

UTAH STATE BULLETIN

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

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

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

Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for November 2010 Medicaid Rate Changes

Effective November 1, 2010, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between September 16, 2010, 12:00 a.m., and October 01, 2010, 11:59 p.m. are included in this, the October 15, 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 November 15, 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 February 12, 2011, 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, Consumer Protection
R152-11-9
Direct Solicitations

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 34100
 FILED: 09/20/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to provide a concrete definition of "business day" as it pertains to direct solicitations.

SUMMARY OF THE RULE OR CHANGE: Business day is defined as any calendar day except Saturday, Sunday, or any federal or state holiday.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-11 and Section 13-2-5 and Section 63G-4-3

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The state budget will not be affected by defining what constitutes a business day. This amendment will not change the manner in which the Division enforces this administrative rule. It simply offers Division investigators and businesses engaged in direct solicitations more defined parameters concerning rescission of transactions.

◆ **LOCAL GOVERNMENTS:** Local government will not be affected by defining what constitutes a business day in connection with direct solicitations, as local government is not statutorily charged with enforcing these rules nor subject to its enforcement.

◆ **SMALL BUSINESSES:** Defining what constitutes a business day will likely save costs for small businesses that engage in direct solicitations by eliminating a common basis for dispute when consumers attempt to rescind transactions.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Defining what constitutes a business day will likely save costs for persons that engage in direct solicitations by eliminating a common basis for dispute when consumers attempt to rescind transactions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Defining what constitutes a business day will likely save compliance costs for affected persons that engage in direct solicitations by eliminating a common basis for dispute when consumers attempt to rescind transactions.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this filing which clarifies what constitutes a "business day" as that phrase is used in the rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Angela Hendricks by phone at 801-530-6035, by FAX at 801-538-6001, or by Internet E-mail at ahendricks@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 11/22/2010

AUTHORIZED BY: Traci Gunderson, Director

R152. Commerce, Consumer Protection.

R152-11. Utah Consumer Sales Practices Act.

R152-11-9. Direct Solicitations.

A. It shall be a deceptive act or practice in connection with a consumer transaction involving any direct solicitation sale for a supplier to do any of the following:

(1) Solicit a sale without clearly, affirmatively, and expressly revealing at the time the seller initially contacts the consumer or prospective consumer, and before making any other statements or asking any questions, except for a greeting: the name of the seller, the name or trade name of the company, corporation or partnership the seller represents, and stating in general terms the nature of the consumer commodities the seller wishes to show or demonstrate.

(2) Represent that the consumer or prospective consumer will receive a discount, rebate, or other benefit for permitting his home or other property, real or personal, to be used as a so-called "model home" or "model property" for demonstration or advertising purposes when such, in fact, is not true;

(3) Represent that the consumer or prospective consumer has been specially selected to receive a bargain, discount, or other advantage when such, in fact, is not true;

(4) Represent that the consumer or prospective consumer is a winner of a contest when such, in fact, is not true;

(5) Represent that the consumer commodities that are being offered for sale cannot be purchased in any place of business, but only through direct solicitation, when such, in fact, is not true;

(6) Represent that the salesman representative, or agent has authority to negotiate the final terms of a consumer transaction when such, in fact, is not true;

(7) Sell, lease, or rent consumer goods or services with a purchase price of \$25 or more and fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution which is in the same language (e.g. Spanish) as that principally used in the oral sales presentation and which shows the date of the transaction and the name and address of the seller.

(8) Except as otherwise provided in the "Home Solicitations Sales Act", Section 70C-5-102(5) and or the "Telephone Fraud Prevention Act", Section 13-26-5, to fail to provide a notice of the buyer's right to cancel within three (3) business days at the time of purchase if the total of the sale exceeds \$25, unless the supplier's cancellation policy is communicated to the buyer and the policy offers greater rights to the buyer than three days, which notice shall be in conspicuous statement written in dark bold at least 12 point type on the front page of the purchase documentation, and shall read as follows: "You, the Buyer, May Cancel This Transaction At Any Time Prior to Midnight of the Third Business Day (or Time Period Reflecting the Supplier's Cancellation Policy But Not Less Than Three Business Days) After the Date of This Transaction or Receipt of The Product, Whichever is Later."

(a) Paragraph (8) shall not apply to "fixture" solicitation sales where the supplier:

(i) automatically provides the buyer a right to cancel within three (3) or more business days from the time of purchase; or

(ii) automatically provides a refund for return of goods within three (3) or more business days from the time of purchase, but prior to installation as a fixture; or

(iii) supplies merchandise to a buyer without prior full payment and allows the buyer three (3) or more business days from the time of receipt of the merchandise, but prior to installation as a fixture to cancel the order and return the merchandise; or

(iv) discloses its refund/return policy in its advertising, catalog and contract, and that policy provides for a return of merchandise within a period of three (3) or more business days from the time of purchase, but prior to installation as a fixture or that policy indicates no return or refund will be offered or made on special merchandise (such as uniquely sized items, custom made or special ordered items); or

(9) Fail or refuse to honor any valid notice of cancellation by a consumer and within 30 calendar days after the receipt of such notice, to: (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the supplier; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

B. "Direct Solicitation" means solicitation of a consumer transaction initiated by a supplier, at the residence or place of employment of any consumer, and includes a sale or solicitation of sale made by the supplier by direct mail or telephone or personal contact at the residence or place of employment of any consumer. In the case of a subscription or club membership (e.g., tape, book, or record club) solicitation, "direct solicitation" means solicitation of the initial consumer transaction pursuant to a subscription or club membership agreement, made by the supplier at the residence or place of employment of any consumer, and includes a solicitation of an initial sale made by the supplier by direct mail or telephone or

personal contact at the residence or place of employment of any consumer, but excludes all subsequent consumer transactions which are provided for in the subscription or club membership agreement.

C. "Time of Purchase" is defined as the day on which the buyer signs an agreement or accepts an offer to purchase consumer goods or services where the total of the sale is \$25 or more.

D. Except for direct solicitations subject to Section 13-26-5, for the purposes of this rule "business day" does not include Saturday, Sunday, or a federal or state holiday.

KEY: advertising, bait and switch, consumer protection, negative options

Date of Enactment or Last Substantive Amendment: [February 8], 2010

Notice of Continuation: February 1, 2007

Authorizing, and Implemented or Interpreted Law: 63G-3-201; 13-2-5; 13-11

Commerce, Occupational And Professional Licensing

R156-9

Funeral Service Licensing Act Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34120

FILED: 09/28/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Funeral Service Board reviewed this rule and determined that changes need to be made with respect to the Utah Funeral Service Law and Rule Examination and other technical cleanup corrections.

SUMMARY OF THE RULE OR CHANGE: Throughout the rule, changed "rules" to "rule" and also capitalized "Division" and "Board" where applicable. In Section R156-9-302a, the proposed amendments delete the use of an open board law and rule examination for funeral director and preneed sales agent applicants and establishes the Utah Funeral Service Law and Rule Examination with a passing score of 75% for those applicants. Also, proposed amendments define when the law/rule examination can be retaken if failed by the applicant.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-9-504 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division will incur minimal costs

of approximately \$75 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

♦ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed funeral service classifications and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.

♦ **SMALL BUSINESSES:** The proposed amendments only apply to licensed funeral service classifications and applicants for licensure in those classifications. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to licensed funeral service classifications and applicants for licensure in those classifications. Applicants for licensure as a funeral director and preneed sales agent will incur a cost of \$85 per examination for the newly proposed Utah Funeral Service Law and Rule Examination. In a year, the Division licenses approximately 20 funeral directors and preneed sale agents for a yearly aggregate cost of \$1,700.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed funeral service classifications and applicants for licensure in those classifications. Applicants for licensure as a funeral director and preneed sales agent will incur a cost of \$85 per examination for the newly proposed Utah Funeral Service Law and Rule Examination.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Pursuant to its statutory authority, in this proposed rule change, the Division adopts the standards for a law and rule examination. Applicants and businesses that hire personnel to provide funeral services could see additional costs due to the cost of the examination, but any such costs should be outweighed by the benefit to the public in receiving services from better qualified providers. No other fiscal impact to businesses is anticipated.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Clyde Ormond by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/18/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 11/17/2010 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 11/25/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-9. Funeral Service Licensing Act Rule[s].

R156-9-101. Short title.

~~[These rules]~~ This rule shall be known as the "Funeral Service Licensing Act Rule[s]".

R156-9-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 9, as defined or used in ~~[these rules]~~ this rule:

(1) "Contract" means a guaranteed preneed funeral arrangement contract.

(2) "Funeral service establishment" is defined in Subsections 58-9-102(12)(a)(i) and (ii), and (b)(i) and (ii).

(3) "Guaranteed product contract" means a contract wherein goods or services are selected which will be provided at the time of need for the consideration specified in the contract regardless of the market price at the time of need.

(4) "Recipient of goods and services" is synonymous with "beneficiary" as defined in Subsection 58-9-102(1), and is used herein to avoid confusion with various common meanings of the term "beneficiary".

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 9, is further defined in accordance with Subsection 58-1-203(1)(e) in Section R156-9-501.

R156-9-103. Authority - Purpose.

~~[These rules are]~~ This rule is adopted by the ~~[d]~~ Division under the authority of Subsection 58-1-106(1)(a) to enable the ~~[d]~~ Division to administer Title 58, Chapter 9.

R156-9-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1)(g) and 58-1-301(3), the qualifications for licensure in Subsections 58-9-302(1)(g), 58-9-302(2)(e), 58-9-302(4)(e) and 58-9-306(6) and (7) are defined, clarified, or established as follows:

(1) An applicant for licensure as a funeral service director shall be required to pass the National Board Examinations (science and art sections) of the Conference of Funeral Service Examining Boards. The examination may be taken while the individual is enrolled in an approved funeral service school.

(2) An applicant for licensure as a ~~[funeral director,]~~ funeral service intern ~~[, preneed sales agent or funeral director by endorsement]~~ shall answer correctly all the law and rule questions in the open book examination contained in the application.

(3) An applicant for licensure as a funeral service director, preneed sales agent or funeral service director by endorsement shall pass the Utah Funeral Service Law and Rule Examination with a score of at least 75%.

(4) An individual who fails the Utah Funeral Service Law and Rule Examination may retake the failed examination:

(a) no earlier than 30 days following any failure;

(b) no more than three failures within a six month period; and

(c) no earlier than six months following any failure thereafter.

R156-9-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 9 is established by rule in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Section R156-1-308g.

R156-9-304. Continuing Professional Education - Funeral Service Directors.

In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b) and Section 58-9-304, the continuing education requirements for funeral service directors is defined, clarified or established as follows:

(1) Continuing professional education shall consist of 20 hours of qualified continuing professional education in each preceding two-year period of licensure or expiration of licensure.

(2) If a renewal period is shortened or extended to effect a change of renewal cycle or if an initial license is granted for a period of less than two years, the continuing professional education hours required for that period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.

(3) The standards for qualified continuing professional education are:

(a) College classes, seminars, or workshops sponsored by professional associations in areas related to funeral service will generally qualify for continuing professional education (CPE) if the education contributes to the professional competence and knowledge of the funeral service director and if the program complies with the standards set forth under Subsection (b).

(b) CPE programs shall meet the following standards:

(i) the course shall be formally organized and be primarily instructional;

(ii) the sponsor shall prepare an outline of the course which shall be retained for a minimum of four years following the presentation;

(iii) the sponsor shall list the hour rating of the course in the course outline. One hour of CPE shall be credited for each 50 minute period of instruction;

(iv) the sponsor shall record and keep an accurate record of course attendance including the date, place, and the name of the licensed funeral service directors attending the course; and

(v) the sponsor shall issue a certificate of completion listing the time, date, place, name of licensee, number of hours of CPE completed and the course title.

(c) Formal correspondence or other individual study programs which require registration shall provide evidence of satisfactory completion including test results and meet all other requirements as specified in this section will qualify.

(d) Each semester hour of college credit shall equal 15 hours of CPE. A quarter hour shall equal ten hours of CPE.

(4) Upon written request from the licensee, the [b]Board may waive the requirement for CPE as provided in Section R156-1-308d.

(5) The licensee is responsible to insure that the program will qualify for CPE. Each licensee shall keep an accurate record of CPE on forms supplied by the [d]Division. The records shall be maintained for a minimum of four years.

(6) The [d]Division in collaboration with the [b]Board shall perform random audits to determine if the licensee is in compliance with the CPE requirements. If audited, or upon request by the [d]Division, the licensee is responsible to submit documentation of compliance with CPE requirements.

R156-9-402. Duties and Responsibilities of a Funeral Service Director in Supervision of Funeral Service Interns, Preneed Funeral Arrangement Sales Agents and Unlicensed Staff.

The duties and responsibilities of a supervising funeral service director include:

(1) being professionally responsible for the acts and practices of the supervisee;

(2) being engaged in a relationship with the supervisee in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) being available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training;

(4) monitoring the performance of the supervisee for compliance with laws, standards, and ethics applicable to the funeral service profession, including the Utah Vital Statistics Rules of the Utah Department of Health;

(5) submitting appropriate documentation to the [d]Division with respect to all work completed by the funeral service intern evidencing the performance of the supervisee during the period of supervised training, including the supervisor's evaluation of the supervisee's competence in the practice of the funeral service profession. This report shall be submitted to the Division within 30 days after the supervisor-supervisee relationship is terminated or within 30 days after the supervisee has completed 2000 hours of supervised experience in a period exceeding one year, performed 50 embalming, and has satisfactorily completed all the duties and functions of an intern throughout the entire internship period;

(6) supervising not more than one funeral service intern at any given time unless approved by the [b]Board and [d]Division;

(7) being physically present and directly supervising, or ensuring that another funeral director directly supervises all duties and functions completed by a funeral service intern throughout the entire internship period;

(8) being responsible for and signing all preneed and at need funeral contracts sold by persons under supervision;

(9) assuring each supervisee is appropriately licensed as a funeral service intern or preneed funeral arrangement sales agent prior to beginning the supervision;

(10) notifying the [d]Division of beginning or ending of association or employment of a preneed sales agent with the funeral service establishment within ten days. Notification shall be made on forms provided by the [d]Division; and

(11) assuring that the supervision requirements are met as required in Section 58-9-307.

R156-9-502. Unprofessional Conduct.

"Unprofessional conduct" as defined in Title 58, Chapters 1 and 9, is further defined in accordance with Subsection 58-1-203(1)(e) to include:

(1) violating the ethical standards of the profession;

(2) failing to comply with laws and rules established by any local, state, federal or other authority regarding funeral services, preneed contracts, health, safety, sanitation, regarding funeral establishments or transportation or handling of dead human bodies, or disclosure requirements to purchasers or prospective purchasers of funeral services or preneed contract;

(3) failing to comply with any provision of the Title 58, Chapter 9, Funeral Service Licensing Act or ~~these~~this Funeral Service Licensing Act Rule[s];

(4) failing to comply with the disclosure requirements of the Federal Trade Commission;

(5) failing to accurately report and record information required by law to be reported on a death certificate;

(6) solicitation or the direct or indirect offer to pay a commission for the procurement of dead human bodies;

(7) failing to comply with the Utah Vital Statistics Rules as promulgated by the Utah Department of Health;

(8) selling preneed funeral arrangements by a preneed funeral arrangement sales agent when the sales agent is not associated with or employed by a funeral service establishment;

(9) selling a preneed funeral arrangement when the preneed funeral arrangement sales agent has not obtained approval to do so from the funeral service establishment and the contract is not approved by the supervising funeral director;

(10) selling an insurance policy to fund a preneed funeral arrangement contract naming a funeral service establishment as beneficiary, prior to executing the underlying preneed funeral arrangement contract;

(11) selling a preneed funeral arrangement without executing an approved preneed funeral arrangement contract within ten working days following the sale;

(12) failing to notify the Division of the beginning or ending of association or employment of a preneed funeral arrangement sales agent;

(13) exercising undue influence over a consumer thereby requiring or causing the consumer to purchase goods or services beyond those the consumer desires or needs;

(14) collecting or receiving money from the sale of an insurance policy funding a preneed funeral arrangement contract unless the person is collecting or receiving the money as a licensed insurance agent or broker;

(15) violating Title 31A, Chapter 23a, containing the fiduciary duties of a trustee with respect to money collected or received as a licensed insurance agent or broker;

(16) receiving a death benefit payment of life insurance proceeds beyond the funeral service establishment's insurable interest in the recipient of goods and services specified in a preneed contract, unless the excess is promptly returned to the insurance company or paid to those entitled to the funds;

(17) converting a preneed funeral arrangement funded by money placed in trust to insurance except as provided by ~~these rules~~this rule;

(18) failing to provide guaranteed goods and services at time of need in accordance with the terms of a preneed funeral arrangement contract;

(19) retaining life insurance proceeds of a policy purchased to fund funeral arrangements but not accompanied by a preneed funeral arrangement contract, unless the licensee provides an equivalent value of funeral goods and services;

(20) failing to report known violations of governing law or rules to the Division and to appropriate law enforcement or other appropriate agencies; and

(21) failing to handle, remit or deposit funds received in payment for a preneed funeral arrangement contract by placing the funds in trust or remitting the funds to an insurance carrier as is required by the contract terms and conditions and by all laws and rules regulating the sale of preneed funeral arrangements and insurance and annuity policies.

R156-9-604. Affiliation of Licensed Sales Agent with Licensed Funeral Service Establishment.

(1) When a licensed sales agent enters association with a licensed funeral service establishment and such association is not currently registered with the [d]Division under the provisions of Subsection 58-9-302(3)(d), or this subsection, the licensed funeral service establishment shall file a notice of association with the [d]Division on forms provided by the [d]Division within ten days after commencement of association.

(2) The licensed funeral service establishment shall provide the licensed sales agent with a copy of the notice filed with the [d]Division.

(3) If a notice of association is not filed by the licensed funeral service establishment within ten days after association, the sales agent may not represent the licensed funeral service establishment with respect to any preneed funeral arrangement until such notice is filed.

R156-9-607. Contract Forms - Division Model.

(1) To assist applicants for a funeral service establishment license, the [d]Division shall publish a model guaranteed preneed funeral arrangement contract form which meets the requirements of Section 58-9-701.

(2) In accordance with the provisions of Subsection 58-9-302(3)(e), a funeral service establishment must submit to the [d]Division a copy of the preneed contract form it intends to market for initial licensure and then ensure that if any amendments are made to the preneed section in the future, the amendments shall meet the requirements set forth in Section 58-9-701 before the contract form may be used in marketing the licensee's preneed funeral arrangement plan under that contract form.

(3) In accordance with the provisions of Subsection 58-9-701(2)(a), easy-to-read type size is hereby defined to be of a

type size large enough to accommodate no more than six lines per vertical inch and no more than 15 characters per horizontal inch.

(4) After April 30, 2007, a new preneed contract form is not required to contain a clause indicating that the Division has approved the contract. Preneed contract forms approved prior to April 30, 2007 shall continue to contain a clause indicating approval by the Division.

R156-9-611. Use of Funds in Trust Account to Purchase Insurance or Annuity Policy.

A funeral service establishment may convert a contract funded by monies held in trust with a contract funded by the proceeds from an insurance or annuity policy provided:

(1) the buyer consents in writing to the conversion after full disclosure of the consequences of the transaction in writing by the funeral service establishment;

(2) the buyer's consent is given without coercion, threat, concealment of material fact, undue influence, or other prejudicial influence inconsistent with the buyer's best interest;

(3) the funeral service establishment uses all monies held in the individual trust account, including interest, as premium for the purchase of the life insurance or annuity policy, unless otherwise directed in writing by the buyer;

(4) the new preneed funeral arrangement contract must be in writing and must provide for goods and services which at least equal to those required of the funeral service establishment under the original contract, and

(5) the new contract meets all requirements of Title 58, Chapter 9, and ~~[these rules]~~this rule.

R156-9-612. Conversion of Trust Accounts Under Prior Law Prohibited.

Conversion of funds held in trust which was established under any prior law regulating preneed funeral arrangements, may not be converted to a trust under the provisions of current statute and rules, but shall continue to be held in trust under the terms and conditions of the predecessor law. However, the funeral service establishment is required to file reports with the Division as required under ~~[these rules]~~this rule.

R156-9-616. Reporting Requirements.

(1) In accordance with Sections 58-9-504 and 58-9-706, each funeral service establishment shall maintain an annual report at the establishment which shall be subject to ~~[d]~~Division audit at anytime. The annual report shall be maintained in a format set forth by the Division and shall include:

(a) a statement of compliance certifying:

(i) that all payments received from the sale of contracts have been:

(A) placed in the funeral service establishment's trust account in accordance with Section 58-9-702 and administered in accordance with Sections 58-9-703 through 58-9-705 and ~~[these rules]~~this rule; or

(B) submitted to the insurance company whose insurance or annuity policy funds the contract;

(ii) that complete and accurate information concerning the preneed funeral arrangements by the funeral service establishment or the funeral service establishment's sales agent was

furnished or made available to the independent certified public accountant who prepared the report of agreed upon procedures; and

(iii) that the annual report is complete and accurate;

(b) at least one of the following reports which reconciles balances in all trust accounts and insurance policies to those in the annual report:

(i) a report from a bank trust department;

(ii) a report from a licensed insurance company; or

(iii) an accounting report on forms available from the ~~[d]~~Division, completed by an independent certified public accountant (CPA) licensed pursuant to Title 58, Chapter 26a, which report indicates the procedures used and agreed upon by the CPA and the funeral service establishment.

(c) an exhibit listing preneed contracts sold prior to April 29, 1991, funded by money, 75% of which is required to be maintained in the name of the contract buyer in the funeral service establishment's trust account as provided in Section 58-9-703, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services and buyer if different, and balance due; the individual trust account number and amount trusted; and the trust earnings, earnings used, and trust balance;

(d) an exhibit listing preneed contracts sold after April 28, 1991, funded by money, 100% of which is required to be maintained in the name of the contract buyer in the funeral service establishment's trust account as provided in Section 58-9-703, which shall include at a minimum the information required under subsection (c);

(e) an exhibit listing preneed contracts funded by money placed in trust which were serviced, revoked, rescinded, or amended since the last reporting period, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services and buyer if different; the individual trust account number and trust balance at the recipient of goods and service's death; the date the contract was closed; and an explanation regarding any preneed contract closed but not serviced;

(f) an exhibit listing preneed contracts sold after April 28, 1991, funded in whole or in part by insurance, which shall include at a minimum: the contract number, date, amount, recipient of goods and services and buyer if different; the insurance company; the policy number, policy holder, and face amount; and

(g) an exhibit listing preneed contracts funded by insurance which were serviced, revoked, rescinded, or otherwise amended since the last reporting period, which shall include at a minimum: the contract number, date, amount, the recipient of goods and services, and buyer if different; the insurance company; the policy number and policy holder; the policy proceeds; the date the contract was closed; and an explanation regarding any preneed contract closed but not serviced.

KEY: funeral industries, licensing, funeral directors, preneed funeral arrangements

Date of Enactment or Last Substantive Amendment: ~~[December 10, 2007]~~2010

Notice of Continuation: October 31, 2006

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-9-504

**Commerce, Occupational and
Professional Licensing
R156-11a
Barber, Cosmetologist/Barber,
Esthetician, Electrologist, and Nail
Technician Licensing Act Rule**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34123

FILED: 09/30/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this filing is to implement the changes in the Barber, Cosmetologist/Barber, Esthetician, Electrologist and Nail Technician Licensing Act (Title 58, Chapter 11a) as amended by H.B. 379 passed by the 2010 Legislature. This filing also makes certain changes overlooked in previous rule filings and makes technical corrections and clarifications. (DAR NOTE: H.B. 379 (2010) is found at Chapter 145, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: In Section R156-11a-102, the definition of "health care practitioner" has been expanded to include a podiatrist and a physician assistant. Section R156-11a-302b is being added to specify the approved evaluation services who may provide education or credential equivalency evaluations of foreign school education compared with a licensed school under Title 58, Chapter 11a. Section R156-11a-302c is being added to establish how a licensed or recognized school under Rule R156-11a may accept credit hours toward graduation from a different licensed profession under Title 58, Chapter 11a. In Section R156-11a-502, amendments add failing as a supervisor to maintain the appropriate supervision levels and performing services without the appropriate levels of supervision as unprofessional conduct. Added in Subsection R156-11a-503(3)(b) possessing at least 10% methyl methacrylate solution to the administrative penalties for unlawful conduct. In Section R156-11a-605, amendment requires schools to provide a copy of the written contract with a student to be provided to the student. Also adds that schools may require a student to retake classes or take refresher courses based upon evaluation of the student's level of competency. In Section R156-11a-607, amendments add that a student written contract with a school include the school's catalogue or handbook, or both and that the school shall maintain a copy for each student and shall provide a copy the catalogue or handbook to the Division upon request. In Sections R156-11a-706, R156-11a-800, and R156-11a-901, minor technical changes are made.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensees in various license classifications provided in Title 58, Chapter 11a, and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** The proposed amendments only apply to licensees in various license classifications provided in Title 58, Chapter 11a, and applicants for licensure in those classifications. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business. Also, these proposed amendments will not result in any increased costs beyond the impact anticipated by the statute change in H.B. 379.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to licensees in various license classifications provided in Title 58, Chapter 11a, and applicants for licensure in those classifications. These proposed amendments will not result in any increased costs beyond the impact anticipated by the statute change in H.B. 379.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensees in various license classifications provided in Title 58, Chapter 11a, and applicants for licensure in those classifications. These proposed amendments will not result in any increased costs beyond the impact anticipated by the statute change in H.B. 379.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As discussed in the rule summary, this filing implements recent statutory changes, establishes additional standards for the protection of students and makes other technical corrections. No fiscal impact to businesses is anticipated from this 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:

♦ Sally Stewart by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at sstewart@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/15/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 11/15/2010 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 11/22/2010

AUTHORIZED BY: Mark Steinagel , Director

R156. Commerce, Occupational and Professional Licensing.
R156-11a. Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule.
R156-11a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 11a, as used in Title 58, Chapters 1 and 11a or this rule:

(1) "Advanced pedicures", as used in Subsection 58-11a-102(31)(a)(i)(D), means any of the following while caring for the nails, cuticles or calluses of the feet:

(a) utilizing manual instruments, implements, advanced electrical equipment, tools, or microdermabrasion for cleaning, trimming, softening, smoothing, or buffing;

(b) utilizing blades, including corn or callus planer or rasp, for smoothing, shaving or removing dead skin from the feet as defined in Section R156-11a-611; or

(c) utilizing topical products and preparations for chemical exfoliation as defined in Subsection R156-11a-610(4).

(2) "Aroma therapy" means the application of essential oils which are applied directly to the skin, undiluted or in a misted dilution with a carrier oil or lotion. for varied applications such as massage, hot packs, cold packs, compress, inhalation, steam or air diffusion, or in hydrotherapy services.

(3) "BCA acid" means bicloroacetic acid.

(4) "Body wraps", as used in Subsection 58-11a-102(31)(a)(i)(A), means body treatments utilizing products or equipment to enhance and maintain the texture, contour, integrity and health of the skin and body.

(5) "Chemical exfoliation", as defined in Subsections 58-11a-102(31)(a)(i)(C) and R156-11a-610(4), means a resurfacing procedure performed with a chemical solution or product for the purpose of removing superficial layers of the epidermis to a point no deeper than the stratum corneum.

(6) "Dermabrasion or open dermabrasion" means the surgical application of a wire or diamond frieze by a physician to abrade the skin to the epidermis and possibly down to the papillary dermis.

(7) "Dermaplane" means the use of a scalpel or bladed instrument under the direct supervision of a health care practitioner to shave the upper layers of the stratum corneum.

(8) "Direct supervision by a licensed health care practitioner" means a health care practitioner who, acting within the

scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4)(a).

(9) "Equivalent number of credit hours" means:

(a) the following conversion table if on a semester basis:

(i) theory - 1 credit hour - 30 clock hours;

(ii) practice - 1 credit hour - 30 clock hours; and

(iii) clinical experience - 1 credit hour - 45 clock hours;

and

(b) the following conversion table if on a quarter basis:

(i) theory - 1 credit hour - 20 clock hours;

(ii) practice - 1 credit hour - 20 clock hours; and

(iii) clinical experience - 1 credit hour - 30 clock hours.

(10) "Exfoliation" means the sloughing off of non-living skin cells by superficial and non-invasive means.

(11) "Extraction" means the following:

(a) "advanced extraction", as used in Subsections 58-11a-102(31)(a)(i)(F) and R156-11a-611(2)(b), means to perform extraction with a lancet or device that removes impurities from the skin;

(b) "manual extraction", as used in Subsection 58-11a-102(25)(a), means to remove impurities from the skin with protected fingertips, cotton swabs or a loop comedone extractor.

(12) "Galvanic current" means a constant low-voltage direct current.

(13) "General supervision by a licensed health care practitioner" means a health care practitioner who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4)(c).

(14) "Health care practitioner" means a physician/surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, ~~or~~ Jan advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, a podiatrist under Title 58, Chapter 5A, Podiatric Physician Licensing Act, or a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Practice Act, acting within the appropriate scope of practice.

(15) "Hydrotherapy", as used in Subsection 58-11a-102(31)(a)(i)(B), means the use of water for cosmetic purposes or beautification of the body.

(16) "Indirect supervision" means the supervising instructor who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4)(b).

(17) "Limited chemical exfoliation" means a non-invasive chemical exfoliation and is further defined in Subsection R156-11a-610(3).

(18) "Lymphatic massage", as used in Subsections 58-11a-102(31)(a)(ii) and 58-11a-302(11)(a)(i)(C), means a method using a light rhythmic pressure applied by manual or other means to the skin using specific lymphatic maneuvers to promote drainage of the lymphatic fluid through the tissue.

(19) "Manipulating", as used in Subsection 58-11a-102(25)(a), means applying a light pressure by the hands to the skin.

(20) "Microdermabrasion", as used in Subsection 58-11a-102(31)(a)(i)(E), means a gentle, progressive, superficial,

mechanical exfoliation of the uppermost layers of the stratum corneum using a closed-loop vacuum system.

(21) "Patch test" or "predisposition test" means applying a small amount of a chemical preparation to the skin of the arm or behind the ear to determine possible allergies of the client to the chemical preparation.

(22) "Pedicure" means any of the following:

(a) cleaning, trimming, softening, or caring for the nails, cuticles, or calluses of the feet;

(b) the use of manual instruments or implements on the nails, cuticles, or calluses of the feet;

(c) callus removal by sanding, buffing, or filing; or

(d) massaging of the feet or lower portion of the leg.

(23) "TCA acid" means trichloroacetic acid.

(24) "Unprofessional conduct" is further defined, in accordance with Section 58-1-501, in Section R156-11a-502.

R156-11a-302b. Qualifications for Licensure - Equivalency of Foreign School Education.

In accordance with Subsection 58-11a-302(17):

(1) An applicant shall submit documentation of education equivalency from a foreign school education to a Utah licensed barber school, cosmetology/barber school, esthetics school, electrology school, or nail technology school.

(2) The documentation shall be an education or credential evaluation from one of the following approved credential evaluation services:

(a) Josef Silny & Associates Incorporated, International Education Consultants; or

(b) Educational Credential Evaluators Incorporated.

R156-11a-302c. Qualifications for Licensure - Acceptance of Credit Hours.

In accordance with Subsection 58-11a-302(18), credit hours toward graduation may be accepted as follows:

(1) A licensed school may accept credit hours toward the curriculum set forth in Section R156-11a-700, R156-11a-701, R156-11a-702, R156-11a-704 and R156-11a-705 from a licensee under Title 58, Chapter 11a, based upon the licensee's schooling, apprenticeship, or experience.

(2) The credit hours accepted toward graduation shall not exceed the number of hours required in Subsections 58-11a-302(1)(d)(i), 58-11a-302(7)(d), 58-11a-302(10)(d)(i), 58-11a-302(11)(d)(i), and 58-11a-302(14)(d)(i) for that professional license in Utah.

R156-11a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to provide direct supervision of an apprentice, a student attending a barber, cosmetology/barber, esthetics, electrology, or nail technology school, or a student instructor;

(2) failing to obtain accreditation as a barber, cosmetology/barber, esthetics, electrology, or nail technology school in accordance with the requirements of Section R156-11a-601;

(3) failing to maintain accreditation as a barber, cosmetology/barber, esthetics, electrology or nail technology school after having been approved for accreditation;

(4) failing to comply with the standards of accreditation

applicable to barber, cosmetology/barber, esthetics, electrology, or nail technology schools;

(5) failing to provide adequate instruction or training as applicable to a student of a barber, cosmetology/barber, esthetics, electrology, or nail technology school, or in an approved barber, cosmetology/barber, esthetics, or nail technology apprenticeship;

(6) failing to comply with Title 26, Utah Health Code;

(7) failing to comply with the apprenticeship requirements applicable to barber, cosmetologist/barber, basic esthetician, master esthetician, or nail technician apprenticeships as set forth in Sections R156-11a-800 through R156-11a-804;

(8) failing to comply with the standards for curriculums applicable to barber, cosmetology/barber, esthetics, electrology, or nail technology schools as set forth in Sections R156-11a-700 through R156-11a-706;

(9) using any device classified by the Food and Drug Administration as a prescriptive medical device without the appropriate level of supervision by a licensed health care practitioner acting within the licensed health care practitioner's scope of practice;

(10) performing services within the scope of practice as a basic esthetician, or a master esthetician without having been adequately trained to perform such services;

(11) failing as a supervisor to provide the appropriate level of supervision while a basic esthetician, an electrologist or a master esthetician under supervision is performing service within the scope of practice as set forth in Subsections 58-11a-102(25), 58-11a-102(28) and 58-11a-102(31);

(12) performing services within the scope of practice as a basic esthetician, a master esthetician or an electrologist without having the appropriate level of supervision as required by Subsection 58-11a-102(25), 58-11a-102(28) and 58-11a-102(31);

~~(13)~~ violating any standard established in Sections R156-11a-601 through R156-11a-612;

~~(14)~~ performing a procedure while the licensee has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the licensee takes medically approved measures to prevent transmission of the disease; and

~~(15)~~ performing a procedure on a client who has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the licensee takes medically approved measures to prevent transmission of the disease.

R156-11a-503. Administrative Penalties - Unlawful Conduct.

In accordance with Subsections 58-1-501(1)(a) and (c), 58-11a-301(1) and (2), 58-11a-502(1), (2) or (4), and 58-11a-503(4), unless otherwise ordered by the presiding officer, the following fine schedule shall apply to citations issued under Title 58, Chapter 11a.

(1) Practicing or engaging in, or attempting to practice or engage in activity for which a license is required under Title 58, Chapter 11a in violation of Subsection 58-11a-502(1).

First Offense: \$200

Second Offense: \$300

(2) Knowingly employing any other person to engage in or practice or attempt to engage in or practice any occupation or profession for which a license is required under Title 58, Chapter 11a in violation of Subsection 58-11a-502(2).

First Offense: \$400

Second Offense: \$800

(3)(a) Using as a nail technician a solution composed of at least 10% methyl methacrylate on a client in violation of Subsection 58-11a-~~501~~502(4)

First Offense: \$500

Second Offense: \$1,000

(b) Possessing as a nail technician a solution composed of at least 10% methyl methacrylate in violation of Subsection 58-11a-502(4)

First Offense: \$500

Second Offense: \$1,000

(4) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-11a-503(4) (h).

(5) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(6) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(7) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-11a-605. Standards for Protection of Students.

In accordance with Subsections 58-11a-302(3)(c)(iii) and (iv), (6)(c)(iii) and (iv), (9)(c)(iii) and (iv), (13)(c)(iii) and (iv), (16)(c)(iii) and (iv), standards for the protection of students shall include the following:

(1) In the event a school ceases to operate for any reason, the school shall notify the [d]Division within 15 days by registered or certified mail and shall name a trustee who [~~will be~~]is responsible [~~to~~]for maintaining the student records. Upon request, the trustee shall provide information such as accumulated student hours and dates of attendance.

(2) Schools shall provide a copy of the written contract prepared in accordance with Section R156-11a-607 to each student.

~~(2)3~~ Schools shall not use students to perform maintenance, janitorial or remodeling work such as scrubbing floor, walls or toilets, cleaning windows, waxing floors, painting, decorating, or performing any outside work on the grounds or building. Students may be required to clean up after themselves and to perform or participate in daily cleanup of work areas, including the floor space, shampoo bowls, laundering of towels and linen and other general cleanup duties that are related to the performance of client services.

~~(3)4~~ Schools shall not require students to sell products applicable to their industry as a condition to graduate, but may provide instruction in product sales techniques as part of their curriculums.

~~(4)5~~ Schools shall keep a daily written record of student attendance.

~~(5)6~~ Schools shall not be permitted to remove hours earned by a student. If a student is late for class, the school may require the student to retake the class before giving credit for the

class. Schools may require a student to take a refresher course or retake a class toward graduation based upon an evaluation of the student's level of competency.

~~(6)7~~ In accordance with Subsection 58-11a-502(3)(a), schools shall not require students to participate in hair removal training that pertains to the genitals or anus of a client.

R156-11a-607. Standards for a Written Contract.

(1) In accordance with Subsections 58-11a-302(3)(c)(iv), (6)(c)(iv), (9)(c)(iv), (13)(c)(iv), and (16)(c)(iv), barber, cosmetology/barber, electrology, esthetics, and nail technology schools shall complete a written contract with each student prior to admission.

(2) Each contract shall [~~contain, as a minimum~~]include specifically or by reference to the school's catalogue or handbook, or both, the following:

(a) the current status of the school's accreditation;

(b) rules of conduct;

(c) attendance requirements;

(d) provisions for make up work;

(e) grounds for probation, suspension or dismissal; and

(f) a detailed fee schedule which shall include the student's financial responsibility upon voluntarily leaving the school or upon being suspended from the school.

(3) The school shall maintain on file a copy of the contract and catalogue or handbook, or both, for each student and shall provide a copy of the contract and catalogue or handbook, or both to the [d]Division upon request.

R156-11a-706. Curriculum for Instructor[s] Schools.

In accordance with Subsections 58-11a-302(2)(e)(i), (5)(e)(i), (8)(e)(i), (12)(e)(i) and (15)(e)(i), the curriculum for an approved instructor school shall consist of instructor training in the following subjects:

(1) motivation and the learning process;

(2) teacher preparation;

(3) teaching methods;

(4) classroom management;

(5) testing;

(6) instructional evaluation;

(7) laws, rules and regulations; and

(8) Utah Barber, Cosmetology/Barber, Esthetics (Master level), Electrology and Nail Technology Instructors Examination review.

R156-11a-800. Approved Barber Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(1), the requirements for an approved barber apprenticeship shall include the following:

(1) The instructor shall have only one apprentice at a time.

(2) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training".

(3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services which will document the total number of hours of training. The record shall be available to the Division upon request.

(4) A complete set of barber texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The instructor shall provide training and technical instruction of 1,250 hours using the curriculum defined in Section R156-11a-700.

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-700.

(9) Any hours obtained while enrolled in a barber school or a cosmetology/barber school shall not be used to satisfy the required 1,250 hours of apprentice training.

R156-11a-901. Standards for an On the Job Training Internship.

In accordance with Subsection 58-11a-304(8), students enrolled in a licensed cosmetology/barber school may participate in an on the job training internship if they meet the following requirements:

(1) The on the job training intern shall have completed at least 1,000 hours of the training contracted with a cosmetology/barber school, of which 400 hours shall be clinical hours.

(2) There shall be a conspicuous sign near the work station of the on the job training intern stating "Intern in Training".

(3) A licensed "on-site" cosmetology/barber shall supervise only one on the job training intern at a time.

(4) An on the job training intern, while working under the direct supervision of an "on-site" licensed cosmetologist/barber, may perform the following procedures:

- (a) draping;
- (b) shampooing;
- (c) roller setting;
- (d) blow drying styling;
- (e) applying color;
- (f) removing color by rinsing and shampooing;
- (g) removing permanent chemicals;
- (h) removing permanent rods;
- (i) removing rollers;
- (j) applying temporary rinses, reconditioners, and

rebuilders;

- (k) acting as receptionists;
- (l) doing retail sales;
- (m) sanitizing the salon;
- (o) doing inventory and ordering supplies; and
- (p) handing equipment to the cosmetologist/barber

supervisor.

(5) The "on-site" cosmetologist/barber supervisor shall have in the supervisor's possession a letter, which must be updated on a quarterly basis, from the school where the on the job training intern is enrolled stating that the on the job training intern is currently in good standing at the school and is complying with school requirements.

(6) Hours of training spent while performing on the job training as an intern shall not apply towards credits required for graduation.

KEY: cosmetologists/barbers, estheticians, electrologists, nail technicians

Date of Enactment or Last Substantive Amendment: [~~August 10, 2009~~2010]

Notice of Continuation: April 12, 2007

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

**Commerce, Occupational and
Professional Licensing
R156-22
Professional Engineers and
Professional Land Surveyors Licensing
Act Rule**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34115

FILED: 09/27/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Professional Engineers and Professional Land Surveyors Licensing Board reviewed the rule and determined a few changes need to be made.

SUMMARY OF THE RULE OR CHANGE: In Section R156-22-102, added definitions for "highly toxic materials" and "maximum allowable quantities"; and updated the referenced International Building Code from the 2006 edition to the 2009 edition. Throughout the rule, capitalized the term "division" and "board". In Subsections R156-22-302c(1)(c) and (2)(a)(i)(A), changed the word "must" to "shall" with respect to experience requirements. Under Subsection R156-22-302c(3), added subsection (b) which provides the qualifying experience shall be obtained after meeting the education requirements. In Subsection R156-22-302d(2)(a)(ii), amendments reflect changes being made by the National Council of Examiners for Engineering and Surveying (NCEES) in April 2011 to replace the required Structural I and II examinations with the Structural Examination. Added Section R156-22-306 which allows a licensed architect to place his license on an inactive status. Section R156-22-501 is renumbered to Section R156-22-503 and administrative penalties/fine schedule is changed to a table format.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-22-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

◆ LOCAL GOVERNMENTS: The proposed amendments only apply to licensed professional engineers, professional structural engineers, professional land surveyors and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.

◆ SMALL BUSINESSES: The proposed amendments only apply to licensed professional engineers, professional structural engineers, professional land surveyors and applicants for licensure in those classifications. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments only apply to licensed professional engineers, professional structural engineers, professional land surveyors and applicants for licensure in those classifications. The Division has determined that there should be no costs or savings as a result of these proposed amendments as they are just minor technical changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed professional engineers, professional structural engineers, professional land surveyors and applicants for licensure in those classifications. The Division has determined that there should be no costs or savings as a result of these proposed amendments as they are just minor technical changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing provides definitions required by statute, updates references to the new building code, updates an examination for structural engineers, and makes other technical changes. No fiscal impact to businesses is anticipated from these amendments.

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:
◆ Dennis Meservy by phone at 801-530-6375, by FAX at

801-530-6511, or by Internet E-mail at dmeservy@utah.gov
◆ Rich Oborn by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at roborn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/15/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 11/10/2010 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 475, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 11/22/2010

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rule.**

R156-22-102. Definitions.

In addition to the definitions in Title 58, Chapters 1, 3a and 22, as used in Title 58, Chapters 1, 3a and 22, or this rule:

(1) "Complete and final", as used in Section 58-22-603, means "complete construction plans" as defined in Subsection 58-22-102(3).

(2) "Direct supervision", as used in Subsection 58-22-102(10), means "supervision" as defined in Subsection 58-22-102(16).

(3) "Employee, subordinate, associate, or drafter of a licensee", as used in Subsections 58-22-102(16), 58-22-603(1)(b) and this rule, means one or more individuals not licensed under this chapter, who are working for, with, or providing professional engineering, professional structural engineering, or professional land surveying services directly to and under the supervision of a person licensed under this chapter.

(4) "Engineering surveys", as used in Subsection 58-22-102(9), include all survey activities required to support the sound conception, planning, design, construction, maintenance, and operation of engineered projects, but exclude the surveying of real property for the establishment of land boundaries, rights-of-way, easements, alignment of streets, and the dependent or independent surveys or resurveys of the public land survey system.

(5) "Highly toxic materials", as used in Subsection 58-22-102(14)(a)(ii)(F), is hazardous materials as defined in Section 307 of the 2009 International Building Code and Section 2703 of the 2009 International Fire Code.

(6) "Incidental practice" means "architecture work as is incidental to the practice of engineering", as used in Subsection 58-22-102(9), and "engineering work as is incidental to the practice of architecture", as used in Subsection 58-3a-102(6), which:

(a) can be safely and competently performed by the licensee without jeopardizing the life, health, property and welfare of the public;

(b) is secondary and substantially less in scope and magnitude when compared to the work performed or to be performed by the licensee in the licensed profession;

(c) is work in which the licensee is fully responsible for the incidental practice performed as provided in Subsections 58-3a-603(1) or 58-22-603(1);

(d) is work that affects not greater than 49 occupant as determined in Section 1004 of the ~~[2006]~~2009 International Building Code;

(e) is work included on a project with a construction value not greater than 15 percent of the overall construction value for the project including all changes or additions to the contracted or agreed upon work; and

(f) shall not include work on a building or related structure in an occupancy category of III or IV as defined in 1604.5 of the ~~[2006]~~2009 International Building Code.

(7) "Maximum allowable quantities", as used in Subsection 58-22-102(14)(a)(ii)(F), is quantities of hazardous materials as set forth in Section 307 of the 2009 International Building Code, Tables 307.1(1) and 307.1(2), which when exceeded, would classify the building, structure or portion thereof as Group H-1, H-2, H-3, H-4 or H-5 hazardous use.

~~(6)~~8 "Professional structural engineering or the practice of structural engineering", as defined in Subsection 58-22-102(14), is further defined to exclude the design and oversight of the construction and installation of highway, utility, or pedestrian bridges.

(7)9 "Recognized jurisdiction", as used in Subsection 58-22-302(4)(d)(i), for licensure by endorsement, means any state, district or territory of the United States, or any foreign country that issues licenses for professional engineers, professional structural engineers, or professional land surveyors, and whose licensure requirements include:

(a) Professional Engineer.

(i) a bachelors or post graduate degree in engineering or equivalent education as determined by the NCEES Credentials Evaluations and four years of full time engineering experience under supervision of one or more licensed engineers; and

(ii) passing the NCEES Principles and Practice of Engineering Examination (PE).

(b) Professional Structural Engineer.

(i) a bachelors or post graduate degree in engineering or equivalent education as determined by the NCEES Credentials Evaluations and four years of full time engineering experience under supervision of one or more licensed engineers;

(ii) passing the NCEES Structural I and II Examination; and

(iii) three years of licensed experience in professional structural engineering.

(c) Professional Land Surveyor.

(i) an associate or higher education degree in land surveying as set forth in Subsection R156-22-302b(2)(c) or equivalent education as determined by the NCEES Credentials Evaluations and four years of full time land surveying experience under supervision of one or more licensed professional land surveyors; and

(ii) passing the NCEES Principles and Practice of Surveying Examination (PS) or passing a professional land surveying examination that is substantially equivalent to the NCEES Principles and Practice of Surveying Examination.

(8)10 "Responsible charge" by a principal, as used in Subsection 58-22-102(7), means that the licensee is assigned to and

is personally accountable for the production of specified professional engineering, professional structural engineering or professional land surveying projects within an organization.

(9)11 "TAC/ABET" means Technology Accreditation Commission/Accreditation Board for Engineering and Technology(ABET, Inc.).

(10)12 "Under the direction of the licensee", as used in Subsection 58-22-102(16), as part of the definition of "supervision of an employee, subordinate, associate, or drafter of a licensee", means that the unlicensed employee, subordinate, associate, or drafter of a person licensed under this chapter engages in the practice of professional engineering, professional structural engineering, or professional land surveying only on work initiated by a person licensed under this chapter, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of a person licensed under this chapter.

(11)13 "Unprofessional conduct" as defined in Title 58, Chapters 1 and 22, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-22-502.

R156-22-103. Authority - Purpose.

This rule is adopted by the ~~[d]~~Division under the authority of Subsection 58-1-106(1)(a) to enable the ~~[d]~~Division to administer Title 58, Chapter 22.

R156-22-302b. Qualifications for Licensure - Education Requirements.

(1) Education requirements - Professional Engineer and Professional Structural Engineer.

In accordance with Subsections 58-22-302(1)(d) and 58-22-302(2)(d), the engineering program criteria is established as one of the following:

(a) The bachelors or post graduate engineering program shall be accredited by EAC/ABET or the Canadian Engineering Accrediting Board (CEAB).

(b) The post graduate engineering degree, when not accredited by EAC/ABET or CEAB, shall be earned from an institution which offers a bachelors or masters degree in an engineering program accredited by EAC/ABET or CEAB in the same specific engineering discipline as the earned post graduate degree and the applicant is responsible to demonstrate that the combined engineering related coursework taken (both undergraduate and post graduate) included coursework that meets or exceeds the engineering related coursework required for the EAC/ABET accreditation for the bachelor degree program.

(c) If the degree was earned in a foreign country, the engineering curriculum shall be determined to be equivalent to an EAC/ABET accredited program by the NCEES Credentials Evaluations, formerly known as the Center for Professional Engineering Education Services (CPEES). Only deficiencies in course work in the humanities, social sciences and liberal arts and no more than five semester hours in math, science or engineering, not to exceed a total of 10 semester hours noted by the credentials evaluation may be satisfied by successfully completing the deficiencies in course work at a recognized college or university approved by the ~~[d]~~Division in collaboration with the ~~[b]~~Board. Engineering course work deficiencies must be completed at an EAC/ABET approved program.

(d) A TAC/ABET accredited degree is not acceptable to meet the qualifications for licensure as a professional engineer or a professional structural engineer.

(2) Education requirements - Professional Land Surveyor. In accordance with Subsection 58-22-302(3)(d), an equivalent land surveying program for licensure as a professional land surveyor is defined as an earned bachelors or higher education degree and completion of a minimum of 30 semester hours or 42 quarter hours of course work in land surveying which shall include the following courses:

(a) successful completion of a minimum of one course in each of the following content areas:

- (i) boundary law;
- (ii) writing legal descriptions;
- (iii) photogrammetry;
- (iv) public land survey system;
- (v) studies in land records or land record systems;
- (vi) surveying field techniques; and

(b) the remainder of the 30 semester hours or 42 quarter hours may be made up of successful completion of courses from the following content areas:

(i) algebra, calculus, geometry, statistics, trigonometry, not to exceed six semester hours or eight quarter hours;

(ii) control systems;

(iii) drafting, not to exceed six semester hours or eight quarter hours;

(iv) geodesy;

(v) geographic information systems;

(vi) global positioning systems;

(vii) land development; and

(viii) survey instrumentation;

(c) the degree and courses shall be completed in an education institution accredited by one of the following:

(i) Middle States Association of Colleges and Schools;

(ii) New England Association of Colleges and Schools;

(iii) North Central Association of Colleges and Schools;

(iv) Northwest Commission on College and Universities;

(v) Southern Association of Colleges and Schools; or

(vi) Western Association of Schools and Colleges.

R156-22-302c. Qualifications for Licensure - Experience Requirements.

(1) General Requirements. These general requirements apply to all applicants under this chapter and are in addition to the specific license requirements in Subsections (2), (3) and (4).

(a) 2,000 hours of work experience constitutes one year (12 months) of work experience.

(b) No more than 2,000 hours of work experience can be claimed in any 12 month period.

(c) Experience ~~must~~ shall be progressive on projects that are of increasing quality and requiring greater responsibility.

(d) Only experience of an engineering, structural engineering or surveying nature, as appropriate for the specific license, is acceptable.

(e) Experience is not acceptable if it is obtained in violation of applicable statutes or rules.

(f) Unless otherwise provided in this Subsection (1)(g), experience shall be gained under the direct supervision of a person licensed in the profession for which the license application is

submitted. Supervision of an intern by another intern is not permitted.

(g) Experience is also acceptable when obtained in a work setting where licensure is not required or is exempted from licensure requirements, including experience obtained in the armed services if:

(i) the experience is performed under the supervision of qualified persons and the applicant provides verifications of the credentials of the supervisor; and

(ii) the experience gained is equivalent to work performed by an intern obtaining experience under a licensed supervisor in a licensed or civilian setting, and the applicant provides verification of the nature of the experience.

(h) Proof of supervision. The supervisor shall provide to the applicant the certificate of qualifying experience in a sealed envelope with the supervisor's seal stamped across the seal flap of the envelope, which the applicant shall submit with the application for licensure.

(i) In the event the supervisor is unavailable or refuses to provide a certification of qualifying experience, the applicant shall submit a complete explanation of why the supervisor is unavailable and submit verification of the experience by alternative means acceptable to the board, which shall demonstrate that the work was profession-related work, competently performed, and sufficient accumulated experience for the applicant to be granted a license without jeopardy to the public health, safety or welfare.

(j) In addition to the supervisor's documentation, the applicant shall submit at least one verification of qualifying experience from a person licensed in the profession who has personal knowledge of the applicant's knowledge, ability and competence to practice in the profession applied for.

(k) Duties and responsibilities of a supervisor. The duties and responsibilities of a licensee under Subsection (1)(f) or other qualified person under Subsection (1)(g) include the following.

(i) A person may not serve as a supervisor for more than one firm.

(ii) A person who renders occasional, part time or consulting services to or for a firm may not serve as a supervisor.

(iii) The supervisor shall be in responsible charge of the projects assigned and is professionally responsible for the acts and practices of the supervisee.

(iv) The supervision shall be conducted in a setting in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised.

(v) The supervisor shall be available for advice, consultation and direction consistent with the standards and ethics of the profession.

(vi) The supervisor shall provide periodic review of the work assigned to the supervisee.

(vii) The supervisor shall monitor the performance of the supervisee for compliance with laws, standards and ethics applicable to the profession.

(viii) The supervisor shall provide supervision only to a supervisee who is an employee of a licensed professional or alternatively in a setting wherein both the supervisor and the supervisee are engaged in a work setting in which the work is exempt from licensure requirements.

(ix) The supervisor shall submit appropriate documentation to the [d]Division with respect to all work completed by the supervisee during the period of supervised experience, including the supervisor's evaluation of the supervisee's competence to practice in the profession.

(x) The supervisor shall assure each supervisee has obtained the degree which is a prerequisite to the intern beginning to obtain qualifying experience.

(2) Experience Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(e), an applicant for licensure as a professional engineer shall complete the following qualifying experience requirements:

(i) Submit verification of qualifying experience, obtained while under the supervision of one or more licensed professional engineers, which experience has been certified by the licensed professional who provided the supervision documenting completion of a minimum of four years of full time or equivalent part time qualifying experience in professional engineering approved by the [d]Division in collaboration with the board in accordance with the following:

(A) The qualifying experience [~~must~~]shall be obtained after meeting the education requirements.

(B) A maximum of three of the four years of qualifying experience may be approved by the board as follows:

(I) A maximum of three years of qualifying experience may be granted for teaching advanced engineering subjects in a college or university offering an engineering curriculum accredited by EAC\ABET.

(II) A maximum of three years of qualifying experience may be granted for conducting research in a college or university offering an engineering curriculum accredited by EAC/ABET provided the research is under the supervision of a licensed professional and is directly related to the practice of engineering, as long as such research has not been credited towards the education requirements. Therefore research which is included as part of the classwork, thesis or dissertation or similar work is not acceptable as additional work experience.

(III) A maximum of one year of qualifying experience may be granted for completion of a masters degree in engineering provided that both the earned bachelors and masters degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(IV) A maximum of two years of qualifying experience may be granted for completion of a doctorate degree in engineering provided that both the earned bachelors or masters degree and doctorate degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(b) The performance or supervision of construction work as a contractor, foreman or superintendent is not qualifying experience for licensure as a professional engineer.

(c) Experience should include demonstration of, knowledge, application, and practical solutions using engineering mathematics, physical and applied science, properties of materials and the fundamental principles of engineering design.

(3) Experience Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(e), each applicant shall submit verification of three years of full time or equivalent part time professional structural engineering experience

obtained while under the supervision of one or more licensed professional structural engineers, which experience is certified by the licensed structural engineer supervisor and is in addition to the qualifying experience required for licensure as a professional engineer.

(b) The qualifying experience shall be obtained after meeting the education requirements.

([b]c) Professional structural engineering experience shall include responsible charge of structural design in one or more of the following areas:

(i) structural design of any building or structure two stories and more, or 45 feet in height, located in a region of moderate or high seismic risk designed in accordance with current codes adopted pursuant to Section 58-56-4;

(ii) structural design for a major seismic retrofit/rehabilitation of an existing building or structure located in a region of moderate or high seismic risk; or

(iii) structural design of any other structure of comparable structural complexity.

([e]d) Professional structural engineering experience shall include structural design in all of the following areas:

(i) use of three of the following four materials as they relate to the design, rehabilitation or investigation of buildings or structures:

(A) steel;

(B) concrete;

(C) wood; or

(D) masonry;

(ii) selection of framing systems including the consideration of alternatives and the selection of an appropriate system for the interaction of structural components to support vertical and lateral loads;

(iii) selection of foundation systems including the consideration of alternatives and the selection of an appropriate type of foundation system to support the structure;

(iv) design and detailing for the transfer of forces between stories in multi-story buildings or structures;

(v) application of lateral design in the design of the buildings or structures in addition to any wind design requirements; and

(vi) application of the local, state and federal code requirements as they relate to design loads, materials, and detailing.

(4) Experience Requirements - Professional Land Surveyor.

(a) In accordance with Subsections 58-22-302(3)(d), an applicant for licensure as a professional land surveyor shall complete the following qualifying experience requirements:

(i) Submit verification of qualifying experience obtained under the supervision of one or more licensed professional land surveyors who have provided supervision, which experience is certified by the licensed professional land surveyor supervisor and is in accordance with the following:

(A) Applicants who have met the education requirements in Subsection 58-22-302(3)(d)(i) shall document four years of full time or equivalent part time qualifying experience in land surveying which experience may be obtained before, during or after completing the education requirements for licensure.

(B) Prior to January 1, 2007, applicants who did not complete the education requirements in Subsection 58-22-302(3)(d)

(i) shall have until December 31, 2009 to apply for licensure by documenting eight years of qualifying experience in land surveying.

(b) The four years of qualifying experience required in R156-22-302c(4)(a)(i)(A) and four of the eight years required in R156-22-302c(4)(a)(i)(B) shall comply with the following:

(i) Two years of experience should be specific to field surveying with actual "hands on" surveying, including all of the following:

- (A) operation of various instrumentation;
- (B) review and understanding of plan and plat data;
- (C) public land survey systems;
- (D) calculations;
- (E) traverse;
- (F) staking procedures;
- (G) field notes and manipulation of various forms of data encountered in horizontal and vertical studies; and

(ii) Two years of experience should be specific to office surveying, including all of the following:

- (A) drafting (includes computer plots and layout);
- (B) reduction of notes and field survey data;
- (C) research of public records;
- (D) preparation and evaluation of legal descriptions; and
- (E) preparation of survey related drawings, plats and record of survey maps.

(c) The remaining qualifying experience required in R156-22-302c(4)(a)(i)(B) shall include any aspects of the practice of land surveying under the supervision of a licensed professional land surveyor in accordance with Subsection 58-22-102(16).

R156-22-302d. Qualifications for Licensure - Examination Requirements.

(1) Examination Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(f), the examination requirements for licensure as a professional engineer are defined, clarified or established as the following:

(i) the NCEES Fundamentals of Engineering (FE) Examination with a passing score as established by the NCEES except that an applicant who has completed an undergraduate degree from an EAC/ABET accredited program and has completed a Ph.D. or doctorate in engineering from an institution that offers EAC/ABET undergraduate programs in the Ph.D. field of engineering is not required to take the FE examination;

(ii) the NCEES Principles and Practice of Engineering (PE) Examination other than Structural II with a passing score as established by the NCEES; and

(iii) pass all questions on the open book, take home Utah Law and Rules Examination, which is included as part of the application for licensure forms.

(b) If an applicant was approved by the Utah Division of Occupational and Professional Licensing to take the examinations required for licensure as an engineer under prior Utah statutes and rules and did take and pass all examinations required under such prior rules, the prior examinations will be acceptable to qualify for reinstatement of licensure rather than the examinations specified under Subsection R156-22-302d(1)(a).

(c) Prior to submitting an application for pre-approval to sit for the NCEES PE examination, an applicant must have successfully completed three out of the four years of the qualifying experience requirements set forth in Subsection R156-22-302c(1)[-

~~and have]~~ after having successfully completed the education requirements set forth in Subsection R156-22-302b(1).

(d) The admission criteria to sit for the NCEES FE examination is set forth in Section 58-22-306.

(2) Examination Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(f), the examination requirements for licensure as a professional structural engineer are defined, clarified, or established as the following:

(i) the NCEES Fundamentals of Engineering Examination (FE) with a passing score as established by the NCEES;

(ii) the NCEES Structural Examination, and prior to April 2011, the NCEES Structural I and Structural II Examinations with a passing score as established by the NCEES; and

(iii) as part of the application for license, pass all questions on the open book, take home Utah Law and Rules Examination.

(b) Prior to submitting an application for pre-approval to sit for the NCEES Structural II examination, an applicant must have successfully completed two out of the three years of the experience requirements set forth in Subsection R156-22-302c(3).

(3) Examination Requirements - Professional Land Surveyor.

(a) In accordance with Subsection 58-22-302(3)(e), the examination requirements for licensure as a professional land surveyor are established as the following:

(i) the NCEES Fundamentals of Surveying (FS) Examination with a passing score as established by the NCEES;

(ii) the NCEES Principles and Practice of Surveying (PS) Examination with a passing score as established by the NCEES; and

(iii) the Utah Local Practice Examination with a passing score of at least 75. An applicant who fails the Utah Local Practice Examination may retake the examination as follows:

(A) no sooner than 30 days following any failure, up to three failures; and

(B) no sooner than six months following any failure thereafter.

(b) Prior to submitting an application for pre-approval to sit for the NCEES PS examination, an applicant must have successfully completed the education requirement set forth in Subsection R156-22-302b(2) and three out of the four years of the qualifying experience requirements set forth in Subsection R156-22-302c(4).

(4) Examination Requirements for Licensure by Endorsement.

In accordance with Subsection 58-22-302(4)(d)(ii), the examination requirements for licensure by endorsement are established as follows:

(a) Professional Engineer: An applicant for licensure as a professional engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(1) except that the board may waive one or more of the following examinations under the following conditions:

(i) the NCEES FE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed;

(ii) the NCEES PE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application, who has been licensed for 20 years preceding the date of the license application, and who was not required to pass the NCEES PE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(b) Professional Structural Engineer: An applicant for licensure as a professional structural engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(2) except that the board may waive the NCEES FE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(c) Professional Land Surveyor: An applicant for licensure as a professional land surveyor by endorsement shall comply with the examination requirements in Subsection R156-22-302d(3) except that the board may waive either the NCEES(FS) Examination or the NCEES (PS) Examination or both to an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES(FS) Examination or the(PS) Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

KEY: professional land surveyors, professional engineers, professional structural engineers

Date of Enactment or Last Substantive Amendment: [December 22, 2009]2010

Notice of Continuation: November 15, 2007

Authorizing, and Implemented or Interpreted Law: 58-22-101; 58-1-106(1)(a); 58-1-202(1)(a)

Commerce, Occupational and
Professional Licensing
R156-39a
Alternative Dispute Resolution
Providers Certification Act Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34108

FILED: 09/21/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In response to H.B. 78 from the 2008 General Session, the Division is required to change the code citations to match the recodification of Title 78. The majority of changes in this rule filing were originally filed as a nonsubstantive rule change with Division of Administrative

Rules on 07/29/2010. However, Hunter Finch (Governor's Office of Planning and Budget) notified the Division in an email sent to Clyde Ormond on 08/25/2010 that some of the statute citations were incorrect and could not actually be found in the statute. As a result, the Division withdrew the nonsubstantive rule filing (DAR No. 33869) and is now submitting the changes as a proposed rule filing since two definitions in Section R156-39a-102 need to be deleted as they are no longer referenced in any statute. (DAR NOTE: H.B. 78 (2008) is found at Chapter 3, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: The changes updated "rules" to "rule" throughout the rule; capitalized "division" where appropriate; and updated statutory citations throughout the rule. Also in Section R156-39a-102, deleted definitions for "mini-trial" and "moderated settlement conference" since these definitions no longer appear in Title 78B, Chapter 6. The remaining subsections have been renumbered.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-39a-1 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

♦ **LOCAL GOVERNMENTS:** The proposed amendments only apply to certified alternative dispute resolution providers and applicants for licensure in that classification. As a result, the proposed amendments do not apply to local governments.

♦ **SMALL BUSINESSES:** The proposed amendments only apply to certified alternative dispute resolution providers and applicants for licensure in that classification. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to certified alternative dispute resolution providers and applicants for licensure in that classification. The Division does not anticipate any impact on these persons as a result of these minor proposed rule amendments which are just "clean up" in nature.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to certified alternative dispute resolution providers and applicants for licensure in that classification. The Division does not anticipate any impact on these persons as a result of these minor proposed rule amendments which are just "clean up" in nature.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this filing which corrects references based on new statutory

amendments, removes terms no longer used in statute, and makes other technical corrections.

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:

◆ Clyde Ormond by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 11/22/2010

AUTHORIZED BY: Mark Steinagel , Director

R156. Commerce, Occupational and Professional Licensing.
R156-39a. Alternative Dispute Resolution Providers Certification Act Rule[s].

R156-39a-101. Title.

~~[These rules are]~~This rule is known as the "Alternative Dispute Resolution Providers Certification Act Rule[s]".

R156-39a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 39a, as used in Title 58, Chapters 1 and 39a or ~~[these rules]~~this rule:

(1) "Alternative dispute resolution provider" or "ADRP" means one who holds himself out as an arbitrator, negotiator, mediator, neutral fact finding expert, qualified neutral person, special master, conciliator, or any other title intended to cause a reasonable person to believe he is engaged in the alternative dispute resolution process.

(2) "Arbitration" means a forum in which one or more qualified neutral individuals, knowledgeable in the subject matter of the dispute, and educated, trained or experienced in the dispute resolution process, hears the positions, facts, and evidence presented by conflicting parties to a dispute, defines the issues, and makes a binding or non-binding decision regarding the matter in dispute.

(3) "Certified alternative dispute resolution provider" means an individual who is certified under Title 58, Chapter 39a as an alternative dispute resolution provider and designated as an arbitrator, mediator, or negotiator.

(4) "License" as used in Title 58, Chapter 39a means certification.

(5) "Negotiation" means a process in which there is an attempt to resolve a dispute or reach agreement in a matter employing the services of one or more negotiators who represent the interests of a party to a dispute or matter not agreed upon.

(6) "Mediation" ~~[means that]~~is defined in Subsection ~~[78-31b-1(5)]~~78B-6-202(8).

(7) ~~["Mini-trial" means that defined in Subsection 78-31b-1(6):~~

~~(8) "Moderated settlement conference" means that defined in Subsection 78-31b-1(7):~~

(9) "Neutral expert fact-finding" means a process in which the issue or issues in dispute are of such a technical or complex nature, and the assessment of the issues by the disputing parties and their respective experts is so divergent, that the services of a neutral expert are retained by the parties to the dispute to hear the issues and advise the parties to the dispute of their neutral and expert opinion for the purpose of improving the opportunity for settlement between the parties.

(10) "Qualified neutral person" means a person who is determined by the parties to a dispute as competent to act as an alternative dispute resolution provider.

(11) "Summary jury trial" ~~[means that]~~is defined in Subsection ~~[78-31b-1(8)]~~78B-6-202(9).

(12) "Unprofessional conduct" is defined in Subsection 58-1-501(2).

(13) "Use of special masters and related processes in civil disputes" means the use of individuals to perform duties assigned by a court or administrative agency in the resolution of disputes in accordance with the direction and authority of the court of administrative agency.

R156-39a-103. Authority - Purpose.

~~[These rules are]~~This rule is adopted by the ~~[d]~~dDivision under the authority of Subsection 58-1-106(1)(a) to enable the ~~[d]~~dDivision to administer Title 58, Chapter 39a.

R156-39a-301. Certificate Classifications.

(1) In accordance with Subsection 58-39a-4(1), the ~~[d]~~dDivision shall issue certificates in the following classifications:

- (a) Certified Alternative Dispute Resolution Provider - Arbitrator;
- (b) Certified Alternative Dispute Resolution Provider - Mediator; and
- (c) Certified Alternative Dispute Resolution Provider - Negotiator.

(2) Each classification shall be considered a separate certificate and shall be obtained by filing a separate application for each and paying the related fee.

R156-39a-302a. Qualifications for Certification - Education and Training Requirements.

In accordance with Subsections 58-1-203(~~[2]~~1)(c) and 58-1-301(3), the education and training requirements for certification in Section 58-39a-5 are defined, clarified, or established as follows:

(1) An applicant to obtain certification as an arbitrator shall document completion of education and training as follows:

(a) satisfactory completion of 30 clock hours of education in arbitration which program of education may include the following subject material:

(i) arbitration language including the phrases and clauses necessary to initiate the procedure;

(ii) implementing the procedures required in adjudicating a proper award including conduct of proceedings, preparation, evidence, timeliness, records and documentation;

(iii) analyzing conflicts to narrow issues in dispute;

(iv) principles of dispute resolution;

(v) effective listening;

(vi) sensitivity and awareness of cross-cultural issues;

(vii) maintaining neutrality;

(viii) appropriate decision making processes;

(ix) control of the process and effective adjudication of the issues in dispute;

- (x) historical perspective of arbitration;
- (xi) critical thinking and reasoning skills;
- (xii) various types of arbitration;
- (xiii) effective writing; and

(b) verification that the applicant has satisfactorily served as an arbitrator in three separate cases or ten clock hours, whichever is greater.

(2) An applicant to obtain certification as a mediator shall document completion of education and training as follows:

(a) satisfactory completion of 30 clock hours of education in mediation which may include the following subject material:

- (i) stages and value of conflict in empowering change;
- (ii) principles of dispute resolution;
- (iii) effective listening;
- (iv) empathy and validation;
- (v) sensitivity and awareness of cross-cultural issues;
- (vi) maintaining neutrality;
- (vii) identifying and reframing issues;
- (viii) establishing trust and respect;
- (ix) techniques for achieving agreement and settlement;
- (x) creating a climate conducive to resolution, identifying options, reaching consensus, and working toward agreement;
- (xi) shaping and writing agreements;
- (xii) ethical standards for conduct of mediations; and

(b) verification that the applicant has satisfactorily served as a mediator in three separate cases or ten clock hours, whichever is greater.

(3) An applicant to obtain certification as a negotiator shall document completion of education and training as follows:

(a) satisfactory completion of 30 clock hours of education in negotiation which may include the following subject material:

- (i) stages and value of conflict in empowering change;
- (ii) principles of negotiation;
- (iii) effective listening;
- (iv) empathy and validation;
- (v) sensitivity and awareness of cross-cultural issues;
- (vi) maintaining neutrality;
- (vii) identifying and reframing issues;
- (viii) establishing trust and respect;
- (ix) shaping and writing agreements;
- (x) ethical standards for conduct of negotiations; and
- (b) verification that the applicant has satisfactorily served as a negotiator in three separate cases or ten clock hours, whichever is greater.

R156-39a-302b. Qualifications for [Licensure]Certification - Experience Requirements.

In accordance with Subsections 58-1-203([2]1)(c) and 58-1-301(3), the experience requirements for certification in Section 58-39a-5 are defined, clarified, or established as follows:

(1) An applicant may be certified as an ADRP - Arbitrator without the necessity of completing the education and training requirements provided in R156-39a-302a(1) by providing evidence that the applicant has served as an arbitrator in cases involving not less than 32 clock hours.

(2) An applicant may be certified as an ADRP - Mediator without the necessity of completing the education and training requirements provided in R156-39a-302a(2) by providing evidence that the applicant has served as a mediator in cases involving not less than 32 clock hours.

(3) An applicant may be certified as an ADRP - Negotiator without the necessity of completing the education and training requirements provided in R156-39a-302a(3) by providing evidence that the applicant has served as a negotiator in cases involving not less than 32 clock hours.

R156-39a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1)(a), the renewal date for the two-year renewal cycle applicable to certificates under Title 58, Chapter 39a, is established by rule in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Section R156-1-308c.

KEY: licensing, arbitration, mediation, alternative dispute resolution

Date of Enactment or Last Substantive Amendment: [October 11, 2006]2010

Notice of Continuation: October 13, 2008

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-39a-1

Commerce, Occupational and Professional Licensing **R156-55b** Electricians Licensing Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34111

FILED: 09/23/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2010 Legislative Session, S.B. 85 amended Title 58, Chapter 55, the Construction Trades Licensing Act, to require that immediate supervision be

defined by Division rule. H.B. 176 also amended Title 58, Chapter 55, by establishing a continuing education registry and clarifying the required continuing education hours for licensed electricians. This filing implements proposed rules related to those legislative bills. Also, the filing changes how long any successfully passed part of the required examination for electricians may be valid. Licensure applicants for journeyman and master electrician license classifications can take years to take and pass the three separate parts of the examination. This has created a concern that codes and industry practices change and applicants that complete the examination should know the current codes and practices. Also, there is a perception that as a result of this proposed amendment, applicants would be more judicious about preparing for and passing the examination. (DAR NOTE: S.B. 85 (2010) is found at Chapter 29, Laws of Utah 2010, and was effective 05/11/2010. H.B. 176 (2010) is found at Chapter 57, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: Capitalized the word "division" throughout the rule. In Subsection R156-55b-102(1), added that the referenced National Electrical Code is the edition which is adopted in the State Construction Code Adoption Act and State Construction Code. Added Subsection R156-55b-102(2) which defines "immediate supervision". In Section R156-55b-302a, replaced the word "curriculum" with "program" in subsections (1)(a) and (2)(a). In Section R156-55b-302c, amendments and additions to this section establish that starting on 12/31/2010 a passed part of any examination required for electrician licensing is only valid for one year. Those individuals who have successfully passed any part of the examination prior to the 12/31/2010 date will have until 12/31/2011 to successfully pass all parts of the required examination. The entire Section R156-55b-304 regarding continuing education has been rewritten to implement H.B. 176. In Subsection R156-55b-401(4), updated the statutory citation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-55-308(1) and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to print the rule and distribute it once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. Due to the definition change for immediate supervision, there may be an unknown increase in the number of administrative citations written by Division investigators for improper supervision of apprentice electricians which may result in a slight increase in revenue generated through a citation fine. The citation fine for such an offense is \$500 for the first offense and \$1,000 for the second offense.

◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed electricians and applicants for licensure in

those electrician license classifications. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** There are small businesses that are electrical contractors and others that provide continuing education courses. Small electrical contractors may be affected by the definition change for immediate supervision. This change may result in an unknown increase in the number of administrative citations written by Division investigators for improper supervision of apprentice electricians. The citation fine for such an offense is \$500 for a first offense and \$1,000 for a second offense. However, the Division is not able to determine how many future citations might be written or how many electrical contractors might violate the provision. For those small businesses that provide continuing education courses, there will be additional costs incurred. For continuing education courses to be reviewed for approval by the Division, the fee is \$40 per course. The course providers will also have to place on the continuing education registry individual information of those who attended their courses. The registry cost for the continuing education providers is \$1 per attendee for each hour of continuing education credit.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments apply to licensed electricians and applicants for licensure in those electrician license classifications as well as electrical continuing education providers. Since licensed electricians are already required to complete 16 continuing education hours every two years, there should be no additional cost to licensees to obtain the required continuing education hours. However, if a licensed electrician chooses not to utilize a continuing education registry, the licensee will incur a \$40 fee for the Division to review and approve continuing education courses. For individuals or groups that provide continuing education courses, there will be additional costs incurred. For continuing education courses to be reviewed for approval by the Division, the fee is \$40 per course. The course providers will also have to place on the continuing education registry individual information of those who attended their courses. The registry cost for the continuing education providers is \$1 per attendee for each hour of continuing education credit. The proposed amendments define and clarify "immediate supervision". This definition and clarification is expected to improve the supervision of apprentice electricians. However, this change may result in an unknown increase in the number of administrative citations written by Division investigators for improper supervision of apprentice electricians. The citation fine for such an offense is \$500 for a first offense and \$1,000 for a second offense. However, the Division is not able to determine how many future citations might be written or how many electrical contractors might violate the "immediate supervision" provision. There will be an unknown number of individuals who will be required to retake an outdated part of the required examination for licensure they had previously passed as a result of the proposed amendment limiting the successful passage of any part of the examination to one year. The cost to take a single part of the required examination, which consists of three separate parts, for

electricians is \$72. The Division is not able to determine how many individuals will be required to retake parts of the examination that have not been successfully passed.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments apply to licensed electricians, applicants for licensure in those electrician license classifications and electrical continuing education providers. Since licensed electricians are already required to complete 16 continuing education hours every two years, there should be no additional cost to licensees to obtain the required continuing education hours. However, if a licensed electrician chooses not to utilize a continuing education registry, the licensee will incur a \$40 fee for the Division to review and approve continuing education courses. For those who provide electrician continuing education courses, there will be additional costs. For continuing education courses to be reviewed for approval by the Division, the fee is \$40 per course. The course providers will also have to place on the continuing education registry individual information of those who attended their courses. The registry cost for the continuing education providers is \$1 per attendee for each hour of continuing education credit. The proposed amendments define and clarify "immediate supervision". This definition and clarification is expected to improve the supervision of apprentice electricians. However, this change may result in an unknown increase in the number of administrative citations written by Division investigators for improper supervision of apprentice electricians. The citation fine for such an offense is \$500 for a first offense and \$1,000 for a second offense. However, the Division is not able to determine how many future citations might be written or how many electrical contractors might violate the "immediate supervision" provision. There will be an unknown number of individuals who would be required to retake an outdated part of the required examination for licensure they had previously passed as a result of the proposed amendment limiting the successful passage of any part of the examination to one year. The cost to take a single part of the required examination, which consists of three separate parts, for electricians is \$72.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing implements recent statutory changes as to continuing education requirements and immediate supervision and makes other technical changes. No fiscal impact to businesses is anticipated beyond those addressed by the Legislature.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Dan Jones by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dansjones@utah.gov
♦ Dennis Meservy by phone at 801-530-6375, by FAX at 801-530-6511, or by Internet E-mail at dmeservy@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/15/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 10/27/2010 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: 11/22/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-55b. Electricians Licensing Rule.

R156-55b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapter 55 or this rule:

(1) "Electrical work" as used in Subsection 58-55-102(13)(a) and in this rule means installation, fabrication or assembly of equipment or systems included in "Premises Wiring" as defined in the edition of the National Electrical Code, as adopted in the State Construction Code Adoption Act and State Construction Code ~~identified in Subsection R156-56-701(1)(b) which is hereby adopted and incorporated by reference~~. Electrical work includes installation of raceway systems used for any electrical purpose, and installation of field-assembled systems such as ice and snow melting, pipe-tracing, manufactured wiring systems, and the like. Electrical work does not include installation of factory-assembled appliances or machinery that are not part of the premises wiring unless wiring interconnections external to the equipment are required in the field, and does not include cable-type wiring that does not pose a hazard from a shock or fire initiation standpoint as defined in the National Electrical Code. Wiring covered by the National Electrical Code that does not pose a hazard as described above includes Class 2 wiring as defined in Article 725, Power-Limited circuits as defined in Article 760 and wiring methods covered by Chapter 8. All other wiring is subject to licensing requirements.

(2) "Immediate supervision", as used in Subsection 58-55-102(23) and this rule means that the apprentice and the supervising electrician may or may not be within sight of one another, but be physically present on the same project or jobsite.

([2]3) "Minor electrical work incidental to a mechanical or service installation" as used in Subsection 58-55-305(1)(n) means the electrical work involved in installation, replacement or repair of appliances or machinery that utilize electrical power. Minor electrical work does not include modification or repair of "Premises Wiring" as defined in the National Electrical Code, and does not include installation of a disconnecting means or outlet. Electrical work is minor and incidental only when wiring is extended no more

than ten feet in length from an outlet or disconnect provided specifically for the piece of equipment.

([3]4) "Residential project" as used in Subsection 58-55-302(3)(j)(ii) pertains to supervision and means electrical work performed in residential dwellings of up to three stories and will include single and multi family dwellings.

([4]5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-55b-501.

([5]6) "Work commonly done by unskilled labor" as used in Subsection 58-55-102(13)(b)(iii) means work such as digging, sweeping, hammering, carrying, drilling holes, or other tasks that do not directly involve the installation of raceways, conductors, cables, wiring devices, overcurrent devices, or distribution equipment. Unlicensed persons may handle wire on large wire pulls involving conduit of two inches or larger or assist in moving heavy electrical equipment when the task is performed in the immediate presence of and supervised by properly licensed master, journeyman, residential master or residential journeyman electricians acting within the scope of their licenses.

R156-55b-103. Authority.

This rule is adopted by the [d]Division under the authority of Subsection 58-1-106(1)(a) to enable the [d]Division to administer Title 58, Chapter 55.

R156-55b-302a. Qualifications for Licensure - Education and Experience Requirements.

(1) In accordance with Subsection 58-55-302(3)(i)(i), the approved electrical training program for licensure as a residential journeyman electrician consists of:

(a) a program of electrical study approved by the Utah Board of Regents, Utah College of Applied Technology Board of Trustees or other out of state curriculum program that is deemed substantially equivalent as determined by the Electricians Licensing Board. Programs approved by the Electricians Licensing Board prior to January 1, 2009 remain approved programs; and

(b) at least two years of work experience as a licensed apprentice consistent with Section R156-55b-302b.

(2) In accordance with Subsection 58-55-302(3)(h)(i), the approved four year planned training program for licensure as a journeyman electrician consists of:

(a) a program of electrical study approved by the Utah Board of Regents, Utah College of Applied Technology Board of Trustees or other out of state curriculum program that is deemed substantially equivalent as determined by the Electricians Licensing Board. Programs approved by the Electricians Licensing Board prior to January 1, 2009 remain approved programs; and

(b) at least four years of work experience as a licensed apprentice consistent with Section R156-55b-302b.

(3) A semester of school shall include at least 81 hours of classroom instruction time. A student shall attend a minimum of 72 hours to receive credit for the semester.

(4) A competency exam shall be given to each student at the end of each semester with the exception of the fourth year second semester. A student, to continue to the next semester, shall achieve a score of 75% or higher on the competency exam. A student who scores below 75% may retake the test one time.

(5) The applicant shall pass each class with a minimum score of 75%.

(6) Competency test results shall be provided to the Board at the Board meeting immediately following the semester in a format approved by the Board.

(7) An applicant for a master electrician license, applying pursuant to Subsection 58-55-302(3)(f)(i) shall be a graduate of an electrical program accredited by the Engineering Accreditation Commission/Accreditation Board for Engineering and Technology (EAC/ABET).

(8) An applicant shall provide documentation that all education and experience meets the requirements of this rule.

R156-55b-302c. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-55-302(1)(c)(i), an applicant for licensure under this rule shall pass the appropriate examinations which are approved by the Board, each of which shall consist of a theory part, a code part and a practical part as follows:

(a) Utah Electrical Licensing Examination for Master Electricians;

(b) Utah Electrical Licensing Examination for Master Residential Electricians;

(c) Utah Electrical Licensing Examination for Journeyman Electricians; and

(d) Utah Electrical Licensing Examination for Residential Journeyman Electricians.

(2) Upon completing the requirements for licensure set forth in Sections R156-55b-302a and R156-55b-302b, the applicant shall obtain approval from the Division permitting the applicant to take the examination.

(3) The applicant shall obtain a "pass" grade on the practical part of the examination, a score of at least 75% on the theory part and a score of at least 75% on the code part of the examination.

(4)(a) If an applicant fails one or more ~~of the~~ parts of the examination, the applicant shall retake ~~the~~ any part ~~or parts~~ of the examination failed.

~~(b) An applicant may not retake any part of the examination no more than two additional times, with and shall wait at least 25 days between tests retakes.~~

~~([5]c) If an applicant does not pass the any failed part of the examination upon the second retake or within six months of initially being approved to test, whichever occurs first, as provided in Subsection (4), the applicant's application shall be denied.~~

~~(5)(a) On or after December 31, 2010, if an applicant passes any part of the examination but does not pass the entire examination, the passing score on any part of the examination shall be valid for one year from the date the part of the examination was passed. Thereafter the applicant shall retake any previously passed part of the examination.~~

~~(b) Prior to December 31, 2010, if an applicant passed any part of the examination but did not pass the entire examination, the applicant may use any previously passed part of the examination to pass the entire examination until December 31, 2011. Thereafter the applicant shall retake the entire examination to support any subsequent application for licensure.~~

R156-55b-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 55 is established by rule in Section R156-1-308a.

(2) Renewal procedures shall be in accordance with Section R156-1-308c.

R156-55b-304. Continuing Education.

~~[(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a continuing education requirement as a condition for renewal or reinstatement of master, journeyman, residential master, residential journeyman and apprentice electrician licenses issued under Title 58, Chapter 55.~~

~~(2) Continuing education shall consist of 16 hours of course work in each preceding two year period of licensure or expiration of licensure.~~

~~(3) A minimum of eight hours shall be on the current edition of the National Electrical Code, as identified in Subsection R156-56-701(1)(b).~~

~~(4) The licensee is responsible for maintaining competent records of completed qualified continuing education for a period of four years after the close of the two year renewal period to which the records pertain.~~

~~(5) The standards for qualified continuing education are as follows:~~

~~(a) courses and instructors shall be approved by the Electricians Licensing Board;~~

~~(b) the content must be relevant to the electrical trade and consistent with the laws and rules of this state;~~

~~(c) an instructor must either be currently teaching or have taught courses related to the electrical trade within the preceding two years for one of the following:~~

~~(i) a trade school, college or university whose electrical program is approved in accordance with Subsections R156-55b-302a(1)(a) and (3);~~

~~(ii) a professional association or organization representing licensed electricians whose program objectives relate to the electrical trade;~~

~~(iii) the licensing agency of another state;~~

~~(iv) a federal or other Utah agency or another state's agency; or~~

~~(v) the Division's Building Codes Education program.~~

~~(6) Electricians Licensing Board members, acting in their official capacity as a board member, may attend any continuing education course at no charge, at any time, to monitor the quality of instruction.](1) Required Hours. Pursuant to Sections 58-55-302.7 and 58-55-303, each licensee shall complete 16 hours of continuing education during each two year license term. A minimum of 12 hours shall be core education. The remaining four hours may be professional education.~~

~~(2) "Core continuing education" is defined as education covering the National Electrical Code as adopted or proposed for adoption.~~

~~(3) "Professional continuing education" is defined as education covering:~~

~~(a) National Fire Protection Association 70E (NFPA 70E), Occupational Safety and Health Administration (OSHA), Mine Safety and Health Administration (MSHA);~~

~~(b) electrical motors and motor controls, electrical tool usage; and~~

~~(c) supervision skills related to the electrical trade.~~

~~(4) Non-acceptable course subject matter includes the following types of courses and other similar courses:~~

~~(a) mechanical office and business skills, such as typing, speed reading, memory improvement and report writing;~~

~~(b) physical well-being or personal development, such as personal motivation, stress management, time management, or dress for success;~~

~~(c) presentations by a supplier or a supplier representative to promote a particular product or line of products; and~~

~~(d) meetings held in conjunction with the general business of the licensee or employer.~~

~~(5) The Division may:~~

~~(a) waive the continuing education requirements for a licensee that is an instructor of an approved apprenticeship program; or~~

~~(b) waive or defer the continuing education requirements as provided in Section R156-1-308d.~~

~~(6) A continuing education course shall meet the following standards:~~

~~(a) Time. Each hour of continuing education course credit shall consist of at least 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes may be used for breaks.~~

~~(b) Provider. The course provider shall meet the requirements of this section and shall be one of the following:~~

~~(i) a recognized accredited college or university;~~

~~(ii) a state or federal agency;~~

~~(iii) a professional association or organization involved in the construction trades; or~~

~~(iv) a commercial continuing education provider providing a program related to the electrical trade.~~

~~(c) Content. The content of the course shall be relevant to the practice of the electrical trade and consistent with the laws and rules of this state.~~

~~(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.~~

~~(e) Teaching Methods. The course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.~~

~~(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training and experience.~~

~~(g) Distance learning. A course may be recognized for continuing education that is provided via internet or through home study courses provided the course verifies registration and participation in the course by means of a passing a test which demonstrates that the participant has learned the material presented. Test questions shall be randomized for each internet participant.~~

~~(h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division and shall provide to individuals completing the course a certificate which contains the following information:~~

~~(i) the date of the course;~~

- (ii) the name of the course provider;
- (iii) the name of the instructor;
- (iv) the course title;
- (v) the hours of continuing education credit;
- (vi) the attendee's name;
- (vii) the attendee's license number; and
- (viii) the signature of the course provider.

(7) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.

(8) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (11). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.

(9) Licensees who lecture in approved continuing education courses shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.

(10) Licensees who obtain an initial license after March 31st of the renewal year shall not be required to meet the continuing education requirement for that renewal cycle.

(11) A course provider shall submit continuing education courses for approval to the continuing education registry and shall submit verification of attendance and completion on behalf of licensees attending and completing the program directly to the continuing education registry in the format required by the continuing education registry.

(12) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses which meet the standards set forth under this section.

(13) Continuing Education Registry.

(a) The Division shall designate an entity to act as the Continuing Education Registry under this rule.

(b) The Continuing Education Registry, in consultation with the Division and the Commission, shall:

(i) through its internet site electronically receive applications from continuing education course providers and shall submit the application for course approval to the Division for review and approval of only those programs which meet the standards set forth under this section;

(ii) publish on its website listings of continuing education programs which have been approved by the Division, and which meet the standards for continuing education credit under this rule;

(iii) maintain accurate records of qualified continuing education approved;

(iv) maintain accurate records of verification of attendance and completion, by individual licensee, which the licensee may review for compliance with this rule; and

(v) make records of approved continuing education programs and attendance and completion available for audit by representatives of the Division.

(c) Fees. The Continuing Education Registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.

R156-55b-401. Conduct of Apprentice and Supervising Electrician.

(1) It shall be the responsibility of the journeyman, residential journeyman, master or residential master electrician who is licensed by the [d]Division to insure that the work installed by any apprentice under his supervision, is properly installed. Proper and safe installations shall be the responsibility of the supervising party or parties.

(2) An apprentice may be supervised as a fourth year apprentice in the fifth and sixth year of apprenticeship. In the seventh and succeeding years of apprenticeship, he shall be under immediate supervision as set forth in Subsection 58-55-302(3)(j)(i).

(3) All other apprentices shall be under immediate supervision as set forth in Subsection 58-55-302(3)(j).

(4) For the purposes of Subsections 58-55-102([28]31), 58-55-501(12) and 58-55-302(3)(j), one of the following shall apply:

(a) the supervisor and apprentice employees are employees of the same electrical contractor;

(b) the supervisor and apprentice employees providing work or supervision of work for another electrical contractor are considered as employees of the electrical contractor on the project; or

(c) the employees of a licensed professional organization who provide workers under a contract with an electrical contractor are considered as employees of the electrical contractor with regard to the work performed on the project.

KEY: occupational licensing, licensing, contractors, electricians
Date of Enactment or Last Substantive Amendment: [~~October 22, 2009~~2010

Notice of Continuation: November 8, 2006

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-55-308(1)

Commerce, Occupational and
Professional Licensing
R156-55c
Construction Trades Licensing Act
Plumber Licensing Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34116

FILED: 09/27/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2010 Legislative Session, H.B. 176 amended Title 58, Chapter 55, by establishing a continuing education registry and a continuing education requirement of 12 hours for licensed plumbers. This filing implements proposed rules related to that legislative bill. Also, the filing changes how long any successfully passed part of the required examination for plumbers may be valid. Licensure applicants for various journeyman and master plumber license classifications can take years to take and pass the two separate sections of the examination. This has created a concern that codes and industry practices change and applicants that complete the examination should know the current codes and practices. Also, there is a perception that as a result of this proposed amendment, applicants would be more judicious about preparing for and passing the examination. (DAR NOTE: H.B. 176 (2010) is found at Chapter 57, Laws of Utah 2010, and was effective 05/11/2010.)

SUMMARY OF THE RULE OR CHANGE: Capitalized the word "division" throughout the rule and also deleted any reference in the rule to a "residential apprentice plumber" since this license classification is no longer included in Subsection 58-55-301(2). In Section R156-55c-101, updated the title of the rule. In Section R156-55c-102, added definition for "direct supervision" and updated definition of plumber to include all plumbing license classification types. In Section R156-55c-302b regarding training and instruction requirement, added hydronics piping and equipment installation and fire suppression system installation to both Table I and II and adjusted minimum hours in both tables accordingly. In Section R156-55c-302c, amendments and additions to this section establish that starting on 12/31/2010 a passed part of any examination required for plumber licensing is only valid for one year. Those individuals who have successfully passed any part of the examination prior to the 12/31/2010 date will have until 12/31/2011 to successfully pass all parts of the required examination. In Subsection R156-55c-302d(1)(c), amended supervisory experience to mean "direct" rather than "immediate" supervision as "direct supervision" is defined in Subsection R156-55c-102(2). Section R156-55c-303b is a new section regarding continuing education to implement H.B. 176. In Section R156-55c-601, added all plumbing license classification types.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-55-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to print the rule and distribute it once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
- ◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed plumbers, applicants for licensure in various plumber license classifications, plumbing contractors and

plumbing continuing education providers. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** There are small businesses that are plumbing contractors and others that provide continuing education courses. For those small businesses that provide continuing education courses, there will be additional costs incurred. For continuing education courses to be reviewed for approval by the Division, the fee is \$40 per course. The course providers will also have to place on the continuing education registry individual information of those who attended their courses. The registry cost for the continuing education providers is \$1 per attendee for each hour of continuing education credit.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments apply to licensed plumbers, applicants for licensure in various plumber license classifications, plumbing contractors, and plumbing continuing education providers. Since the continuing education requirement of 12 hours every 2 years is new for licensed plumbers, the Division estimates a licensed plumber can obtain the required hours for an average cost of \$120 per licensee. The Division currently has approximately 4,500 licensed plumbers, resulting in an aggregate cost of \$540,000 over a 2-year period. Also if a licensed plumber chooses not to utilize a continuing education registry, the licensee will incur a \$40 fee for the Division to review and approve continuing education courses. For individuals or groups that provide continuing education courses, there will be additional costs incurred. For continuing education courses to be reviewed for approval by the Division, the fee is \$40 per course. The course providers will also have to place on the continuing education registry individual information of those who attended their courses. The registry cost for the continuing education providers is \$1.00 per attendee for each hour of continuing education credit. There will be an unknown number of individuals who will be required to retake an outdated part of the required examination for licensure they had previously passed as a result of the proposed amendment limiting the successful passage of any part of the examination to one year. The cost to take the written section of the examination is \$72 and the cost to take the practical section of the examination is \$100. The Division is not able to determine how many individuals will be required to retake parts of the examination that have not been successfully passed.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments apply to licensed plumbers, applicants for licensure in various plumbing license classifications, plumbing contractors, and plumbing continuing education providers. Since the continuing education requirement of 12 hours every 2 years is new for licensed plumbers, the Division estimates a licensed plumber can obtain the required hours for an average cost of \$120 per licensee. Also if a licensed plumber chooses not to utilize a continuing education registry, the licensee will incur a \$40 fee for the Division to review and approve continuing education courses. For individuals or groups that provide continuing

education courses, there will be additional costs incurred. For continuing education courses to be reviewed for approval by the Division, the fee is \$40 per course. The course providers will also have to place on the continuing education registry individual information of those who attended their courses. The registry cost for the continuing education providers is \$1 per attendee for each hour of continuing education credit. There will be an unknown number of individuals who will be required to retake an outdated part of the required examination for licensure they had previously passed as a result of the proposed amendment limiting the successful passage of any part of the examination to one year. The cost to take the written section of the examination is \$72 and the cost to take the practical section of the examination is \$100. The Division is not able to determine how many individuals will be required to retake parts of the examination that have not been successfully passed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing implements recent statutory changes as to continuing education requirements and makes other technical changes. No fiscal impact to businesses is anticipated beyond those addressed by the Legislature.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Dan Jones by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dansjones@utah.gov
♦ Dennis Meservy by phone at 801-530-6375, by FAX at 801-530-6511, or by Internet E-mail at dmeservy@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/15/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 10/27/2010 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: 11/22/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-55c. [~~Construction Trades Licensing Act~~]Plumber Licensing Rule.

R156-55c-101. Title.

This rule is known as the "[~~Construction Trades Licensing Act~~]Plumber Licensing Rule".

R156-55c-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapters 1 and 55 or this rule:

(1) "Board" means the Plumbers Licensing Board.

(2) "Direct supervision", as used in this rule, means reasonable direction, oversight, inspection, and evaluation of the work of a person, in or out of the immediate presence of the supervision person, so as to ensure that the end result complies with applicable standards.

~~(2)3~~ (3) "Plumber" means apprentice plumber, [~~residential apprentice plumber,~~]journeyman plumber, [~~and~~]residential journeyman plumber, master plumber and residential master plumber.

(3)4 "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined in accordance with Subsection 58-1-203(1)(e), in Subsection R156-55c-501.

R156-55c-103. Authority - Purpose.

This rule is adopted by the [d]Division under the authority of Subsection 58-1-106(1)(a) to enable the [d]Division to administer Title 58, Chapter 55.

R156-55c-302b. Qualification for Licensure - Training and Instruction Requirement.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the training and instruction requirements for licensure in Subsection 58-55-302(3)(c) and (d) are defined, clarified, or established as follows:

(1) An applicant for a journeyman plumber's license shall demonstrate successful completion of the requirements of either paragraph (a) or (b):

(a)(i) 8,000 hours of training and instruction in not less than four years that meets the requirements of Subsections R156-55c-302b(4) and (6).

(ii) the 8,000 hours shall include 576 clock hours of related classroom instruction that meets the requirements of Subsection R156-55c-302b(5);

(iii) the apprenticeship shall be obtained while licensed as an apprentice plumber[~~or residential apprentice plumber~~];

(iv) the apprenticeship shall include on the job training and instruction in [~~seven~~nine] of the [~~nine~~11] work process areas listed in Table I; and

(v) the hours obtained in any work process area shall be at least the number of hours listed in Table I.

(b)(i) 16,000 hours of on the job training and instruction in not less than eight years;

(ii) the apprenticeship shall be obtained while licensed as an apprentice plumber;

(iii) the hours shall include on the job training and instruction in [~~seven~~nine] of the [~~nine~~11] work process areas listed in Table I; and

(iv) the hours obtained in any work process shall be at least the number of hours listed in Table I.

TABLE I
Training and Instruction

Work Process	Minimum Hours
A. Use of hand tools, equipment and pipe machinery	200
B. Installation of piping for waste, soil, sewer and vent lines	2,000
C. Installation of hot and cold water for domestic purposes	1,400
D. Installation and setting of plumbing appliances and fixtures	[1,400] 1,200
E. Maintenance and repair of plumbing	600
F. General pipe work including process and industrial hours	600
G. Gas piping or service piping	400
H. Welding, soldering and brazing as it applies to the trade	100
I. Service and maintenance of gas controls and equipment	100
J. <u>Hydronics piping and equipment installation</u>	300
K. <u>Fire suppression system installation</u>	100

(2) An applicant for a residential journeyman plumber's license shall demonstrate successful completion of the requirements of paragraph (a) or (b):

(a)(i) 6,000 hours of training and instruction in not less than three years that meets the requirements of Subsections R156-55c-302b(4) and (6).

(ii) the 6,000 hours shall include 432 clock hours of related classroom instruction that meets the requirements of Subsection R156-55c-302b(5);

(iii) the 6,000 hours shall be obtained while licensed as an apprentice plumber [~~or residential apprentice plumber~~];

(iv) the apprenticeship shall include on the job training and instruction in ~~six~~ eight of the ~~eight~~ ten work process areas listed in Table II; and

(v) the hours obtained in any work process area shall include at least the number of hours listed in Table II.

(b)(i) 12,000 hours of experience in not less than six years which has been documented using a form provided by the ~~(d)~~ Division;

(ii) the experience shall be obtained while licensed as an apprentice plumber [~~or residential apprentice plumber~~];

(iii) at least 9,000 hours of experience shall be directly involved in the plumbing trade;

(iv) the hours shall be in ~~six~~ eight of the ~~eight~~ ten work process areas listed in Table II; and

(v) the hours obtained in any work process area shall include at least the number of hours listed in Table II.

TABLE II
Training and Instruction

Work Process	Minimum Hours
A. Use of hand tools, equipment and pipe machinery	100
B. Installation of piping for waste, soil, sewer and vent lines	1,600
C. Installation of hot and cold water for domestic purposes	1,200
D. Installation and setting of plumbing appliances and fixtures	[1,000] 800
E. Maintenance and repair of plumbing	600
F. Gas piping or service piping	400
G. Service and maintenance of gas controls and equipment	100
H. Welding, soldering and brazing as it applies to the trade	100
I. <u>Hydronics piping and equipment installation</u>	300
J. <u>Fire suppression system installation</u>	100

(3) A licensed residential journeyman plumber applying for a journeyman plumber's license shall complete 2,000 hours of on the job training in industrial or commercial plumbing while licensed as an apprentice plumber [~~or residential apprentice plumber~~], which shall include successful completion of an approved fourth year course of classroom instruction.

(4) On the job training and instruction required in this section shall include measurements of an apprentice's performance in the plumbing trade.

(5) Formal classroom instruction required by this section shall meet the following requirements:

(a) instruction shall be conducted by an entity approved by the Utah Board of Regents, Utah College of Applied Technology Board of Trustees or by another similar out of state body that approves formal plumbing educational programs; and

(b) instruction shall be conducted by competent qualified staff and shall include measures of competency and achievement level of each apprentice.

(6) Apprentice plumbers [~~and residential apprentice plumbers~~] shall engage in the plumbing trades only in accordance with the following:

(a) except as provided in Subsection 58-55-302(3)(e)(ii) for fourth through tenth year apprentices, while engaging in the plumbing trade, an apprentice plumber [~~or residential apprentice plumber~~] shall be under the immediate supervision of a journeyman plumber for commercial or industrial work, and by a residential journeyman or journeyman plumber for residential work;

(b) the apprentice shall engage in the plumbing trade in accordance with the instruction of the supervising plumber; and

(c) the apprentice shall work in a ratio of not to exceed two apprentice plumbers to one supervising plumber.

R156-55c-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirements for licensure in Subsection 58-55-302(1)(c)(i) are defined, clarified, or established as follows:

(1) The applicant shall obtain a score of 70% on the Utah Plumbers Licensing Examination which shall consist of a written section and practical section.

(2) Admission to the examinations is permitted after the applicant has completed all requirements for licensure set forth in Sections R156-55c-302a, R156-55c-302b and R156-55c-302c.

~~(3) [An examinee who passes one section of the Utah Plumbers Licensing Examination and fails the other section shall be required to retake and pass only the section failed.]~~

~~(4)(a) If an applicant fails one or more sections of the examination, the applicant shall retake [the]any section of the examination failed.~~

~~(b) An applicant may not retake any section of the examination [no]more than two [additional]times and shall wait[with] at least 25 days between [tests]retakes.~~

~~(5)(c) If an applicant does not pass [the]any failed section of the examination upon the second retake or within six months of initially being approved to test, whichever occurs first, [as provided in Subsection (4),]the applicant's application shall be denied.~~

~~(4)(a) On or after December 31, 2010, if an applicant passes any section of the examination but does not pass the entire examination, the passing score on any section of the examination shall be valid for one year from the date the section of the examination was passed. Thereafter the applicant shall retake any previously passed section of the examination that is no longer valid to support any subsequent application for licensure.~~

~~(b) Prior to December 31, 2010, if an applicant passed any section of the examination but did not pass the entire examination, the applicant may use any previously passed section of the examination to pass the entire examination until December 31, 2011. Thereafter the applicant shall retake the entire examination.~~

R156-55c-302d. Qualifications for Licensure - Master Supervisory Experience and Education Requirements.

In accordance with Subsections 58-55-302(3)(a)(i)(A) and 58-55-302(3)(b)(i), the minimum supervisory experience qualifications for licensure as a master plumber and residential master plumber are established as follows:

(1) An applicant shall demonstrate successful completion of 4000 hours of supervisory experience that includes each of the following categories and minimum number of hours:

- (a) supervising employees: 700 hours;
- (b) supervising construction projects: 700 hours;
- (c) cost/price management: 300 hours; and

(d) miscellaneous construction experience: 300 hours in any one or more of the following: accounting/financial principles, contract negotiations, conflict resolutions, marketing, human resources and government regulation pertaining to business and the construction trades.

(2) The following, or the substantial equivalent thereof, as determined by the Board in collaboration with the Commission, shall apply to the minimum supervisory experience qualifications established in Subsection (1):

(a) supervisory experience shall be obtained while licensed in the proper license classification as either a journeyman plumber or a residential journeyman plumber;

(b) supervisory experience shall be obtained as an employee of a licensed plumbing contractor, whose employer covers the applicant with workers compensation and unemployment insurances and deducts federal and state taxes from the applicant's compensation;

(c) all supervisory experience shall be under the [immediate]direct supervision of the applicant's employer[as defined in Subsection 58-55-102(20)]; and

(d) no more than 2000 hours of experience may be earned during any 12-month period.

(3) An associate of applied science or similar or higher educational degree, in accordance with Subsection 58-55-302(3)(a)(i)(B), shall fulfill 2000 hours of the 4000 hour supervisory experience requirement. Such an applicant shall complete the remaining minimum 2000 hour supervisory experience listed above in Subsection R156-55c-302d(1).

(a) The degree shall be accredited by one of the following:

- (i) Middle States Association of Colleges and Schools;
- (ii) New England Association of Colleges and Schools;
- (iii) North Central Association of Colleges and Schools;
- (iv) Northwest Commission on Colleges and

Universities;

- (v) Southern Association of Colleges and Schools; or
- (vi) Western Association of Schools and Colleges.

(b) The degree shall be in one of the following courses of study:

- (i) accounting;
- (ii) apprenticeship;
- (iii) business management;
- (iv) communications;
- (v) computer systems and computer information systems;
- (vi) construction management;
- (vii) engineering;
- (viii) environmental technology;
- (ix) finance;
- (x) human resources; or
- (xi) marketing.

R156-55c-303b. Continuing Education - Standards.

~~(1) Required Hours. Pursuant to Sections 58-55-302.7 and 58-55-303, each licensee shall complete 12 hours of continuing education during each two year license term. A minimum of eight hours shall be core education. The remaining four hours may be professional education.~~

~~(2) "Core continuing education" is defined as education covering:~~

~~(a) International Building, Mechanical, Plumbing Codes and Utah building code amendments as adopted or proposed for adoption;~~

~~(b) the Americans with Disability Act;~~

~~(c) medical gas, National Fire Protection Association 13D and 54; and~~

~~(d) hydronics and waste water treatment.~~

~~(3) "Professional continuing education" is defined as education covering:~~

(a) energy conservation, management training, new technology, plan reading; and

(b) lien laws and Utah construction registry.

(4) Non-acceptable course subject matter includes the following types of courses and other similar courses:

(a) mechanical office and business skills, such as typing, speed reading, memory improvement and report writing;

(b) physical well-being or personal development, such as personal motivation, stress management, time management, or dress for success;

(c) presentations by a supplier or a supplier representative to promote a particular product or line of products; and

(d) meetings held in conjunction with the general business of the licensee or employer.

(5) The Division may:

(a) waive the continuing education requirements for a licensee that is an instructor of an approved education apprenticeship program; or

(b) waive or defer the continuing education requirements as provided in Section R156-1-308d.

(6) A continuing education course shall meet the following standards:

(a) Time. Each hour of continuing education course credit shall consist of at least 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes may be used for breaks.

(b) Provider. The course provider shall meet the requirements of this section and shall be one of the following:

(i) a recognized accredited college or university;

(ii) a state or federal agency;

(iii) a professional association or organization involved in the construction trades; or

(iv) a commercial continuing education provider providing a program related to the plumbing trade.

(c) Content. The content of the course shall be relevant to the practice of the plumbing trade and consistent with the laws and rules of this state.

(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.

(e) Teaching Methods. The course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.

(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training and experience.

(g) Distance learning. A course may be recognized for continuing education that is provided via internet or through home study courses provided the course verifies registration and participation in the course by means of a passing a test which demonstrates that the participant has learned the material presented. Test questions shall be randomized for each internet participant.

(h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division and shall provide to individuals completing the course a certificate which contains the following information:

(i) the date of the course;

(ii) the name of the course provider;

(iii) the name of the instructor;

(iv) the course title;

(v) the hours of continuing education credit;

(vi) the attendee's name;

(vii) the attendee's license number; and

(viii) the signature of the course provider.

(7) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.

(8) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (11). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.

(9) Licensees who lecture in approved continuing education courses shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.

(10) Licensees who obtain an initial license after March 31st of the renewal year shall not be required to meet the continuing education requirement for that renewal cycle.

(11) A course provider shall submit continuing education courses for approval to the continuing education registry and shall submit verification of attendance and completion on behalf of licensees attending and completing the program directly to the continuing education registry in the format required by the continuing education registry.

(12) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses which meet the standards set forth under this section.

(13) Continuing Education Registry.

(a) The Division shall designate an entity to act as the Continuing Education Registry under this rule.

(b) The Continuing Education Registry, in consultation with the Division and the Commission, shall:

(i) through its internet site electronically receive applications from continuing education course providers and shall submit the application for course approval to the Division for review and approval of only those programs which meet the standards set forth under this section;

(ii) publish on its website listings of continuing education programs which have been approved by the Division, and which meet the standards for continuing education credit under this rule;

(iii) maintain accurate records of qualified continuing education approved;

(iv) maintain accurate records of verification of attendance and completion, by individual licensee, which the licensee may review for compliance with this rule; and

(v) make records of approved continuing education programs and attendance and completion available for audit by representatives of the Division.

(c) Fees. The Continuing Education Registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.

R156-55c-304. Licensure by Endorsement.

In accordance with the provisions of Section 58-1-302, the [d]Division may issue an individual a license as an apprentice plumber, ~~[residential apprentice plumber]~~journeyman plumber, ~~[or residential journeyman plumber, master plumber or residential master plumber]~~ by endorsement, in accordance with the following:

(1) An applicant for licensure by endorsement as a journeyman plumber, ~~[or residential journeyman plumber, master plumber or residential master plumber]~~ has the burden to demonstrate that the apprenticeship instruction and training, or experience requirements in lieu of an apprenticeship, and the examination requirements of the state or jurisdiction in which the applicant holds licensure are equal to the requirement of this state or were equal to the requirements of this state at the time the applicant received licensure in the other state.

(2) An applicant for licensure as an apprentice ~~[or apprentice residential]~~plumber who has completed part of apprenticeship training and instruction in another jurisdiction has the burden to demonstrate that the apprenticeship program in the other state is equivalent to an approved apprenticeship program in this state as a condition of the applicant being given credit for completion of an apprenticeship program in another state.

R156-55c-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) engaging in the plumbing trade as an apprentice plumber ~~[or residential apprentice plumber]~~ on a commercial or industrial project when not under the immediate supervision of a journeyman plumber;

(2) engaging in the plumbing trade as an apprentice plumber ~~[or as a residential apprentice plumber]~~ on a residential project when not under the immediate supervision of a residential journeyman or journeyman plumber, except as provided in Subsection 58-55-302(3)(e)(ii);

(3) engaging in the plumbing trade as an apprentice plumber except in accordance with instructions of the supervising plumber;

(4) acting as a journeyman plumber or residential journeyman plumber while supervising more than two apprentice plumbers;

(5) failure as a licensed plumber to carry a copy of his current plumber's license on his person or in close proximity to his person when performing plumbing work or to display that license upon request of a representative of the [d]Division or any law enforcement officer; and

(6) failure as a plumbing contractor to certify work experience and supervisory hours when requested by a plumber who is or has been an employee of the plumbing contractor.

R156-55c-601. Proof of Licensure.

Each apprentice, ~~[residential apprentice]~~residential journeyman, ~~[and]~~ journeyman plumber, residential master plumber and master plumber shall:

(1) carry on his person or in close proximity to his person his current license when he is engaged in the plumbing trade; and

(2) display his license to a representative of the [d]Division or any law enforcement officer upon request.

KEY: occupational licensing, licensing, plumbers, plumbing
Date of Enactment or Last Substantive Amendment:
~~[December 8, 2009]~~2010
Notice of Continuation: November 8, 2006
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)
(a); 58-1-202(1)(a); 58-55-101

Commerce, Occupational and
Professional Licensing

R156-55d

Utah Construction Trades Licensing Act
Burglar Alarm Licensing Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34124

FILED: 09/30/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division, the Alarm System Security and Licensing Board, and the Construction Services Commission reviewed the rule and determined a few changes need to be made.

SUMMARY OF THE RULE OR CHANGE: Updated the title of rule. In Section R156-55d-102, added a definition for "immediate supervision" and renumbered remaining subsections. In Section R156-55d-103, capitalized "division". In Subsection R156-55d-302c(2), added that experience completed shall be as an employee and under the immediate supervision of the applicant's employer. In Sections R156-55d-302e and R156-55d-302f, updated the statutory citations. In Section R156-55d-303, updated the rule citation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-55-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a) and Subsection 58-55-302(3)(k) and Subsection 58-55-302(3)(l) and Subsection 58-55-302(4) and Subsection 58-55-308

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

◆ LOCAL GOVERNMENTS: The proposed amendments only apply to licensed alarm companies and alarm company agents and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.

◆ SMALL BUSINESSES: The proposed amendments only apply to licensed alarm companies and alarm company agents and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments only apply to licensed alarm companies and alarm company agents and applicants for licensure in those classifications. The Division has determined that there should be no costs or savings as a result of these proposed amendments as they are just minor technical changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed alarm companies and alarm company agents and applicants for licensure in those classifications. The Division has determined that there should be no costs or savings as a result of these proposed amendments as they are just minor technical changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this filing which implements recent statutory amendments and corrects statutory references.

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:

◆ Clyde Ormond by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@utah.gov
◆ Dennis Meservy by phone at 801-530-6375, by FAX at 801-530-6511, or by Internet E-mail at dmeservy@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/15/2010

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 10/27/2010 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: 11/22/2010

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-55d. ~~[Utah Construction Trades Licensing Act]~~ Burglar Alarm Licensing Rule.

R156-55d-101. Title.

This rule is known as the "~~[Utah Construction Trades Licensing Act]~~ Burglar Alarm Licensing Rule".

R156-55d-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as used in Title 58, Chapters 1 and 55, or this rule:

(1) "Immediate supervision", as used in this rule, means reasonable direction, oversight, inspection, and evaluation of the work of a person, in or out of the immediate presence of the supervisory person, so as to ensure that the end result complies with applicable standards.

~~(1)2~~ "Individual employed", as used in Subsection 58-55-102(2), means an individual who is an employee of a licensed burglar alarm company and who has or could have access to knowledge of specific applications.

~~(2)3~~ "Employee", as used in Subsections 58-55-102(~~1~~7) and R156-55d-102(1), means an individual providing labor services for compensation who has federal and state taxes withheld and worker's compensation and unemployment insurance provided by the individual's employer.

~~(3)4~~ "Knowledge of specific applications", as used in Subsection R156-55d-102(1), means obtaining specific information about any premises which is protected or is to be protected by an alarm system. This knowledge is gained through access to records, on-site visits or otherwise gathered through working for an alarm business or company.

~~(4)5~~ "Unprofessional conduct", as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(1), in Section R156-55d-502.

R156-55d-103. Authority - Purpose.

This rule is adopted by the ~~[d]~~Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 55.

R156-55d-302c. Qualifications for Licensure - Experience Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3) the experience requirements for an alarm company applicant's qualifying agent in Subsection 58-55-302(3)(k)(i) are established as follows:

- (1) an applicant shall have within the past ten years:
- (a) not less than 6,000 hours of experience in a lawfully operated alarm company business of which not less than 2,000 hours shall have been in a managerial, supervisory, or administrative position; or
 - (b) not less than 6,000 hours of experience in a lawfully operated alarm company business combined with not less than 2,000 hours of managerial, supervisory, or administrative experience in a lawfully operated construction company;

(2) all experience under Subsection (1) shall be as an employee and under the immediate supervision of the applicant's employer[~~as defined in Subsection 58-55-102(20)~~];

(3) all experience must be obtained while lawfully engaged as an alarm company agent and working for a lawfully operated burglar alarm company;

(4) 2,000 hours of work experience constitutes one year (12 months) of work experience;

(5) an applicant may claim no more than 2,000 hours of work experience in any 12 month period; and

(6) no credit shall be given for experience obtained illegally.

R156-55d-302e. Qualifications for Licensure - Insurance Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3), the insurance requirements for licensure as an alarm company in Section 58-55-302(3)(k)(~~ix~~x)(A) are defined, clarified, or established as follows:

(1) an applicant for an alarm company license shall file with the Division a "certificate of insurance" issued by an insurance company or agent licensed in the state demonstrating the applicant is covered by comprehensive public liability coverage in an amount of not less than \$300,000 for each incident, and not less than \$1,000,000 in total;

(2) the terms and conditions of the policy of insurance coverage shall provide that the Division shall be notified if the insurance coverage terminates for any reason; and

(3) all licensed alarm companies shall have available on file and shall present to the Division upon demand, evidence of insurance coverage meeting the requirements of this section for all periods of time in which the alarm company is licensed in this state as an alarm company.

R156-55d-302f. Qualifications for Licensure - Good Moral Character - Disqualifying Convictions.

(1) In addition to those criminal convictions prohibiting licensure as set forth in Subsections 58-55-302(3)(k)(~~vi~~vii) and (3)(l)(iii), the following is a list of criminal convictions which may disqualify a person from obtaining or holding a burglar alarm company or a burglar alarm company agent's license:

(a) crimes against a person as defined in Title 76, Chapter 5, Parts 1 and 2;

(b) theft/larceny, including retail theft, as defined in Title 76, Chapter 6;

(c) sex offenses as defined in Title 76, Chapter 5, Part 4;

(d) any offense involving controlled substances;

(e) fraud;

(f) forgery;

(g) perjury, obstructing justice and tampering with evidence;

(h) conspiracy to commit any of the offenses listed herein;

(i) burglary

(j) escape from jail, prison or custody;

(k) false or bogus checks;

(l) pornography;

(m) any attempt to commit any of the above offenses; or

(n) two or more convictions for driving under the influence of alcohol within the last three years.

(2) Applications for licensure or renewal of licensure shall be considered on a case by case basis taking into consideration the following:

(a) the conduct involved;

(b) the potential or actual injury caused by the applicant's conduct; and

(c) the existence of aggravating or mitigating factors.

R156-55d-303. Renewal Cycle - Procedure.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 55, is established by rule in Section R156-1-308a(1).

(2) Renewal procedures shall be in accordance with Section R156-1-308c.

**KEY: licensing, alarm company, burglar alarms
Date of Enactment or Last Substantive Amendment:
[November 24, 2008]2010**

**Notice of Continuation: February 25, 2010
Authorizing, and Implemented or Interpreted Law: 58-55-101;
58-1-106(1)(a); 58-1-202(1)(a); 58-55-302(3)(k); 58-55-302(3)(l);
58-55-302(4); 58-55-308**

**Commerce, Real Estate
R162-2c-202
Qualifications for Licensure**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 34097
FILED: 09/16/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is proposed to outline the factors that the Division will consider in evaluating whether an applicant for licensure demonstrates the financial responsibility required by the S.A.F.E. Act and by Subsection 61-2c-203(1)(a).

SUMMARY OF THE RULE OR CHANGE: In evaluating an applicant's financial responsibility, the division will consider outstanding civil judgments and tax liens, foreclosures, multiple social security numbers attached to the applicant's name, child support arrearages, and bankruptcies.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Because the Division will be able to use the Nationwide Mortgage Licensing System (NMLS) database to access the information it needs in order to evaluate an applicant's financial responsibility, it will incur no costs in this process. Therefore, no impact to the state budget is anticipated.

◆ **LOCAL GOVERNMENTS:** Local governments do not license with the division, nor do they implement the rules that govern mortgage licensing. No fiscal impact to local government is anticipated.

◆ **SMALL BUSINESSES:** An applicant for licensure is required to pay \$15 to the NMLS to cover the costs of a credit check. A small business that chooses to pay this cost on behalf of an applicant will be affected by this charge. This minimal cost is imposed by the NMLS, not by the Division.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** An applicant for licensure is required to pay \$15 to the NMLS to cover the costs of a credit check. This minimal cost is imposed by the NMLS, not by the Division.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Affected persons will pay \$15 to comply with the NMLS requirement that they pay for a credit check.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing allows the Division to consider an applicant's financial responsibility in reviewing the applicant's fitness for licensure. No fiscal impact to businesses is anticipated, as applicants already provide a fee to the NMLS database for a credit check.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 11/22/2010

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.**R162-2c. Utah Residential Mortgage Practices and Licensing Rules.****R162-2c-202. Qualifications for Licensure.**

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) court findings of fraudulent or deceitful activity;

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

(viii) evidence of non-compliance with:

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

(B) a probation agreement; or

(C) a plea in abeyance; or

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

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

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

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

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

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

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

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

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

(h) evidence of disregard for licensing laws;

(i) evidence of drug or alcohol dependency;

(j) sanctions placed on professional licenses; and

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

(3) Financial responsibility. Individual applicants shall evidence financial responsibility. To evaluate an applicant for financial responsibility, the division shall:

(a) access the credit information available through the NMLS of:

(i) an applicant for initial licensure, beginning October 18, 2010; and

(ii) a licensee who requests renewal during the 2010 renewal period, unless the licensee's credit report was reviewed in issuing the initial license; and

(b) give particular consideration to:

(i) outstanding civil judgments;

(ii) outstanding tax liens;

(iii) foreclosures;

(iv) multiple social security numbers attached to the individual's name;

(v) child support arrearages; and

(vi) bankruptcies.

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

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

KEY: residential mortgage, loan origination, licensing, enforcement

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

Authorizing, and Implemented or Interpreted Law: 61-2c-103(3); 61-2c-402(4)

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34121

FILED: 09/28/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposal sets forth requirements for investment advisers who have custody of client funds or securities. Specifically, the proposal formally adopts and incorporates by reference the 2010 amended federal rule governing custody, Rule 206(4)-2 of the Investment Advisers Act of 1940, and provides that, like the federal rule, failure to comply with Rule 206(4)-2 is a fraudulent, deceptive, or manipulative act, practice, or course of business. The Division notes that failure to comply with Rule 206(4)-2 is currently already a dishonest or unethical business practice as set forth in Utah Admin. Code Rule R164-6-1g(E)(20). The purpose of this proposal is to expressly incorporate the requirements of the federal rule so that investment advisers who have custody of client funds or securities can ensure compliance with the rule.

SUMMARY OF THE RULE OR CHANGE: In light of recent securities fraud trends, this rule provides additional safeguards to protect investors by requiring that investment advisers with access to client funds and securities undergo annual examinations by an independent public accountant to verify client assets, and requires that qualified custodians maintaining client funds and securities send account statements directly to the clients, and, unless client assets are maintained by an independent custodian unrelated to the investment adviser, requires a report by an independent public accountant evaluating the adviser's internal controls relating to the custody of client assets. These heightened requirements for those advisers who have access to client funds or securities are intended to prevent the misappropriation or other misuse of investor assets.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-1-2 and Section 61-1-24

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds 17 CFR 275.206(4)-2, published by Government Printing Office, 03/12/2010

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There will be no additional costs or savings to the state budget because the proposal does not affect any state entities.

◆ **LOCAL GOVERNMENTS:** There will be no additional costs or savings to local government because the proposal does not affect any local governmental entities.

◆ **SMALL BUSINESSES:** Investment advisers with custody of client funds or securities are already subject to the heightened reporting requirements of Rule 206(4)-2 because it is a dishonest or unethical practice under the Utah Uniform Securities Act to fail to comply with the rule. Likewise, any formerly federal covered advisers which become state

Commerce, Securities

R164-2-2

Custody Requirements for Investment Advisers

covered as a result of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act will already have been required to comply with the federal rule and thus there will be no change for such advisers.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Investment advisers with custody of client funds or securities are already subject to the heightened reporting requirements of Rule 206(4)-2 because it is a dishonest or unethical practice under the Utah Uniform Securities Act to fail to comply with the rule. Likewise, any formerly federal covered advisers which become state covered as a result of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act will already have been required to comply with the federal rule and thus there will be no change for such advisers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As indicated above, affected persons should already be in compliance with the requirements of the proposed rule amendment as a result of the 2010 amendments to federal Rule 206(4)-2 of the Investment Advisers Act of 1940, which became effective 03/12/2010. In the rulemaking process, the United States Securities and Exchange Commission (SEC) reviewed more than 1,300 comment letters from the public, many of which were from those in the securities industry who are affected by the rule. For additional information see <http://edocket.access.gpo.gov/2010/pdf/2010-18.pdf>

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposal, which furthers the goal of safekeeping and protecting investor funds and securities, expressly adopts and incorporates by reference recent federal rule amendments governing investment advisers who have access to client funds and securities. As described above, investment advisers licensed in Utah already must comply with Rule 206(4)-2. In addition, as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, some affected advisers will have already been required to comply with the federal rule and therefore there will be no additional costs to such persons.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Charles Lyons by phone at 801-530-6940, by FAX at 801-530-6980, or by Internet E-mail at cl Lyons@utah.gov
◆ Keith Woodwell by phone at 801-530-6606, by FAX at 801-530-6980, or by Internet E-mail at kwoodwell@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 11/22/2010

AUTHORIZED BY: Keith Woodwell, Director

R164. Commerce, Securities.

R164-2. Investment Adviser - Unlawful Acts.

R164-2-2. Custody Requirements for Investment Advisers.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-2 and 61-1-24.

(2) This rule sets forth the requirements for investment advisers with custody of client funds or securities.

(B) It is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice or course of business for an investment adviser licensed or required to be licensed under Section 61-1-3 to have custody of client funds or securities unless the investment adviser complies with the requirements of Rule 206(4)-2 of the Investment Advisers Act of 1940 (amended 2010), which is adopted and incorporated by reference.

(C) For purposes of this rule and any determination of whether an investment adviser has custody of client funds or securities, "custody" is defined as in Rule 206(4)-2(d)(2) of the Investment Advisers Act of 1940.

KEY: securities, securities regulation, investment advisers, custody requirements

Date of Enactment or Last Substantive Amendment: [~~March 20, 2000~~]2010

Notice of Continuation: February 16, 2010

Authorizing, and Implemented or Interpreted Law: 61-1-2; 61-1-24

Commerce, Securities
R164-4
Licensing Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34126

FILED: 09/30/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposal makes minor modifications to the license application and renewal process for investment advisers in light of recent changes made by the United States Securities and Exchange Commission (SEC) to the form used

for licensing federal covered and state covered investment advisers, and makes clarifying amendments.

SUMMARY OF THE RULE OR CHANGE: This proposal incorporates recent SEC changes to Form ADV, the form used by both federal and state covered investment advisers in order to become licensed. The proposal also modifies the minimum financial requirements for certain investment advisers by waiving the bonding requirement for advisers who are deemed to have custody solely because the adviser is authorized to withdraw fees from a client account. In addition, also following federal amendments, the proposal increases the amount of prepaid advisory fees triggering the submission of a balance sheet from \$500 to \$1,200 per client. Finally, the proposal changes references from NASD to FINRA and makes several minor corrections.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-1-24 and Section 61-1-4

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will be no additional costs or savings to the state budget because the proposal does not affect any state entities.
- ◆ **LOCAL GOVERNMENTS:** There will be no additional costs or savings to local government because the proposal does not affect any local governmental entities.
- ◆ **SMALL BUSINESSES:** There will be no additional costs, but there may be savings for investment advisers who meet the criteria for a waiver of the bonding requirement.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no additional costs, but there may be savings for investment advisers who meet the criteria for a waiver of the bonding requirement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule makes several changes to the licensing and renewal procedures for investment advisers to reflect changes made by the SEC to forms used in the licensing process. The only fiscal impact may be savings from the costs of obtaining a bond for certain investment advisers as described in the rule summary.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Charles Lyons by phone at 801-530-6940, by FAX at 801-530-6980, or by Internet E-mail at clyons@utah.gov
- ◆ Keith Woodwell by phone at 801-530-6606, by FAX at 801-530-6980, or by Internet E-mail at kwoodwell@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 11/22/2010

AUTHORIZED BY: Keith Woodwell, Director

R164. Commerce, Securities.

R164-4. Licensing Requirements.

R164-4-1. Broker-Dealer, Broker-Dealer Agent, and Issuer-Agent Licensing Requirements.

- (A) Authority and purpose
 - (1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.
 - (2) This rule sets forth the procedure and requirements to license as a broker-dealer, broker-dealer agent, or issuer-agent.
- (B) Definitions
 - (1) "Division" means the Division of Securities, Utah Department of Commerce.
 - (2) "CRD" means the Central Registration Depository.
 - (3) "FINRA[~~NASD~~]" means the Financial Industry Regulatory Authority, formerly known as NASD[National Association of Securities Dealers].
 - (4) "NASAA" means the North American Securities Administrators Association, Inc.
 - (5) "SEC" means the United States Securities and Exchange Commission.
- (C) Broker-dealer licensing, post licensing, renewal, and withdrawal requirements
 - (1) License requirements
 - (1)(a) To license as a broker-dealer, applicant must be a member of FINRA[~~the NASD~~] and submit to the CRD the following:
 - (1)(a)(i) SEC Form BD - Uniform Application for Broker-Dealer Registration;
 - (1)(a)(ii) application for a license as an agent in Utah, as specified in paragraph (D), for each principal, officer, agent or employee who directly supervises, or will directly supervise, any licensed agent associated with applicant in Utah; and
 - (1)(a)(iii) a license fee as specified in the Division's fee schedule, and in the form of payment prescribed by the CRD.
 - (1)(b) A certificate of license will not be issued. Proof of status is available from the CRD.
 - (2) Post-licensing requirements
 - (2)(a) Applicant must file amendments to SEC Form BD with the CRD only.
 - (2)(b) Applicant must file SEC Form X-17A-5, FOCUS reports in a timely manner with FINRA[~~the NASD~~]. However, the Division may request applicant to provide a copy of the FOCUS Report.

- (3) License renewal requirements
- (3)(a) All licenses expire on December 31 of each year.
- (3)(b) To renew a license, applicant must submit to the CRD the license fee specified in the Division's fee schedule before December 31.
- (4) License or application withdrawal requirements
- (4)(a) To withdraw a license or application, applicant must file with the CRD, or with the Division if not required by the CRD, SEC Form BDW - Uniform Request for Withdrawal from Registration as a Broker-Dealer.
- (4)(b) A withdrawal is effective 30 days following receipt of SEC Form BDW, unless the Division notifies applicant otherwise.
- (D) Broker-dealer agent licensing, renewal, and withdrawal requirements
- (1) License requirements
- (1)(a) To license as a broker-dealer agent, applicant or the sponsoring broker-dealer must submit to the CRD the following, in addition to any information required by FINRA~~[the NASD]~~, the CRD, or the SEC:
- (1)(a)(i) FINRA~~[NASD]~~ Form U-4 - Uniform Application for Securities Industry Registration or Transfer;
- (1)(a)(ii) proof that applicant passed the Series 63, Uniform Securities Agent State Law Examination (Series 63 Exam), or the Series 66, Uniform Combined State Law Examination (Series 66 Exam), which are administered by FINRA~~[the NASD]~~, and any other exams required by the SEC or FINRA~~[the NASD]~~; and
- (1)(a)(iii) a license fee as specified in the Division's fee schedule, and in the form of payment prescribed by the CRD.
- (1)(b) A certificate of license will not be issued. Proof of status is available from the CRD.
- (2) License renewal requirements
- (2)(a) All licenses expire on December 31 of each year.
- (2)(b) To renew a license, applicant must submit to the CRD the license fee specified in the Division's fee schedule before December 31.
- (3) License or application withdrawal requirements
- (3)(a) To withdraw a license or application, applicant must file with the CRD, FINRA~~[NASD]~~ Form U-5 - Uniform Termination Notice for Securities Industry Registration.
- (3)(b) A withdrawal is effective 30 days following receipt of FINRA~~[NASD]~~ Form U-5, unless the Division notifies applicant otherwise.
- (4) Miscellaneous provisions
- (4)(a) Except as provided in subparagraph (D)(4)(b), applicant may associate with only one broker-dealer at a time.
- (4)(b) A dual license may be allowed by the director if:
- (4)(b)(i) applicant requests a dual license in writing to the Division which identifies the broker-dealers with which applicant will associate and sets forth the reasons for the dual license;
- (4)(b)(ii) both broker-dealers with which applicant intends to associate represent in writing to the Division that each assumes full responsibility for applicant at all times; and
- (4)(b)(iii) applicant discloses the dual license to each client.
- (E) Issuer-agent licensing, renewal, and withdrawal requirements
- (1) License requirements

- (1)(a) To license as an issuer-agent, applicant or the sponsoring issuer must submit to the Division the following:
- (1)(a)(i) FINRA~~[NASD]~~ Form U-4 with original signatures;
- (1)(a)(ii) proof that applicant passed the Series 63 Exam or the Series 66 Exam;
- (1)(a)(iii) a license fee as prescribed in the Division's fee schedule; and
- (1)(a)(iv) a surety bond if required by Section R164-11-1.
- (2) License renewal requirements
- (2)(a) All licenses expire on December 31 of each year.
- (2)(b) To renew a license, applicant must submit to the Division the following before December 31 of each year:
- (2)(b)(i) FINRA~~[NASD]~~ Form U-4 with original signatures; and
- (2)(b)(ii) The license fee specified in the Division's fee schedule.
- (3) License or application withdrawal requirements
- (3)(a) To withdraw a license or application, applicant must file with the Division a written request for withdrawal or FINRA~~[NASD]~~ Form U-5.
- (3)(b) A withdrawal is effective thirty days following receipt of the written request for withdrawal, unless the Division notifies applicant otherwise.
- (4) Miscellaneous provisions
- (4)(a) If applicant applies for a license two or more times in a twelve-month period, the Division deems applicant to be a broker-dealer. Applicant must then license as a broker-dealer.

R164-4-2. Investment Adviser and Investment Adviser Representative Licensing Requirements.

- (A) Authority and Purpose
- (1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.
- (2) This rule sets forth the procedure and requirements to license as an investment adviser and investment adviser representative.
- (B) Definitions
- (1) "CRD" means the Central Registration Depository.
- (2) "Designated Official" means a person that is a partner, officer, director, sole proprietor, or a person occupying a similar status or performing similar functions in an investment adviser firm.
- (3) "Division" means the Division of Securities, Utah Department of Commerce.
- (4) "Fee" means any remuneration received, directly or indirectly, for investment advice given or investment advisory services rendered, including, among other things, charges for a publication which includes investment advice and commissions paid or received when securities are purchased or sold as a result of investment advice given or investment advisory services rendered. License fees referred to in this rule are not included.
- (5) "IARD" means the Investment Adviser Registration Depository.
- (6) "Investment advice" or "investment advisory services" means advice given or services rendered concerning the value of securities or as to the advisability of investing in, or purchasing or selling securities.
- (7) "NASAA" means the North American Securities Administrators Association, Inc.

(8) "FINRA[~~NASD~~]" means the Financial Industry Regulatory Authority, formerly known as NASD[National Association of Securities Dealers].

(9) "SEC" means the United States Securities and Exchange Commission.

(10) "SIPC" means the Securities Investor Protection Corporation.

(C) Investment adviser and investment adviser representative licensing requirements

(1) Investment adviser licensing requirements. To license as an investment adviser, applicant must submit the following:

(1)(a) To the IARD:

(1)(a)(i) SEC Form ADV - Uniform Application for Investment Adviser Registration, Parts 1 and 2, including applicant's audited balance sheet if required under item 18[4] of [part H of] Form ADV Part 2; and

(1)(a)(ii) a license fee as specified in the Division's fee schedule. (This fee includes the fee for one designated official.)

(1)(b) To the CRD:

(1)(b)(i) FINRA[~~NASD~~] Form U-4 - Uniform Application for Securities Industry Registration or Transfer for applicant's designated official; and

(1)(b)(ii) proof that applicant's designated official has passed the Series 65 or both the Series 66 Exam and Series 7 Exam.

(1)(c) To the Division:

(1)(c)(i) a notification:

(aa) identifying the applicant's designated official[Part H of SEC Form ADV - Uniform Application for Investment Adviser Registration]; and

(bb) indicating whether the applicant will have either custody of or discretionary authority over client funds or securities.

(1)(c)(ii) If the applicant will have custody of or discretionary authority over client funds or securities, the applicant must provide Division Form 4-5BIA - Indemnity Bond of Investment Adviser[; if required by Section R164-4-5;] or documents containing the information provided on Division Form 4-5BIA, or, alternatively, proof of membership in SIPC.

(2) Investment Adviser Representative Licensing Requirements. To license as an investment adviser representative, the investment adviser or federal covered adviser with which the applicant will associate must submit the following:

(2)(a) To the CRD:

(2)(a)(i) FINRA[~~NASD~~] Form U-4; and

(2)(a)(ii) proof applicant passed the Series 65 Exam or both the Series 66 Exam and Series 7 Exam.

(2)(b) To the IARD, a license fee as specified in the Division's fee schedule.

(3) Miscellaneous provisions

(3)(a) Except as provided in Subparagraph (C)(3)(b), applicant may associate with only one investment adviser or federal covered adviser at a time.

(3)(b) A dual license may be allowed by the director if:

(3)(b)(i) Applicant requests a dual license in writing to the Division which identifies the investment advisers or federal covered advisers with which applicant intends to associate and sets forth the reasons for the dual license;

(3)(b)(ii) Both investment advisers or federal covered advisers with which applicant intends to associate represent in

writing to the Division that each assumes full responsibility for applicant at all times; and

(3)(b)(iii) Applicant discloses the dual license to each client.

(D) Investment adviser and associated investment adviser representative renewal requirements

(1) All licenses expire on December 31 of each year.

(2) To renew licenses of the investment adviser and associated investment adviser representatives, the investment adviser must submit the following[~~to the IARD before December 31~~]:

(2)(a) To the IARD:

(2)(a)(i) SEC Form ADV - Uniform Application for Investment Adviser Registration, Parts 1 and 2, including applicant's audited balance sheet if required under item 18 of Form ADV Part 2[a copy of applicant's most recent SEC Form ADV - Uniform Application for Investment Adviser Registration];

(2)(a)(ii) a license fee for the investment adviser and a license fee for each associated investment adviser representative as specified in the Division's fee schedule (the license fee for the investment adviser includes the fee for one designated official).[;]

(2)(b) To the CRD:

(2)(b)(i) FINRA Form U-4 - Uniform Application for Securities Industry Registration or Transfer for applicant's designated official and any investment adviser representatives.

(2)(c) To the Division:

(2)(c)(i) Division Form 4-5BIA, Indemnity Bond of Investment Adviser, if required by Section R164-4-5; and

(2)(c)(ii) the investment adviser's most recently audited balance sheet, if the investment adviser requires payment of advisory fees six months or more in advance and in excess of \$1,2[5]00 per client, or if the investment adviser has custody or possession of clients' funds or securities.[; and]

[(2)(c) a copy of the alternate disclosure brochure given or offered if the investment adviser delivered or offered to deliver a written disclosure statement in lieu of Part H of Form ADV during the last calendar year of the licensing period.

_____] (E) Investment adviser representatives of federal covered advisers

(1) All licenses expire on December 31 of each year.

(2) To renew licenses of the investment adviser representatives of a federal covered adviser, the federal covered adviser must submit to the IARD before December 31, a license fee for each investment adviser representative as specified in the Division's fee schedule.

(F) Investment adviser and investment adviser representative withdrawal requirements

(1) Investment adviser withdrawal requirements

(1)(a) To withdraw a license or application, applicant must file with the IARD, SEC Form ADV-W - Notice of Withdrawal from Registration as Investment Adviser.

(1)(b) A withdrawal is effective thirty days following receipt of SEC Form ADV-W, unless the Division notifies applicant otherwise.

(2) Investment adviser representative withdrawal requirements

(2)(a) To withdraw a license or application, applicant must file with the CRD, a completed FINRA[~~NASD~~] Form U-5.

(2)(b) A withdrawal is effective thirty days following receipt of applicant's ~~FINRA~~[~~NASD~~] Form U-5, unless the Division notifies applicant otherwise.

(G) Acts or practices which require licensing as an investment adviser and compliance with statutes and rules pertaining thereto

(1) Lawyers, accountants, engineers or teachers

(1)(a) A lawyer, accountant, engineer or teacher (professional) must be licensed as an investment adviser or investment adviser representative if the professional provides investment advice or investment advisory services to the professional's clients for a fee, if the advice is not "solely incidental" to the professional's regular professional practice with respect to clients.

(1)(b) For purposes of this subparagraph (1), providing investment advice under ANY of the following circumstances would NOT be considered to be "solely incidental":

(1)(b)(i) The investment advice the professional or the investment advisory service the professional renders clients is the primary professional advice for which the professional charges or is paid a fee;

(1)(b)(ii) The professional advertises or otherwise holds himself out to the public as a provider of investment advice; or

(1)(b)(iii) The professional holds funds for clients pursuant to discretionary authority to invest such funds.

(1)(c) Following are examples to assist in understanding the meaning of "solely incidental":

(1)(c)(i) If the primary professional advice for which the professional receives a fee involves business or tax planning and the professional neither advertises or otherwise holds himself out as a provider of investment advice, nor holds funds which the professional invests for clients. The professional may also provide investment advice to clients in connection with the planning or other professional services, without being required to become licensed as an investment adviser.

(1)(c)(ii) If the professional advertises or otherwise holds himself out as a provider of investment advice, the professional must be licensed as an investment adviser whether or not the professional actually provides investment advice.

(1)(c)(iii) If the professional holds client funds which the professional invests for the client, the professional must be licensed as an investment adviser whether or not the professional actually provides investment advice.

(2) Broker-dealers and broker-dealer agents

(2)(a) A broker-dealer or broker-dealer agent must be licensed as an investment adviser or investment adviser representative if for a fee, the securities broker-dealer or sales agent of the securities broker-dealer provides investment advice to clients if the investment advice is not "solely incidental" to the conduct of business as a broker-dealer or broker-dealer agent.

(2)(b) For purposes of this subparagraph, providing investment advice under ANY of the following circumstances would NOT be considered "solely incidental":

(2)(b)(i) Providing investment advice to a client for a fee in addition to any commission received in connection with transactions in which the client either purchases or sells securities;

(2)(b)(ii) Providing investment advice, for a fee, to clients who are not clients of the broker-dealer with which the agent is licensed; or

(2)(b)(iii) Receiving compensation from an investment adviser to whom the broker-dealer or agent refers clients.

(3) Insurance agents

(3)(a) An insurance agent who, for a fee, provides investment advice to a client, must be licensed as an investment adviser or investment adviser representative.

(3)(b) An insurance agent who, performs an analysis of a client's estate, for a fee, which recommends that the client purchases or sells either specific securities or specific types of securities must be licensed as an investment adviser or investment adviser representative.

(3)(c) An insurance agent who, receives a commission from the sale of insurance to a client who makes such purchase with the proceeds of securities the insurance agent recommended be sold, must be licensed as an investment adviser or investment adviser representative.

(4) Others

(4)(a) One must be licensed as an investment adviser or investment adviser representative, as appropriate, whether or not described in subparagraphs (1), (2), or (3) of paragraph (G[E]) if:

(4)(a)(i) ~~Providing~~ [~~a~~] advertising, or otherwise holding oneself out as a provider of investment advice;

(4)(a)(ii) Publishing a newspaper, news column, news letter, news magazine, or business or financial publication, which, for a fee, gives investment advice based upon the specific investment situations of the clients; or

(4)(a)(iii) Receiving a fee from an investment adviser for client referrals.

R164-4-3. General Licensing Requirements.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule applies to the licensing of broker-dealers, broker-dealer agents, issuer-agents, investment advisers, and investment adviser representatives.

(B) Definitions

(1) "CRD" means the Central Registration Depository operated by ~~FINRA~~[~~the NASD~~].

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "IARD" means the Investment Adviser Registration Depository operated by ~~FINRA~~[~~the NASD~~].

(4) "NASAA" means the North American Securities Administrators Association, Inc.

(5) "~~FINRA~~[~~NASD~~]" means the Financial Industry Regulatory Authority, formerly known as NASD [~~National Association of Securities Dealers~~].

(6) "SEC" means the United States Securities and Exchange Commission.

(7) "Termination" means the date on which ~~FINRA~~[~~the NASD~~] processes ~~FINRA~~[~~NASD~~] Form U-5 - Uniform Termination Notice for Securities Industry Registration.

(C) Examination requirements

(1) A broker-dealer agent must pass the Series 63, Uniform Securities Agent State Law Examination (Series 63 Exam) or the Series 66, Uniform Combined State Law Examination (Series 66 Exam). If the broker-dealer agent's most recent license terminated two or more years before the date of receipt by the

Division of a new application, the agent will be required to retake the examination.

(2) An issuer-agent must pass the Series 63 Exam or the Series 66 Exam. If the issuer-agent's most recent license terminated two or more years before the date of receipt by the Division of a new application, the agent will be required to retake the examination.

(3) Investment advisers and investment adviser representatives

(3)(a) Examination requirements. An individual applying to be licensed as an investment adviser or investment adviser representative shall provide the Division with proof of obtaining a passing score on one of the following examinations:

(3)(a)(i) Series 65, Uniform Investment Adviser Law Examination (Series 65 Exam); or

(3)(a)(ii) Series 7, General Securities Representative Examination (Series 7 Exam) and Series 66 Exam.

(3)(b) If an investment adviser or investment adviser representative has not been licensed in any jurisdiction for a period of two (2) years, the investment adviser or investment adviser representative will be required to retake the examination.

(3)(c) Waivers. The investment adviser or investment adviser representative may request a waiver of the examination requirement if such individual currently holds one of the following professional designations:

(3)(c)(i) Certified Financial Planner (CFP) awarded by the Certified Financial Planner Board of Standards, Inc.;

(3)(c)(ii) Chartered Financial Consultant (ChFC) awarded by the American College, Bryn Mawr, Pennsylvania;

(3)(c)(iii) Personal Financial Specialist (PFS) awarded by the American Institute of Certified Public Accountants;

(3)(c)(iv) Chartered Financial Analyst (CFA) awarded by the Institute of Chartered Financial Analysts;

(3)(c)(v) Chartered Investment Counselor (CIC) awarded by the Investment Counsel Association of America, Inc.; or

(3)(c)(vi) Such other professional designation as the Division may recognize by order.

(D) Electronic Filing

(1) The Division designates and authorizes the web-based CRD to receive and store filings and collect related fees on behalf of the Division whenever this rule requires filings to be submitted to the CRD.

(2) The Division designates and authorizes the web-based IARD to receive and store filings and collect related fees on behalf of the Division whenever this rule requires filings to be submitted to the IARD.

(3) Unless otherwise provided, all broker-dealer, agent, investment adviser, and investment adviser representative applications, amendments, reports, notices, related filings and fees required to be filed with the Division pursuant to this rule, shall be filed electronically with and transmitted to either the CRD or the IARD as designated in this rule. The following additional conditions relate to such electronic filings:

(3)(a) When a signature or signatures are required by the particular instruction of any filing to be made through the CRD or the IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to the CRD or the IARD. Submission of a

filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

(3)(b) Solely for purposes of a filing made through the CRD or the IARD, a document is considered filed with the Division when all fees are received and the filing is accepted by the CRD or the IARD on behalf of the state.

(4) Notwithstanding Subparagraph (D)(3), the electronic filing of any particular document shall not be required until such time as the CRD or the IARD provides for receipt of such filings. Any documents required to be filed with the Division, the CRD or the IARD that are not permitted to be filed with or cannot be accepted by the CRD or the IARD shall be filed directly with the Division in either a paper format or as an attachment to an email to the Division in a format that can be viewed by the Division.

(5) This Subparagraph provides two "hardship exemptions" from the requirements to make electronic filings as required by this rule.

(5)(a) Temporary Hardship Exemption.

(5)(a)(i) Investment advisers licensed or required to be licensed under the Act who experience unanticipated technical difficulties that prevent submission of an electronic filing to the IARD may request a temporary hardship exemption from the requirements to file electronically.

(5)(a)(ii) To request a temporary hardship exemption, the investment adviser must:

(5)(a)(ii)(aa) File Form ADV-H in paper format with the state securities agency where the investment adviser's principal place of business is located, no later than one business day after the filing that is the subject of the Form ADV-H was due; and

(5)(a)(ii)(bb) Submit the filing that is the subject of the Form ADV-H in electronic format to the IARD no later than seven business days after the filing was due.

(5)(a)(iii) The temporary hardship exemption will be deemed effective upon receipt by the Division of the complete Form ADV-H. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the Division.

(5)(b) Continuing Hardship Exemption.

(5)(b)(i) A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this rule are prohibitively burdensome.

(5)(b)(ii) To apply for a continuing hardship exemption, the investment adviser must:

(5)(b)(ii)(aa) File Form ADV-H in paper format with the Division at least twenty business days before a filing is due; and

(5)(b)(ii)(bb) If a filing is due to more than one state securities agency, the Form ADV-H must be filed with the state securities agency where the investment adviser's principal place of business is located. The state securities agency who receives the application will grant or deny the application within ten business days after the filing of Form ADV-H.

(5)(b)(iii) The exemption is effective upon approval by the Division. The time period of the exemption may be no longer than one year after the date on which the Form ADV-H is filed. If the Division approves the application, the investment adviser must, no later than five business days after the exemption approval date, submit filings to the Division in paper format along with the appropriate processing fees for the period of time for which the exemption is granted.

(5)(c) The decision to grant or deny a request for a hardship exemption will be made by the state securities agency where the investment adviser's principal place of business is located, which decision will be followed by the state securities agency in the other state(s) where the investment adviser is licensed.

(E) Correcting amendments

(1) At a time when a material change occurs:

(1)(a) a broker-dealer must promptly file amendments to SEC Form BD - Uniform Application for Broker-Dealer Registration with the CRD;

(1)(b) a broker-dealer agent must promptly file amendments to ~~FINRA~~[~~NASD~~] Form U-4 - Uniform Application for Securities Industry Registration or Transfer with the CRD;

(1)(c) an issuer-agent must promptly file amendments to ~~FINRA~~[~~NASD~~] Form U-4 - Uniform Application for Securities Industry Registration or Transfer with the Division;

(1)(d) an investment adviser must promptly file amendments to SEC Form ADV - Uniform Application for Investment Adviser Registration with the IARD;

(1)(e) an investment adviser representative must promptly file amendments to ~~FINRA~~[~~NASD~~] Form U-4 - Uniform Application for Securities Industry Registration or Transfer with the CRD; and

(1)(f) a federal covered adviser must promptly file amendments to SEC Form ADV - Uniform Application for Investment Adviser Registration with the IARD.

(2) Amendments should be filed in accordance with the instructions on the respective forms.

(F) Service of process

(1) The requirement in Subsection 61-1-4(1) that requires filing a consent to service of process may be fulfilled by execution of SEC Form BD, ~~FINRA~~[~~NASD~~] Form U-4, or SEC Form ADV, as applicable.

(G) License transfer

(1) A broker-dealer or broker-dealer agent may transfer a license by following CRD procedures. The Division recognizes and participates in the NASAA/CRD Temporary Agent Transfer ("TAT") program and will honor transfers effected through TAT procedures.

R164-4-4. Minimum Financial Requirements and Financial Reporting Requirements of Licensed Broker-Dealers and Investment Advisers.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4, 61-1-5, 61-1-6, and 61-1-24.

(2) This rule provides the minimum financial requirements and financial reporting requirements for broker-dealers and investment advisers.

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "Net worth" means an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as current assets under generally accepted accounting

principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature; home, home furnishing, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(4) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-Dealer - Minimum Financial Requirements

(1) Each broker-dealer licensed or required to be licensed under the Act shall comply with SEC Rules 15c3-1 (17 CFR 240.15c3-1(1996)), 15c3-2 (17 CFR 240.15c3-2(1996)), and 15c3-3 (17 CFR 240.15c3-3(1996)), which are adopted and incorporated by reference.

(2) Each broker-dealer licensed or required to be licensed under the Act shall comply with SEC Rule 17a-11 (17 CFR 240.17a-11(1996)) and shall file with the Division upon request copies of notices and reports required under SEC Rules 17a-5 (17 CFR 240.17a-5(1996)), 17a-10 (17 CFR 240.17a-10(1996)), and 17a-11 (17 CFR 240.17a-11(1996)), which are adopted and incorporated by reference.

(3) To the extent the SEC promulgates changes to the above referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Division for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended SEC rule.

(D) Investment Adviser - Minimum Financial Requirements

(1) Except as provided in subparagraph (D)(4), unless an investment adviser posts a bond pursuant to Section R164-4-5 or is not required to post a bond under Section R164-4-5(F)(2)(a), an investment adviser licensed or required to be licensed under the Act who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000, and every investment adviser licensed or required to be licensed under the Act who has discretionary authority over client funds or securities but does not have custody of client funds or securities, shall maintain at all times a minimum net worth of \$10,000.

(2) An investment adviser registered or required to be registered who accepts prepayment of more than \$1,2[5]00 per client and six or more months in advance shall maintain at all times a positive net worth.

(3) Unless otherwise exempted, as a condition of the right to continue to transact business in this state, every investment adviser licensed or required to be licensed under the Act shall by the close of business on the next business day notify the Division if such investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the Division of its financial condition, including the following:

(3)(a) A trial balance of all ledger accounts;

(3)(b) A statement of all client funds or securities which are not segregated;

(3)(c) A computation of the aggregate amount of client ledger debit balances; and

(3)(d) A statement as to the number of client accounts.

(4) The Division may require that a current appraisal be submitted in order to establish the worth of any asset.

(5) Every investment adviser that has its principal place of business in a state other than this state shall maintain such minimum capital as required by the state in which the investment adviser maintains its principal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirements.

R164-4-5. Bonding Requirements for Broker-Dealers, Broker-Dealer Agents, Issuer-Agents, and Investment Advisers.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4 and 61-1-24.

(2) This rule sets the surety-bond requirements for broker-dealers, broker-dealer agents, issuer-agents, and investment advisers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "SEC" means the United States Securities and Exchange Commission.

(3) "SIPC" means the Securities Investor Protection Corporation.

(C) Bonding requirements for broker-dealers

(1) A broker-dealer who is a member of SIPC and is not excluded from membership assessments need not provide a bond.

(2) Every broker-dealer licensed or required to be licensed under this Act whose business is exclusively intrastate, who does not make use of any facility of a national securities exchange and who is not registered under section 15 of the Securities Exchange Act of 1934, shall be bonded in an amount of not less than \$100,000 by a bonding company qualified to do business in this state.

(D) Bonding requirements for broker-dealer agents

(1) A broker-dealer agent need not provide a bond.

(E) Bonding requirements for issuer-agents

(1) An issuer-agent need not provide a bond unless otherwise required by Section R164-11-1.

(2) If an issuer-agent must provide a bond, it must be:

(2)(a) issued by a corporate bonding company qualified to do business in Utah;

(2)(b) on or in substantially the same form as Division Form 4-5BI, "Corporate Indemnity Bond of Issuer"; and

(2)(c) be in the amount of \$25,000.

(3) Upon written request the Division may waive the bond requirement and accept instead the escrow of funds.

(3)(a) The issuer or issuer-agent must place in escrow at least \$25,000.

(3)(b) The issuer or issuer-agent may place the money in escrow at any federal or state bank or savings institution, only.

(3)(c) The term of the escrow must extend for a period terminating no earlier than four years after expiration of the issuer's registration statement.

(3)(d) The escrow must be on or in substantially the same form as Division Form 4-5EIA, "Escrow Agreement", which is available from the Division.

(3)(e) The funds in escrow may be released only by an order of the Division, in accordance with the following:

(3)(e)(i) If claims have been made against the issuer-agent in a court of competent jurisdiction and the court has finally adjudicated the dispute, or the claimant and the issuer-agent have agreed in writing to resolve the dispute, the amount of funds at issue may be ordered released by the Division in accordance with the order or agreement, up to the amount placed in escrow; or

(3)(e)(ii) The issuer's registration statement expired not less than four (4) years ago.

(F) Bonding requirements for certain investment advisers

(1) Except as provided in subparagraphs (F)(2) and (3), every investment adviser having custody of or discretionary authority over client funds or securities shall be bonded:

(1)(a) in an amount determined by the Division based upon the number of clients and the total assets under management of the investment adviser, which shall be at a minimum of \$10,000;

(1)(b) issued by a bonding company qualified to do business in this state;

(1)(c) on or in substantially the same form as Division Form 4-5BIA, Corporate Indemnity Bond of Investment Adviser.

(2) The requirements of subparagraph (F)(1) shall not apply to those applicants or licensees who:

(2)(a) have custody solely as a consequence of the adviser's authority to withdraw advisory fees from client accounts; or

(2)(b) comply with the requirements of Section R164-4-4.

(3) An investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of subparagraph (F)(1), provided that the investment adviser is licensed as an investment adviser in the state where it has its principal place of business and is in compliance with such state's requirements relating to bonding.

(4) Upon request and for good cause shown, the Division may waive the bond requirement and accept instead the escrow of funds.

(4)(a) The investment adviser must place in escrow an amount determined by the Division based upon the number of clients and the total assets under management of the investment adviser, which shall be at a minimum of \$10,000.

(4)(b) The investment adviser may place the money in escrow at any federal or state bank or savings institution, only.

(4)(c) The term of the escrow must extend for a period terminating no earlier than three years after expiration of the investment adviser's license.

(4)(d) The escrow must be on, or in substantially the same form as, Division Form 4-5EIA, Escrow Agreement.

(4)(e) The funds in escrow may be released only by an order of the Division, in accordance with the following:

(4)(e)(i) Where claims have been made against the investment adviser in a court of competent jurisdiction and the court has finally adjudicated the dispute, or the claimant and the investment adviser have agreed in writing to resolve the dispute, the amount of funds at issue may be ordered released by the D[d]ivision in accordance with the order or agreement, up to the amount placed in escrow; or

(4)(e)(ii) The investment adviser has not been licensed by the Division for a period of at least four years.

R164-4-6. Notice Filing Requirements for Federal Covered Advisers.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-4 and 61-1-24.

(2) This rule provides the notice filing requirements for federal covered advisers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "SEC" means the United States Securities and Exchange Commission.

(C) Notice Filings

Federal covered advisers required to file notice filings pursuant to Subsection 61-1-4(2), must file with IARD the following:

(1) an executed SEC Form ADV - Uniform Application for Investment Adviser Registration; and

(2) a filing fee as specified in the Division's fee schedule.

(D) Notice filing renewals

(1) All notice filings expire on December 31 of each year.

(2) To renew notice filings, a federal covered adviser must submit the following to IARD before December 31:

(2)(a) a copy of the federal covered adviser's most recent SEC Form ADV; and

(2)(b) a filing fee as specified in the Division's fee schedule. [

~~(E) Until IARD provides for the filing of Part 2 of Form ADV, the Division will deem filed Part 2 of Form ADV if a federal covered adviser provides, within 5 days of a request, Part 2 of Form ADV to the Division. Because the Division deems Part 2 of the Form ADV to be filed, a federal covered adviser is not required to submit Part 2 of Form ADV to the Division unless requested.]~~

R164-4-7. Broker-dealers, Investment Advisers and Other Securities Personnel Using the Internet for General Dissemination of Information on Products and Services.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-13 and 61-1-24.

(2) This rule clarifies when broker-dealers, investment advisers, broker-dealer agents and investment adviser representatives are transacting business in this state for purposes of Section 61-1-4 by distributing information on available products and services through Internet Communications available to persons in this state.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "Internet" means the global information system comprised of independent computer networks which are interconnected and share information without the use of a central processing center by use of the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, to include without limitation, the World Wide Web, proprietary or "common carrier" electronic delivery systems, or similar medium.

(3) "Internet Communications" means a communication made on the Internet which is directed generally to anyone who has access to the Internet, including persons in Utah, to include without

limitation, postings on Bulletin Boards, displays on "Home Pages" or similar methods.

(C) Licensing Exclusion

Broker-dealers, investment advisers, broker-dealer agents ("BD agents") and investment adviser representatives ("IA reps") who use the Internet to distribute information on available products and services through Internet Communications shall not be deemed to be "transacting business" in this state for purposes of Subsections 61-1-3(1) and 61-1-3(3) based solely on that fact if the following conditions are observed:

(1) The Internet Communication contains a legend in which it is clearly stated that:

(1)(a) the broker-dealer, investment adviser, BD agent or IA rep in question may only transact business in this state if first licensed, excluded or exempted from state broker-dealer, investment adviser, BD agent or IA rep licensing requirements, as may be; and

(1)(b) follow-up, individualized responses to persons in this state by such broker-dealer, investment adviser, BD agent or IA rep that involve either the effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, will not be made absent compliance with state broker-dealer, investment adviser, BD agent or IA rep licensing requirements, or an applicable exemption or exclusion;

(2) The Internet Communication contains a mechanism, including and without limitation, technical "firewalls" or other implemented policies and procedures, designed reasonably to ensure that prior to any subsequent, direct communication with prospective customers or clients in this state, said broker-dealer, investment adviser, BD agent or IA rep is first licensed in this state or qualifies for an exemption or exclusion from such requirement. Nothing in this subparagraph shall be construed to relieve a state licensed broker-dealer, investment adviser, BD agent or IA rep from any applicable securities registration requirement in this state;

(3) The Internet Communication does not involve either effecting or attempting to effect transactions in securities, or the rendering of personalized investment advice for compensation, as may be, in this state over the Internet, but is limited to the dissemination of general information on products and services; and

(4) In the case of a BD agent or IA rep:

(4)(a) the affiliation with the broker-dealer or investment adviser of the BD agent or IA rep is prominently disclosed within the Internet Communication;

(4)(b) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated retains responsibility for reviewing and approving the content of any Internet Communication by a BD agent or IA rep;

(4)(c) the broker-dealer or investment adviser with whom the BD agent or IA rep is associated first authorizes the distribution of information on the particular products and services through the Internet Communication; and

(4)(d) in disseminating information through the Internet Communication, the BD agent or IA rep acts within the scope of the authority granted by the broker-dealer or investment adviser.

(D) Limitations of Exclusion

(1) The exclusion provided in paragraph (C) extends to state broker-dealer, investment adviser, BD agent and IA rep licensing requirements only, and does not excuse compliance with applicable securities registration, antifraud or related provisions.

(2) Nothing in this exclusion shall be construed to affect the activities of any broker-dealer, investment adviser, BD agent and IA rep engaged in business in this state that is not subject to the jurisdiction of the Division as a result of the National Securities Markets Improvements Act of 1996, as amended.

R164-4-8. Exclusion for Certain Canadian Brokers and Securities Exemption.

(A) Authority and purpose

(1) The Division enacts this rule under authority granted by Subsections 61-1-13(3)(i) and 61-1-14(2)(s) and Section 61-1-24.

(2) This rule provides an exclusion from the definition of "Broker-dealer" for certain Canadian brokers and provides an exemption for transactions effectuated by these certain Canadian brokers.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Broker-Dealer Exclusion

"Broker-dealer" as defined in Section 61-1-13(3) excludes a person who is resident in Canada, has no office or other physical presence in this state, and complies with the following conditions:

(1) Only effects or attempts to effect transactions in securities:

(1)(a) with or through the issuers of the securities involved in the transactions, broker-dealers, banks, saving institutions, trust companies, insurance companies, investment companies defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;

(1)(b) with or for a person from Canada who is temporarily present in this state, with whom the Canadian person had a bona fide business-client relationship before the person entered this state; or

(1)(c) with or for a person from Canada who is in this state, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor;

(2) files a notice in the form of his current application required by the jurisdiction in which their head office is located and a consent to service of process;

(3) is a member of a self-regulatory organization or stock exchange in Canada;

(4) Maintains his provincial or territorial registration and his membership in a self-regulatory organization or stock exchange in good standing;

(5) Discloses to his clients in this state that he is not subject to the full regulatory requirements of the Utah Uniform Securities Act; and

(6) Is not in violation of Section 61-1-1 and all rules promulgated thereunder.

(D) Transactional Securities Exemption

The Division finds that registration is not necessary or appropriate for the protection of investors in connection with an offer or sale of a security in a transaction effected by a person excluded from the definition of broker-dealer under Paragraph (C)

R164-4-9. Exemptions From Licensing Requirements for Investment Advisers Providing Advice to Certain Institutional Investors.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-3 and 61-1-24.

(2) This rule provides exemptions from the licensing requirements of the Act for investment advisers and investment adviser representatives who meet specified criteria.

(B) Definitions

(1) "Act" means the Utah Uniform Securities Act, Utah Code Ann. Section 61-1-1 et seq.

(2) "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

(3)(a) "High net worth family entity" means a corporation, limited partnership, limited liability company, or other entity, with all of its owners, partners, or members belonging to a single family who are all related by blood, adoption or marriage; with a combined net worth of not less than \$10 million; and with ownership by an individual family member being direct or indirect pursuant to a trust or other similar arrangement where the investment is made by or on behalf of, or for the benefit of, the individual.

(3)(b) An individual does not constitute a "high net worth family entity" for purposes of this rule regardless of the net worth of the individual.

(4) "Private fund" means an entity that:

(4)(a) would be subject to regulation under the federal Investment Company Act of 1940 but for the exceptions from the definition of "investment company" provided for:

(4)(a)(i) a fund that has no more than 100 beneficial owners and which is not making and does not presently propose to make a public offering of its securities, or

(4)(a)(ii) a fund that is owned exclusively by qualified purchasers, as defined in subsection (5) below, and which is not making and does not presently propose to make a public offering of its securities; and

(4)(b) offers interests in the entity based on the investment advisory skills, ability or expertise of the investment adviser.

(5) "Qualified purchaser" has the same meaning as defined in the Investment Company Act of 1940 Sec. 2(a)(51).

(C) Exemption for Investment Advice to Certain Institutional Investors

(1) For purposes of Subsection 61-1-3(3)(b)(ii), an investment adviser or investment adviser representative is exempt from the licensing requirements of the Act if the investment adviser or investment adviser representative renders investment advisory services only to the following institutional investors:

(1)(a) a non-individual "accredited investor" (as that term is defined in Rule 501(a)(1)-(3), (7), and any entity in which all of the equity owners are persons defined in Rule 501(a)(1)-(3) and (7), promulgated by the Securities and Exchange Commission (SEC) under the Securities Act of 1933 (1933 Act), as amended;

(1)(b) a "qualified institutional buyer" (as that term is defined in Rule 144A(a)(1) promulgated by the SEC under the 1933 Act, as amended; or

(1)(c) a corporation, partnership, trust, estate, or other entity (excluding individuals) having net worth of not less than \$10 million, or a wholly-owned subsidiary of such entity.

(2) The exemption from investment adviser and investment adviser representative licensing provided by this Subsection (C) is not available if the institutional investor is in fact acting only as agent for another purchaser that is not an institutional investor listed in Subsection 61-1-3(3)(b) or Subsection (C)(1) of this rule. The exemption from licensure is available only if the institutional investor is acting for its own account or as a bona fide trustee of a trust organized and existing other than for the purpose of acquiring the investment advisory services for which the investment adviser or investment adviser representative is claiming the exemption.

(D) Exemption for Investment Advice to Certain Private Funds

(1) For purposes of Subsection 61-1-3(3)(b)(ii), an investment adviser or investment adviser representative is exempt from the licensing requirements of the Act if the investment adviser or investment adviser representative renders investment advisory services only to a private fund that regularly makes equity investments in companies, if:

(1)(a) the private fund does not grant investors the right or power to redeem their interests in the fund within two years of purchase;

(1)(b) at the time of investment, at least 80% of the fair market value of the investments made by the private fund possess all of the following characteristics:

(1)(b)(i) the private fund, either alone or with other similarly situated private funds, has control of the target company;

(1)(b)(ii) the private fund, either alone or with other similarly situated private funds, has access to material business, financial and other corporate records of the target company without being required to resort to statutory stockholder or other equity owner records access provisions;

(1)(b)(iii) the private fund, either alone or with other similarly situated private funds, has the right to elect one or more directors to the target company's board of directors or equivalent governing management body, either at the outset or on the occurrence or non-occurrence of specified events; and

(1)(b)(iv) at the time of the investment, the securities representing the private fund's equity stake or into which such securities may be converted have not been listed on an exchange and are of a highly illiquid nature such that no significant secondary market exists for the securities; and

(1)(c) at the time of investment, at least 80% of the fair market value of the investments made by the private fund possess at least two of the following four characteristics:

(1)(c)(i) the private fund's interest in the target company includes a common, preferred, convertible or other direct or indirect equity stake;

(1)(c)(ii) the private fund, either alone or with other similarly situated private funds, has the right, at the target company's expense, to have its equity interest in the target company registered for sale in a future public offering or otherwise redeemed upon the occurrence of given event or contingency or to otherwise obtain liquidity for the private fund's investment;

(1)(c)(iii) the private fund, either alone or with other similarly situated private funds, has:

(1)(c)(iii)(A) co-sale rights that allow the private fund to sell its equity in the target company on the same terms as holders of a majority of the equity interests of such target;

(1)(c)(iii)(B) liquidation preferences with priority to holders of common equity; or

(1)(c)(iii)(C) redemption rights to require the target company to repurchase or redeem the private fund's equity interest at a price constituting a preference to that of the common equity holders; and

(1)(c)(iv) the private fund, either alone or with other similarly situated private funds, has:

(1)(c)(iv)(A) anti-dilution rights materially limiting the power of the target company to issue new equity securities on terms that dilute the equity interest of the private fund without adjusting the investment rights of the private equity fund;

(1)(c)(iv)(B) rights of first offer or participation enabling the private fund to acquire its pro rata share of any newly issued equity securities;

(1)(c)(iv)(C) rights to materially preclude the target company from issuing equity without first obtaining consent of the private fund either as an equity holder or through the private fund's designee(s) on the target company's board of directors or equivalent governing management body; or

(1)(c)(iv)(D) other rights superior to the rights of holders of common equity relating to cause or block an event or transaction that would provide full or partial liquidity to the private fund.

(E) Exemptions for Investment Advice to Certain High Net Worth Family Entities

(1) For purposes of Subsection 61-1-3(3)(b)(ii), an investment adviser or investment adviser representative is exempt from the licensing requirements of the Act if the investment adviser or investment adviser representative:

(1)(a) renders investment advisory services to a high net worth family entity or related family entities, and

(1)(b) does not render investment advisory services to any other entities or individuals, other than those described in Subsections (C) and (D) above.

(F) Determination of Net Worth

(1) For purposes of determining the net worth of an institutional investor or high net worth family entity under this rule, an investment adviser or investment adviser representative may rely upon the entity's most recent annual balance sheet or other financial statement which shall have been audited by an independent accountant or which shall have been verified by a principal of the entity.

(G) Prohibition on Advertising and Touting

(1) The exemptions from the licensing requirements of the Act provided by this rule are not applicable if the investment adviser or investment adviser representative advertises its services or holds itself out to the public as a provider of investment advice, including:

(1)(a) advertising, touting, or providing testimonials of the performance, experience or expertise of the investment adviser or investment adviser representative;

(1)(b) making general solicitations for investment; or

(1)(c) paying a fee to any person for referrals or solicitations unless that person is a licensed investment adviser representative, issuer agent or broker-dealer agent in the jurisdiction in which such activities occur.

(H) Advisory Services to Entity versus Owners of the Entity

(1) For purposes of this rule only, an investment adviser or investment adviser representative that is providing investment advisory services to a corporation, general partnership, limited partnership, limited liability company, trust or other legal entity, other than a private fund, is not providing investment advisory services to a shareholder, general partner, member, other security holder, beneficiary or other beneficial owner of the legal entity unless the investment adviser provides investment advisory services to such owner separate and apart from the investment advisory services provided to the legal entity.

(I) No Licensing Exemption for Advisory Services to Natural Persons

(1) There is no licensing exemption under this rule for an investment adviser or investment adviser representative providing investment advisory services to a natural person.

(2) Except as provided in Subsections (D) and (E), there is no licensing exemption under this rule for an investment adviser or investment adviser representative providing investment advisory services to a private fund, such as a hedge fund, that is composed partially or entirely of natural persons.

KEY: securities, securities regulation, investment advisers, securities licensing requirements

Date of Enactment or Last Substantive Amendment: [March 11], 2010

Notice of Continuation: July 30, 2007

Authorizing, and Implemented or Interpreted Law: 61-1-3; 61-1-4; 61-1-5; 61-1-6; 61-1-13; 61-1-14; 61-1-24

**Commerce, Securities
R164-5
Broker-Dealer and Investment Adviser
Books and Records**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34125

FILED: 09/30/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposal updates references to United States Securities and Exchange Commission (SEC) rules setting forth recordkeeping requirements for broker-dealers and investment advisers and raises the threshold amount of prepaid investment advisory services requiring submission of audited financial statements by investment advisers, consistent with the threshold amount under federal rules. The proposal also gives advisers additional time following the end

of their fiscal years in which to submit financial statements when such statements are required.

SUMMARY OF THE RULE OR CHANGE: This proposal updates references to SEC recordkeeping requirements for broker-dealers and investment advisers, and increases the amount of prepaid investment advisory services triggering submission of an audited financial statement from \$500 to \$1,200 per client. The proposal also adds 30 additional days to the period within which financial statements must be submitted.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-1-24 and Section 61-1-5

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 17 CFR 275.204-2, published by Government Printing Office, 08/12/2010

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will be no additional costs or savings to the state budget because the proposal does not affect any state entities.
- ◆ **LOCAL GOVERNMENTS:** There will be no additional costs or savings to the state budget because the proposal does not affect any local governmental entities.
- ◆ **SMALL BUSINESSES:** Raising the threshold amount of fees paid in advance which trigger the submission of an audited financial statement may result in savings for investment advisers who do not meet the threshold and therefore are not required to submit an audited financial statement. Advisers required to submit such statements may experience savings from the additional 30 days added to the period in which such statements must be submitted.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Raising the threshold amount of fees paid in advance which trigger the submission of an audited financial statement may result in savings for investment advisers who do not meet the threshold and therefore are not required to submit an audited financial statement. Advisers required to submit such statements may experience savings from the additional 30 days added to the period in which such statements must be submitted.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposed rule will not increase costs and may result in savings to investment advisers who do not meet the threshold to require the submission of an audited financial statement, and those who must submit financial statements may experience savings from the additional 30 days in which to submit them.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Charles Lyons by phone at 801-530-6940, by FAX at 801-530-6980, or by Internet E-mail at clyons@utah.gov
♦ Keith Woodwell by phone at 801-530-6606, by FAX at 801-530-6980, or by Internet E-mail at kwoodwell@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 11/22/2010

AUTHORIZED BY: Keith Woodwell, Director

R164. Commerce, Securities.

R164-5. Broker-Dealer and Investment Adviser Books and Records.

R164-5-1. Recordkeeping Requirements of Broker-Dealers and Investment Advisers.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-5 and 61-1-24.

(2) This rule specifies the books and records a broker-dealer and an investment adviser must maintain.

(B) Definitions

(1) "Act" means Title 61, Chapter 1, Utah Uniform Securities Act.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "SEC" means the United States Securities and Exchange Commission.

(C) Broker-dealer requirements

(1) Unless otherwise provided by order of the SEC, each broker-dealer licensed or required to be licensed under this Act shall make, maintain and preserve books and records in compliance with SEC Rules 17a-3 (17 CFR 240.17a-3(1996)), 17a-4 (17 CFR 240.17a-4(1996)), 15c2-6 (17 CFR 240.15c2-6(1991)) and 15c2-11 (17 CFR 240.15c2-11(1996)), which are adopted and incorporated by reference.

(2) To the extent that the SEC promulgates changes to the above referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the Division for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

(D) Investment adviser requirements

(1) Except as provided in subparagraph (D)(3), unless otherwise provided by order of the SEC, each investment adviser licensed or required to be licensed under the Act shall make, maintain and preserve books and records in compliance with SEC Rule 204-2 (17 CFR 275.204-2(August 12, 2010[1996])), which is

adopted and incorporated by reference, notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940.

(2) To the extent that the SEC promulgates changes to the above-referenced rules, investment advisers in compliance with such rules as amended shall not be subject to enforcement action by the Division for violation of this rule to the extent that the violation results solely from the investment adviser's compliance with the amended rule.

(3) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of subparagraph (D), provided the investment adviser is licensed or registered in such state and is in compliance with such state's record keeping requirements.

R164-5-3. Financial Reporting of Broker-Dealers and Investment Advisers.

(A) Authority and Purpose

(1) The Division enacts this rule under authority granted by Sections 61-1-5 and 61-1-24.

(2) This rule specifies the annual financial reports required of a broker-dealer and an investment adviser.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(C) Broker-Dealer required financial statements

(1) Upon request, each broker-dealer must file with the Division audited financial statements as of the end of its fiscal year. The statements must meet the requirements of Paragraph (E).

(D) Investment Adviser required financial statements

(1) Except as provided in subparagraph (D)(2), each investment adviser who has custody or possession of client[']s funds or securities or requires payment of advisory fees six months or more in advance and in excess of \$1,2[5]00 per client shall file with the Division audited financial statements as of the end of the investment adviser's fiscal year. The statements must meet the requirements of Paragraph (E).

(2) Every investment adviser that has its principal place of business in a state other than this state shall be exempt from the requirements of subparagraph (D), provided the investment adviser is licensed or registered in such state, is in compliance with such state's financial reporting requirements, and annually files with the Division a copy of any financial reports filed with such state.

(E) Financial statement requirements

The financial statements filed pursuant to this rule must:

(1) include a balance sheet, a statement of income or operations, a statement of shareholder equity, and a statement of cash flows, accompanied by appropriate notes stating the accounting principles and practices followed in their preparation, the basis at which securities are included and other notes as may be necessary for an understanding of the statements.

(2) be prepared in accordance with generally accepted accounting principles.

(3) be audited by an independent certified public accountant. The audit must:

(a) be made in accordance with generally accepted auditing standards;

(b) include a review of the accounting system, the internal accounting controls and procedures for the safeguarding of

securities and funds including appropriate tests thereof since the prior examination.

(4) be accompanied by an unqualified opinion of the auditor as to the report of financial condition. In addition, the auditor shall submit as a supplementary opinion any comments, based upon the audit, as to any material inadequacies found to exist in the accounting system, the internal accounting controls and procedures for safeguarding securities and funds, and shall indicate any corrective action taken or proposed.

(5) The financial statements shall be filed with the Division within 12[9]0 days following the end of the investment adviser's fiscal year.

KEY: securities, securities regulation, recordkeeping, financial requirements

Date of Enactment or Last Substantive Amendment: [~~March 4, 1998~~2010]

Notice of Continuation: July 30, 2007

Authorizing, and Implemented or Interpreted Law: 61-1-5; 61-1-24

Environmental Quality, Drinking Water R309-100-4 General

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 34112
FILED: 09/23/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment updates the definition of a public water system.

SUMMARY OF THE RULE OR CHANGE: This rule clarifies the language in the State Safe Drinking Water Act at Subsection 19-4-102(6)(a)(i) which defines a public water system with these words: "has at least 15 service connections; or". The clarification added by rule identifies that a platted subdivision of 15 lots will likely result in 15 service connections and thus qualifies as a public water system for rules that relate to construction.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-4-102(6)(a)(i)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There are no costs to the state budget for this rule amendment because the rule change does not increase or decrease the workload of regulating public water systems. The rule change merely clarifies the

definition of a public water system to include subdivisions and contiguous developments that will result in 15 connections.

♦ **LOCAL GOVERNMENTS:** There are no costs to the local government budget for this rule amendment because there are no added requirements for them in regards to this clarification of the definition of public water systems.

♦ **SMALL BUSINESSES:** Land subdivisions will be affected, but there will be no increase in the cost over what is currently required. It will not change the cost of operating a public water system because it does not increase the requirements for public water systems.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no persons other than small businesses, businesses or local government entities that will have costs associated with this rule amendment. This is because the rule amendment clarifies the definition of a public water system; it does not increase the requirements for an already operating public water system.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Land subdivisions will be affected, but there will be no increase in the cost over what is currently required.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Environmental Quality agrees with the comments in the cost and compliance summaries above.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
DRINKING WATER ROOM THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Rachael Cassady by phone at 801-536-4467, by FAX at 801-536-4211, or by Internet E-mail at rcassady@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 11/22/2010

AUTHORIZED BY: Ken Bousfield , Director

**R309. Environmental Quality, Drinking Water.
R309-100. Administration: Drinking Water Program.
R309-100-4. General.**

These rules shall apply to all public drinking water systems within the State of Utah.

(1) A public drinking water system is a system, either publicly or privately owned, providing water for human consumption and other domestic uses, which:

(a) Has at least 15 service connections, [~~or~~]

(i) Delivery of drinking water, such as by a single well, to a portion of a platted subdivision or a portion of a contiguous development, either of which is under the same ownership or control, shall be considered a single public drinking water system; and

(ii) A platted subdivision or other contiguous development of 15 or more lots, under the same ownership or control, is considered to have the corresponding number of connections as there are lots; or

(b) Serves an average of at least 25 individuals daily at least 60 days out of the year.

([e]i) A ratio of 3.13 persons per connection shall be used to calculate the [population]individuals served unless, at the time of operation, more accurate information is available. The ratio is based on the statewide average persons per residence in the 2000 census.

(ii) [Therefore, n]Notwithstanding the [above stated] threshold for the number of service connections set forth in (a), a drinking water system consisting of at least 8 service connections [shall be deemed]is considered to serve 25 people, based on the ratio in (b)(i), and consequently [be]is classified as a public drinking water system, unless, at the time of operation, more accurate data can be used.

(iii) [This]The ratio in (b)(i)[shall] is only be used to determine whether, prior to construction or modification, any particular water system is considered to be a public water system.

(c) Any person or entity may [challenge]request a review of [this provision]the designation of a public water system by submitting documentation to the Executive Secretary showing that the drinking water system, upon complete build out, falls below both thresholds listed in (a) and (b) above. All decisions made by the Executive Secretary may be appealed to the Drinking Water Board.

([d]2) Submetered Properties.

([i]a) Submetered Properties means a billing process by which a property owner (or association of property owners, in the case of co-ops or condominiums) bills tenants based on metered total water use; the property owner is then responsible for payment of a water bill from a public water system.

([ii]b) A property owner who installs submeters to track usage of water by tenants on his or her property shall not be subject to these rules solely as a result of taking the administrative act of submetering and billing.

([iii]c) Owners of submetered properties shall receive all their water from a regulated public water system to qualify under the terms of R309-105-5 for exemption from monitoring requirements, except as to the selling of water.

([iv]d) This is not intended to exempt systems where the property in question has a large distribution system (piping in excess of 500 feet in length and sized larger than the normal service lateral based on a fixture unit analysis) serves a large population or serves a mixed (commercial/residential) population (e.g. many military installations/facilities or large mobile home parks or P.U.D's) from regulation as a public drinking water system as pertains to notifying the Division of the persons indicated below in ([3]5) or plan review of modifications or changes to their systems (refer to R309-500).

([e]3) The term public drinking water system includes collection, treatment, storage or distribution facilities under control

of the operator and used primarily in connection with the system. Additionally, the term includes collection, pretreatment or storage facilities used primarily in connection with the system but not under such control (see 19-4-102 of the Utah Code Annotated).~~—All public water systems are further categorized into three different types, community water (CWS), non-transient non-community water (NTNCWS), and transient non-community water (TNCWS).]~~

([2]4) Categories of Public Drinking Water Systems

Public drinking water systems are divided into three categories, as follows:

(a) "Community water system" (CWS) means a public drinking water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

(b) "Non-transient, non-community water system" (NTNCWS) means a public water system that is not a community water system and that regularly serves at least 25 of the same nonresident persons over six months per year. Examples of such systems are those serving the same individuals (industrial workers, school children, church members) by means of a separate system.

(c) "Transient non-community water system" (TNCWS) means a non-community public water system that does not serve 25 of the same nonresident persons per day for more than six months per year. Examples of such systems are those, RV park, diner or convenience store where the permanent nonresident staff number less than 25, but the number of people served exceeds 25.

(d) The distinctions between "Community", "Non-transient, non-community", and "Transient Non-community" water systems are important with respect to monitoring and water quality requirements.

([3]5) Responsibility

(a) All public drinking water systems must have a person or organization designated as the owner of the system. The name, address and phone number of this person or organization shall be supplied, in writing, to the Board.

(b) The name of the person to be contacted on issues concerning the operation and maintenance of the system shall also be provided, in writing, to the Board.

KEY: drinking water, environmental protection, administrative procedures

Date of Enactment or Last Substantive Amendment: [September 24, 2009]2010

Notice of Continuation: March 22, 2010

Authorizing, and Implemented or Interpreted Law: 19-4-104; 63G-4-202

Labor Commission, Industrial Accidents R612-2-5 Regulation of Medical Practitioner Fees

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34132

FILED: 10/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to adopt and incorporate by reference the 2010 Resource-Based Relative Value Schedule (RBRVS), the 2010 American Medical Association Current Procedural Terminology (CPT) Coding standards, and the 2011 Medical Fee Guidelines.

SUMMARY OF THE RULE OR CHANGE: The amendment incorporates the most recent annual versions of the Resource-Based Relative Value Scale (RBRVS), the American Medical Association's CPT-4 coding guidelines, and the Labor Commission's Medical Fee Guidelines.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-1-104 and Section 34A-2-101 et seq. and Section 34A-3-101 et seq.

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 2011 Medical Fee Guidelines, published by Utah Labor Commission, 2011
- ◆ Updates The Essential RBRVS, published by Ingenix, 2010
- ◆ Updates 2010 CPT Professional Edition, published by American Medical Association, 2010

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The proposed amendment will impose no additional administrative or enforcement costs on the Labor Commission, which is the state agency charged with administering and enforcing Utah's workers' compensation system. The National Council on Compensation Insurance projects that overall workers' compensation costs will increase by 0.4% as a result of adoption of the updated RBRVS and CPT standards. The Commission presumes that this increase will be passed on to the state in increased workers' compensation insurance premiums.

◆ **LOCAL GOVERNMENTS:** The National Council on Compensation Insurance projects that overall workers' compensation costs will increase by 0.4% as a result of adoption of the updated RBRVS and CPT standards. The Commission presumes that this increase will be passed on to local government in increased workers' compensation insurance premiums.

◆ **SMALL BUSINESSES:** The National Council on Compensation Insurance projects that overall workers' compensation costs will increase by 0.4% as a result of adoption of the updated RBRVS and CPT standards. The Commission presumes that this increase will be passed on to small businesses in increased workers' compensation insurance premiums.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:**

The National Council on Compensation Insurance projects that overall workers' compensation costs will increase by 0.4% as a result of adoption of the updated RBRVS and CPT standards. The Commission presumes that this increase will be passed on to all employers in increased workers' compensation insurance premiums.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Workers' compensation insurance carriers and those providing medical services to injured workers will be affected by the proposed amendment. Because the RBRVS and CPT systems are used throughout the health care industry, insurance carriers and medical providers already receive and use updates to those systems. The Commission does not anticipate that the updates required by this rule amendment will result in any additional compliance costs for those entities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The workers' compensation system uses the same relative value (RBRVS) and coding (CPT) systems that are generally used throughout the health industry. Periodically, the RBRVS and CPT systems are updated. It is therefore necessary for the Commission to also adopt those changes in order to 1) avoid confusion and 2) provide adequate payment for medical care provided to injured workers. This year's modifications to the RBRVS and CPT will result in minimal increases in payments for medical services and a corresponding minimal increase of 0.4% to workers' compensation insurance carriers and self-insured employers.

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

LABOR COMMISSION
INDUSTRIAL ACCIDENTS
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ron Dressler by phone at 801-530-6841, by FAX at 801-530-6804, or by Internet E-mail at rdressler@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 11/22/2010

AUTHORIZED BY: Sherrie Hayashi, Commissioner

**R612. Labor Commission, Industrial Accidents.
R612-2. Workers' Compensation Rules-Health Care Providers.
R612-2-5. Regulation of Medical Practitioner Fees.**

Pursuant to Section 34A-2-407(9):
A. The Labor Commission of Utah:

1. Establishes and regulates fees and other charges for medical provider services as required for the treatment of a work-related injury or illness.

2. Adopts and by this reference incorporates the National Centers for Medicare and Medicaid Services (CMS) for the Medicare Physician Fee Schedule (MPFS) "Resource-Based Relative Value Scale" (RBRVS), 20[09]10 edition, as the method for calculating reimbursement and the American Medical Association's CPT-4, 20[09]10 edition, coding guidelines.

a. The non-facility total unit value will apply in calculating the reimbursement, except that procedures provided in a facility setting shall be reimbursed at the facility total unit value and the facility may bill a separate facility charge.

b. The CPT-4 coding guidelines and RBRVS are subject to the Utah Labor Commission's [2009—2010]2011 Medical Fee Guidelines and the following Labor Commission conversion factors for medical care rendered for a work-related injury or illness, effective December 1, 20[09]10: (Conversion Rates below EFFECTIVE December 1, 2009, to be used with the RBRVS procedural Unit value as per specialty.)

Anesthesiology \$41.00 (1 unit per 15 minutes of anesthesia);

Medicine, E and M \$46.00

Evaluation and Management codes 99201 - 99204 and 99211 - 99214 \$46.00

Pathology and Laboratory 150% of Utah's published Medicare carrier

Radiology \$53.00;

Restorative Services \$46.00, with Utah code 97001 and 97003 at a 1.5 relative value unit and Utah code 97002 and 97004 at a 1.0 of relative value unit.

Surgery \$37.00;

All 20000 codes, codes 49505 thru 49525 and all 60000 codes of the CPT-4 coding guidelines \$58.00.

3. Adopts and incorporates by this reference the Utah Labor Commission's [2009—2010]2011 Medical Fee Guidelines, effective December 1, 20[09]10. The Utah Medical Fee Guidelines can be obtained from the division for a fee sufficient to recover costs of development, printing, and mailing or can be downloaded at the Labor Commission's website at <http://laborcommission.utah.gov/Provider%20Page.html#WorkersCompensation>.

4. Decides appropriate billing procedure codes when disputes arise between the medical practitioner and the employer or its insurance carrier. In no instance will the medical practitioner bill both the employer and the insurance carrier.

B. Employees cannot be billed for treatment of their work-related injuries or illnesses.

C. Discounting from the fees established by the Labor Commission is allowed only through specific contracts between a medical provider and a payor for treatment of work-related injury or illness.

D. Restocking fee 15%. Rule R612-2-16 covers the restocking fee.

E. Dental fees are not published. Rule R612-2-18 covers dental injuries.

F. Ambulance fees are not published. Rule R612-2-19 covers ambulance charges.

G. For procedures not covered by other provisions of this rule, medical providers have three options.

1. Medical providers may request preauthorization for a procedure from the insurance carrier.

2. Medical providers may present evidence to Medical Fee Committee for incorporating a procedure into the Commission's fee schedule. However, such incorporation will have prospective effect only.

3. Medical providers may apply for hearing before the Commission's Adjudication Division pursuant to Subsection 34A-2-801(1)(c) to establish a reasonable fee for the procedure.

KEY: workers' compensation, fees, medical practitioner

Date of Enactment or Last Substantive Amendment:
[November 23, 2009]2010

Notice of Continuation: April 28, 2008

Authorizing, and Implemented or Interpreted Law: 34A-2-101 et seq.; 34A-3-101 et seq.; 34A-1-104

Labor Commission, Boiler and Elevator Safety R616-3-3 Safety Codes for Elevators

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 34131

FILED: 10/01/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to adopt a new provision within the current American Society of Mechanical Engineers (ASME) code that provides optional standards for application to the design and installation of elevators with alternative suspension, compensation and governor systems in Utah. The Labor Commission's intent is to maintain uniformity between state standards and national standards.

SUMMARY OF THE RULE OR CHANGE: This rule change adopts ASME A17.6-2010 which establishes the standard for elevator suspension, compensation, and governor systems.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 34A-7-101 et seq.

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds Standard for Elevator Suspension, Compensation, and Governor Systems, published by American Society of Mechanical Engineers, July 30, 2010

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There will be no cost or savings to the state budget associated with the adoption of this code from an administrative and enforcement standpoint. The code's adoption is necessary to address alternative suspension, compensation, and governor systems for elevators that have been installed in Utah. The method by which the Division conducts its inspections, and the costs associated with these inspections will not change. From an owner and operator standpoint, there will also be no cost or savings to the state. The cost of to purchase this new section of the ASME code is \$85.
- ◆ **LOCAL GOVERNMENTS:** There will be no cost or savings to local government associated with the adoption of this code. Its adoption is necessary to address alternative suspension, compensation, and governor systems for elevators that have been installed in Utah. The method by which the Division conducts its inspections, and the costs associated with these inspections will not change. The cost of this ASME code section is \$85.
- ◆ **SMALL BUSINESSES:** There will be no cost or savings to small businesses associated with the adoption of this code. Its adoption is necessary to address alternative suspension, compensation, and governor systems for elevators that have been installed in Utah. The method by which the Division conducts its inspections, and the costs associated with these inspections will not change. The cost of this ASME code section is \$85.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No persons other than businesses and government will be affected by the adoption of this code.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no cost or savings to affected persons associated with the adoption of this code. Its adoption is necessary to address alternative suspension, compensation, and governor systems for elevators that have been installed in Utah. The method by which the Division conducts its inspections, and the costs associated with these inspections will not change. The cost of this ASME code section is \$85.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes required by this proposed rule will have no net fiscal impact on business; however, businesses enjoy competitive benefits by maintaining conformity between Utah and national standards.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Ami Windham by phone at 801-530-6850, by FAX at 801-530-6871, or by Internet E-mail at ajohnston@utah.gov
- ◆ Pete Hackford by phone at 801-530-7605, by FAX at 801-530-6871, or by Internet E-mail at phackford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 11/22/2010

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R616. Labor Commission, Boiler and Elevator Safety.

R616-3. Elevator Rules.

R616-3-3. Safety Codes for Elevators.

The following safety codes are adopted and incorporated by reference within this rule:

- A. ASME A17.1, Safety Code for Elevators and Escalators, 2007 ed. issued April 6, 2007, and amended as follows:
 - 1. Delete 2.2.2.5;
 - 2. Amend 8.6.5.8 as follows: Existing hydraulic cylinders installed below ground when found to be leaking shall be replaced with cylinders conforming to 3.18.3.4 or the car shall be provided with safeties conforming to 3.17.1 and guide rails, guide rail supports and fastenings conforming to 3.23.1. This code is issued every three years with annual addenda. New issues and addenda become mandatory only when a formal change is made to these rules. Elevators are required to comply with the A17.1 code in effect at the time of installation.
- B. ASME A17.3 - 2002 Safety Code for Existing Elevators and Escalators. This code is adopted for regulatory guidance only for elevators classified as remodeled elevators by the Division of Boiler and Elevator Safety.
- C. ASME A90.1-1992, Safety Standard for Belt Manlifts.
- D. ANSI A10.4-1990, Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations.
- E. 2006 International Building Code.
- F. ICC/ANSI A117.1-1998 Accessible and Usable Buildings and Facilities, sections 407 and 408, approved February 13, 1998.
- G. ASME A18.1-2005 Safety Standard For Platform Lifts And Stairway Chairlifts, issued November 29, 2005.
- H. ASME A17.6-2010 Standard for Elevator Suspension, Compensation, and Governor Systems.

KEY: elevators, certification, safety

Date of Enactment or Last Substantive Amendment: ~~March 24, 2008~~**2010**

Notice of Continuation: November 30, 2006

Authorizing, and Implemented or Interpreted Law: 34A-1-101 et seq.

Pardons (Board of), Administration
R671-103
 Attorneys

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 34118

FILED: 09/28/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule clarifies the role of attorneys participating in Board of Pardons proceedings.

SUMMARY OF THE RULE OR CHANGE: This rule clarifies the role of attorneys participating in Board of Pardons proceedings and outlines qualifications they must meet in order to do so.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 77-27-5 and Section 77-27-9 and Section 78A-9-103

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** It has been determined that the state's budget will not be affected by this new rule because it is only a role clarification.
- ◆ **LOCAL GOVERNMENTS:** It has been determined that local government's budget will not be affected by this new rule because it is only a role clarification.
- ◆ **SMALL BUSINESSES:** It has been determined that the budgets of small businesses will not be affected by this new rule because it is only a role clarification.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It has been determined that the budgets of other persons will not be affected by this new rule because it is only a role clarification.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because this rule is simply a role clarification.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact to any state or municipal department, agency, or entity.

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

PARDONS (BOARD OF)
 ADMINISTRATIONROOM 300
 448 E 6400 S
 SALT LAKE CITY, UT 84107-8530
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/15/2010

THIS RULE MAY BECOME EFFECTIVE ON: 11/22/2010

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.

R671-103. Attorneys.

R671-103-1. Attorneys.

(1) Only attorneys licensed to practice law in the State of Utah may appear and represent an inmate, offender, or petitioner before the Board.

(2) A person may not act as an attorney or represent any inmate, offender, or petitioner before the Board if:

(a) the person has been prohibited from doing so by Board order entered pursuant to the Board's inherent powers or this rule; or

(b) the person is disbarred or suspended from the practice of law in Utah or any other jurisdiction.

R671-103-2. Prohibiting Attorney Appearance and Representation.

(1) The Board may prohibit any attorney from representing any offender before the Board if the Board determines that the attorney:

(a) has violated any federal, state or local law or ordinance;

(b) is disbarred or suspended in Utah or any other jurisdiction;

(c) is not currently licensed by, or is not in good standing with, the Utah State Bar;

(d) has violated any rule or regulation of the Department of Corrections regarding facility integrity or security;

(e) has violated any of the Rules of Professional Responsibility as promulgated by the Utah Supreme Court; or

(f) has violated any of the Board's Administrative Rules.

KEY: parole, inmates, attorneys

Date of Enactment or Last Substantive Amendment: 2010

Authorizing, Implemented, or Interpreted Law: 77-27-5; 77-27-9; 78A-9-103

Pardons (Board of), Administration
R671-308
 Offender Hearing Assistance

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 34119

FILED: 09/28/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change clarifies the roles of attorneys in parole violation hearings, pardon hearings and commutation hearings.

SUMMARY OF THE RULE OR CHANGE: This rule change clarifies the roles of attorneys in parole violation hearings, pardon hearings and commutation hearings.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 77-27-11 and 77-27-29 and 77-27-5 and 77-27-9 and 78A-9-103

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** It has been determined that the state's budget will not be affected by this rule amendment because it is only a role clarification.
- ◆ **LOCAL GOVERNMENTS:** It has been determined that local government's budget will not be affected by this rule amendment because it is only a role clarification.
- ◆ **SMALL BUSINESSES:** It has been determined that the budgets of small businesses will not be affected by this rule amendment because it is only a role clarification.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It has been determined that the budgets of other persons will not be affected by this rule amendment because it is only a role clarification.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because this rule amendment is only a role clarification.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact to any state or municipal department, agency or entity.

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

PARDONS (BOARD OF)
 ADMINISTRATIONROOM 300
 448 E 6400 S
 SALT LAKE CITY, UT 84107-8530
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ John Green by phone at 801-261-6464, by FAX at 801-261-6481, or by Internet E-mail at jagreen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/15/2010
 THIS RULE MAY BECOME EFFECTIVE ON: 11/22/2010

AUTHORIZED BY: Clark Harms, Chairman

R671. Pardons (Board of), Administration.

R671-308. Offender Hearing Assistance.

R671-308-1. Offender Hearing Assistance.

Offenders who are deemed by the Board or a Hearing Official to be unable to effectively represent themselves at a hearing may be allowed to have any assistance the Board determines is necessary to conduct an orderly hearing. This may include a Board-appointed representative.

R671-308-2. Offender ~~Hearing~~ Legal Counsel Hearings.

(a) At parole violation hearings including evidentiary hearings, where there are no new criminal convictions, an attorney may be ~~retained by the State~~ assigned to represent parolees at State expense.

(b) An alleged parole violator may choose instead to have private attorney representation at the parolee's own expense. In each case, an offender's attorney must be admitted and licensed to practice law within the state of Utah, as defined by Utah Code Ann. Section 78A-9-103 (1953, as amended) and must comply with the Board's Administrative Rules, including Rule R671-103, Attorneys.

R671-308-3. Offender Legal Counsel -- Pardon and Commutation Hearings.

(a) In pardon or commutation proceedings, an offender or petitioner has no right, requirement or entitlement to legal representation or appointed counsel before the Board.

(b) A pardon or commutation petitioner may hire their own attorney, at their own expense, to appear or represent the petitioner before the Board. Any person representing a petitioner must meet the requirements of Subsection R671-308-2(b) and must comply with the Board's Administrative Rules.

KEY: parole, inmates

Date of Enactment or Last Substantive Amendment: ~~September 27, 2007~~ 2010

Notice of Continuation: July 25, 2007

Authorizing, Implemented, or Interpreted Law: 77-27-5; 77-27-9; 77-27-11; 77-27-29; 78A-9-103

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.

Insurance, Administration
R590-259
Dependent Coverage to Age 26
NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 34127
FILED: 09/30/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule is to ensure access to coverage for dependent children, as required under the federal Patient Protection Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119, 2010, and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029, 2010, that went into effect 09/23/2010.

SUMMARY OF THE RULE OR CHANGE: The rule has been created to ensure access to coverage for dependent children, as required by the U.S. Department of Health Human Services (HHS) and under the federal Patient Protection Affordable Care Act that went into effect 09/23/2010. As of September 23, insurers have declined coverage to dependent children until the state defines the terms of an "Open Enrollment Period." The law requires the state to define the terms of an open enrollment period.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-22-605

EMERGENCY RULE REASON AND JUSTIFICATION:
REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare.
JUSTIFICATION: Children are being denied access to health insurance coverage. HHS recently notified the states that insurers could limit enrollment of children if the state defined the terms of an open enrollment period. Instead of enrolling children until the terms of an open enrollment period are defined, insurers are denying coverage to all children. Therefore, immediate action is necessary for compliance with the Patient Protection Affordable Care Act which requires all children under age 19 access to health insurance coverage without any waiting period.

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No filings will need to be made by insurers. The change will require insurers to change their internal procedures. None of this will have a fiscal impact on the department or the state's budget.
- ◆ **LOCAL GOVERNMENTS:** Local governments will not be affected by this rule since it relates to the relationship between the department and their life insurance licensees.
- ◆ **SMALL BUSINESSES:** This rule will only impact health insurers who are considered large businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Health insurers will be required to comply with the Patient Protection Affordable Care Act by providing insurance to children. Families and children will be able to obtain coverage during an open enrollment period.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Health insurers will be required to comply with the Patient Protection Affordable Care Act by providing insurance to children.

Families and children will be able to obtain coverage during an open enrollment period.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule itself does not create the fiscal impact but rather requires insurers to implement the requirements of the new federal law.

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

EFFECTIVE: 09/30/2010

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-259. Dependent Coverage to Age 26.

R590-259-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3) and 31A-22-605(4).

R590-259-2. Purpose and Scope.

(1) The purpose of this rule is to facilitate the implementation of certain provisions of the Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, 124 Stat. 119, 2010, and the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029, 2010.

(2)(a) Except as provided in R590-259-2(2)(b), this rule applies to any health insurer that provides individual health benefit plan coverage or group health benefit plan coverage.

(b) Subject to R590-259-7, this rule applies to grandfathered plan coverage for individual health benefit plan coverage and group health benefit plan coverage.

R590-259-3. Definitions.

In addition the definitions in Section 31A-1-301, the following definitions shall apply for the purposes of this rule.

(1) "Grandfathered plan coverage" means coverage provided by a health insurer in which an individual was enrolled on March 23, 2010 for as long as it maintains that status in accordance with federal regulations.

(2) "Group health insurance coverage" means, in connection with a group health plan, health insurance coverage offered in connection with such plan.

(3) "Group health plan" means an employee welfare benefit plan as defined in section 3(1) of the Employee Retirement Income Security Act of 1974, ERISA, to the extent that the plan

provides medical care, as defined in R590-259-3(7), and including items and services paid for as medical care to employees, including both current and former employees, or their dependents as defined under the terms of the plan directly or through insurance, reimbursement, or otherwise.

(4)(a) "Health benefit plan" means a policy, contract, certificate or agreement offered by an insurer to provide, deliver, arrange for, pay for or reimburse any of the costs of health care services.

(b) "Health benefit plan" includes short-term and catastrophic health insurance policies, and a policy that pays on a cost-incurred basis, except as otherwise specifically exempted in this definition.

(c) "Health benefit plan" does not include:

(i) coverage only for accident, or disability income insurance, or any combination thereof;

(ii) coverage issued as a supplement to liability insurance; (iii) liability insurance, including general liability insurance and automobile liability insurance;

(iv) workers' compensation or similar insurance;

(v) automobile medical payment insurance;

(vi) credit-only insurance;

(vii) coverage for on-site medical clinics; and

(viii) other similar insurance coverage, specified in federal regulations issued pursuant to Pub. L. No. 104-191, under which benefits for medical care are secondary or incidental to other insurance benefits.

(d) "Health benefit plan" does not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan:

(i) limited scope dental or vision benefits;

(ii) benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; or

(iii) other similar, limited benefits specified in federal regulations issued pursuant to Pub. L. No. 104-191.

(e) "Health benefit plan" does not include the following benefits if the benefits are provided under a separate policy, certificate or contract of insurance, there is no coordination between the provision of the benefits and any exclusion of benefits under any group health plan maintained by the same plan sponsor, and the benefits are paid with respect to an event without regard to whether benefits are provided with respect to such an event under any group health plan maintained by the same plan sponsor:

(i) coverage only for a specified disease or illness; or

(ii) hospital indemnity or other fixed indemnity insurance.

(f) "Health benefit plan" does not include the following if offered as a separate policy, certificate or contract of insurance:

(i) Medicare supplemental health insurance as defined under section 1882(g)(1) of the Social Security Act;

(ii) coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code, Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); or

(iii) similar supplemental coverage added to coverage under a group health plan.

(5)(a) "Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, which includes a health benefit plan provided to individuals

through a trust arrangement, association or other discretionary group that is not an employer plan, but does not include short-term limited duration insurance.

(b) For purposes of this subsection, a health insurer offering health insurance coverage in connection with a group health plan shall not be deemed to be a health insurer offering individual health insurance coverage solely because the insurer offers a conversion policy.

(6) "Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

(7) "Medical care" means amounts paid for:

(a) the diagnosis, care, mitigation, treatment or prevention of disease, or amounts paid for the purpose of affecting any structure or function of the body;

(b) transportation primarily for and essential to medical care referred to in R590-259-3(7)(a); and

(c) insurance covering medical care referred to in R590-259-3(7)(a) and (b).

(8) "Participant" adopts the meaning given under section 3(7) of ERISA.

(9) "Subscriber" means, in the case of individual health insurance contract, the person in whose name the contract is issued.

R590-259-4. Eligibility for Dependent Coverage to Age 26; Definition of Dependent; Uniformity of Plan Terms.

(1) A health insurer that makes available dependent coverage of children shall make that coverage available for children until attainment of 26 years of age.

(2) With respect to a child who has not attained 26 years of age, a health insurer shall not define dependent for purposes of eligibility for dependent coverage of children other than the terms of a relationship between a child and the plan participant, and, in the individual market, primary subscriber.

(3) A health insurer shall not deny or restrict coverage for a child who has not attained 26 years of age:

(a) based on the presence or absence of the child's financial dependency upon the participant, primary subscriber or any other person, residency with the participant and in the individual market the primary subscriber, or with any other person, student status, employment or any combination of those factors; or

(b) based on eligibility for other coverage, except as provided in R590-259-7.

(3) Nothing in this rule shall be construed to require a health insurer to make coverage available for the child of a child receiving dependent coverage.

(4) The terms of coverage in a health benefit plan offered by a health insurer providing dependent coverage of children cannot vary based on age except for children who are 26 years of age or older.

R590-259-5. Individuals Whose Coverage Ended by Reason of Cessation of Dependent Status - Applicability; Opportunity to Enroll; Written Notice; Effective Date.

(1) This section applies to any child:

(a) whose coverage ended, or who was denied coverage, or was not eligible for group health insurance coverage or individual health insurance coverage under a health benefit plan because, under the terms of coverage, the availability of dependent

coverage of a child ended before the attainment of 26 years of age; and

(b) who becomes eligible, or is required to become eligible, for coverage on the first day of the first plan year and, in the individual market, the first day of the first policy year, beginning on or after September 23, 2010 by reason of the provisions of this section.

(2)(a) If group health insurance coverage or individual health insurance coverage, in which a child described in R590-259-5(1) is eligible to enroll, or is required to become eligible to enroll, in the coverage in which the child's coverage ended or did not begin for the reasons described in R590-259-5(1), and if the health insurer is subject to the requirements of this section the health insurer shall give the child an opportunity to enroll that continues for at least 30 days.

(3)(a) The insurer shall provide written notice of the opportunity to enroll beginning not later than the first day of the first plan and in the individual market the first day of the first policy year, beginning on or after September 23, 2010.

(b) The notice of opportunity to enroll shall include a statement that children whose coverage ended, or who were denied coverage, or were not eligible for coverage, because the availability of dependent coverage of children ended before the attainment of 26 years of age are eligible to enroll in the coverage.

(c)(i) The notice may be provided to an employee on behalf of the employee's child and, in the individual market, to the primary subscriber on behalf of the primary subscriber's child.

(ii) For group health insurance coverage:

(A) the notice may be included with other enrollment materials that the health insurer distributes to employees, provided the statement is prominent; and

(B) if a notice satisfying the requirements of this section is provided to an employee whose child is entitled to an enrollment opportunity under R590-259-5(2), the obligation to provide the notice of enrollment opportunity under R590-259-5(3) with respect to that child is satisfied.

(d) The written notice shall be provided beginning not later than the first day of the first plan year and in the individual market the first day of the first policy year, beginning on or after September 23, 2010.

(4) For an individual who enrolls under R590-259-5(2), the coverage shall take effect not later than the first day of the first plan year and, in the individual market, the first day of the first policy year, beginning on or after September 23, 2010.

R590-259-6. Individuals Whose Coverage Ended by Reason of Cessation of Dependent Status - Group Health Plan Special Enrollee.

(1) A child enrolling in group health insurance coverage pursuant to R590-259-5 shall be treated as if the child were a special enrollee, as provided under 45 CFR Section 146.117(d).

(2)(a) The child and, if the child would not be a participant once enrolled, the participant through whom the child is otherwise eligible for coverage under the plan, shall be offered all the benefit packages available to similarly situated individuals who did not lose coverage by reason of cessation of dependent status.

(b) For purposes of this subsection, any difference in benefits or cost-sharing requirements constitutes a different benefit package.

(3) The child shall not be required to pay more for coverage than similarly situated individuals who did not lose coverage by reason of cessation of dependent status.

R590-259-7. Grandfathered Group Health Plans - Applicability.

(1) For plan years beginning before January 1, 2014, a group health plan providing group health insurance coverage that is a grandfathered plan and makes available dependent coverage of adult children may exclude an adult child who has not attained 26 years of age from coverage only if the adult child is eligible to enroll in an eligible employer-sponsored health benefit plan, as defined in section 5000A(f)(2) of the Internal Revenue Code, other than the group health plan of a parent.

(2) For plan years, beginning on or after January 1, 2014, a group health plan providing group health insurance coverage that is a grandfathered plan shall comply with the requirements of R590-259-4 through 6.

R590-259-8. Open Enrollment Period.

(1) (a) If a health insurer offers an individual health benefit plan beginning on or after September 23, 2010, a health insurer must offer open enrollment periods each year that:

(i) begin November 1 and extends through December 15 for coverage effective January 1; and

(ii) begin May 1 and extends through June 15 for coverage effective July 1.

(b) Coverage shall become effective on the day indicated in R590-259-8(1)(a), except that if mutually agreed upon by the applicant and the insurer, an alternative effective date may be selected.

(3) During an open enrollment period, all children under the age of 19 shall be offered coverage on a guaranteed issue basis and without any limitations, pre-existing exclusions or riders based on health status.

(4) Written notice for an open enrollment period, including notice written in electronic format, must include the enrollment period and instructions on how to enroll.

(5) The notice must be provided in electronic format by prominently posting such notice on the insurer's public website at least 30 days prior to the open enrollment period through the end of the open enrollment period.

(6)(a) Nothing in this rule prohibits a health insurer from allowing year-round open enrollment for dependents.

(b) Health insurers offering year-round open enrollment must post such information on the insurer's web site.

R590-259-9. Special Enrollment for Qualifying Events.

Nothing in this rule shall alter an applicant's ability to obtain health insurance during a special enrollment period, outside of the open enrollment period, resulting from a qualifying event as defined by Health Insurance Portability and Accountability Act (HIPAA).

R590-259-10. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-259-11. Enforcement Date.

The department will begin enforcing the provisions of this rule immediately.

R590-259-12. 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: health insurance open enrollment

Date of Enactment or Last Substantive Amendment: September 30, 2010

Authorizing, and Implemented or Interpreted Law: 31A-2-201, 31A-22-605

**Public Safety, Fire Marshal
R710-9
Rules Pursuant to the Utah Fire
Prevention Law**

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 34128

FILED: 09/30/2010

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Fire Prevention Board directed that a 120-Day (Emergency) Filing be enacted that amends the rule to prohibit the use of antifreeze in new construction in residences and dwelling unit portions of occupancies because of the concern of the ignition of the antifreeze in the fire sprinkler system. The Board also proposes to require that existing automatic fire sprinkler systems that are drained shall be refilled with a maximum amount of antifreeze depending on the type of antifreeze selected.

SUMMARY OF THE RULE OR CHANGE: In Subsection R710-9-1(1.4), the Board proposes to adopt as an incorporated reference the 2009 International Fire Code as adopted and amended by the Utah State Legislature. In Subsections R710-9-10(10.1), (10.2), and (10.3), the Board proposes to prohibit in new construction the use of antifreeze in automatic fire sprinkler systems in residences and dwelling unit portions of occupancies. In Subsection R710-9-10(10.4), the Board proposes to require that existing automatic fire sprinkler systems that are drained of the antifreeze can only be refilled to a maximum concentration of 40% propylene glycol or a maximum concentration of 50% glycerin.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204 and Subsection 53-7-106(5)

EMERGENCY RULE REASON AND JUSTIFICATION:
 REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare.
JUSTIFICATION: There have been two cases of ignition of the antifreeze used in the fire sprinkler system when a fire occurred and the sprinkler head fused. Both fires caused injury and death to the occupants. The latest fire occurred in Herriman, Utah, badly burning a mother and small son. The occurrence is small and rare but under certain specific conditions, you can have spraying fire when the fire sprinkler fuses with antifreeze. The fire ignites the alcohol in the antifreeze which burns the occupants. The length of the fire is quite short before the continued spray extinguishes the fire, but damage to human skin and other key elements such as lungs is disastrous.

MATERIALS INCORPORATED BY REFERENCES:
 ♦ Adds International Fire Code, published by International Code Council, Inc., 03/01/2009

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** There would be no aggregate anticipated cost or savings to the state budget because these amendments do not affect the activities of the state.
 ♦ **LOCAL GOVERNMENTS:** There would be no aggregate anticipated cost or savings to local government because these amendments do not affect the activities of local government.
 ♦ **SMALL BUSINESSES:** There would be an aggregate anticipated cost to small businesses of approximately \$50 per fire sprinkler head to install fire sprinkler systems in residences. The 25% increase per head would be to redesign the fire sprinkler system so that the usage of antifreeze is not required for freezing or a dry or preaction system would be installed. A total aggregate amount of increase for an average home would be approximately \$1,000.
 ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There would be an aggregate anticipated cost to persons other than small businesses of approximately \$50 per fire sprinkler head to install fire sprinkler systems in residences. The 25% increase per head would be to redesign the fire sprinkler system so that the usage of antifreeze is not required for freezing or a dry or preaction system would be installed in the areas of the residence where it would freeze. A total aggregate amount of increase for an average home would be approximately \$1,000 on a fire sprinkler system that usually would have approximately 20 heads.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for affected persons would be an approximate \$50 increase per fire sprinkler head to redesign the automatic fire sprinkler system that would not require the use on antifreeze to prevent freezing of the lines which would increase the cost to install an automatic fire sprinkler system about 25% more than it currently costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
 There would be an approximate increase of 25% in the installation of automatic fire sprinkler systems in the State of Utah. The continued use of large antifreeze systems in automatic fire sprinkler systems has now proven to be a life threatening hazard to the occupants of the residence. Under specific conditions, when the automatic fire sprinkler system opens, the fire can ignite the antifreeze and cause a spraying type fire for a very short period of time. Even with the 25% increase in installation costs, this amendment needs to be enacted to prevent the burning injuries or death caused in this very rare situation.

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

EFFECTIVE: 10/01/2010

AUTHORIZED BY: Ron Morris , Utah State Fire Marshal

R710. Public Safety, Fire Marshal.
R710-9. Rules Pursuant to the Utah Fire Prevention Law.
R710-9-1. Title, Authority, and Adoption of Codes.
 1.1 These rules shall be known as the "Rules Pursuant to the Utah Fire Prevention Law", and may be cited as such, and will be hereafter referred to as "these rules".
 1.2 These rules are promulgated in accordance with Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, as amended.
 1.3 These rules are adopted by the Utah Fire Prevention Board to provide minimum rules for safeguarding life and property from the hazards of fire and explosion, for board meeting conduct, procedures to amend incorporated references, establishing board subcommittees, enforcement of the rules of the State Fire Marshal, and deputizing Special Deputy State Fire Marshals.
 1.4 There is further adopted as part of these rules the following codes which are incorporated by reference:
 1.4.1 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, except as amended by provisions listed in R710-9-10, et seq.
 1.5 Copies of the above code are on file in the Office of Administrative Rules and the Office of the State Fire Marshal.

R710-9-10. Amendments and Additions.
The following amendments and additions are hereby adopted by the Board for application statewide:

10.1 IFC, Chapter 9, Section 903.3.1.1 is amended by adding the following subsection: 903.3.1.1.2 Antifreeze Prohibited. The use of antifreeze in automatic sprinkler systems in new construction is prohibited in the dwelling unit portion of an occupancy installed in accordance with NFPA 13.

10.2 IFC, Chapter 9, Section 903.3.1.2 is amended by adding the following subsection: 903.3.1.2.2 Antifreeze Prohibited. The use of antifreeze in automatic sprinkler systems in new construction is prohibited in the dwelling unit portion of an occupancy installed in accordance with NFPA 13R.

10.3 IFC, Chapter 9, Section 903.3.1.3 is amended by adding the following subsection: 903.3.1.3.1 Antifreeze Prohibited. The use of antifreeze in automatic sprinkler systems in new construction installed in accordance with NFPA 13D is prohibited.

10.4 IFC, Chapter 9, Section 903.5 is amended to add the following subsection: 903.5.1 Antifreeze Replacement. Whenever the automatic sprinkler system protecting residences and dwelling units of mixed occupancies that use antifreeze is drained, the replacement antifreeze shall be properly mixed and tested, but shall not exceed a maximum concentration of 40% propylene glycol or a maximum concentration of 50% glycerin.

R710-9-[40]11. 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-[44]12. 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-[42]13. Adjudicative Proceedings.

[42]13.1 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.

[42]13.2 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.

[42]13.3 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.

[42]13.4 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.

[42]13.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

[42]13.6 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.

[42]13.7 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.

[42]13.8 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: October 1, 2010

Notice of Continuation: June 8, 2007

Authorizing, and Implemented or Interpreted Law: 53-7-204

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.

Administrative Services, Administrative Rules **R15-1** Administrative Rule Hearings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 34104
FILED: 09/21/2010

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: Subsections 63G-3-402(1)(a) and 63G-3-402(1)(n) require the Division to establish all hearing procedures necessary to make rules under the Utah Administrative Rulemaking Act, to administer the Act, and to require agency compliance with hearing procedures.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received since the rule was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 63G-3-302 establishes state policy governing rulemaking hearings. The provisions of Rule R15-1 are mandated by Subsections 63G-3-402(1)(a) and 63G-3-402(1)(n). Rule R15-1 provides procedures governing mandatory rulemaking hearings. Hearings are mandatory when a specific provision of law requires a hearing or when

no fewer than ten persons or an organization with no fewer than 10 members requests that the agency to hold a hearing within 15 days of the rules publication. A rulemaking hearing provides a meaningful opportunity for citizens to learn about, become involved with, and influence administrative policy making. Comments made by persons at rulemaking hearings become part of the administrative record in which an agency justifies its regulatory decisions. This rule is necessary and should be continued to provide consistent guidelines for mandatory rulemaking hearings.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
ADMINISTRATIVE RULES
ROOM 4120 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kenneth Hansen by phone at 801-538-3777, by FAX at 801-359-0759, or by Internet E-mail at khansen@utah.gov

AUTHORIZED BY: Kenneth Hansen, Director

EFFECTIVE: 09/21/2010

Administrative Services, Administrative Rules **R15-2** Public Petitioning for Rulemaking

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 34105
FILED: 09/21/2010

AUTHORIZED BY: Kenneth Hansen, Director

EFFECTIVE: 09/21/2010

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 63G-3-601(2) requires the Division to promulgate administrative rules governing rulemaking petitions and to prescribe the form for petitions made under Section 63G-3-601.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received since this rule was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 63G-3-601 permits interested persons to petition an agency to enact, amend, or repeal a rule. Subsection 63G-3-601(2) mandates that the Division "prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition." Rule R15-2 establishes petitioning procedures and requires petitioners to provide specific information. Rule R15-2 also establishes procedures governing agency consideration and disposition of rulemaking petitions. Therefore, this rule should be continued. Rulemaking petitions provide citizens an important opportunity to directly influence the content of agency rules. Subsections 63G-3-601(5) and (6) requires an agency or board to respond to a rulemaking petition within 60 or 80 days respectively from receipt of the petition. A rulemaking petition also constitutes the administrative remedy which, with few exceptions, must be exhausted before a person may ask the court for relief as provided in Section 63G-3-602.

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

ADMINISTRATIVE SERVICES
ADMINISTRATIVE RULES
ROOM 4120 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Kenneth Hansen by phone at 801-538-3777, by FAX at 801-359-0759, or by Internet E-mail at khansen@utah.gov

Administrative Services, Administrative Rules **R15-3**

Definitional Clarification of Administrative Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 34106
FILED: 09/21/2010

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 63G-3-402(1) requires the Division to administer the Utah Administrative Rulemaking Act, Title 63G, Chapter 3, and to require state agencies to comply with filing, publication, and hearing procedures. Subsection 63G-3-301(2) requires agencies to comply with rules made by the division to implement the 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: No written comments have been received since this rule was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R15-3 clarifies the role of rules in limiting agency discretion pursuant to Subsection 63G-3-201(8); provides standards for an agency to follow when making amendments to materials it incorporates by reference into its rules pursuant to Subsection 63G-3-201(7); requires an agency to provide a summary of materials incorporated by reference as part of the rule analysis summary; requires an agency to comply with copyright laws when providing the Division a copy of materials incorporated by reference pursuant to Subsection 63G-3-201(7)(d); and limits the type of material that may be included in rule, consistent with Subsection 63G-3-201(7)(a)(iv). This rule provides necessary clarification to the statute. It ensures that materials incorporated by reference are available. It helps facilitate the broad distribution of rule text. Therefore, this rule should be continued. Clear, consistent administrative

rules increase the likelihood of compliance by both members of the public and the agency.

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

ADMINISTRATIVE SERVICES
ADMINISTRATIVE RULES
ROOM 4120 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Kenneth Hansen by phone at 801-538-3777, by FAX at 801-359-0759, or by Internet E-mail at khansen@utah.gov

AUTHORIZED BY: Kenneth Hansen, Director

EFFECTIVE: 09/21/2010

Administrative Services, Administrative Rules **R15-4**

Administrative Rulemaking Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 34107
FILED: 09/21/2010

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 63G-3-402(1) requires the Division to administer the Utah Administrative Rulemaking Act, Title 63G, Chapter 3; to establish all filing, publication, and hearing procedures necessary to make rules; and to require state agencies to comply with filing, publication, and hearing procedures. Subsection 63G-3-301(2) requires agencies to comply with rules made by the Division to implement the 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: No written comments have been received since this rule was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY

DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R15-4 establishes publication dates for the Utah State Bulletin and Utah State Digest pursuant to Subsections 63G-3-402(1)(d) and 63G-3-402(1)(f); establishes filing and publication deadlines; clarifies how the 30-day comment period is calculated; clarifies filing requirements for notices of effective date, nonsubstantive changes, changes in proposed rules, and 120-day (emergency) rules; clarifies how rule text is to be marked to show changes; and provides that changes not correctly marked may or may not, at the discretion of the director or his designee, be codified. This rule is necessary and should be continued because it ensures the statutory minimum level of public access to agency administrative rules; it helps ensure consistent application of rulemaking procedures across state agencies; and it establishes the Division's rule filing standards so that a state agency can know what to expect when it engages in rulemaking.

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

ADMINISTRATIVE SERVICES
ADMINISTRATIVE RULES
ROOM 4120 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Kenneth Hansen by phone at 801-538-3777, by FAX at 801-359-0759, or by Internet E-mail at khansen@utah.gov

AUTHORIZED BY: Kenneth Hansen, Director

EFFECTIVE: 09/21/2010

Administrative Services, Administrative Rules **R15-5**

Administrative Rules Adjudicative Proceedings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 34109
FILED: 09/22/2010

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE

OR REQUIRE THE RULE: Sections 63G-3-301 and 63G-4-202 permit an agency to designate adjudicative proceedings as informal. If the agency chooses to do so, it must do so by rule. Section 63G-4-503 requires each agency to issue rules that govern procedures for declaratory orders. Subsection 63G-3-402(1)(n) requires the division to administer the Utah Administrative Rulemaking Act, Title 63G, Chapter 3.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received since this rule was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Upon review of this rule, the Division has determined that it is no longer necessary because statute provides: 1) that the division has authority to make nonsubstantive changes; and 2) a process for a person to challenge an administrative rule. The Division has provided this review to comply with the procedures of Section 63G-3-305 and intends to file a notice of proposed rule to repeal this rule in the near future.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 ADMINISTRATIVE RULES
 ROOM 4120 STATE OFFICE BLDG
 450 N STATE ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kenneth Hansen by phone at 801-538-3777, by FAX at 801-359-0759, or by Internet E-mail at khansen@utah.gov

AUTHORIZED BY: Kenneth Hansen, Director

EFFECTIVE: 09/22/2010

**Commerce, Real Estate
 R162-10
 Administrative Procedures**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 34117
 FILED: 09/27/2010

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 61-2f-103(1)(a) gives the Real Estate Commission and the Division authority to make rules for the administration of the chapter. Pursuant to Subsection 61-2f-103(c), in administering the chapter, the Real Estate Commission and the Division have the task of conducting administrative hearings in licensing and disciplinary matters. Therefore, where rules are needed to govern administrative hearings, it is within their grant of authority for the Real Estate Commission and the Division to promulgate such rules as long as they are not in conflict with Title 63G, Chapter 4, the Utah Administrative Procedures 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: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Real Estate Commission holds informal licensing hearings almost every month and frequently holds informal disciplinary hearings as well. In so doing, the Commission uses and enforces the provisions contained in the administrative procedures rule. Therefore, continuation of the rule is justified.

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

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

AUTHORIZED BY: Deanna Sabey, Director

EFFECTIVE: 09/27/2010

Community And Culture, Indian Affairs
R230-1
 Native American Grave Protection and
 Repatriation

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 34098
 FILED: 09/16/2010

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 9-9-403(2) authorizes the Division of Indian Affairs to make rules for the disposal of ancient Native American remains consistent with Title 9, Chapter 8, Part 3, Antiquities, and in consultation with Native American groups, representatives of repositories, and the review committee established under Section 9-9-405.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received during or 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: Rule R230-1 defines the administrative process of repatriation, including setting time limits for agency reporting, tribal claiming, and outlines a process for the reinterment of remains that are unclaimed. Without this rule ancient Native American human remains would not have an administrative process for repatriation. Therefore, this rule should be continued.

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

COMMUNITY AND CULTURE
 INDIAN AFFAIRS ROOM 103
 324 S STATE ST
 SALT LAKE CITY, UT 84111-5223
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Forrest Cuch by phone at 801-538-8788, by FAX at 801-538-8803, or by Internet E-mail at fscuch@utah.gov
 ♦ Rebecca Nelson by phone at 801-538-8767, by FAX at 801-538-8888, or by Internet E-mail at rebeccanelson@utah.gov

AUTHORIZED BY: Forrest Cuch , Director

EFFECTIVE: 09/16/2010

Education, Administration
R277-444
 Distribution of Funds to Arts and
 Science Organizations

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 34113
 FILED: 09/24/2010

**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 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Legislature has continued to provide funding for distribution to arts and science organizations through the Utah State Board of Education to provide opportunities for students to participate in arts and science programs and performances. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

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

EFFECTIVE: 09/24/2010

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

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

EFFECTIVE: 09/24/2010

Education, Administration

R277-602

Special Needs Scholarships - Funding and Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 34114
FILED: 09/24/2010

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 53A-1a-706(5)(b) requires the Utah State Board of Education to provide rules to establish timelines for payments to private schools. Section 53A-1a-707 requires the Utah State Board of Education to provide rules about eligibility of students for scholarships and application process for students to participate in the scholarship program.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Legislature continues to provide funding for the Special Needs Scholarship Program and Utah law continues to require that the Utah State board of Education provide rules to administration of the program. Therefore, this rule should be continued.

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

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

Health, Health Systems Improvement, Primary Care And Rural Health

R434-100

Physician Visa Waiver

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 34129
FILED: 09/30/2010

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 26-1-18 allows the statutory authority to the Utah Department of Health as the health, health planning, and medical assistance authority of the state and is the sole state agency for administration of federally assisted state programs or plans for public health, health planning, maternal and child health, crippled children's services, and medical assistance. The Conrad State 30 J-1 Visa Waiver Program is a federally assisted program managed by the Utah Department of Health.

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 were received when the rule change was made in September 2008. No comments have been received on the Conrad 30 J-1 Visa Waiver Program from the State, local governments, small businesses, or other persons other than businesses.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule should continue because the Utah Department of Health continues to be designated by the United States Department of State (USDOS) and the United States Citizenship and Immigration Service (USCIS) as the agency approved to review and recommend Conrad 30 J-1

Visa Waivers to eligible physicians. The Utah Department of Health continues to have the authority to recommend to the USDOS waivers, which they then send on to the USCIS for final approval and granting. Conrad 30 J-1 Visa Waiver requests continue to come into the Utah Department of Health from physicians and health care facilities needing physicians to serve Utah's medically underserved populations.

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

HEALTH
HEALTH SYSTEMS IMPROVEMENT,
PRIMARY CARE AND RURAL HEALTH

3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Erin Olsen by phone at 801-273-6618, by FAX at 801-273-4146, or by Internet E-mail at elolsen@utah.gov

AUTHORIZED BY: David Sundwall, Executive Director

EFFECTIVE: 09/30/2010

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

Capitol Preservation Board (State)

Administration

No. 33843 (AMD): R131-13. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation
Published: 08/15/2010
Effective: 09/22/2010

No. 33845 (NEW): R131-15. State Construction Contracts and Drug and Alcohol Testing
Published: 08/15/2010
Effective: 09/22/2010

Commerce

Occupational and Professional Licensing

No. 33865 (AMD): R156-41. Speech-Language Pathology and Audiology Licensing Act Rule
Published: 08/15/2010
Effective: 09/21/2010

Environmental Quality

Drinking Water

No. 33847 (AMD): R309-215-16. Groundwater Rule
Published: 08/15/2010
Effective: 09/21/2010

Environmental Response and Remediation

No. 33779 (REP): R311-501. Illegal Drug Operations Site Reporting and Decontamination Act, Contesting an Initial Order or Notice
Published: 07/15/2010
Effective: 09/28/2010

Public Safety

Fire Marshal

No. 33870 (AMD): R710-8. Day Care Rules
Published: 08/15/2010
Effective: 09/21/2010

No. 33880 (AMD): R710-11. Fire Alarm System Inspecting and Testing

Published: 08/15/2010
Effective: 09/21/2010

Tax Commission

Auditing

No. 33837 (AMD): 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
Published: 08/01/2010
Effective: 09/23/2010

No. 33848 (AMD): R865-19S-4. Collection of Tax Pursuant to Utah Code Ann. Section 59-12-107

Published: 08/15/2010
Effective: 09/23/2010

No. 33849 (AMD): R865-19S-33. Admissions and User Fees Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103

Published: 08/15/2010
Effective: 09/23/2010

No. 33850 (AMD): R865-19S-64. Morticians, Undertakers and Funeral Directors Pursuant to Utah Code Ann. Section 59-12-103

Published: 08/15/2010
Effective: 09/23/2010

No. 33852 (AMD): R865-19S-80. Printers' Purchases and Sales Pursuant to Utah Code Ann. Section 59-12-103

Published: 08/15/2010
Effective: 09/23/2010

No. 33853 (AMD): R865-19S-85. Sales and Use Tax Exemptions for Certain Purchases by a Manufacturing Facility Pursuant to Utah Code Ann. Section 59-12-104
Published: 08/15/2010
Effective: 09/23/2010

No. 33854 (AMD): R865-19S-109. Sales Tax Nature of Veterinarians' Purchases and Sales Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104
Published: 08/15/2010
Effective: 09/23/2010

No. 33855 (AMD): R865-19S-111. Graphic Design Services Pursuant to Utah Code Ann. Section 59-12-103
Published: 08/15/2010
Effective: 09/23/2010

No. 33856 (AMD): R865-19S-121. Sales and Use Tax Exemptions for Certain Purchases by a Mining Facility Pursuant to Utah Code Ann. Section 59-12-104
Published: 08/15/2010
Effective: 09/23/2010

No. 33857 (AMD): R865-19S-122. Sales and Use Tax Exemptions for Certain Purchases by a Web Search Portal Establishment Pursuant to Utah Code Ann. Section 59-12-104
Published: 08/15/2010
Effective: 09/23/2010

Property Tax
No. 33794 (AMD): R884-24P-33. 2010 Personal Property Valuation Guides and Schedules Pursuant to Utah Code Ann. Section 59-2-301
Published: 07/15/2010
Effective: 09/23/2010

End of the Notices of Rule Effective Dates Section

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2010 through October 01, 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/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Administrative Rules</u>					
R15-1	Administrative Rule Hearings	34104	5YR	09/21/2010	Not Printed
R15-2	Public Petitioning for Rulemaking	34105	5YR	09/21/2010	Not Printed
R15-3	Definitional Clarification of Administrative Rule	34106	5YR	09/21/2010	Not Printed
R15-4	Administrative Rulemaking Procedures	33437	NSC	03/29/2010	Not Printed
R15-4	Administrative Rulemaking Procedures	34107	5YR	09/21/2010	Not Printed
R15-5	Administrative Rules Adjudicative Proceedings	34109	5YR	09/22/2010	Not Printed
<u>Archives</u>					
R17-7-3	Archives/ Research Room/Access to Records	33320	AMD	05/17/2010	2010-3/12
<u>Debt Collection</u>					
R21-3	Debt Collection Through Administrative Offset	33564	NSC	07/01/2010	Not Printed
R21-3	Debt Collection Through Administrative Offset	33778	NSC	07/26/2010	Not Printed
<u>Facilities Construction and Management</u>					
R23-1	Procurement of Construction	33621	AMD	07/08/2010	2010-11/6
R23-2-15	Negotiation and Appointment	33766	NSC	07/01/2010	Not Printed
R23-7	State Construction Contracts and Drug and Alcohol Testing	33622	NEW	07/08/2010	2010-11/16
R23-22	General Procedures for Acquisition and Selling of Real Property	33623	AMD	07/08/2010	2010-11/19
R23-22-7	Requirements for the Disposition of Real Property by DFCM	33683	NSC	07/08/2010	Not Printed
R23-23	Health Reform -- Health Insurance Coverage in State Contracts -- Implementation	33634	AMD	07/08/2010	2010-11/23
R23-26	Dispute Resolution	33360	5YR	02/01/2010	2010-4/79
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	33618	AMD	08/01/2010	2010-11/26
R25-7-10	Reimbursement for Transportation	33302	AMD	04/21/2010	2010-3/12
<u>Fleet Operations, Surplus Property</u>					
R28-2	Surplus Firearms	33706	AMD	08/19/2010	2010-13/4
<u>Purchasing and General Services</u>					
R33-3	Source Selection and Contract Formulation	33650	AMD	07/08/2010	2010-11/28
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
<u>Records Committee</u>					
R35-1-4	Committee Minutes	33335	AMD	05/17/2010	2010-4/16
R35-1-4	Committee Minutes	33436	NSC	05/17/2010	Not Printed
R35-1a	State Records Committee/Definitions	33399	5YR	02/22/2010	2010-6/35

Risk Management

R37-1	Risk Management General Rules	33390	AMD	06/01/2010	2010-5/2
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

AGRICULTURE AND FOOD

Administration

R51-1	Public Petitions for Declaratory Rulings	34029	5YR	08/31/2010	2010-18/109
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Animal Industry

R58-7	Livestock Markets, Satellite Video Livestock Auction Market, Livestock Sales, Dealers and Livestock Market Weighpersons	33326	5YR	01/14/2010	2010-3/87
R58-10	Meat and Poultry Inspection	33329	5YR	01/14/2010	2010-3/87
R58-11	Slaughter of Livestock	33997	5YR	08/25/2010	2010-18/109
R58-12	Record Keeping and Carcass Identification at Meat Exempt (Custom Cut) Establishments	33996	5YR	08/25/2010	2010-18/110
R58-13	Custom Exempt Slaughter	33995	5YR	08/24/2010	2010-18/110
R58-15	Collection of Annual Fees for the Wildlife Damage Prevention Act	33999	5YR	08/25/2010	2010-18/111
R58-16	Swine Garbage Feeding	33994	5YR	08/24/2010	2010-18/112
R58-17	Aquaculture and Aquatic Animal Health	33327	5YR	01/14/2010	2010-3/88
R58-20-5	Facilities	33217	AMD	01/27/2010	2009-24/4
R58-21	Trichomoniasis	33340	5YR	01/27/2010	2010-4/79

Chemistry Laboratory

R63-1	Fee Schedule	34012	5YR	08/26/2010	2010-18/112
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Conservation and Resource Management

R64-1	Agriculture Resource and Development Loans (ARDL)	33305	5YR	01/07/2010	2010-3/89
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Marketing and Development

R65-1	Utah Apple Marketing Order	33993	5YR	08/24/2010	2010-18/113
R65-3	Utah Turkey Marketing Order	33992	5YR	08/24/2010	2010-18/113
R65-4	Utah Egg Marketing Order	33991	5YR	08/24/2010	2010-18/114

Plant Industry

R68-1	Utah Bee Inspection Act Governing Inspection of Bees	33998	5YR	08/25/2010	2010-18/114
R68-2	Utah Commercial Feed Act Governing Feed	33813	5YR	07/07/2010	2010-15/69
R68-6	Utah Nursery Act	33905	5YR	08/10/2010	2010-17/113
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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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<u>acceptable documents</u> Public Safety, Driver License	33143 33338 33512	R708-41 R708-41 R708-41	AMD AMD 5YR	01/25/2010 03/24/2010 03/25/2010	2009-23/23 2010-4/40 2010-8/61
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	32978	R309-511	NEW	03/11/2010	2009-19/88
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	33310	R307-842	NEW	04/08/2010	2010-3/32

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	33421	R651-412	NEW	04/21/2010	2010-6/22
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	33943	R651-615	NSC	09/21/2010	Not Printed
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particulate matter

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