Safety, Fire Marshal

R710-4

Buildings Under the Jurisdiction of the
State Fire Prevention Board

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33840

FILED: 07/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met on 07/13/2010 in a regularly scheduled Board meeting and voted to add an incorporated reference, strike out several other incorporated references, and allow the usage of different emergency evacuations drills along with the standard fire drills.

SUMMARY OF THE RULE OR CHANGE: In Subsection R710-4-1(1.1), the Board proposes to update the National Fire Protection Association, NFPA 101, Life Safety Code, from the currently used 2006 edition to the 2009 edition. In Subsection R710-4-1(1.2), the Board proposes to add the 2009 International Fire Code as an incorporated reference in this rule. In Subsections R710-4-1(1.2) through (1.5), the Board proposes to strike out several incorporated references that are now enacted and amended by the Utah State Legislature through the State Construction Code Adoption Act. In Subsection R710-4-3(3.1.1)(f), the Board proposes to allow the current requirement of one fire drill per month in the elementary schools to be substituted every other month with another security drill such as earthquake drill, shelter-in-place drill, or lock down for violence drill.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates International Fire Code, published by International Code Council, Inc., 03/01/2009
- ◆ Updates NFPA 101 - Life Safety Code, published by National Fire Protection Association, 07/30/2009

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There would be a cost to the state budget of \$153 to purchase the two updated incorporated references. There would be an aggregate anticipated cost of approximately \$1,500 to purchase the needed copies of both standards.
- ◆ **LOCAL GOVERNMENTS:** There would be no aggregate anticipated cost to local government. These rules are for those occupancies that are under the control of the Fire Prevention Board. These occupancies are usually overseen by the State Fire Marshal, State Health Department, and State Human Services. Local authorities do have some involvement, but it is normally limited.
- ◆ **SMALL BUSINESSES:** There would be no aggregate anticipated cost or savings to small business due to the fact that both of these updated incorporated references are regulatory manuals and normally would not be purchased by small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There would be a small savings to the schools who would not be required to conduct numerous fire and security drills each month. These drills will now be able to be combined and save money and energy of the administration, teachers, and students.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost of those that are affected by these proposed rule amendments would normally be the regulatory agencies that need these standards to complete the life safety inspections they are charged to complete.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The combining of the fire and security drills is a better situation for all that are participating with these programs. The two regulatory codes that are proposed are normally not purchased by businesses and so there is little to no fiscal impact on businesses for the adoption of this proposed administrative rule.

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

PUBLIC SAFETY
FIRE MARSHAL
ROOM 302
5272 S COLLEGE DR
MURRAY, UT 84123-2611
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Brent Halladay by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2010

AUTHORIZED BY: Ron Morris, Utah State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board.

R710-4-1. Adoption of Fire Codes.

Pursuant to Title 53, Chapter 7, Section 204, of the Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules for the prevention of fire and for the protection of life and property against fire and panic in any publicly owned building, including all public and private schools, colleges, and university buildings, and in any building or structure used or intended for use, as an asylum, hospital, mental hospital, sanitarium, home for the aged, assisted living facility, children's home or day care center, or any similar institutional type occupancy of any capacity; and in any place of assemblage where fifty (50) or more persons may gather together in a building, structure, tent, or room, for the purpose of amusement, entertainment, instruction, or education. The requirements listed in this rule text are in addition to the requirements listed in R710-9, Rules Pursuant to the Utah Fire Prevention Law.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 101, Life Safety Code (LSC), [2006]2009 edition, except as amended by provisions listed in R710-4-3, et seq. The following chapters from NFPA, Standard 101 are the only chapters adopted:

Chapter 18 - New Health Care Occupancies; Chapter 19 - Existing Health Care Occupancies; Chapter 20 - New Ambulatory Health Care Occupancies; Chapter 21 - Existing Ambulatory Health Care Occupancies; Chapter 22 - New Detention and Correctional Occupancies; Chapter 23 - Existing Detention and Correctional Occupancies; and other sections referenced within and pertaining to these chapters only. Wherever there is a section, figure or table in NFPA 101 that references "NFPA 5000 - Building Construction and Safety Code", that reference shall be replaced with the "International Building Code".

~~1.2 International Fire Code (IFC), 2009 edition, excluding appendices, as published by the International Code Council, Inc. (ICC), and as enacted and amended by the Utah State Legislature in Sections 102 and 201 of the State Fire Code Adoption Act.~~ ~~1.2 International Building Code (IBC), 2006 edition, as published by the International Code Council, Inc. (ICC), and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.~~

~~1.3 International Mechanical Code (IMC), 2006 edition, as published by the International Code Council, Inc., and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.~~

~~1.4 International Fuel Gas Code (IFGC), 2006 edition, as published by the International Code Council, and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.~~

~~1.5 International Plumbing Code (IPC), 2006 edition, as published by the International Code Council, Inc., and as adopted under the authority of the Uniform Building Standards Act, Title 58, Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code, R156-56-701.~~

~~1.3~~ Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal.

R710-4-2. Definitions.

2.1 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Bureau of Fire Prevention or Fire Prevention Bureau" means the AHJ.

2.4 "Fire Chief or Chief of the Department" means the AHJ.

2.5 "Fire Department" means the AHJ.

2.6 "Fire Marshal" means the AHJ.

2.7 "Fire Officer" means the State Fire Marshal, the state fire marshal's deputies, the fire chief or fire marshal of any county, city, or town fire department, the fire officer of any fire district or special service district organized for fire protection purposes is the AHJ.

2.8 "IBC" means International Building Code.

2.9 "ICC" means International Code Council, Inc.

2.10 "IFC" means International Fire Code.

2.11 "IFGC" means International Fuel Gas Code.

2.12 "IMC" means International Mechanical Code.

2.13 "IPC" means International Plumbing Code.

2.14 "LSC" means Life Safety Code.

2.15 "NEC" means National Electric Code.

2.16 "NFPA" means National Fire Protection Association.

2.17 "SFM" means State Fire Marshal.

2.18 "UCA" means Utah State Code Annotated 1953 as amended.

R710-4-3. Amendments and Additions.

3.1 Fire Drills

3.1.1 IFC, Chapter 4, Section 405.2, Table 405.2, is amended to add the following footnotes:

e. Secondary schools in Group E occupancies shall have ~~[a fire drill]~~ an emergency evacuation drill conducted at least every two months, to a total of four ~~[fire drills]~~ emergency evacuation drills during the nine-month school year. The first ~~[fire drill]~~ emergency evacuation drill shall be conducted within 10 school days of the beginning of classes.

f. In Group E occupancies, excluding secondary schools, if the AHJ approves, the monthly required emergency evacuation drill can be substituted by a security or safety drill to include shelter in place, earthquake drill or lock down for violence. The routine emergency evacuation drill for fire must be conducted at least every other evacuation drill.

~~[f.]g.~~ A-3 occupancies in academic buildings of institutions of higher learning are required to have one ~~[fire drill]~~ emergency evacuation drill per year, provided the following conditions are met:

1. The building has a fire alarm system in accordance with Section 907.2.

2. The rooms classified as assembly, shall have fire safety floor plans as required in Section 404.3.2(4) posted.

3. The building is not classified a high-rise building.

4. The building does not contain hazardous materials over the allowable quantities by code.

3.2 Door Closures

3.2.1 IFC, Chapter 7, Section 703.2. Add the following: Exception: In Group E Occupancies, where the corridor serves an occupant load greater than 30 and the building does not have an automatic fire sprinkler system installed, the door closures may be of the friction hold-open type on classrooms doors with a rating of 20 minutes or less only.

3.3 Fire Protection Systems

3.3.1 IFC, Chapter 9, Section 903.2. ~~[7]~~ 8 is amended to add the following: Exception: Group R-4 fire areas not more than 4500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system.

3.3.2 Water Supply Analysis

3.3.2.1 For proposed construction in both sprinklered and unsprinklered occupancies, the owner or architect shall provide an engineer's water supply analysis evaluating the available water supply.

3.3.2.2 The owner or architect shall provide the water supply analysis during the preliminary design phase of the proposed construction.

3.3.2.3 The water analysis shall be representative of the supply that may be available at the time of a fire as required in NFPA, Standard 13, Annex A.15.2.1.

3.3.3 Fire Alarm Systems

3.3.3.1 Required Installations

3.3.3.1.1 All state-owned buildings, college and university buildings, other than institutional, with an occupant load of 300 or more, all schools with an occupant load of 50 or more, shall have an approved fire alarm system with the following features:

3.3.3.1.1.1 Automatic detection devices that detect smoke shall be installed throughout all corridors and spaces open to the corridor at the maximum prescribed spacing of thirty feet on center and no more than fifteen feet from the walls or smoke detectors shall be installed as required in NFPA, Standard 72, Section 5.3.

3.3.3.1.1.2 Where structures are not protected or partially protected with an automatic fire sprinkler system, approved automatic detectors shall be installed in accordance with the complete coverage requirements of NFPA, Standard 72.

3.3.3.1.1.3 Manual fire alarm boxes shall be provided as required. In public and private elementary and secondary schools, manual fire alarm boxes shall be provided in the boiler room, kitchen, and main administrative office of each building, and any other areas as determined by the AHJ.

3.3.3.2 Main Panel

3.3.3.2.1 An approved key plan drawing and operating instructions shall be posted at the main fire alarm panel which displays the location of all alarm zones and if applicable, device addresses.

3.3.3.2.2 The main panel shall be located in a normally attended area such as the main office or lobby. Location of the Main Panel other than as stated above, shall require the review and authorization of the SFM. Where location as required above is not possible, an electronically supervised remote annunciator from the main panel shall be located in a supervised area of the building. The remote annunciator shall visually indicate system power status, alarms for each zone, and give both a visual and audible indication of trouble conditions in the system. All indicators on both the main panel and remote annunciator shall be adequately labeled.

3.3.3.3 System Wiring, Class and Style

3.3.3.3.1 Fire alarm system wiring shall be designated and installed as follows:

3.3.3.3.1.1 The initiating device circuits shall be designated and installed Class A as defined in NFPA, Standard 72.

3.3.3.3.1.2 The notification appliance circuits shall be designated and installed Class A as defined in NFPA, Standard 72.

3.3.3.3.1.3 Signaling line circuits shall be designated and installed Style 6 or 7 as defined in NFPA, Standard 72.

3.3.3.4 Fan Shut Down

3.3.3.4.1 Fan shut down shall be as required in IMC, Chapter 6, Section 606.

3.3.3.4.2 Duct detectors required by the IMC, shall be interconnected, and compatible with the fire alarm system.

3.3.3.5 Nuisance Alarms

3.3.3.5.1 IFC, Chapter 9, Section 907.20.5~~9.5~~ is amended to add the following sentences: Increases in nuisance alarms shall require the fire alarm system to be tested for sensitivity. Fire alarm systems that continue after sensitivity testing with unwarranted nuisance alarms shall be replaced as directed by the AHJ.

3.4 Time Out and Seclusion Rooms

3.4.1 Time Out and Seclusion Rooms are allowed in occupancies protected by an automatic fire alarm system.

3.4.2 A vision panel shall be provided in the room door for observation purposes.

3.4.3 Time Out and Seclusion Room doors may not be fitted with a lock unless it is a self-releasing latch that releases automatically if not physically held in the locked position by an individual on the outside of the door.

3.4.4 Time Out and Seclusion Rooms shall be located where a responsible adult can maintain visual monitoring of the person and room.

R710-4-4. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-4-5. Validity.

The Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared, for any reason, to be invalid, it is the intent of the Board that it would have passed all other portions of this Board action, independent of the elimination here from of any such portion as may be declared invalid.

R710-4-6. Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes as adopted, the more restrictive requirement shall govern, as determined by the AHJ, or his authorized representative.

R710-4-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

7.2 A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final decision from the AHJ.

7.3 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

7.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

7.5 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

7.6 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

7.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

KEY: fire prevention, public buildings

Date of Enactment or Last Substantive Amendment: ~~May 8, 2007~~ **September 7, 2010**

Notice of Continuation: June 8, 2007

Authorizing, and Implemented or Interpreted Law: 53-7-204

Public Safety, Fire Marshal
R710-5
Automatic Fire Sprinkler System
Inspecting and Testing

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33839

FILED: 07/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met in a regularly scheduled Board meeting on 07/13/2010 and voted to amend Rule R710-5. The Board proposes to correct two publishing errors in the incorporated reference, establish a three- and five-year inspection label to be placed on the fire sprinkler riser, establish acceptable inspection forms, and establish the requirement that a copy of the completed inspection forms be left at the riser.

SUMMARY OF THE RULE OR CHANGE: In Subsection R710-5-3(3.1), the Board proposes to add the required statutory reference. In Subsections R710-5-6(6.2) and (6.3), the Board proposes to correct the incorporated reference that mistakenly interchanged the definitions on the two referenced sections. In Subsections R710-5-6(6.4.2) and (6.4.3), the Board proposes to create a three- and five-year inspection label that would be attached to the sprinkler riser so it can be easily determined when these critical inspections were completed. In Subsections R710-5-6(6.5.1), (6.5.2), and (6.5.3), the Board proposes to require that the inspection form presented in the National Fire Protection Association, NFPA 25, be used as the approved inspection form. The Board also proposes to allow the industry to use it's own inspection form if it adequately covers the requirements in NFPA 25, and is approved by the State Fire Marshal. In Subsection R710-5-6(6.5.4), the Board proposes to require that a copy of the inspection forms be left in a waterproof container and affixed to the sprinkler riser.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-225.5

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There would be no aggregate anticipated cost or savings to the state budget because these proposed changes do not affect the State of Utah's budget.

♦ **LOCAL GOVERNMENTS:** There would be no aggregate anticipated cost or savings to local government because these proposed amendments do no affect local government in any form.

♦ **SMALL BUSINESSES:** There would be an aggregate anticipated cost to have the three- and five-year labels printed. There would also be a cost to purchase the waterproof containers and the cost to have one additional set of inspection forms be left at the sprinkler riser. The unknown amount of labels printed by each company and the unknown number of waterproof containers purchased make an aggregate cost nearly impossible to state. An estimate of \$10,000 for all the companies is the best estimate that can be concluded.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There would be a cost of approximately \$500 for each company or corporation to provide the initial amount of labels and containers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There would be a compliance cost of approximately \$500 for the persons responsible for purchasing of three- and five-year labels and waterproof containers. The estimate of \$500 could be substantially higher for the larger companies who have many more employees and where the needs for materials are vastly increased.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The addition by the Board of the three- and five-year labels to be placed on the fire sprinkler riser and the purchasing of waterproof containers will have a minimal impact on business. The industry sought to have these additional items mandated to know when the inspections need to be completed due to the extra expense and the inspection forms at the sprinkler riser so the next inspecting concern can tell what was completed the year before. The extra cost for the labels and waterproof containers will provide much more professionalism in the industry and be much fairer to the customer. Currently with no label attached, there have been incidences where businesses have paid for three- and five-year inspections sooner than they should have. These requirements will make it much better and save thousands of dollars.

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

PUBLIC SAFETY
 FIRE MARSHAL
 ROOM 302
 5272 S COLLEGE DR
 MURRAY, UT 84123-2611
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Brent Halladay by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2010

AUTHORIZED BY: Ron Morris, Utah State Fire Marshal

R710. Public Safety, Fire Marshal.**R710-5. Automatic Fire Sprinkler System Inspecting and Testing.****R710-5-3. Certificates of Registration.**

3.1 Required Certificates of Registration.

No person shall engage in the inspecting and testing of automatic fire sprinkler systems without first receiving a certificate of registration issued by the SFM as required in UCA 53-7-225.5. The following groups are exempted from the requirements of this part:

3.1.1 The AHJ that is performing the initial installation acceptance testing of the automatic fire sprinkler system or ongoing inspections to verify compliance with the adopted NFPA standards and these rules.

3.1.2 The building owner or designee that performs additional periodic inspections beyond the annual inspection required in Section 6.2 of these rules, to satisfy requirements set by company policy, insurance, or risk management.

3.2 Application.

3.2.1 Application for a certificate of registration to inspect and test automatic fire sprinkler systems shall be made in writing to the SFM on forms provided the SFM. The applicant shall sign the application. The SFM or his deputies may request picture identification of the applicant for a certificate of registration.

3.2.2 The applicant shall indicate on the application which of the four technician levels the applicant will apply for:

3.2.2.1 Technician I

3.2.2.2 Technician II

3.2.2.3 Technician III

3.2.2.4 Master Technician

3.2.3 The application for a certificate of registration shall be accompanied with proof of public liability insurance from the certificate holder or employing concern. A public liability insurance carrier showing coverage of at least \$100,000 for each incident, and \$300,000 in total coverage shall issue the public liability insurance. The certificate of registration holder shall notify the SFM within 30 days after the public liability insurance coverage required is not longer in effect for any reason.

3.3 Technician Examination.

The SFM shall require all applicants for a certificate of registration as a technician to complete the following:

3.3.1 Technician I shall pass a written examination on wet pipe sprinkler systems, antifreeze sprinkler systems, and standpipes, and complete the manipulative skills task book.

3.3.2 Technician II shall pass all the requirements listed for Technician I; pass a written examination on dry pipe sprinkler systems, deluge sprinkler systems, preaction sprinkler systems, combined dry pipe-preaction systems, fire pumps, and water storage tanks, and complete the manipulative skills task book.

3.3.3 Technician III shall pass all the requirements listed for Technician I and II; pass a written examination on water spray fixed systems, foam-water sprinkler systems, and foam-water spray systems, and complete the manipulative skills task book.

3.3.4 Master Technician shall have successfully completed and be certified as NICET III in Inspection and Testing of Water-based Systems, and complete the manipulative skills task book.

3.4 Examinations will be given according to the following requirements:

3.4.1 All certification examinations given are open book examinations. The applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination. Any other materials to include cellular telephones are prohibited in the examination room.

3.4.2 Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.

3.4.3 Each certification examination taken has a time limit of two hours to completion. To successfully pass the written examination, the applicant must obtain a minimum grade of seventy percent (70%). Leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant.

3.4.4 If there are different levels of proficiency in the subject matter, the lower proficiency level will be fully completed before the next higher proficiency will be administered.

3.4.5 To successfully complete the manipulative skills task book, all required skill tasks shall be signed as completed by a person duly qualified or certified in that skill.

3.5 As required in 3.3.4, those applicants that have successfully completed the requirements of NICET III, in Inspection and Testing of Water-based Systems, and that corresponds to the work to be performed by the applicant, shall have the requirement for initial written examination waived, after appropriate documentation is provided to the SFM by the applicant.

3.6 Issuance.

Following receipt of the properly completed application, compliance with Section 3.3 of these rules, the SFM shall issue a certificate of registration.

3.7 Original and Renewal Valid Date.

Original certificates of registration shall be valid for one year from the date of application. Thereafter, each certificate of registration shall be renewed annually and renewals shall be valid for one year from issuance.

3.8 Renewal Date.

Application for renewal shall be made as directed by the SFM.

3.9 Re-examination.

Every holder of a valid certificate of registration shall take a re-examination every three years, from date of original certificate, to comply with the provisions of Section 3.3 of these rules as follows:

3.9.1 The re-examination to comply with the provisions of Section 3.3 of these rules shall consist of an open book examination for each level of certification, to be mailed to the certificate holder at least 60 days before the renewal date.

3.9.2 The re-examination will consist of questions that focus on changes in the last three years to the adopted NFPA standards, the statute, and the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or the SFM.

3.9.3 The certificate holder is responsible to complete the re-examination and return it to the SFM in sufficient time to renew.

3.9.4 The certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

3.10 Refusal to Renew.

The SFM may refuse to renew any certificate of registration in the same manner and for any reason that he is authorized, pursuant to Section 7, to deny an original certificate of registration. The applicant shall, upon such refusal, have the same rights as are granted by Section 7 of these rules to an applicant for an original certificate of registration, which has been denied by the SFM.

3.11 Inspection.

The holder of a certificate of registration shall submit such certificate for inspection, upon request of the AHJ.

3.12 Type.

Every certificate of registration shall indicate the type of act or acts to be performed and for which the applicant has qualified as follows:

3.12.1 Technician I: A person who is engaged in the inspection and testing of wet pipe sprinkler systems, antifreeze sprinkler systems, and standpipes.

3.12.2 Technician II: A person who is engaged in the inspection and testing of dry pipe sprinkler systems, deluge sprinkler systems, preaction sprinkler systems, combined dry pipe-preaction systems, fire pumps and water storage tanks.

3.12.3 Technician III: A person who is engaged in the inspection and testing of foam-water sprinkler systems, foam-water spray systems, and water spray fixed systems.

3.12.4 Master Technician: A person who has obtained NICET III certification in Inspection and Testing of Water-based Systems.

3.13 Change of Address.

Any change in home address of any holder of a valid certificate of registration shall be reported in writing, by the registered person to the SFM within 30 days of such change.

3.14 Duplicate.

A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate, which has been lost or destroyed.

3.15 Minimum Age.

No certificate of registration shall be issued to any person who is under 18 years of age.

3.16 Restrictive Use.

3.16.1 A certificate of registration may be used for identification purposes only as long as such certificate remains valid.

3.16.2 Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a

certificate of registration has qualified shall be permissible by such applicant.

3.17 Right to Contest.

3.17.1 Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination.

3.17.2 Every contention as to the validity of individual questions of an examination shall be made within 48 hours after taking said examination.

3.17.3 The decision as to the action to be taken on the submitted contention shall be made by the SFM, and such decision shall be final.

3.17.4 The decision made by the SFM, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

3.18 Non-Transferable.

Certificates of Registration shall not be transferable. The person to whom issued shall carry individual certificates of registration.

3.19 Certificate of Registration Identification.

Every certificate shall be identified by a number, delineated as AFS-(number). Such number shall not be transferred from one person to another.

3.20 New Employees

New or existing employees desiring to attain a Certificate of Registration may perform the various acts required while under the constant direct supervision of a person holding a valid certificate of registration for a period not to exceed 60 days from the initial date of employment or beginning service in the field.

R710-5-6. Amendments and Additions.

6.1 Service.

At the time of service, all servicing shall be done in accordance with the adopted NFPA standard, adopted statutes, and these rules.

6.2 NFPA 25, Chapter 5, Section 5.1, Table 5.1 is amended as follows: On line 16 of the "Inspection" section, the "Obstruction Reference" is changed from 14.2.2 to 14.2.1.

6.3 NFPA 25, Chapter 5, Section 5.1, Table 5.1 is amended as follows: On line one of the "Investigation" section, the "Obstruction Reference" is changed from 14.2.1 to 14.2.2.

6.[2]4 Frequency and Labels

6.4.1 Automatic fire sprinkler systems, standpipes, and fire pumps shall be inspected annually by a person holding a certificate of registration as required in Section 3.1 of these rules.

6.4.2 Automatic fire sprinkler systems that pass the three-year and five-year inspection requirements as required in NFPA 25, Tables 5.1 and 13.1, shall have a label affixed to the riser indicating the specific inspection or inspections that was completed, the month and year those inspections was performed, the person who performed the inspection, and the person performing the inspections certificate of registration number.

6.4.3 The label shall be affixed to the riser using a heatless process, shall be 3 in. X 5 in., shall have the official seal of registration of the SFM affixed to the label, shall be constructed of durable material, and shall be the self-destructive type when removal is attempted.

6.[3]5 Accepted Inspection Forms

6.5.1 [One of the two] Inspection forms listed in NFPA[- Standard] 25, Annex B, Section B.2, shall be used as the accepted inspection forms.

6.5.2 Inspection form format shall be as required in NFPA 25, Annex B, Section B.1(4)[-].

6.5.3 [or a] A similar equivalent inspection form approved by the SFM [shall] may be used as the accepted forms for inspection, testing, and [inspecting] maintenance of water-based fire [sprinkler] protection systems.

6.5.4 A copy of the completed inspection forms shall be left in a water proof container affixed to the riser.

6.[4]6 New Systems

Newly installed automatic fire sprinkler systems, standpipes, and fire pumps are exempt from the annual testing requirement required in Section 6.2 of these rules, for one year from the approval date of the initial installation acceptance testing.

KEY: automatic fire sprinklers

Date of Enactment or Last Substantive Amendment: [~~May 23, 2008~~ September 7, 2010]

Notice of Continuation: March 28, 2008

Authorizing, and Implemented or Interpreted Law: 53-7-204

**Public Safety, Fire Marshal
R710-6
Liquefied Petroleum Gas Rules**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33838

FILED: 07/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Liquefied Petroleum Gas Board met in a regularly scheduled Board meeting on 06/24/2010 and voted to amend the currently enacted administrative rule. The Board adopted a newer edition of an incorporated reference and set a specific length of time for the definition of "temporary".

SUMMARY OF THE RULE OR CHANGE: In Subsection R710-6-1(1.4), the Board proposes to update the 2006 International Fire Code to the 2009 International Fire Code. The Board also directed that the updated incorporated reference state that it was enacted and amended by the Utah State Legislature in the State Fire Code Adoption Act. In Subsection R710-6-8(8.5.4), the Board proposes to delete a section of the rule that no longer applies in the 2009 International Fire Code. In Subsection R710-6-8(8.5.4), in place of the previous deletion, the Board proposes to define that if an liquefied petroleum (LP) Gas container is discontinued in use the term "temporary" is one-year in

length. The Board also added the allowance that the Authority Having Jurisdiction (AHJ) could extend it beyond the one-year length of time if so needed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-305

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates International Fire Code, published by International Code Council, Inc., 03/01/2009

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The aggregate anticipated cost to the state budget would be to purchase the newly enacted and amended 2009 International Fire Code. If that were to happen the cost of a 2009 International Fire Code is approximately \$68 per volume. There would be an aggregate anticipated cost of approximately \$1,000 to purchase the newly adopted incorporated reference.

◆ **LOCAL GOVERNMENTS:** The only aggregate anticipated cost to local government budget would be to purchase the 2009 International Fire Code at a cost of approximately \$68 for each volume. Due to the unknown number of local government agencies that would purchase the fire code and the unknown number of volumes for each local government agency, it is impossible to estimate the aggregate anticipated cost to local government.

◆ **SMALL BUSINESSES:** There would be no aggregate anticipated cost to small businesses due to the fact that small businesses would not be purchasing the 2009 International Fire Code which is a regulatory manual and would be purchased by regulatory agencies.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There would be no fiscal impact to other persons due to the fact that they would not be purchasing a 2009 International Fire Code for private usage. There is no need to do so.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only compliance cost for affected persons would be to purchase the newly incorporated reference, the 2009 International Fire Code. The purchase would be for regulatory agencies to use in the enforcement of the fire code and normally the affected business persons would not be required to purchase the 2009 International Fire Code. The cost of the newly adopted fire code is approximately \$68.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Utah State Legislature now enacts and amends the adoption of a state construction standard and a state fire code. That occurs every three years. The purchasing of the 2009 International Fire Code by businesses would be almost non-existent due to the fact that businesses normally do not use the fire code for reference to enforce the fire code, the regulatory agencies would purchase the fire code. I feel the fiscal impact on businesses is so small it is not even measurable.

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

PUBLIC SAFETY
FIRE MARSHAL
ROOM 302
5272 S COLLEGE DR
MURRAY, UT 84123-2611
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Brent Halladay by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2010

AUTHORIZED BY: Ron Morris , Utah State Fire Marshal

R710. Public Safety, Fire Marshal.

R710-6. Liquefied Petroleum Gas Rules.

R710-6-1. Adoption, Title, Purpose and Scope.

Pursuant to Title 53, Chapter 7, Section 305, Utah State Code Annotated 1953, the Liquefied Petroleum Gas (LPG) Board adopts minimum rules to provide regulation to those who distribute, transfer, dispense or install LP Gas and/or its appliances in the State of Utah.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 58, LP Gas Code, 2008 edition, except as amended by provisions listed in R710-6-8, et seq.

1.2 National Fire Protection Association (NFPA), Standard 54, National Fuel Gas Code, 2009 edition, except as amended by provisions listed in R710-6-8, et seq.

1.3 National Fire Protection Association (NFPA), Standard 1192, Standard on Recreational Vehicles, 2008 Edition, except as amended by provisions listed in R710-6-8, et seq.

1.4 International Fire Code (IFC), Chapter 38, [2006]2009 edition, as published by the International Code Council, Inc. (ICC), [except as amended by provisions listed in R710-6-8, et seq] and as enacted and amended by the Utah State Legislature in Sections 102 and 201 of the State Fire Code Adoption Act.

1.5 A copy of the above codes are on file with the Division of Administrative Rules, and the State Fire Marshal's Office. The definitions contained in the afore referenced codes shall also pertain to these rules.

1.6 Title.

These rules shall be known as "Rules Governing LPG Operations in the State of Utah" and may be cited as such, and will be hereinafter referred to as "these rules".

1.7 Validity.

If any article, section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the LPG Board

such decision shall not affect the validity of the remaining portion of these rules.

1.8 Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes or standards as adopted, the more restrictive requirement shall govern, as determined by the enforcing authority.

R710-6-8. Amendments and Additions.

The following amendments and additions are hereby adopted by the Board:

8.1 All LP Gas facilities that are located in a public place shall be inspected by a certified LP Gas serviceman every five (5) years for leaks in all buried piping as follows:

8.1.1 All buried piping shall be pressure tested and inspected for leaks as set forth in NFPA Standard 54, Sections 4.1.1 through 4.3.4.

8.1.2 If a leak is detected and repaired, the buried piping shall again be pressure tested for leaks.

8.1.3 The certified LP Gas serviceman shall keep a written record of the inspection and all corrections made to the buried piping located in a public place.

8.1.4 The inspection records shall be available to be inspected on a regular basis by the Division.

8.2 Whenever the Division is required to complete more than two inspections to receive compliance on an LP Gas System, container, apparatus, appliance, appurtenance, tank or tank trailer, or any pertinent equipment for the storage, transportation or dispensation of LP Gas, the Division shall charge to the owner for each additional inspection, the re-inspection fee as stated in R710-6-6.1(e).

8.3 All LP Gas containers of more than 5000 water gallons shall be inspected at least biannually for compliance with the adopted statute and rules. The following containers are exempt from this requirement:

8.3.1 Those excluded from the act in UCA, Section 53-7-303.

8.3.2 Containers under federal control.

8.3.3 Containers under the control of the U.S. Department of Transportation and used for transportation of LP Gas.

8.3.4 Containers located at private residences.

8.4 Those using self-serve key or card services shall be trained in safe filling practices by the licensed dealer providing the services. A letter shall be sent to the Division by the licensed dealer stating that those using the self-serve key or card service have been trained.

8.5 IFC Amendments:

8.5.1 IFC, Chapter 38, Section 3801.2 Permits. On line 2 after the word "105.7" add "and the adopted LPG rules".

8.5.2 IFC, Chapter 38, Section 3803.1 is deleted and rewritten as follows: General. LP Gas equipment shall be installed in accordance with NFPA 54, NFPA 58, the adopted LP Gas Administrative Rules, and the International Fuel Gas Code, except as otherwise provided in this chapter.

8.5.3 IFC, Chapter 38, Section 3809.12 is deleted and rewritten as follows: In Table 3809.12, Doorway or opening to a building with two or more means of egress, with regard to quantities

720 or less and 721-2,500, the currently stated "5" is deleted and replaced with "10".

~~[8.5.4 IFC, Chapter 38, Section 3809.14 is amended as follows: Delete "20" from line three and replace it with "10".]~~8.5.4 IFC, Chapter 38, Section 3810.1 is amended as follows: On line two after the word "discontinued" add the words "for more than one year or longer as allowed by the Authority Having Jurisdiction (AHJ)".

8.6 NFPA, Standard 58 Amendments:

8.6.1 NFPA, Standard 58, Section 5.2.1.1 is amended to add the following section: (c) All new, used or existing containers of 5000 water gallons or less, installed in the State of Utah or relocated within the State of Utah shall be marked with the ASME stamp as defined in Section 2.1 of these rules. All new, used or existing containers of more than 5000 water gallons, installed in the State of Utah or relocated within the State of Utah, shall be marked with the ASME stamp as defined in Section 2.1 of these rules, and shall be inspected for approval by the Division. If the Division has concerns about the integrity or condition of the container, additional nondestructive testing may be required to include but not limited to hydrostatic testing, ultrasonic metal thickness testing or any other testing as determined necessary by the Division. All incurred costs for additional testing required by the Division shall be the responsibility of the owner.

8.6.2 NFPA, Standard 58, Section 5.2.1.1 is amended to add the following section: (d) If an existing U68, U69, U200 or U201 specification container, more than 5000 water gallons, is relocated within the State of Utah, and does not bear the required ASME stamp as defined in Section 2.1 of these rules, the container cannot be reinstalled unless the container has received a "Special Classification Permit" from the Division. Specifications of the type of container, container history if known, material specifications and calculations, and condition of the container shall be submitted to the Division by the person seeking the "Special Classification Permit". The Division shall inspect the container for approval. If the Division has concerns about the integrity or condition of the container, additional nondestructive tests such as hydrostatic testing, ultrasonic metal thickness testing or any other testing as determined necessary by the Division. All incurred costs of testing and evaluations shall be the responsibility of the owner. The Division will approve or disapprove the proposed container. Approval by the Division shall be obtained before the container is set or filled with LP Gas.

8.6.3 NFPA, Standard 58, Section 5.2.1.5 is amended to add the following sentence at the end of the section:

(A) Repairs and alterations shall only be made by those holding a National Board "R" Certificate of Authorization commonly known as an R Stamp.

8.6.4 NFPA Standard 58, Sections 5.9.3.2(3)(a) and (b) are deleted and rewritten as follows:

Type K copper tubing without joints below grade may be used in exterior LP Gas piping systems only.

8.6.5 NFPA, Standard 58, Section 6.6.1.2 is amended to add the following at the end of the section: When guard posts are installed they shall be installed meeting the following requirements:

8.6.5.1 Constructed of steel not less than four inches in diameter and filled with concrete.

8.6.5.2 Set with spacing not more than four feet apart.

8.6.5.3 Buried three feet in the ground in concrete not less than 15 inches in diameter.

8.6.5.4 Set with the tops of the posts not less than three feet above the ground.

8.6.6 NFPA, Standard 58, Section 6.6.3 is amended to add the following section: 6.6.3.9 Skid mounted ASME horizontal containers greater than 2000 water gallons, with non-fireproofed steel mounted attached supports, resting on concrete, pavement, gravel or firm packed earth, may be mounted on the attached supports to a maximum of 12 inches from the top of the skid to the bottom of the container.

8.6.7 NFPA, Standard 58, Section 6.6.6 is amended to add the following: (L) All metallic equipment and components that are buried or mounded shall have cathodic protection installed to protect the metal and shall meet the following requirements:

8.6.7.1 Sacrificial anodes shall be installed as required by the size of the container. If more than one sacrificial anode is required they shall be evenly distributed around the container.

8.6.7.2 Sacrificial anodes shall be connected to the container or piping as recommended by the manufacturer or using accepted engineering practices.

8.6.7.3 Sacrificial anodes shall be placed as near the bottom of the container as possible and approximately two feet away from the container.

8.6.8 NFPA, Standard 58, Section 6.24.3.16 is added as follows: On dispensing installations, 1000 gallon water capacity or less, where the dispensing cabinet is located next to the LP Gas container, stainless steel wire braid hose of more than 36 inches in length may be used on vapor and liquid return lines only. The hose shall be secured and routed in a safe and professional manner, marked with the date of installation, and shall be replaced every five years from that installation date.

8.6.9 NFPA, Standard 58, Section 6.25.3.2, the last sentence of the section is deleted and rewritten as follows: Existing installations shall comply with this requirement by March 31, 2011.

8.6.10 NFPA, Standard 58, Section 8.4.1.1(1) is amended as follows: On line one remove "5ft (1.5m)" and replace it with "10 ft (3m)".

KEY: liquefied petroleum gas

Date of Enactment or Last Substantive Amendment: ~~May 24, 2010~~**September 7, 2010**

Notice of Continuation: March 30, 2006

Authorizing, and Implemented or Interpreted Law: 53-7-305

Public Safety, Fire Marshal
R710-9
Rules Pursuant to the Utah Fire
Prevention Law

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 33836

FILED: 07/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: On 07/13/2010, the Utah Fire Prevention Board met in a regularly scheduled Board meeting and voted to amend Rule R710-9 by adding a new section with regard to the Firefighter Support Restricted Account.

SUMMARY OF THE RULE OR CHANGE: Section R710-9-9, Firefighter Support Restricted Account, is added. In Subsection R710-9-9(9.1), the Board proposes to create a Firefighter Support Restricted Account Advisory Committee whose duties are to provide direction to the State Fire Marshal in the distribution of firefighter license plate funding in the restricted account. In Subsections R710-9-9(9.2) through (9.5), the Board establishes the advisory committees members, terms, appointment of a chairman, etc. In Subsections R710-9-9(9.6) through (9.8), the Board proposes to establish how the funding will be distributed, to whom it will go to, and if there is a conflict, how it will be resolved.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-109

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There is no aggregate anticipated cost or savings to the state budget because the creation of this committee will not impact the states budget.
- ◆ LOCAL GOVERNMENTS: There could be an aggregate anticipated cost to local government if a local government official was appointed to be a committee member. The effect would be approximately two meetings per year per committee member in the Salt Lake valley.
- ◆ SMALL BUSINESSES: There is no aggregate anticipated cost or savings to small businesses because it does not affect small businesses in any form.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There could be an aggregate anticipated cost to other persons if the one committee member was from the general public. It would involve approximately two meetings per year in the Salt Lake City area.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons due to the formation of an advisory committee.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses for the passage of these proposed amendments which creates an advisory committee.

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

PUBLIC SAFETY
FIRE MARSHAL
ROOM 302
5272 S COLLEGE DR
MURRAY, UT 84123-2611
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Brent Halladay by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2010

AUTHORIZED BY: Ron Morris, Utah State Fire Marshal

R710. Public Safety, Fire Marshal.**R710-9. Rules Pursuant to the Utah Fire Prevention Law.****R710-9-2. Definitions.**

2.1 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Committee" means the Firefighter Support Restricted Account Advisory Committee.

2.[3]4 "Division" means State Fire Marshal.

2.[4]5 "IFC" means International Fire Code.

2.[5]6 "LFA" means Local Fire Authority.

2.7 "Restricted Account" means Firefighter Support Restricted Account.

2.[6]8 "SFM" means State Fire Marshal or authorized deputy.

2.[7]9 "Sub-Committee" means Fire Prevention Board Budget Sub-Committee or Amendment Sub-Committee.

2.[8]10 "UCA" means Utah Code Annotated, 1953.

R710-9-9. Firefighter Support Restricted Account.

9.1 There is created by the Board a Firefighter Support Restricted Account Advisory Committee whose duties are to provide direction to the Division in the distribution of funds in the Restricted Account.

9.2 The Committee shall be appointed by the Division, approved by the Board, and shall consist of the following members:

9.2.1 Two representatives from the Utah State Firemen's Association.

9.2.2 Two representatives from the Utah State Fire Chiefs Association.

9.2.3 Two representatives from the Professional Firefighters of Utah.

9.2.4 One representative from the general public.

9.3 The Committee members shall serve for a term of three years, shall meet as directed by the Division, and a majority of members shall be present to constitute a quorum.

9.4 The Committee shall select one of its members to act in the position of chair, the chair shall serve for a term of one year, and the chair shall be a voting member only in the event of a tie vote.

9.5 The Committee shall assist the Division in preparing application forms to be used to apply for distributions from the Restricted Account.

9.6 The Division shall set a specific time period each year for the receiving of applications, the review of applications by the committee, and the distribution of the Restricted Account funds.

9.7 The Division shall distribute the Restricted Account funding to charitable organizations meeting the requirements listed in UCA 53-7-109(4), and to be expended for only the purposes allowed in accordance with UCA 53-7-109(5)(b).

9.8 In the event of a conflict in the distribution of the Restricted Account funds, an appeal for resolution shall be made to the Board. The Board shall be the final authority in the resolution of the conflict.

R710-9-~~9~~10. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-9-~~10~~11. Validity.

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-9-~~11~~12. Adjudicative Proceedings.

~~12.1~~ All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

~~12.2~~ If a city, county, or fire protection district refuses to establish a method of appeal regarding a portion of the IFC, the appealing party may petition the Board to act as the board of appeals.

~~12.3~~ A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the Board within 20 days after receiving final decision.

~~12.4~~ All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with UCA, Section 63G-4-201.

~~12.5~~ The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

~~12.6~~ The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

~~12.7~~ Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

~~12.8~~ Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

KEY: fire prevention, law

Date of Enactment or Last Substantive Amendment: ~~July 1, 2010~~ **September 7, 2010**

Notice of Continuation: June 8, 2007

Authorizing, and Implemented or Interpreted Law: 53-7-204

**Public Safety, Peace Officer Standards
and Training
R728-409
Suspension or Revocation of Peace
Officer Certification**

NOTICE OF PROPOSED RULE

(Repeal and Reenact)
DAR FILE NO.: 33816
FILED: 07/13/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 187 enacted by the 2010 Utah Legislature became effective 05/11/2010. This bill significantly modified the Public Safety Code relating to peace officer certification and the procedures and grounds for the denial, relinquishment, suspension, or revocation of peace officer certification. Rule R728-409 as previously published no longer complies with state law. This rule change is necessary to provide for public safety as it relates to the regulation of peace officer certification and to keep the agency in compliance with state law. (DAR NOTE: H.B. 187 (2010) is found at Chapter 313, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: This rule change constitutes a repeal and reenactment. The new rule establishes procedures for the suspension or revocation of a peace officer's certification that are in compliance with Section 53-6-211 as modified by the 2010 Legislature. The rule change provides definitions, outlines investigative procedures, outlines procedures for adjudicative proceedings, and establishes procedures to be followed by the Peace Officer Standards and Training (POST) Council in issuing an order for the suspension or revocation of a peace officer's certification.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-6-211

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds POST Council Disciplinary Guidelines, published by POST Council, 06/07/2010

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There is no anticipated cost or savings to the state budget by implementation of this rule because the changes in the rule do not establish any additional requirements that would have fiscal impact.
- ◆ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government by implementation of this rule because the changes in the rule do not establish any additional requirements that would have fiscal impact.
- ◆ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses by implementation of this rule because the changes in the rule do not establish any additional requirements that would have fiscal impact.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to other persons by implementation of this rule because the changes in the rule do not establish any additional requirements that would have fiscal impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no anticipated cost or savings to affected persons by implementation of this rule because the changes in the rule do not establish any additional requirements that would have fiscal impact.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will have no fiscal impact on businesses.

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

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
410 W 9800 S
SANDY, UT 84070
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Kelly Sparks by phone at 801-256-2321, by FAX at 801-256-0600, or by Internet E-mail at ksparks@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2010

AUTHORIZED BY: Lance Davenport, Commissioner

R728. Public Safety, Peace Officer Standards and Training.
~~[R728-409. Refusal, Suspension, or Revocation of Peace Officer Certification.~~

~~R728-409-1. Authority.~~

~~————— The authority for the refusal, suspension or revocation of peace officer certification is authorized under Section 53-6-105(K) and 53-6-211 which gives authority for the Director of Peace Officers Standards and Training to make rules for this chapter.~~

~~R728-409-2. Purpose.~~

~~————— The purpose of a procedure for the refusal, suspension, or revocation of peace officer certification/authority is to further law enforcement professionalism and to protect the public, employing agencies and law enforcement officers alike.~~

~~R728-409-3. Cause to Evaluate Certification for the Refusal, Suspension, or Revocation of Peace Officer Certification or Authority.~~

~~————— The division may initiate an investigation when it receives information that grounds for refusal, suspension, or revocation of certification exist. The initial information may come from any responsible source, including those provisions of R728-409-5. Pursuant to the purpose and intent of 53-6-211, revocation is a permanent deprivation of peace officer certification or authority, and except as outlined in R728-409-28 does not allow for a person who has been revoked in the State of Utah to be readmitted into any peace officer training program conducted by or under the approval of the division, or to have peace officer certification or authority reinstated or restored by the division.~~

~~————— Any of the following provisions may constitute cause for refusal, suspension, or revocation of peace officer certification or authority:~~

~~————— A. Any willful falsification of any information provided to the division to obtain certified status. The information could be in the form of written application, supplementary documentation requested or required by the division, testimony or other oral communication to the division, or any other form of information which could be considered fraudulent or false for purposes of Subsection 53-6-211(1)(d)(i).~~

~~————— B. "Physical or mental disability" for purposes of Section 53-6-211(1)(d)(ii), shall be defined as set forth in Utah Administrative Code, Rule R728-403-9, Physical, Emotional, or Mental Condition Requirement, and division medical guidelines.~~

~~————— C. Conviction of any drug related offense including the provisions of Title 58 Chapter 37.~~

~~————— D. "Addiction to drug or narcotics" for purposes of Section 53-6-211(1)(d)(iii) means addiction to any drug or narcotic as defined in Title 58, Chapter 37.~~

~~————— 1. Peace officers who, in the normal course of their peace officer duties and functions, possess, attempt to simulate, unintentionally use or are forced to use, narcotics, drugs, or drug paraphernalia, shall be exempt from the provisions of Section 53-6-211(1)(d)(iii) and (v), so long as their conduct:~~

- ~~————— a. is authorized by their law enforcement employer; and~~
- ~~————— b. does not jeopardize the public health, safety or welfare.~~

~~————— 2. Addiction to drugs or narcotics as a direct result of the legitimate treatment of a physical, emotional or psychological disease, or injury which is currently being treated by a licensed~~

physician or medical practitioner licensed in this state or any other state, and which has been reported, in writing, to the law enforcement employer and P.O.S.T., shall not be considered a violation of Section 53-6-211(1)(d)(iii) so long as the addiction does not jeopardize the public health, safety or welfare.

a. Addiction to unlawfully obtained drugs or narcotics arising from circumstances not involving (a) the legitimate treatment of a physical disease; (b) circumstances involving surgery or serious injury; (c) from psychological illness; and (d) which has not been treated by a licensed physician or medical practitioner, licensed in this state or any other state, shall be considered a violation of Section 53-6-211(1)(d)(iii).

b. No applicant shall be granted peace officer certification or authority if it is demonstrated that the applicant has a drug addiction which is not under control.

c. A peace officer may have peace officer certification or authority temporarily suspended for the duration of drug rehabilitation. If the peace officer has demonstrated control of the drug addiction as determined by a division medical consultant, peace officer certification or authority shall be restored.

d. Criminal conduct by a person asserting the conduct was the result of drug addiction or dependence shall be grounds for refusal, suspension or revocation of peace officer certification or authority despite the fact that rehabilitation has not occurred prior to the peace officer certification or authority being refused, suspended or revoked.

3. Notwithstanding anything contained in this administrative rule to the contrary, a peace officer may have peace officer certification or authority revoked for conduct in violation of Section 53-6-211(1)(d)(iii), if, prior to the conduct in question, the peace officer has had a previous suspension or revocation of peace officer certification or authority under Section 53-6-211(1)(d)(iii), or similar statute of another jurisdiction.

E. Conviction of a felony.

F. "Crimes involving dishonesty" for purposes of Section 53-6-211(1)(d)(iv) means conviction for criminal conduct, under the statutes of this state or any other jurisdiction, which under the rules of evidence can be used to impeach a witness or involving, but not limited to, any of the following:

1. theft;
2. fraud;
3. tax evasion;
4. issuing bad checks;
5. financial transaction credit card offenses;
6. deceptive business practices;
7. defrauding creditors;
8. robbery;
9. aggravated robbery;
10. bribery or receiving a bribe;
11. perjury;
12. extortion;
13. falsifying government records;
14. forgery;
15. receiving stolen property;
16. burglary or aggravated burglary.

G. "Crimes involving unlawful sexual conduct" for purposes of Section 53-6-211(1)(d)(iv) means any violation described in Title 76, Chapter 5, Part 4; Chapter 5a; Chapter 7, Part

1; Chapter 10, Part 13; or Chapter 9, Part 7, Section 702, 702.5 and 702.7.

H. "Crimes involving physical violence" for purposes of Section 53-6-211(1)(d)(iv) means any violation of Part 1, Assault and Related Offenses, and Part 2, Criminal Homicide, of Title 76, Chapter 5.

I. "Driving under the influence of alcohol or drugs" for purposes of Section 53-6-211(1)(d)(iv) means any violation of Section 41-6a-502.

Criminal conduct by an individual asserting the conduct was a result of drug addiction or dependence shall be grounds for refusal, suspension or revocation despite the fact that rehabilitation has not occurred prior to the refusal, suspension or revocation.

J. "Conduct or pattern of conduct" for purposes of Section 53-6-211(1)(d)(v) means an act or series of acts by a person which occur prior to or following the granting of peace officer certification or authority.

1. Conduct that shall be considered as grounds for violation of Section 53-6-211(1)(d)(v) shall include:

a. uncharged conduct which includes the conduct set forth in Rule R728-409-3, which could be considered criminal, although such conduct does not result in the filing of criminal charges against the person, but where the evidence shows that the criminal act did occur, that the person committed the act, and that the burden of proof by a preponderance of the evidence could be established by the division;

b. criminal conduct where a criminal charge is filed, a conviction is not obtained, but where the evidence shows that the criminal act did occur, that the person committed the act, and that the burden of proof by a preponderance of the evidence appears to exist;

c. criminal conduct as enumerated in Section 53-6-211(1)(d)(iv) and 53-6-203, where the filing of a criminal charge has resulted in a finding of guilt based on evidence presented to a judge or jury, a guilty plea, a plea of nolo contendere, a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation, diversion agreements, or conviction which has been expunged, dismissed, or treated in a similar manner to either of these procedures;

d. violations of Section 53-6-211(1)(d)(i) or the refusal to respond, or the failure to respond truthfully, to the questions of POST investigators asked pursuant to R728-409-5;

e. violations of Section 53-6-211(1)(d)(iii) which involve criminal conduct or jeopardize the public health, safety or welfare;

f. sexual harassment which is:

(i) conduct which rises to the level of behavior of a criminal sexual nature which includes, but is not limited to, the unwelcome touching of the breasts of a female, buttocks or genitals of another, and or taking of indecent liberties with another;

(ii) behavior by a supervisor which creates the perception in the mind of the subordinate that the granting or withholding of tangible job benefits shall be based on the granting of sexual favors.

g. sexual conduct which is:

(i) subject to criminal punishment; or

(ii) substantially diminishes or, if known, would tend to diminish public confidence and respect for law enforcement; or

(iii) damages or, if known, would tend to damage a law enforcement department's efficiency or morale; or

~~(iv) impairs or, if known, would tend to impair the ability of the peace officer to objectively and diligently perform the duties and functions of a peace officer;~~

~~h. sexual activity protected by the right of privacy, that does not hamper law enforcement, shall not be grounds for refusal, suspension or revocation of peace officer certification or authority.~~

~~i. Other conduct, whether charged or uncharged, which constitutes malfeasance in office, non-feasance in office, violates the peace officer's oath of office, or a willful and deliberate violation of Title 53, Chapter 6, or the administrative rules contained in Utah Administrative Code, Agency R728:~~

~~(i) Malfeasance for purposes of subsection (h) shall include the commission of some act which is wholly wrongful or unlawful that affects, interrupts or interferes with the performance of official duties.~~

~~(ii) Non-feasance for purposes of subsection (h) shall include the omission of an act which a peace officer by virtue of his employment as such is charged to do.~~

~~(iii) oath of office for purposes of subsection (h) shall include the swearing of a person, upon employment as a peace officer defined in Title 53, Chapter 13, to an oath to support, obey and defend the Constitution of the United States and the Constitution of the State of Utah and discharge the duties of the office with fidelity, or, a similar oath of a county, city or town.~~

~~j. arrest for driving under the influence of alcohol or drugs, where the elements of the offense could be established by a preponderance of the evidence.~~

~~k. Addiction to alcohol:~~

~~(i) if it is demonstrated that a peace officer or applicant for peace officer certification or authority has an alcohol addiction which is not under control;~~

~~(ii) a peace officer with an alcohol addiction may have peace officer certification or authority temporarily suspended for the duration of alcohol rehabilitation. If the peace officer has demonstrated control of the alcohol addiction as determined by a division medical consultant, peace officer certification or authority may be restored;~~

~~(iii) criminal conduct by an individual asserting the conduct was a result of alcohol addiction or dependence shall be grounds for refusal, suspension or revocation despite the fact that rehabilitation has not occurred prior to the refusal, suspension or revocation.~~

~~l. Acts of gross negligence or misconduct which is "clearly outrageous" or shock the conscience of a reasonable person;~~

~~(i) violations of the Law Enforcement Code of Ethics as adopted by the Council;~~

~~(ii) lying under the Garrity warning~~

~~m. A dismissal from military service under any of the following circumstances:~~

~~(i) Bad conduct discharge (BCD)~~

~~(ii) Dishonorable discharge (DD)~~

~~(iii) Administrative discharge of "General under honorable conditions" (GEN).~~

R728-409-4. Conduct Not in Violation of Section 53-6-211(1).

~~Conduct which shall not be considered a violation of this subsection includes:~~

~~A. Traffic violations other than those enumerated in Section 53-6-211(1)(d)(iv) or R728-409-3 herein; or~~

~~B. Violations of individual department policy and procedure as enumerated in Section 53-6-211(4).~~

R728-409-5. Investigative Procedure.

~~A. All investigations initiated shall be commenced upon the reasonable belief that cause exists for the refusal, suspension or revocation of peace officer, correctional officer, reserve/auxiliary officer or special function officer certification as indicated in section 409-3 above.~~

~~B. The initiation of an investigation may occur upon any of the following circumstances:~~

~~1. A peace officer who has been charged with a criminal violation of law;~~

~~2. A peace officer who has committed conduct which is a criminal act under law, but which has not been criminally charged and/or where criminal prosecution is not anticipated;~~

~~3. A peace officer who has committed conduct in violation of section 409-3 above, where the department has conducted disciplinary action and notification of the conduct has been made to the division by the peace officer's department;~~

~~4. A department which has terminated a peace officer from employment for conduct which is in violation of section 409-3 above;~~

~~5. A department which has agreed to allow a peace officer to resign, rather than terminate the employment, for conduct which is in violation of section 409-3 above;~~

~~6. A complaint from a citizen which, on its face, appears to be a violation of section 409-3 above;~~

~~7. Media attention, confirmed by the employing agency, reporting peace officer misconduct which appears to be in violation of section 409-3 above;~~

~~8. Information from a peace officer, concerning another peace officer or law enforcement department, alleging improper, unethical, or unlawful conduct in violation of section 409-3 above;~~

~~9. Information against a peace officer received from any law enforcement agency, criminal justice related agency, or political subdivision alleging improper, unethical, or unlawful conduct in violation of section 409-3 above;~~

~~10. Administrative procedures instituted by the division to uncover or reveal past criminal conduct or the character of an individual requesting peace officer certification, or entrance into a certified peace officer training program which upon completion would create eligibility for peace officer certification; and/or~~

~~11. The peace officer may be directed to respond to questions pursuant to a "Garrity Warning." Refusal to respond to questions after being warned, or the failure to respond truthfully, may result in a suspension up to three years depending on aggravating and mitigating circumstances.~~

~~C. All citizens requesting to file a complaint against a peace officer will be requested to sign a written statement detailing the incident, swear to the accuracy of the statement, be advised that complaints found to be malicious in nature may be prosecuted under Section 76-8-511, Falsification of Government Record, and may require that the citizen submit to a polygraph examination concerning the truth and veracity of the complaint.~~

~~D. Non-criminal complaints or information about a peace officer initiated by another peace officer will be submitted in writing detailing the incident or offer the division a tape recorded statement detailing the incident.~~

~~E. A staff member will be assigned to investigate the complaint or information and to make a recommendation to proceed or to discontinue action in the matter.~~

~~1. If a peace officer under investigation is employed by a law enforcement agency, POST shall notify the peace officer's employing agency concerning the complaint or information.~~

~~2. POST will refer any complaints made by officers or citizens of a criminal nature to the appropriate agency having jurisdiction.~~

~~3. Criminal complaints will be handled by the agency having jurisdiction.~~

~~4. If the responsible agency has an open and active case POST will wait until the agency has completed their investigation before taking action.~~

~~5. POST will use the investigation and may use the adjudicative findings to help determine its action with regard to an individual's certification. POST will do it's own investigation whenever it feels the necessity to do so.~~

~~6. POST will take action based on the actual conduct of the individual as determined by an investigative process, not necessarily on the punishment or finding of the court.~~

~~7. POST's primary concern is conduct that disrupts, diminishes or otherwise jeopardizes public trust and fidelity in law enforcement.~~

~~8. Complaints that are not criminal will be investigated by the agency having jurisdiction. If the employing agency chooses not to investigate, a POST staff investigator may be assigned to conduct the investigation.~~

~~9. Witnesses and other evidence may be subpoenaed for the investigation pursuant to Section 53-6-210.~~

~~10. If ordinary investigative procedures cannot resolve the facts at issue, the peace officer may be requested to submit to a polygraph examination. Refusal to do so could result in the immediate suspension of peace officer certification until such time as an administrative proceeding can be established or other factual information has been received which no longer requires the need for the polygraph examination.~~

~~11. If an officer is found to have lied under the Garrity warning, his certification may result in a suspension up to three years depending on aggravating and mitigating circumstances.~~

~~F. Subsection (E) will be the method preferred for the investigation of alleged violations of Title 53, Chapter 6, unless special investigative procedures are determined to be more beneficial to the investigative process by the director and the council as per R728-409-7.~~

~~G. If the alleged conduct constitutes a public offense for which the individual involved has not been previously convicted, the division shall immediately notify the appropriate prosecutorial authority. If the conduct would also, if proven, constitute grounds for suspension or decertification under Section 53-6-211(1), the director in his discretion may immediately suspend the certification of the individual as provided in Section 63G-4-502 and Rule R728-409-25.~~

~~H. If immediate suspension of a peace officer's certification is believed necessary to ensure the safety and welfare~~

~~of the public, or for insuring the continued public trust or professionalism of law enforcement, the director shall immediately establish the procedures for investigation and adjudicative proceedings in order to fulfill the due process rights of the peace officer.~~

~~I. Whenever an investigation is initiated the officer(s) who is under investigation and his department will be notified as soon as reasonably possible, except in cases where the nature of the complaint would make such a course of action impractical. The date and time the department administrator and the officer are notified should be noted in the appropriate space on the complaint form.~~

~~J. In all cases, where possible, the investigation shall be conducted with the full knowledge and assistance of the department administrator or the administrator of the employing political subdivision.~~

~~K. If during the course of an investigation it appears that eriminal action may be involved the information is to be turned over to appropriate local authorities for disposition. It is not the position of the division to be involved in investigating criminal cases against officers. If eriminal charges are pending against an officer the division may wait until the case is adjudicated before deciding if any further action is warranted by the division (subject to subsection (5)(J) above).~~

~~L. Assigned investigators are to ensure that all investigative procedures are properly documented and recorded in the case file.~~

~~M. Final disposition of a case (i.e., close case, refer to department for follow-up action, refer for adjudicative proceeding, etc.) will be made by the deputy director with the approval of the director.~~

R728-409-6. Special Investigative Proceedings - Procedures.

~~A. The Director with the concurrence of the Council on Peace Officer Standards and Training, may initiate special investigative proceedings:~~

~~B. The purpose of the special investigative proceeding is to hear testimony and other evidence regarding violations of Chapter 6, Title 53.~~

~~C. Special investigative proceedings will be presided over by a panel of the Council on Peace Officer Standards and Training consisting of at least three Council members and any persons designated by the Council Chairman and Director of the division.~~

~~D. Direct examination of witnesses will be conducted by members of the panel.~~

~~E. The division and presiding officer may subpoena witnesses and other evidence for special investigative proceedings, as per Sections 53-6-210 and 63G-4-205(2).~~

~~F. The special investigative proceeding will be a proceeding of record by the use of tape recording and/or court reporter.~~

~~G. If an officer is found to have lied under the Garrity warning, his certification may result in a suspension up to three years depending on aggravating and mitigating circumstances.~~

R728-409-7. Purpose of Adjudicative Proceedings.

~~A. The purpose of adjudicative proceedings will be to establish whether or not:~~

- ~~1. the respondent did in fact commit the alleged conduct; and~~
- ~~2. such conduct falls within the grounds for administrative action enumerated in Section 53-6-211(1); or~~
- ~~3. to exonerate the respondent if the evidence presented fails to prove that the respondent committed the alleged conduct or that such conduct falls within grounds for administrative action enumerated in Section 53-6-211(1); or~~
- ~~4. to recommend, to the Council on Peace Officer Standards and Training and the Director of the Division of Peace Officer Standards and Training, any action to be taken with respect to the respondent if the evidence presented indicates that the respondent committed the alleged conduct and that such conduct falls within grounds for administrative action enumerated in Rule R728-409-2 above and in Section 53-6-211(1).~~
- ~~B. The Administrative Law Judge may recommend refusal, suspension or revocation of the respondent's peace officer, correctional officer, reserve/auxiliary officer or special function officer certification, as applicable.~~
- ~~C. Any decision reached by the Administrative Law Judge against the respondent involving a violation of Subsection 53-6-211(1), must meet the standard burden of proof which will be a preponderance of evidence.~~

~~R728-409-8. Commencement of Adjudicative Proceedings -- Administrative Complaint.~~

- ~~A. Except as otherwise permitted by Sections 53-6-211(6) and 63G-4-502 and Rules R728-409-8(C) and R728-409-25, all adjudicative proceedings shall be commenced by notice of an Administrative Complaint accompanied by a Notice of Agency Action. The Administrative Complaint will set forth the allegations complained of by the division. A copy of the Administrative Complaint and Notice of Agency Action shall be sent to the individual named on the administrative complaint and notice of agency action or by certified mail.~~
- ~~B. The Administrative Complaint shall be filed and served according to the following requirements:~~
- ~~1. when adjudicative proceedings are commenced by the division, the Administrative Complaint shall be in writing, signed by the Council Chairman and shall include:~~
- ~~a. the name and mailing address of the respondent, and the name and address of the agency employee or attorney designated to represent the division;~~
- ~~b. the division's file number or other reference number;~~
- ~~c. the name of the adjudicative proceeding;~~
- ~~d. the date that the notice of the division's action was mailed;~~
- ~~e. a statement indicating that a formal hearing will be conducted according to the provisions of Sections 63G-4-204 to 63G-4-209, except as otherwise indicated by Rule R728-409 in reference to time of response, as allowed under Section 63G-4-201(2)(vi);~~
- ~~f. a statement that the respondent shall file a responsive pleading within 30 days of the mailing date of the notice of agency action;~~
- ~~g. a statement of the time and place of the scheduled adjudicative proceeding, a statement indicating the purpose for which the adjudicative proceeding is to be held, and a statement~~

~~indicating that a party who fails to attend or participate in the adjudicative proceeding may be held in default;~~

- ~~h. a statement of the legal authority and jurisdiction under which the administrative proceeding is to be maintained;~~
- ~~i. the name, title, mailing address, and telephone number of the presiding officer; and~~
- ~~j. a statement of the purpose of the adjudicative proceeding and, to the extent known by the presiding officer, the questions to be decided.~~

~~C. When the cause of action under Section 53-6-211 and Rule R728-409-3 is conviction of a felony, the following procedures shall apply:~~

- ~~1. The division shall send written notice to the peace officer stating that proceedings prior to revocation shall be limited to an information review of written documentation by the presiding officer, and that revocation is mandatory when the presiding officer determines that the peace officer has been convicted of a felony.~~
- ~~2. The notice shall state that within 15 days of the mailing date of the notice, the peace officer may request, in writing, an informal hearing before the presiding officer to present evidence that there was no felony conviction, or that the conviction has been overturned, reduced to a misdemeanor or expunged. This notice shall also state that if the peace officer does not so request, the presiding officer, and POST Council, will proceed on the documentation of conviction.~~

~~R728-409-9. Responsive Pleadings.~~

- ~~A. In all adjudicative proceedings, the respondent shall file and serve a written response signed by the respondent or his representative within 30 days of the mailing date of the notice of agency action, that shall include:~~
- ~~1. the division's file number or other reference number;~~
- ~~2. the name of the adjudicative proceeding;~~
- ~~3. a statement of the relief that the respondent seeks;~~
- ~~4. a statement of facts;~~
- ~~5. a statement summarizing the reasons that the relief requested should be granted.~~
- ~~B. The response shall be filed with the division.~~
- ~~C. The presiding officer or the division, pursuant to rule, may permit or require pleadings in addition to the notice of agency action and the response. All papers permitted or required to be filed shall be filed with the division.~~

~~R728-409-10. Consent Agreements.~~

- ~~A. The director may seek a consent agreement for the refusal, suspension or revocation of certification with the individual. The consent agreement will be delivered with the administrative complaint.~~
- ~~B. The individual will have 10 days from receiving the consent agreement to respond to the Director on the consent agreement.~~
- ~~C. If a consent agreement is not sought or is not reached, the procedure outlined in R728-409-9 above will proceed.~~
- ~~D. If a consent agreement has been signed by both parties, the adjudicative proceeding will conclude.~~
- ~~E. The consent agreement procedure will not extend the period of time for responsive pleading to the administrative complaint and notice of agency action.~~

~~R728-409-11. Scheduling the Adjudicative Proceeding -- Hearing:~~

~~A. After the division has been served with the responsive pleading, notice of the location, date and time for the adjudicative hearing will be issued.~~

~~B. The adjudicative hearing will be held within a reasonable time after service of the responsive pleading unless a later scheduling is ordered by the presiding officer, or mutually agreed upon by the individual and the division.~~

~~C. When the cause for action is conviction of a felony, the presiding officer will conduct an informal review of the documentation within 30 days after the notice is mailed to the peace officer. If the peace officer timely requests a hearing, the presiding officer shall, within 30 days of the request, hold an informal hearing pursuant to Section 53-6-211(6).~~

~~R728-409-12. Discovery and Subpoenas:~~

~~A. In formal adjudicative proceedings parties may conduct limited discovery. The respondent is entitled to a copy of all evidence the division intends to use in the adjudicative proceeding, and other relevant documents in the agency's possession which are necessary to support his or her claims or defenses subject, however, to the Government Records Access and Management Act, UCA 63G-2-101 et seq. Discovery does not extend to interrogatories, requests for admissions or depositions.~~

~~B. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence for adjudicative proceedings shall be issued by the Division of Peace Officer Standards and Training pursuant to Section 53-6-210, or the presiding officer when requested by any party, or may be issued by the presiding officer on his own motion pursuant to Section 63G-4-205.~~

~~C. Discovery is prohibited in informal proceedings.~~

~~R728-409-13. Procedures for Adjudicative Proceedings -- Hearing Procedures:~~

~~A. All formal adjudicative proceedings shall be conducted as follows:~~

~~1. The presiding officer shall regulate the course of the hearing to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions.~~

~~2. On his own motion, or upon objection by a party, the presiding officer:~~

~~a. may exclude evidence that is irrelevant, immaterial, or unduly repetitious;~~

~~b. shall exclude evidence privileged in the courts of Utah;~~

~~c. may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all pertinent portions of the original document;~~

~~d. may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, or the record of other proceedings before the agency, and of technical or scientific facts within the agency's specialized knowledge.~~

~~3. The presiding officer may not exclude evidence solely because it is hearsay.~~

~~4. The presiding officer shall afford to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence.~~

~~5. The presiding officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.~~

~~6. All testimony presented at the hearing, if offered as evidence, to be considered in reaching a decision on the merits, shall be given under oath.~~

~~7. The hearing shall be recorded at the division's expense.~~

~~8. Any party, at his own expense, may have a person approved by the division prepare a transcript of the hearing, subject to any restrictions that the division is permitted by statute to impose to protect confidential information disclosed at the hearing.~~

~~9. All hearings shall be open to all parties.~~

~~10. This rule does not preclude the presiding officer from taking appropriate measures necessary to preserve the integrity of the hearing.~~

~~11. The respondent has the right to counsel. Counsel will not be provided by the division and all costs for counsel will be the sole responsibility of the respondent.~~

~~12. Witnesses at adjudicative hearings may have counsel present. Counsel for witnesses will not have the right to cross-examine. Counsel will not be provided by the division and all costs for counsel will be the sole responsibility of the witness.~~

~~13. Witnesses before an adjudicative hearing may be excluded from adjudicative hearing while other witnesses are testifying.~~

~~14. The presiding officer may issue an order to admonish witnesses not to discuss their testimony with other witnesses appearing to testify or offer evidence to the presiding officer at the adjudicative hearing. This order shall remain in effect until all testimony and evidence has been presented at the hearing.~~

~~15. A person's failure to comply with the admonishment order may result in the refusal to consider testimony or evidence presented, if it is deemed that the testimony or evidence has been tainted through violation of the admonishment order.~~

~~B. When the cause for action is conviction of a felony and the peace officer requests an informal hearing, it shall be conducted, except as modified by these rules, pursuant to Section 63G-4-203.~~

~~C. If the presiding officer finds, by informal review or hearing, that the peace officer has been convicted of a felony, he shall recommend revocation of certification. If the presiding officer determines that there was not a conviction, he or she may recommend action other than revocation.~~

~~R728-409-14. Procedures for Adjudicative Proceedings -- Intervention:~~

~~A. Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the division. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:~~

~~1. the division's file number or other reference number;~~

~~2. the name of the proceeding;~~

~~3. a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law; and~~

~~4. a statement of the relief that the petitioner seeks from the division.~~

~~B. The presiding officer shall grant a petition for intervention if he determines that:~~

- ~~1. the petitioner's legal interests may be substantially affected by the adjudicative proceeding; and~~
- ~~2. the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.~~

~~C.1. Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.~~

~~2. An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.~~

~~3. The presiding officer may impose the conditions at any time after the intervention.~~

R728-409-15. Default.

~~A. The presiding officer may enter an order of default against a party if:~~

- ~~1. a party fails to attend or participate in the hearing; or~~
- ~~2. the respondent in the proceeding fails to file the response required under Rule R728-409-9.~~

~~B. The order shall include a statement of the grounds for default and shall be mailed to all parties.~~

~~C. The defaulted party may seek to have the presiding officer set aside the default order in accordance with Rule 60(b) of the Utah Rules of Civil Procedure.~~

~~D. After issuing the order for default, the presiding officer shall conduct the necessary proceedings to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party.~~

R728-409-16. Procedures for Adjudicative Proceedings – Recommendations.

~~A. In adjudicative proceedings:~~

~~1. within a reasonable time after the hearing, or after the filing of any post-hearing papers permitted by the presiding officer, the presiding officer shall sign and issue a recommendation that includes:~~

- ~~a. a statement of the presiding officer's findings of fact based exclusively on the evidence of record in the adjudicative hearing or on facts officially noted;~~
- ~~b. a statement of the presiding officer's conclusions of law;~~
- ~~c. a statement of the reasons for the presiding officer's recommendation;~~
- ~~d. a statement of recommended agency action;~~
- ~~e. a notice of the right to apply for council review; and~~
- ~~f. the time limits applicable to any review.~~

~~2. The presiding officer may use his experience, technical competence, and specialized knowledge to evaluate the evidence.~~

~~3. No finding of fact that was contested may be based solely on hearsay evidence.~~

~~4. This section does not preclude the presiding officer from issuing interim orders to:~~

- ~~a. notify the parties of further hearings;~~
- ~~b. notify the parties of provisional rulings on a portion of the issues presented; or~~

~~e. otherwise provide for the fair and efficient conduct of the adjudicative hearing.~~

R728-409-17. Notice of Presiding Officer's Recommendation.

~~A. If the evidence against the individual does not support the conduct alleged in the administrative complaint with respect to Section 53-6-211(1), the presiding officer, hereafter referred to as Administrative Law Judge, will mail the parties a copy of the recommendation upon issuance of the recommendation.~~

~~B. If the Administrative Law Judge finds that the evidence against the individual does support the conduct alleged in the administrative complaint with respect to Section 53-6-211(1), the Administrative Law Judge will mail the parties a copy of the recommendation upon issuance of the recommendation.~~

~~C. The Administrative Law Judge may issue his/her recommendation to the parties by certified mail.~~

R728-409-18. Request for Review of Presiding Officer's Recommendation.

~~A. Except when revocation is recommended for conviction of a felony, the parties will have 15 days from the date of issuance of the Administrative Law Judge's recommendation to request a review of the recommendation before the council.~~

~~B. A request by any party for council review of the Administrative Law Judge's recommendation will be made in writing to the council and will contain all issues which the party wishes to raise. The request must specify whether the party is challenging the ALJ's recommended findings of fact, conclusions of law, and/or agency action. If the party is challenging the recommended findings or conclusions, the request must particularly set forth which findings and/or conclusions it wants reviewed and considered by the council. A copy of the request will be served upon all other parties.~~

~~C. The party seeking review shall provide transcripts, documents, and briefs to the council within 45 days after the filing of the notice requesting review. If the party is challenging the recommended findings of fact or conclusions of law, it must support its request with specific references and citations to the hearing record, and copies of the evidence received by the ALJ at the hearing, and which are relevant to the challenged recommendations. If the request is based on oral testimony presented at the hearing, the party shall provide, at its expense, a transcription of that relevant testimony. No party shall be permitted oral argument before the council unless a request for oral argument is filed with the Council within this same 45 day period.~~

~~D. The other party or parties shall have 30 days from the date the transcripts, documents and briefs are filed by the party seeking review, to file any response to the request for review. Any response may include additional transcripts or documents necessary for review.~~

~~E. The council shall whenever possible within a reasonable time from the filing of the notice requesting review to provide for a review hearing before the council.~~

~~F. Any review shall be based upon the administrative hearing record and briefs or other documents submitted by the parties. If a party has submitted portions of the hearing transcript, or other evidence admitted at the hearing, the council may, in its discretion, require the division to submit all or any other portion of the hearing transcript or evidence, and may continue the review~~

hearing for that purpose. If necessary to make a determination, the council may also require the agency to subpoena any of the witnesses who testified in the evidentiary hearing, to appear at the next regularly scheduled council meeting, to answer questions from council members.

G. If oral argument is requested by either party, at the review hearing the parties will be permitted 20 minutes each to present oral argument on their respective positions identified in their written requests and briefs. Any testimony presented during oral argument, if offered as evidence to be considered in reaching a decision on the review, shall be given under oath.

H. If no oral argument is requested, the council shall, within a reasonable time after all documents, transcripts and briefs have been filed, issue to the director a review decision.

I. If oral argument has been received, the council, within a reasonable time after the review hearing, shall issue to the Director a review decision.

J. The council has the power to make a full review of the Administrative Law Judge's recommendation. This power includes, but is not limited to, the power to accept the ALJ's recommended findings of fact, conclusions of law, and/or agency action, or to reject all or a portion thereof, and render its own findings, conclusions and proposed action on the officer's certification.

K. Any periods of time designated in this rule for the filing of documents and pleadings, or for scheduling of hearings may be extended by the council for good cause.

R728-409-19. Council Action and Finding by Director.

A. Unless a consent order has been signed by all parties as per Rule R728-409-10 or a request for review is made to the Council as per Rule R728-409-18, and following the adjudicative proceeding or following a default by the individual as outlined in Rule R728-409-15:

1. The division representative will issue to the council the recommendation of the Administrative Law Judge. The council will review the Administrative Law Judge's recommendation and make a decision to concur or reject that recommendation, and to issue any alternative recommendation it may desire.

2. The council will issue and file its decision with the director.

R728-409-20. Director's Final Order.

A. In adjudicative proceedings:

1. After a majority of the council recommends to refuse, suspend or revoke respondent's peace officer, correctional officer, reserve/auxiliary officer, or special function officer certification, or to take no action against respondent, the director shall prepare and issue a final order within 30 days outlining the council's decision.

2. The final order will include information on the appeal process as outlined in administrative rules R728-409-21, 22, 23.

3. The director shall, upon issuance, serve a copy of the final order on the respondent by certified mail and shall mail a copy to the employing agency.

R728-409-21. Division Review - Reconsideration.

A. Except when revocation is recommended for conviction of a felony within ten days after the date that the

director's final order is issued, any party may file a written request for reconsideration, stating the specific grounds upon which relief is requested. The filing of the request is not a prerequisite for seeking judicial review of the order.

B. The request for reconsideration shall be filed with the division by the person making the request.

C.1. The director, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

2. If the director or the person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for rehearing shall be considered to be denied.

R728-409-22. Judicial Review - Exhaustion of Administrative Remedies.

A. A party aggrieved may obtain judicial review of final agency action only after exhausting all administrative remedies available, except that:

1. The court may relieve a party seeking judicial review of the requirement to exhaust any or all administrative remedies if:

a. the administrative remedies are inadequate; or

b. exhaustion of remedies would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion.

B.1. A party shall file a petition for judicial review of final agency action within 30 days after the date that the order constituting the final agency action is issued.

2. The petition shall name the agency and all other appropriate parties as respondents and shall meet the form requirements specified in Chapter 4 of Title 63G.

R728-409-23. Judicial Review - Adjudicative Proceedings.

A. At the conclusion of formal adjudicative proceedings, the Utah Court of Appeals has jurisdiction to review the director's final order.

B. To seek judicial review of the director's final order, the petitioner shall file a petition for review of agency action in the form required by the Rules of the Utah Court of Appeals.

1. The Rules of the Utah Court of Appeals govern all additional filings and proceedings in the Utah Court of Appeals.

C. The contents, transmittal, and filing of the agency's record for judicial review of formal adjudicative proceedings are governed by the Rules of the Utah Court of Appeals, except that:

1. all parties to the review proceedings may stipulate to shorten, summarize, or organize the record;

2. the Utah Court of Appeals may tax the cost of preparing transcripts and copies for the record:

a. against a party who unreasonably refuses to stipulate to shorten, summarize, or organize the record; or

b. according to any other provision of law.

c. The scope of judicial review by the Utah Court of Appeals is controlled by Section 63G-4-403. Relief granted by the Utah Court of Appeals is controlled by Section 63G-4-404.

D. If peace officer certification is revoked for conviction of a felony after an informal hearing, the district courts have jurisdiction to review the final order pursuant to Sections 63G-4-401 and 63G-4-402.

R728-409-24. Judicial Review – Stay and Other Temporary Remedies Pending Final Disposition.

A. The director may grant a stay of the final order or other temporary remedy during the pendency of judicial review, according to the division's rules.

B. Parties shall petition the director for a stay or other temporary remedies unless extraordinary circumstances require immediate judicial intervention.

C. If the director denies a stay or denies other temporary remedies requested by a party, the director's order of denial shall be mailed to all parties and shall specify the reasons why the stay or other temporary remedy was not granted.

D. If the director has denied a stay or other temporary remedy to protect the public health, safety, or welfare against a substantial threat, the court may not grant a stay or other temporary remedy unless it finds that:

1. the director violated the division's rules in denying the stay; or

2.a. the party seeking judicial review is likely to prevail on the merits when the court finally disposes of the matter;

b. the party seeking judicial review will suffer irreparable injury without immediate relief;

c. granting relief to the party seeking review will not substantially harm other parties to the proceedings; and

d. the threat to the public health, safety, or welfare relied upon by the agency is not sufficiently serious to justify the director's action under the circumstances.

R728-409-25. Emergency Adjudicative Proceedings.

A. The division may issue an order on an emergency basis without complying with the requirements of this chapter if:

1. the facts known by the division or presented to the division show that an immediate and significant danger to the public health, safety, or welfare exists; and

2. the threat requires immediate action by the division.

B. In issuing an emergency order, the division shall:

1. limit the order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

2. issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the division's utilization of an emergency adjudicative proceeding; and

3. give immediate notice to the person who is required to comply with the order.

C. Upon the commencement of an emergency adjudicative proceeding, the division shall commence a formal adjudicative proceeding in accordance with the other provisions of this rule in order not to infringe upon any legal right or interest of any party.

R728-409-26. Civil Enforcement.

A.1. In addition to other remedies provided by law, an division may seek enforcement of an order by seeking civil enforcement in the district courts.

2. The action seeking civil enforcement of the division's order must name, as defendants, each alleged violator against whom the agency seeks to obtain civil enforcement.

3. Venue for an action seeking civil enforcement of the division's order shall be determined by the requirements of the Utah Rules of Civil Procedure.

4. The action may request, and the court may grant, any of the following:

a. declaratory relief;

b. temporary or permanent injunctive relief;

c. any other civil remedy provided by law; or

d. any combination of the foregoing.

B.1. Any person whose interests are directly impaired or threatened by the failure of the division to enforce the division's order may timely file a complaint seeking civil enforcement of that order, but the action may not be commenced;

a. until at least 30 days after the plaintiff has given notice of his intent to seek civil enforcement of the alleged violation to the director, the attorney general, and to each alleged violator against whom the petitioner seeks civil enforcement;

b. if the division has filed and is diligently prosecuting a complaint seeking civil enforcement of the same order against the same or a similarly situated defendant; or

c. if a petition for judicial review of the same order has been filed and is pending in court.

2. The complaint seeking civil enforcement of the division's order must name, as defendants, the division, and each alleged violator against whom the plaintiff seeks civil enforcement.

3. Except to the extent expressly authorized by statute, a complaint seeking civil enforcement of the division's order may not request, and the court may not grant, any monetary payment apart from taxable costs.

C. In a proceeding for civil enforcement of the division's order, in addition to any other defenses allowed by law, a defendant may defend on the ground that:

1. the order sought to be enforced was issued by the division without jurisdiction to issue the order;

2. the order does not apply to the defendant;

3. the defendant has not violated the order; or

4. the defendant violated the order but has subsequently complied.

D. Decisions on complaints seeking civil enforcement of the division's order are reviewable in the same manner as other civil cases.

R728-409-27. Declaratory Orders.

A. Any person may file a request for division actions, requesting that the division issue a declaratory order determining the applicability of a statute, rule, or order within the primary jurisdiction of the division to specified circumstances.

B. The division shall not issue a declaratory order if:

1. the request is one of a class of circumstances that the division has by rule defined as being exempt from declaratory orders; or

2. the person requesting the declaratory order participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the present request.

a. The division may issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party, only if that person consents in writing to the determination of the matter by a declaratory proceeding.

~~C. Persons may intervene in declaratory proceedings if:~~
~~1. they meet the requirements of Rule R728-409-12; and~~
~~2. they file timely petitions for intervention according to division rules.~~

~~D. After receipt of a petition for a declaratory order, the division may issue a written order:~~

- ~~1. declaring the applicability of the statute, rule, or order in question to the specified circumstances;~~
- ~~2. setting the matter for adjudicative proceedings;~~
- ~~3. agreeing to issue a declaratory order within a specified time; or~~
- ~~4. declining to issue a declaratory order and stating the reasons for its action.~~

~~E. A declaratory order shall contain:~~

- ~~1. the names of all parties to the proceeding on which it is based;~~
- ~~2. the particular facts on which it is based; and~~
- ~~3. the reasons for its conclusion.~~

~~F. A copy of all orders issued in response to a request for a declaratory proceeding shall be mailed promptly to the petitioner and any other parties.~~

~~G. A declaratory order has the same status and binding effect as any other order issued in an adjudicative proceeding.~~

~~H. Unless the petitioner and the division agree in writing to an extension, if the division has not issued a declaratory order within 60 days after receipt of the request for a declaratory order, the petition is denied.~~

~~R728-409-28. Reconsideration Based on Mistake, Fraud, or Newly Discovered Evidence.~~

~~A. Reconsideration of a decision by POST Council, and a new opportunity to be heard, may be granted for any of the following reasons:~~

- ~~1. The decision of POST Council was based on a mistake of law or fact;~~
- ~~2. There was fraud, misrepresentation or misconduct in the adjudicative proceeding; or~~
- ~~3. There is newly discovered material evidence which the party could not, with reasonable diligence, have discovered and produced during the adjudicative proceedings.~~

~~B. At any time after a final order is issued, either party may request reconsideration under this rule, by complying with the procedures set forth in R728-409-18(B) through (K).~~

~~C. Reconsideration by POST Council pursuant to this rule shall be a two-step process:~~

- ~~1. A written request and information outlining the reasons and justification for making the request shall be submitted to a special subcommittee consisting of the presidents of the Chiefs of Police Association and the Sheriffs Association, or their designees, and another POST Council member designated by the Chairman, which shall review the request and information provided and decide whether the party seeking consideration has, by a preponderance of the evidence, established that the prior decision was based on one or more of the grounds set forth above. The subcommittee will notify the director of its decision, who will then send out a notice of that decision to both parties.~~
- ~~2. If the subcommittee decides step one in the affirmative, the matter will be scheduled for consideration by POST Council at the next regularly scheduled meeting. POST shall give~~

~~reasonable notice to the parties of the date, time and location of the meeting. POST Council shall reconsider the correct, clarified or new evidence, and render a decision based on the written request and information and oral argument, (if such was timely requested.) Any oral testimony presented to the council shall be under oath, and subject to the penalty of perjury.~~

~~3. POST Council's decision shall be communicated to the Director, who shall then notify the parties thereof, in writing and consistent with R728-409-20. The parties will then have the same appeal rights set forth in R728-409-22, 409-23, and 409-24.~~

~~D. The definitions set forth in Utah Rules of Civil Procedures, Rules 59 and 60, and interpretive case law thereon, shall apply to determinations under this rule.]~~

R728-409. Suspension or Revocation of Peace Officer Certification.

R728-409-1. Authority.

Section 53-6-105(1)(k) provides that the director shall, with the advice of the council, make rules necessary to administer Title 53 Chapter 6.

R728-409-2. Purpose.

The purpose of this rule is to establish procedures for the suspension or revocation of a peace officer's certification.

R728-409-3. Definitions.

A. Terms used in this rule are defined in Section 53-6-102.

B. In addition:

1. "ALJ" means an administrative law judge who conducts administrative hearings as provided in Subsection 53-6-211(3);
2. "Garrity warning" means a warning issued based on the decision in Garrity v. New Jersey, 385 U.S. 493 (1967);
3. "on duty" means that a peace officer is:
 - a. actively engaged in any of the duties of his employment as a peace officer;
 - b. receiving compensation for activities related to his employment as a peace officer;
 - c. on the property of a law enforcement facility;
 - d. in a law enforcement vehicle which is located in a public place; or
 - e. in a public place and is wearing a badge or uniform, authorized by a law enforcement agency, which readily identifies the wearer as a peace officer;
4. "respondent" means a peace officer against whom the division has initiated an adjudicative proceeding under Section 53-6-211;
5. "revocation" means the permanent deprivation of a peace officer's certification, which does not allow for a peace officer whose certification has been revoked to be readmitted into any peace officer training program conducted by or under the approval of the division, or to have peace officer certification reinstated or restored by the division;
6. "sexual conduct" means the touching of the anus, buttocks or any part of the genitals of a person, or the touching of the breast of a female, whether or not through clothing, with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant; and

7. "suspension" means the temporary deprivation of a peace officer's certification.

R728-409-4. Cause for the Suspension or Revocation of a Peace Officer's Certification.

The division may initiate an investigation when it receives information that grounds for the suspension or revocation of a peace officer's certification exist under Subsection 53-6-211(1).

R728-409-5. Conduct Not in Violation of Subsection 53-6-211(1).

Conduct which shall not be considered a violation of Subsection 53-6-211(1) includes:

A. Any traffic offense which is a class C misdemeanor or infraction;

B. A violation of a law enforcement agency's policy or procedure;

C. Conduct which is discovered or established through questioning which goes beyond the scope of a properly administered interview as established in Garrity v. New Jersey, 385 U.S. 493 (1967); or

D. Sexual activity which is protected under the right of privacy as recognized by the United States Supreme Court in Lawrence v. Texas, 539 U.S. 558 (2003).

R728-409-6. Investigative Procedure.

A. The division shall initiate an investigation when it receives information from any reliable source that grounds for the suspension or revocation of certification exist under Subsection 53-6-211(1), including when any of the following circumstances occur:

1. A peace officer is charged with a criminal violation of law;

2. A peace officer has committed conduct which is a criminal act under law, but which has not been criminally charged or where criminal prosecution is not anticipated;

3. A peace officer has committed conduct in violation of Subsection 53-6-211(1), where the peace officer's employing agency has conducted disciplinary action and notified the division;

4. A peace officer is terminated for conduct which is in violation of Subsection 53-6-211(1);

5. A peace officer resigns for conduct which is in violation of Subsection 53-6-211(1);

6. A citizen makes a complaint which, on its face, appears to be a violation of Subsection 53-6-211(1);

7. The media reports about officer misconduct which appears to be in violation of Subsection 53-6-211(1) and there is independent evidence to confirm that the conduct occurred;

8. A peace officer or law enforcement agency makes a complaint about a peace officer alleging conduct in violation of Subsection 53-6-211(1);

9. A criminal justice related agency or political subdivision makes a complaint about a peace officer alleging conduct in violation of Subsection 53-6-211(1);

10. A background investigation has been conducted by the division on a peace officer seeking peace officer certification or entrance into a certified peace officer training program which indicates that the peace officer has engaged in conduct in violation of Subsection 53-6-211(1); or

11. A peace officer has provided false information to the peace officer's employing agency after having been issued a properly administered Garrity warning.

C. A citizen seeking to file a complaint against a peace officer may be required to sign a written statement, detailing the incident and swearing to the accuracy of the statement after being advised that providing a false statement may result in prosecution under Section 76-8-511, Falsification of Government Record.

D. A peace officer seeking to file a complaint against another peace officer may submit written documentation detailing the incident.

E. If the division receives a complaint or information about misconduct of a peace officer, an investigator from the division will be assigned to investigate the complaint or information and to make a recommendation to proceed or to discontinue action in the matter. Assigned investigators are to ensure that all investigative procedures are properly documented and recorded in the case file.

F. If a peace officer under investigation is employed by a law enforcement agency, the division shall notify the peace officer's employing agency concerning the complaint or information, unless the nature of the complaint would make such a course of action impractical. The date and time the department administrator and the officer are notified should be noted in the appropriate space on the complaint form.

G. The division will refer any complaints made by officers or citizens of a criminal nature to the appropriate law enforcement agency having jurisdiction for investigation and prosecution if such a referral has not already been made.

H. If the law enforcement agency which employs the peace officer has an open and active investigation, the division will wait until the agency has completed their investigation before taking action unless the division determines that it is not in the public's best interest to wait.

I. The division may use the information gathered by the law enforcement agency which employs the peace officer in its investigation and may use any adjudicative findings to help determine what course of action to take. This will not preclude the division from conducting an independent investigation if the division finds it is necessary.

J. The division will take action based on the actual conduct of the peace officer as determined by an investigative process, not necessarily on the punishment instituted by the law enforcement agency which employs the peace officer or any court findings.

K. Witnesses and other evidence may be subpoenaed for the investigation pursuant to Section 53-6-210.

L. If ordinary investigative procedures cannot resolve the facts at issue, a peace officer may be requested to submit to a polygraph examination.

M. The director may immediately suspend a peace officer's certification as provided in Section 63G-4-502 if the director believes it is necessary to ensure the safety and welfare of the public, the continued public trust or professionalism of law enforcement.

N. Once the investigation is concluded, the division shall determine whether there is sufficient evidence to proceed with an adjudicative proceeding.

O. If the division determines that there is insufficient evidence to find that a peace officer engaged in conduct in violation of Subsection 53-6-211(1), the director shall issue a letter to the peace officer indicating that the investigation has been concluded and that the division shall take no action.

R728-409-7. Purpose of Adjudicative Proceedings.

A. The purpose of an adjudicative proceeding will be to determine whether there is sufficient evidence to find that the respondent committed the alleged conduct by clear and convincing evidence and whether such conduct falls within the grounds for administrative action enumerated in Subsection 53-6-211(1).

B. All adjudicative proceedings initiated by the division for the purpose of suspending or revoking a peace officer's certification shall be formal proceedings as provided by Section 63G-4-202.

R728-409-8. Commencement of Adjudicative Proceedings - Filing of the Notice of Agency Action.

A. Except as provided by 63G-4-502 all adjudicative proceedings initiated by the division for the purpose of suspending or revoking a peace officer's certification shall be commenced by the filing of a Notice of Agency Action.

B. The Notice of Agency Action shall be signed by the director and shall comply with the requirements of Section 63G-4-201.

C. The Notice of Agency Action shall be filed with the division and a copy shall be sent to the respondent by certified mail.

R728-409-9. Responsive Pleadings.

A. The respondent must file with the division a written response, signed by the respondent or his attorney, within 30 days of the mailing date of the Notice of Agency Action.

B. The written response must comply with the requirements in Section 63G-4-204.

R728-409-10. Consent Agreements.

A. Once a Notice of Agency Action has been issued, the division may seek a consent agreement with the respondent.

B. The respondent will have 20 days from the date that the consent agreement is signed by the director to respond to the division regarding the consent agreement.

C. If a consent agreement is not sought or is not reached, the adjudicative proceeding will continue. The period of time in which the respondent must file a responsive pleading to the Notice of Agency Action is not extended if the parties are unable to reach a consent agreement.

D. If a consent agreement is reached, it shall be signed by the respondent and the director and be filed with the division. The consent agreement shall indicate that the matter shall be heard at the next regularly scheduled council meeting.

R728-409-11. Default.

A. The ALJ may enter an order of default against a party if:

1. the respondent fails to file the response required by rule R728-409-9; or

2. the respondent fails to attend or participate in the hearing.

B. The order of default shall include a statement of the grounds for default and shall indicate that the matter will be heard at the next regularly scheduled council meeting.

C. The ALJ shall issue the order of default. The order of default shall be filed with the division and a copy shall be sent to the respondent by certified mail.

D. The respondent may seek to set aside the default order by filing a motion within 3 months of the date of the order of default. The ALJ may set aside the order of default for good cause shown.

R728-409-12. Scheduling a Hearing Before the ALJ.

A. After the division receives the responsive pleading from the respondent, notice of the location, date and time for the hearing will be issued by the division. The notice of hearing shall be filed with the division and a copy shall be sent to the respondent by certified mail.

B. The hearing will be held within a reasonable time after service of the responsive pleading unless a later scheduling is ordered by the ALJ, or mutually agreed upon by the respondent and the division.

R728-409-13. Discovery and Subpoenas.

A. In formal adjudicative proceedings parties may conduct only limited discovery. A respondent's right to discovery does not extend to interrogatories, requests for admissions, request for the production of documents, request for the inspection of items, or depositions.

B. Upon request, the respondent is entitled to a copy of the materials contained in the division's investigative file that the division intends to use in the adjudicative proceeding.

C. The disclosure of all discovery materials is subject to the provisions in the Government Records Access and Management Act, Section 63G-2-101 et seq. The division may charge a fee for discovery in accordance with Section 63G-2-203.

D. Subpoenas and other orders to secure the attendance of witnesses or the production of evidence for adjudicative proceedings shall be issued by the division pursuant to Section 53-6-210, by the ALJ when requested by any party, or by the ALJ on his own motion pursuant to Section 63G-4-205.

R728-409-14. Hearing Procedures.

A. All hearings shall be conducted by the ALJ according to the requirements of Section 63G-4-206.

B. At the hearing, the respondent has the right to be represented by an attorney. Legal counsel will not be provided to the respondent by the division and all costs associated with representation will be the sole responsibility of the respondent.

R728-409-15. ALJ Decision.

A. Within 30 days from the date a hearing is held, the ALJ shall sign and issue a written decision, which shall include a statement of:

1. the ALJ's findings of fact based exclusively on the evidence of record in the adjudicative hearing or on facts officially noted;

2. the ALJ's conclusions of law; and

3. the reasons for the ALJ's decision.

B. If the ALJ finds that there is sufficient evidence to find that the respondent engaged in conduct in violation of Subsection 53-6-211(1), the ALJ's decision shall indicate that the matter will be heard at the next regularly scheduled council meeting.

C. If the ALJ finds that there is insufficient evidence to find that the respondent engaged in conduct in violation of Subsection 53-6-211(1), the matter will be dismissed.

D. The ALJ shall file the decision with the division and a copy shall be sent to the respondent by certified mail.

R728-409-16. Action by the Council.

A. Once a consent agreement has been reached or there has been an order of default or decision issued by the ALJ, the division shall present the matter to the council at their next regularly scheduled meeting. The division shall provide the council with the pleadings contained in the administrative file. The division shall also provide the council with any written information or comments provided by the chief, sheriff, or administrative officer of the respondent's employing agency.

B. At the council meeting the respondent or the respondent's attorney may address the council regarding whether the respondent's peace officer certification should be suspended or revoked.

C. The council shall review the matter and shall determine whether suspension or revocation of the respondent's peace officer certification is appropriate based upon the facts of the case and the POST Disciplinary Guidelines which were adopted on June 7, 2010.

R728-409-17. Final Order.

A. After the council has decided the matter, the council chairperson shall issue a final order within 30 days of the council meeting.

B. The final order shall indicate the action taken by the council with regards to the respondent's peace officer certification and shall include information on the appeal process outlined in R728-409-18.

C. The council's action shall be effective on the date that the final order is issued.

D. The council chairperson shall file the final order with the division. A copy of the final order shall be sent to the respondent by certified mail and the respondent's employing agency by regular mail.

R728-409-18. Judicial Review.

A. A respondent may obtain judicial review of the council's action by filing a petition for judicial review with the Utah Court of Appeals within 30 days after the date that the final order is issued by the council chairperson.

B. The petition must meet all requirements specified in Sections 63G-4-401 and 403.

KEY: law enforcement officers, certification, investigations, rules and procedures

Date of Enactment or Last Substantive Amendment: [October 1, 2008]2010

Notice of Continuation: February 27, 2007

Authorizing, and Implemented or Interpreted Law: 53-6-211

**Tax Commission, Auditing
R865-9I-13
Pass-Through Entity Withholding
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.: 33837

FILED: 07/15/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment replaces a word with a more accurate word.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment replaces the word "passive" with "portfolio" since this is a more accurate term for the income described in the definition of "nonbusiness income of the pass-through entity derived from or connected with Utah sources".

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:** 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:** Any fiscal impacts were taken into account in S.B. 23 (2009).

♦ **SMALL BUSINESSES:** Any fiscal impacts were taken into account in S.B. 23 (2009).

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Any fiscal impacts were taken into account in S.B. 23 (2009).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed amendment clarifies 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 anticipated.

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 08/31/2010

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2010

AUTHORIZED BY: R. Bruce Johnson, Tax Commission Chair

R865. Tax Commission, Auditing.

R865-9I. Income Tax.

R865-9I-13. Pass-Through Entity 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) 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~~ portfolio 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.

(4) A pass-through entity shall calculate the tax it is required to withhold on behalf of pass-through entity taxpayers by:

(a) multiplying the income of the pass-through entity computed in Subsection (1) by the tax rate in effect under Section 59-10-104; and

(b) subtracting from the amount calculated in Subsection (4)(a) any amounts withheld from the pass-through entity under Section 59-6-102 that are attributable to pass-through entity taxpayers for whom the pass-through entity is required to withhold.

(5)(a) A pass-through entity is not required to withhold a tax on behalf of a pass-through entity taxpayer of that pass-through entity if the pass-through entity taxpayer is:

(i) exempt from taxation under Section 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.

(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: ~~July 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

End of the Notices of Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule.

Because **120-DAY RULES** are effective immediately, the law does not require a public comment period. However, when an agency files a **120-DAY RULE**, it usually files a **PROPOSED RULE** at the same time, to make the requirements permanent. Comments may be made on the **PROPOSED RULE**. Emergency or **120-DAY RULES** are governed by Section 63G-3-304; and Section R15-4-8.

Lieutenant Governor, Elections **R623-4** Electronic Signatures in Initiatives and Referenda

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 33815

FILED: 07/08/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide a framework by which those seeking to qualify a statewide initiative or referendum for the ballot may submit electronic signatures to comply with the signature requirements contained in the Elections Code. The intent of the rule is to maintain the statutory precautions and provisions in the initiative or referendum statutes protecting against fraud and mistake and providing for accountability in the use of electronic signatures.

SUMMARY OF THE RULE OR CHANGE: The rule will authorize the Lieutenant Governor to allow the use of electronic signatures in statewide initiatives and referenda petitions if the sponsors' process allows for accommodation of the statutory precautions to protect against fraud and mistake. (DAR NOTE: A corresponding proposed new rule is under DAR No. 33827 in this issue, August 1, 2010, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Anderson v. Bell 2010 UT 47 and Article VII Sections 1 and 14 and Section 46-4-102 and Section 46-4-501 and Section 63G-3-201 and Section 63G-3-304 and Sections 20A-7-201 through 20A-7-214 and Subsection 67-1a-2(2)(a)(i)

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare; and place the agency in violation of federal or state law.

JUSTIFICATION: In the recent opinion by the Utah Supreme Court in the Anderson v. Bell case, the Court ruled that electronic signatures may be used in certificate of nomination petitions. The Court's decision highlights the need to develop rules to accommodate electronic signatures while still ensuring the integrity of the initiative and referendum process. There are three active initiatives currently collecting signatures with time-sensitive statutory deadlines.

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** It is anticipated to have no cost or savings to the state budget. There is no cost difference between electronic signatures and holographic signatures when processing them at state level.

◆ **LOCAL GOVERNMENTS:** Depending on how the sponsors meet the requirements and submit the completed petitions to the county clerks for certification, there could be either a cost or a savings.

◆ **SMALL BUSINESSES:** It is anticipated to have no cost or savings to small businesses. The rule should not affect small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is anticipated to have cost savings to the sponsors of initiatives and referenda. Depending on how the requirements are met, electronic petitions may be more cost effective than paper petitions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The cost for compliance will vary depending on how the sponsors meet the requirements of the rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is anticipated there will be no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
LIEUTENANT GOVERNOR
ELECTIONS
ROOM 220 UTAH STATE CAPITOL
SALT LAKE CITY, UT 84114
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Mark Thomas by phone at 801-538-1041, by FAX at 801-538-1133, or by Internet E-mail at mjthomas@utah.gov

EFFECTIVE: 07/08/2010

AUTHORIZED BY: Greg Bell, Lieutenant Governor

R623. Lieutenant Governor, Elections.

R623-4. Electronic Signatures in Initiatives and Referenda.

R623-4-1. Purpose.

The purpose of this rule is to provide a framework by which those seeking to qualify a statewide initiative or referendum for the ballot may submit electronic signatures to comply with the signature requirements contained in the Elections Code. The Rule is intended to maintain the statutory precautions and provisions in the initiative or referendum statutes protecting against fraud and mistake and providing for accountability in the use of electronic signatures.

R623-4-2. Authority.

Authority for the adoption of this Rule is Utah Constitution Article VII, Sections 1 and 14, Utah Code Subsections 67-1a-2(2)(a)(i) and (ii), Section 46-4-501, Section 63G-3-201, and Section 63G-3-304.

R623-4-3. Definitions.

"Electronic Record" and "Electronic Signature" have the same meaning as in the Utah Uniform Electronic Transactions Act, Utah Code Section 46-4-102.

R623-4-4. Application of the Rule.

This rule applies to and governs the use or recognition of an electronic signature in the initiative and referenda process by the Lieutenant Governor's Office and his staff. It is also applicable to and governs the use, recognition, or allowance of electronic signatures in the initiative and referendum process by county clerks in statewide initiatives and referenda.

R623-4-5. Policy of the Rule.

It is the policy of this rule to allow the use and recognition of electronic signatures in initiatives and referenda to the extent that this can be done while maintaining the Legislature's recognized precautions to protect against fraud or mistake in the signature gathering process.

R623-4-6. Authorization to Use Electronic Signatures in Initiative and Referenda.

In order to preserve the integrity, security and auditability of the signature gathering process while using electronic signatures, and to maintain the Legislature's precautions and provisions to protect against fraud and mistake in that process, electronic signatures are authorized to be used and counted in initiatives and referenda if the processes for gathering electronic signatures meet the following standards:

1. For electronic signatures gathered after this Rule takes effect, the Lieutenant Governor shall have authorized the creation of electronic packets and assigned a range of unique numbers to be applied to those packets prior to their circulation, execution, or signing, Utah Code Subsection 20A-7-204(5);

2. Communication and an exchange of information shall have occurred between the sponsor and any proposed circulator sufficient for the sponsor to satisfy his duty that the individual is of 18 years of age and a resident of the State of Utah, Utah Code Subsection 20A-7-205(2);

3. The circulator shall have circulated the petition to other legal voters, Utah Code Section 20A-7-203, Subsection 20A-7-101(3);

4. The person electronically signing the petition shall have done so in the circulator's presence, Utah Code Subsection 20A-7-203(3); and

5. The person signing the petition under Utah Code Subsection 20A-7-203(1) is a different person than the one signing under Subsection 20A-7-203(3) verifying that the persons who signed the packet did so in his or her presence.

R623-4-7. Effective Date.

This rule is effective immediately. In order to ensure that electronic signatures may be recognized and counted and avoid imminent peril to the public welfare and comply with state law, the Lieutenant Governor has determined that there is a need for immediate implementation of this Rule.

The Lieutenant Governor will publish this Interim Rule and will solicit public comment on its provisions for thirty days. The Lieutenant Governor will review those comments to determine if a public hearing on the rule is necessary and whether any changes need to be made. He will then finalize its provisions.

KEY: electronic signatures, statewide initiatives and referenda, ballot propositions, petitions
Date of Enactment or Last Substantive Amendment: July 8, 2010

Authorizing, and Implemented or Interpreted Law: Article VII Sections 1 and 14; 46-4-102; 46-4-501; 20A-7-201 through 214; 67-1a-2(2)(a)(i); 63G-3-201; 63G-3-304; Anderson v. Bell 2010 UT 47

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to remove obsolete rules from the Utah Administrative Code. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **NOTICE**. By filing a Notice, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. **NOTICES** are effective upon filing.

NOTICES are governed by Section 63G-3-305.

Agriculture and Food, Plant Industry **R68-2** Utah Commercial Feed Act Governing Feed

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33813
FILED: 07/07/2010

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 4-2-2 directs the Department to write rules necessary for the effective administration of the agricultural laws of the state. Section 4-12-3 authorizes the Department to write rules implementing the Utah Commercial Feed Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any comments supporting or opposing this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This commercial feed rule allows the Department to provide requirements that enable feed to be produced in a safe and wholesome manner. It also requires feeds to be properly labeled for sale and distribution to livestock and poultry producers. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Clair Allen by phone at 801-538-7180, by FAX at 801-538-7189, or by Internet E-mail at clairallen@utah.gov
◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 07/07/2010

Agriculture and Food, Plant Industry **R68-10** Quarantine Pertaining to European Corn Borer

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33835
FILED: 07/15/2010

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 4-2-2(1)(i) requires the Department to write rules to implement the agricultural laws of the state. Subsections 4-2-2(1)(k)(i) and (ii) require the Department to inspect any places that might become infected with harmful insects and to establish quarantines if necessary. Such actions require that a rule be in place

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: All comments received from Utah corn growers indicate support for the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This quarantine helps the department ensure that corn imported into Utah for feed is not infested with European corn borers. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Clair Allen by phone at 801-538-7180, by FAX at 801-538-7189, or by Internet E-mail at clairallen@utah.gov
 ♦ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
 ♦ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov

AUTHORIZED BY: Leonard Blackham, Commissioner

EFFECTIVE: 07/15/2010

Commerce, Occupational and
 Professional Licensing
R156-20a
 Environmental Health Scientist Act
 Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 33812
 FILED: 07/06/2010

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: Title 58, Chapter 20a, provides for the licensure of environmental health scientists and environmental health scientists-in-training. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-20a-201(3) provides that the Environmental Health Scientist Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 20a, with respect to environmental health scientists and environmental health scientists-in-training.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed, it has been amended once in 2009. However, the Division has not received any written comments with respect to this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 20a, with respect to environmental health scientists and environmental health scientists-in-training. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements.

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:
 ♦ Sally Stewart by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at sstewart@utah.gov

AUTHORIZED BY: Mark Steinagel , Director

EFFECTIVE: 07/06/2010

14717 S MINUTEMAN DR
DRAPER, UT 84020-9549
or at the Division of Administrative Rules.

Corrections, Administration
R251-303
Offenders' Use of Telephones

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33810
FILED: 07/05/2010

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: Section 64-13-10 grants the Department the authority to adopt rules as necessary to fulfill its mission. The department finds it necessary to exercise this authority to notify the public and governmental agencies that staff members can monitor telephone conversations with offenders at Community Correctional Centers (Centers) at any time. (Note: A nonsubstantive rule change has been filed to update text to current DAR rulewriting standards.)

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 comments received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Offenders living in Community Correctional Centers have access to coin-operated telephones in order to make personal, business, and legal phone calls. Offenders are well informed by policy and posted signs that their phone calls, excluding privileged legal calls, may be monitored for reasons of safety and security, and to ensure compliance with the terms of their parole while they are residents of the Center. The department cannot rely solely on offenders to tell those they are speaking to that their phone calls are subject to such monitoring. The intent of this rule is to give notice to the public and other government agencies of that fact. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Tom Anderson by phone at 801-545-5503, by FAX at 801-545-5523, or by Internet E-mail at tomanderson@utah.gov

AUTHORIZED BY: Thomas Patterson , Executive Director

EFFECTIVE: 07/05/2010

Transportation, Motor Carrier, Ports of Entry
R912-9
Pilot/Escort Requirements and Certification Program

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33819
FILED: 07/14/2010

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: This rule is enacted under Section 72-7-406 which requires the Utah Department of Transportation to protect the safety of the traveling public and to establish procedures for the safe movement of oversize and overweight loads on Utah highways.

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 written comments from interested persons during and since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law requiring a Pilot/Escort Requirements and Certification Program remains in force and the Department is required to comply with the law by having this rule in place. Therefore, this rule should be continued.

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

TRANSPORTATION
MOTOR CARRIER, PORTS OF ENTRY
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

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 07/14/2010

and the Department is required to comply with the law by having this rule in place. Therefore, this rule should be continued.

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

TRANSPORTATION
MOTOR CARRIER, PORTS OF ENTRY
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

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 07/14/2010

Transportation, Motor Carrier, Ports of Entry
R912-10
Requirements for Pilot/Escort Qualified Training and Certification Programs

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33820
FILED: 07/14/2010

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: This rule is enacted under Section 72-7-406 which requires the Utah Department of Transportation to protect the safety of the traveling public and to establish procedures for the safe movement of oversize and overweight loads on Utah highways.

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 written comments from interested persons during and since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law requiring rules governing Pilot/Escort Qualified Training and Certification Programs remains in force

Transportation, Program Development
R926-8
Public Partnering

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 33817
FILED: 07/14/2010

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: Rule R926-8 is required by Section 72-2-123 to guide partnering with local agencies on state highway capacity improvement projects.

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 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: The Utah Transportation Commission has approved this rule as necessary for fairly administering issues of proposed local agency partnering on state highway projects. Therefore, this rule should be continued.

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

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 07/14/2010

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a Notice of Effective Date within 120 days from the publication of a Proposed Rule or a related Change in Proposed Rule the rule lapses and the agency must start the rulemaking process over.

Notices of Effective Date are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal & Reenact
REP = Repeal

Administrative Services

Facilities Construction and Management
No. 33621 (AMD): R23-1. Procurement of Construction
Published: 06/01/2010
Effective: 07/08/2010

No. 33622 (NEW): R23-7. State Construction Contracts and Drug and Alcohol Testing
Published: 06/01/2010
Effective: 07/08/2010

No. 33623 (AMD): R23-22. General Procedures for Acquisition and Selling of Real Property
Published: 06/01/2010
Effective: 07/08/2010

No. 33634 (AMD): R23-23. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation
Published: 06/01/2010
Effective: 07/08/2010

Purchasing and General Services
No. 33650 (AMD): R33-3. Source Selection and Contract Formulation
Published: 06/01/2010
Effective: 07/08/2010

No. 33635 (AMD): R33-5. Construction and Architect-Engineer Selection
Published: 06/01/2010
Effective: 07/08/2010

No. 33656 (NEW): R33-10. State Construction Contracts and Drugs and Alcohol Testing
Published: 06/01/2010
Effective: 07/08/2010

Commerce

Administration
No. 33616 (AMD): R151-46b. Department of Commerce Administrative Procedures Act Rules
Published: 06/01/2010
Effective: 07/12/2010

Occupational and Professional Licensing
No. 33641 (AMD): R156-1. General Rule of the Division of Occupational and Professional Licensing
Published: 06/01/2010
Effective: 07/08/2010

No. 33631 (AMD): R156-31b. Nurse Practice Act Rule
Published: 06/01/2010
Effective: 07/08/2010

No. 33639 (AMD): R156-46b. Division Utah Administrative Procedures Act Rule
Published: 06/01/2010
Effective: 07/08/2010

No. 33615 (AMD): R156-60a. Social Worker Licensing Act Rule
Published: 06/01/2010
Effective: 07/08/2010

No. 33638 (NEW): R156-83. Online Prescribing, Dispensing, and Facilitation Licensing Act Rule
Published: 06/01/2010
Effective: 07/08/2010

Education

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No. 33651 (REP): R277-109. One-time Signing Bonuses
Published: 06/01/2010
Effective: 07/15/2010

No. 33652 (REP): R277-113. One-time Performance-based Compensation Program
Published: 06/01/2010
Effective: 07/15/2010

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No. 33653 (REP): R277-517. Athletic Coaching Certification
Published: 06/01/2010
Effective: 07/15/2010

No. 33654 (REP): R277-603. Basic Skills Education
Program
Published: 06/01/2010
Effective: 07/15/2010

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No. 33554 (AMD): R313-19. Requirements of General
Applicability to Licensing of Radioactive Material
Published: 05/01/2010
Effective: 07/14/2010

No. 33555 (AMD): R313-21. General Licenses
Published: 05/01/2010
Effective: 07/14/2010

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No. 33633 (AMD): R477-3-5. Position Classification
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Published: 06/01/2010
Effective: 07/12/2010

No. 33647 (AMD): R477-11-1. Disciplinary Action
Published: 06/01/2010
Effective: 07/12/2010

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Published: 06/01/2010
Effective: 07/08/2010

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No. 33642 (AMD): R590-172. Notice to Uninsurable
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Published: 06/01/2010
Effective: 07/15/2010

No. 33648 (REP): R590-234. Single Risk Limitation
Published: 06/01/2010
Effective: 07/15/2010

No. 33644 (AMD): R590-247-3. General Instructions
Published: 06/01/2010
Effective: 07/15/2010

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No. 33581 (NEW): R765-609. Regents' Scholarship
Published: 05/15/2010
Effective: 07/15/2010

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No. 33645 (AMD): 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
Published: 06/01/2010
Effective: 07/08/2010

No. 33646 (AMD): R865-9I-21. Return By Partnership
Pursuant to Utah Code Ann. Sections 59-10-507 and
59-10-514
Published: 06/01/2010
Effective: 07/08/2010

No. 33640 (AMD): 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
Published: 06/01/2010
Effective: 07/08/2010

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Insurance Coverage in State Contracts -- Implementation
Published: 06/01/2010
Effective: 07/13/2010

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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 July 15, 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).

Questions regarding the index and the information it contains should be addressed to Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

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ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
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<u>Debt Collection</u>					
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<u>Facilities Construction and Management</u>					
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R33-5	Construction and Architect-Engineer Selection	33635	AMD	07/08/2010	2010-11/35
R33-10	State Construction Contracts and Drugs and Alcohol Testing	33656	NEW	07/08/2010	2010-11/44
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R37-2	Risk Management State Workers' Compensation Insurance Administration	33392	NSC	03/10/2010	Not Printed
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	33393	AMD	06/01/2010	2010-6/6

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R68-7	Utah Pesticide Control Act	33080	AMD	01/04/2010	2009-22/5
R68-10	Quarantine Pertaining to European Corn Borer	33835	5YR	07/15/2010	Not Printed
R68-12	Quarantine Pertaining to Mint Wilt	33677	5YR	05/27/2010	2010-12/69
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R70-101	Bedding, Upholstered Furniture and Quilted Clothing	33542	5YR	04/07/2010	2010-9/41

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R156-24b	Physical Therapy Practice Act Rule	33584	AMD	06/21/2010	2010-10/17
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R156-73-603	Standards for Practice of Animal Chiropractic	33712	NSC	07/01/2010	Not Printed
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R156-78	Vocational Rehabilitation Counselors Licensing Act Rule	33585	AMD	06/21/2010	2010-10/54
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ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

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