UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed February 16, 2011, 12:00 a.m. through March 01, 2011, 11:59 p.m.

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

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

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

Division of Administrative Rules, Salt Lake City 84114

Utah state bulletin.
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SPECIAL NOTICES

Health
Health Care Financing

Notice for April 2011 Medicaid Rate Changes

Effective April 1, 2011, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies, potential adjustments to existing codes, and nursing home rate changes to case mix components consistent with adopted payment methodology. 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 February 16, 2011, 12:00 a.m., and March 01, 2011, 11:59 p.m. are included in this, the March 15, 2011 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 April 14, 2011. 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 July 13, 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** or a **Change in Proposed Rule**, the **Proposed Rule** lapses and the agency must start the process over.

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

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

The Proposed Rules Begin on the Following Page

Commerce, Administration
R151-4
Department of Commerce
Administrative Procedures Act Rule

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 34479
FILED: 03/01/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed rule reorganizes the existing administrative procedures rule so that its numbering is consistent with recent statutory changes that renumbered the Utah Administrative Procedures Act (UAPA). At the same time, the proposed rule streamlines and simplifies the existing procedures, removing outdated or duplicative language.

SUMMARY OF THE RULE OR CHANGE: In general, the substance of the existing administrative procedures rule (Rule R151-46b) has been incorporated into this filing. The numbering is changed to reflect the current numbering system for UAPA, and the existing language has been simplified. A repeal of Rule R151-46b will be filed concurrently with this filing. (DAR NOTE: A proposed repeal of Rule R151-46b is under DAR No. 34480 in this issue, March 15, 2011, of the Bulletin.)

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Since the substance of the rule remains essentially the same, no costs or savings are anticipated with respect to this rule filing.
♦ LOCAL GOVERNMENTS: Local governments generally do not appear in administrative proceedings before the Department, but even if they do, no costs or savings are anticipated since the substance of this filing is essentially the same as the existing procedures.
♦ SMALL BUSINESSES: No new requirements are imposed on small businesses, as the substance of the rule remains essentially the same.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No new requirements are imposed on affected persons, as the substance of the rule remains essentially the same.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional requirements for affected persons are established by this rule filing beyond those already in place.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This filing simplifies and renumbers the current administrative procedures rule to meet the statutory numbering scheme. No fiscal impact to businesses is anticipated.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Masuda Medcalf by phone at 801-530-7663, by FAX at 801-530-6446, or by Internet E-mail at mmedcalf@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2011

AUTHORIZED BY: Francine Giani, Executive Director

R151. Commerce, Administration.
R151-4. Department of Commerce Administrative Procedures Act Rule.
R151-4-101. Title and Organization.
This rule (R151-4) is:
(1) known as the "Department of Commerce Administrative Procedures Act Rule;" and
(2) organized into the following Parts:
(a) Part 1, General Provisions (R151-4-101 through R151-4-114);
(b) Part 2, Pleadings (R151-4-201 through R151-4-205);
(c) Part 3, Motions (R151-4-301 through R151-4-305);
(d) Part 4, Filing and Service (R151-4-401 through R151-4-402;
(e) Part 5, Discovery - Formal Proceedings (R151-4-501 through R151-4-516);
(f) Part 6, Depositions - Formal Proceedings (R151-4-601 through R151-4-611);
(g) Part 7, Hearings (R151-4-701 through R151-4-712);
(h) Part 8, Orders (R151-4-801 through R151-4-803); and
(i) Part 9, Agency Review and Judicial Review (R151-4-901 through R151-4-907).

R151-4-102. Definitions.
In addition to the definitions in Title 63G, Chapter 4, Administrative Procedures Act, as used in this rule (R151-4):
(1) "Agency head" means the executive director of the department or the director of a division.
(2) "Applicant" means a person who submits an application.

(3) "Application" means a request for:
(a) licensure;
(b) certification;
(c) registration;
(d) permit; or
(e) other right or authority granted by the department.
(4) "Department" means:
(a) the Utah Department of Commerce; or
(b) a division of the department.
(5) "Division" means a division of the department.
(6) "Electronic" means a:
(a) facsimile transmission; or
(b) PDF file attached to an email.
(7) "Intervenor" means a person permitted to intervene in an adjudicative proceeding before the department.
(8) "Motion" means a request for any action or relief in an adjudicative proceeding.
(9) "Party in interest:"
(a) includes:
(i) a party;
(ii) a relative of a party; or
(iii) an individual with a financial interest in the outcome of the proceeding; and
(b) does not include:
(i) a party's counsel; or
(ii) an employee of a party's counsel.
(10) "Petition" means the charging document setting forth:
(a) statement of jurisdiction;
(b) statement of one or more allegations;
(c) statement of legal authority; and
(d) request for relief.
(11) "Pleadings" include the following along with any response:
(a) notice of agency action or request for agency action;
(b) the petition, motions, briefs or other documents filed by the parties to an adjudicative proceeding;
(c) a request for agency review or agency reconsideration;
(d) motions, briefs or other documents filed by the parties on agency review; and
(e) a response submitted to a pleading.

R151-4-103. Authority.
This rule (R151-4) is adopted under Subsection 63G-4-102(6) and Section 13-1-6 to define, clarify, or establish the procedures that govern adjudicative proceedings before the department.

R151-4-104. Supplementing Provisions.
Any provision of this rule (R151-4) may be supplemented by a division rule unless expressly prohibited by this rule.

R151-4-105. Purpose and Scope.
(1) This rule (R151-4) is intended to secure the just, speedy, and economical determination of all issues presented in adjudicative proceedings before the department.
(2) In the event of a conflict between this rule and a statute, the statute governs.

R151-4-106. Utah Rules of Civil Procedure.
The Utah Rules of Civil Procedure and related case law are persuasive authority in this rule (R151-4), but may not, except as otherwise provided by Title 63G, Chapter 4, Administrative Procedures Act or by this rule, be considered controlling authority.

R151-4-107. Computation of Time.
(1) Periods of time in department proceedings shall:
(a) exclude the first day of the act, event, or default from which the time begins to run; and
(b) include the last day unless it is a Friday, Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day that is not a Friday, Saturday, Sunday, or legal holiday.
(2) When a period of time is less than seven days, Fridays, Saturdays, Sundays, and legal holidays are excluded.
(3)(a)(i) When a period of time runs after the service of a document by mail, three days shall be added to the end of the prescribed period.
(ii) Except as provided in R151-4-107(1)(b), these three days include Fridays, Saturdays, Sundays, and legal holidays.
(b) No additional time is provided if service is accomplished by electronic means.

R151-4-108. Timeliness of Administrative Proceedings.
In both informal and formal proceedings, the hearing date shall be scheduled to provide for the hearing to be concluded not more than 180 calendar days after the day on which:
(1) the notice of agency action is issued; or
(2) the initial decision with respect to a request for agency action is issued.

R151-4-109. Extension of Time and Continuance of Hearing.
(1) When ruling on a motion or request for extension of time or continuance of a hearing, the presiding officer shall consider:
(a) whether there is good cause for granting the extension or continuance;
(b) the number of extensions or continuances the requesting party has already received;
(c) whether the extension or continuance will work a significant hardship upon the other party;
(d) whether the extension or continuance will be prejudicial to the health, safety or welfare of the public; and
(e) whether the other party objects to the extension or continuance.
(2)(a) Except as provided in R151-4-109(2)(b), an extension of a time period or a continuance of a hearing may not result in the hearing being concluded more than 240 calendar days after the day on which:
(i) the notice of agency action was issued; or
(ii) the initial decision with respect to a request for agency action was issued.

(b) Notwithstanding R151-4-109(2)(a), an extension of a time period or a continuance may exceed the time restriction in R151-4-109(2)(a) only if:

(i)(A) a party provides an affidavit or certificate signed by a licensed physician verifying that an illness of the party, the party's counsel, or a necessary witness precludes the presence of the party, the party's counsel, or a necessary witness at the hearing;

(B) counsel for a party withdraws shortly before the final hearing, unless the presiding officer finds the withdrawal was for the purpose of delaying the hearing, in which case the hearing will go forward with or without counsel; or

(C) a parallel criminal proceeding or investigation exists based on facts at issue in the administrative proceeding, in which case the continuance must address the expiration of the continuance upon the conclusion of the criminal proceeding; and

(ii) the presiding officer finds that injustice would result from failing to grant the extension or continuance.

(c) The failure to conclude a hearing within the required time period is not a basis for dismissal.

(3) The presiding officer may not grant an extension of time or continuance that is not authorized by statute or rule.

R151-4-110. Representation of Parties.

(1) A party may:

(a) be represented by counsel who is an active member of a state bar if counsel submits a written notice of appearance;

(b) represent oneself individually; or

(c) if not an individual, represent itself through an officer or employee.

(2) Counsel licensed by the bar of a state other than Utah shall submit a certificate of good standing from the relevant state bar.

R151-4-111. Review of Emergency Orders.

Unless otherwise provided by statute or rule:

(1)(a) A division shall schedule a hearing to determine whether an emergency order should be affirmed, set aside, or modified based on the standards in Section 63G-4-502 if:

(i) the division has previously:

(A) commenced an emergency adjudicative proceeding in the matter; and

(B) issued an order in accordance with Section 63G-4-502 that results in a continued impairment of the affected party's rights or legal interests; and

(ii) the affected party timely submits a written request for a hearing.

(b) A hearing under this rule (R151-4-111) shall be conducted in conformity with Section 63G-4-206.

(2)(a) Upon request for a hearing under this rule, the Division shall conduct a hearing as soon as reasonably practical but not later than 20 days from the receipt of a written request unless the Division and the party requesting the hearing agree in writing to conduct the hearing at a later date.

(b) The Division has the burden of proof to establish, by a preponderance of the evidence, that the requirements of Section 63G-4-502 have been met.

(3)(a) Except as otherwise provided by statute, the division director or designee shall select an individual or body of individuals to act as presiding officer at the hearing.

(b) An individual who directly participated in issuing the emergency order may not act as the presiding officer.

(4)(a) Within 15 calendar days after the day on which the hearing to consider the emergency order concludes, the presiding officer shall issue an order in accordance with Section 63G-4-208.

(b) The order of the presiding officer is subject to agency review.

R151-4-112. Declaratory Orders.

(1)(a) A petition for the issuance of a declaratory order under Section 63G-4-503 shall be filed with the agency head who has primary jurisdiction to enforce or implement the statute, rule, or order for which a declaratory order is sought.

(b) The petition shall:

(i) set forth:

(A) the question to be answered;

(B) the facts and circumstances related to the question;

(C) the statute, rule, or order to be applied to the question; and

(D) whether oral argument is sought in conjunction with the petition; and

(ii) comply with Part 2, Pleadings.

(2)(a) If the agency head issues a declaratory order without setting the matter for an adjudicative proceeding, the order shall be based on:

(i) a review of the petition;

(ii) oral argument, if any;

(iii) laws and rules applicable to the petition;

(iv) applicable records maintained by the department; and

(v) other relevant information reasonably available to the department.

(b) If the agency head sets the matter for an adjudicative proceeding, the department shall issue a notice of adjudicative proceeding under Subsection 63G-4-201(2)(a).

(3) The department may not issue a declaratory order in any of the following classes of circumstances:

(a) questions involving circumstances set forth in Subsection 63G-4-503(3)(a)(ii) or (3)(b);

(b) questions that are not within the jurisdiction of the department;

(c) questions that have been addressed by the department in an order, rule, or policy;

(d) questions that can be addressed by informal advice;

(e) questions that are addressed by statute;

(f) questions that would be more properly addressed by statute or rule;

(g) questions that arise out of pending or anticipated litigation in a civil, criminal, or administrative forum; or

(h) questions that are irrelevant, insignificant, meaningless, or spurious.

(4) The recipient of a declaratory order may request agency review.

R151-4-113. Record of an Adjudicative Proceeding.

The record of an adjudicative proceeding includes:

(1) the pleadings and exhibits filed by the parties;

(2) the recording of a hearing;

(3) a transcript of a hearing; and

(4) orders or other documents issued:
(a) by a presiding officer; or
(b) on agency review or reconsideration.

R151-4-114. Informal Adjudicative Proceedings in General.
(1) Any provision of R151-4 that is specific to a formal adjudicative proceeding is not mandatory for an informal adjudicative proceeding.
(2) By rule or order a division may apply a provision applicable to a formal adjudicative proceeding to an informal adjudicative proceeding, except that a provision relating to discovery, including depositions, may not be applied to an informal adjudicative proceeding.

R151-4-201. Docket Number and Title.
(1) The department shall assign a docket number to each notice of agency action and, where appropriate, to each request for agency action.
(2) At a minimum the docket number shall consist of:
(a) a letter code identifying where the matter originated, as follows:
(i) CORP-Corporations;
(ii) CP-Consumer Protection;
(iii) DOPL-Occupational and Professional Licensing, including additional designations that division may implement for diversion, lien recovery fund, or other programs;
(iv) NAFA-New Automobile Franchise Act;
(v) PVFA-Powersport Vehicle Franchise Act;
(vi) RE-Real Estate;
(vii) AP-Real Estate Appraisers;
(viii) MG-Mortgage; and
(ix) SD-Securities;
(b) a numerical code indicating the calendar year the matter arises; and
(c) another number indicating chronological position among notices of agency action or requests for agency action filed during the year.
(3) The department shall give each adjudicative proceeding a title in substantially the following form:

TABLE I

BEFORE THE (DIVISION)
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH
In the Matter of (Notice of Agency Action)
(the application, (Request for Agency Action)
petition or license
of John Doe) No. AA-2000-001

R151-4-202. Content and Size of Pleadings.
Pleadings shall:
(1) be double-spaced, typewritten, and presented on standard 8 1/2 x 11 inch white paper; and
(2) contain:
(a) a clear and concise statement of the allegations or facts relied upon as the basis for the pleading; and
(b) an appropriate request for relief when relief is sought.

R151-4-203. Signing of Pleadings.
(1) Pleadings shall be signed by the party or the party's representative and shall show the signer's address.
(2) The signature is a certification that:
(a) the signer has read the pleading; and
(b) to the best of the signer's knowledge and belief, there is good ground to support the pleading.

R151-4-204. Amendments to Pleadings.
(1)(a) A party may amend a pleading once as a matter of course at any time before a responsive pleading is served.
(b) A party that does not qualify to amend a pleading under (1)(a) may amend a pleading only by leave of the presiding officer or by written consent of the adverse party.
(2) A party shall respond to an amended pleading within the later of:
(a) the time remaining for response to the original pleading; or
(b) ten days after service of the amended pleading.
(3) Defects in a pleading that do not affect substantial rights of a party need not be amended and shall be disregarded.

R151-4-205. Response to a Notice of Agency Action.
(1) A respondent in a formal adjudicative proceeding shall file a response to the notice of agency action.
(2)(a) A respondent in an informal adjudicative proceeding may file a response to a notice of agency action.
(b) The presiding officer may, by a written order, require a respondent in an informal adjudicative proceeding to submit a response.
(3) Unless a different date is established by law or rule the following shall be filed within 30 days after the mailing date of the notice:
(a) a response to a notice of agency action; or
(b) a notice of receipt of request for agency action.

R151-4-301. General Provisions.
(1) A party may file a motion that is relevant and timely.
(2) All motions shall be filed in writing unless the necessity for a motion arises at a hearing and could not have been anticipated prior to the hearing.
(3) Subsection 63G-4-102(4)(b) may not be construed to prohibit a presiding officer from granting a timely motion to dismiss for
(a) failure to prosecute;
(b) failure to comply with this rule (R151-4), except where this rule expressly provides that a matter is not a basis for dismissal;
(c) failure to establish a claim upon which relief may be granted; or
(d) other good cause basis.

R151-4-302. Time for Filing a Motion to Dismiss.
A motion to dismiss on a ground described in Rule 12(b)(1) through (7) of the Utah Rules of Civil Procedure shall be filed prior to filing a responsive pleading.

R151-4-303. Memoranda and Affidavits.

(1) The presiding officer shall permit and may require memoranda and affidavits in support of, or in response to, a motion.

(2) Unless otherwise governed by a scheduling order issued by the presiding officer:

(a) memoranda or affidavits in support of a motion shall be filed concurrently with the motion;

(b) memoranda or affidavits in response to a motion shall be filed no later than 10 days after service of the motion; and

(c) a final reply shall be filed no later than five days after service of the response.

R151-4-304. Oral Argument.

(1) The presiding officer may permit or require oral argument on a motion.

(2) Oral argument on a motion shall be scheduled to take place no more than 10 days after the last day on which the party:

(a) who did not make the motion could have filed a response if that party does not file a response; or

(b) the party who made the motion:

(i) replies to the opposing party's response to the motion; or

(ii) could have replied to the opposing party's response to the motion.

R151-4-305. Ruling on a Motion.

(1) The presiding officer shall verbally rule on a motion at the conclusion of oral argument whenever possible.

(2) When a presiding officer verbally rules on a motion, the presiding officer shall issue a written ruling within 30 calendar days after the day on which the presiding officer makes the verbal ruling.

(3) If the presiding officer does not verbally rule on a motion at the conclusion of oral argument, the presiding officer shall issue a written ruling on the motion no more than 30 calendar days after:

(a) oral argument; or

(b) if there is no oral argument, the final submission on the motion as outlined in R151-4-304(2).

(4) The failure of the presiding officer to comply with the requirements of R151-4-305:

(a) is not a basis for dismissal of the matter; and

(b) may not be considered an automatic denial or grant of the motion.

R151-4-401. Filing.

(1)(a) Pleadings shall be filed with:

(i) the department or division in which the adjudicative proceeding is being conducted, which:

(A) maintains the official file and should receive original documents: and

(B) shall provide the pleading to the applicable board or commission; and

(ii) an administrative law judge who is conducting all or part of the adjudicative proceeding, whose copy is a courtesy copy.

(b) The filing of discovery documents is governed by R151-4-512.

(2)(a)(i) A filing may be accomplished by hand delivery or by mail to the department or division in which the adjudicative proceeding is being conducted.

(ii) a filing by hand delivery or mail is complete when it is received and date stamped by the department.

(b)(i) A filing may be accomplished by electronic means if the original document is also mailed to the department or division the same day, as evidenced by a postmark or mailing certificate.

(ii) Filing by electronic means is complete upon transmission if transmission is completed and received during the department's operating hours; otherwise, filing is complete on the next business day.

(iii) A filing by electronic means is not effective unless the department or division receives all pages of the document transmitted.

(iv) The burden is on the party filing the document to ensure that a transmission is properly completed.

R151-4-402. Service.

(1)(a) Pleadings filed by the parties and documents issued by the presiding officer shall be concurrently served on all parties.

(b) The party who files a pleading is responsible for service of the pleading.

(c) The presiding officer who issues a document is responsible for service of the document.

(2)(a) Service may be made:

(i) on a person upon whom a summons may be served pursuant to the Utah Rules of Civil Procedure; and

(ii) personally or on the agent of the person being served.

(b) If a party is represented by an attorney, service shall be made on the attorney.

(3)(a) Service may be accomplished by hand delivery or by mail to the last known address of the intended recipient.

(b) Service by mail is complete upon mailing.

(c) Service may be accomplished by electronic means.

(d) Service by electronic means is complete on transmission if transmission is completed during normal business hours at the place receiving the service; otherwise, service is complete on the next business day.

(4) There shall appear on all documents required to be served a certificate of service in substantially the following form:

TABLE II

```
CERTIFICATE OF SERVICE
     I certify that I have this day served the
foregoing document on the parties of record in this
proceeding set forth below (by delivering a copy thereof
in person) (by mailing a copy thereof, properly addressed
by first class mail with postage prepaid, to) (by
electronic means and first class mail to):

(Name(s) of parties of record)
(Address(es))

Dated this (day) day of (month), (year).

(Signature)
(Name and Title)
```

R151-4-501. Applicability.

(1) This part (R151-4-501 to -516) applies only to formal adjudicative proceedings.

(2) Discovery is prohibited in informal adjudicative proceedings.

R151-4-502. Scope of Discovery.

(1) Parties may obtain discovery regarding a matter that:

(a) is not privileged;

(b) is relevant to the subject matter involved in the proceeding; and

(c) relates to a claim or defense of:

(i) the party seeking discovery; or

(ii) another party.

(2)(a) Subject to R151-4-502(3) and R151-4-504, a party may obtain discovery of documents and tangible things otherwise discoverable under R151-4-502(1) and prepared in anticipation of litigation or for hearing by or for another party or by or for that party's representative, including the party's attorney, consultant, insurer or other agent, only on a showing that the party seeking discovery:

(i) has substantial need of the materials in the preparation of the case; and

(ii) is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

(b) In ordering discovery of materials described in R151-4-502(2)(a), the presiding officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney of a party.

(3) Discovery of facts known and opinions held by experts, otherwise discoverable under R151-4-502(1) and acquired or developed in anticipation of litigation or for hearing, may be obtained only through the disclosures required by R151-4-504.

R151-4-503. Disclosures Required by Prehearing Order.

(1) In the prehearing order the presiding officer may require each party to disclose in writing:

(a)(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information supporting the party's claims or defenses; and

(ii) identification of the topic(s) addressed in the information maintained by each individual; and

(b)(i) a copy of all discoverable documents, data compilations, and tangible things that:

(A) are in the party's possession, custody, or control; and

(B) support the party's claims or defenses; or

(ii)(A) a description, by category and location, of the tangible things identified in R151-4-503(1)(b)(i); and

(B) reasonable access.

(2)(a) The order may not require disclosure of expert testimony, which is governed by R151-4-504.

(b) The order shall not require the disclosure of information regarding persons or things intended to be used solely for impeachment.

(3)(a) Each party shall make the disclosures required by R151-4-503(1) within 14 days after the prehearing order is issued.

(b) A party joined after the prehearing conference shall make these disclosures within 30 days after being served.

(c) A party shall make initial disclosures based on the information then reasonably available and is not excused from making disclosures because:

(i) the party has not fully completed the investigation of the case;

(ii) the party challenges the sufficiency of another party's disclosures; or

(iii) another party has not made disclosures.

(4) Disclosures required under R151-4-503 shall be made in writing, signed, and served.

R151-4-504. Disclosures Otherwise Required.

(1)(a) A party shall:

(i) disclose in writing the name, address and telephone number of any person who might be called as an expert witness at the hearing; and

(ii) provide a written report pursuant to the requirements for disclosure of expert testimony of Rule 26 of the Utah Rules of Civil Procedure.

(b) Unless otherwise stipulated in writing by the parties or ordered in writing by the presiding officer, the disclosures required by R151-4-504(1) shall be made:

(i) within 30 days after the deadline for completion of discovery; or

(ii) if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under R151-4-504(1)(a), within 60 days after the disclosure made by the other party.

(c) If either party fails to file its disclosure within the time frames in R151-4-504(1), the presiding officer:

(i) shall exclude the expert testimony from the proceeding; and

(ii) may not continue the hearing to allow additional time for the disclosures.

(2)(a) In addition to the disclosures required by R151-4-504(1), a party shall disclose information regarding evidence the party may present at hearing other than solely for impeachment purposes pursuant to the pretrial disclosures provisions of Rule 26 of the Utah Rules of Civil Procedure.

(b)(i) The disclosures required by R151-4-504(2) shall be made at least 45 days before the hearing.

(ii) Within 14 days after service of the disclosures a party may serve and file an objection to the:

(A) use of a deposition designated by another party; and

(B) admissibility of materials identified under R151-4-504(2)(a).

(iii) An objection not timely made is waived.

R151-4-505. Other Discovery Methods.

Parties may obtain discovery by one or more of the following methods:

(1) depositions upon oral examination;

(2) production of documents or things;

(3) permission to enter upon land or other property for inspection and other purposes; and

(4) physical and mental examinations.

R151-4-506. Limits on Use of Discovery.

The frequency and extent of discovery shall be limited by the presiding officer regardless of whether either party files a motion to limit discovery if:

(1) the discovery sought is unreasonably cumulative, duplicative, or is obtainable from some other source that is:

(a) more convenient;

(b) less burdensome; or

(c) less expensive;

(2) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(3) the discovery is unduly burdensome or expensive, taking into account:

(a) the needs of the case;

(b) the amount in controversy;

(c) limitations on the parties' resources; and

(d) the importance of the issues at stake in the litigation.

R151-4-507. Protective Orders.

(1) Upon motion by a party or by the person from whom discovery is sought the presiding officer may make an order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(a) that the discovery not be had;

(b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(c) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(d) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(e) that discovery be conducted with no one present except persons designated by the presiding officer;

(f) that a deposition after being sealed be opened only by order of the presiding officer;

(g) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; or

(h) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.

(2) If the motion for a protective order is denied in whole or in part, the presiding officer may order that a party or person provide or permit discovery.

R151-4-508. Timing, Completion, and Sequence of Discovery.

(1) Parties are encouraged to initiate appropriate discovery procedures in advance of the prehearing conference so that discovery disputes can be addressed at that conference to the extent possible.

(2)(a) All discovery, except for prehearing disclosures governed by R151-4-504, shall be completed within 120 calendar days after the day on which:

(i) the notice of agency action was issued; or

(ii) the initial decision with respect to a request for agency action was issued.

(b) Factors the presiding officer shall consider in determining whether to shorten this time period include:

(i) whether a party's interests will be prejudiced if the time period is not shortened;

(ii) whether the relative simplicity or nonexistence of factual issues justifies a shortening of discovery time; and

(iii) whether the health, safety or welfare of the public will be prejudiced if the time period is not shortened.

(c) Factors the presiding officer shall consider in determining whether a party has demonstrated good cause to extend this time period include, in addition to those set forth in R151-4-109:

(i) whether the complexity of the case warrants additional discovery time; and

(ii) whether that party has made reasonable and prudent use of the discovery time that has already been available to the party since the proceeding commenced.

(d) Notwithstanding R151-4-508(2)(c), the presiding officer may not extend discovery in a way that prevents the hearing from taking place within the time frames established in R151-4-108.

(3)(a) Unless the presiding officer orders otherwise for the convenience of parties and witnesses, and except as otherwise provided by this rule (R151-4), discovery methods may be used in any sequence.

(b) The fact that a party is conducting discovery shall not operate to delay another party's discovery.

R151-4-509. Supplemented Disclosures and Amended Responses.

(1) A party who has made a disclosure or responded to a request for discovery with a response that was complete when made shall supplement the disclosure or amend the response to include subsequent information if:

(a) ordered by the presiding officer; or

(b) a circumstance described in R151-4-509(2) or (3) exists.

(2)(a) A party shall supplement disclosures if:

(i) the party learns that in some material respect the information disclosed is incomplete or incorrect; and

(ii) the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(b) With respect to testimony of an expert from whom a report is required under R151-4-504:

(i) the duty extends to information contained in the report; and

(ii) additions or other changes to this information shall be disclosed by the time the party's disclosures under R151-4-504 are due.

(3) A party shall amend a prior response to a request for production:

(a) within a reasonable time after the party learns that the response is in some material respect incomplete or incorrect; and

(b) if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

R151-4-510. Prehearing Conference - Scheduling the Hearing Date.

(1) Each notice of agency action or initial decision with respect to a request for agency action:

(a) shall contain the time, date, and location of a prehearing conference, which shall be at least 45 calendar days but not more than 60 calendar days after the date of the notice of agency action or initial decision with respect to a request for agency action;

(b) shall contain a clear notice that failure to respond within 30 calendar days may result in:

(i) cancellation of the prehearing conference; and

(ii) a default order; and

(c) may contain the date, consistent with R151-4-108, of the scheduled hearing.

(2)(a) The prehearing conference may be in person or telephonic.

(b) All parties, or their counsel, shall participate in the conference.

(c) The conference shall include discussion and scheduling of discovery, prehearing motions, and other necessary matters.

(3) During the prehearing conference, the presiding officer shall issue a verbal order, and shall issue a written order to the same effect within 2 business days after the conference is concluded, which shall address each of the following:

(a) if necessary, scheduling an additional prehearing conference;

(b) setting a deadline for the filing of all prehearing motions and cross-motions, including motions for summary judgment, which deadline shall allow for all motions to be submitted and ruled on prior to the hearing date;

(c) modifying, if appropriate, a deadline for disclosures;

(d) resolving discovery issues;

(e) establishing a schedule for briefing, discovery needs, expert witness reports, witness and exhibit lists, objections, and other necessary or appropriate prehearing matters;

(f) if not already scheduled, scheduling a hearing date in compliance with R151-4-108; and

(g) dealing with other necessary matters.

(4) A party joined after the prehearing conference is bound by the order issued as a result of that conference unless the order is modified in writing pursuant to a stipulation or motion.

(5)(a) Notwithstanding any other rule, the presiding officer shall schedule all prehearing matters consistent with R151-4-108.

(b) The presiding officer may:

(i) adjust time frames as necessary to accommodate R151-4-108; and

(ii) schedule appropriate prehearing matters to occur concurrently.

R151-4-511. Signing of Disclosures, Discovery Requests, Responses, and Objections.

(1)(a) Every disclosure shall:

(i) be signed by:

(A) at least one attorney of record; or

(B) the party if not represented; and

(ii) include the mailing address of the signer.

(b) The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it was made.

(2)(a) Every request for discovery or response or objection to discovery shall:

(i) be signed by:

(A) at least one attorney of record; or

(B) the party if not represented; and

(ii) include the mailing address of the signer.

(b) The signature of the attorney or party constitutes a certification that the signer has read the request, response, or objection, and that to the best of the signer's knowledge, information, and belief formed after a reasonable inquiry it is:

(i) consistent with this rule (R151-4) and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(ii) not interposed for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(iii) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, and the importance of the issues at stake in the proceeding.

(3)(a) If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection.

(b) A party is not obligated to take an action with respect to a request, response, or objection until it is signed.

R151-4-512. Filing of Discovery Requests or Disclosures.

(1) Unless otherwise ordered by the presiding officer:

(a) a party may not file a request for or response to discovery, but shall file only the original certificate of service stating that the request or response has been served on the other parties and the date of service;

(b) a party may not file any of the disclosures required by the prehearing order or any of the expert witness disclosures required by R151-4-504, but shall file only the original certificate of service stating that the disclosures have been served on the other parties and the date of service;

(c) except as may be required by Rule 30 of the Utah Rules of Civil Procedure, depositions shall not be filed; and

(d) a party shall file the disclosures required by R151-4-504.

(2) A party filing a motion for a protective order or a motion for an order compelling discovery shall attach to the motion a copy of the request or response at issue.

R151-4-513. Subpoenas.

(1) Each subpoena:

(a) shall be issued and signed by the presiding officer;

(b) shall state the title of the action;

(c) shall command each person to whom it is directed to attend and give testimony at a hearing or deposition at a time and place specified;

(d) may command the person to whom it is directed to produce designated books, papers, or tangible things, and in the case of a subpoena for a deposition, may permit inspection and copying of the items; and

(e) shall limit its designation of books, papers, or tangible things to matters properly within the scope of discoverable information.

(2) A subpoenaed individual shall receive the fee for attendance and mileage reimbursement required by law.

(3)(a) A subpoena commanding a person to appear at a hearing or a deposition in Utah may be served at any place in Utah.

(b) A person who resides in Utah may be required to appear at a deposition:

(i) in the county where the person resides, is employed, or transacts business in person; or

(ii) at any reasonable location as the presiding officer may order.

(c) A person who does not reside in this state may be required to appear at a deposition:

(i) in the county in Utah where the person is served with a subpoena; or

(ii) at any reasonable location as the presiding officer may order.

(4) A subpoena shall be served in accordance with the requirements of the jurisdiction in which service is made.

(5) Upon a motion made promptly to quash or modify a subpoena, but no later than the time specified in the subpoena for compliance, the presiding officer may:

(a) quash or modify the subpoena, if it is shown to be unreasonable and oppressive; or

(b) conditionally deny the motion with the denial conditioned on the payment of the reasonable cost of producing the requested materials by the person on whose behalf the subpoena is issued.

(6)(a) In the case of a subpoena requiring the production of books, papers, or other tangible things at a deposition, the person to whom the subpoena is directed may, within 10 days after service or on or before the time specified in the subpoena for compliance if the time is less than 10 days after service, serve on the attorney designated in the subpoena a written objection to production, inspection, or copying of any of the designated materials.

(b) If this objection is made, the party serving the subpoena is not entitled to production, inspection, or copying of the materials except pursuant to a further order of the presiding officer who issued the subpoena.

R151-4-514. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes.

(1) Upon approval by the presiding officer, a party may serve on another party a request:

(a) to produce and permit the party making the request to:

(i) inspect and copy a data compilation from which information can be obtained and translated into a reasonably usable form; or

(ii) inspect and copy, test, or sample a document or tangible thing that:

(A) constitutes or contains matters within the scope of R151-4-502(1); and

(B) are in the possession, custody or control of the party upon whom the request is served; or

(b) to permit, within the scope of R151-4-502(1), entry on designated land, property, object, or operation in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing, testing, or sampling.

(2)(a) Before permitting a party to serve a request for production of documents, the presiding officer must first find that the requesting party has demonstrated the records have not already been provided.

(b) After approval by the presiding officer, the request may be served on a party.

(c) The request shall:

(i) set forth the items to be inspected either by individual item or by category;

(ii) describe each item and category with particularity; and

(iii) specify a reasonable time, place, and manner of making the inspection and performing the related acts.

(d)(i) The party upon whom the request is served shall serve a written response within 20 days after service of the request unless the presiding officer allows a shorter or longer time in a written order.

(ii) The response shall state, with respect to each specific item or category:

(A) that inspection and related activities will be permitted as requested; or

(B) an objection.

(iii) The party submitting the request may move for an order under R151-4-516 with respect to any:

(A) objection;

(B) failure to respond to any part of the request; or

(C) failure to permit inspection as requested.

(e) A party who produces documents for inspection shall:

(i) produce them as they are kept in the usual course of business; or

(ii) organize and label them to correspond with the categories in the request.

R151-4-515. Physical and Mental Examination of Persons.

(1)(a) When the mental or physical condition, including the blood group, of a party or of a person in the custody or under the legal control of a party is in controversy, the presiding officer may order the party or person to:

(i) submit to a physical or mental examination by a physician; or

(ii) produce for examination the person in the party's custody or legal control.

(b) The order:

(i) may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties; and

(ii) shall specify:

(A) the time, place, manner, conditions, and scope of the examination; and

(B) the person or persons by whom it is to be made.

(2)(a)(i) If requested by the party against whom an order is made under this rule or the person examined, the party causing the examination to be made shall deliver to the requester a copy of a detailed written report of the examining physician including findings, diagnoses, conclusions, test results, and reports of any earlier examination of the same condition.

(ii)(A) After delivery, the party causing the examination is entitled, on request, to receive from the party against whom the order is made a like report of an examination, previously or

thereafter made, of the same condition unless, in the case of an examination of a person not a party, the party shows that the party is unable to obtain it.

(B) The presiding officer on motion may order a party to deliver a report, and if a physician fails or refuses to make a report, the presiding officer may exclude the physician's testimony at the hearing.

(b) By requesting and obtaining an examination report or by taking the deposition of the examiner, the party examined waives any privilege regarding the testimony of every other person who has examined or may thereafter examine the party for the same mental or physical condition.

(c) R151-4-515(2):

(i) applies to examination made by agreement of the parties unless the agreement expressly provides otherwise; and

(ii) does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician under any other rule.

R151-4-516. Motion to Compel Discovery - Sanctions.

(1)(a) The discovering party may move for an order compelling discovery if:

(i) a party fails to make disclosures required by a prehearing order;

(ii) a party fails to make the disclosures required by R151-4-504;

(iii) a deponent fails to answer a question;

(iv) a corporation or other entity named as a deponent fails to designate an individual to testify pursuant to Rule 30 of the Utah Rules of Civil Procedure; or

(v) a party, in response to a request for inspection under R151-4-514, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested.

(b) When taking a deposition, the proponent of the question may complete or adjourn the examination before applying for an order.

(c) If the presiding officer denies the motion in whole or in part, the presiding officer may make a protective order that otherwise would be authorized by R151-4-507.

(d) An evasive or incomplete answer is treated as a failure to answer.

(2)(a) If a party or other person fails to comply with an order compelling discovery:

(i) the department may seek civil enforcement in the district court under Section 63G-4-501; or

(ii) the presiding officer may, for good cause, issue an order:

(A) that the related matters and facts shall be taken to be established;

(B) refusing to allow the disobedient party to support or oppose designated claims or defenses; or

(C) prohibiting the disobedient party from introducing designated matters in evidence;

(D) striking out pleadings or portions of pleadings;

(E) dismissing the proceeding or a portion of the proceeding; or

(F) rendering a judgment by default against the disobedient party.

R151-4-601. Applicability - Scope.

(1)(a) This part (R151-4-601 to -611) applies only to formal adjudicative proceedings.

(b) Discovery is prohibited in informal adjudicative proceedings.

(2)(a) Only as provided in this part and with a written order of the presiding officer, a party may take the testimony by deposition upon oral examination of certain persons, including parties, who have knowledge of facts relevant to the claims or defenses of a party in the proceeding.

(b) The attendance of witnesses may be compelled by subpoena.

(c) A party may not depose an expert witness.

R151-4-602. General Provisions - Persons who may be Deposed.

(1) Before a party may request leave to take a person's deposition, the party must first make diligent efforts to obtain discovery from that person by means of an informal interview.

(2) A party may not be granted leave to take a deposition unless the party, upon motion, demonstrates to the satisfaction of the presiding officer that the person has knowledge of facts relevant to the claims or defenses of a party in the proceeding and:

(a) has refused a reasonable request by the moving party for an informal interview;

(b) after having notice of at least two reasonable requests by that party for an informal interview, has failed to respond to those requests;

(c) has refused to answer reasonable questions propounded to him by that party in an informal interview; or

(d) will be unavailable to testify at the hearing.

(3) In deciding whether to grant the motion, the presiding officer shall consider the probative value the testimony is likely to have in the proceeding.

(4) The moving party has the burden of demonstrating the need for a deposition.

R151-4-603. Notice of Deposition - Requirements.

(1)(a) A party permitted to take a deposition shall give notice pursuant to the notice requirements of Rule 30 of the Utah Rules of Civil Procedure.

(2)(a) The parties may stipulate in writing or, upon motion, the presiding officer may order in writing that the testimony at a deposition be recorded by means other than stenographic means.

(b) The stipulation or order:

(i) shall designate the person before whom the deposition shall be taken;

(ii) shall designate the manner of recording, preserving and filing the deposition; and

(iii) may include other provisions to assure the recorded testimony will be accurate and trustworthy.

(c) A party may arrange to have a transcript made at the party's own expense.

(d) A deposition recorded by means other than stenographic means shall set forth in writing:

(i) any objections;

(ii) any changes made by the witness;

(iii) the signature of the witness identifying the deposition as the witness's own or the statement of the court reporter required if the witness does not sign; and

(iv) any certification required by Rule 30 of the Utah Rules of Civil Procedure.

(3) The notice to a party deponent may be accompanied by a request in compliance with R151-4-514 for the production of documents and tangible things at the deposition.

(4) Rule 30(b)(6) of the Utah Rules of Civil Procedure shall apply where a deponent is:

(a) a public or private corporation;

(b) a partnership;

(c) an association; or

(d) a government agency.

(5) The parties may stipulate in writing or, upon motion, the presiding officer may order a deposition be taken by telephone.

R151-4-604. Examination and Cross-Examination.

(1) Examination and cross-examination of witnesses may proceed as permitted at a hearing under the Utah Administrative Procedures Act and pursuant to Rule 30 of the Utah Rules of Civil Procedure.

R151-4-605. Motion to Terminate or Limit Examination.

(1) The presiding officer may order the court reporter conducting the examination to end the deposition or may limit the scope and manner of taking the deposition pursuant to Rule 30 of the Utah Rules of Civil Procedure.

R151-4-606. Submission to Witness - Changes - Signing.

A deposition shall be submitted to the witness, changed, and signed pursuant to Rule 30 of the Utah Rules of Civil Procedure.

R151-4-607. Certification - Delivery - Exhibits.

(1) The transcript or recording of a deposition shall be certified and delivered pursuant to Rule 30 of the Utah Rules of Civil Procedure.

(2) Exhibits shall be marked for identification, inspected, copied, and delivered pursuant to Rule 30 of the Utah Rules of Civil Procedure.

R151-4-608. Persons Before Whom Depositions May Be Taken.

Depositions shall be taken before a certified court reporter holding a current and active license under Utah Code Title 58, Chapter 74, Certified Court Reporters Licensing Act.

R151-4-609. Use of Depositions.

(1) Pursuant to the other provisions of R151-4-609, a part of a deposition, if admissible under the rules of evidence applied as though the witness were present and testifying, may be used against a party who:

(a) was present or represented at the taking of the deposition; or

(b) had reasonable notice of the deposition.

(2) A party may use a deposition:

(a) to contradict or impeach the testimony of the deponent as a witness; or

(b) for another purpose permitted by the Utah Rules of Evidence.

(3) An adverse party may use a deposition for any purpose.

(4) A party may use the deposition of a witness, whether or not a party, for any purpose if the presiding officer finds that:

(a) the witness is dead;

(b) the witness is more than 100 miles from the hearing, unless it appears the absence of the witness was procured by the party offering the deposition;

(c) the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(d) the party offering the deposition has been unable to procure the attendance of the witness by subpoena.

(5) If part of a deposition is offered in evidence by a party, an adverse party may require introduction of any other part which ought, in fairness, to be considered with the part introduced.

(6) A deposition lawfully taken and filed in a court or another agency within Utah may be used as if originally taken in the pending proceeding.

(7) A deposition previously taken may otherwise be used as permitted by the Utah Rules of Evidence.

R151-4-610. Objections to Admissibility.

A party may object at a hearing to receiving in evidence any part of a deposition for a reason that would require the exclusion of the evidence if the witness were present and testifying.

R151-4-611. Effect of Errors and Irregularities in Depositions.

(1) An error or irregularity in the notice for taking a deposition is waived unless a party promptly serves a written objection on the party giving the notice.

(2) Objection to taking a deposition because of disqualification of the court reporter before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) An objection to the competency of a witness or to the competency, relevancy, or materiality of testimony is not waived by failure to make it before or during the taking of the deposition, unless the basis of the objection is one that could have been obviated or removed if presented at that time.

(4) An error or irregularity occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and an error that might be obviated, removed, or cured if promptly presented, is waived unless an objection is made at the taking of the deposition.

(5) An error or irregularity in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with is waived unless a motion to suppress is made with reasonable promptness after the defect is, or with due diligence should have been, discovered.

R151-4-701. Hearings Required or Permitted.

A hearing shall be held in an adjudicative proceedings in which a hearing is:

(1) required by statute or rule and not waived by the parties; or

(2) permitted by statute or rule and timely requested.

R151-4-702. Time to Request Permissive Hearing.

A request for a hearing permitted by statute or rule must be received no later than:

(1) the time period for filing a response to a notice of agency action if a response is required or permitted;

(2) twenty days following the issuance of a notice of agency action if a response is not required or permitted; or

(3) the filing of the request for agency action.

R151-4-703. Hearings Open to Public - Exceptions.

(1) A hearing in an adjudicative proceeding is open to the public unless closed by:

(a) the presiding officer conducting the hearing, pursuant to Title 63G, Chapter 4, the Administrative Procedures Act; or

(b) a presiding officer who is a public body, pursuant to Title 52, Chapter 4, the Open and Public Meetings Act.

(2)(a) The deliberative process of an adjudicative proceeding is a quasi-judicial function exempt from the Open and Public Meetings Act.

(b) Deliberations are closed to the public.

R151-4-704. Bifurcation of Hearing.

The presiding officer may, for good cause, order a hearing bifurcated into a findings phase and a sanctions phase.

R151-4-705. Order of Presentation in Hearings.

The order of presentation of evidence in hearings in formal adjudicative proceedings shall be as follows:

(1) opening statement of the party with the burden of proof;

(2) opening statement of the opposing party, unless the party reserves the opening statement until the presentation of its case-in-chief;

(3) case-in-chief of the party with the burden of proof and cross examination of witnesses by opposing party;

(4) case-in-chief of the opposing party and cross examination of witnesses by the party with the burden of proof;

(5) if the presiding officer finds it to be necessary, rebuttal evidence by the party which has the burden of proof;

(6) if the presiding officer finds it to be necessary, rebuttal evidence by the opposing party;

(7) closing argument by the party with the burden of proof;

(8) closing argument by the opposing party; and

(9) final argument by the party with the burden of proof.

R151-4-706. Testimony Under Oath.

Testimony presented at a hearing shall be given under oath administered by the presiding officer and under penalty of perjury.

R151-4-707. Electronic Testimony.

(1) As used in this section (R151-4-707), electronic testimony includes testimony by telephone or by other audio or video conferencing technology.

(2)(a) Electronic testimony is permissible in a formal proceeding only:

(i) on the consent of all parties; or

(ii) if warranted by exigent circumstances.

(b) Expenses to produce in-person testimony do not constitute an exigent circumstance in a formal proceeding. (c) Electronic testimony generally is permissible in an informal proceeding on the request of a party.

(3)(a) When electronic testimony is to be presented, the presiding officer shall require identification of the witness.

(b) The presiding officer shall provide safeguards to:

(ii) assure the witness does not refer to documents improperly; and

(iii) reduce the possibility the witness may be coached or influenced during the testimony.

R151-4-708. Standard of Proof.

Unless otherwise provided by statute, the standard of proof in a proceeding under this rule (R151-4), whether initiated by a notice of agency action or request for agency action, is a preponderance of the evidence.

R151-4-709. Burden of Proof.

Unless otherwise provided by statute:

(1) the department has the burden of proof in a proceeding initiated by a notice of agency action; and

(2) the party who seeks action from the department has the burden of proof in a proceeding initiated by a request for agency action.

R151-4-710. Default Orders.

(1) The presiding officer may enter a default order under Section 63G-4-209, with or without a motion from a party.

(2) If a basis exists for a default order, the order may enter without notice to the defaulting party or a hearing.

(3) A default order is not required to be accompanied by a separate order.

R151-4-711. Record of Hearing.

(1) The presiding officer shall make a record of all prehearing conferences and hearings.

(2)(a) The presiding officer shall make the record of a hearing in a formal proceeding by means of:

(i) a certified court reporter licensed under Title 58, Chapter 74, Certified Court Reporters Licensing Act; or

(ii) a digital audio or video recording in a commonly used file format.

(b) The presiding officer shall make record of a hearing in an informal proceeding by:

(i) a method required for a formal proceeding; or

(ii) minutes or an order prepared or adopted by the presiding officer.

(3) A hearing in an adjudicative proceeding shall be recorded at the expense of the department.

(4)(a) If a party is required by R151-4-902 to obtain a transcript of a hearing for agency review, the party must ensure that the record is transcribed:

(i) in a formal adjudicative proceeding, by a certified court reporter; or

(ii) in an informal adjudicative proceeding, by:
(A) a certified court reporter; or
(B) a person who is not a party in interest.
(b) Where a transcript is prepared by someone other than a certified court reporter, a party shall file an affidavit of the transcriber stating under penalty of perjury that the transcript is a correct and accurate transcription of the hearing record.
(c) Pages and lines in a transcript shall be numbered for referencing purposes.
(d) The party requesting the transcript shall bear the cost of the transcription.
(5) The original transcript of a record of a hearing shall be filed with the presiding officer.

R151-4-712. Fees.
(1)(a) Witnesses appearing on the demand or at the request of a party may receive payment from that party of:
(i) $18.50 for each day in attendance; and
(ii) if traveling more than 50 miles to attend and return from the hearing, 25 cents per mile for each mile actually and necessarily traveled.
(b) A witness subpoenaed by a party other than the department may:
(i) demand one day's witness fee and mileage in advance; and
(ii) be excused from appearance unless the fee is provided.
(2) Interpreters and translators may receive compensation for their services.
(3) An officer or employee of the United States, the State of Utah, or a county, incorporated city, or town within the State of Utah, may not receive a witness fee unless the officer or employee is required to testify at a time other than during normal working hours.
(4) A witness may not receive fees in more than one adjudicative proceeding on the same day.

R151-4-801. Requirements and Timeliness.
(1) For default orders and orders issued subsequent to a default order, the requirements of Subsections 63G-4-203(1)(i)(iii) and (iv) and 63G-4-208(1)(e),(f) and (g) are satisfied if the order includes a notice of the right to seek to set aside the order as provided in Subsection 63G-4-209(3).
(2) Except as provided in Sections 63G-4-502 and R151-4-111, the presiding officer shall issue an order within 45 calendar days after the day on which the hearing concludes.
(3) If the presiding officer permits the filing of post-hearing documents, that filing shall be scheduled in a way that allows the presiding officer to issue an order within 45 calendar days after the day on which the hearing concludes.
(4) The failure of the presiding officer to comply with the requirements of this section (R151-4-801):
(a) is not a basis for dismissal of the matter; and
(b) may not be considered an automatic denial or grant of a motion.

R151-4-802. Effective Date.
The effective date of an order is 30 calendar days after its issuance unless otherwise provided in the order.

R151-4-803. Clerical Mistakes.
(1) The department may correct clerical mistakes in orders or other parts of the record and errors arising from oversight or omission on:
(a) its own initiative; or
(b) the motion of a party.
(2) Mistakes described in this section (R151-4-803) may be corrected:
(a) at any time prior to the docketing of a petition for judicial review; or
(b) as governed by Rule 11(h) of the Utah Rules of Appellate Procedure.

R151-4-901. Availability of Agency Review and Reconsideration.
(1) Except as otherwise provided in Subsection 63G-4-209(3)(c), an aggrieved party may obtain agency review of a final order by filing a request with the executive director within 30 calendar days after the issuance of the order.
(2)(a) Agency review is not available for an order or decision entered by:
(i) the Utah Motor Vehicle Franchise Advisory Board; or
(ii) the Utah Powersport Vehicle Franchise Advisory Board.
(b) Agency review is not available for an order or decision entered by the Division of Occupational and Professional Licensing for:
(i) Prelitigation proceedings under Title 78B, Chapter 3, the Utah Health Care Malpractice Act;
(ii) a request for modification of a disciplinary order; or
(iii) a request under Section 58-1-404(4) for entry into the Diversion Program.
(c) Agency review is not available for an order or decision entered by the Division of Corporations and Commercial Code for:
(i) refusal to file a document under the Utah Revised Business Corporations Act pursuant to Section 16-10a-126;
(ii) revocation of a foreign corporation's authority to transact business pursuant to Section 16-10a-1532;
(iii) refusal to file a document under the Utah Revised Limited Liability Company Act pursuant to Section 48-2c-211; or
(iv) revocation of a foreign limited liability company's authority to transact business pursuant to Section 48-2c-1614.
(d)(i) A party may request agency reconsideration pursuant to Section 63G-4-302 for an order or decision exempt from agency review under R151-4-901(2)(a), (2)(b)(ii), and (2)(c).
(ii) Pursuant to Subsections 58-1-404(4)(d) and 78B-3-416(1)(c), agency reconsideration is not available for an order or decision exempt from agency review under R151-4-901(2)(b)(i) and (2)(b)(iii).

R151-4-902. Request for Agency Review - Transcript of Hearing - Service.
(1) A request for agency review shall:
(a) comply with Subsection 63G-4-301(1)(b) and this section (R151-4-902); and
(b) include a copy of the order that is the subject of the request.

(2) A party requesting agency review shall set forth any factual or legal basis in support of that request, including adequate supporting arguments and citation to:

(a) appropriate legal authority; and

(b) the relevant portions of the record.

(3)(a) If a party challenges a finding of fact, the party must demonstrate, based on the entire record, that the finding is not supported by substantial evidence.

(b) A party challenging a finding of fact bears the burden to:

(i) marshal or gather all the evidence in support of the finding; and

(ii) show that despite that evidence, the finding is not supported by substantial evidence.

(c) The failure to marshal the evidence permits the executive director to accept a division's findings of fact as conclusive.

(d) A party challenging a legal conclusion must support the argument with citation to:

(i) relevant authority; and

(ii) the portions of the record relevant to the issue.

(4)(a) If the grounds for agency review include a challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall order and cause a transcript of the record relevant to the finding or conclusion to be prepared.

(b) When a transcript is required, the party seeking review shall:

(i) certify that the transcript has been ordered;

(ii) notify the department when the transcript will be available; and

(iii) file the transcript with the executive director in accordance with the time frame stated in the certification regarding transcript.

(c) The party seeking agency review bears the cost of the transcript.

(5)(a) A party seeking agency review shall, in the manner described in R151-4-401 and -402, file and serve on all parties copies of correspondence, pleadings, and other submissions.

(b) If an attorney enters an appearance on behalf of a party, service shall be made on the attorney instead of the party.

(6) Failure to comply with this section (R151-4-902) may result in dismissal of the request for agency review.

R151-4-903. Stay Pending Agency Review.

(1)(a) With a timely filing of a request for agency review, the party seeking review may request that the effective date of the order subject to review be stayed pending the completion of review.

(b) If a stay is not timely requested and subsequently granted, the order subject to review shall take effect according to its terms.

(2)(a) The division that issued the order subject to review may oppose a request for a stay in writing within ten days from the date the stay is requested.

(b) Failure to oppose a timely request for a stay shall result in an order granting the stay unless the department determines that a stay would not be in the best interest of the public.

(c) If a division opposes a motion for a stay, the department may permit a final response by the party requesting the stay.

(d) The department may enter an interim order granting a stay pending a decision on the motion for a stay.

(3)(a) In determining whether to grant a request for a stay, the department shall review the division's findings of fact, conclusions of law and order to determine whether granting a stay would, or might reasonably be expected to, pose a significant threat to the public health, safety and welfare.

(b) The department may issue:

(i) an order granting the motion for a stay;

(ii) a conditional stay imposing terms, conditions or restrictions on a party pending agency review;

(iii) a partial stay; or

(iv) an order denying the motion for a stay.

R151-4-904. Agency Review - Memoranda.

(1)(a) The department may order or permit the parties to file memoranda to assist in conducting agency review.

(b) Memoranda shall comply with:

(i) this rule (R151-4); and

(ii) a scheduling order entered by the department.

(2)(a) If a transcript is not necessary to conduct agency review, a memorandum supporting a request for agency review shall be concurrently filed with the request.

(b) If a transcript is necessary to conduct agency review, a supporting memorandum shall be filed no later than 15 days after the filing of the transcript with the department.

(3)(a) A response to a request for agency review and a memorandum supporting that response shall be filed no later than 30 days after the service of the memoranda supporting the request.

(b) A final reply memorandum shall be filed no later than 10 days after the service of a response to the request for agency review.

(4) If agency review involves more than two parties the department shall conduct a telephonic scheduling conference to address briefing deadlines.

R151-4-905. Agency Review - Standards of Review.

In both formal and informal adjudicative proceedings, the standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings under Subsection 63G-4-403(4).

R151-4-906. Agency Review - Type of Relief - Order on Review.

(1) The type of relief available on agency review shall be the same as the type of relief available on judicial review under Subsection 63G-4-404(1)(b).

(2) The order on review constitutes final agency action for purposes of Subsection 63G-4-401(1).

R151-4-907. Stay and Other Temporary Remedies Pending Judicial Review.

(1) Unless otherwise provided by statute, a motion for a stay of an order or other temporary remedy during the pendency of judicial review shall include:

(a) a statement of the reasons for the relief requested;

(b) a statement of the facts relied upon;
(c) affidavits or other sworn statements if the facts are subject to dispute;
(d) relevant portions of the record of the adjudicative proceeding and agency review;
(e) a memorandum of law identifying the issues to be presented on appeal and supporting the aggrieved party's position that those issues raise a substantial question of law or fact reasonably likely to result in reversal, remand for a new hearing, or relief from the order entered;
(f) clear and convincing evidence that if the requested stay or other temporary remedy is not granted, the aggrieved party will suffer irreparable injury;
(g) clear and convincing evidence that if the requested stay or other temporary remedy is granted, it will not substantially harm other parties to the proceeding; and
(h) clear and convincing evidence that if the requested stay or other temporary remedy is granted, the aggrieved party will not pose a significant danger to public health, safety and welfare.
(2) The executive director may grant a motion for a stay of an order or other temporary remedy during the pendency of judicial review if all of the criteria in R151-4-907 are met.

KEY: administrative procedures, adjudicative proceedings, government hearings
Date of Enactment or Last Substantive Amendment: 2011
Authorizing, and Implemented or Interpreted Law: 13-1-6; 63G-4-102(6)

Commerce, Administration
R151-46b
Department of Commerce Administrative Procedures Act Rules

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 34480
FILED: 03/01/2011

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The substantive elements of this rule have been incorporated into the proposed new Rule R151-4. Therefore, this rule is no longer needed. (DAR NOTE: A proposed new Rule R151-4 is under DAR No. 34479 in this issue, March 15, 2011, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The rule is repealed in its entirety.

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

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: As the substantive provisions of this rule are incorporated into the proposed new Rule R151-4, no costs or savings should result from this filing.
♦ LOCAL GOVERNMENTS: Local governments generally do not appear before the Department in adjudicative proceedings, but even if they do, no costs or savings should result to local governments from this filing as the elements are now incorporated in Rule R151-4.
♦ SMALL BUSINESSES: As the substantive provisions of this rule are incorporated into the proposed new Rule R151-4, no costs or savings should result from this filing to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: As the substantive provisions of this rule are incorporated into the proposed new Rule R151-4, no costs or savings should result from this filing to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs are expected with this repeal, which relieves affected persons from any obligations to comply with the rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule repeal as the substance of these provisions is contained in the new Rule R151-4 proposed by the Department.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Masuda Medcalf by phone at 801-530-7663, by FAX at 801-530-6446, or by Internet E-mail at mmedcalf@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2011

AUTHORIZED BY: Francine Giani, Executive Director

R151. Commerce, Administration.
~~[R151-46b. Department of Commerce Administrative Procedures Act Rules.~~
~~R151-46b-1. Title.~~
~~These rules are known as the "Department of Commerce Administrative Procedures Act Rules."~~

R151-46b-2. Definitions.

In addition to the definitions in Title 63G, Chapter 4, Administrative Procedures Act, which apply to these rules:

(1) "Agency head" means the executive director of the department, the director of a division, or the committee's residential and small commercial representative, respectively, as used in context.

(2) "Applicant" means a person who submits an application.

(3) "Application" means a request for licensure, certification, registration, permit, or other right or authority granted by the department.

(4) "Committee" means the Committee of Consumer Services of the department.

(5) "Department" means the department, a division, or the committee, respectively or collectively, as used in context.

(6) "Division" means a division of the department.

(7) "Intervenor" means a person permitted to intervene in an adjudicative proceeding before the department.

(8) "Motion" means a request for any action or relief submitted to the presiding officer in an adjudicative proceeding.

(9) "Petition" means the charging document, typically incorporated by reference into a notice of agency action, setting forth a statement of jurisdiction, statement of allegations, statement of legal authority, and prayer for relief.

(10) "Pleadings" include the notice of agency action or request for agency action, any response filed thereto, the petition, motions, briefs or other documents filed by the parties to an adjudicative proceeding, any request for agency review or agency reconsideration, any response filed thereto, and any motions, briefs or other documents filed by the parties on agency review.

(11) "Record" means the record of a hearing in an adjudicative proceeding or the record of the entire adjudicative proceeding, as used in context.

R151-46b-3. Authority - Purpose.

These rules are adopted by the department under the authority of Subsection 63G-4-102(6) and Section 13-1-6 to define, clarify, or establish the procedures which govern adjudicative proceedings before the department.

R151-46b-4. Supplementing Provisions of Rule R151-46b.

Any provision of these rules may be supplemented by division or committee rules unless expressly prohibited by these rules.

R151-46b-5. General Provisions.

(1) Purpose.

These rules are intended to secure the just, speedy, and economical determination of all issues presented in adjudicative proceedings before the department.

(2) Deviation from Rules.

The presiding officer may permit or require a deviation from these rules upon a determination that compliance therewith is impractical or unnecessary.

(3) Utah Rules of Civil Procedure.

The Utah Rules of Civil Procedure and case law thereunder may be looked to as persuasive authority upon these rules, but shall not, except as otherwise provided by Title 63G, Chapter 4, Administrative Procedures Act, or by these rules, be considered controlling authority.

(4) Computation of Time.

(a) Periods of time prescribed or allowed by these rules, by any applicable statute or by an order of a presiding officer shall be computed as to exclude the first day of the act, event, or default from which the designated period of time begins to run. The last day of the period so computed shall be included, unless it is a Friday, Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Friday, Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Fridays, Saturdays, Sundays, and legal holidays shall be excluded in the computation. Whenever a party has the right or is required to do some act or take some action within a prescribed period after the service of a notice or other paper upon him and service is by mail, three days shall be added to the prescribed period. No additional time is provided if service is accomplished by facsimile or other electronic means.

(b) Subject to the provisions of Subsections R151-46b-5(5)(b) and -9(9)(e)(ii), for good cause shown, the presiding officer may extend a time period under these rules on his own motion or upon written application from either party.

(5) Extension of Time; Continuance of Hearing.

(a) When a statute, or these rules, authorizes the presiding officer to extend a time period or grant a continuance of a hearing, the presiding officer shall consider the following factors, and such other factors as may be appropriate, in determining whether to grant such extension or continuance:

(i) whether there is good cause for granting the extension or continuance;

(ii) the number of extensions or continuances the requesting party has already received;

(iii) whether the extension or continuance will work a significant hardship upon the other party;

(iv) whether the extension or continuance will be prejudicial to the health, safety or welfare of the public; and

(v) whether the other party objects to the extension or continuance.

(b)(i) Notwithstanding the provisions of Subsection R151-46b-5(2) or any other provision of these rules, and except as provided in Subsection (5)(b)(ii), an extension of a time period or a continuance of a hearing may not result in the hearing being concluded more than 240 calendar days after the day on which:

(A) the notice of agency action was issued; or

(B) the initial decision with respect to a request for agency action was issued.

(ii) Notwithstanding the provisions of Subsection (5)(b)(i), an extension of a time period or a continuance may exceed the time restriction outlined in Subsection (5)(b)(i) only if:

(A)(I) a party provides an affidavit or certificate signed by a licensed physician verifying that an illness of the party, the party's counsel, or a necessary witness precludes the presence of the party, the party's counsel, or a necessary witness at the hearing;

(II) counsel for a party withdraws shortly before the final hearing, unless the presiding officer finds that the withdrawal was for the purpose of delaying the hearing; or

(III) a parallel criminal proceedings exists based on facts at issue in the administrative proceeding; and

(B) the presiding officer finds that injustice would result from failing to grant the extension or continuance.

(iii) The failure of the presiding officer to comply with the requirements of this Subsection

(5)(b) is not a basis for dismissal of the matter.

(6) Conflict.

In the event of a conflict between these rules and any statutory provision, the statute shall govern.

(7) Necessity of Compliance with GRAMA.

To the extent that the Utah Government Records Access and Management Act ("GRAMA") would impose a restriction on the ability of a party to disclose any record which would otherwise have to be disclosed under these rules, such record shall not be disclosed except upon compliance with the requirements of that Act.

R151-46b-6. Representation of Parties.

(a) A party may be represented by counsel or may represent oneself individually, or if not an individual, may represent itself through an officer or employee. For the purpose of this provision, the term "counsel" means active members of the Utah State Bar or active members of any other state bar.

(b) Counsel from a foreign licensing state shall submit a notice of appearance to the presiding officer along with a certificate of good standing from the foreign licensing state.

R151-46b-7. Pleadings.

(1) Docket Number and Title.

An agency shall assign a docket number to each notice of agency action and, where appropriate, to each request for agency action. The docket number shall consist of a letter code identifying the agency in which the matter originated (CORP-Corporations; CP-Consumer Protection; CCS-Committee of Consumer Services; DOPL-Occupational and Professional Licensing; D-Diversion; NAFA-New Automobile Franchise Act; PVFA-Powersport Vehicle Franchise Act; RE-Real Estate, AP-Real Estate Appraisers; MG-Mortgage; SD-Securities), a numerical code indicating the year the matter arose, and another number indicating chronological position among notices of agency action or requests for agency action filed during the year. The department shall give each adjudicative proceeding a title that shall be in substantially the following form:

TABLE I

BEFORE THE (DIVISION/COMMITTEE)
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

In the Matter of	(Notice of Agency Action)
(the application,	(Request for Agency Action)
petition or license	
of John Doe)	No. AA-2000-001

(2) Content and Size of Pleadings.

Pleadings shall be double-spaced, typewritten and presented on standard 8-1/2-x-11-inch white paper. Pleadings shall contain a clear and concise statement of the allegations or facts relied upon as the basis for the pleading, together with an appropriate prayer for relief when relief is sought.

(3) Signing of Pleadings.

Pleadings shall be signed by the party or the party's representative and shall show the signer's address. The signature shall be deemed to be a certification that the signer has read the pleading and that, to the best of his knowledge and belief, there is good ground to support it.

(4) Amendments to Pleadings.

A party may amend a pleading once as a matter of course at any time before a responsive pleading is served. Otherwise, a party may amend a pleading only by leave of the presiding officer or by written consent of the adverse party. Leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten days after service of the amended pleading, whichever period may be longer, unless the presiding officer otherwise orders. Defects in a pleading that do not affect substantial rights of a party need not be amended and shall be disregarded.

(5) Response to a Notice of Agency Action.

(a) Formal Adjudicative Proceedings.

In accordance with Subsection 63G-4-201(2)(a)(vi), a respondent in a formal adjudicative proceeding shall file a response to the notice of agency action.

(b) Informal Adjudicative Proceedings.

(i) In accordance with Subsection 63G-4-203(1)(a), a respondent in an informal adjudicative proceeding may file, but is not required to file except as provided in Subsection (ii), a response to a notice of agency action.

(ii) The presiding officer may, upon a determination of good cause, require a person against whom an informal adjudicative proceeding has been initiated to submit a response by so ordering in the notice of agency action or the notice of receipt of request for agency action.

(c) Time Period for Filing a Response.

Unless a different date is established by law, rule, or by the presiding officer, a response to a notice of agency action or a notice of receipt of request for agency action shall be filed within 30 days of the mailing date of the notice.

(6) Motions.

(a) General. Any motion that is relevant to an adjudicative proceeding and is timely may be filed. All motions shall be filed in writing, unless the necessity for a motion arises at a hearing and could not have been anticipated prior to the hearing. Subsection 63G-4-102(4)(b) shall not be construed to prohibit a presiding officer from granting a timely motion to dismiss for failure to prosecute, failure to comply with these rules, failure to establish a claim upon which relief may be granted, or any other good cause basis.

(b) Time for Filing Motions to Dismiss.

Any motion to dismiss on a ground described in Rule 12(b)(1) through (7) of the Utah Rules of Civil Procedure shall be filed prior to filing a responsive pleading if such a pleading is permitted unless, subject to Subsections R151-46b-5(5)(b) and -9(9)(c)(ii), the presiding officer allows additional time upon a determination of good cause.

(c) Memoranda and Affidavits.

The presiding officer shall permit and may require memoranda and affidavits in support or contravention of a motion. Unless otherwise governed by a scheduling order issued by the presiding officer, any memorandum or affidavits in support of a motion shall be filed concurrently with the motion, any memorandum or affidavits in response to a motion shall be filed no

later than ten days after service of the motion, and any final reply shall be filed no later than five days after service of the response.

(d) Oral Argument.

(i) The presiding officer may permit or require oral argument on a motion.

(ii) Any oral argument on a motion shall be scheduled to take place no more than 10 calendar days after the day on which the final submission on the motion is filed.

(e) Ruling on a motion.

(i) The presiding officer shall verbally rule on a motion at the conclusion of oral argument whenever possible.

(ii) When a presiding officer verbally rules on a motion, the presiding officer shall issue a written ruling within 30 calendar days after the day on which the presiding officer made the verbal ruling.

(iii) If the presiding officer does not verbally rule on a motion at the conclusion of oral argument, the presiding officer shall issue a written ruling on the motion no more than 30 calendar days after:

(A) oral argument; or

(B) if there was no oral argument, the final submission on the motion.

(iv) The failure of the presiding officer to comply with the requirements of this Subsection (6)(e) is not a basis for dismissal of the matter, and may not be considered an automatic denial or grant of the motion.

R151-46b-8. Filing and Service.

(1) Filing.

(a) Pleadings shall be filed with the agency in which the adjudicative proceeding is being conducted. If an administrative law judge is conducting part of the adjudicative proceeding, then the party shall cause a courtesy copy of such pleadings to be filed with the administrative law judge. The filing of discovery documents is governed by Subsection R151-46b-9(11)(a).

(b) Manner and time of filing.

(i) A filing may be accomplished by hand delivery or by mail to the agency in which the adjudicative proceeding is being conducted.

(ii)(A) A filing may also be accomplished by facsimile or other electronic means, so long as the original document is also mailed to the agency the same day, as evidenced by a postmark or mailing certificate.

(B) Filing by electronic means is complete upon transmission if transmission is completed during normal business hours at the place receiving the filing; otherwise, filing is complete on the next business day.

(C) A filing by electronic means is not effective unless the agency receives all pertinent pages of the document transmitted.

(D) The burden is on the party filing the document to ensure that a transmission is properly completed.

(2) Service.

Pleadings filed by the parties and documents issued by the presiding officer shall be served upon the parties to the adjudicative proceeding concurrently with the filing or issuance thereof. The party who files the pleading shall be responsible for service of the pleading. The presiding officer who issues a document shall be responsible for service of the document.

(a) Service may be made upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure and may be made personally or upon the agent of the person being served. If a party is represented by an attorney, service may be made upon the attorney.

(b) Service may be accomplished by hand delivery or by mail to the last known address of the intended recipient. Service by mail is complete upon mailing. Service may also be accomplished by facsimile or other electronic means. Service by electronic means is complete on transmission if transmission is completed during normal business hours at the place receiving the service; otherwise, service is complete on the next business day.

(c) There shall appear on all documents required to be served a certificate of service in substantially the following form:

TABLE II

```
CERTIFICATE OF SERVICE
    I hereby certify that I have this day served the
foregoing document upon the parties of record in this
proceeding set forth below (by delivering a copy thereof
in person) (by mailing a copy thereof, properly addressed
by first class mail with postage prepaid, to) (by
facsimile/electronic means and first class mail to):

(Name(s) of parties of record)
(Address(es))

Dated this (day) day of (month), (year).

(Signature)
(Title)
```

R151-46b-9. Discovery - Formal Proceedings Only.

This rule applies only to formal adjudicative proceedings. Discovery is prohibited in informal adjudicative proceedings.

(1) Scope of discovery.

(a) Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party.

(b) Subject to the provisions of Subsections R151-46b-9(1)(c) and R151-46b-9(3)(a), a party may obtain discovery of documents and tangible things otherwise discoverable under Subsection R151-46b-9(1)(a) and prepared in anticipation of litigation or for hearing by or for another party or by or for that party's representative, including his attorney, consultant, insurer or other agent, only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the presiding officer shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

(c) Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of Subsection R151-46b-9(1)(a) and acquired or developed in anticipation of litigation or for hearing, may be obtained only through the disclosures required by Subsection R151-46b-9(3)(a).

~~(2) Disclosures Required By Initial Prehearing Order.~~

~~(a) Pursuant to the initial prehearing order issued in accordance with Subsection R151-46b-9(9)(c), the presiding officer may require each party to disclose:~~

~~(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information supporting its claims or defenses, identifying the subjects of the information; and~~

~~(ii) a copy of, or a description by category and location of, and reasonable access to, all discoverable documents, data compilations, and tangible things which are in its possession, custody, or control and which support its claims or defenses.~~

~~(b) The order shall not require disclosure of expert testimony, which is governed by Subsection R151-46b-9(3)(a). The order also shall not require the disclosure of information regarding persons or things intended to be used solely for impeachment.~~

~~(c) The disclosures required by Subsection R151-46b-9(2)(a) shall be made within 14 days after the written initial prehearing order is issued unless that order provides otherwise. A party joined after the initial prehearing conference shall make these disclosures within 30 days after being served unless otherwise stipulated by the parties or ordered by the presiding officer. A party shall make initial disclosures based on the information then reasonably available and is not excused from making disclosures because the party has not fully completed the investigation of the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made disclosures.~~

~~(3) Disclosures Otherwise Required.~~

~~(a) Expert Testimony.~~

~~A party shall disclose the name, address and telephone number of any person who may be called as an expert witness at the hearing.~~

~~(i) Except as otherwise stipulated by the parties or ordered by the presiding officer, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.~~

~~(ii) Unless otherwise stipulated by the parties or ordered by the presiding officer, the disclosures required by Subsection R151-46b-9(3)(a) shall be made within 30 days after the expiration of discovery as provided by Subsection R151-46b-9(7)(b) or, if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Subsection R151-46b-9(3)(a)(i), within 60 days after the disclosure made by the other party.~~

~~(b) Prehearing Disclosures.~~

~~In addition to the disclosures required pursuant to Subsection R151-46b-9(3)(a), a party shall disclose the following information regarding the evidence that it may present at trial other than solely for impeachment purposes:~~

~~(i) the name and, if not previously provided, the address and telephone number of each witness, including the general scope of their anticipated testimony, separately identifying those whom the party expects to present and those whom the party may call if the need arises;~~

~~(ii) the designation of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and~~

~~(iii) an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.~~

~~These disclosures shall be made at least 30 days before the hearing unless otherwise ordered by the presiding officer. A party may serve and file any objection to the use under Subsection R151-46b-9(13)(i) of a deposition designated by another party under Subsection R151-46b-9(3)(b)(ii) and any objection, together with the grounds therefore, as to the admissibility of materials identified under Subsection R151-46b-9(3)(b)(iii). Any such objections shall be made within 14 days after service of the disclosures required by Subsection R151-46b-9(3)(b) unless a different time is specified by the presiding officer. Objections not timely made under this Subsection, other than objections on grounds of relevancy, shall be deemed waived unless excused by the presiding officer for good cause shown.~~

~~(c) Form of Disclosures.~~

~~Unless otherwise stipulated by the parties or ordered by the presiding officer, all disclosures under Subsections R151-46b-9(2) through (3)(b) shall be made in writing, signed and served.~~

~~(4) Other Discovery Methods.~~

~~Parties may also obtain discovery by one or more of the following methods: depositions upon oral examination as provided in these rules, production of documents or things, permission to enter upon land or other property for inspection and other purposes, and physical and mental examinations.~~

~~(5) Limits on Use of Discovery.~~

~~The frequency and extent of use of the discovery methods set forth in Subsection R151-46b-9(4) shall be limited by the presiding officer if it is determined that:~~

~~(a) the discovery sought is unreasonably cumulative, duplicative or is obtainable from some other source that is more convenient, less burdensome, or less expensive;~~

~~(b) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or~~

~~(c) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The presiding officer may act on his own motion after reasonable notice or pursuant to a motion under Subsection R151-46b-9(6).~~

~~(6) Protective Orders.~~

~~Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the presiding officer may make any order which justice requires to protect a party or~~

person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(a) that the discovery not be had;

(b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(c) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(d) the certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(e) that discovery be conducted with no one present except persons designated by the presiding officer;

(f) that a deposition after being sealed be opened only by order of the presiding officer;

(g) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(h) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the presiding officer.

If the motion for a protective order is denied in whole or in part, the presiding officer may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

(7) Timing, Completion and Sequence of Discovery.

(a) A party may not use any of the discovery methods described in Subsection R151-46b-9(4) prior to the date that the disclosures required in the initial prehearing order are received unless otherwise stipulated by the parties or ordered by the presiding officer. If the initial prehearing order does not require the parties to make disclosures, then the parties may use those discovery methods at any time after the date of the initial prehearing conference.

(b) Unless otherwise stipulated by the parties or ordered by the presiding officer for good cause shown, all discovery, except for prehearing disclosures governed by Subsection R151-46b-9(3), shall be completed within 120 days after the date of the initial prehearing conference. Factors the presiding officer shall consider in determining whether a party has demonstrated good cause to shorten this time period include whether that party's interests will be prejudiced if the time period is not shortened, whether the relative simplicity or nonexistence of factual issues justifies a shortening of discovery time, and whether the health, safety or welfare of the public will be prejudiced if the time period is not shortened. Factors the presiding officer shall consider in determining whether a party has demonstrated good cause to extend this time period include, in addition to those set forth in R151-46b-5(5), whether the complexity of the case warrants additional discovery time, and whether that party has made reasonable and prudent use of the discovery time that has already been available to the party since the proceeding commenced.

(c) Unless the presiding officer upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, and except as otherwise provided by these rules, methods of discovery described in Subsection R151-46b-9(4) may be used in any sequence. The fact that a party is conducting discovery shall not operate to delay any other party's discovery.

(8) Supplemented Disclosures and Amended Responses. A party who has made a disclosure under Subsections (2) or (3) or responded to a request for discovery with a response that was complete when made shall supplement the disclosure or amend the response to include information thereafter acquired if ordered by the presiding officer or in the following circumstances:

(a) A party shall supplement at appropriate intervals disclosures under Subsections R151-46b-9(2) and (3) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required under Subsection R151-46b-9(3)(a), the duty extends to information contained in the report, and any additions or other changes to this information shall be disclosed by the time the party's disclosures under Subsection R151-46b-9(3)(b) are due.

(b) A party shall amend a prior response to a request for production within a reasonable time after the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

(9) Initial Prehearing Conference.

(a) The party initiating the adjudicative proceeding shall file a written request for the scheduling of an initial prehearing conference and provide a copy to the presiding officer within 10 days after the filing of the response to the notice of agency action or within 10 days after the filing of the request for agency action in a case commenced by such a request. The presiding officer shall contact the parties upon receiving that request for the scheduling of the conference and arrange for that conference to be held at the earliest feasible time. Nothing in this rule shall limit the ability of the presiding officer to contact the parties and schedule the conference on his own initiative.

(b) The conference may be conducted either in person or telephonically. All parties, or their counsel, shall participate in the conference. The conference shall include discussion of discovery, prehearing motions and other matters pertaining to the orderly management of the proceeding.

(c) During the initial prehearing conference, the presiding officer shall issue a verbal order regarding the following matters, and shall issue a written order to the same effect after the conference is concluded:

(i) scheduling any additional prehearing conferences;

(ii) setting a deadline for the filing of all prehearing motions and cross-motions, including motions for summary judgment, which deadline shall allow for all motions to be submitted and ruled on prior to the hearing date;

(iii) modifying, if appropriate, any of the deadlines for disclosures under Subsection R151-46b-9(3);

(iv) resolving any discovery issues;

(v) establishing a schedule for briefing, discovery needs, expert witness reports, witness and exhibit lists, objections, and any other necessary or appropriate prehearing matters;

(vi) scheduling a hearing date, which notwithstanding the provisions of Subsection R151-46b-5(2), shall provide for the hearing to be concluded not more than 180 calendar days after the day on which:

(A) the notice of agency action was issued; or

(B) the initial decision with respect to a request for agency action was issued; and

(vii) dealing with any other matters appropriate in the circumstances of the case.

(d) A party joined after the initial prehearing conference is bound by the order issued as a result of that conference, unless the presiding officer orders on stipulation or motion a modification of that order. Any such stipulation or motion shall be filed within a reasonable time after joinder.

(e) Notwithstanding Subsection R151-46b-9(7)(b) or any other provision of these rules that provides a maximum time frame for any prehearing matter, the presiding officer shall schedule all prehearing matters consistent with Subsection R151-46b-9(9)(c)(vi). The presiding officer may:

(i) adjust any time frames as necessary to accommodate Subsection R151-46b-9(9)(c)(vi); and/or

(ii) schedule any appropriate prehearing matters to occur concurrently.

(10) Signing of Disclosures, Discovery Requests, Responses, and Objections.

(a) Every disclosure made pursuant to Subsections R151-46b-9(2) and (3) shall be signed by at least one attorney of record or by the party if not represented, whose address shall be stated. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it was made.

(b) Every request for discovery or any response or objection thereto made by a party shall be signed by at least one attorney of record or by the party if not represented, whose address shall be stated. The signature of the attorney or party constitutes a certification that he has read the request, response, or objection, and that to the best of his knowledge, information, and belief formed after a reasonable inquiry it is:

(i) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(ii) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(iii) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, and the importance of the issues at stake in the proceeding.

(c) If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

(11) Filing of Discovery Requests or Disclosures.

(a) Unless otherwise ordered by the presiding officer, a party shall not file any request for or response to discovery, but shall file only the original certificate of service stating that the request or response has been served on the other parties and the date of service. Unless otherwise ordered by the presiding officer, a party shall not file any of the disclosures required by the initial prehearing order pursuant to Subsection R151-46b-9(2) or any of the disclosures required by Subsection R151-46b-9(3)(a), but shall file only the original certificate of service stating that the disclosures have been served on the other parties and the date of service. Except as provided in Subsection R151-46b-9(13)(f)(i) or unless otherwise ordered by the presiding officer, depositions shall not be filed. A party shall file the disclosures required by Subsection R151-46b-9(3)(b) unless otherwise ordered by the presiding officer.

(b) A party filing a motion for a protective order or a motion for an order compelling discovery shall attach to the motion a copy of the request for discovery or the response which is at issue.

(12) Subpoenas.

(a) Every subpoena shall be issued by the presiding officer under the seal of the department or applicable division, shall state the title of the action, and shall command every person to whom it is directed to attend and give testimony at a hearing or deposition at a time and place therein specified. A subpoena may also command the person to whom it is directed to produce books, papers, or tangible things designated therein, and in the case of a subpoena for a deposition, to also permit inspection and copying of such items. A subpoena for a deposition must limit its designation of such items to matters which properly fall within the scope of discoverable information as provided in Subsection R151-46b-9(1)(a). The presiding officer shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

(b) Service of a subpoena upon a person named therein shall be accompanied by a tender of fees for one day's attendance and the mileage allowed by law.

(c) A subpoena commanding a person to appear at a hearing or a deposition being held in this state may be served at any place within this state. A person who resides in this state may be required to appear at a deposition only in the county where the person resides, or is employed, or transacts business in person, or at such other place as the presiding officer may order. A person who does not reside in this state may be required to appear at a deposition only in the county of this state where the person is served with a subpoena, or at such other place as the presiding officer may order.

(d) A subpoena commanding a person to appear at a deposition or to produce or allow the inspection of documents, tangible things or premises located outside this state shall be served in accordance with the requirements of the jurisdiction in which such service is made.

(e) Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance therewith, the presiding officer may:

(i) quash or modify the subpoena, if it is shown to be unreasonable and oppressive; or

(ii) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(f) In the case of subpoenas requiring the production of books, papers, or other tangible things at a deposition, the person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 10 days after service, serve upon the attorney designated in the subpoena a written objection to production, inspection or copying of any or all of the designated materials. If such objection is made, the party serving the subpoena shall not be entitled to production, inspection or copying of the materials except pursuant to a further order of the presiding officer who issued the subpoena.

~~(13) Depositions Upon Oral Examination: General provision; Persons who may be deposed.~~

~~Under the limited circumstances prescribed in this Subsection, a party may with leave of the presiding officer take the testimony by deposition upon oral examination of certain persons, including parties, who have knowledge of facts relevant to the claims or defenses of any party in the proceeding. The attendance of witnesses may be compelled by subpoena as provided in Subsection R151-46b-9(12). Depositions of expert witnesses shall not be permitted.~~

~~(a)(i) Before a party may request leave to take a person's deposition, the party must first make diligent efforts to obtain discovery from that person by means of an informal interview. A party shall not be granted leave to take a deposition unless the party, upon motion, demonstrates to the satisfaction of the presiding officer that the person has knowledge of facts relevant to the claims or defenses of any party in the proceeding and:~~

~~(A) has refused a reasonable request by the moving party for an informal interview;~~

~~(B) after having notice of at least two reasonable requests by that party for an informal interview, has failed to respond to those requests;~~

~~(C) has refused to answer reasonable questions propounded to him by that party in an informal interview; or~~

~~(D) will be unavailable to testify at the hearing.~~

~~In deciding whether to issue such an order, the presiding officer shall take into consideration the probative value which the testimony of that witness is likely to have in the proceeding. The burden of demonstrating the need for a deposition shall be upon the party requesting the deposition.~~

~~(ii) For an informal interview:~~

~~(A) a party or counsel has no obligation to notify the other party or counsel of an intention to hold an informal interview with a potential witness;~~

~~(B) a party or counsel does not have a right to be present during an informal interview with a potential witness conducted by another party or counsel; and~~

~~(C) there is no requirement to have a potential witness placed under oath before providing information in an informal interview.~~

~~(b) Notice of Examination: General Requirements; Notice; Non-Stenographic Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone.~~

~~(i) A party permitted to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced, as set forth in the subpoena, shall be attached to or included in the notice.~~

~~(ii) The parties may stipulate in writing or, upon motion, the presiding officer may order the testimony at a deposition be recorded by other than stenographic means. The stipulation or order shall designate the person before whom the deposition shall be taken, the manner of recording, preserving and filing the deposition, and may include other provisions to assure that the recorded testimony will be accurate and trustworthy. A party may arrange to have a stenographic transcription made at his own expense. Any objections under Subsection R151-46b-9(13)(c), any changes made by the witness, his signature identifying the deposition as his own or the statement of the officer that is required if the witness does not sign, as provided in this rule, and the certification of the officer required by Subsection R151-46b-9(13)(f), shall be set forth in a writing to accompany a deposition recorded by non-stenographic means.~~

~~(iii) The notice to a party deponent may be accompanied by a request made in compliance with Subsection R151-46b-9(14) for the production of documents and tangible things at the taking of the deposition.~~

~~(iv) A party may, in his notice and in a subpoena, name as the deponent a public or private corporation or a partnership or association or governmental agency and describe with reasonable particularity the matters on which examination is requested. In that event, the organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. A subpoena shall advise a non-party organization of its duty to make such a designation. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection does not preclude taking a deposition by any other procedure authorized in these rules.~~

~~(v) The parties may stipulate in writing or, upon motion, the presiding officer may order a deposition be taken by telephone.~~

~~(c) Examination and Cross-Examination; Record of Examination; Oath; Objections.~~

~~Examination and cross-examination of witnesses may proceed as permitted at the hearing under the provisions of the Utah Administrative Procedures Act and the Utah Rules of Evidence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other means ordered in accordance with Subsection R151-46b-9(13)(b)(ii) of this rule. If requested by one of the parties, the testimony shall be transcribed. All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and he shall transmit them to the officer, who shall propound them to the witness and record the answer verbatim.~~

~~(d) Motion to Terminate or Limit Examination.~~

~~At any time during the taking of the deposition, on motion of either a party or the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the presiding officer may order the officer conducting the examination to cease forthwith from taking the deposition or may limit the scope and manner of the taking of the deposition, as provided in Subsection R151-46b-9(6). If the order made terminates the examination, it shall be resumed thereafter only upon~~

the order of the presiding officer. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefore. The deposition may then be used as though signed, unless a motion to suppress is filed pursuant to Subsection R151-46b-9(13)(i)(e)(v) and the presiding officer holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(f) Certification and Filing by Officer; Exhibits; Copies; Notice of Filing.

(i) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. Unless otherwise ordered by the presiding officer, he shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly send the sealed transcript of the deposition to the attorney who arranged for the transcript to be made. If the party taking the deposition is not represented by an attorney, the transcript of the deposition shall be filed with the division or committee before which the proceeding is being held unless otherwise ordered by the presiding officer. An attorney receiving the transcript of the deposition shall store it under conditions that will protect it against loss, destruction, tampering or deterioration. The officer shall file, and serve upon all parties, a certificate indicating to whom he delivered the transcript, and the date he did so.

Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to the deposition, and may be inspected and copied by any party, except that if the person producing the materials desires to retain them, he may either offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals, if he affords to all parties fair opportunity to verify the copies by comparison with the originals, or offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to the original transcript of the deposition pending final disposition of the case.

(ii) Upon payment of reasonable charges therefore, the officer shall furnish a copy of the deposition to any party or to the deponent.

(g) Failure to Attend or to Serve Subpoena; Expenses.

(i) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the presiding officer may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(ii) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the presiding officer may order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees.

(h) Persons Before Whom Depositions May Be Taken.

(i) Within the United States or within a territory or insular possession subject to the jurisdiction of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held, or before a person appointed by the presiding officer in which the action is pending. A person so appointed has power to administer oaths and take testimony.

(ii) In a foreign country, depositions may be taken:

(A) on notice before a person authorized to administer oaths in the place in which the examination is held, either by the law thereof or by the law of the United States; or

(B) before a person commissioned by the presiding officer. The person so commissioned shall have the power, by virtue of his commission, to administer any necessary oath and take testimony. A commission shall be issued on application and notice and on terms that are just and appropriate. It is not requisite to the issuance of a commission that the taking of the deposition in any other manner in impracticable or inconvenient; and a commission may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title.

(iii) No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is a relative or employee of such attorney or counsel, or is financially interested in the proceeding.

(i) Use of Depositions in Agency Adjudicative Proceedings.

(a) Use of Depositions.

At a hearing or upon argument of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(i) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Utah Rules of Evidence.

(ii) The deposition of either a party or anyone who, at the time of taking the deposition, was an officer, director, or managing agent, or a person designated under Subsection R151-46b-9(13)(b)(iv) to testify on behalf of a public or private corporation,

partnership or association or governmental agency which is a party, may be used by an adverse party for any purpose.

(iii) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer finds that:

(A) the witness is dead;

(B) the witness is at a greater distance than 100 miles from the place of hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition;

(C) the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment;

(D) the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) upon application and notice, such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(iv) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought, in fairness, to be considered with the part introduced, and any party may introduce any other parts.

All depositions lawfully taken and duly filed in any court or another agency of this state may be used as if originally taken in the pending proceeding. A deposition previously taken may also be used as permitted by the Utah Rules of Evidence.

(b) Objections to Admissibility.

Subject to the provisions of Subsection R151-46b-9(13)(i)(c), objection may be made at the hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Effect of Errors and Irregularities in Depositions.

(i) All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(ii) Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(iii) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(iv) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(v) Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise dealt with are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

(14) Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes.

(a) Scope.

Upon approval by the presiding officer, any party may serve on any other party a request:

(i) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy any designated documents, including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form, or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Subsection R151-46b-9(1)(a) and which are in the possession, custody or control of the party upon whom the request is served; or

(ii) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of Subsection R151-46b-9(1)(a).

(b) Procedure.

Before permitting a party to serve a request for production of documents, the presiding officer must first find that the party seeking such leave has demonstrated that the records he seeks have not already been provided to him in the initial disclosures submitted by another party. After approval by the presiding officer, the request may be served upon any party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 20 days after the service of the request. The presiding officer may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order under Subsection R151-46b-9(16) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(15) Physical and Mental Examination of Persons.

(a) Order for Examination.

When the mental or physical condition, including the blood group, of a party or of a person in the custody or under the legal control of a party is in controversy, the presiding officer may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or person by whom it is to be made.

(b) Report of Examining Physician.

(i) If requested by the party against whom an order is made under Subsection (a) of this rule or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery, the party causing the examination shall be entitled, upon request, to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition unless, in the case of a report of examination of a person not a party, the party shows that he is unable to obtain it. The presiding officer on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician fails or refuses to make a report, the presiding officer may exclude his testimony if offered at the hearing.

(ii) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him in respect of the same mental or physical condition.

(iii) Subsection R151-46b-9(15)(b) applies to examination made by agreement of the parties unless the agreement expressly provides otherwise. Subsection R151-46b-9(15)(b) does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other rule.

(16) Motion to Compel Discovery; Sanctions for Failure to Make or Cooperate in Discovery.

(a) A party may request entry of an order compelling discovery as follows:

(i) If a party fails to make disclosures required by an initial prehearing order pursuant to R151-46b-9(2), or a party fails to make the disclosures required by R151-46b-9(3), or a deponent fails to answer a question propounded under Subsection R151-46b-9(13), or a corporation or other entity fails to make a designation under Subsection R151-46b-9(13)(b)(iv), or a party, in response to a request for inspection submitted under Subsection R151-46b-9(14), fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling such disclosures, or an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

If the presiding officer denies the motion in whole or in part, the presiding officer may make such protective order as he would have been empowered to make on a motion made pursuant to Subsection R151-46b-9(6).

(ii) For purposes of Subsection R151-46b-9(16)(a)(i), an evasive or incomplete answer is to be treated as a failure to answer.

(b) Discovery Sanctions.

(i) If a party or other person fails to comply with an order compelling discovery issued by the presiding officer, the department may seek enforcement of that order by seeking civil enforcement in the district court as provided in Section 63G-4-501.

(ii) If a party, an officer, director, or managing agent of a party or a person designated under Subsection R151-46b-9(13)(b)(iv) to testify on behalf of a party fails to obey an order or provide or permit discovery, including an order made under Subsection R151-46b-9(16)(a), the presiding officer may make such orders in regard to the failure as are just, including:

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(iii) If a party fails to comply with an order under Subsection R151-46b-9(15)(a) requiring him to produce another for examination, the presiding officer may enter any order listed in paragraphs (A), (B), and (C) of Subsection R151-46b-9(16)(b)(ii) unless the party failing to comply shows that he is unable to produce such person for examination.

(iv) If a party, an officer, director, or managing agent of a party or a person designated under Subsection R151-46b-9(13)(b)(iv) to testify on behalf of a party fails to appear before the officer who is to take his deposition, after being served with a proper notice, fails to serve a written response to a request for inspection submitted under Subsection R151-46b-9(14), after proper service of the request, the presiding officer on motion may make such orders in regard to the failure as are just and may take any action authorized under paragraphs (A), (B) and (C) of Subsection R151-46b-9(16)(b)(ii). In lieu of any order or in addition thereto, the presiding officer shall require the party failing to act or the attorney advising him or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the presiding officer finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act described in Subsection R151-46b-9(16) may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided in Subsection R151-46b-9(6).

(v) The failure to comply with Subsections R151-46b-9(1) through R151-46b-9(15) or to honor any certification made under those rules may be found by the presiding officer to be a default under Section 63G-4-209.

R151-46b-10. Hearings.

(1) Hearings Required or Permitted.

A hearing shall be held in all adjudicative proceedings in which a hearing is:

(a) required by statute or rule and not waived by the parties; or

(b) permitted by statute or rule and timely requested.

(2) Time to Request Permissive Hearing.

A request for a hearing permitted by statute or rule must be received no later than:

(a) the time period for filing a response to a notice of agency action if a response is required or permitted;

(b) twenty days following the issuance of a notice of agency action if a response is not required or permitted; or

(c) the filing of the request for agency action.

(3) Scheduling of Hearings.

(a)(i) The date, time, and place of a hearing shall be set forth in the notice of agency action or the notice of receipt of request for agency action, or, if not known at the time of the notice, in a separate notice of hearing.

(ii) Notwithstanding the provisions of Subsection R151-46b-5(2), the hearing in any formal or informal adjudicative proceeding shall be concluded not more than 180 calendar days after the day on which:

(A) the notice of agency action was issued; or

(B) the initial decision with respect to a request for agency action was issued.

(b) Subject to the provisions of Subsection R151-46b-5(5)(b), the presiding officer may, upon a determination of good cause, issue an order modifying the date, time, or place of a hearing.

(4) Hearings Open to Public; Exceptions.

(a) Any hearing in an adjudicative proceeding is open to the public unless closed by the presiding officer conducting the hearing, pursuant to Title 63G, Chapter 4, the Administrative Procedures Act, or by a presiding officer who is a public body, pursuant to Title 52, Chapter 4, the Open and Public Meetings Act.

(b) The deliberative process of an adjudicative proceeding is a quasi-judicial function exempt from the Open and Public Meetings Act. Deliberations are closed to the public.

(5) Bifurcation of Hearing.

The presiding officer, good cause appearing, may order a hearing bifurcated into a findings phase relative to the allegations set forth in the petition, and a sanctions phase, if required, based upon the findings.

(6) Order of Presentation in Hearings.

The order of presentation of evidence in hearings in formal adjudicative proceedings shall normally be as follows:

(a) opening statement of the party with the burden of proof;

(b) opening statement of the opposing party, unless the party reserves the opening statement until the presentation of its case-in-chief;

(c) case-in-chief of the party which has the burden of proof and cross examination of witnesses by opposing party;

(d) case-in-chief of the opposing party and cross examination of witnesses by the party with the burden of proof;

(e) rebuttal case by the party which has the burden of proof;

(f) surrebuttal case by the opposing party;

(g) further rebuttal or surrebuttal as permitted by the presiding officer;

(h) closing argument by the party which has the burden of proof;

(i) closing argument by the opposing party; and

(j) final argument by the party which has the burden of proof.

(7) Testimony Under Oath.

All testimony presented at a hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath administered by the presiding officer.

(8) Telephonic Testimony.

(a) Telephonic testimony is only permissible in a formal adjudicative proceeding upon the consent of the parties or if warranted by exigent circumstances. Normally, expenses which would be incurred by a party to produce in-person testimony do not constitute an exigent circumstance as to justify telephonic testimony in a formal adjudicative proceeding. Telephonic testimony is generally permissible in an informal proceeding upon the request of any party.

(b) When telephonic testimony is to be presented, the presiding officer shall require that the identity of any witness so testifying be established. The presiding officer shall also provide safeguards to assure the witness does not refer to documents improperly and to reduce the possibility the witness may be coached or influenced during their testimony.

(9) Standard of Proof.

The standard of proof in all proceedings under these rules, whether initiated by a notice of agency action or request for agency action, shall be a preponderance of the evidence.

(10) Burden of Proof.

The department has the burden of proof in any proceeding initiated by a notice of agency action. The party who seeks action from the department has the burden of proof in any proceeding initiated by a request for agency action.

(11) Default Procedures.

(a) Order entering the default of a party.

(i) The presiding officer may enter the default of a party in accordance with Section 63G-4-209, sua sponte or upon motion of a party.

(ii) A party filing a motion for entry of default shall also file an affidavit substantiating the grounds for the motion.

(iii) If the submissions establish a basis for entry of default, the presiding officer may enter the default without notice to the defaulting party or a hearing.

(b) Additional proceedings.

(i) Following the entry of default, the presiding officer may, sua sponte or upon motion of a party, conduct further proceedings and enter a final order based on the submissions filed without notice to or participation by the defaulting party when:

(A) the relief sought against the party is specifically set forth in the pleadings that were served upon that party;

(B) the factual allegations contained in those pleadings are supported by affidavit or by a verified petition; and

(C) those factual allegations, and applicable law, support the granting of the relief sought against that party.

(ii) In all other cases, the presiding officer shall not enter a final order without conducting a hearing in which the party seeking relief may submit proffers, evidence, or legal arguments in support of the relief it requests against the defaulting party. The hearing may be held without notice to or participation by the defaulting party if the pleadings served upon the defaulting party set forth the potential relief which could be obtained against such party.

(c) The order of default and the final order may be concurrently issued.

(12) Record of Hearing.

(a) Record Requirement.

The presiding officer shall cause a record to be made of all prehearing conferences and all hearings which are conducted.

(b) Record Methods.

(i) Formal Adjudicative Proceedings.

~~The presiding officer shall cause the record of a hearing in a formal adjudicative proceeding to be made by means of:~~

~~(A) a certified court reporter pursuant to Title 58, Chapter 74, Certified Court Reporters Licensing Act; or~~

~~(B) a digital audio or video recording in a commonly used file format.~~

~~(ii) Informal Adjudicative Proceedings.~~

~~The presiding officer may cause a record of a hearing in an informal adjudicative proceeding to be made by a method set forth in Subsection (i) or by minutes prepared or adopted by the presiding officer.~~

~~(c) Record Expense.~~

~~The hearing in an adjudicative proceeding shall be recorded at the expense of the agency.~~

~~(d) Transcription of Record.~~

~~(i) If a party is required by Subsection R151-46b-12(3)(d) regarding agency review proceedings to obtain a transcript of a hearing, the party must ensure that the record is transcribed:~~

~~(A) in a formal adjudicative proceeding, by a certified court reporter; or~~

~~(B) in an informal adjudicative proceeding, by any certified court reporter or by a person who is not a party in interest. For purposes of this Subsection, "a party in interest" is defined to include a party or a relative of the party. Neither a party's counsel nor an employee of a party's counsel is considered "a party in interest" for purposes of this Subsection.~~

~~(ii) Where a transcript is prepared by someone other than a certified court reporter, a party shall file an affidavit of the transcriber stating under penalty of perjury that the transcript is a correct and accurate transcription of the hearing record.~~

~~(iii) Pages and lines in a transcript shall be numbered for referencing purposes.~~

~~(iv) The party requesting the transcript shall bear the cost of the transcription.~~

~~(v) The original transcript of a record of a hearing shall be filed with the presiding officer.~~

~~(13) Fees.~~

~~(a) Witness Fees.~~

~~Witnesses appearing upon the demand or at the request of a party shall be entitled to receive payment from that party in the amount of $18.50 for each day in attendance and, if traveling more than 50 miles to attend and return from the hearing, shall be entitled to receive 25 cents per mile for each mile thus actually and necessarily traveled. Any witness subpoenaed by a party other than the department may, at the time of service of the subpoena, demand one day's witness fee and mileage in advance and unless such fee is tendered, the witness shall not be required to appear.~~

~~(b) Interpreter and Translator Fees.~~

~~Interpreters and translators, including those skilled in foreign languages and communication with the deaf, shall be allowed such compensation for their services as the presiding officer may allow.~~

~~(c) Officers and Employees not Entitled to Fees - Exception.~~

~~No officer or employee of the United States, or of the State of Utah, or of any county, incorporated city or town within the State of Utah, shall receive any witness fee when testifying in an adjudicative proceeding unless the officer or employee is required to testify at a time other than during his normal working hours.~~

~~(d) Only One Fee Per Day Allowed.~~

~~No witness shall receive fees in more than one adjudicative proceeding on the same day.~~

R151-46b-11. Orders.

~~(1) Requirements.~~

~~(a) All orders issued by a presiding officer shall comply with the requirements of Subsection 63G-4-203(1)(i) or Section 63G-4-208, respectively. In the case of default orders and orders issued subsequent to a default order, the requirements of Subsections 63G-4-203(1)(i)(iii) and (iv) and 63G-4-208(1)(e),(f) and (g) are satisfied if the order includes a notice of the right to seek to set aside the order as provided in Subsection 63G-4-209(3).~~

~~(b) Except as provided in Sections 63G-4-502 and R151-46b-16, as to emergency proceedings, the presiding officer shall issue an order within 45 calendar days after the day on which the hearing concludes.~~

~~(c) If the presiding officer permits the filing of any post-hearing documents, that filing shall be scheduled in a way that allows the presiding officer to issue an order within 45 calendar days after the day on which the hearing concludes.~~

~~(d) The failure of the presiding officer to comply with the requirements of this Subsection (1) is not a basis for dismissal of the matter, and may not be considered an automatic denial or grant of any motion.~~

~~(2) Effective Date.~~

~~The effective date of the final order in an adjudicative proceeding shall be 30 days after the issuance thereof unless otherwise provided in the order.~~

~~(3) Clerical Mistakes.~~

~~Clerical mistakes in orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the department on its own initiative or on the motion of any party and after such notice, if any, as the department orders. Such mistakes may be so corrected at any time prior to the docketing of a petition for judicial review or as governed by Rule 11(h) of the Utah Rules of Appellate Procedure.~~

R151-46b-12. Agency Review.

~~(1) Availability of Agency Review.~~

~~Except as otherwise provided in Subsection 63G-4-209(3)(e), an aggrieved party may obtain agency review of a final order issued in an adjudicative proceeding by filing a request with the executive director of the department within thirty days following the issuance of the order.~~

~~(2) When Agency Review Is Not Available.~~

~~(a) Agency review is not available as to any order or decision entered by the following agencies:~~

~~(i) the Real Estate Appraiser Licensing and Certification Board;~~

~~(ii) the Utah Motor Vehicle Franchise Advisory Board; and~~

~~(iii) the Utah Powersport Vehicle Franchise Advisory Board.~~

~~(b) Agency review is not available for any decisions or orders entered by the Division of Occupational and Professional Licensing as to the following matters:~~

~~(i) Prelitigation proceedings conducted pursuant to Title 78B, Chapter 3, the Utah Health Care Malpractice Act;~~

(ii) Requests for modification to disciplinary orders issued by the Division of Occupational and Professional Licensing; and

(iii) Requests for entry into the Diversion Program pursuant to Section 58-1-404(4).

(c) Agency review is not available for any decisions or orders entered by the Division of Corporations and Commercial Code as to the following matters:

(i) refusal to file a document under the Utah Revised Business Corporations Act pursuant to Section 16-10a-126;

(ii) revocation of a foreign corporation's authority to transact business pursuant to Section 16-10a-1532;

(iii) refusal to file a document under the Utah Revised Limited Liability Company Act pursuant to Section 48-2c-211; and

(iv) revocation of a foreign limited liability company's authority to transact business pursuant to Section 48-2c-1614.

(d)(i) Agency reconsideration may be requested for orders or decisions exempt from agency review under Subsections R151-46b-12(2)(a), (b)(ii), and (c) pursuant to Section 63G-4-302.

(ii) Agency reconsideration is not available for orders or decisions exempt from agency review under Subsections (b)(i) and (b)(iii), pursuant to Subsections 58-1-404(4)(d) and 78B-3-416(1)(c).

(3) Content of a Request for Agency Review - Transcript of Hearing - Service.

(a) The content of a request for agency review shall be in accordance with Subsection 63G-4-301(1)(b) and as provided in this Subsection. The request for agency review shall include a copy of the order that is the subject of the request.

(b) A party requesting agency review shall set forth any factual or legal basis in support of that request, including adequate supporting arguments and citation to appropriate legal authority and to the relevant portions of the record developed during the adjudicative proceeding.

(c) If a party challenges a finding of fact in the order subject to review, the party must demonstrate, based on the entire record, that the finding is not supported by substantial evidence. A party challenging the facts bears the burden to marshal or gather all of the evidence in support of a finding and to show that despite such evidence, the finding is not supported by substantial evidence. The failure to so marshal the evidence permits the executive director to accept a division's findings of fact as conclusive. A party challenging a legal conclusion must support the argument with citation to any relevant authority and also cite to those portions of the record that are relevant to that issue.

(d) If the grounds for agency review include any challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall order and cause a transcript of the record relevant to such finding or conclusion to be prepared. When a request for agency review is filed under such circumstances, the party seeking review shall certify that a transcript has been ordered and shall notify the department when the transcript will be available for filing with the department. The party shall thereafter file the transcript with the executive director in accordance with the time frame stated in the certification regarding transcript. The party seeking agency review shall bear the cost of the transcript.

(e) A party seeking agency review shall, in the manner described in R151-46b-8, file and serve upon all other parties copies of correspondence, pleadings, and other submissions. If an attorney enters an appearance on behalf of a party, service shall thereafter be made upon that attorney, instead of directly to the party.

(f) Failure to comply with this rule may result in dismissal of the request for agency review.

(4) Stay Pending Agency Review.

(a) Upon the timely filing of a request for agency review, the party seeking review may request that the effective date of the order subject to review be stayed pending the completion of review. If a stay is not timely requested and subsequently granted, the order subject to review shall take effect according to its terms.

(b) The division or committee that issued the order subject to review may oppose the request for a stay in writing within ten days from the date the stay is requested. Failure to oppose a timely request for a stay shall result in an order granting the stay unless the department determines that a stay would not be in the best interest of the public. The department may also enter an interim order granting a stay pending a decision on the motion for a stay.

(c) In determining whether to grant a request for a stay or a motion opposing that request, the department shall review the division's or committee's findings of fact, conclusions of law and order to determine whether granting a stay would, or might reasonably be expected to, pose a significant threat to the public health, safety and welfare. The department may also issue a conditional stay by imposing terms, conditions or restrictions on a party pending agency review.

(5) Memoranda.

(a) The department may order or permit the parties to file memoranda to assist in conducting agency review. Any memoranda shall be filed consistent with these rules or as otherwise governed by any scheduling order entered by the department.

(b) When no transcript is necessary to conduct agency review, any memoranda supporting a request for such review shall be concurrently filed with the request. If a transcript is necessary to conduct agency review, any supporting memoranda shall be filed no later than 15 days after the filing of the transcript with the department.

(c) Any response to a request for agency review and any memoranda supporting that response shall be filed no later than 15 days from the filing of the request for agency review or no later than 15 days from the service of any subsequent memoranda supporting that request. Any final reply memoranda shall be filed no later than five days after the service of a response to the request for agency review.

(6) Oral Argument.

The request for agency review or the response thereto shall state whether oral argument is sought in conjunction with agency review. The department may order or permit oral argument if the department determines such argument is warranted to assist in conducting agency review.

(7) Standard of Review.

The standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings, as set forth in Subsection 63G-4-403(4).

(8) Type of Relief.

The type of relief available on agency review shall be the same as the type of relief available on judicial review, as set forth in Subsection 63G-4-404(1)(b).

(9) Order on Review.

The order on review shall comply with the requirements of Subsection 63G-4-301(6).

R151-46b-14. Exhaustion of Administrative Remedies.

(1) In accordance with Section 63G-4-401, an aggrieved party may seek judicial review of a final order only after exhausting all administrative remedies available.

(2) The order on review constitutes final agency action for purposes of Subsection 63G-4-401(1).

R151-46b-15. Stay and Other Temporary Remedies Pending Judicial Review.

(1) Unless otherwise provided by statute, a motion for a stay of an order or other temporary remedy during the pendency of judicial review shall include:

(a) a statement of the reasons for the relief requested;

(b) a statement of the facts relied upon;

(c) affidavits or other sworn statements if the facts are subject to dispute;

(d) relevant portions of the record of the adjudicative proceeding and agency review thereof;

(e) a memorandum of law identifying the issues to be presented on appeal and supporting the aggrieved party's position that those issues raise a substantial question of law or fact reasonably likely to result in reversal, remand for a new hearing, or relief from the order entered;

(f) clear and convincing evidence that if the requested stay or other temporary remedy is not granted, the aggrieved party will suffer irreparable injury;

(g) clear and convincing evidence that if the requested stay or other temporary remedy is granted, it will not substantially harm other parties to the proceeding; and

(h) clear and convincing evidence that if the requested stay or other temporary remedy is granted, the aggrieved party will not pose a significant danger to public health, safety and welfare.

(2) The executive director of the department may grant a motion for a stay of an order or other temporary remedy during the pendency of judicial review upon a showing by the aggrieved party that the requirements for such relief established in this rule are met.

R151-46b-16. Emergency Adjudicative Proceedings.

Unless otherwise provided by statute or rule:

(1) When a division commences an emergency adjudicative proceeding and issues an order in accordance with Section 63G-4-502 which results in a continued impairment of the affected party's rights or legal interests, the division that issued the emergency order shall schedule a hearing upon written request of the affected party to determine whether the emergency order should be affirmed, set aside, or modified based on the standards set forth in Section 63G-4-502. The hearing will be conducted in conformity with Section 63G-4-206.

(2) Upon request for a hearing pursuant to this rule, the Division will conduct a hearing as soon as reasonably practical but not later than 20 days from the receipt of a written request unless the Division and the party requesting the hearing agree to conduct the hearing at a later date. The Division shall have the burden of proof to establish, by a preponderance of the evidence, that the requirements of Section 63G-4-502 have been met.

(3) Except as otherwise provided by statute, the division director or his designee shall select an individual or body of individuals to act as the presiding officer at the hearing. The presiding officer shall not include any individual who directly participated in issuing the emergency order.

(4) Within 15 calendar days after the day in which the emergency hearing concludes, the presiding officer shall issue an order in accordance with the requirements of Section 63G-4-208. The order of the presiding officer shall be considered final agency action with respect to the emergency adjudicative proceeding and shall be subject to agency review in accordance with Section R151-46b-12.

R151-46b-17. Declaratory Orders.

(1) Filing of Petition for Declaratory Order.

A petition for the issuance of a declaratory order shall be filed with the agency head which has primary jurisdiction to enforce or implement the statute, rule, or order for which a declaratory order is sought. The petition shall set forth the question to be answered, the facts and circumstances related to the question, the statute, rule, or order to be applied to the question, and whether oral argument is sought in conjunction with the petition. The Petition shall comply with the requirements for pleadings set forth in Section R151-46b-7.

(2) Disposition of Petition.

Upon receipt of a petition for a declaratory order, the agency head shall issue a written order in accordance with Subsection 63G-4-503(6) or allow the petition to be denied in accordance with Subsection 63G-4-503(7).

(a) If the agency head issues a declaratory order declaring the applicability of the statute, rule, or order in question to the specified facts and circumstances set forth in the petition without setting the matter for an adjudicative proceeding, the order shall be based upon a review of the petition and oral argument upon the petition, if any; laws and rules applicable to the petition; records maintained by the agency; or any other relevant information reasonably available to the agency.

(b) If the agency head sets the matter for an adjudicative proceeding, a notice of adjudicative proceeding shall be issued in accordance with the requirements of Subsection 63G-4-201(2)(a), to the extent applicable.

(3) Classes of Circumstances in Which the Agency Will Not Issue a Declaratory Order.

The following are defined as classes of circumstances in which the agency will not issue a declaratory order:

(a) questions involving circumstances set forth in Subsection 63G-4-503(3)(a)(ii) or (3)(b);

(b) questions which are not within the jurisdiction of the agency to address;

(c) questions which have already been adequately addressed by an agency in the form of an order;

(d) questions which can be adequately addressed by an agency in the form of informal advice;

(e) questions which are already clearly addressed by statute or rule and do not warrant a declaratory order;

(f) questions which are more properly addressed by statute or rule;

(g) questions which arise out of pending or anticipated litigation in a civil, criminal, or administrative forum which are more properly addressed by that forum; and

~~(h) questions which are irrelevant, insignificant, meaningless, or spurious.~~
~~(4) Agency Review.~~
~~The recipient of a declaratory order may request agency review pursuant to Section 63G-4-301 and these rules.~~

~~R151-46b-18. Record of an Adjudicative Proceeding.~~
~~(1) Definition.~~
~~The record of an adjudicative proceeding includes the pleadings and exhibits filed by the parties, the recording of any hearing under Subsection R151-46b-10(11), any transcript of a hearing, and orders or other documents issued by any presiding officer in the adjudicative proceeding or on agency review or reconsideration of the adjudicative proceeding.~~
~~(2) Retention.~~
~~The record of an adjudicative proceeding shall be retained by the department pursuant to Title 63, Chapter 2, the Government Records Access and Management Act ("GRAMA"). As used herein, "department" means the department, division or committee before whom the adjudicative proceeding was conducted.~~
~~(3) Classification.~~
~~The record of an adjudicative proceeding is classified as a "public record" except as otherwise classified by the department pursuant to GRAMA.~~

~~KEY: administrative procedures, adjudicative proceedings, government hearings~~
~~Date of Enactment or Last Substantive Amendment: July 22, 2010~~
~~Notice of Continuation: May 3, 2006~~
~~Authorizing, and Implemented or Interpreted Law: 13-1-6; 63G-4-102(6)~~]

Commerce, Occupational and Professional Licensing
R156-46b
Division Utah Administrative Procedures Act Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34469
FILED: 02/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Construction Services Commission are proposing amendments to change certain limited formal adjudicative proceedings to informal adjudicative proceedings with respect to plumbers and electricians applying for renewal/reinstatement and plumbers and electricians subject to disciplinary proceedings. Division Bureau Managers have been successfully handling these types of proceedings as informal adjudicative proceedings for contractors during the past year. This has increased the efficiency of processing these applications or cases. The proposed changes will not result in any detrimental effect on licensees who are able to demonstrate that they are qualified and will not unnecessarily waste Division resources for a formal adjudicative proceeding when the case does not need that level of review and expense. A case can always be converted to a formal adjudicative proceeding if the case involves issues that may need a more formal review. In addition, an applicant who is accorded an informal adjudicative proceeding at the Division level will be allowed a formal adjudicative proceeding should an appeal be made to the court system.

SUMMARY OF THE RULE OR CHANGE: In Sections R156-46b-201 and R156-46b-202 plumbers and electricians are added where appropriate to change certain formal adjudicative proceedings to informal adjudicative proceedings.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 58-1-106(1)(a) and Subsection 63G-4-102(6)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Division anticipates no costs to the state budget as a result of these proposed amendments. The proposed amendments will allow the Division to more efficiently handle these types of cases with respect to plumbers and electricians in an informal setting without unnecessarily devoting resources to formal proceedings. Any savings realized will be absorbed in the Division's existing budget and will allow these resources to be directed to other functions needing attention.
♦ LOCAL GOVERNMENTS: The proposed amendments do not apply to local governments. The proposed amendments only apply to licensed plumbers and electricians applying for renewal/reinstatement and plumbers and electricians subject to disciplinary proceedings.
♦ SMALL BUSINESSES: The proposed amendments only apply to licensed plumbers and electricians applying for renewal/reinstatement and licensed plumbers and electricians subject to disciplinary proceedings. Licensees 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 plumbers and electricians applying for renewal/reinstatement and licensed plumbers and electricians subject to disciplinary proceedings. No costs will be incurred by licensees if they comply with all statutory requirements affecting their profession. The Division anticipates licensees may realize a savings in time as a result of changing some proceedings from formal to informal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed plumbers and electricians applying for renewal/reinstatement and licensed plumbers and electricians subject to disciplinary proceedings. No costs will be incurred by licensees if they comply with all statutory requirements affecting their profession. The Division anticipates licensees may realize a savings in time as a result of changing some proceedings from formal to informal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is not expected that there will be a cost increase to the plumbers and electricians industry as a result of the changes in the designation of adjudicative proceedings; experience has shown that such cases are able to be resolved informally. No fiscal impact to other businesses is anticipated by such change of procedures.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Dan Jones by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dansjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 03/30/2011 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2011

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-46b. Division Utah Administrative Procedures Act Rule.
R156-46b-201. Formal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by a request for agency action are classified as formal adjudicative proceedings:

(a) denial of application for renewal of licensure, except denial of an application for renewal of a contractor, plumber or electrician license under Title 58, Chapter 55;

(b) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(5), except denial of an application for reinstatement of a contractor, plumber or electrician license under Title 58, Chapter 55;

(c) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(6)(b), except denial of an application for reinstatement of a contractor, plumber or electrician license under Title 58, Chapter 55;

(d) special appeals board held in accordance with Section 58-1-402;

(e) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as a formal adjudicative proceeding; and

(f) board of appeal held in accordance with Subsection 58-56-8(3).

(2) The following adjudicative proceedings initiated by a Notice of Agency Action are classified as formal adjudicative proceedings:

(a) disciplinary proceedings, except disciplinary proceedings against a contractor, plumber or electrician licensed under Title 58, Chapter 55, which result in the following sanctions:

(i) revocation of licensure;

(ii) suspension of licensure;

(iii) restricted licensure;

(iv) probationary licensure;

(v) issuance of a cease and desist order except when imposed by citation or by an order in a contested citation hearing;

(vi) administrative fine except when imposed by citation or by an order in a contested citation hearing; and

(vii) issuance of a public reprimand;

(b) unilateral modification of a disciplinary order; and

(c) termination of diversion agreements.

R156-46b-202. Informal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by a request for agency action are classified as informal adjudicative proceedings:

(a) approval of application for initial licensure, renewal or reinstatement of licensure, or relicensure;

(b) denial of application for initial licensure or relicensure;

(c) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(6)(a);

(d) denial of application for reinstatement of restricted, suspended, or probationary licensure during the term of the restriction, suspension, or probation;

(e) approval or denial of application for inactive or emeritus licensure status;

(f) board of appeal under Subsection 58-56-8(3);

(g) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11;

(h) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (g);

(i) approval or denial of request to surrender licensure;

(j) approval or denial of request for entry into diversion program under Section 58-1-404;

(k) matters relating to diversion program;

(l) contested citation hearings held in accordance with Subsection 58-55-503(4)(b);

(m) approval or denial of request for modification of disciplinary order;

(n) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as an informal adjudicative proceeding;

(o) approval or denial of request for correction of procedural or clerical mistakes;

(p) approval or denial of request for correction of other than procedural or clerical mistakes;

(q) denial of application for renewal of licensure as a contractor, plumber or electrician under Title 58, Chapter 55;

(r) denial of application for reinstatement of licensure as a contractor, plumber or electrician under Title 58, Chapter 55;

(s) disciplinary proceedings against a contractor, plumber or electrician licensed under Title 58, Chapter 55; and

(t) all other requests for agency action permitted by statute or rule governing the Division not specifically classified as formal adjudicative proceedings in Subsection R156-46b-201(1).

(2) The following adjudicative proceedings initiated by a notice of agency action or request for agency action are classified as informal adjudicative proceedings:

(a) nondisciplinary proceeding which results in cancellation of licensure;

(b) disciplinary sanctions imposed in a memorandum of understanding with an applicant for licensure; and

(c) disciplinary proceedings against a contractor, plumber or electrician licensed under Title 58, Chapter 55.

KEY: administrative procedures, government hearings, occupational licensing
Date of Enactment or Last Substantive Amendment: [~~July 8, 2010~~]2011
Notice of Continuation: January 31, 2011
Authorizing, and Implemented or Interpreted Law: 63G-4-102(6); 58-1-106(1)(a)

Commerce, Occupational and Professional Licensing

R156-55a

Utah Construction Trades Licensing Act Rule

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 34470
FILED: 02/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Construction Services Commission determined the following changes should be made in the rule: 1) amendments correct and clarify the scope of practice for the S202 and S213 contractor license classifications and clarify that the work allowed by a primary classification includes all work described in a related subclassification; 2) amendments eliminate outdated transition provisions necessary in a prior rule change; 3) amendments approve another certification for crane operators; and 4) amendments allow license bonds to be less than the current $50,000 minimum in limited circumstances.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-55a-301 (2), S202/Solar Photovoltaic contractor, the proposed amendments are to correct and clarify what work must be performed by licensed electricians. The current rule inappropriately allows persons who are not licensed as electricians to perform work which should only be performed by licensed electricians to assure competent and safe performance. S213-Industrial Piping contractor, proposed amendment clarifies that geothermal work can be done under this classification. This type of work has previously been allowed under this classification, but the industry requested additional clarification. In the new Subsection R156-55a-301(3), the proposed amendments clarify that work allowed to be performed under subclassifications are allowed under the related primary classification. This has been the informal policy for many years but was not specifically stated in the rule. The old Subsection R156-55a-301(3) is deleting outdated transitions provisions that were needed at the time of a prior rule change but that are no longer applicable. In Section R156-55a-503, added Table number II. In Section R156-55a-504, the proposed amendment adds acceptance of another certification for crane operators which has been found to be a comparable certification. In the new Subsection R156-55a-602(4), the proposed amendments allow the license bond required to be less than the current $50,000 minimum in limited circumstances. It has been found that in a few cases the minimum bond requirement is higher than needed to protect the public health, safety, and welfare.

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 58-55-102(39)(a) and Subsection 58-55-308(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 contractors 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 contractors and applicants for licensure in those classifications. The costs of license bonds will be reduced for a limited number of small contractors. It is impossible to estimate the amount of savings that may result. The remaining proposed amendments should not affect the budget of a small business.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments only apply to licensed contractors and applicants for licensure in those classifications. The costs of license bonds will be reduced for a limited number of small contractors. It is impossible to estimate the amount of savings that may result. The remaining proposed amendments should not affect the budget of other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed contractors and applicants for licensure in those classifications. The costs of license bonds will be reduced for a limited number of small contractors. It is impossible to estimate the amount of savings that may result. The remaining proposed amendments should not affect the budget of affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change clarifies the scope of practice for certain contractor classifications, removes outdated provisions, clarifies existing practices, permits certification of crane operators by a new equivalent entity, and permits a bond amount less than $50,000 in limited circumstances as a method of establishing financial responsibility. These amendments could result in cost savings to licensees in amounts difficult to estimate. No other fiscal impact to businesses is anticipated.

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

COMMERCE
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HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
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INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 03/30/2011 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2011

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-55a. Utah Construction Trades Licensing Act Rule.
R156-55a-301. License Classifications - Scope of Practice.

(1) In accordance with Subsection 58-55-301(2), the classifications of licensure are listed and described in this section. The construction trades or specialty contractor classifications listed are those determined to significantly impact the public health, safety, and welfare. A person who is engaged in work which is included in the items listed in Subsections R156-55a-301(4) and (5) is exempt from licensure in accordance with Subsection 58-55-305(1)(i).

(2) Licenses shall be issued in the following primary classifications and subclassifications:

E100 - General Engineering Contractor. A General Engineering contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(22).

B100 - General Building Contractor. A General Building contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(21) and pursuant to Subsection 58-55-102(21)(b) is clarified as follows:

(a) The General Building Contractor scope of practice does not include activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the North American Board of Certified Energy Practitioners.

(b) The General Building Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

B200 - Modular Unit Installation Contractor. Set up or installation of modular units as defined in Subsection 58-56-3(15) and constructed in accordance with Section 58-56-13. The scope of the work permitted under this classification includes construction of the permanent or temporary foundations, placement of the modular unit on a permanent or temporary foundation, securing the units together if required and securing the modular units to the foundations. Work excluded from this classification includes installation of factory built housing and connection of required utilities.

R100 - Residential and Small Commercial Contractor. A Residential and Small Commercial contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(32) and pursuant to Subsection 58-55-102(32) is clarified as follows:

(a) The Residential and Small Commercial Contractor scope of practice does not include activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the North American Board of Certified Energy Practitioners.

(b) The Residential and Small Commercial Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued

by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

R101 - Residential and Small Commercial Non Structural Remodeling and Repair. Remodeling and repair to any existing structure built for support, shelter and enclosure of persons, animals, chattels or movable property of any kind with the restriction that no change is made to the bearing portions of the existing structure, including footings, foundation and weight bearing walls; and the entire project is less than $50,000 in total cost.

R200 - Factory Built Housing Contractor. Disconnection, setup, installation or removal of manufactured housing on a temporary or permanent basis. The scope of the work permitted under this classification includes placement of the manufactured housing on a permanent or temporary foundation, securing the units together if required, securing the manufactured housing to the foundation, and connection of the utilities from the near proximity, such as a meter, to the manufactured housing unit and construction of foundations of less than four feet six inches in height. Work excluded from this classification includes site preparation or finishing, excavation of the ground in the area where a foundation is to be constructed, back filling and grading around the foundation, construction of foundations of more than four feet six inches in height and construction of utility services from the utility source to and including the meter or meters if required or if not required to the near proximity of the manufactured housing unit from which they are connected to the unit.

I101 - General Engineering Trades Instruction Facility. A General Engineering Trades Instruction Facility is a construction trades instruction facility authorized to teach the construction trades and is subject to the scope of practice defined in Subsection 58-55-102(22).

I102 - General Building Trades Instruction Facility. A General Building Trades Instruction Facility is a construction trades instruction facility authorized to teach the construction trades and is subject to the scope of practice defined in Subsections 58-55-102(21) or 58-55-102(32).

I103 - Electrical Trades Instruction Facility. An Electrical Trades Instruction Facility is a construction trades instruction facility authorized to teach the electrical trades and subject to the scope of practice defined in Subsection R156-55a-301(S200).

I104 - Plumbing Trades Instruction Facility. A Plumbing Trades Instruction Facility is a construction trades instruction facility authorized to teach the plumbing trades and subject to the scope of practice defined in Subsection R156-55a-301(S210).

I105 - Mechanical Trades Instruction Facility. A Mechanical Trades Instruction Facility is a construction trades instruction facility authorized to teach the mechanical trades and subject to the scope of practice defined in Subsection R156-55a-301(S350).

S200 - General Electrical Contractor. Fabrication, construction, and/or installation of generators, transformers, conduits, raceways, panels, switch gear, electrical wires, fixtures, appliances, or apparatus which utilizes electrical energy. The General Electrical Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

S201 - Residential Electrical Contractor. Fabrication, construction, and/or installation of services, disconnecting means, grounding devices, panels, conductors, load centers, lighting and plug circuits, appliances and fixtures in any residential unit, normally requiring non-metallic sheathed cable, including multiple units up to and including a four-plex, but excluding any work generally recognized in the industry as commercial or industrial.

S202 - Solar Photovoltaic Contractor. Fabrication, construction, installation, and [~~repair~~]replacement of photovoltaic cell panels and related components[~~, including battery storage systems, distribution panels, switch gear, electrical wires, inverters, and other electrical apparatus for solar photovoltaic systems. Work excluded from this classification includes work on any alternating current system or system component~~]. Wiring, connections and wire methods as governed in the National Electrical Code and Subsection R156-55b-102(1) shall only be performed by an S200 General Electrical Contractor or S201 Residential Electrical Contractor. This classification is not required to install stand alone solar systems that do not tie into premises wiring or into the electrical utility, such as signage or street or parking lighting.

S210 - General Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in buildings, by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting, heating, and industrial purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a building out to the main water, sewer or gas pipeline. The General Plumbing Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

S211 - Boiler Installation Contractor. Fabrication and/or installation of fire-tube and water-tube power boilers and hot water heating boilers, including all fittings and piping, valves, gauges, pumps, radiators, converters, fuel oil tanks, fuel lines, chimney flues, heat insulation and all other devices, apparatus, and equipment related thereto.

S212 - Irrigation Sprinkling Contractor. Layout, fabrication, and/or installation of water distribution system for artificial watering or irrigation.

S213 - Industrial Piping Contractor. Fabrication and/or installation of pipes and piping for the conveyance or transmission of steam, gases, chemicals, and other substances including excavating, trenching, and back-filling related to such work. This classification includes the above work for geo thermal systems.

S214 - Water Conditioning Equipment Contractor. Fabrication and/or installation of water conditioning equipment and only such pipe and fittings as are necessary for connecting the water conditioning equipment to the water supply system within the premises.

S215 - Solar Thermal Systems Contractor. Construction, repair and/or installation of solar thermal systems up to the system shut off valve or where the system interfaces with any other plumbing system.

S216 - Residential Sewer Connection and Septic Tank Contractor. Construction of residential sewer lines including connection to the public sewer line, and excavation and grading related thereto. Excavation, installation and grading of residential septic tanks and their drainage.

S217 - Residential Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in residential building, including multiple units up to and including a four-plex by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting and heating purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a residential building out to the main water, sewer or gas pipeline. Excluded is any new construction and service work generally recognized in the industry as commercial or industrial.

S220 - Carpentry Contractor. Fabrication for structural and finish purposes in a structure or building using wood, wood products, metal studs, vinyl materials, or other wood/plastic/metal composites as is by custom and usage accepted in the building industry as carpentry. Incidental work includes the installation of tub liners and wall systems.

S221 - Cabinet, Millwork and Countertop Installation Contractor. On-site construction and/or installation of milled wood products or countertops.

S222 - Overhead and Garage Door Contractor. The installation of overhead and garage doors and door openers.

S230 - Siding Contractor. Fabrication, construction, and/or installation of siding.

S231 - Raingutter Installation Contractor. On-site fabrication and/or installation of raingutters and drains, roof flashings, gravel stops and metal ridges.

S240 - Glass and Glazing Contractor. Fabrication, construction, installation, and/or removal of all types and sizes of glass, mirrors, substitutes for glass, glass-holding members, frames, hardware, and other incidental related work.

S250 - Insulation Contractor. Installation of any insulating media in buildings and structures for the sole purpose of temperature control, sound control or fireproofing, but shall not include mechanical insulation of pipes, ducts or conduits.

S260 - General Concrete Contractor. Fabrication, construction, mixing, batching, and/or installation of concrete and related concrete products along with the placing and setting of screeds for pavement for flatwork, the construction of forms, placing and erection of steel bars for reinforcing and application of plaster and other cement-related products.

S261 - Concrete Form Setting and Shoring Contractor. Fabrication, construction, and/or installation of forms and shoring material; but, does not include the placement of concrete, finishing of concrete or embedded items such as metal reinforcement bars or mesh.

S262 - Gunnite and Pressure Grouting Contractor. Installation of a concrete product either injected or sprayed under pressure.

S263 - Cementatious Coating Systems Resurfacing and Sealing Contractor. Fabrication, construction, mixing, batching and installation of cementatious coating systems or sealants limited to the resurfacing or sealing of existing surfaces, including the preparation or patching of the surface to be covered or sealed.

S270 - General Drywall and Plastering Contractor. Fabrication, construction, and installation of drywall, gypsum, wallboard panels and assemblies. Preparation of drywall or plaster surfaces for suitable painting or finishing. Application to surfaces of coatings made of plaster, including the preparation of the surface and the provision of a base. This does not include applying stucco to lathe, plaster and other surfaces. Exempted is the plastering of foundations.

S272 - Ceiling Grid Systems, Ceiling Tile and Panel Systems Contractor. Fabrication and/or installation of wood, mineral, fiber, and other types of ceiling tile and panels and the grid systems required for placement.

S273 - Light-weight Metal and Non-bearing Wall Partitions Contractor. Fabrication and/or installation of light-weight metal and other non-bearing wall partitions.

S280 - General Roofing Contractor. Application and/or installation of asphalt, pitch, tar, felt, flax, shakes, shingles, roof tile, slate, and any other material or materials, or any combination of any thereof which use and custom has established as usable for, or which are now used as, water-proof, weatherproof, or watertight seal or membranes for roofs and surfaces; and roof conversion. Incidental work includes the installation of roof clamp ring to the roof drain.

S290 - General Masonry Contractor. Construction by cutting, and/or laying of all of the following brick, block, or forms: architectural, industrial, and refractory brick, all brick substitutes, clay and concrete blocks, terra-cotta, thin set or structural quarry tile, glazed structural tile, gypsum tile, glass block, clay tile, copings, natural stone, plastic refractories, and castables and any incidental works, including the installation of shower pans, as required in construction of the masonry work.

S291 - Stone Masonry Contractor. Construction using natural or artificial stone, either rough or cut and dressed, laid at random, with or without mortar. Incidental work includes the installation of shower pans.

S292 - Terrazzo Contractor. Construction by fabrication, grinding, and polishing of terrazzo by the setting of chips of marble, stone, or other material in an irregular pattern with the use of cement, polyester, epoxy or other common binders. Incidental work includes the installation of shower pans.

S293 - Marble, Tile and Ceramic Contractor. Preparation, fabrication, construction, and installation of artificial marble, burned clay tile, ceramic, encaustic, falence, quarry, semi-vitreous, and other tile, excluding hollow or structural partition tile. Incidental work includes the installation of shower pans.

S294 - Cultured Marble Contractor. Preparation, fabrication and installation of slab and sheet manmade synthetic products including cultured marble, onyx, granite, onice, corian, and corian type products. Incidental work includes the installation of shower pans.

S300 - General Painting Contractor. Preparation of surface and/or the application of all paints, varnishes, shellacs, stains, waxes and other coatings or pigments.

S310 - Excavation and Grading Contractor. Moving of the earth's surface or placing earthen materials on the earth's surface, by use of hand or power machinery and tools, including explosives, in any operation of cut, fill, excavation, grading, trenching, backfilling, or combination thereof as they are generally practiced in the construction trade.

S320 - Steel Erection Contractor. Construction by fabrication, placing, and tying or welding of steel reinforcing bars or erecting structural steel shapes, plates of any profile, perimeter or cross-section that are used to reinforce concrete or as structural members, including riveting, welding, and rigging.

S321 - Steel Reinforcing Contractor. Fabricating, placing, tying, or mechanically welding of reinforcing bars of any profile that are used to reinforce concrete buildings or structures.

S322 - Metal Building Erection Contractor. Erection of pre-fabricated metal structures including concrete foundation and footings, grading, and surface preparation.

S323 - Structural Stud Erection Contractor. Fabrication and installation of metal structural studs and bearing walls.

S330 - Landscaping Contractor.

(a) grading and preparing land for architectural, horticultural, or decorative treatment;

(b) arrangement, and planting of gardens, lawns, shrubs, vines, bushes, trees, or other decorative vegetation;

(c) construction of small decorative pools, tanks, fountains, hothouses, greenhouses, fences, walks, garden lighting of 50 volts or less, or sprinkler systems;

(d) construction of retaining walls except retaining walls which are intended to hold vehicles, structures, equipment or other non natural fill materials within the area located within a 45 degree angle from the base of the retaining wall to the level of where the additional weight bearing vehicles, structures, equipment or other non natural fill materials are located; or

(e) patio areas except that:

(i) no decking designed to support humans or structures shall be included; and

(ii) no concrete work designed to support structures to be placed upon the patio shall be included.

(f) This classification does not include running electrical or gas lines to any appliance.

S340 - Sheet Metal Contractor. Layout, fabrication, and installation of air handling and ventilating systems. All architectural sheet metal such as cornices, marquees, metal soffits, gutters, flashings, and skylights and skydomes including both plastic and fiberglass.

S350 - HVAC Contractor. Fabrication and installation of complete warm air heating and air conditioning systems, and complete ventilating systems. The HVAC Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

S351 - Refrigerated Air Conditioning Contractor. Fabrication and installation of air conditioning ventilating systems to control air temperatures below 50 degrees.

S352 - Evaporative Cooling Contractor. Fabrication and installation of devices, machinery, and units to cool the air temperature employing evaporation of liquid.

S353 - Warm Air Heating Contractor. Layout, fabrication, and installation of such sheet metal, gas piping, and furnace equipment as necessary for a complete warm air heating and ventilating system.

S354 - Radon Mitigation Contractor. Layout, fabrication, and installation of a radon mitigation system. This classification does not include work on heat recovery ventilation or makeup air components which must be performed by an HVAC Contractor and does not include electrical wiring which must be performed by an Electrical Contractor.

S360 - Refrigeration Contractor. Construction and/or installation of refrigeration equipment including, but not limited to, built-in refrigerators, refrigerated rooms, insulated refrigerated spaces and equipment related thereto; but, the scope of permitted work does not include the installation of gas fuel or electric power services other than connection of electrical devices to a junction box provided for that device and electrical control circuitry not exceeding 50 volts.

S370 - Fire Suppression Systems Contractor. Layout, fabrication, and installation of fire protection systems using water, steam, gas, or chemicals. When a potable sanitary water supply system is used as the source of supply, connection to the water system must be accomplished by a licensed journeyman plumber. Excluded from this classification are persons engaged in the installation of fire suppression systems in hoods above cooking appliances.

S380 - Swimming Pool and Spa Contractor. On-site fabrication, construction and installation of swimming pools, prefabricated pools, spas, and tubs.

S390 - Sewer and Waste Water Pipeline Contractor. Construction of sewer lines, sewage disposal and sewage drain facilities including excavation and grading with respect thereto, and the construction of sewage disposal plants and appurtenances thereto.

S400 - Asphalt Paving Contractor. Construction of asphalt highways, roadways, driveways, parking lots or other asphalt surfaces, which will include but will not be limited to, asphalt overlay, chip seal, fog seal and rejuvenation, micro surfacing, plant mix sealcoat, slurry seal, and the removal of asphalt surfaces by milling. Also included is the excavation, grading, compacting and laying of fill or base-related thereto. Also included in painting on asphalt surfaces including striping, directional and other types of symbols or words.

S410 - Pipeline and Conduit Contractor. Fabrication, construction, and installation of pipes, conduit or cables for the conveyance and transmission from one station to another of such products as water, steam, gases, chemicals, slurries, data or communications. Included are the excavation, cabling, horizontal boring, grading, and backfilling necessary for construction of the system.

S420 - General Fencing, Ornamental Iron and Guardrail Contractor. Fabrication, construction, and installation of fences, guardrails, handrails, and barriers.

S421 - Residential Fencing Contractor. Fabrication and installation of residential fencing up to and including a height of six feet.

S430 - Metal Firebox and Fuel Burning Stove Installer. Fabrication, construction, and installation of metal fireboxes, fireplaces, and wood or coal-burning stoves, including the installation of venting and exhaust systems, provided the individual performing the installation is RMGA certified.

S440 - Sign Installation Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state or local governmental jurisdictions. Signs and graphic displays shall include signs of all types, both lighted and unlighted, permanent highway marker signs, illuminated awnings, electronic message centers, sculptures or graphic representations including logos and trademarks intended to identify or advertise the user or his product, building trim or lighting with neon or decorative fixtures, or any other animated, moving or stationary device used for advertising or identification purposes. Signs and graphic displays must be fabricated, installed and erected in accordance with professionally engineered specifications and wiring in accordance with the National Electrical Code.

S441 - Non Electrical Outdoor Advertising Sign Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state and local governmental jurisdictions. Signs and graphics shall include outdoor advertising signs which do not have electrical lighting or other electrical requirements, and in accordance with professionally engineered specifications.

S450 - Mechanical Insulation Contractor. Fabrication, application and installation of insulation materials to pipes, ducts and conduits.

S460 - Wrecking and Demolition Contractor. The raising, cribbing, underpinning, moving, and removal of building and structures.

S470 - Petroleum Systems Contractor. Installation of above and below ground petroleum and petro-chemical storage tanks, piping, dispensing equipment, monitoring equipment and associated petroleum and petro-chemical equipment including excavation, backfilling, concrete and asphalt.

S480 - Piers and Foundations Contractor. The excavation, drilling, compacting, pumping, sealing and other work necessary to construct, alter or repair piers, piles, footings and foundations placed in the earth's subsurface to prevent structural settling and to provide an adequate capacity to sustain or transmit the structural load to the soil or rock below.

S490 - Wood Flooring Contractor. Installation of wood flooring including prefinished and unfinished material, sanding, staining and finishing of new and existing wood flooring. Underlayments, non-structural subfloors and other incidental related work.

S491 - Laminate Floor Installation Contractor. Installation of laminate floors including underlayments, non-structural subfloors and other incidental related work, but does not include the installation of sold wood flooring.

S500 - Sports and Athletic Courts, Running Tracks, and Playground Installation Contractor. Installation of sports and athletic courts including but not limited to tennis courts, racquetball courts, handball courts, basketball courts, running tracks, playgrounds, or any combination. Includes nonstructural floor subsurfaces, nonstructural wall surfaces, perimeter walls and perimeter fencing. Includes the installation and attachment of equipment such as poles, basketball standards or other equipment.

S510 - Elevator Contractor. Erecting, constructing, installing, altering, servicing, repairing or maintaining an elevator.

S600 - General Stucco Contractor. Applying stucco to lathe, plaster and other surfaces.

S700 - Specialty License Contractor.

(a) A specialty license is a license that confines the scope of the allowable contracting work to a specialized area of construction which the Division grants on a case-by-case basis.

(b) When applying for a specialty license, an applicant, if requested, shall submit to the Division the following:

(i) a detailed statement of the type and scope of contracting work that the applicant proposes to perform; and

(ii) any brochures, catalogs, photographs, diagrams, or other material to further clarify the scope of the work that the applicant proposes to perform.

(c) A contractor issued a specialty license shall confine the contractor's activities to the field and scope of operations as outlined by the Division.

(3) The scope of practice for the following primary classifications includes the scope of practice stated in the descriptions for the following subsclassifications:

TABLE I

Primary Classification	Included subclassifications
S200	S201, S202
S210	S211, S212, S213, S214, S215, S216, S217
S220	S221, S222
S230	S231
S260	S261, S262, S263
S270	S272, S273
S290	S291, S292, S293, S294
S320	S321, S322, S323
S350	S351, S325, S353, S354
S420	S421
S440	S441
S490	S491

~~[(3)(a) Any person holding a S215 Solar Systems Contractor license before the effective date of this rule may obtain a S202 Solar Photovoltaic Contractor license by submitting an affidavit demonstrating two years of experience that meets the requirements of R156-55a-302b no later than March 31, 2010.~~

~~(b) Any person holding a S271 Plastering and Stucco Contractor license before the effective date of this rule shall be issued a S270 General Drywall and Plastering Contractor license.~~

~~(c) Any person holding a S274 Drywall Contractor license before the effective date of this rule shall be issued a S270 General Drywall and Plastering Contractor license.~~

~~(d) Any person holding a S271 Plastering and Stucco Contractor license or an S270 General Drywall, Stucco and Plastering Contractor license before the effective date of this rule may obtain a S600 General Stucco Contractor license by submitting an affidavit demonstrating two years of experience that meets the requirements of R156-55a-302b no later than March 31, 2010.~~

~~(e) Any person holding any of the following licenses before the effective date of this rule shall be issued a S280 General Roofing Contractor license:~~
~~(i) S281 Single Ply and Specialty Coating Contractor;~~
~~(ii) S282 Build-up Roofing Contractor;~~
~~(iii) S283 Shingle and Shake Roofing Contractor;~~
~~(iv) S284 Tile Roofing Contractor; and~~
~~(v) S285 Metal Roofing Contractor.~~
] (4) The following activities are determined to not significantly impact the public health, safety and welfare and therefore do not require a contractors license:
(a) sandblasting;
(b) pumping services;
(c) tree stump or tree removal;
(d) installation within a building of communication cables including phone and cable television;
(e) installation of low voltage electrical as described in R156-55b-102(1);
(f) construction of utility sheds, gazebos or other similar items which are personal property and not attached;
(g) building and window washing, including power washing;
(h) central vacuum systems installation;
(i) concrete cutting;
(j) interior decorating;
(k) wall paper hanging;
(l) drapery and blind installation;
(m) welding on personal property which is not attached;
(n) chimney sweepers other than repairing masonry;
(o) carpet and vinyl floor installation; and
(p) artificial turf installation.
(5) The following activities are those determined to not significantly impact the public health, safety and welfare beyond the regulations by other agencies and therefore do not require a contractors license:
(a) lead removal regulated by the Department of Environmental Quality;
(b) asbestos removal regulated by the Department of Environmental Quality; and
(c) fire alarm installation regulated by the Fire Marshal.

R156-55a-503. Administrative Penalties.
(1) In accordance with Subsection 58-55-503, the following fine schedule shall apply to citations issued under Title 58, Chapter 55:

TABLE II

FINE SCHEDULE

FIRST OFFENSE

Violation	All Licenses Except Electrical or Plumbing	Electrical or Plumbing
58-55-308(2)	$ 500.00	N/A
58-55-501(1)	$ 500.00	$ 500.00
58-55-501(2)	$ 500.00	$ 800.00
58-55-501(3)	$ 800.00	$1,000.00
58-55-501(9)	$ 500.00	$ 500.00
58-55-501(10)	$ 800.00	$1,000.00
58-55-501(12)	N/A	$ 500.00
58-55-501(14)	$ 500.00	N/A
58-55-501(19)	$ 500.00	N/A
58-55-501(21)	$ 500.00	$ 500.00
58-55-504(2)	$ 500.00	N/A

SECOND OFFENSE

58-55-308(2)	$1,000.00	N/A
58-55-501(1)	$1,000.00	$1,500.00
58-55-501(2)	$1,000.00	$1,500.00
58-55-501(3)	$1,600.00	$2,000.00
58-55-501(9)	$1,000.00	$1,000.00
58-55-501(10)	$1,600.00	$2,000.00
58-55-501(12)	N/A	$1,000.00
58-55-501(14)	$1,000.00	N/A
58-55-501(19)	$1,000.00	N/A
58-55-501(21)	$1,000.00	$1,000.00
58-55-504(2)	$1,000.00	N/A

THIRD OFFENSE

Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-55-503(4)(h).

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.
(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.
(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.
(5) 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.

R156-55a-504. Crane Operator Certifications.
In accordance with Subsection 58-55-504(2)(a) one of the following certifications is required to operate a crane on commercial construction projects:
(1) a certification issued by the National Commission for the Certification of Crane Operators;[~~or~~]
(2) a certification issued by the Operating Engineers Certification Program formerly known as the Southern California Crane and Hoisting Certification Program; or
(3) a certification issued by the Crane Institute of America.

R156-55a-602. Contractor License Bonds.
(1) Pursuant to the provisions of Subsection 58-55-306(1)(b) and except as provided in Subsection (4), a contractor shall provide a license bond issued by a surety acceptable to the Division in the amount of $50,000 or such higher amount as may be determined by the Division and the Commission as provided for in Subsection R156-55a-602(3). An acceptable surety is one that is listed in the Department of Treasury, Fiscal Service, Circular 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" at the date of the bond.
(2) The coverage of the license bond shall include losses which may occur as the result of the contractor's violation of the unprofessional or unlawful provisions contained in Title 58, Chapters 1 and 55.

(3) The amount of the bond specified under Subsection R156-55a-602(1) may be increased by an amount determined by the Commission and Division when the financial history of the applicant, including any of its owners holding more than 10 percent interest, indicates the $50,000 bond is insufficient to reasonably cover risks to the public health, safety and welfare.

(4) A contractor may provide a license bond issued by a surety acceptable to the Division in an amount less than $50,000 if:

(a) the contractor demonstrates by clear and convincing evidence that:

(i) the financial history of the applicant, including any of its owners holding more than 10 percent interest, indicates the $50,000 bond is in excess of what is reasonably necessary to cover risks to the public health, safety and welfare;

(ii) the contractor's lack of financial responsibility is due to extraordinary circumstances that the contractor could not control as opposed to general financial challenges all contractors experience; and

(iii) the contractor's scope of practice will be restricted commensurate with the degree of risk the contract presents to the public health, safety, and welfare; and

(b) the Commission and Division approve the amount.

KEY: contractors, occupational licensing, licensing
Date of Enactment or Last Substantive Amendment: [~~August 16, 2010~~]2011
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; 58-55-308(1)(a); 58-55-102(39)(a)

Commerce, Real Estate
R162-2f
Real Estate Licensing and Practices Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34458
FILED: 02/23/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Three amendments are proposed, all of which respond to industry concerns, as explained more fully in the summary of the amendment presented below.

SUMMARY OF THE RULE OR CHANGE: Section R162-2f-205 is amended to state that an entity may not register under a name that closely resembles the name of another registered entity or that the division determines might otherwise prove confusing or misleading to the public. Section R162-2f-401a is amended to outline standards that a licensee must follow in disclosing to a buyer the source from which the licensee obtains square footage data of a property. Section R162-2f-403 is amended to clarify that a principal broker may not pay a commission out of a trust account without first depositing the withdrawn funds into an operating account.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2f-103(1)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: These amendments establish standards for complying with existing rules. They do not create new requirements that the Division will be required to administer or enforce. Therefore, no impact to the state budget is anticipated.
♦ LOCAL GOVERNMENTS: Local governments are not subject to these rules. Therefore, no fiscal impact to local governments is anticipated.
♦ SMALL BUSINESSES: No new fees are imposed on small businesses as a result of these rule amendments, nor are any incidental costs associated with a small business being required to choose a unique business name, to provide a square footage disclosure to a buyer, and to deposit a principal broker's commission into an operating account before further disbursing the money. Therefore, there should be no fiscal impact to small businesses.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No new fees are imposed on affected persons as a result of these rule amendments, nor are any incidental costs associated with an affected person being required to choose a unique business name, to provide a square footage disclosure to a buyer, and to deposit a principal broker's commission into an operating account before further disbursing the money. Therefore, there should be no fiscal impact to affected persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: To comply, an affected person must adhere to the standards that are established. Doing so will require some care and awareness, but will not impose a financial burden.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As indicated in the rule summary, this rule filing further clarifies existing provisions and standards and is not expected to have any fiscal impact to businesses.

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 04/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2011

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.
R162-2f. Real Estate Licensing and Practices Rules.
R162-2f-205. Registration of Entity.

(1) A principal broker shall not conduct business through an entity, including a branch office, dba, or separate property management company, without first registering the entity with the division.

(2) Exemptions. The following locations may be used to conduct real estate business without being registered as branch offices:

(a) a model home;

(b) a project sales office; and

(c) a facility established for twelve months or less as a temporary site for marketing activity, such as an exhibit booth.

(3) To register an entity with the division, a principal broker shall:

(a) evidence that the name of the entity is registered with the Division of Corporations;

(b) certify that the entity is affiliated with a principal broker who:

(i) is authorized to use the entity name; and

(ii) will actively supervise the activities of all sales agents, associate brokers, branch brokers, and unlicensed staff;

(c) if registering a branch office, identify the branch broker who will actively supervise all licensees and unlicensed staff working from the branch office;

(d) submit an application that includes:

(i) the physical address of the entity;

(ii) if the entity is a branch office, the name and license number of the branch broker;

(iii) the names of associate brokers and sales agents assigned to the entity; and

(iv) the location and account number of any real estate trust account in which funds received at the registered location will be deposited; and

(e) pay a nonrefundable application fee.

(4) Restrictions.

(a)(i) The division shall not register an entity proposing to use a business name that:

(A) is likely to mislead the public into thinking that the entity is not a real estate brokerage or property management company[~~.~~];

(B) closely resembles the name of another registered entity; or

(C) the division determines might otherwise be confusing or misleading to the public.

(ii) Approval by the division of an entity's business name does not ensure or grant to the entity a legal right to use or operate under that name.

(b) A branch office shall operate under the same business name as the principal brokerage.

(c) An entity may not designate a post office box as its business address, but may designate a post office box as a mailing address.

(5) Registration not transferable.

(a) A registered entity shall not transfer the registration to any other person.

(b) A registered entity shall not allow an unlicensed person to use the entity's registration to perform work for which licensure is required.

(c) If a change in corporate structure of a registered entity creates a separate and unique legal entity, that entity shall obtain a unique registration, and shall not operate under an existing registration.

(d) The dissolution of a corporation, partnership, limited liability company, association, or other entity registered with the division terminates the registration.

R162-2f-401a. Affirmative Duties Required of All Licensed Individuals.

An individual licensee shall:

(1) uphold the following fiduciary duties in the course of representing a principal:

(a) loyalty, which obligates the agent to place the best interests of the principal above all other interests, including the agent's own;

(b) obedience, which obligates the agent to obey all lawful instructions from the principal;

(c) full disclosure, which obligates the agent to inform the principal of any material fact the agent learns about:

(i) the other party; or

(ii) the transaction;

(d) confidentiality, which prohibits the agent from disclosing, without permission, any information given to the agent by the principal that would likely weaken the principal's bargaining position if it were known, but excepting any known material fact concerning:

(i) a defect in the property; or

(ii) the client's ability to perform on the contract;

(e) reasonable care and diligence;

(f) holding safe and accounting for all money or property entrusted to the agent; and

(g) any additional duties created by the agency agreement;

(2) for the purpose of defining the scope of the individual's agency, execute a written agency agreement between the individual and the individual's principal, including:

(a) a seller the individual represents;

(b) a buyer the individual represents;

(c) a buyer and seller the individual represents as a limited agent in the same transaction pursuant to this Subsection (4);

(d) the owner of a property for which the individual will provide property management services; and

(e) a tenant whom the individual represents;

(3) in order to represent both principals in a transaction as a limited agent, obtain informed consent by:

(a) clearly explaining in writing to both parties:

(i) that each is entitled to be represented by a separate agent;

(ii) the type(s) of information that will be held confidential;

(iii) the type(s) of information that will be disclosed; and

(iv) the circumstances under which the withholding of information would constitute a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations;

(b) obtaining a written acknowledgment from each party affirming that the party waives the right to:

(i) undivided loyalty;

(ii) absolute confidentiality; and

(iii) full disclosure from the licensee; and

(c) obtaining a written acknowledgment from each party affirming that the party understands that the licensee will act in a neutral capacity to advance the interests of each party;

(4) when acting under a limited agency agreement:

(a) act as a neutral third party; and

(b) uphold the following fiduciary duties to both parties:

(i) obedience, which obligates the limited agent to obey all lawful instructions from the parties, consistent with the agent's duty of neutrality;

(ii) reasonable care and diligence;

(iii) holding safe all money or property entrusted to the limited agent; and

(iv) any additional duties created by the agency agreement;

(5) prior to executing a binding agreement, disclose in writing to clients, agents for other parties, and unrepresented parties:

(a) the licensee's position as a principal in any transaction where the licensee operates either directly or indirectly to buy, sell, lease, or rent real property;

(b) the fact that the licensee holds a license with the division, whether the license status is active or inactive, in any circumstance where the licensee is a principal in an agreement to buy, sell, lease, or rent real property;

(c) the licensee's agency relationship(s);

(d)(i) the existence or possible existence of a due-on-sale clause in an underlying encumbrance on real property; and

(ii) the potential consequences of selling or purchasing a property without obtaining the authorization of the holder of an underlying encumbrance;

(6) [~~when completing a listing agreement, make reasonable efforts to verify the accuracy and content of the listing;~~]in order to offer a property for sale or lease:

(a) disclose the source on which the licensee relies for any square footage data that will be used in the marketing of the property:

(i) in the written agreement, executed with the seller, through which the licensee acquires the right to offer the property for sale; and

(ii) in a written disclosure provided to the buyer, at the licensee's direction, at or before the deadline for the seller's or lessor's disclosure per the contract for sale or lease; and

(b) make reasonable efforts to verify the accuracy and content of all other information and data to be used in the marketing of the property.

(7) upon initial contact with another agent in a transaction, disclose the agency relationship between the licensee and the client;

(8) when executing a binding agreement in a sales transaction, confirm the prior agency disclosure:

(a) in the currently approved Real Estate Purchase Contract; or

(b) in a separate provision with substantially similar language incorporated in or attached to the binding agreement;

(9) when executing a lease or rental agreement, confirm the prior agency disclosure by:

(a) incorporating it into the agreement; or

(b) attaching it as a separate document;

(10) when offering an inducement to a buyer who will not pay a real estate commission in a transaction:

(a) obtain authorization from the licensee's principal broker to offer the inducement;

(b) comply with all underwriting guidelines that apply to the loan for which the borrower has applied; and

(c) provide notice of the inducement, using any method or form, to:

(i) the principal broker of the seller's agent, if the seller paying a commission is represented; or

(ii) the seller, if the seller paying a commission is not represented;

(11) if the licensee desires to act as a sub-agent for the purpose of showing property owned by a seller who is under contract with another brokerage, prior to showing the seller's property:

(a) notify the listing brokerage that sub-agency is requested; and

(b) enter into a written agreement with the listing brokerage with which the seller has contracted:

(i) consenting to the sub-agency; and

(ii) defining the scope of the agency;

(c) obtain from the listing brokerage all available information about the property; and

(d) uphold the same fiduciary duties outlined in this Subsection (1);

(12) provide copies of a lease or purchase agreement, properly signed by all parties, to the party for whom the licensee acts as an agent;

(13)(a) in identifying the seller's brokerage in paragraph 5 of the approved Real Estate Purchase Contract, use:

(i) the principal broker's individual name; or

(ii) the principal broker's brokerage name; and

(b) personally fulfill the licensee's agency relationship with the client, notwithstanding the information used to complete paragraph 5;

(14) timely inform the licensee's principal broker or branch broker of real estate transactions in which:

(a) the licensee is involved as agent or principal;

(b) the licensee has received funds on behalf of the principal broker; or

(c) an offer has been written;

(15)(a) disclose in writing to all parties to a transaction any compensation in addition to any real estate commission that will be received in connection with a real estate transaction; and

(b) ensure that any such compensation is paid to the licensee's principal broker;

(16) in negotiating and closing transactions, use:

(a)(i) the standard forms approved by the commission and identified in Section R162-2f-401f;

(ii) standard supplementary clauses approved by the commission; and

(iii) as necessary, other standard forms including settlement statements, warranty deeds, and quit claim deeds;

(b) forms prepared by an attorney for a party to the transaction, if:

(i) a party to the transaction requests the use of the attorney-drafted forms; and

(ii) the licensee first verifies that the forms have in fact been drafted by the party's attorney; or

(c) if no state-approved form exists to serve a specific need, any form prepared by an attorney, regardless of whether the attorney is employed for the purpose by:

(i) the principal; or

(ii) an entity in the business of selling blank legal forms;

(17) use an approved addendum form to make a counteroffer or any other modification to a contract;

(18) in order to sign or initial a document on behalf of a principal:

(a) obtain prior written authorization in the form of a power of attorney duly executed by the principal;

(b) retain in the file for the transaction a copy of said power of attorney;

(c) attach said power of attorney to any document signed or initialed by the individual on behalf of the principal;

(d) sign as follows: "(Principal's Name) by (Licensee's Name), Attorney-in-Fact;" and

(e) initial as follows: "(Principal's Initials) by (Licensee's Name), Attorney-in-Fact for (Principal's Name);"

(19) if employing an unlicensed individual to provide assistance in connection with real estate transactions, adhere to the provisions of Section R162-2f-401g;

(20) strictly adhere to advertising restrictions as outlined in Section R162-2f-401h;

(21) as to a guaranteed sales agreement, provide full disclosure regarding the guarantee by executing a written contract that contains:

(a) the conditions and other terms under which the property is guaranteed to be sold or purchased;

(b) the charges or other costs for the service or plan;

(c) the price for which the property will be sold or purchased; and

(d) the approximate net proceeds the seller may reasonably expect to receive;

(22) immediately deliver money received in a real estate transaction to the principal broker for deposit; and

(23) as contemplated by Subsection 61-2f-401(18), when notified by the division that information or documents are required for investigation purposes, respond with the required information or documents in full and within ten business days.

R162-2f-403. Trust Accounts.

(1) A principal broker shall:

(a) maintain a trust account in a bank or credit union located within the state of Utah;

(b) notify the division in writing of:

(i) the account number; and

(ii) the address of the bank or credit union where the account is located; and

(c) use the account for the purpose of securing client[**s**] funds:

(i) deposited with the principal broker in connection with a real estate transaction regulated under Title 61, Chapter 2f et seq.;

(ii) if the principal broker is also a builder or developer, deposited under a Real Estate Purchase Contract, construction contract, or other agreement that provides for the construction of a dwelling; and

(iii) collected in the performance of property management duties as specified in this Subsection (4)(b).

(2) A principal broker who deposits in any trust account more than $500 of the principal broker's own funds violates Subsection 61-2f-401(4)(b).

(3) A principal broker may not deposit into the principal broker's real estate trust account funds received in connection with rental of tourist accommodations where the rental period is less than 30 consecutive days.

(4)(a) A principal broker who regularly engages in property management on behalf of seven or more individual units shall establish a property management trust account separate from the real estate trust account.

(b) A principal broker who collects rents or otherwise manages property for no more than six individual units at any given time may use the real estate trust account to secure funds received in connection with the principal broker's property management activities.

(5) A trust account maintained by a principal broker shall be non-interest-bearing, unless:

(a) the parties to the transaction agree in writing to deposit the funds in an interest-bearing account;

(b) the parties to the transaction designate in writing the person to whom the interest will be paid upon completion or failure of the sale;

(c) the person designated under this Subsection (5)(b):

(i) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code; and

(ii) operates exclusively to provide grants to affordable housing programs in Utah; and

(d) the affordable housing program that is the recipient of the grant under this Subsection (5)(c)(ii) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code.

(6) Disbursement of funds held in trust.

(a) A principal broker may disburse funds only in accordance with:

(i) specific language in the Real Estate Purchase Contract authorizing disbursement;

(ii) other proper written authorization of the parties having an interest in the funds; or

(iii) court order.

(b) A principal broker may not release for construction purposes those funds held as deposit money under an agreement that provides for the construction of a dwelling unless the purchaser authorizes such disbursement in writing.

(c) A principal broker may not withdraw any portion of the principal broker's sales commission:

(i) without written authorization from the seller and buyer; or

(ii)(A) until after the settlement statements have been delivered to the buyer and seller; and

(B) the buyer or seller has been paid for the amount due as determined by the settlement statement.

(d) A principal broker may not pay a commission from the real estate trust account without first:

(i) [~~until after~~]closing or otherwise terminating the transaction[~~ has closed or otherwise terminated~~];[~~ and~~]

(ii) [~~without~~]making a record of each disbursement[~~.~~] ; and

(iii) depositing the withdrawn funds into the principal broker's operating account.

(e) A principal broker may not release earnest money or other trust funds associated with a failed transaction unless:

(i) a condition in the Real Estate Purchase Contract authorizing disbursement has occurred; or

(ii) the parties execute a separate signed agreement containing instructions and authorization for disbursement.

(f) If both parties to a contract make a written claim to the earnest money or other trust funds and the principal broker cannot determine from any signed agreement which party's claim is valid, the principal broker may:

(i) interplead the funds into court and thereafter disburse:

(A) upon written authorization of the party who will not receive the funds; or

(B) pursuant to the order of a court of competent jurisdiction; or

(ii) within 15 days of receiving written notice that both parties claim the funds, refer the parties to mediation if:

(A) no party has filed a civil suit arising out of the transaction; and

(B) the parties have contractually agreed to submit disputes arising out of their contract to mediation.

(g) If a principal broker is unable to disburse trust funds within five years after the failure of a transaction, the principal broker shall remit the funds to the State Treasurer's Office as unclaimed property pursuant to Title 67, Chapter 4a et seq.

KEY: real estate business, licensing, enforcement
Date of Enactment or Last Substantive Amendment: [~~December 22, 2010~~]2011
Authorizing, and Implemented or Interpreted Law: 61-2f-103(1)

Commerce, Real Estate
R162-103
Appraisal Education Requirements

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34476
FILED: 03/01/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to comply with the requirements and recommendations of the Appraisal Subcommittee following their biannual audit of the Division of Real Estate and make other technical corrections.

SUMMARY OF THE RULE OR CHANGE: In applying for certification, a school's directors, owners and instructors must disclose whether they have ever entered a plea in abeyance or diversion agreement to criminal charges. In order to receive credit for prelicensing or continuing education courses, a student must attend 100% of the scheduled class time. An individual may be awarded up to one-half of the required continuing education credit for teaching, program development, authorship of textbooks, or similar activities. Service on the education review committee, experience review committee, and technical advisory panel may constitute continuing education credit if approved by the Appraiser Board as a course in accordance with standards set by the Appraisal Qualifications Board.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 61-2b-8

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: These amendments clarify existing provisions, but do not create new requirements or programs that the Division will need to implement or enforce. Therefore, no impact to the state budget is anticipated.

♦ LOCAL GOVERNMENTS: Local governments are not required to comply with the rules governing the appraisal industry. Therefore, no fiscal impact to local governments is anticipated from this rule filing.

♦ SMALL BUSINESSES: These amendments pose no new requirements for small businesses; rather, they clarify existing rule provisions. Therefore, no fiscal impact to small businesses is anticipated from this rule filing.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: These amendments pose no new requirements for affected persons; rather, they clarify existing rule provisions.

Therefore, no fiscal impact to small businesses is anticipated from this rule filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These amendments provide clarifications, but do not require any new compliance. Therefore, no compliance costs are anticipated for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As indicated in the rule summary, no fiscal impact is anticipated from this rule filing, which clarifies licensure requirements to include disclosing any pleas in abeyance, clarifies the standards for continuing education credits, and makes other minor technical amendments.

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2011

AUTHORIZED BY: Deanna Sabey, Director

R162. Commerce, Real Estate.
R162-103. Appraisal Education Requirements.
R162-103-2. School Certification.

103.2.1 Each school requesting certification shall make application for approval on the form prescribed by the Division, and shall submit the applicable fees. The application shall include, and the Board may consider, the following information in determining the school's eligibility for certification:

103.2.1.1 Name, phone number, and address of the school, school director and all owners of the school.

103.2.1.2 Attestation to upstanding moral character by individuals who are school directors or owners of the school, and whether any individual:

(a) has had an appraiser license or certification, or any other professional license or certification, denied, restricted, suspended, or revoked.

(b) has been permitted to resign or surrender an appraiser license or certification, or any other professional license or certification.

(c) has ever allowed an appraiser license or certification or any other professional license or certification to expire while the individual was under investigation, or while action was pending against the individual by an appraiser licensing or any other agency.

(d) has any action now pending by any appraiser licensing or other agency.

(e) is currently under investigation for, or charged with, or has ever pled guilty or no contest to, [~~or~~]been convicted of, or agreed to a plea in abeyance or diversion agreement for a misdemeanor or felony, excluding minor traffic offenses.

(f) has ever been placed on probation in connection with any criminal offense or a licensing action.

103.2.1.3 A description of the type of school and a description of the school's physical facilities. All courses shall be taught in an appropriate classroom facility and not in any private residence, except for courses approved for specific home-study purposes;

103.2.1.4 A copy of the statement which shall be provided for each student outlining the days, times and locations of classes; the number of quizzes and examinations; the grading system, including methods of testing and standards of grading; the requirements for attendance; and the school's refund policy.

103.2.2 A public school may schedule its courses within the criteria of its regular schedule, for example, quarter, semester, or similar schedule. A quarter hour of college credit is the equivalent of 10 classroom hours, and a semester hour of college credit is the equivalent of 15 classroom hours.

103.2.3 Upon approval by the Board, a school shall be issued certification. A school certification shall be issued for a two-year term and expire twenty-four months from the date of issuance. School certifications may be renewed by submitting a properly completed application for renewal prior to the expiration date of the school's current certification, using the form required by the Division, and paying the applicable fee. The term of a renewed school certification shall be twenty-four months. Conditions of certification include the following:

(a) A school shall teach the approved course of study as outlined in the State Approved Course Outline;

(b) A school shall require each student to attend the required number of hours and pass a final examination;

(c) A school shall maintain a record of each student's attendance for a minimum of five years after his enrollment;

(d) A school shall not make any misrepresentation in its advertising about any course of instruction, and shall be able to provide substantiation of any claim made. All advertising and public notices shall be free of statements or implications which do not enhance the dignity and integrity of the appraisal profession. A school shall refrain from disparaging a competitor's services or methods of operation;

(e) Within 15 calendar days after the occurrence of any material change in the school which could affect its approval, including the events listed in R162-103.2.1.2, the school shall give the Division written notice of that change; and

(f) A school shall not attempt by any means to obtain or use the questions on the state licensure or certification exam unless those questions have been dropped from the current exam bank.

(g) A school shall provide to all students at the time of registration a copy of the qualifying questionnaire the student will be required by the Division to answer as part of the prelicensing or precertification examination.

R162-103-3. Course Certification.

103.3.1 Each school requesting approval of a course designed to meet the education requirements of licensure or certification shall make application for approval on a form prescribed by the Division and shall pay the applicable fee. The application shall include, and the Board may consider, the following information in determining eligibility for approval:

(a) A course outline including a description of the course, the length of time to be spent on each subject area broken into segments of no more than 30 minutes each, and three to five learning objectives for every three hours;

(b) Indication of any method of instruction other than lecture method including: a slide presentation, CD, DVD, webinar, satellite broadcast, cassette, video tape, movie, or other.

(c) A copy of the three final examinations of the course and the answer keys which are used to determine if the student has passed the course;

(d) An explanation of what the school procedure is for maintaining the security of the final exams and the answer keys;

(e) A list of the titles, authors and publishers of all required textbooks;

(f) A list of the instructors and evidence of their certification by the Division, and a list of any guest lecturers to be used and evidence of their qualifications as an instructor for a specific course;

(g) Days, times, and location of classes; and

(h) A commitment to give no more than eight credit hours per day to any student.

103.3.2 Upon approval by the Board, a course shall be issued certification. All original course certifications and all renewed course certifications shall be issued with an expiration date of twenty-four months after issuance.

103.3.3 Each course of study shall meet the minimum standards set forth in the State Approved Course Outline provided for each approved course and be approved by the AQB Course Approval Program. The school may alter the sequence of presentation of the required topics.

103.3.4 All courses of study shall meet the minimum hourly requirement of that course. A credit hour is defined as 50 minutes of supervised contact by a certified instructor within a 60-minute time period. A 10-minute break shall be given for each 50 minutes in class. Registration or certification credit shall be limited to a maximum of eight credit hours per day. The limitation applies only to the credit a student may receive and is not intended to limit the number of classroom hours offered.

103.3.5 A public school or institution may use any faculty member to teach an approved course provided the individual demonstrates to the satisfaction of the Division and the Board academic training or appraisal experience qualifying [~~him~~]the faculty member to teach the course.

103.3.6 Distance education is defined as any educational process based on the geographical separation of instructor and student (e.g., CD ROM, On-line learning, correspondence courses, video conferencing, etc.). Distance education courses must provide interaction between the learner and instructor and must include testing. A distance education course may be acceptable to meet the classroom hour requirement or its equivalent providing each course meets the following conditions:

(a) The course:

(i)(A) has been presented by an accredited college or university which offers distance education programs in other disciplines and where accreditation has been made by the Commission on Colleges or a regional accreditation association; or

(B) has received approval by the International Distance Education Certification Center, also known as IDECC; and

(ii) has been approved under the AQB Course Approval Program.

(b) The learner must successfully complete a written examination personally proctored by an official approved by the presenting entity; and

(c) The course must meet the requirements established by the AQB and be equivalent to the minimum of 15 classroom hours.

103.3.7 A maximum of 10% of the required class time may be spent in testing, including review test and final examination. A student cannot challenge a course or any part of a course of study by taking an exam in lieu of attendance.

103.3.7.1 If a student fails a school final examination, he shall not be allowed to retest for a minimum of three days. The student shall not be allowed to retake the same final exam, but shall be given a new exam with different questions.

103.3.7.2 If the student fails the final exam a second time, the student shall not be allowed to retest for a minimum of two weeks at which time the student shall be given an entirely new exam with completely new questions. If the student fails this third exam, the student shall fail the course.

103.3.8 All texts, workbooks, supplement pamphlets and any other materials shall be appropriate and current in their application to the required course outline.

103.3.9 Within 15 calendar days after the occurrence of any material change in a course which could affect approval, the school shall give the Division written notice of the change.

R162-103-4. Education Credit for Noncertified Courses.

103.4.1 Education credit shall be granted towards licensure or certification for an appraisal education course which has been taken and which has not been previously certified in Utah for prelicensing education credit, and has been provided by a school which meets the criteria as outlined in 103.1.

103.4.1.1 The course content shall have met the minimum standards set forth in the Utah State Approved Course Outline and be approved by the AQB Course Approval Program.

103.4.1.2 A course must be at least 15 hours in duration, including the examination. An hour is defined as 50 minutes of supervised contact by a certified instructor within a 60-minute time period.

103.4.1.3 A final examination shall be administered at the end of each course pertinent to that education offering.

103.4.2 Credit shall not be granted for a course taken in which the applicant obtained credit from the course provider by challenge examination without having attended the course.

103.4.3 Credit shall not be given for duplicate or highly comparable classes. Each course must represent a progression in [~~which~~]the appraiser's knowledge[~~is increased~~].

103.4.4 Except as provided in R162-105.3.3, there is no time limit regarding when education credit must have been obtained.

103.4.5 Hourly credit for a course taken from a professional appraisal organization shall be granted based upon the Division approved list which verifies hours for these courses.

103.4.6 Credit shall only be granted for a course that has been successfully completed. Successful completion of a course means that the applicant has attended [~~a minimum of 90%~~]100% of the scheduled class hours, has completed all required exercises and assignments, and has achieved a passing score on a course final examination. The final examination shall not be an open book examination.

103.4.7 Submission for Education Approval.

103.4.7.1 Courses that have not been previously certified for prelicensing credit shall be reviewed by the Education Review Committee. It is the responsibility of the applicant to establish that a particular education offering shall qualify to meet the education requirement for licensing or certification.

103.4.7.2 The applicant shall submit on a form provided by the Division a list of the courses that documents the course title, the name of the sponsoring organization, the number of classroom hours, and the date the course was completed.

103.4.7.3 The applicant shall attest on a notarized affidavit that the courses have been completed as documented.

103.4.7.4 The applicant shall support the claim for education credit if requested by the Division by providing proof of completion of the courses in the form of certificates, transcripts, report cards, letters of verification, or similar proof.

R162-103-5. Instructor Application for Certification.

103.5.1 Each instructor requesting approval to be certified as an instructor to teach the education requirements of appraisal licensure or certification shall make application for approval on a form prescribed by the Division and shall submit the applicable fees. The application shall include, and the Board may consider, the following information in determining the instructor's eligibility for approval:

103.5.1.1 Attestation to upstanding moral character, including whether the individual:

(a) has had an appraiser license or certification, or any other professional license or certification, denied, restricted, suspended, or revoked.

(b) has been permitted to resign or surrender an appraiser license or certification, or any other professional license or certification.

(c) has ever allowed an appraiser license or certification or any other professional license or certification to expire while the individual was under investigation, or while action was pending against the individual by an appraiser licensing or any other agency.

(d) has any action now pending by any appraiser licensing or other agency.

(e) is currently under investigation for, or charged with, or has ever pled guilty or no contest to, [~~or~~]been convicted of, or agreed to a plea in abeyance or diversion agreement for a misdemeanor or felony, excluding minor traffic offenses.

(f) has ever been placed on probation in connection with any criminal offense or a licensing action.

103.5.2 The instructor shall demonstrate evidence of knowledge of the subject matter by the following:

103.5.2.1 A minimum of five years active experience in appraising, or

103.5.2.2 Evidence of having completed college or other appropriate courses specific to the topic [~~he~~]the instructor proposes to teach, or

103.5.2.3 Evidence of other qualifications of experience, education, or credentials which are acceptable to the Board; and

103.5.2.4 Evidence of having passed an examination designed to test knowledge of the subject matter he proposes to teach.

103.5.3 An applicant to teach the course on USPAP shall conform to all of the above criteria and in addition shall have been certified by the AQB as an AQB Certified USPAP instructor.

103.5.4 Upon approval by the Board, an applicant shall be issued certification. Instructor certifications shall be issued for a term that expires twenty-four months from the date of issuance. Conditions of renewal of certification include providing proof of the following:

103.5.4.1 [~~Must~~]The instructor must have taught at least 20 hours of in-class instruction in a certified course during the preceding two years; and

103.5.4.2 [~~Must~~]The instructor must have attended a real estate instructor development workshop sponsored or approved by the Division during the preceding two years.

103.5.4.3 Instructor certifications may be renewed by submitting a properly completed application for renewal prior to the expiration date of the instructor's current certification, using the form required by the Division. Renewed instructor certifications shall be issued for a term of twenty-four months. If the instructor does not submit a properly completed renewal form, renewal fee, and any required documentation prior to the expiration date of the current certification, the certification shall expire. When a certification expires, the certification may be reinstated for a period of thirty days after the expiration date upon payment of a late fee in addition to completing the requirements for a timely renewal. After this thirty day period, and until three months after the expiration date, an instructor certification may be reinstated upon payment of a non-refundable late fee and submission of proof of completion of six classroom hours of education related to real estate appraisal or teaching techniques in addition to completing the requirements for a timely renewal. Following the three month period, an instructor shall be required to apply as an original applicant in order to obtain a new certification.

103.5.5 Within 15 calendar days after the occurrence of any of the events listed in Section 103.5.1, an applicant or instructor shall give written notice to the Division of that event.

R162-103-7. Continuing Education Course Certification.

103.7 As a condition of renewal, all appraisers shall complete the equivalent of 28 classroom hours of appraisal education during the two-year term preceding renewal.

103.7.1 Except as provided in R162-103.7.6, continuing education credit shall be given to students only for courses that are certified by the Division at the time the courses are taught. Course sponsors shall apply for course certification by submitting all forms and fees required by the Division not less than 30 days prior to the course being taught. Applications shall include the following information which shall be used in determining approval:

(a) name and contact information of the course sponsor and the entity through which the course will be provided;

(b) a description of the physical facility where the course will be taught;

(c) the proposed number of credit hours for the course;

(d)(i) identification of whether the method of instruction will be traditional education or distance education;

(ii) if distance education, the course shall meet the requirements for distance learning outlined in R162-103.3.6, except that:

(A) testing for continuing education course competency need not be a proctored examination if the course mechanisms require a student to demonstrate mastery and fluency;

(B) the course may be approved by the Division, rather than by the AQB Course Approval program; and

(C) a course need not be a minimum of 15 classroom hours;

(e) the title of the course;

(f) a statement defining how the course will meet the objectives of continuing education by increasing the licensee's knowledge, professionalism, and ability to protect and serve the public;

(g) a course outline including, for each segment of no more than 15 minutes, a description of the subject matter;

(h) a minimum of one learning objective for every hour of class time;

(i) the name and certification number of each certified instructor who will teach the course;

(j) copies of all materials that will be distributed to the participants;

(k) the procedure for pre-registration, the tuition or registration fee and a copy of the cancellation and refund policy;

(l) except for courses approved for distance education, the procedure for taking and maintaining control of attendance during class time, which procedure shall be more extensive than having the student sign a class roll;

(m) a sample of the completion certificate which shall bear the following information:

(i) space for the licensee's name, type of license and license number, and date of course;

(ii) The name of the course provider, course title, hours of credit, certification number, and certification expiration date; and

(iii) Space for signature of the course sponsor and a space for the licensee's signature;

(n)(i) a signed statement agreeing to upload the following, within 10 days after the end of a course offering, to the database specified by the Division:

(A) course name;

(B) course certificate number assigned by the Division;

(C) date the course was taught;

(D) number of credit hours; and

(E) names and license numbers of all students receiving continuing education credit;

(o) a signed statement agreeing not to market personal sales products;

(p) a commitment to give no more than eight credit hours per day to any student; and

(q) other information the Division may require.

103.7.2 Real estate appraisal related field trips are acceptable for continuing education credit; however, transit time to or from the field trip location may not be included when awarding credit if instruction does not occur.

103.7.3 Prelicensing education credit awarded to individuals seeking a different classification than that held, can also be used to satisfy a continuing education requirement.

103.7.4 Alternative Continuing Education Credit - continuing education credit may be granted for participation, other than as a student, in an appraisal practicum course.

103.7.4.1 [~~Credit~~]Up to one-half of an individual's continuing education credit requirement may be granted on a case by case basis for teaching, program development, authorship of textbooks, or similar activities which are determined by the Board to be equivalent to obtaining continuing education.

103.7.4.2 The Education Review Committee shall review claims of equivalent education and also alternative continuing education proposed to be used for continuing education purposes.

103.7.4.3 The Board may award continuing education credit to members of the Education Review Committee, the Experience Review Committee, and the Technical Advisory Panel if approved by the Board and offered as a practicum course under R162-103.7.4 or as a course under R162-103.7.4.1 in accordance with AQB standards.

103.7.4.4 The Division may award continuing education credit to Board Members for participation on the Board in accordance with AQB standards.

103.7.5 Courses that are approved for continuing education credit for real estate sales agents, real estate brokers, or mortgage officers licensed by the Division are not acceptable for appraiser continuing education credit unless the courses have been previously approved by the Division for appraiser continuing education.

103.7.6(a) The Division may grant continuing education credit for non-certified courses submitted by a renewal applicant in the form required by the Division if:

(i) the course was not required by these rules to be certified and the Division determines that the course meets the continuing education objectives listed in this rule; or

(ii) the course was taught outside the state of Utah.

(b) A licensee shall retain original course completion certificates for three years following renewal and produce those certificates when audited by the Division.

103.7.7 The Division may only certify course topics approved as continuing education topics by the AQB.

103.7.8(a) A course sponsor is not responsible for uploading information for students who fail to provide an accurate name or license number registered with the Division.

(b) Continuing education credit shall not be given to any student who fails to provide to a course sponsor an accurate name or license number registered with the Division within 7 days of attending the course.

103.7.9 A course sponsor shall upon completion of a course offering, provide a certificate of completion, in the form required by the Division, to those students who attend [~~a minimum of 90%~~]100% of the required class time.

103.7.10 Except for distance education courses, a course may only be approved if taught in an appropriate classroom facility and not in a private residence.

103.7.11(a) For purposes of this rule, a credit hour is defined as 50 minutes within a 60 minute segment. A course may not be approved for fewer than two credit hours.

KEY: real estate appraisals, education
Date of Enactment or Last Substantive Amendment: [~~January 1, 2009~~]2011
Notice of Continuation: April 18, 2007
Authorizing, and Implemented or Interpreted Law: 61-2b-8

Community and Culture, Olene Walker Housing Trust Fund
R235-1
Olene Walker Housing Loan Fund (OWHLF)

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34455
FILED: 02/22/2011

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify the scope, services and funding sources under the Olene Walker Housing Loan Fund (OWHLF).

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies the OWHLF's objective which is to develop new affordable housing and to rehabilitate and preserve current affordable housing stock. It also adds language allowing the OWHLF to pursue funding from other non-state sources, and aligns the handling of such funding with the current regulations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 9-4-704(5)(a)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Savings--Would allow the OWHLF to pursue funds from other non-state sources.
♦ LOCAL GOVERNMENTS: Local governments served by the OWHLF would continue to receive the same level of service and should experience no effect.
♦ SMALL BUSINESSES: Small businesses who apply for funding from the OWHLF wound not be required to do anything different from the current loan process, would not experience any additional costs to take advantage of OWHLF programs, and therefore should not be affected.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: People who apply for funding from the OWHLF wound not be required to do anything different from the current loan process, would not experience any additional costs to take advantage of OWHLF programs, and therefore should not be affected.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no direct compliance costs. Individuals and agencies who apply for OWHLF would be required to adhere to certain standards or requirements associated with the funding sources.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: With other new funding opportunities available, from time to time, the OWHLF would be able to secure those funds and better leverage what state funds are already appropriated from the Utah Legislature. These amendments will not require any increase in state match. Any new funds received for the OWHLF directly correlate to new business opportunities for contractors, material suppliers, architects and engineers.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMUNITY AND CULTURE
OLENE WALKER HOUSING TRUST FUND
ROOM 500
324 S STATE ST
SALT LAKE CITY, UT 84111
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Matt Turner by phone at 801-368-1173, by FAX at 801-538-8888, or by Internet E-mail at mjturner@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2011

AUTHORIZED BY: Michael Hansen, Interim Executive Director

R235. Community and Culture, Olene Walker Housing Loan Fund.
R235-1. Olene Walker Housing Loan Fund (OWHLF).
R235-1-1. Authority.

(1) Pursuant to Section 9-4-701 et seq., Utah Code, the Olene Walker Housing Loan Fund Board (OWHLF) determines how federal and state monies deposited to the fund shall be allocated and distributed.

(2) [~~An Allocation Plan~~]The Program Guidance and Rulesgovern[~~s~~] the allocation and distribution of funds. The [~~Allocation Plan~~]Program Guidance and Rulesmay be amended from time to time as new guidelines and regulations are issued or as the Board deems necessary to carry out the goals of the OWHLF.

R235-1-2. Purpose.

(1) Pursuant to Subsection 9-4-702(1)(a), the Division of Housing and Community Development (DHCD) shall administer the OWHLF as the designee of the executive director of the Department of Community and Culture (DCC).

(2) The objective of the OWHLF is to rehabilitate or develop housing that is affordable to very low, low and moderate-income persons through a fair and competitive process.

(3) In administering this fund, this rule incorporates by reference 24 CFR 84-85 as authorized under Utah Code Annotated Section 9-4-703 through 708.

R235-1-3. Definitions.

In addition to terms defined in Section 9-4-701:

(1) "Application" means the form provided and required by DHCD to be submitted to request funds from the OWHLF.

(2) "Board" means the Olene Walker Housing Loan Fund Board.

(3) "BRC" means a Board Review Committee(s), consisting of members selected by the Board.

(4) "Consolidated Plan" means a plan of up to five years in length that describes community needs, resources, priorities and proposed activities to be undertaken under certain HUD programs, including Community Development Block Grant (CDBG), HOME, Emergency Shelter Grant [~~and~~]Housing Opportunities for Persons with AIDS (HOPWA), and other partner funding sources.

(5) "Subsidy-layering" means an evaluation of the project conducted by DHCD staff to ensure that the lowest amount of HOME and other funds necessary to provide affordable housing are invested in the project.

(6) "HOME, CDBG, or HOPWA" means HUD programs that provide funds for housing and community needs.

(7) "Affordable Housing" means assisting persons at or below 80% of area median income (as defined by HUD) to find decent, and safe housing at a reasonable cost.

(8) "Loan" means funds provided with the requirement of repayment of principal and interest over a fixed period of time.

(9) "Grant" means funds provided with no requirement or expectation of repayment.

(10) "Local Agency" means public housing authorities, counties, cities, towns, and association of governments.

(11) "Funding Cycle" means period of time in which OWHLF funds are allocated.

(12) "Allocation Plan" means an annual plan that describes housing needs, priorities, funding sources, and the process and policies to request funds from the OWHLF.

(13) "Other Funding Sources" means funds from other federal programs and community partners (including CRA funds).

R235-1-4. Applicant and Project Eligibility.

(1) The Board shall consider for funding, only those applications submitted by an eligible applicant as defined in Section 9-4-706, Utah Code.

(2) The Board shall consider for funding only those eligible projects as defined in Section 9-4-705, Utah Code and meet one or more of the following priorities established by the Board:

(a) Efficiently utilize funds, through cost containment and resource leveraging,

(b) Provide that largest numbers of units shall charge the lowest monthly rental amount at levels that are attainable over the longest periods of time,

(c) Provide the most equitable geographic distribution of resources,

(d) Provide housing for special-needs populations including: (i) transitional housing, (ii) elderly and frail elderly housing, and (iii) housing for physically and mentally disabled persons,

(e) Strengthen and expand the abilities of local governments, non-profits organizations and for-profit organizations to provide and preserve affordable housing,

(f) Assist various Community Housing Development Organizations (CHDO) in designing and implementing strategies to create affordable housing, and

(g) Promote partnerships among local government, non-profit and for-profit organizations, and CHDO.

(h) Meet the goals of the Utah Consolidated Plan and any local area plans regarding affordable housing.

R235-1-5. Application Requirements.

(1) OWHLF funds shall be distributed in accordance with an application process defined in this rule. Funds shall be issued during a scheduled funding cycle. The Board conducts four cycles during a calendar year.

(2) An applicant seeking to obtain funds shall submit a completed application form furnished by the [~~Division of~~]DHCD prior to the cycle's deadline.

(3) All completed applications will be reviewed by staff, which will present the application to the Board Review Committee (BRC) during the cycle in which the application is received. Applications will be ranked and scored according to how completely each application meets the criteria established by the Board.

(4) Applicants submitting incomplete applications will be notified of deficiencies. Each incomplete request(s) will be held in a file, pending submission of all required information by the applicant.

(5) A decision on each application will generally be made no later than the award notification date for each cycle. The Board may delay final decisions in order to accommodate scheduling and processing problems peculiar to each cycle.

(6) The Board may modify a given cycle and change submission deadlines to dates other than those previously scheduled. In doing so, the Board will make reasonable efforts to inform interested parties of such modifications.

(7) For Single-Family Program applicants, the Board may delegate responsibilities to local agencies for application intake, loan underwriting, processing, approval, project development, construction and weatherization oversight, and management. Local agencies will be governed by policies and procedures approved by the Board.

R235-1-6. Project Selection Process.

(1) The BRC shall select applications for funding according to the following process and requirements as outlined in the Allocation Plan:

(a) Project underwriting and threshold review,

(b) Scoring and documentation review,
(c) Market study and project reasonableness review,
(d) Calculation of OWHLF subsidy amount.

R235-1-7. Funding Approval.

(1) After each application has been processed and the funding amount has been determined for a given cycle, staff will present projects to the BRC at its next regularly scheduled meeting. The BRC shall hear comments from applicants at the committee meeting and obtain sufficient information to inform the full board about the project, its financial structure, and related general information.

(2) A copy of the BRC recommendation, including all conditional requirements imposed by the BRC and staff, shall become a part of the permanent record and placed in the applicant's file. Recommendations will be presented at the next regularly scheduled quarterly Board meetings. The board will approve, deny, or delay the application.

(3) An applicant may request a change in the terms as outlined in the original motion of the board by reapplying to DHCD, with all updated, applicable financial information included, in subsequent funding rounds.

R235-1-8. Project Reporting.

(1) All projects receiving funding approval will be required to provide status reports at a scheduled frequency, in a format prescribed by the staff, and approved by the Board.

(2) Projects that have not begun construction within one year from the date of approval for funding must submit to staff a summary of significant progress made to date and an explanation of why the project is behind schedule. Staff will present this information to the BRC.

(3) The BRC may choose to extend the period of the project, to rescind the approval, or require the project to re-apply in accordance with current parameters.

R235-1-9. Compliance Monitoring.

(1) Monitoring of the project by DHCD staff will be completed to ensure program compliance. Program non-compliance or lack of response to inquiries from staff will be reported to the DHCD administration, the Board, HUD, and the Attorney General's Office as deemed necessary.

R235-1-10. Administration Fees.

(1) The local agencies listed below may use previously designated funds for project administration costs as approved by the Board. Such projects are still subject to on-site administrative supervision, staff oversight, or monitoring by DHDC. The agencies include:

(a) Public Housing Authorities.
(b) Counties, cities and towns.
(c) Associations of Governments.

(2) The agencies shall be expected to demonstrate a significant level of business management and administrative experience and ability in order to receive administrative funds. They shall also demonstrate an acceptable level of background and experience to perform housing rehabilitation/reconstruction and implementation functions.

R235-1-11. Financial Subsidy Review.

(1) DHCD staff shall conduct "subsidy layering" reviews on projects that directly or indirectly receive financial assistance from the U.S. Department of Agriculture Rural Development Service ("RD or RDS"), [~~or~~]the U.S. Department of Housing and Urban Development ("HUD") exclusive of HOME, CDBG, or HOPWA assistance, (i.e., the "Subsidy Layering Review") and other federal agencies.

(2) Subsidy Layering Reviews shall be conducted in accordance with guidelines established by [~~RD and HUD~~]the cognizant federal agency with respect to the review of any financial assistance provided by or through these agencies to the project and shall include a review of:

(a) The amount of equity capital contributed to a project by investors,

(b) The project costs including developer fees, and

(c) The contractor's profit, syndication costs and rates.

(3) In the course of conducting the review, the staff may disclose or provide a copy of the application to [~~RD or HUD~~]the cognizant federal agency for [~~their~~]its review and comments and shall take any other action deemed necessary to satisfy its obligations under the respective review requirements. DHCD staff will [~~accept a~~]consider the results of any review completed by Utah Housing Corporation (UHC).

R235-1-12. Sharing of Information.

(1) Application information may be shared with participating lenders, IRS and UHC.

(2) In administering this program, the DHCD staff shall conduct all functions in accordance with the provisions of the state GRAMA statute and the federal Freedom of Information Act.

R235-1-13. Portfolio Management.

(1) DHCD staff will track the status of the OWHLF portfolio to assess any problem loans needing special loan servicing. Staff will make recommendations to the BRC regarding loan review, changes, and approvals.

(2) DHCD staff will work with the board and the Attorney General's office to develop policies and procedures to govern special portfolio management issues such as loan restructuring, bankruptcies, and asset disposal.

KEY: Olene Walker Housing Loan Fund, affordable housing, housing development
Date of Enactment or Last Substantive Amendment: [~~March 1, 2006~~]2011
Authorizing, and Implemented or Interpreted Law: 9-4-704(5)(a)

Environmental Quality, Administration
R305-6
Administrative Procedures

NOTICE OF PROPOSED RULE

(New Rule)
DAR FILE NO.: 34472
FILED: 02/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Department of Environmental Quality (DEQ) is updating its rule governing administrative procedures, and it is simultaneously consolidating those procedures into one rule. Updating is needed for several reasons. A 2009 amendment to Section 19-1-301 required the Department to use administrative law judges for most administrative proceedings. Many of the updates are needed to incorporate that statutory change. Updates are also needed to make clarifications and improvements in administrative procedures, changes based on the Department's accumulated experience with administrative procedures. The purpose of specifying administrative procedures generally is to ensure that all participants will have information about how administrative proceedings will be conducted, and to ensure that the proceedings are conducted fairly and efficiently. Companion rulemaking will be filed soon to repeal the current rules governing administrative proceedings and to change references from those rules to this rule.

SUMMARY OF THE RULE OR CHANGE: DEQ is proposing to consolidate rules currently found at: Rule R307-103 (Air Quality); Rule R309-115 (Drinking Water); Rule R313-17 (Radiation Control); Rule R315-12 (Solid and Hazardous Waste); Rule R311-210 (Underground Storage Tanks); and Rule R317-9 (Water Quality). In addition, the new rule makes many changes to the current rules listed, including changes to encourage informal discovery and to limit discovery to appropriate subjects (proposed Section R305-6-105); changes to require that for decisions to be made by an executive secretary of a board, comments must be provided to the executive secretary in order to preserve a commenter's right to challenge the executive secretary's decision (proposed Section R305-6-209); and changes that specify situations in which declaratory actions should not be considered (proposed Section R305-6-302). Although the changes made are too extensive to list, additional changes will be discussed at the hearing for this rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-1-301 and Section 19-2-104 and Section 19-3-104 and Section 19-5-104 and Section 19-6-105 and Section 63G-4-102 and Section 63G-4-201 and Section 63G-4-202 and Section 63G-4-203 and Section 63G-4-205 and Section 63G-4-503

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it is also anticipated that efficiencies will be offset by a steadily increasing caseload.

♦ LOCAL GOVERNMENTS: There is no direct impact on local government, except that they may be regulated entities that would be governed by the rule. The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings. It is also anticipated that efficiencies will be offset by a steadily increasing caseload.

♦ SMALL BUSINESSES: The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Individuals, partnerships, and other entities can be regulated entities that will be governed by the new rule. The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to administrative proceedings from those currently being used are not expected to be substantial enough to have an impact on the budget of any participant. Although some changes have been proposed to improve efficiency, e.g., new requirements regarding discovery in Section R305-6-209, it would be speculative to suggest that the impact of any improvement would be measurable savings for any specific proceeding.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
ADMINISTRATION
195 N 1950 W
SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kimberly Kreykes by phone at 801-536-4042, by FAX at 801-536-4099, or by Internet E-mail at kkreykes@utah.gov
♦ Laura Lockhart by phone at 801-366-0283, by FAX at 801-366-0292, or by Internet E-mail at llockhart@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 05/16/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 04/11/2011 04:00 PM, DEQ MASOB Building, 195 N 1950 W, Board Room (Room 1015), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2011

AUTHORIZED BY: Amanda Smith, Executive Director

R305. Environmental Quality, Administration.
R305-6. Administrative Procedures.
R305-6-101. Purpose of Parts.

Part 1 of this Rule (R305-6-101 through 118) addresses general and preliminary matters.

Part 2 of this Rule (R305-6-201 through 219) addresses procedures for adjudication.

Part 3 of this Rule (R305-6-301 through 303) addresses declaratory orders and emergency adjudication.

Part 4 of this Rule (R305-6-401 through 423) addresses matters relevant to specific statutes.

R305-6-102. Scope of Rule.

This rule governing administrative procedures applies to proceedings under:

(1) the Environmental Quality Code, Utah Code Ann. Title 19, Chapter 1;

(2) the Air Conservation Act, Utah Code Ann. Title 19, Chapter 2;

(3) the Radiation Control Act, Utah Code Ann. Title 19, Chapter 3;

(4) the Safe Drinking Water Act, Utah Code Ann. Title 19, Chapter 4;

(5) the Water Quality Act, Utah Code Ann. Title 19, Chapter 5;

(6) the Solid and Hazardous Waste Act, Utah Code Ann. Title 19, Chapter 6, Part 1;

(7) the Hazardous Substances Mitigation Act, Utah Code Ann. Title 19, Chapter 6, Part 3;

(8) the Underground Storage Tank Act, Utah Code Ann. Title 19, Chapter 6, Part 4;

(9) the Used Oil Management Act, Utah Code Ann. Title 19, Chapter 6, Part 7;

(10) the Waste Tire Recycling Act, Utah Code Ann. Title 19, Chapter 6, Part 8;

(11) the Illegal Drug Operations Site Reporting and Decontamination Act, Utah Code Ann. Title 19, Chapter 6, Part 9;

(12) the Mercury Switch Removal Act, Utah Code Ann. Title 19, Chapter 6, Part 10;

(13) the Industrial Byproduct Reuse provisions, Title 19, Chapter 6, Part 10;

(14) the Voluntary Cleanup Program provisions, Title 19, Chapter 8; and

(15) the Environmental Covenants Act, Title 57, Chapter 25.

R305-6-103. Definitions.

The following definitions apply to this Rule. The definitions in Part 4 of this Rule, e.g., definitions of "Board" and "Executive Secretary," also apply for matters governed by the statutory provisions specified in that Part. If the definition in Part 4 differs from the definition in Part 1, the definition in Part 4 controls.

(1) "Administrative Law Judge" or ALJ means the person appointed under Section 19-1-103 to conduct an adjudicatory proceeding.

(2) "Administrative Proceedings Records Officer" means the person responsible for maintaining the administrative record, as identified in R305-6-109(8).

(3) "Executive Director" means the Executive Director of the Department of Environmental Quality.

(4) "Initial Order" means an Order, as defined in R305-6-103(6), that is issued by the Executive Secretary and that is the final step in the portion of a proceeding that is exempt from the requirements of UAPA as provided in Section 63G-4-102(2)(k). "Initial Orders" are further described in Part 4 of this Rule.

(5) "Notice of Violation" means a notice of violation issued by the Executive Secretary that is exempt from the requirements of UAPA under Section 63G-4-102(2)(k).

(6) "Order" means any determination by a person or entity within the Department of Environmental Quality that affects the legal rights of a person or group of persons, but not including a rule made under the Utah Administrative Rulemaking Act, Title 63G, Chapter 3. Orders include but are not limited to:

(a) compliance orders and administrative settlement orders;

(b) cease and desist orders (but not including emergency orders issued under Section 63G-4-502);

(c) approvals, denials, terminations, modifications, revocations, reissuances or renewals of a permit, plan approval or license;

(d) approvals, denials, or modifications of financial assurance;

(e) approvals, denials, or modifications of requests for a variance or exemption from regulatory requirements;

(f) approvals, denials, or modifications of requests for application of alternative standards or requirements, or of an experimental program;

(g) certifications or denials of certifications;

(h) assessments of fees or penalties;

(i) declaratory orders under Section 63G-4-503 and R305-6-302;

(j) preliminary approvals preceding issuance of a permit, plan approval or license if the approval is identified and issued as an order; and

(k) all other orders described as Initial Orders in Part 4 of this Rule.

(7) "Part" means the sections of this Rule that are grouped together by subject matter, e.g., Sections R305-6-401 through 423 are Part 4 of this Rule.

(8) "Party" is defined in R-305-6-204.

(9) "Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. "Person" also includes, as appropriate to the matter, other entities as provided in definitions in the statutes specified in R305-6-102 and in rules promulgated thereunder.

(10) "Presiding Officer" shall mean, as appropriate:

(a) The ALJ for proceedings conducted under Section 19-1-301;

(b) The members of a Board, for proceedings associated with determinations to be made by the Board, including determinations under Section 19-1-301(6)(b);

(c) The Board Chair as specified in R305-6-110(3), R305-6-215(3), and R305-6-216; or

(d) Any other Presiding Officer specified in Part 4.

(11) "RFAA" means a Request for Agency Action. See R305-6-202.

(12) "Rule, " unless otherwise specified, means this Rule R305-6, Administrative Procedures for the Department of Environmental Quality.

(13) "UAPA" means the Utah Administrative Procedures Act, Utah Code Ann. Title 63G, Chapter 4.

R305-6-104. Applicability of UAPA.

(1) Proceedings that result in Initial Orders and Notices of Violation issued by the Executive Secretary are exempt from the requirements of UAPA, as provided in Section 63G-4-102(2)(k).

(2) A proceeding to challenge an Initial Order or a Notice of Violation is subject to the requirements of UAPA as provided in this Rule.

(3) Proceedings other than those described in R305-6-104(1) are subject to the requirements of UAPA as provided in this Rule.

(4) Neither UAPA nor this Rule applies to requests for government records or requests for confidentiality of government records. Those matters are governed by the Utah Government Records Access and Management Act, Sections 63G-2-101 through 901, and by Section 19-1-306.

R305-6-105. Notice and Comment, and Exhaustion of Remedies.

(1) Public notice and an opportunity for comment is provided before some orders are issued. An agency may choose to provide opportunity for comment even if one is not required.

(2) If an opportunity to comment is provided, a prospective challenger must provide comments in order to preserve the challenger's right to contest an Initial Order. Comments are sufficient to preserve the right to contest an order, for each issue raised, if the comments provide sufficient information to give notice to the agency to allow the agency to fully consider the issue before making a determination.

(3) For purposes of this Section R305-6-105, notice of an opportunity to comment is sufficient if it meets statutory requirements. If there are no statutory requirements, notice of an opportunity to comment is sufficient if it is posted on DEQ's website, and if at least 30 days' notice is provided.

R305-6-106. Effectiveness and Finality of Initial Orders and Notices of Violation.

(1) Unless otherwise stated in the order or notice, an Initial Order or a Notice of Violation is effective upon issuance and, even if it is contested, remains effective unless a stay is issued or the Initial Order or a Notice of Violation is rescinded, vacated or otherwise terminated. An Initial Order or a Notice of Violation shall become final 30 calendar days after the date issued unless it is contested as provided in R305-6-202.

(2) The date of issuance of an Initial Order or a Notice of Violation is the date the Initial Order or a Notice of Violation is signed and dated.

(3) Failure to contest an Initial Order or a Notice of Violation before it becomes final under this R305-6-106 waives any right of administrative contest, reconsideration, review or judicial appeal.

R305-6-107. Designation of Proceedings as Formal or Informal.

(1) All proceedings to contest an Initial Order or a Notice of Violation and all other proceedings identified in Part 4 of this Rule shall be conducted as formal proceedings except as specifically provided in Part 4.

(2) The Presiding Officer in accordance with Section 63G-4-202(3) may convert proceedings that are designated to be formal to informal and proceedings which are designated as informal to formal if conversion is in the public interest and rights of all parties are not unfairly prejudiced. In the event the Presiding Officer is an ALJ, a decision to use informal procedures must be approved by the Board.

R305-6-108. Form of Submissions.

(1) Hard copy versions of documents submitted under this Rule shall ordinarily be printed on white paper that is 8-1/2 by 11 inches, with 1 inch margins and 12 point font. Double-sided printing is encouraged but not required. Electronic documents shall also be prepared for 8-1/2 by 11 inch paper, using 1 inch margins and 12 point font.

(2) Requests for agency action, notices of agency action, and responses shall include numbered paragraphs.

R305-6-109. Service and Filing of Notices, Orders and Other Papers.

(1)(a) Unless otherwise directed by the ALJ or other Presiding Officer, and except as otherwise provided in this Section R305-6-109, filing and service of all papers shall be done solely by email. Filing and service under these proceedings will be governed by R305-6-109(3).

(b) In the event the ALJ or other Presiding Officer determines that it is inappropriate in a specific case to file and serve all papers by email, the requirements of R305-6-109(4) will govern.

Those requirements may be modified by the ALJ or other Presiding Officer.

(c) The provisions of R305-6-109(2) will also apply regardless of whether filing and service are done by email (R305-6-109(3)) or by traditional (R305-6-109(4)) service methods.

(d) A party or prospective intervenor seeking to have filing and service requirements governed by R305-6-109(2), such as a person who does not have access to email, shall file and serve the request as provided in R305-6-109(4). Once a request to proceed under R305-6-109(4) is filed, the provisions of that section shall apply to all future filing and service unless otherwise ordered by the ALJ or other Presiding Officer.

(2) General Provisions Governing Filing and Service.

(a) Unless otherwise directed by the ALJ or other Presiding Officer, every filing shall be filed with the ALJ or other Presiding Officer. If no ALJ or other Presiding Officer has been appointed or otherwise identified in this Rule, every filing shall be filed with the Administrative Proceedings Records Officer.

(b) All papers that are required to be served shall also be served on the Administrative Proceedings Records Officer.

(c) Every filing shall be served upon, as applicable:

(i) the Executive Secretary;

(ii) the attorney representing the Executive Secretary;

(iii) the person who was the recipient of the notice of violation or order being challenged;

(iv) each person who has been granted intervention or who has filed a Petition to Intervene that has not been denied; and

(v) the Administrative Proceedings Records Officer, as provided in R305-6-109(8)(a).

(d) A person, other than the Executive Secretary, who is represented by an attorney or other representative, as provided in R305-6-111, shall be served through the attorney or other representative.

(e) Every filing shall include a certificate of service that shows the date and manner of service on the persons identified in R305-5-109(2).

(f) Regardless of whether a proceeding is governed by R305-6-109(3) or R305-6-109(4), documents that are filed expressly for the consideration of the Board, such as a party's comments on a draft decision, shall be provided to the Executive Secretary in hard copy for distribution to the Board. The person filing the document shall provide to the Executive Secretary one copy for each member of the Board.

(g) The ALJ or other Presiding Officer shall determine which parts of the Initial Record and the Adjudicative Record shall be provided to the Board by hard copy and which shall be provided by electronic copy.

(h) Service on a regulated entity at the entity's last known address in the agency's file shall be deemed service on that entity.

(i) A party shall not file requests for discovery, responses to requests to discovery, deposition notices or other discovery-related papers with the ALJ or other Presiding Officer or the Administrative Proceedings Records Officer unless they are included as exhibits to motions, briefs, testimony or similar submissions, or unless otherwise ordered by the ALJ or other Presiding Officer.

(3) Provisions governing electronic filing and service.

(a) Documents shall be filed with the Administrative Proceedings Records Officer at DEQAPRO@utah.gov. All submissions to that address will be automatically acknowledged. It is the submitter's responsibility to ensure that the submitter receives the acknowledgment and, if no such acknowledgment is received, to contact the Administrative Proceedings Records Officer at (801) 366-0290 within one business day to ensure that the filing was received.

(b) Service on all other parties and on persons who have filed a Petition to Intervene that has not been denied shall be on email addresses provided by those persons. If a submitter is unable, after due diligence, to determine an email address for a party or a person who has filed a Petition to Intervene, the submitter shall provide service by traditional means, as provided in R305-6-109(4).

(c) A text document served by email shall be submitted as a PDF document. A signed document shall be scanned so that the scanned document includes the signature. If a submitter cannot scan a document so that the signature is scanned, the submitter shall file and serve a hard copy of the document as described in R305-6-109(4). The submitter shall still file and serve a searchable electronic document as provided in R305-6-109(3)(d).

(d) If a document served by email is one that has been created by the person serving the document in the course of the adjudicative proceeding, it shall be provided in a searchable format. If a single document cannot include both searcheable text and a scanned signature (as required by R305-6-109(3)(d)), the server may submit two PDF documents: one with the scanned signature, and one unsigned but searcheable and otherwise identical to the signed document.

(e) The ALJ or other Presiding Officer may order any submission to be provided in a searchable format.

(f) Large emails (5 Mb or more) may not be accepted by some email systems. It shall be the responsibility of a person sending a large email to ensure that it has been received by all parties, e.g., by telephoning or by sending a separate notification email.

(g) Photographic or other illustration documents served by email shall be submitted as:

(i) a PDF document; or

(ii) a "JPEG" document.

(h) Documents that are difficult to file or serve by email because of their size or form may be filed or served on a CD or DVD. A document may also be provided in hard copy form if it is impracticable to copy the document electronically. Filing and service of such documents shall be as provided in R305-6-109(4).

(i) A party shall provide a paper copy of any document, including signed documents, upon request by the ALJ or other presiding officer.

(4) Provisions governing traditional filing and service.

(a) Filing and service shall be made:

(i) by United States mail, postage pre-paid;

(ii) by hand-delivery;

(iii) by overnight courier delivery; or

(iv) by the Utah State Building Mail system, if the sender and receiver are both state employees.

(b) Documents to be filed with the Administrative Proceedings Records Officer shall be submitted to one of these addresses: By U.S. Mail: Administrative Proceedings Records Officer, Environment Division, Utah Attorney General's Office, PO Box 140873, Salt Lake City Utah 84114-0873; or By hand or commercial delivery: Administrative Proceedings Records Officer,

Environment Division, Utah Attorney General's Office, 160 East 300 South, 5th Floor, Salt Lake City Utah 84111.

(c)(i) A document that is filed or served by U.S Mail shall be considered filed or served on the date it is mailed. A document that is filed or served by Utah State Building Mail shall be considered filed or served on the date it is placed in a Utah State Building Mail bin.

(ii) R305-6-109(4)(c) does not apply to a Request for Agency Action or a Petition to Intervene in an agency action. To be timely, those documents must be received for filing within 30 calendar days of the issuance of the Initial Order or a Notice of Violation. See R305-6-202.

R305-6-110. Computation and Extensions of Time.

(1) A business day is any day other than a Friday, Saturday, Sunday or legal holiday.

(2) Computing time.

(a) If a period is stated in calendar days:

(i) exclude the day of the event that triggers the period;

(ii) count every day, including intermediate Fridays, Saturdays, Sundays, and legal holidays; and

(iii) include the last day of the period, but if the last day is a Friday, Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Friday, Saturday, Sunday, or legal holiday.

(b) If a period is stated in business days:

(i) exclude the day of the event that triggers the period; and

(ii) count every business day.

(c) If a document is not served by email, any time for responding to the document shall be extended by three business days.

(3) Extensions of Time.

(a) Except as otherwise provided by statute or this Rule, the ALJ or other Presiding Officer may approve extensions of any time limits established by this rule, and may extend time limits adopted in schedules established under R305-6-207.

(b) R305-6-202(9) governs extensions of time associated with filing Requests for Agency Action and R305-6-205(7) governs extensions of time associated with filing Petitions to Intervene.

(c) The ALJ or other Presiding Officer may also postpone hearings upon motion from the parties, or upon the ALJ's or Presiding Officer's own motion. For matters before a board, the Board Chair may act as Presiding Officer for purposes of this paragraph. In the event the Board Chair is not available, the Executive Director may act as Presiding Officer for purposes of this paragraph.

R305-6-111. Appearances and Representation

(1) A party or a prospective intervenor to a proceeding may be represented:

(a) by an individual if the individual is the party; or

(b) by a designated officer if the party is a person other than an individual.

(2) Any party may be represented by legal counsel. An attorney who is not currently a member in good standing of the Utah State Bar must present a written or oral motion for admission pro hac vice made by an active member in good standing of the Utah State Bar. Communication with and service on local counsel shall be deemed to be communication with and service on the party so represented.

R305-6-112. Proceeding Conducted by Teleconference or Other Electronic Means.

(1) If approved by the ALJ or other Presiding Officer, a party or prospective intervenor may participate in any hearing or other proceeding by teleconference or other electronic means if the ALJ or other Presiding Officer determines that it will not unfairly prejudice the rights of the other participants.

(2) Notwithstanding R305-6-112(a), participation by teleconference or other electronic means is not permitted for an evidentiary hearing or dispositive motion hearing.

R305-6-113. Settlement.

The parties may settle all or any portion of an action at any time during an administrative proceeding through a settlement agreement, an administrative settlement order, or a proposed judicial consent decree. Upon notice by the Executive Secretary that there is a proposed settlement that will be subject to a public comment period, the ALJ or other presiding officer shall stay an administrative proceeding, in whole or in part, until the end of that comment period and for an additional 30 calendar days in order to allow the Executive Secretary to make a final settlement determination.

R305-6-114. Modifying Requirements of Rules.

(1) Except as provided in R305-6-114(b), the requirements of these rules may be modified by order of the ALJ or other Presiding Officer for good cause.

(2) The requirements for timely filing a Request for Agency Action under R305-6-202(8) and (9), and a Petition to Intervene under R305-6-205(3), (4) and (7) may not be modified.

R305-6-115. Disqualification of an ALJ, a Board Member or Other Presiding Officer.

(1) An ALJ, Board member or other Presiding Officer shall disqualify himself from performing the functions of the Presiding Officer regarding any matter in which he, or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

(a) Is a party to the proceeding, or an officer, director, or trustee of a party;

(b) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented a party concerning the matter in controversy;

(c) Knows that he has a financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a party to the proceeding;

(d) Knows that he has any other interest that could be substantially affected by the outcome of the proceeding; or

(e) Is likely to be a material witness in the proceeding.

(2) A board member who attends an evidentiary or other hearing in a matter shall be recused from participating in any proceeding of the board as a whole regarding the same matter.

(3) An ALJ, Board member or other Presiding Officer is also subject to disqualification under principles of due process and administrative law.

(4) These requirements are in addition to any requirements under the Utah Public Officers' and Employees' Ethics Act, Utah Code Ann., Title 67, Chapter 16.

(5) Motions for Disqualification. Any motion for disqualification of an ALJ, Board member or other Presiding Officer shall be made first to the ALJ, Board or other Presiding Officer. If the Presiding Officer is not the final decisionmaker, a party may seek review of the determination of the ALJ or other Presiding Officer under R305-6-217.

R305-6-116. Limitation on Authority Under Rule.

Nothing in this Rule constitutes a grant of authority for any person other than the recipient to challenge a Notice of Violation or to initiate an action to challenge the agency's enforcement either generally or in a specific situation. See UAPA, Sections 63G-4-102(8) and 63G-4-201(3).

R305-6-117. No Limitation on Authority to Bring Action.

(1) Nothing in this Rule shall be read as a limitation either of the agency's statutory authority to bring an emergency proceeding or a judicial proceeding under UAPA, Section 63G-4-502 or the Department of Environmental Quality Code, Utah Code Ann. Title 19, or of the administrative procedures the agency may use for an emergency proceeding under those authorities.

(2) Failure in this Rule to provide administrative procedures for an administrative action that is authorized by statute shall not be read as a limitation of the agency's authority to bring that action.

R305-6-118. Procedures Not Addressed.

In the event there are authorities or situations for which procedures are not prescribed by these rules, the ALJ or other Presiding Officer shall, for a specific case, identify analogous procedures or other procedures that will apply. Such proceedings shall be conducted formally under UAPA.

R305-6-201. Purpose of Part.

Part 2 of this Rule (R305-6-201 through 219) specifies procedures to be used in adjudicative proceedings.

R305-6-202. Requests for Agency Action and Contesting an Initial Order or Notice of Violation.

(1) Procedure. Initial Orders and Notices of Violation may be contested by filing a written Request for Agency Action with the Executive Secretary or the Executive Director, as specified in Part 4 of this Rule and at the address specified in that Part. The Request for Agency Action shall also be served as provided in R305-6-109.

(2) A Request for Agency Action may also be filed to initiate agency action as provided in Part 4.

(3) Any Request for Agency Action is governed by and shall meet all of the requirements of UAPA, Section 63G-4-201(3)(a) and (3)(b).

(4) As provided in Section 63G-4-201(3)(a), a Request for Agency Action shall be in writing and signed by the person making the Request for Agency Action, or by that person's representative, and shall include:

(a) the names and addresses of all persons to whom a copy of the request for agency action is being sent;

(b) the agency's file number or other reference number, if known;

(c) the date that the request for agency action was mailed;

(d) a statement of the legal authority and jurisdiction under which agency action is requested;

(e) a statement of the relief or action sought from the agency;

(f) a statement of the facts and reasons forming the basis for relief or agency action; and

(5) In addition to the information required by 63G-4-201(3)(a) and R305-6-202(4), a Request for Agency Action shall include the requestor's name, address and email address, if any.

(6) It is not sufficient under Section 63G-4-201(3)(a) to file a request for a hearing or a general statement of disagreement.

(7) If a Request for Agency Action is made by a person other than the recipient of an order, the Request for Agency Action shall also include a Petition to Intervene that meets the requirements of Section 63G-4-207 and R305-6-205.

(8) To be timely, a Request for Agency Action made to contest an Initial Order or a Notice of Violation shall be received for filing, by email or at the address specified in Part 4 of this Rule, within 30 calendar days of the issuance of the Initial Order or a Notice of Violation.

(9) Extension of Time to File Request for Agency Action.

(a) The time for filing a Request for Agency Action may be extended by stipulation of the parties. Any such stipulation shall be filed with the same individual with whom a Request for Agency Action would be filed as specified in Part 4, before the date the order or notice of agency action becomes final.

(b) The time for filing a Request for Agency Action may be extended by order of the Board or other final decisionmaker. Any motion for extension shall be filed before the date the order or notice of agency action becomes final.

(c) A person that is not a party and that is seeking extensions for filing a Request for Agency Action and a Petition to Intervene may file a single stipulation or motion that complies with this R305-6-202(9) and with R305-6-205(7).

(d) Parties are encouraged to use extensions to resolve disputes through informal settlement.

R305-6-203. Notice of Further Proceedings and Response to Request for Agency Action.

(1) In actions initiated by the agency, the agency shall issue a Notice of Agency Action in accordance with Section 63G-4-201(2).

(2)(a) In actions initiated by a Request for Agency Action, the ALJ or other Presiding Officer shall issue a Notice of Further Proceedings in accordance with Section 63G-4-201(3)(d) and (e).

(b) If a matter is not set for hearing at the time the Notice is issued, notice of the time and place for a hearing shall be provided promptly after the hearing is scheduled.

(3) In responding to a Request for Agency Action challenging a Notice of Violation and Order, the Executive Secretary may, as appropriate, simply reassert information contained in the challenged Notice of Violation and Order.

R305-6-204. Parties.

(1) For a proceeding that follows an Initial Order or Notice of Violation, the following persons are parties to an adjudicative proceeding:

(a) the person to whom the Initial Order or Notice of Violation was directed, such as a person who submitted a permit, license or plan approval application that was approved or disapproved by an Initial Order;

(b) The Executive Secretary of the Board who issued an Initial Order or Notice of Violation; and

(c) All persons to whom the Board or other final decisionmaker has granted intervention under R305-6-205; and

(2) For a proceeding that does not follow an Initial Order or Notice of Violation, the following persons are parties to an adjudicative proceeding, as appropriate:

(a) the person to whom a Notice of Agency Action or other Order was directed;

(b) All persons for whom intervention has been granted under R305-6-205; and

(c) If the Executive Secretary is the Presiding Officer, other persons within DEQ as designated by the Presiding Officer.

(3) Amicus Curiae (Friend of the Court). A person may be permitted by the ALJ or other Presiding Officer to enter an appearance as amicus curiae (friend of the court), subject to conditions established by the ALJ or other Presiding Officer.

R305-6-205. Intervention.

(1) A Petition to Intervene shall meet the requirements of Section 63G-4-207.

(2) Except as provided in R305-6-205(5), the timeliness of a Petition to Intervene under Section 63G-4-207 shall be determined by the ALJ or other Presiding Officer under the facts and circumstances of each case.

(3) If an ALJ or other Presiding Officer has been appointed to make a recommended decision to the Board or other final decisionmaker, a recommended decision denying intervention shall be forwarded to the Board or other final decisionmaker for a final determination. A decision by the ALJ or other Presiding Officer to grant intervention may be considered by the Board or other final decisionmaker under R305-6-217 (Interlocutory Review) if the standards specified in that provision are met.

(4) A person who is not a party to a proceeding but who seeks to challenge an Initial Order of the Executive Secretary that has not been challenged by a party shall file a Petition for Intervention with a Request for Agency Action. Any such Petition to Intervene and Request for Agency Action must be filed before the order becomes final under R305-6-106(1). To be timely, a Petition to Intervene shall be received for filing, by email or at the address specified in Part 4 of this Rule, within 30 calendar days of the issuance of the Initial Order or Notice of Violation.

(5) Any response to a Petition to Intervene shall be filed within 20 calendar days of the date the Petition was filed.

(6) Petitions to Intervene shall be filed at the same address as provided for Requests for Agency Action in Part 4 of this Rule. Service shall be as provided in R305-6-109, except that the Petition must be received for filing by the deadline.

(7) Extension of Time to File Petition to Intervene.

(a) The time for filing a Petition to Intervene may be extended by stipulation of the parties and the prospective intervenor. Any such stipulation shall be filed before the date the order or notice of agency action becomes final.

(b) The time for filing a Request for Agency Action may be extended by order of the Board or other final decisionmaker. Any motion for extension shall be filed with the same individual with whom a Request for Agency Action would be filed as specified in Part 4, before the date the order or notice of agency action becomes final.

(c) A person that is not a party and that is seeking extensions for filing a Request for Agency Action and a Petition to Intervene may file a single stipulation or motion that complies with R305-6-202(9) and with this R305-6-205(7).

(d) Parties are encouraged to use extensions to resolve disputes through informal settlement.

R305-6-206. Procedures for Informal Proceedings.

(1) Procedures for Informal Proceedings are governed by Section 63G-4-203.

(2) No hearing or other conference is required for an informal proceeding. If a hearing is held, the parties shall be permitted to testify, present evidence and comment on issues. A hearing may be conducted as a meeting rather than using trial-type procedures.

(3) Discovery and intervention are not available in an informal proceeding. The presiding officer may issue a subpoena or other order to compel the production of necessary evidence.

R305-6-207. Pre-hearing Conferences, Proceedings and Order.

(1) The ALJ or other Presiding Officer may hold one or more pre-hearing conferences for the purposes of: identifying and, if possible, narrowing the issues that will be considered at a hearing; determining whether an issue will be considered at an evidentiary hearing or a hearing to rule on a dispositive motion; establishing schedules for disclosures and the filing of motions, testimony and pre-hearing memoranda; determining the status of the litigation; considering stipulations of fact or law; and considering any other pre-hearing matters. The ALJ or other Presiding Officer shall issue pre-hearing orders memorializing the determinations made about these matters.

(2) The ALJ or other Presiding Officer may at any time order a party to make a more clear statement of the issues the party intends to raise at a hearing. The ALJ or other Presiding Officer may also order a party to respond to questions about those issues for the purpose of clarifying the issues. The other parties to the proceeding may, within eight business days of the date a response to the order is served, file and serve comments on the response.

(3) The ALJ or other Presiding Officer may:

(a) require the parties to submit proposed schedules for the proceeding; and

(b) change deadlines and page limits for submissions established by this Rule.

(4) The parties may request the ALJ or other presiding officer hold a conference for the purpose of addressing the matters described in R305-6-207(1).

R305-6-208. Agency Record.

(1) The final agency record shall consist of:

(a) An Initial Record relating to Initial Orders and Notices of Violation, further described in R305-6-208(2);

(b) An Adjudicative Record consisting of:

(i) All documents filed with the ALJ or other Presiding Officer, and with the Administrative Records Officer;

(ii) All orders and other written communications from the ALJ or other Presiding Officer;

(iii) All transcripts of hearings and exhibits submitted during a hearing; and

(iv) Other documents as determined by the ALJ or other Presiding Officer.

(2)(a) The Executive Secretary shall prepare an Initial Record, which shall consist of background documents for the matter that shall be deemed to be authenticated for purposes of the hearing and motions, and may be introduced as evidence by any party. The Initial Record is not intended to take the place of discovery or of the proffer by parties of documentary evidence.

(b) The Initial Record shall be indexed and compiled in chronological order. Each page of the Initial Record shall be numbered for ease of reference. A hard copy and an electronic copy of the Initial Record shall be filed with the ALJ or other Presiding Officer. An electronic copy of the Initial Record shall be served as provided in R305-6-109(9). Electronic records shall meet the requirements for electronic filing and service in R305-6-109(9)(c) and (d).

(c) The Initial Record document index shall include the Initial Order or Notice of Violation being challenged, any Request for Agency Action, any responsive pleading, and any relevant:

(i) permit, plan approval or license; application;

(ii) draft order (such as a permit) that was released for public comment;

(iii) public comments received;

(iv) comment response document; and

(v) final permit.

(d) Documents other than those specified in R305-6-208(2)(c) may be included in the Initial Record only upon the agreement of the parties. Documents that the parties cannot agree upon may be submitted in the course of the proceeding. Failure of a party to object to inclusion of a document in the Initial Record shall be deemed to be agreement to its inclusion in the initial record and to its authenticity.

(e) If many of the documents or large parts of the documents that would ordinarily constitute the Initial Record are irrelevant to the issues raised in the proceeding, the Executive Secretary may propose a more limited Initial Record that does not include the documents specified in R305-6-208(2)(c). If a matter involves a multi-volume permit, for example, the Executive Secretary may propose to exclude the parts of the permit that relate to emergency response if the dispute is about waste sampling.

(f) Analytical analyses of samples documented in the Initial Record are deemed to be accurate unless specifically objected to no later than 15 calendar days before the date the Executive Secretary's preliminary witness lists are due.

(3) Procedure for preparing Initial Record.

(a) Unless the ALJ or Presiding Officer directs otherwise, within 40 calendar days after the date of a Notice of Further Proceedings, the Executive Secretary shall compile a draft index of documents in the Initial Record as described in paragraph (2)(c), and shall provide the list to all other parties. Each party may, within fifteen calendar days of the date the draft index was served, propose to add documents to or delete documents from the index.

(b) The Executive Secretary shall consider the other parties' submissions and shall, within ten calendar days of the date the submissions were served, file an Initial Record.

(c) Parties may file objections to the Initial Record within eight business days of the date of the Initial Record. The Executive Secretary may respond to objections within eight business days of service of the objections.

(d) The ALJ or other Presiding Officer shall consider objections filed and may order changes in the Initial Record.

R305-6-209. Discovery and Disclosure.

(1) Informal discovery by agreement of the parties is preferred. All parties shall have access to information contained in the agency's records unless the records are not required to be disclosed under the Government Records Access and Management Act, Title 63G, Chapter 4, as modified by Section 19-1-306 of the Utah Environmental Quality Code.

(2) Formal discovery is allowed in a matter by agreement of the parties involved in the formal discovery or if so directed by the ALJ or other Presiding Officer in a formal proceeding. The ALJ or other Presiding Officer may order formal discovery when each of the following elements is present:

(a) informal discovery is inadequate to obtain the information required;

(b) there is no other available alternative that would be less costly or less burdensome;

(c) the formal discovery proposed is not unduly burdensome;

(d) the formal discovery proposed is necessary for the parties to properly prepare for the hearing;

(e) the formal discovery does not seek a party's position regarding a question of law or about the application of facts to law that could be addressed in a motion to dismiss or a motion for summary judgment;

(f) the formal discovery does not allow a party to probe the mental processes of the Executive Secretary or other agency decisionmaker in making a determination, except to the extent the Executive Secretary or other agency decisionmaker will be offered as a witness for the agency for the purpose of explaining the determination; and

(g) the formal discovery proposed will not cause unreasonable delays.

(3)(a) Except as otherwise provided in this Section R305-6-209, the time periods, limitations and other requirements for discovery in the Utah Rules of Civil Procedure shall apply unless otherwise ordered by the ALJ or other Presiding Officer after consideration of the specific formal discovery proposed.

(b) No initial disclosure shall be required as provided in Utah Rules of Civil Procedure Rule 26(a)(1)(B) through (D).

(4) Each party shall provide to the other parties copies of any documents it intends to introduce as provided in R305-6-212(1). This information shall be provided and updated in accordance with a schedule established in the pre-hearing order.

R305-6-210. Subpoenas.

(1) A party requesting an administrative subpoena must prepare it and submit it to the Administrative Proceedings Records Officer for the signature of the ALJ or other Presiding Officer. Each administrative subpoena form shall have the following statement

prominently displayed on the form: "This Administrative Subpoena is issued under the authority of the Utah Administrative Procedures Act, Section 63G-4-205(2). If you believe that this subpoena is inappropriate, you may object. The standards of Utah Rules of Civil Procedure, Rule 45, will be used to determine whether a subpoena is appropriate. File any objection with (requestor to insert title and address of ALJ or other Presiding Officer). See also Utah Admin. Code R305-6-210."

(2) Service. Service of the subpoena shall be made by the party requesting it in a manner consistent with the Utah Rules of Civil Procedure, Rule 45(b).

(3) Objection. A party or other person served with a subpoena may file an objection for the reasons specified in the Utah Rules of Civil Procedure, Rule 45. In response, the party that served the subpoena may file a Motion to Compel. The ALJ or other Presiding Officer shall consider the Motion to Compel and require compliance with the existing subpoena, issue a new subpoena on specified conditions, or quash the subpoena.

R305-6-211. Motions.

(1) Ruling on Motions. Motions may be made by written motion at or before a hearing, or orally during a hearing. Each motion shall include the grounds upon which it is based and the relief or order sought. Copies of written motions shall be filed and served in accordance with R305-6-109.

(2) Responses to motions shall be filed within 12 business days of service of the Motion.

(3) Memoranda in support of or opposition to a dispositive motion may not exceed 25 pages. Memoranda in support of or in opposition to other motions may not exceed 15 pages. This limit shall not include face sheet, table of contents, statements of issues and facts, or exhibits.

(4) A reply to a memorandum in opposition to a motion may be filed within five business days of service of the memorandum in opposition, and is limited to eight pages. A reply memorandum shall be limited to responding to matters raised in the memorandum in opposition.

(5) Deadlines and page limits may be modified by order of the ALJ or other Presiding Officer.

(6) When appropriate, parties are encouraged to file dispositive motions, such as a Motion for Summary Judgment, a Motion to Dismiss or a Motion for Judgment on the Pleadings. Parties are encouraged to file dispositive motions no later than 45 calendar days prior to the scheduled hearing.

R305-6-212. Pre-Hearing Briefs and Other Pre-Hearing Submissions.

(1) At least 20 business days before a scheduled hearing, the parties shall exchange proposed exhibits and thereafter shall meet to attempt to stipulate to the admission of exhibits.

(2) At least 10 business days before a scheduled hearing, the parties shall jointly file and serve any stipulation regarding admission of exhibits and shall file and serve copies of all of its exhibits that are subject to a stipulation. Electronic copies of the exhibits, as described in R305-6-109(9)(c) and (d), shall be filed with the ALJ or other Presiding Officer, and served on other parties. Electronic and hard copies of the exhibits shall be served on the Administrative Proceedings Records Officer.

(3) Unless otherwise ordered by the ALJ or other Presiding Officer, each party may, but is not required to file, at least 10 business days before a scheduled hearing:

(a) A pre-hearing brief, limited to 25 pages, not including exhibits or any statement of facts; and

(b) Any motions related to the way the hearing will be conducted, or to the admission of exhibits and other evidence that will be presented at the hearing.

(4) A party may object to an exhibit when it is introduced in a hearing, except that no party may object to:

(a) the authenticity of a record included in the Initial Record;

(b) the accuracy of analytical analysis of samples documented in the Initial Record, except as provided in R305-6-208(2)(f).

(5)(a) Any party may file testimony and evidence using pre-filed testimony of a witness, unless otherwise ordered by the ALJ or other Presiding Officer.

(b) For lengthy or complex proceedings, pre-filed testimony is preferred and may be required by the ALJ or other Presiding Officer.

(c) Pre-filed testimony shall be submitted at least 10 business days before a scheduled hearing.

R305-6-213. Hearings.

(1) The ALJ or other Presiding Officer shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony, cross-examination, oral arguments or opening and closing statements while affording to all parties the opportunity to present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence. The ALJ or other Presiding Officer shall also establish the order of presentation at the hearing.

(2)(a) All hearings shall, at a minimum, be recorded at the agency's expense using audio recording devices. The agency may elect instead to use a court reporter.

(b) Any party may request that the agency use a court reporter for the hearing, which request shall be granted by the ALJ or other Presiding Officer. Unless otherwise ordered by the ALJ or other Presiding Officer, the requesting party shall bear the cost associated with these requests. Any such requests shall be submitted to the ALJ or other Presiding Officer at least eight business days before the scheduled hearing.

(3) Evidence.

(a) Except as otherwise stated in this rule, formal proceedings shall be conducted in accordance with the Utah Rules of Evidence.

(b) Every party to an adjudicative proceeding has the right to introduce evidence, subject to the Utah Rules of Evidence. The evidence may be oral or written, real or demonstrative, direct or circumstantial.

(i) The ALJ or other Presiding Officer may admit any reliable evidence possessing probative value which would be accepted by a reasonably prudent person in the conduct of his affairs.

(ii) The ALJ or other Presiding Officer may admit hearsay evidence. However, no finding of fact may be based solely on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence.

(iii) If a party attempts to introduce evidence into a hearing, and it is excluded, the party may proffer the excluded testimony or evidence to allow any reviewing authority to pass on the correctness of the ruling of exclusion.

(c) All witnesses who have provided pre-filed testimony shall be present at the hearing unless otherwise ordered by the ALJ or other Presiding Officer. A witness for whom pre-filed testimony has been submitted shall be allowed to give a brief summary of that testimony, and shall then be made available for cross-examination. The pre-filed testimony of any witness who is not present at the hearing will be treated as other hearsay evidence.

(d) Oral testimony at a formal hearing will be sworn. The oath will be administered by the reporter, the ALJ or other Presiding Officer. Anyone testifying falsely under oath may be subject to prosecution for perjury in accordance with the provisions of Sections 76-8-502 and 76-8-503.

R305-6-214. Post-Hearing Submissions

Unless otherwise ordered by the ALJ or other Presiding Officer, not later than ten business days after a hearing, each party may, but is not required to submit:

(1) A post-hearing brief, limited to 10 pages, not including exhibits; and

(2) Proposed findings of fact and conclusions of law.

R305-6-215. Recommended Decisions and Orders.

(1) If the ALJ or other Presiding Officer is not the final decisionmaker for a matter, the ALJ or other Presiding Officer shall prepare a recommended decision that includes written findings of fact and written conclusions of law, and that meets the requirements of Section 63G-4-208. At the time the ALJ or other Presiding Officer sends the recommended decision to the final decisionmaker, it shall be served on the parties.

(2)(a) Any party may provide comments to the final decisionmaker on the recommended decision.

(b) Unless otherwise ordered by the final decisionmaker, comments shall be filed with the final decisionmaker within eight business days of the date the recommended order is issued. Comments shall cite to the specific parts of the record which support the comments and shall be limited to 20 pages unless an enlargement of pages is approved by the presiding officer responsible for the final decision.

(3) The Board Chair may act as Presiding Officer for purposes of R305-6-215(2)(b). In the event the Board Chair is not available, the Executive Director may act as Presiding Officer.

(4)(a) The final decisionmaker shall issue an order that includes written findings of fact and written conclusions of law, and that meets the requirements of Section 63G-4-208.

(b) If the proceeding is subject to the requirements of Section 19-1-301(6)(a), the Board may approve, approve with modifications, or disapprove a proposed dispositive action, including findings of facts and conclusions of law, submitted by the ALJ.

R305-6-216. Consideration by the Board or Other Final Decisionmaker.

(1) If an ALJ or other Presiding Officer submits a recommended decision to the Board or other final decisionmaker, the Parties shall be granted time before the Board or other final decisionmaker to present oral argument regarding the recommended decision.

(2) The final decisionmaker will establish the time allowed for each party.

(3) If the final decisionmaker is a board, the Board Chair may act as the Presiding Officer for purposes of issuing an order establishing the amount and division of time and the order of presentation. In the event the Board Chair is not available, the Executive Director may act as Presiding Officer.

R305-6-217. Interlocutory Review.

(1) This provision applies to proceedings where an ALJ or other Presiding Officer has responsibility for the evidentiary proceedings, but the Board or a different Presiding Officer has responsibility for the final determination.

(2) Ordinarily, a party may challenge an order issued by the ALJ or other Presiding Officer only after the ALJ or other Presiding Officer has made a final recommended decision. However, a party may request interlocutory consideration of an order before that time if a ruling that is alleged to be in error could not be corrected through a challenge to the final recommended decision (e.g., a ruling denying privileged status to records), or in other situations where it may materially advance the termination of the proceeding. The final decisionmaker's determination to hear an interlocutory request to overturn an order is discretionary.

(3) A determination that a document is not privileged, and any determination relative to a motion for stay under R305-6-218 will ordinarily be considered to meet the requirements of R305-6-217(2), but are not exhaustive of the determinations that may be considered to meet the requirements of R305-6-217(2).

R305-6-218. Stays of Orders.

(1) Stay of Orders Pending Administrative Adjudication.

(a) A party seeking a stay of an Initial Order during an adjudicative proceeding shall file a motion with the ALJ or other Presiding Officer.

(b) An ALJ or other Presiding Officer shall grant a stay if the party seeking the stay demonstrates the following:

(i) The party seeking the stay will suffer irreparable harm unless the stay is issued;

(ii) The threatened injury to the party seeking the stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;

(iii) The stay, if issued, would not be adverse to the public interest; and

(iv) There is a substantial likelihood that the party seeking the stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further adjudication.

(2) The standards specified in R305-6-218(1) shall apply to any interlocutory review of an order regarding a requested stay of an Initial Order.

(3) Stay of the Order Pending Judicial Review.

(a) A party seeking a stay of a final order by the Board or other final decisionmaker shall file a motion with the Board or other final decisionmaker.

(b) The standards specified in R305-6-218(1)(b) shall apply to any such request.

(4) If granted, a stay suspends the challenged order for the period as directed by the ALJ or other Presiding Officer.

R305-6-219. Default.

(1) A party may be found in default in accordance with Section 63G-4-209. The default order shall include a statement of the grounds for default and shall be filed and served on all parties.

(2) A defaulted party may seek to have the default set aside according to procedures set forth in the Utah Rules of Civil Procedure.

R305-6-301. Purpose of Part.

Part 3 of this Rule (R305-6-301 through 303) governs requests for declaratory and emergency actions.

R305-6-302. Declaratory Orders.

(1) For all matters over which the Executive Secretary has Initial Order authority as described in Part 4 of this Rule, any Request for a Declaratory Order shall be addressed first to the Executive Secretary. For all other matters, a Request for Declaratory Order shall be filed with the Presiding Officer specified in Part 4 of this Rule.

(2) Any person who seeks to obtain a declaratory order shall file a Request for Declaratory Order that meets these requirements. The request shall:

(a) Clearly designate the Request for Agency Action as one requesting a declaratory order;

(b) Identify the statute, rule or order to be reviewed;

(c) Describe in detail the situation or circumstances in which the applicability of the statute, rule or order is to be reviewed;

(d) Describe the Requestor's reason or need for the order;

(e) Set out a proposed order;

(f) As appropriate, address with specificity each of the circumstances described in R305-6-302(4) and demonstrate that the condition does not apply.

(3) Failure to submit a complete Request for Declaratory Order is grounds for denying the Request.

(4) The following classes of circumstances are exempt from declaratory order, as provided in Section 63G-4-503(3)(b):

(a) Circumstances in which a declaratory order would substantially prejudice the rights of a person who would be a necessary party under the Utah Rules of Civil Procedure, unless the Petitioner has that person's consent in writing;

(b) Circumstances in which the person requesting the declaratory order does not have standing;

(c) Circumstances in which informal agency opinion or other agency action is sufficient to meet the need described in the Petition;

(d) Circumstances in which questions have already been adequately addressed by the agency in an order or in informal advice;

(e) Circumstances that raise questions that are clear and do not warrant an order;

(f) Circumstances that are more properly addressed by a statutory change or rulemaking proceedings;

(g) Circumstances that arise out of pending or anticipated litigation in a civil, criminal or administrative forum and that are more properly addressed by that forum;

(h) Circumstances under which the critical facts are not clear and may be altered by subsequent events, or the issues are otherwise not yet ripe for consideration;

(i) Circumstances under which the person making the request is unable to show that real risk to that person will be confronted if the intended course of conduct is taken; and

(j) Circumstances involving use of the agency's emergency authority.

(5) If no declaratory order or order setting the matter for hearing is issued within 60 calendar days of the Request, the Request shall be deemed denied.

(6) An Initial Order of the Executive Secretary on a Request for Declaratory Action may be challenged as described in R305-6-202. The matter may be resolved using the procedures specified in Part 2 of this Rule, or other procedures specified by the Presiding Officer.

R305-6-303. Emergency Actions.

Emergency orders may be issued as provided in Section 63G-4-502. See R305-6-117.

R305-6-401. Purpose of Part.

Part 4 of this Rule (R305-6-401 through 423) provides definitions and other provisions that will govern the way the procedures specified in Part 3 of this Rule will apply to adjudication brought under specific statutes. The following matters are addressed:

(1) Definitions;

(2) Identification of Initial Orders and Notices of Violation that are exempt from UAPA requirements;

(3) Where a Request for Agency Action and other submissions should be filed; and

(4) Whether proceedings will be conducted formally or informally.

R305-6-402. Addresses for Filing.

(1) Documents submitted to the Executive Director of the Department of Environmental Quality shall be sent to: Executive Director, Department of Environmental Quality, P.O. Box 144810, Salt Lake City, Utah 84114-4810. Alternatively, these documents may be delivered by courier or hand delivery to: Executive Director, Department of Environmental Quality, 195 North 1950 West, 4th Floor, Salt Lake City, Utah 84116-3097.

(2) Documents submitted to the Executive Secretary of the Air Quality Board shall be sent to: Executive Secretary, Utah Air Quality Board, Division of Air Quality, P.O. Box 144820, Salt Lake City, Utah 84114-4820. Alternatively, these documents may be delivered by courier or hand delivery to: Executive Secretary, Utah Air Quality Board, Division of Air Quality, 195 North 1950 West, 4th Floor, Salt Lake City, Utah 84116-3097.

(3) Documents submitted to the Executive Secretary of the Drinking Water Board shall be sent to: Executive Secretary, Drinking Water Board, Division of Drinking Water, P.O. Box 144830, Salt Lake City, Utah 84114-4830. Alternatively, these documents may be delivered by courier or hand delivery to: Executive Secretary, Drinking Water Board, Division of Drinking Water, 195 North 1950 West, 3rd Floor, Salt Lake City, Utah 84116-3097.

(4) Documents submitted to the Executive Secretary of the Radiation Control Board shall be sent to: Executive Secretary, Radiation Control Board, Division of Radiation Control, P.O. Box 144850, Salt Lake City, Utah 84114-4850. Alternatively, these documents may be delivered by courier or hand delivery to: Executive Secretary, Radiation Control Board, Division of Radiation Control, 195 North 1950 West, 3rd Floor, Salt Lake City, Utah 84116-3097.

(5) Documents submitted to the Executive Secretary of the Solid and Hazardous Waste Control Board (but not including documents submitted under the Underground Storage Tank Act, Part 4 of Section 19-6 or the Illegal Drug Operations Site Reporting and Decontamination Act, Part 9 of 19-6) shall be sent to: Executive Secretary, Solid and Hazardous Waste Control Board, Division of Solid and Hazardous Waste, P.O. Box 144880, Salt Lake City, Utah 84114-4880. Alternatively, these documents may be delivered by courier or hand delivery to: Executive Secretary, Solid and Hazardous Waste Control Board, Division of Solid and Hazardous Waste, 195 North 1950 West, 2nd Floor, Salt Lake City, Utah 84116-3097

(6) Documents submitted to the Executive Secretary of the Solid and Hazardous Waste Control Board pursuant to Parts 4 and 9 of Section 19-6 shall be sent to: Executive Secretary, Solid and Hazardous Waste Control Board, Division of Environmental Response and Remediation, P.O. Box 144840, Salt Lake City, Utah 84114-4840. Alternatively, these documents may be delivered by courier or hand delivery to: Executive Secretary, Solid and Hazardous Waste Control Board, Division of Environmental Response and Remediation, 195 North 1950 West, 1st Floor, Salt Lake City, Utah 84116-3097.

(7) Documents submitted to the Executive Secretary of the Water Quality Board shall be sent to: Executive Secretary, Water Quality Board, Division of Water Quality, P.O. Box 144870, Salt Lake City, Utah 84114-4870. Alternatively, these documents may be delivered by courier or hand delivery to: Executive Secretary, Water Quality Board, Division of Water Quality, 195 North 1950 West, 3rd Floor, Salt Lake City, Utah 84116-3097.

(8) Documents submitted to the Executive Secretary of the Water Quality Board relative to uranium mill facilities or low-level radioactive waste disposal facilities shall be sent to: Executive Secretary, Water Quality Board/Radiation, Division of Radiation Control, P.O. Box 144850, Salt Lake City, Utah 84114-4850. For courier or hand delivery, these documents shall be sent to: Executive Secretary, Water Quality Board/Radiation, Division of Radiation Control, 195 North 1950 West, 3rd Floor, Salt Lake City, Utah 84116-3097.

R305-6-403. Matters Governed by Title 19, Chapter 1 of the Environmental Quality Code, but Not Including Title 19, Chapter 1, Part 4.

(1) Scope. This subsection R305-6-403 applies to all matters governed by Title 19, Chapter 1, of the Environmental Quality Code.

(2) Definitions.

"Presiding Officer" means the Executive Director.

(3) Orders and notices issued under the authority of Title 19, Chapter 1 of the the Environmental Quality Code are not exempt from the requirements of UAPA. The provisions of UAPA and of this Rule shall apply to proceedings initiated under the authority of Title 19, Chapter 1, the "Environmental Quality Code."

(4) Initiating and intervening in a proceeding. Nothing in this Rule constitutes authority for any person other than the agency to initiate adjudicative proceedings under Title 19, Chapter 1. Nothing in this Rule constitutes authority for any person to intervene in an action commenced under Title 19, Chapter 1.

(5) Proceedings under Title 19, Chapter 1 of the Environmental Quality Code, and specifically under Section19-1-202(2)(a), will be conducted formally under UAPA.

(6) Agency review under Section 63G-4-301 is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-404. Matters Governed by the Air Conservation Act, Title 19, Chapter 2, but Not Including Sections 19-2-112 or 19-2-123 through 19-2-126.

(1) Scope. This subsection R305-6-404 applies to all matters governed by the Air Conservation Act, Title 19, Chapter 2, but not including Sections 19-2-112 or 19-2-123 through 19-2-126.

(2) Definitions.

"Board" means the Air Quality Board.

"Executive Secretary" means the Executive Secretary of the Air Quality Board.

(3) The Board delegates to the Executive Secretary the authority to issue Initial Orders and Notices of Violation as described in R305-6-404(4).

(4) Initial Orders and Notices of Violation issued by the Executive Secretary under the authority of the Air Conservation Act are exempt from the requirements of UAPA under 63G-4-102(2)(k). Initial Orders and Notices of Violation include, but are not limited to, Initial Orders and Notices of Violation regarding:

(a) approval, denial, termination, modification, revocation, reissuance or renewal of permits, plans, or approval orders;

(b) notices of violation and orders associated with notices of violation;

(c) orders to comply and orders to cease and desist;

(d) certification for tank vapor tightness testing under R307-342 ;

(e) certification of asbestos contractors under R307-801;

(f) fees imposed for major source reviews under R307-414;

(g) assessment of other fees except as provided in R307-103-14(7);

(h) requests for variances, exemptions, and other approvals;

(i) requests or approvals for experiments, testing or control plans;

(j) certification of individuals and firms who perform lead-based paint activities and accreditation of lead-based paint training providers under R307-840;

(k) compliance with the requirements of the Air Conservation Act and rules promulgated thereunder; and

(l) declaratory orders under Section 63G-4-503 and R305-6-302.

(5) Initiating and intervening in a proceeding. A request to initiate or intervene in a proceeding, as described in this Rule,

shall be served on the Executive Secretary at the address specified in R305-6-402(2). See also R305-6-202 and R305-6-205.

(6) A challenge to an Initial Order or to a Notice of Violation will be conducted formally under UAPA.

(7) Agency review of the Board's decision under Section 63G-4-301 is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-405. Matters Governed by Section 19-2-112 of the Air Conservation Act.

(1) This subsection R305-6-405 describes matters governed by Section 19-2-112(1) of the Air Conservation Act, and applies to matters governed by Section 19-2-112(2) of that Act.

(2) Actions taken under the authority of Section 19-2-112(1) are subject to the procedures specified in that subsection only; neither this Rule nor UAPA applies.

(3) Definitions.

"Presiding Officer" means the Executive Director or any person or persons the Executive Director appoints as Presiding Officer.

(4) Orders and notices issued under the authority of 19-2-112(2) are subject to the requirements of and procedure specified in 63G-4-502. There is no administrative review available for orders issued under this provision. Any request for reconsideration shall be addressed to the Executive Director at the address specified in R305-6-402(1).

(5) Initiating and intervening in a proceeding. Nothing in this Rule constitutes authority for:

(a) any person other than the agency to initiate adjudicative proceedings under 19-2-112(2); or

(b) any person to intervene in an action commenced under 19-2-112(2).

R305-6-406. Matters Governed by Sections 19-2-123 through 19-2-126 of the Air Conservation Act.

(1) Scope. This subsection R305-6-406 applies to matters governed by Sections 19-2-123 through 19-2-126 of the Air Conservation Act. Sections 59-7-605 and 59-10-1009 of the Utah Tax Code also apply to these matters.

(2) Definitions.

(a) General.

"Board" means, as appropriate, the Air Quality Board or the Water Quality Board.

"Executive Secretary" means, as appropriate, the Executive Secretary of the Air Quality Board or the Water Quality Board.

(3) The Board delegates to the Executive Secretary the authority to issue Initial Orders as described in R305-6-406(5).

(4) Requests relating to air pollution control equipment shall be directed to the Air Quality Board and its Executive Secretary. Requests for water pollution control equipment shall be directed to the Water Quality Board and its Executive Secretary. See Section 19-2-102(14)(a).

(5) Initial Orders issued by the Executive Secretary under the authority of 19-2-123 through 19-2-126 are exempt from the requirements of UAPA under 63G-4-102(2)(k). Initial Orders include, but are not limited to, Initial Orders regarding eligibility of pollution control equipment for tax exemptions under R307-120 and R307-121, and declaratory orders under Section 63G-4-503 and R305-6-302.

(6) Initiating and intervening in a proceeding. A request for agency action or a petition to intervene in a proceeding, as described in this Rule, shall be served, as appropriate under R305-6-406(4), on the Executive Secretary for the Air Quality Board as specified in R305-6-402(2), or on the Executive Secretary for the Water Quality Board as specified in R305-6-402(7).

(7) A challenge to an Initial Order issued under 19-2-123 through 19-2-126 will be conducted formally under UAPA.

(8) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-407. Matters Governed by the Radiation Control Act, Title 19, Chapter 3, but Not Including Section 19-3-109.

(1) Scope. This subsection R305-6-407 applies to all matters governed by the Radiation Control Act, Title 19, Chapter 3, but not including Section 19-3-109.

(2) Definitions.

"Board" means the Radiation Control Board.

"Executive Secretary" means the Executive Secretary of the Radiation Control Board.

(3) The Board delegates to the Executive Secretary the authority to issue Initial Orders and Notices of Violation as described in R305-6-407(4).

(4) Initial Orders and Notices of Violation issued by the Executive Secretary under the authority of the Radiation Control Act are exempt from the requirements of UAPA under 63G-4-102(2)(k). Initial Orders and Notices of Violation include, but are not limited to, Initial Orders and Notices of Violation regarding:

(a) approval, amendment, denial, termination, transfer, revocation, or renewal of licenses or permits;

(b) x-ray facility registration, qualified expert registration, and mammography imaging medical physicist approval;

(c) generator site access certifications and registrations;

(d) requests for variances or exemptions;

(e) notices of violation and orders associated with notices of violation;

(f) orders assessing penalties;

(g) orders to comply and orders to cease and desist;

(h) orders regarding impoundment of radioactive material

(i) orders regarding decommissioning;

(j) orders regarding financial assurance;

(k) orders regarding surveying, monitoring, sampling, or information;

(l) compliance with the requirements of the Radiation Control Act and rules promulgated thereunder; and

(m) declaratory orders under Section 63G-4-503 and R305-6-302.

(5) Initiating and intervening in a proceeding. A request for agency action or a petition to intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary as specified in R305-6-402(4).

(6) A challenge to an Initial Order or notice issued under the Radiation Control Act will be conducted formally under UAPA.

(7) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

(8) See R305-6-411(5)(b) regarding the Executive Secretary responsible for water quality matters at uranium mill facilities, low level radioactive waste processing facilities, and low level radioactive waste disposal facilities.

R305-6-408. Matters Governed by the Radiation Control Act, Title 19, Chapter 3, Section 19-3-109.

(1) Scope. This subsection R305-6-408 applies to all matters governed by Section 19-3-109 of the Radiation Control Act.

(2) Definitions.

"Board" means the Radiation Control Board.

"Executive Secretary" means the Executive Secretary of the Radiation Control Board.

(3) The Board delegates to the Executive Secretary the authority to issue a Notice of Agency Action assessing penalties under Section 19-3-109.

(4) Before issuing a Notice of Agency Action assessing penalties, the Executive Secretary shall provide at least 30 calendar days' notice of the proposed penalty, and shall provide the recipient with an opportunity to comment on the proposed penalty.

(5) If the recipient of a Notice of Agency Action proposing to assess penalties does not file a written response within 30 calendar days, the Executive Secretary may issue a final order under Section 63G-4-209(1)(c). If the recipient does file a written response, the Board will conduct a formal proceeding on the matter. The Board may delegate decisions, other than dispositive decisions, to an appointed Presiding Officer.

(6) Nothing in this Rule constitutes authority for any person other than the Executive Secretary or the Board to initiate an adjudicative proceeding under Section 19-3-109. Nothing in this Rule constitutes authority for any person to intervene in an action commenced under Section 19-3-109.

(7) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-409. Matters Governed by the Safe Drinking Water Act, Title 19, Chapter 4, but Not Including Section 19-4-109(1).

(1) Scope. This subsection R305-6-409 applies to all matters governed by the Safe Drinking Water Act, Title 19, Chapter 4, but not included Section 19-4-109(1).

(2) Definitions.

"Board" means the Drinking Water Board.

"Executive Secretary" means the Executive Secretary of the Drinking Water Board.

(3) The Board delegates to the Executive Secretary the authority to issue Initial Orders and Notices of Violation as described in R305-6-409(4).

(4) Initial Orders and Notices of Violation issued by the Executive Secretary under the authority of the Safe Drinking Water Act are exempt from the requirements of UAPA under 63G-4-102(2)(k). Initial Orders and Notices of Violation include, but are not limited to, Initial Orders and Notices of Violation regarding:

(a) approval, denial, termination, modification, revocation, reissuance or renewal of permits, plans, or approval orders;

(b) notices of violation and orders associated with notices of violation;

(c) orders to comply and orders to cease and desist;

(d) orders regarding variances and exemptions;

(e) certification of water supply operators under R309-300 and backflow technicians under R309-305;

(f) ratings of water systems under R309-400-4;

(g) assessment of fees;

(h) concurrence with source protection plans;

(i) compliance with the requirements of the Safe Drinking Water Act and rules promulgated thereunder; and

(j) declaratory orders under Section 63G-4-503 and R305-6-302.

(5) Initiating and intervening in a proceeding. A request for agency action or a petition to intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary at the address specified in R305-6-402(3).

(6) A challenge to an Initial Order or notice issued under the Safe Drinking water Act will be conducted formally under UAPA.

(7) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-410. Matters Governed by the Safe Drinking Water Act, Title 19, Chapter 4, Section 19-4-109(1).

(1) Scope. This subsection R305-6-410 applies to all matters governed by Section 19-4-109 of the Safe Drinking Water Act.

(2) Definitions.

"Board" means the Drinking Water Board.

"Executive Secretary" means the Executive Secretary of the Drinking Water Board.

(3) The Board delegates to the Executive Secretary the authority to issue a Notice of Agency Action assessing penalties under Section 19-4-109(1).

(4) Before issuing a Notice of Agency Action assessing penalties, the Executive Secretary shall provide at least 30 calendar days' notice of the proposed penalty, and shall provide the recipient with an opportunity to comment on the proposed penalty.

(5) If the recipient of a Notice of Agency Action proposing to assess penalties does not file a written response within 30 calendar days, the Executive Secretary may issue a final order under Section 63G-4-209(1)(c). If the recipient does file a written response, the Board will conduct a formal proceeding on the matter. The Board may delegate decisions, other than dispositive decisions, to an appointed Presiding Officer.

(6) Nothing in this Rule constitutes authority for any person other than the Executive Secretary or the Board to initiate an adjudicative proceeding under Section 19-3-109. Nothing in this Rule constitutes authority for any person to intervene in an action commenced under Section 19-3-109.

(7) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-411. Matters Governed by the Water Quality Act, Title 19, Chapter 5.

(1) Scope. This subsection R305-6-411 applies to all matters governed by the Water Quality Act, Title 19, Chapter 5.

(2) Definitions.

"Board" means the Water Quality Board.

"Executive Secretary" means the Executive Secretary of the Water Quality Board.

"Presiding Officer" shall mean, as appropriate, an ALJ appointed under 19-1-301, the Board, or, for matters governed by Section 19-5-112(2), the Executive Director.

(3) The Board delegates to the Executive Secretary the authority to issue Initial Orders and Notices of Violation as described in R305-6-411(4).

(4) Initial Orders and Notices of Violation issued by the Executive Secretary under the authority of the Water Quality Act are exempt from the requirements of UAPA under 63G-4-102(2)(k). Initial Orders and Notices of Violation include, but are not limited to, Initial Orders and Notices of Violation regarding:

(a) approval, denial, termination, modification, revocation, reissuance or renewal of permits, plans, or approval orders;

(b) notices of violation and orders associated with notices of violation;

(c) orders to comply and orders to cease and desist;

(d) orders regarding variances and exemptions;

(e) assessment of fees;

(f) requests or approvals for experiments, testing or control plans;

(g) certification of wastewater treatment works operators under R317-10; and

(h) certification of individuals who design, inspect, maintain, or conduct percolation or soil tests for underground wastewater disposal systems;

(i) compliance with the requirements of the Water Quality Act and rules promulgated thereunder; and

(j) declaratory orders under Section 63G-4-503 and R305-6-302.

(5) Initiating and intervening in a proceeding.

(a) A request for agency action or a petition to intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary and, except as otherwise provided in R305-6-411(5)(b), shall be addressed to the Executive Secretary at the address specified in R305-6-402(7).

(b) The director of the Radiation Control Division has been appointed as a Co-Executive Secretary of the Water Quality Board, with responsibility for uranium mill facilities, low-level radioactive waste processing facilities, and low level radioactive waste disposal facilities. A request for agency action or a petition to intervene in a proceeding involving an order or notice issued by the Director of the Radiation Control Division as Executive Secretary for the Water Quality Board with respect to those facilities shall be served on the Executive Secretary as specified in R305-6-402(8).

(6) A challenge to an Initial Order or notice issued under the Water Quality Act will be conducted formally under UAPA.

(7) The Executive Director shall be the final decisionmaker for a challenge to a permit decision, as specified in Section 19-5-112(2). The Board shall be the final decisionmaker for all other challenges.

(8) Agency review of the Board's or Executive Director's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-412. Matters Governed by the Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 1.

(1) Scope. This subsection R305-6-412 applies to all matters governed by Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 1.

(2) Definitions.

"Board" means the Solid and Hazardous Waste Control Board.

"Executive Secretary" means the Executive Secretary of the Solid and Hazardous Waste Control Board.

(3) The Board delegates to the Executive Secretary the authority to issue Initial Orders and Notices of Violation as described in R305-6-412(4).

(4) Initial Orders and Notices of Violation issued by the Executive Secretary under the authority of the Solid and Hazardous Waste Act are exempt from the requirements of UAPA under 63G-4-102(2)(k). Initial Orders and Notices of Violation include, but are not limited to, initial proceedings regarding:

(a) approval, modification, denial, termination, transfer, revocation, or reissuance of permits or plan approvals;

(b) orders regarding approval for equivalent testing or analytical methods;

(c) notices of violation and orders associated with notices of violation;

(d) orders regarding variances and exceptions;

(e) orders for corrective action;

(f) consent orders;

(g) compliance with the requirements of the Solid and Hazardous Waste Act and rules promulgated thereunder; and

(h) declaratory orders under Section 63G-4-503 and R305-6-302.

(5) Initiating and intervening in a proceeding. A request to initiate or intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary as provided in R305-6-402(5) or (6).

(6) A challenge to an Initial Order or notice issued under the Solid and Hazardous Waste Act will be conducted formally under UAPA.

(7) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-413. Matters Governed by the Hazardous Substances Mitigation Act, Title 19, Chapter 6, Part 3.

(1) Scope. This subsection R305-6-413 applies to all matters governed by the Hazardous Substances Mitigation Act, Title 19, Chapter 6, Part 3.

(2) Definitions.

"Presiding Officer" means the Executive Director or any person or persons the Executive Director appoints as Presiding Officer.

(3) Orders and Notices of Violation issued under the authority of the Hazardous Substances Mitigation Act are not exempt from the requirements of UAPA. The provisions of UAPA (including as appropriate the emergency provisions of Section 63G-

4-502) and of this Rule shall apply to proceedings initiated under the authority of the Hazardous Substances Mitigation Act.

(4) Proceedings under this statute shall be conducted formally under UAPA.

(5) Initiating and intervening in a proceeding. Nothing in this Rule constitutes authority for any person other than the agency to initiate adjudicative proceedings under the Hazardous Substances Mitigation Act. Requests to intervene in a proceeding shall be governed by Section 63G-4-207 and the provisions of this Rule. A petition to intervene in a proceeding shall be served on the Executive Director as provided in R305-6-402(1).

(6) Agency review of the Executive Director's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-414. Matters Governed by the Underground Storage Tank Act, Title 19, Chapter 6, Part 4, but Not Including Sections 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

(1) Scope. This subsection R305-6-414 applies to all matters governed by the Underground Storage Tank Act, Title 19, Chapter 6, Part 4, but not including Sections 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

(2) Definitions.

"Board" means the Solid and Hazardous Waste Control Board.

"Executive Secretary" means the Executive Secretary of the Solid and Hazardous Waste Control Board.

(3) The Executive Secretary has statutory authority to issue Initial Orders and Notices of Violation as described in R305-6-414(4).

(4) Initial Orders and Notices of Violation issued by the Executive Secretary under the authority of the Underground Storage Tank Act are exempt from the requirements of UAPA under 63G-4-102(2)(k), except as provided in R305-6-415. Initial Orders and Notices of Violation that are exempt from UAPA include, but are not limited to, orders and notices regarding:

(a) approval, denial, termination, or revocation of certifications, registrations, and certificates of compliance;

(b) orders regarding approval for equivalent testing or analytical methods;

(c) notices of violation and orders associated with notices of violation;

(d) orders regarding variances and exceptions;

(e) orders for investigation or corrective action;

(f) apportionment;

(g) consent orders;

(h) compliance with the requirements of the Underground Storage Tank Act and rules promulgated thereunder; and

(i) declaratory orders under Section 63G-4-503 and R305-6-302.

(4) Initiating and intervening in a proceeding.

(a) A challenge to a revocation of a certificate of compliance shall be initiated by serving a Request for Agency Action on the Executive Director as provided in R305-6-402(1). See Section 19-6-414(3) of the Underground Storage Tank Act.

(b) All other requests to initiate or intervene in a proceeding, as described in this Rule, shall be directed to the Board and served on the Executive Secretary as provided in R305-6-402(6).

(5) A challenge to an Initial Order or notice issued under the Underground Storage Tank Act will be conducted formally under UAPA.

(6) Agency review of the Executive Directors or the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-415. Matters Governed by the Underground Storage Tank Act, Title 19, Chapter 6, Sections 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5.

(1) Scope. This subsection R305-6-415 applies to all matters governed by Sections 19-6-407, 19-6-408, 19-6-416, and 19-6-416.5 of the Underground Storage Tank Act.

(2) Definitions.

"Board" means the Solid and Hazardous Waste Control Board.

"Executive Secretary" means the Executive Secretary of the Solid and Hazardous Waste Control Board.

(3) The Executive Secretary has statutory authority to issue a Notice of Agency Action assessing penalties under Sections 19-6-407, 19-6-408, 19-6-416, and 19-6-416.5.

(4) Before issuing a Notice of Agency Action assessing penalties, the Executive Secretary shall provide at least 30 calendar days' notice of the proposed penalty, and shall provide the recipient with an opportunity to comment on the proposed penalty.

(5) If the recipient of a Notice of Agency Action proposing to assess penalties does not file a written response within 30 calendar days, the Executive Secretary may issue a final order under Section 63G-4-209(1)(c). If the recipient does file a written response, the Board will conduct a formal proceeding on the matter. The Board may appoint a Presiding Officer for pre-hearing and hearing matters, but any dispositive determinations shall be made by the Board. Proceedings described in paragraph (4) are not exempt from UAPA.

(6) Nothing in this Rule constitutes authority for any person other than the Executive Secretary or the Board to initiate an adjudicative proceeding under Sections 19-6-407, 19-6-408, 19-6-416, or 19-6-416.5. Nothing in this Rule constitutes authority for any person to intervene in an action commenced under Sections 19-6-107, 19-6-108, 19-6-416 or 19-6-416.5.

(7) Orders issued by the Executive Secretary to assess penalties under Sections 19-6-407, 19-6-408, 19-6-416 and 19-6-416.5 are not exempt from the requirements of UAPA.

(8) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-416. Matters Governed by the Used Oil Management Act, Title 19, Chapter 6, Part 7.

(1) Scope. This subsection R305-6-416 applies to all matters governed by the Used Oil Management Act, Title 19, Chapter 6, Part 7.

(2) Definitions.

"Board" means the Solid and Hazardous Waste Control Board.

"Executive Secretary" means the Executive Secretary of the Solid and Hazardous Waste Control Board.

(3) The Executive Secretary has statutory authority to issue Initial Orders and Notices of Violation as described in R305-6-416(4).

(4) Initial Orders and Notices of Violation issued by the Executive Secretary under the authority of the Used Oil Management Act are exempt from the requirements of UAPA under 63G-4-102(2)(k). Initial Orders and Notices of Violation include, but are not limited to, initial proceedings regarding:

(a) approval, modification, denial, termination, transfer, revocation, or reissuance of permits, plan approvals, sureties and registrations;

(b) notices of violation and orders associated with notices of violation;

(c) orders for corrective action;

(d) orders regarding variances and exceptions;

(e) consent orders; and

(f) registration and revocation of registration of used oil collection centers, used oil aggregation points or DIYer used oil collection centers;

(g) reclamation orders;

(h) compliance with the requirements of the Used Oil Management Act and rules promulgated thereunder; and

(i) declaratory orders under Section 63G-4-503 and R305-6-302.

(5) Initiating and intervening in a proceeding. A request to initiate or intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary as specified in R305-6-402(5).

(6) A challenge to an Initial Order or notice issued under the Used Oil Management Act will be conducted formally under UAPA.

(7) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-417. Matters Governed by the Waste Tire Recycling Act, Title 19, Chapter 6, Part 8.

(1) Scope. This subsection R305-6-417 applies to all matters governed by Waste Tire Recycling Act, Title 19, Chapter 6, Part 8.

(2) Definitions.

"Board" means the Solid and Hazardous Waste Control Board.

"Executive Secretary" means the Executive Secretary of the Solid and Hazardous Waste Control Board.

(3) The Executive Secretary has statutory authority to issue Notices of Agency Action as described in R305-6-417(4).

(4) Notices of agency action for orders and notices of violation under the Waste Tire Recycling Act include, but are not limited to, notices regarding proceedings for:

(a) approval, modification, denial, termination, transfer, revocation, or reissuance of permits, plan approvals;

(b) approvals, denial and other orders regarding financial assurance and insurance;

(c) notices of violation and orders associated with compliance with the statute;

(d) orders regarding variances or exemptions;

(e) orders for corrective action, including reclamation;

(f) consent orders;

(g) registration and revocation of registration of waste tire transporters and recyclers;

(h) approval of reimbursements;

(i) approval of payments to counties or municipalities for costs of a waste tire transporter or recycler to remove waste tires; and

(j) declaratory orders under Section 63G-4-503 and R305-6-302.

(5) If the recipient of a Notice of Agency Action does not file a written response within 30 calendar days, the Executive Secretary may issue a final order under Section 63G-4-209(1)(c). If the recipient does file a written response, the Board will conduct a formal proceeding on the matter. The Board may appoint a Presiding Officer for pre-hearing and hearing matters, but any dispositive determinations shall be made by the Board. Proceedings described in paragraph (4) are not exempt from UAPA.

(6) Initiating and intervening in a proceeding. A request to initiate or intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary as specified in R305-6-402(5).

(7) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-418. Matters Governed by the Illegal Drug Operations Site Reporting and Decontamination Act, Title 19, Chapter 6, Part 9.

(1) Scope. This subsection R305-6-418 applies to all matters over which the Board has authority under the Illegal Drug Operations Site Reporting and Decontamination Act, Title 19, Chapter 6, Part 9, and under the authority of the Board.

(2) Definitions.

"Board" means the Solid and Hazardous Waste Control Board.

"Executive Secretary" means the Executive Secretary of the Solid and Hazardous Waste Control Board.

(3) The Board delegates to the Executive Secretary the authority to issue Notices of Agency Action and to respond to Requests for Agency Action as described in R305-6-418(4).

(4) Proceedings under the Illegal Drug Operations Site Reporting and Decontamination Act include, but are not limited to, notices regarding proceedings for:

(a) proceedings regarding certifications of decontamination specialists; and

(b) declaratory orders under Section 63G-4-503 and R305-6-302.

(5) If the recipient of a Notice of Agency Action does not file a written response within 30 calendar days, the Executive Secretary may issue a final order under Section 63G-4-209(1)(c). If the recipient does file a written response, the Board will conduct a proceeding on the matter. The Board may appoint a Presiding Officer for pre-hearing and hearing matters, but any dispositive determinations shall be made by the Board. Proceedings described in paragraph (4) are not exempt from UAPA.

(6) A proceeding regarding an application for certification shall be conducted informally by the Executive Secretary. Agency review of the Executive Secretary's decision is not available. A request for reconsideration may be filed using the procedures specified in Section 63G-4-302.

(7) A proceeding to revoke certification shall be conducted formally. Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-419. Matters Governed by the Mercury Switch Removal Act, Title 19, Chapter 6, Part 10.

(1) Scope. This subsection R305-6-419 applies to all matters governed by the Mercury Switch Removal Act, Title 19, Chapter 6, Part 10.

(2) Definitions.

"Board" means the Solid and Hazardous Waste Control Board.

"Executive Secretary" means the Executive Secretary of the Solid and Hazardous Waste Control Board.

(3) Initial Orders and Notices of Violation issued by the Executive Secretary under the authority of the Mercury Switch Removal Act are exempt from the requirements of UAPA under Section 63G-4-102(2)(k). Initial Orders and Notices of Violation include, but are not limited to, initial proceedings regarding:

(a) approval, modification, denial, termination, transfer, revocation, or reissuance of plans;

(b) notices of violation and orders associated with compliance with the statute, including orders for corrective action;

(c) orders regarding variances and exceptions;

(d) consent orders;

(e) compliance with the requirements of the Mercury Switch Removal Act and rules promulgated thereunder; and

(f) declaratory orders under Section 63G-4-503 and R305-6-302.

(4) Initiating and intervening in a proceeding. A request to initiate or intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary as specified in R305-6-402(5).

(5) A challenge to an Initial Order or notice issued under the Mercury Switch Removal Act will be conducted formally under UAPA.

(6) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-420. Matters Governed by the Industrial Byproduct Reuse Act, Title 19, Chapter 6, Part 11.

(1) Scope. This subsection R305-6-420 applies to all matters governed by the Industrial Byproduct Reuse Act, Title 19, Chapter 6, Part 11.

(2) Definitions.

"Board" means the Solid and Hazardous Waste Control Board.

"Executive Secretary" means the Executive Secretary of the Solid and Hazardous Waste Control Board.

(3) The Executive Secretary has statutory authority to issue Notices of Agency Action as described in R305-6-420(4).

(4) Notices of agency action for orders and notices of violation under the Industrial Byproduct Reuse Act include, but are not limited to, notices regarding proceedings for:

(a) orders regarding applications for reuse of an industrial byproduct; and

(b) declaratory orders under Section 63G-4-503 and R305-6-302.

(5) If the recipient of a Notice of Agency Action does not file a written response within 30 calendar days, the Executive Secretary may issue a final order under Section 63G-4-209(1)(c). If the recipient does file a written response, the Board will conduct a formal proceeding on the matter. The Board may appoint a Presiding Officer for pre-hearing and hearing matters, but any dispositive determinations shall be made by the Board. Proceedings described in paragraph (4) are not exempt from UAPA.

(6) Initiating and intervening in a proceeding. A request to initiate or intervene in a proceeding, as described in this Rule, shall be served on the Executive Secretary as specified in R305-6-402(5).

(7) Agency review of the Board's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-421. Matters Governed by the Voluntary Cleanup Program Statute, Title 19, Chapter 8.

(1) Scope. This subsection R305-6-421 applies to all matters governed by the Voluntary Cleanup Program statute, Title 19, Chapter 8.

(2) Definitions.

"Presiding Officer" means the Executive Director or the Executive Director's designee.

(3) Determinations about whether to enter into an agreement under this program lie within the sole discretion of the Executive Director. Unless the Executive Director designates another Presiding Officer, papers shall be filed with the Executive Director as provided in R305-6-402(1).

(4) The Executive Director delegates to the Director of the Division of Environmental Response and Remediation authority to issue orders and other Notices of Agency Action regarding:

(a) proposed determinations regarding approvals, disapprovals or modifications of work plans and reports;

(b) approvals, denials or modifications of certificates of completion; and

(c) declaratory orders under Section 63G-4-503 and R305-6-302.

(5) Agency review of the Executive Director's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-422. Matters Governed by the Environmental Institutional Control Act, Title 19, Chapter 10.

(1) Scope. This subsection R305-6-422 applies to all matters governed by the Environmental Institutional Control Act, Title 19, Chapter 10.

(2) Definitions.

"Presiding Officer" means the Executive Director or the Executive Director's designee.

(3) A request to terminate or modify an environmental institutional control adopted under this act shall be considered a Request for Agency Action and shall be directed to the Executive Director as provided in R305-6-402(1). The Executive Director may at any time designate another Presiding Officer. The person submitting the Request for Agency Action shall be notified of the designation.

(4) Proceedings described in paragraph (3) will be conducted under UAPA using formal procedures. Proceedings under the Environmental Institutional Control Act are not exempt from the requirements of UAPA.

(5) Agency review of the Executive Director's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4-302.

R305-6-423. Matters Governed by the Uniform Environmental Covenants Act, Title 57, Chapter 25.

(1) Scope. This subsection R305-6-423 applies to all matters governed by the Uniform Environmental Covenants Act, Title 57, Chapter 25.

(2) The Executive Director, or the Executive Directors designee, is the Presiding Officer.

(3) Orders issued by the Executive Director or the Executive Director's designee under the authority of the Environmental Institutional Control Act are not exempt from the requirements of UAPA.

(4) A request to approve, modify or terminate an environmental covenant shall be considered to be a Request for Agency Action and a proceeding to address the Request shall be conducted under UAPA using formal procedures.

(5) Initiating and intervening in a proceeding. A request to initiate or intervene in a proceeding, as described in this Rule, shall be filed with the Executive Director as specified in R305-6-402(1).

(6) Agency review of the Executive Director's decision, as provided in Section 63G-4-301, is not available. A request for reconsideration may be filed under Section 63G-4

KEY: administrative procedures, adjudicative procedures, hearings
Date of Enactment or Last Substantive Amendment: 2011
Authorizing, and Implemented or Interpreted Law : 63G-4-102, 63G-4-201, 63G-4-202, 63G-4-203, 63G-4-205, 63G-4-503, 19-1-301, 19-2-104, 19-3-104, 19-5-104, and 19-6-105

Environmental Quality, Drinking Water
R309-800
Capacity Development Program

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34450
FILED: 02/16/2011

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change authorizes the Executive Secretary to the Drinking Water Board to require a Capacity Assessment of water systems applying for State Revolving Fund (SRF), if deemed necessary. Reference appropriate sections of the Utah Groundwater Rule relating to significant deficiencies and capacity assessment.

SUMMARY OF THE RULE OR CHANGE: This change is to ascertain a water system's capability to meet the requirements of the Safe Drinking Water Act as well as the ability to repay any loans made from the SRF loan program.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: Minimal cost - depending on the number of water systems requiring a Capacity Development Assessment, expected to require approximately 0.2 FTE per year; potential benefit - assess whether a water system is a viable investment for SRF money.
♦ LOCAL GOVERNMENTS: Minimal cost - Capacity Development Assessment worksheets require approximately 1 to 2 hours to complete; potential benefits - qualification for either low cost loan and/or grant money for water system improvements through the SRF program.
♦ SMALL BUSINESSES: Only "bodi[ies] politic" are eligible for funding through the SRF program.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None anticipated - only water systems and their personnel will be impacted by this rule change, only political subdivisions of the State may apply for funding through the SRF program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Minimal - Capacity Development Assessment worksheets should require at most two hours to complete.

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 WATERROOM 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:
♦ Michael Grange by phone at 801-536-0069, by FAX at 801-536-4122, or by Internet E-mail at mgrange@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/18/2011

THIS RULE MAY BECOME EFFECTIVE ON: 05/18/2011

AUTHORIZED BY: Ken Bousfield , Director

R309. Environmental Quality, Drinking Water.
R309-800. Capacity Development Program.
R309-800-1. Authority.

(1) Under authority granted in Utah Code Subsection 19-4-104(1)(a)(v), the Drinking Water Board adopts this rule implementing the capacity development program and governing the allotment of federal funds to public water systems to assist them to comply with the Federal 1996 Reauthorized Safe Drinking Water Act (SDWA).

R309-800-2. Purpose.

(1) The SDWA makes certain federal funds available to states, through the Drinking Water State Revolving Loan Program as defined in section 1452(k)(2)(C) to provide assistance to any public water system as part of a capacity development strategy developed and implemented in accordance with section 1420(c) to ensure all new public water systems will be able to comply with the SDWA, to enhance existing public water systems' capability to comply with the SDWA, and determine which public water systems applying for financial assistance are eligible to use the State Revolving Funds.

(2) The purpose of the Capacity Development Program is to enhance and ensure the technical, managerial, and financial capacity of water systems. The Program's goals are:

(a)[-] to promote long-term compliance with drinking water regulations, and

(b)[-] to promote the public health protection objectives of the SDWA.

(c) to promote compliance with the requirements of the State of Utah's Groundwater Rule, R309-215-16, in identifying and correcting significant deficiencies in technical, managerial, and/or financial capacity.

R309-800-3. Definitions.

(1) Definitions for terms used in this rule are given in R309-110, except as modified below.

(2) "Capacity Development" means the technical, managerial, and financial capabilities of the water system to plan for, achieve, and maintain compliance with applicable drinking water standards.

(3) "Drinking Water Region Planning" means a county wide water plan, administered locally by a coordinator, who facilitates the input of representatives of each public water system in the county with a selected consultant, to determine how each public water system will either collectively or individually comply with source protection, operator certification, monitoring including consumer confidence reports, capacity development including technical, financial and managerial aspects, environmental issues, available funding and related studies.

(4) "Small Water System" means a water system with less than 3,300 people being served.

(5) "Public Water System" means a system providing water for human consumption and other domestic uses through pipes or other constructed conveyances, which has at least 15 service connections or serves an average of at least 25 individuals daily at least 60 days out of the year.

(6) "Non-Community Water System" (NCWS) means a public water system that is not a community water system. There are two types of NCWS's: transient and non-transient.

(7) Non-Transient Non-Community Water System (NTNCWS) means a public water system that regularly serves at least 25 of the same nonresident persons per day for more than 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.

(8) "New Water System" means a system that will become a community water system or non-transient, non-community water system on or after October 1, 1999.

(9) "Required reserve" means funds set aside to meet requirements set forth in a loan covenant/bond indenture.

R309-800-4. General.

(1) Capacity development criteria are to be used as a guideline for all water systems. These criteria constitute a standard applied when reviewing new systems applications, reviewing applications for financial assistance and assessing capacity of water systems rated unapproved or in significant non-compliance with SDWA requirements or State drinking water rules by the State or the EPA.

(2) Water systems shall meet the following criteria:

(a) Technical Capacity Criteria:

(i) Finished water shall meet all drinking water standards as required by Utah State Rules;

(ii) Personnel shall operate the system in accordance with the operations and maintenance manual;

(iii) A valid water right shall be obtained;

(iv) Water system shall meet source, storage, and distribution requirements as per Utah State Rules;

(v) Water system shall not be rated unapproved or in significant noncompliance by the State or the EPA.

(b) Managerial Capacity Criteria:

(i) The system owner(s) shall be clearly identified to the Executive Secretary;

(ii) The system shall meet all of the operator certification requirements as per R309-300 and backflow technician certification requirements as per R309-305.

(iii) A system or method shall be in-place to effectively maintain all requisite records, distribution system histories/maps, and compliance information; and

(iv) An operating plan shall include names and certification level of the system operator(s), facility operation and maintenance manuals, routine maintenance procedures, water quality violations response procedures, water quality monitoring plan, training plan, and emergency response plan;

(v) The Executive Secretary of the Drinking Water Board shall be informed of management changes.

(c) Financial Capacity Criteria:

(i) Revenues shall be greater than expenses;

(ii) A financial statement compilation by a Certified Public Accountant, or an audit if otherwise required of the water system, shall be completed every three years;

(iii) The water system shall devise and implement a managerial budget and accounting process in accordance with generally accepted principals;

(iv) The operating ratio (operating revenue divided by operating expenses excluding depreciation and required reserves) shall be greater than 1.0;

(v) The coverage ratio (total revenues minus operating expenses excluding depreciation and required reserves divided by annual debt service) shall be greater than 1.0;

(vi) Customers shall be metered; and

(vii) An emergency/replacement reserve shall be created and funded.

(3) Public Water Systems that use ground water, except those that combine all of their ground water with surface water or with ground water under the direct influence of surface water prior to treatment, but including consecutive systems receiving finished ground water shall be subject to the sanitary survey requirements of R309-100-7 and the significant deficiency requirements of R309-215-16(3) in order to be in compliance with the Capacity Development Program requirements.

R309-800-5. Requirements for New Community and New Non-transient, Non-community Water Systems.

(1) Feasibility Review, (See R309-100-6).

(2) Each proposed, new water system must demonstrate that it has adequate technical, managerial, and financial capacity before it may provide water for human consumption. Proposed water systems shall submit the following for Capacity Assessment Review:

(3) Project Notification form, available on the Internet at www.drinkingwater.utah.gov/blank_forms.htm.

(4) A business plan, which includes a facilities plan, management plan, and financial plan.

(a) Facilities plan. The facilities plan shall describe the scope of the water services to be provided and shall include the following:

(i) A description of the nature and extent of the area to be served, and provisions for extending the water supply system to include additional area. The description shall include population and land use projections and forecasts of water usage;

(ii) An assessment of current and expected drinking water compliance based on monitoring data from the proposed water source;

(iii) A description of the alternatives considered, including interconnections with other existing water systems, and the reasons for selecting the method of providing water service. This description shall include the technical, managerial, financial and operational reasons for the selected method, and

(iv) An engineering description of the facilities to be constructed, including the construction phases and future phases and future plans for expansion. This description shall include an estimate of the full cost of any required construction, operation, and maintenance;

(b) Management plan. The management plan shall describe what is needed to provide for effective management and operation of the system and shall include the following:

(i) Documentation that the applicant has the legal right and authority to take the measures necessary for the construction, operation, and maintenance of the system. The documentation shall include evidence of ownership if the applicant is the owner of the system or, if the applicant is not the owner, legally enforceable management contracts or agreements;

(ii) An operating plan that describes the tasks to be performed in managing and operating the system. The operating plan shall consist of administrative and management organization charts, plans for staffing the system with certified operators, and provisions for an operations and maintenance manual; and

(iii) Documentation of credentials of management and operations personnel, cooperative agreements or service contracts including demonstration of compliance with R309-300 water system operator certification rule; and

(c) Financial plan. The financial plan shall describe the system's expected revenues, cash flow, income and issuance and repayment of debt for meeting the costs of construction, and the costs of operation and maintenance for at least five years from the date the applicant expects to begin system operation.

(5) After the information submitted by the applicant is complete, the Division of Drinking Water shall conduct a Capacity Assessment Review. The applicant shall be notified in writing whether or not the new system has demonstrated adequate capacity. No new community or non-transient, non-community system will be approved if it lacks adequate capacity.

(6) Those systems constructed without approval shall be subject to: points as [~~per~~]specified in R309-400, and/or administrative and/or civil penalties and fines.

[~~**R309-800-6. Minimum Capacity Required for Financial Assistance Under Provisions of R309-705.**~~

~~(1) To obtain financial assistance, the applicant shall follow a two-step application process. First, the applicant shall complete a short application to establish a position on the priority list. A second application shall include Capacity Assessment Worksheets, project information, and financial information to verify priority ranking, determine eligibility, and provide a basis for grant/loan parameters.~~

~~(2) Financial assistance under the provisions of R309-705: Financial Assistance: Federal Drinking Water Project Revolving Loan Program shall not be available to a system that lacks the technical, managerial, or financial capability to maintain SDWA compliance, or is in significant noncompliance with any provision of R309-200 through 225 or 500 through 550, unless the use of the financial assistance will ensure compliance or if the owner of the system agrees to undertake feasible and appropriate changes in operation to ensure technical, managerial, and financial capacity to comply with the SDWA over the long term.~~

]**R309-800-6. Minimum Capacity Required for Financial Assistance Under Provisions of R309-700 and R309-705.**

(1) Applicants for financial assistance shall complete an application form, available on the Internet at www.drinkingwater.utah.gov/blank_forms.htm. The application shall include project information and water system financial information and will be used to determine eligibility, establish project priority ranking, and provide a basis for determining financial assistance parameters.

(2)(a) As described in (3) below, applicants for financial assistance from the Federal Drinking Water State Revolving Loan Program are required to complete and submit Capacity Development worksheets to the Executive Secretary.

(b) As described in (4) below, the Executive Secretary may require an applicant for a loan from the State's Revolving Loan

Program to complete and submit Capacity Development worksheets for review.

(3) Financial assistance under the provisions of R309-705, Financial Assistance: Federal Drinking Water State Revolving Fund Loan Program. Financial assistance shall not be available to a water system that lacks the technical, managerial, or financial capability to maintain SDWA compliance, or is in significant non-compliance with any provisions of R309-200 through 225 or 500 through 550, unless:

(a) The use of the financial assistance will ensure compliance with SDWA and Utah rules; or

(b) The owner of the system agrees to undertake feasible and appropriate changes in operation to ensure technical, managerial, and financial capacity to maintain long-term compliance with SDWA.

(4) Financial assistance under the provisions of R309-700 Financial Assistance: State Drinking Water State Revolving Fund Loan Program. A Capacity Development Assessment may be necessary before the Executive Secretary considers whether a project is eligible for financial assistance under the State's Revolving Loan Program. The decision will be based on available water system information obtained through sanitary surveys, site visits, monitoring and reporting data, or other valid means. If, after review of available information, the Executive Secretary determines that a Capacity Development Assessment is necessary, he will require that the applicant complete and submit the Capacity Development worksheets to the Division. Otherwise, a Capacity Development Assessment is not required.

KEY: drinking water, funding, regionalization, capacity development
Date of Enactment or Last Substantive Amendment: [~~September 15, 1999~~]2011
Notice of Continuation: March 23, 2010
Authorizing, and Implemented or Interpreted Law: 19-4-104

Environmental Quality, Water Quality
R317-1-7
TMDLs

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34486
FILED: 03/01/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to incorporate by reference the completed and recently approved Pariette Draw Total Maximum Daily Load (TMDL) water quality study and determination into the rule.

SUMMARY OF THE RULE OR CHANGE: This section incorporates by reference the completed and approved Pariette Draw TMDL into the rule. This TMDL document has gone through an individual public review process, has been approved by the EPA and adopted by the Water Quality Board.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-5-104(1)(f)

MATERIALS INCORPORATED BY REFERENCES:

♦ Adds TMDLs for Total Dissolved Solids, Selenium and Boron in the Pariette Draw Watershed, published by Utah Division of Water Quality, 09/28/2010

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There are no anticipated impacts to the state budget. The proposed amendment will be addressed using existing resources.

♦ LOCAL GOVERNMENTS: No cost impacts to local governments are anticipated. No activities that would result in costs or savings to local governments are mandated by the approved TMDL.

♦ SMALL BUSINESSES: No cost impacts to small businesses are anticipated. Strategies and management options for reducing nonpoint sources of pollutants are identified, but are not specifically mandated by the approved TMDL. Any reductions in nonpoint pollutant sources recommended by the TMDL are voluntary. Implementation projects and strategies will be made available for discussion and comment in a continuing public planning process associated with each TMDL.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No cost impacts to other persons are anticipated. No reductions in water quality pollutants are specifically mandated for other persons in the TMDL. Any reductions in nonpoint pollutant sources recommended by the TMDL are voluntary. Implementation projects and strategies will be made available for discussion and comment in a continuing public planning process associated with each TMDL.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No direct compliance costs are anticipated for affected persons. Strategies and management options for reducing nonpoint sources of pollutants are identified, but are not specifically mandated by the approved TMDL. Any reductions in non-point pollutant sources recommended by the TMDL are voluntary. Implementation projects and strategies will be made available for discussion and comment in a continuing public planning process associated with each TMDL.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impacts to businesses are anticipated as a result of the approved TMDL. No compliance requirements were

implemented for point sources of pollutants as a result of the approved TMDL. Strategies and management options for reducing nonpoint sources of pollutants are identified, but are not specifically mandated by the approved TMDL. Implementation projects and strategies will be made available for discussion and comment in a continuing public planning process associated with each TMDL.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
WATER QUALITYROOM DEQ, THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Dave Wham by phone at 801-536-4337, by FAX at 801-536-4301, or by Internet E-mail at dwham@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2011

AUTHORIZED BY: Walter Baker, Director

R317. Environmental Quality, Water Quality.
R317-1. Definitions and General Requirements.
R317-1-7. TMDLs.

The following TMDLs are approved by the Board and hereby incorporated by reference into these rules:

7.1 Middle Bear River -- February 23, 2010
7.2 Chalk Creek -- December 23, 1997
7.3 Otter Creek -- December 23, 1997
7.4 Little Bear River -- May 23, 2000
7.5 Mantua Reservoir -- May 23, 2000
7.6 East Canyon Creek -- September 14, 2010
7.7 East Canyon Reservoir -- September 14, 2010
7.8 Kents Lake -- September 1, 2000
7.9 LaBaron Reservoir -- September 1, 2000
7.10 Minersville Reservoir -- September 1, 2000
7.11 Puffer Lake -- September 1, 2000
7.12 Scofield Reservoir -- September 1, 2000
7.13 Onion Creek (near Moab) -- July 25, 2002
7.14 Cottonwood Wash -- September 9, 2002
7.15 Deer Creek Reservoir -- September 9, 2002
7.16 Hyrum Reservoir -- September 9, 2002
7.17 Little Cottonwood Creek -- September 9, 2002
7.18 Lower Bear River -- September 9, 2002
7.19 Malad River -- September 9, 2002
7.20 Mill Creek (near Moab) -- September 9, 2002
7.21 Spring Creek -- September 9, 2002
7.22 Forsyth Reservoir -- September 27, 2002
7.23 Johnson Valley Reservoir -- September 27, 2002
7.24 Lower Fremont River -- September 27, 2002
7.25 Mill Meadow Reservoir -- September 27, 2002
7.26 UM Creek -- September 27, 2002
7.27 Upper Fremont River -- September 27, 2002
7.28 Deep Creek -- October 9, 2002
7.29 Uinta River -- October 9, 2002
7.30 Pineview Reservoir -- December 9, 2002
7.31 Browne Lake -- February 19, 2003
7.32 San Pitch River -- November 18, 2003
7.33 Newton Creek -- June 24, 2004
7.34 Panguitch Lake -- June 24, 2004
7.35 West Colorado -- August 4, 2004
7.36 Silver Creek -- August 4, 2004
7.37 Upper Sevier River -- August 4, 2004
7.38 Lower and Middle Sevier River -- August 17,2004
7.39 Lower Colorado River -- September 20, 2004
7.40 Upper Bear River -- August 4, 2006
7.41 Echo Creek -- August 4, 2006
7.42 Soldier Creek -- August 4, 2006
7.43 East Fork Sevier River -- August 4, 2006
7.44 Koosharem Reservoir -- August 4, 2006
7.45 Lower Box Creek Reservoir -- August 4, 2006
7.46 Otter Creek Reservoir -- August 4, 2006
7.47 Thistle Creek -- July 9, 2007
7.48 Strawberry Reservoir -- July 9, 2007
7.49 Matt Warner Reservoir -- July 9, 2007
7.50 Calder Reservoir -- July 9, 2007
7.51 Lower Duchesne River -- July 9, 2007
7.52 Lake Fork River -- July 9, 2007
7.53 Brough Reservoir -- August 22, 2008
7.54 Steinaker Reservoir -- August 22, 2008
7.55 Red Fleet Reservoir -- August 22, 2008
7.56 Newcastle Reservoir -- August 22, 2008
7.57 Cutler Reservoir -- February 23, 2010
7.58 Pariette Draw -- September 28, 2010

KEY: water pollution, waste disposal, industrial waste, effluent standards
Date of Enactment or Last Substantive Amendment: [~~November 19, 2010~~]2011
Notice of Continuation: October 2, 2007
Authorizing, and Implemented or Interpreted Law: 19-5

Governor, Economic Development, Pete Suazo Utah Athletic Commission
R359-1-511
Event Officials

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 34482
FILED: 03/01/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes remove the announcer as an event official; permit the commission to test an event official for drugs, alcohol, or both; and assign a penalty schedule for an event official who tests positive for drugs or alcohol or refuses to provide a sample. The safety and welfare of the contestants depend on event officials who are not under the influence of drugs, alcohol, or both.

SUMMARY OF THE RULE OR CHANGE: The changes remove the announcer as an event official; permit the commission to test an event official for drugs, alcohol, or both; and assign a penalty schedule for an event official who tests positive for drugs or alcohol or refuses to provide a sample.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63C, Chapter 11

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This requirement will not negatively impact the commission's workload in regulating events. The cost of the drug and alcohol testing is estimated at $5 per test and is reimbursed by the event promoter. It is anticipated that testing will be rarely required, unless there is reasonable suspciion that an official is under the influence of drugs, alcohol, or both.
♦ LOCAL GOVERNMENTS: The proposed rule change will not result in any anticipated cost or savings to local government since local government does not regulate unarmed combat.
♦ SMALL BUSINESSES: A promoter will be required to pay for any requested tests, which is anticipated to be about $5 per test. However, it is estimated that there will be less than 10 tests per year required for event officials each year for each promoter at a net additional cost of less than $50 per year.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings for other entities because they will not be impacted by the proposed drug and alcohol test requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is estimated that there will be less than 10 tests per year required for event officials each year for each promoter at a net additional cost of less than $50 per year.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule will give additional guidance and tools to ensure event officials are sober when fulfilling their responsibilities. The estimated cost is estimated to be less than $50 per year for any promoter.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
GOVERNOR
ECONOMIC DEVELOPMENT,
PETE SUAZO UTAH ATHLETIC COMMISSION
324 S STATE ST
STE 500
SALT LAKE CITY, UT 84111
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Bill Colbert by phone at 801-538-8876, by FAX at 801-538-8888, or by Internet E-mail at bcolbert@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2011

AUTHORIZED BY: Bill Colbert, Director

R359. Governor, Economic Development, Pete Suazo Utah Athletic Commission.
R359-1. Pete Suazo Utah Athletic Commission Act Rule.
R359-1-511. Event Officials.

(1) Selection and approval of event officials for a contest, bout, program, match, or exhibition.

(a) The event officials are the referee(s), judges, timekeeper and physician(s).

(b) The commission shall approve all event officials.

(c) The number of event officials assigned is dependent on the number of rounds, bouts and/or championship bouts.

(d) The number of event officials required[~~, to be in attendance,~~] or the substitution of officials for any reason or at any time during the event shall be solely within the power and discretion of the Commission.

[~~(e) The promoter may select the event announcer.~~
] (2) Event officials are prohibited from being under the influence of alcohol and/or illicit drugs.

(a) At the request of the Commission, an event official shall submit to a test of body fluids to determine the presence of drugs and/or alcohol. The event official shall give an adequate sample or it will deem to be a denial and prohibited from participating in future events. The promoter shall be responsible for any costs of testing.

(b) Unless the commission determines otherwise at a scheduled meeting, an event official who tests positive for alcohol and/or illegal drugs shall be penalized as follows:

(i) First offense - 180 day prohibition from participating in unarmed combat events.

(ii) Second offense - 1 year prohibition from participating in unarmed combat events.

(iii) Third offense - 2 year prohibition from participating in unarmed combat events.

([~~2~~]3) Event officials shall be stationed at places designated by the Commissioner in Charge or Director.

([~~3~~]4) Referees, judges, timekeepers and physicians shall be deemed to be independent contractors of the Commission.

([**4**]5) [~~All ring officials~~]The Judges, Referee(s) and Timekeeper [~~assigned and directed by the Commission to be in attendance~~]officiating at any event, bout, program, match, or exhibition shall be paid by the licensed promoter for the event in accordance with the fee schedule approved by the Commission.

(6) The promoter shall pay to the Commission the total fees set by the Commission for all officials whom the Commission [~~directs~~]approves to officiate in a contest or exhibition[~~, promoted by the promoter~~].

(7) Event Officials' Minimum Fee Schedule:

TABLE

NUMBER OF BOUTS	REFEREE	JUDGE	TIMEKEEPER
1-5	$100.00	$50.00	$35.00
>5	$100.00	$100.00	$50.00

(8) If any licensee of the Commission protests the assignment of a referee or judge, the matter will be reviewed by two Commissioners or a Commissioner and the Commission Director and/or Chief Inspector in order to make such disposition of the protest as the facts may justify. Protests not made in a timely manner may be denied.

KEY: licensing, boxing, unarmed combat, white-collar contests
Date of Enactment or Last Substantive Amendment: [~~January 31, ~~]2011
Notice of Continuation: May 10, 2007
Authorizing, and Implemented or Interpreted Law: 63C-11-101 et seq.

Governor, Economic Development, Pete Suazo Utah Athletic Commission
R359-1-512
Announcer

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34483
FILED: 03/01/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify the announcer's responsibilities and require the announcer to be sober during events; allow the commission to require an announcer to submit to drug and alcohol testing; and establish penalties for non-compliance. An event announcer needs to have a clear mind and behavior that does not reflect poorly on the sport of unarmed combat.

SUMMARY OF THE RULE OR CHANGE: The purpose of this amendment is to clarify the announcer's responsibilities and require the announcer to be sober during events; allow the commission to require an announcer to submit to drug and alcohol testing; and establish penalties for non-compliance.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63C, Chapter 11

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This requirement will not negatively impact the commission's workload in regulating events. The cost of the drug and alcohol testing is estimated at $5 per test and is reimbursed by the event promoter. It is anticipated that testing will be rarely required, unless there is reasonable suspicion that an announcer is under the influence of drugs, alcohol, or both.
♦ LOCAL GOVERNMENTS: The proposed rule change will not result in any anticipated cost or savings to local government since local government does not regulate unarmed combat.
♦ SMALL BUSINESSES: It is estimated that there will be less than 10 tests per year required for event officials each year for each promoter at a net additional cost of less than $50 per year.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings for other entities because they will not be impacted by the proposed drug and alcohol test requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is estimated that there will be less than 10 tests per year required for event officials each year for each promoter at a net additional cost of less than $50 per year.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule will give additional guidance and tools to help ensure the announcer is sober when fulfilling his or her responsibilities. The estimated cost is estimated to be less than $50 per year for any promoter.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
GOVERNOR
ECONOMIC DEVELOPMENT,
PETE SUAZO UTAH ATHLETIC COMMISSION
324 S STATE ST
STE 500
SALT LAKE CITY, UT 84111
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Bill Colbert by phone at 801-538-8876, by FAX at 801-538-8888, or by Internet E-mail at bcolbert@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2011

AUTHORIZED BY: Bill Colbert, Director

R359. Governor, Economic Development, Pete Suazo Utah Athletic Commission.
R359-1. Pete Suazo Utah Athletic Commission Act Rule.
R359-1-512. Announcer.

(1) The promoter may select the event announcer.

([~~1~~]2) At the beginning of a contest, the announcer shall announce that the contest is under the auspices of the Commission.

([~~2~~]3) The announcer shall announce the names of the referee, judges, and timekeeper when the competitions are about to begin, and shall also announce the changes made in officials as the contest progresses.

([~~3~~]4) The announcer shall announce the names of all contestants, their weight, professional record, their city and state of residence, and country of origin if not a citizen.

(3) An announcer shall not engage in unprofessional conduct.

(4) The announcer is prohibited from being under the influence of alcohol and/or illicit drugs.

(a) At the request of the Commission, an announcer shall submit to a test of body fluids to determine the presence of drugs and/or alcohol. The event official shall give an adequate sample or it will deem to be a denial and prohibited from participating in future events. The promoter shall be responsible for any costs of testing.

(b) Unless the commission determines otherwise at a scheduled meeting, an announcer who tests positive for alcohol and/or illegal drugs shall be penalized as follows:

(i) First offense - 180 day prohibition from participating in unarmed combat events.

(ii) Second offense - 1 year prohibition from participating in unarmed combat events.

(iii) Third offense - 2 year prohibition from participating in unarmed combat events.

KEY: licensing, boxing, unarmed combat. white-collar contests
Date of Enactment or Last Substantive Amendment: [~~January 31,~~]2011
Notice of Continuation: May 10, 2007
Authorizing, and Implemented or Interpreted Law: 63C-11-101 et seq.

Governor, Economic Development, Pete Suazo Utah Athletic Commission
R359-1-515
Competing in an Unsanctioned Unarmed Combat Event

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34484
FILED: 03/01/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to dissuade unarmed combat contestant from competing in unsanctioned unarmed combat events; and help protect the health and safety of unarmed combat contestants and the public.

SUMMARY OF THE RULE OR CHANGE: The purpose of this amendment is to dissuade unarmed combat contestant from competing in unsanctioned unarmed combat events; help protect the health and safety of unarmed combat contestants and the public; and establish penalties and prohibits unarmed combat contestants from competing in Utah for 60 days after they compete in an unsanctioned unarmed combat event.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63C, Chapter 11

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: This requirement will not negatively impact the commission's workload in regulating events and contestants. The commission can enforce the proposed requirement within its present budget.
♦ LOCAL GOVERNMENTS: The proposed rule change will not result in any anticipated cost or savings to local government since local government does not regulate unarmed combat.
♦ SMALL BUSINESSES: The proposed rule will not increase the cost or result in any net savings to small businesses. No additional fees are being assessed to these entities.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: A contestant who competes in an unsanctioned unarmed combat events will have to have their blood work re-completed before competing in a sanctioned event in Utah. The cost to perform these tests is estimated to be $100.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A contestant who competes in an unsanctioned unarmed combat events will have to have their blood work re-completed before competing in a sanctioned event in Utah. The cost to perform these tests is estimated to be $100.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Unarmed contestants who compete in unsanctioned events do not have the oversight of a commission that is a member of the Association of Boxing Commissions (ABC). It is difficult to assess whether or not a contestant is seriously injured in an unsanctioned event or has possibly been exposed to a blood-borne disease via a contestant who has been tested. The proposed rule protects the health and safety of unarmed combat contestants and discourages contestants from competing in unsanctioned events.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
GOVERNOR
ECONOMIC DEVELOPMENT,
PETE SUAZO UTAH ATHLETIC COMMISSION
324 S STATE ST
STE 500
SALT LAKE CITY, UT 84111
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Bill Colbert by phone at 801-538-8876, by FAX at 801-538-8888, or by Internet E-mail at bcolbert@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2011

AUTHORIZED BY: Bill Colbert, Director

R359. Governor, Economic Development, Pete Suazo Utah Athletic Commission.
R359-1. Pete Suazo Utah Athletic Commission Act Rule.
R359-1-515. Competing in an Unsanctioned Unarmed Combat Event.

(1) The Commission shall deny issuing a license to a contestant who has competed in an unarmed combat event not sanctioned by an Association of Boxing Commission (ABC) member commission for a period of 60 days from the date of the event.

(2) Unarmed combat contestants who are currently licensed by the Commission shall not be approved to compete in an unarmed combat event until 60 days from the date of their last ABC member commission sanctioned fight.

(3) After competing in an unsanctioned unarmed combat event, a contestant must submit new blood tests results drawn within 30 days of their scheduled event.

KEY: licensing, boxing, unarmed combat, white-collar contests
Date of Enactment or Last Substantive Amendment: [~~January 31,~~]2011
Notice of Continuation: May 10, 2007
Authorizing, and Implemented or Interpreted Law: 63C-11-101 et seq.

Natural Resources; Oil, Gas and Mining; Non-coal
R647-2
Exploration

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34473
FILED: 02/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish requirements for companies who conduct exploration for minerals in Utah, in accordance with the Utah Mined Land Reclamation Act. The rule change would consolidate the annual report and annual fee deadlines to one consistent date in the fiscal year.

SUMMARY OF THE RULE OR CHANGE: Rule R647-2 establishes requirements for companies who conduct exploration for minerals in Utah. This change delays the filing of the annual permit fee from the last Friday of July to the deadline for annual reports. Also, this change delays the annual report due date from December 31 to January 31. As a result, annual reports for exploration, small mine operation and large mine operation will all be due on January 31.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 40-8-15(2) and Subsection 40-8-7(1)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Minerals Program is expected to encounter small savings in staff time from less follow-up to operators who are late in filing the annual report and annual fee. One consistent due date will enable the staff to contact the operator once for both items if late, rather than August and January.
♦ LOCAL GOVERNMENTS: No local government costs or savings are anticipated. Local government is not impacted by this rule.
♦ SMALL BUSINESSES: Small business who conduct exploration for minerals would not be negatively impacted by

consolidating the annual report and fee deadlines, and may see small reduced cost from one mailing rather than two.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses, or local government entities would not be impacted by this rule since it pertains to companies who conduct exploration for minerals in Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will not be added compliance costs for companies who conduct exploration for minerals since they will continue to submit annual reports and annual fees, and the due date will now be the same.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses will not encounter increased costs from this rule change, and mineral mining companies should see reduced mailing costs.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING; NON-COAL
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 03/23/2011 09:00 AM, DNR, 1594 W North Temple, #1040, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 04/27/2011

AUTHORIZED BY: John Baza, Director

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-2. Exploration.
R647-2-101. Filing Requirements and Review Procedures.

1. Prior to the commencement of exploration, a Notice of Intention to Conduct Exploration (FORM MR-EXP) containing all the required information must be filed with and determined complete by the Division and the Division shall have approved the form and amount of reclamation surety. It is recommended that the notice of intention be filed with the Division at least 30 days prior to the planned commencement of exploration.

2. Within 15 days after receipt of a Notice of Intention to Conduct Exploration (FORM MR-EXP), the Division will review the proposal and notify the operator in writing that the notice of intention is:

2.11. Complete and all required information has been submitted; or

2.12. Incomplete, and additional information as identified by the Division will be required.

The Division will review and respond to any subsequent filings of information within 10 working days of receipt.

3. If more than five acres of disturbance are planned, a detailed exploration development and reclamation plan must be included in the notice of intention and approved by the Division.

4. The Division will review and approve or disapprove:

4.11. The form and amount of reclamation surety, and;

4.12. Any variances requested under R647-2-107, 108, or 109, regardless of the number of surface acres of disturbance planned.

5. Developmental drilling conducted within an already approved disturbed area with approved surety does not require submittal of a Notice of Intention to Conduct Exploration (FORM MR-EXP).

6. A permittee's retention of a notice of intention shall require the paying of permit fees as authorized by the Utah Legislature. The procedures for paying the permit fees are as follows:

6.11. The Division shall notify the operators of record annually of the amount of permit fees authorized by the Utah Legislature for Exploration.

6.12. Fees are due [~~beginning July 31, 1998 and thereafter annually, by the last Friday of July as authorized by the Utah Legislature~~]annually by the deadline in R647-2-115 for reports.

6.13. A permittee may avoid payment of the fee by complying with the following requirements:

6.13.11. A permittee will notify the Division of a desire to close out a notice of intention by checking the appropriate box of the permit fees billing form.

6.13.12. The permittee will then arrange with the Division for an onsite inspection of the site to assure that all required reclamation has been performed. If an inspection reveals that an area is not yet suitably reclaimed, then a new billing notice will be issued and the permittee will be given 30 days from the date of the onsite inspection to pay the fee.

R647-2-115. Reports.

On or before [~~December~~]January 31st of [~~the year of filing of a Notice of Intention to Conduct Exploration (FORM MR-EXP)~~]each year, the operator conducting exploration must submit a Mineral Exploration Progress Report (FORM MR-EPR), which describes any unusual drilling conditions, water encountered, hole plugging measures, and reclamation activities conducted.

KEY: minerals reclamation
Date of Enactment or Last Substantive Amendment: [~~February 23, 2006~~]2011
Notice of Continuation: June 2, 2008
Authorizing, and Implemented or Interpreted Law: 40-8-1 et seq.

Natural Resources; Oil, Gas and Mining; Non-coal
R647-3
Small Mining Operations

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34474
FILED: 02/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish requirements and deadlines for companies who operate small mineral mines in Utah (five acres or less), in accordance with the Utah Mined Land Reclamation Act. The rule change would consolidate the annual report and annual fee deadlines to one consistent date in the fiscal year.

SUMMARY OF THE RULE OR CHANGE: Section R647-3-101 addresses filing requirements of companies who operate small mineral mines in Utah. This change delays the filing of the annual permit fee from the last Friday of July to the deadline for annual reports, i.e. January 31. An addition, Section R647-3-105 is amended to correct one inadvertent word improperly included in the small mining operations rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 40-8-7(1)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Minerals Program is expected to encounter small savings in staff time from less follow-up to operators who are late in filing the annual report and annual fee. One consistent due date will enable the staff to contact the operator once for both items if late, rather than August and February.
♦ LOCAL GOVERNMENTS: No local government costs or savings are anticipated. Local government is not impacted by this rule.
♦ SMALL BUSINESSES: Small businesses who operate small mineral mines would not be negatively impacted by consolidating the annual report and fee deadlines, and may see a small reduced cost from one mailing rather than two.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses, or local government entities would not be impacted by this rule since it pertains to companies who operate small mineral mines in Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will not be added compliance costs for small mineral mining operators since they will continue to submit annual reports and annual fees, but the due date will now be the same.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses will not encounter increased costs from this rule change, and mineral mining companies should see reduced mailing costs.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING; NON-COAL
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 03/23/2011 09:00 AM, DNR, 1594 W North Temple, #1040, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 04/27/2011

AUTHORIZED BY: John Baza, Director

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-3. Small Mining Operations.
R647-3-101. Filing Requirements and Review Procedures.

1. Prior to commencement of operations, a Notice of Intention to Commence Small Mining Operations (FORM MR-SMO) containing all the required information must be filed with and determined complete by the Division and the Division shall have approved the form and amount of reclamation surety. It is recommended that the notice of intention be filed with the Division at least thirty (30) days prior to the planned commencement of operations.

2. Within 15 days after receipt of a Notice of Intention, the Division will review the proposal and notify the operator in writing;

2.11. That the notice of intention is complete and all required information has been submitted; or,

2.12. That the notice of intention is incomplete, and additional information as identified by the Division will be required.

2.12.111. The Division will review and respond to any subsequent filings of information within 10 working days of receipt.

3. The Division will review and approve or disapprove:

3.11. The form and amount of reclamation surety (R647-3-111), and

3.12. All variances requested from Rules R647-3-107, 108, and 109, regardless of the number of surface acres of disturbance planned.

4. The operator must notify the Division no later than 30 days after beginning small mining operations.

5. A permittee's authorization under a notice of intention to conduct small mining operations shall require the paying of permit fees as authorized by the Utah Legislature. The procedures for paying the permit fees are as follows:

5.11. The Division shall notify the operators of record annually of the amount of permit fees authorized by the Utah Legislature for

5.11.11. Small Mining Operations (less than 5 disturbed acres)

5.12. Fees are due [~~beginning July 31, 1998 and thereafter annually, by the last Friday of July as authorized by the Utah Legislature~~]annually by the deadline in R647-3-117 for reports.

6. A permittee may avoid payment of the fee by complying with the following requirements:

6.11. A permittee will notify the Division of a desire to close out a notice of intention by checking the appropriate box of the permit fees billing form.

6.12. The permittee will then arrange with the Division for an onsite inspection of the site to assure that all required reclamation has been performed. If an inspection reveals that an area is not yet suitably reclaimed, then a new billing notice will be issued and the permittee will be given 30 days from the date of the onsite inspection to pay the fee.

R647-3-105. Project Location and Map.

The notice of intention shall include a location map and an operations map. Each map shall be plotted at a scale to accurately identify locational landmarks and operations details.

1. The general location map shall be the scale of a USGS 7.5 minute series map or equivalent (1" = 2000') and identify new or existing access roads.

2. The operations map (1" = 200' or other scale as determined necessary by the Division) shall identify:

2.11. The area to be disturbed;

2.12. The location of any existing or proposed operations including access roads, drill holes, trenches, pits, shafts, cuts, or other planned [~~exploration~~]small mining activities; and

2.13. Any adjacent previous disturbance for which the operator is not responsible.

KEY: minerals reclamation
Date of Enactment or Last Substantive Amendment: [~~February 23, 2006~~]2011
Notice of Continuation: June 2, 2008
Authorizing, and Implemented or Interpreted Law: 40-8-1 et seq.

Natural Resources; Oil, Gas and Mining; Non-coal
R647-4-101
Filing Requirements and Review Procedures

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34475
FILED: 02/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish filing requirements and deadlines for companies who operate large mineral mines in Utah (more than five acres), in accordance with the Utah Mined Land Reclamation Act. The rule change would consolidate the annual report and annual fee deadlines to one consistent date in the fiscal year.

SUMMARY OF THE RULE OR CHANGE: Section R647-4-101 addresses filing requirements of companies who operate large mineral mines in Utah. This change delays the filing of the annual permit fee from the last Friday of July to the deadline for annual reports, i.e. January 31.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 40-8-7(1)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Minerals Program is expected to encounter small savings in staff time from less follow-up to operators who are late in filing the annual report and annual fee. One consistent due date will enable the staff to contact the operator once for both items if late, rather than August and February.
♦ LOCAL GOVERNMENTS: No local government costs or savings are anticipated. Local government is not impacted by this rule.
♦ SMALL BUSINESSES: Small businesses who operate large mineral mines would not be negatively impacted by consolidating the annual report and fee deadlines, and may see small reduced cost from one mailing rather than two.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons other than small businesses, businesses, or local government entities would not be impacted by this rule since it pertains to companies who operate large mineral mines in Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will not be added compliance costs for large mineral mining operators since they will continue to submit annual reports and annual fees, but the due date will now be the same.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses will not encounter increased costs from this rule change, and mineral mining companies should see reduced mailing costs.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING; NON-COAL
ROOM 1210
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Steve Schneider by phone at 801-538-5328, by FAX at 801-359-3940, or by Internet E-mail at steveschneider@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
♦ 03/23/2011 09:00 AM, DNR, 1594 W North Temple, #1040, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 04/27/2011

AUTHORIZED BY: John Baza, Director

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-4. Large Mining Operations.
R647-4-101. Filing Requirements and Review Procedures.

Prior to commencement of operations, a Notice of Intention to Commence Large Mining Operations (FORM MR-LMO) containing all the required information must be filed with and approved by the Division and the Division shall have approved the form and amount of reclamation surety.

1. Within 30 days after receipt of a Notice of Intention, or within 30 days after receipt of any subsequent submittal, the Division will complete its review and notify the operator in writing:

1.11. That the notice of intention is complete; or

1.12. That the notice of intention is incomplete, and that additional information as identified by the Division will be required.

2. Within 30 days after receipt of the notice of intention or within 30 days following the last action of the operator or Division on the notice of intention, the Division shall reach a tentative decision with respect to the approval or denial of the notice of intention.

Notice of the tentative decision will then be published in accordance with Rule R647-4-116.

3. Division approval of the notice of intention and execution of the Reclamation Contract (FORM MR-RC) by the operator shall bind the Division and the operator in accordance with the Act and implementing regulations; and, shall enable the operator to conduct mining and reclamation activities in accordance therewith.

4. The operator must notify the Division within 30 days of beginning mining operations.

5. A permittee's retention of an approved notice of intention shall require the paying of permit fees as authorized by the Utah Legislature. The procedures for paying the permit fees are as follows:

5.11. The Division shall notify the operators of record annually of the amount of permit fees authorized by the Utah Legislature for the following notices of intention.

5.11.11. Large Mining Operations (less than 50 acres) (fees calculated on the disturbed acreage permitted/bonded).

5.11.12. Large Mining Operations (greater than 50 acres) (fees calculated on the disturbed acreage permitted/bonded).

5.12. Fees are due [~~beginning July 31, 1998 and thereafter annually, by the last Friday of July as authorized by the Utah Legislature~~]annually by the deadline in R647-4-121 for reports.

5.13. A permittee may avoid payment of the fee by complying with the following requirements:

5.13.11. A permittee will notify the Division of a desire to close out a notice of intention by checking the appropriate box of the permit fees billing form.

5.13.12. The permittee will then arrange with the Division for an onsite inspection of the site to assure that all required reclamation has been performed. If an inspection reveals that an area is not yet suitably reclaimed, then a new billing notice will be issued and the permittee will be given 30 days from the date of the onsite inspection to pay the fee.

KEY: minerals reclamation
Date of Enactment or Last Substantive Amendment: [~~February 23, 2006~~]2011
Notice of Continuation: June 2, 2008
Authorizing, and Implemented or Interpreted Law: 40-8-1 et seq.

Public Safety, Fire Marshal
R710-6-4
LP Gas Certificates

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34487
FILED: 03/01/2011

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Liquefied Petroleum Gas Board met on 12/02/2010, in a regularly scheduled Board meeting and voted by unanimous vote to amend the adopted rule to add

the allowance for licensed journeyman plumbers to not be required to purchase a license to install LP Gas appliances.

SUMMARY OF THE RULE OR CHANGE: In Subsection R710-6-4(4.10.4), the LP Gas Board proposes to amend the administrative rule and remove the requirement that journeyman plumbers have to secure an LP Gas license. State law allows that a journeyman plumber is only required to license with the Division of Occupational and Professional Licensing (DOPL).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-305

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There would be no aggregate anticipated cost or savings to the state budget because this proposed amendment will not affect the running of state government, therefore, the state budget will not be impacted.
♦ LOCAL GOVERNMENTS: There would be no aggregate anticipated cost or savings to local government because this proposed amendment has no effect on the running of local government.
♦ SMALL BUSINESSES: There would be an aggregate savings to small businesses of $105 per person to not be required to have to purchase the annual LP Gas license. The Division has no way of estimating the aggregate amount of journeyman plumbers that now have not licensed because of this proposed amendment nor will not license due to the rule amendment.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Persons that are licensed journeyman plumbers would save $105 annually to not be required to purchase an LP Gas license.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost for affected persons. There is a $105 per year savings to those journeyman plumbers that wouldn't have to purchase the annual license.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses with the enactment of the proposed amendment. There is a savings to journeyman plumbers of $105 for the enactment of this amendment because the plumber will not have to purchase an LP Gas license on and above the regular journeyman license at DOPL.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
FIRE MARSHAL
ROOM 302
5272 S COLLEGE DR
MURRAY, UT 84123-2611
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Brent Halladay by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2011

AUTHORIZED BY: Brent Halladay, Acting State Fire Marshal

R710. Public Safety, Fire Marshal.
R710-6. Liquefied Petroleum Gas Rules.
R710-6-4. LP Gas Certificates.

4.1 Application.

Application for an LPG certificate shall be made in writing to the Division. The application shall be signed by the applicant.

4.2 Examination.

Every person who performs any act or acts described in UCA, Section 53-7-308, shall pass an initial examination in accordance with the provisions of this article.

4.3 Types of Initial Examinations:
4.3.1 Carburetion
4.3.2 Dispenser
4.3.3 HVAC/Plumber
4.3.4 Recreational Vehicle Service
4.3.5 Serviceman
4.3.6 Transportation and Delivery

4.4 Initial Examinations.

4.4.1 The initial examination shall include an open book written test of the applicant's knowledge of the work to be performed by the applicant. The applicant is allowed to use the adopted statute, administrative rules, NFPA 54, and NFPA 58. Any other materials to include cellular telephones or related cellular equipment are prohibited in the examination room.

4.4.2 The initial examination may also include a practical or actual demonstration of some selected aspects of the job to be performed by the applicant if so warranted by the test administrator.

4.4.3 Leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant.

4.4.4 To successfully complete the written and practical initial examinations, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken. Each portion of the examination will be graded separately. Failure of any one portion of the examination will not delete the entire test.

4.4.5 Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.

4.4.6 Examinations may be given at various field locations as deemed necessary by the Division. Appointments for field examinations are required.

4.4.7 As required in Sections 4.2 and 4.3 of these rules, those applicants that have successfully completed the requirements of the Certified Employee Training Program (CETP), as written by the National Propane Gas Association, and that corresponds to the

work to be performed by the applicant, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.4.8 As required in Sections 4.2 and 4.3.6 of these rules, those applicants that have successfully completed the requirements in Code of Federal Regulations (CFR) 49, Parts 172.700, 172.704, 177.800 and 177.816, that corresponds to the work to be performed by the applicant, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.4.9 As required in Sections 4.2 and 4.3.3 of these rules, those applicants that have successfully completed the Rocky Mountain Gas Association, Natural Gas Technician Certification Exam with a passing score, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.4.10 As required in Sections 4.2 and 4.3.3 of these rules, those applicants that are licensed journeyman plumbers as required in the Constructions Trades Licensing Act Plumber Licensing Rules, R156-55c, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.5 Original and Renewal Date.

Original LPG certificates shall be valid for one year from the date of issuance. Thereafter, each LPG certificate shall be renewed annually and renewals thereof shall be valid from for one year from issuance.

4.6 Renewal Date.

Application for renewal shall be made on forms provided by the Division.

4.7 Re-examination.

Every holder of a valid LPG Certificate shall take a re-examination every five years from the date of original certificate issuance, to comply with the provisions of Section 4.3 of these rules as follows:

4.7.1 The re-examination to comply with the provisions of Section 4.3 of these rules shall consist of an open book examination, to be mailed to the certificate holder at least 60 days before the renewal date.

4.7.2 The open book re-examination will consist of questions that focus on changes in the last five years to NFPA 54, NFPA 58, the statute, or the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or Division.

4.7.3 The certificate holder is responsible to complete the re-examination and return it to the Division in sufficient time to renew.

4.7.4 The certificate holder is responsible to return to the Division with the re-examination the correct renewal fees to complete that certificate renewal.

4.7.5 As required in Section 4.7 of these rules, those applicants that have successfully completed the requirements in Code of Federal Regulations (CFR) 49, Parts 172.700, 172.704, 177.800 and 177.816, that corresponds to the work to be performed by the applicant, shall have the requirement for re-examination waived, after appropriate documentation is provided to the Division by the applicant.

4.7.6 As required in Section 4.7 of these rules, those applicants that provide the Division with written verification of the completion of 40 hours of continuing training over the previous five-year period shall have the requirement for re-examination waived.

4.8 Refusal to Renew.

The Division may refuse to renew any LPG certificate in the same manner and for any reason that is authorized pursuant to Section 5.2 of these rules.

4.9 Inspection.

The holder of a LPG certificate shall submit such certificate for inspection, upon request of the Division or the enforcing authority.

4.10 Type.

4.10.1 Every LPG certificate shall indicate the type of act or acts to be performed and for which the applicant has qualified.

4.10.2 Any person holding a valid LPG certificate shall not be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

4.10.3 It is the responsibility of the LPG certificate holder to insure that the concern they are employed by is licensed under this act.

4.10.4 The requirements listed in Sections 4.10.2 and 4.10.3 of these rules do not apply to licensed journeyman plumbers who meet the requirements listed in 4.4.10 of these rules.

4.11 Change of Address.

Any change in home address of any holder of a valid LPG certificate shall be reported by the registered person to the Division within thirty (30) days of such change.

4.12 Duplicate.

A duplicate LPG certificate may be issued by the Division to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the Division from the certified person. Such statement shall attest to the certificate having been lost or destroyed. If the original is found, it shall be surrendered to the Division within 15 days.

4.13 Contents of Certificate of Registration.

Every LPG certificate issued shall contain the following information:

4.13.1 The name and address of the applicant.

4.13.2 The physical description of applicant.

4.13.3 The signature of the LP Gas Board Chairman.

4.13.4 The date of issuance.

4.13.5 The expiration date.

4.13.6 Type of service the person is qualified to perform.

4.13.7 Have printed on the card the following: "This certificate is for identification only, and shall not be used for recommendation or advertising".

4.14 Minimum Age.

No LPG certificate shall be issued to any person who is under sixteen (16) years of age.

4.15 Restrictive Use.

4.15.1 No LPG certificate shall constitute authorization for any person to enforce any provisions of these rules.

4.15.2 A LPG certificate may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

4.15.3 Regardless of the acts for which the applicant has qualified, the performance of only those acts authorized under the licensed concern employing such applicant shall be permissible.

4.15.4 Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a LPG certificate has qualified shall be permissible by such applicant.

4.16 Right to Contest.

4.16.1 Every person who takes an examination for a LPG certificate shall have the right to contest the validity of individual questions of such examination.

4.16.2 Every contention as to the validity of individual questions of an examination that cannot be reasonably resolved, shall be made in writing to the Division within 48 hours after taking said examination. Contentions shall state the reason for the objection.

4.16.3 The decision as to the action to be taken on the submitted contention shall be by the Board, and such decision shall be final.

4.16.4 The decision made by the Board, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

4.17 Non-Transferable.

LPG Certificates shall not be transferable to another individual. Individual LPG certificates shall be carried by the person to whom issued.

4.18 New Employees.

New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid LPG certificate for a period not to exceed 45 days from the initial date of employment. By the end of such period, new employees shall have taken and passed the required examination. In the event the employee fails the examination, re-examination shall be taken within 30 days. The employee shall remain under the direct supervision of an employee holding a valid LPG certificate, until certified.

4.19 Certificate Identification.

Every LPG certificate shall be identified by a number, delineated as PE-(number). Such number shall not be transferred from one person to another.

KEY: liquefied petroleum gas
Date of Enactment or Last Substantive Amendment: [~~September 7, 2010~~]April 21, 2011
Notice of Continuation: March 30, 2006
Authorizing, and Implemented or Interpreted Law: 53-7-305

Transportation, Program Development
R926-6
Transportation Corridor Preservation Revolving Loan Fund

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34451
FILED: 02/17/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to make typographic corrections and to clarify that funds from the Transportation Corridor Preservation Revolving Loan Fund are not to be used for relocation assistance because there is no displacement in corridor preservation.

SUMMARY OF THE RULE OR CHANGE: The changes correct typographical errors and clarify that funds from the Transportation Corridor Preservation Revolving Loan Fund are not to be used for relocation assistance because there is no displacement in corridor preservation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 72-2-117(10)(a) and Subsection 72-2-117(7)(c)

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no anticipated costs or savings to the state budget as the changes only clarify the current practice that funds from the Transportation Corridor Preservation Revolving Loan Fund are not used for relocation assistance.
♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government as the changes only clarify the current practice that funds from the Transportation Corridor Preservation Revolving Loan Fund are not used for relocation assistance.
♦ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses as the changes only clarify the current practice that funds from the Transportation Corridor Preservation Revolving Loan Fund are not used for relocation assistance.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses or local governments entities as the changes only clarify the current practice that funds from the Transportation Corridor Preservation Revolving Loan Fund are not used for relocation assistance.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons as the changes only clarify the current practice that funds from the Transportation Corridor Preservation Revolving Loan Fund are not used for relocation assistance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts on businesses as the changes only clarify the current practice that funds from the Transportation Corridor Preservation Revolving Loan Fund are not used for relocation assistance.

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

CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2011

AUTHORIZED BY: John Njord, Executive Director

R926. Transportation, Program Development.
R926-6. Transportation Corridor Preservation Revolving Loan Fund.
R926-6-1. Purpose and Authority.

(1) Utah Code Ann. Section 72-2-117[-](7)(c) and Utah Code Ann. Section 72-2-117[-](10)(a) authorizes the Utah Transportation Commission to establish this rule. The purpose of this rule is to establish procedures for:

(a) the Utah Department of Transportation to apply for fund monies;

(b) the Utah Transportation Commission to award fund monies; and

(c) repayment conditions; and

(d) establishing a corridor preservation advisory council committee.

R926-6-2. Definitions.

(1) "Commission" means the Utah Transportation Commission.

(2) "UDOT" means the Utah Department of Transportation.

(3) "Council" means the Utah Transportation Corridor Preservation Advisory Committee Council.

(4) "Corridor" means a strip of land between two termini within which traffic, topography, environment and other characteristics are evaluated for transportation purposes.

(5) "Fund" means the Transportation Corridor Preservation Revolving Loan Fund.

R926-6-3. Utah Transportation Preservation Advisory Council.

(1) UDOT shall establish a council committee to provide recommendations and priorities concerning the use of fund monies to the commission[-] and assist in prioritizing requests for funding. The council committee shall be chaired by the Director of Right-of-Way. Additional committee members shall be two Commission members selected by the Chairman of the Commission, one designated member from each of the Metropolitan Planning Organizations in the State, any additional members appointed by the Commission or designated by the Council, and representatives with relevant technical expertise or experience.

R926-6-4. Council Responsibilities.

The council shall receive and review all requests for monies from the fund[,] and shall prioritize such requests based upon Subsections 72-2-117[-](7)(a) and (b). Priority shall be given to cost-effective preservation projects which maximize cost savings for future transportation right of way acquisitions.

R926-6-5. UDOT Responsibilities.

(1) In addition to the specified statutory considerations, UDOT may also:

(a) review requests and determine if sufficient studies have been completed in a corridor to:

(i) identify environmentally sensitive areas;

(ii) determine feasible alignments;

(iii) determine cost-effectiveness of the project; and

(iv) allow for adequate public involvement.

(b) forward Council recommendations to the Commission and request approval for funding specific corridors;

(c) acquire real property or any interest in real property necessary for corridor preservation in corridors authorized by the Commission;

(d) manage monies of the fund; and

(e) administer repayment contracts with counties and municipalities.

R926-6-6. Procedure for the Awarding of Fund Monies.

Requests for monies shall be directed to the Council for review and prioritization based upon R926-6-4. The results of the evaluation of requests shall be forwarded to the Commission. The Commission shall review the recommendations of the Council as well as any other pertinent[~~nnant~~] factors and approve, adjust, or reject the recommended expenditures in accordance with Section 72-2-117(4)(a). In no event shall fund monies be used or made available for relocation assistance.

R926-6-7. Repayment Conditions.

The Commission may determine a loan repayment schedule. All corridor preservation loans shall be paid back according to the approved loan repayment schedule or the earlier of[:] when the remainder of the right of way has been acquired,[;] or when the project has been advertised for construction. If the commission determines an alignment for a transportation project is not feasible and property for the alignment was purchased under this program, the property shall be disposed of in accordance with Section 72-5-111. All loan repayments together with rents, lease proceeds, profits, and monies resulting from the sale of excess properties shall be returned to the fund.

KEY: transportation, transportation corridor preservation revolving loan fund, transportation planning, right of way
Date of Enactment or Last Substantive Amendment: [~~February 22, 2007~~]2011
Notice of Continuation: November 29, 2006
Authorizing, and Implemented or Interpreted Law: 72-2-117[-](7)(c); 72-2-117[-](10)(a)

Transportation, Program Development
R926-9
Establishment Designation and Operation of Tollways

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34460
FILED: 02/24/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add a purpose and authority section, make other stylistic changes, and correct typographical errors.

SUMMARY OF THE RULE OR CHANGE: The changes add a purpose and authority section, make other stylistic changes, and correct typographical errors.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-2-120 and Section 72-6-118

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no anticipated costs or savings to the state budget because the changes do not affect how the program is operated, they only clarify the purpose and authority of the rule and make other nonsubstantive changes.
♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government because the changes do not affect how the program is operated, they only clarify the purpose and authority of the rule and make other nonsubstantive changes.
♦ SMALL BUSINESSES: There are no anticipated costs or savings to smal businesses because the changes do not affect how the program is operated, they only clarify the purpose and authority of the rule and make other nonsubstantive changes.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities because the changes do not affect how the program is operated, they only clarify the purpose and authority of the rule and make other nonsubstantive changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons because the changes do not affect how the program is operated, they only clarify the purpose and authority of the rule and make other nonsubstantive changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts on businesses because the changes do not affect how the program is operated, they only clarify the purpose and authority of the rule and make other nonsubstantive changes.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
PROGRAM DEVELOPMENT
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2011

AUTHORIZED BY: John Njord, Executive Director

R926. Transportation, Program Development.
R926-9. Establishment, Designation and Operation of Tollways.
R926-9-1. Purpose and Authority.

The purpose of this rule is to provide the procedure to establish, designate and operate tollways. This rule is authorized by Section 72-6-118.

R926-9-2. Definitions.

(1) "Commission" means the Transportation Commission, which is created in [~~Utah Code~~]Section 72-1-301;

(2) "Department" means the Utah Department of Transportation;

(3) "Executive Director" means the Executive Director of the Utah Department of Transportation;

(4) "HOT Lane" has the meaning described in [~~Utah Code Ann.~~]Section 72-6-118 for "High occupancy toll lane";

(5) "HOV Lane" means a lane that has been designated for the use of high occupancy vehicles pursuant to [~~Utah Code Ann.~~]Section 41-6a-702;

(6) "Toll" means the toll or user fees that the operator of a motor vehicle must pay for the privilege of driving on a tollway, including the toll or user fees that the operator of a single occupant motor vehicle must pay for the privilege of driving on a HOT Lane;

(7) "Toll Lane" has the meaning described in [~~Utah Code Ann.~~]Section 72-6-118;

(8) "Tollway" has the meaning described in [~~Utah Code Ann.~~]Section 72-6-118. Tollways include, but are not limited to, HOT Lanes and Toll Lanes; and

(9) "Tollway development agreement" has the meaning described in [~~Utah Code Ann.~~]Section 72-6-202.

R926-9-[~~2~~]3. Designation of Tollways.

(1) The Department may consider designating tollways including, but not limited to, the designation of existing HOV Lanes as HOT Lanes or may widen existing highways to add one or more Toll Lane(s). In deciding whether to designate a tollway, the Department may evaluate whether:

(a) the tollway would make the specific highway or the highway system more efficient;

(b) the designation or addition would increase available funds, reduce operational costs, or expedite project delivery; and

(c) the project will be consistent with the overall policies, strategies, and actions of the Department, including those strategies that are developed through the regular transportation planning process.

(2) Commission approval is required for designation of HOT Lanes on existing state highways and establishment of tollways on new state highways or additional capacity lanes. Legislative approval is required prior to designation of any other types of tollways provided the Commission may provide interim approvals to establish such tollways, between sessions of the Legislature, subject to approval or disapproval by the Legislature during the subsequent session.

(3) If the Department wishes to designate a tollway, it shall submit its recommendations to the Commission and request approval.

(4) The Commission will evaluate the recommendations and make a final decision.

(5) The Commission will issue its decision in a public meeting.

(6) Tollways shall comply with all design and construction standards and specifications normally applicable to Department projects, except as may be otherwise agreed to by the Department in writing.

(7) Automatic tolling systems used for the collection of tolls shall meet or exceed the minimum criteria established by the United States Department of Transportation pursuant to United States Public Law 10[~~5~~]9-59, Section 1604, Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) if procured and deployed after the adoption of such criteria.

(8) The Commission will set Tolls in accordance with [~~Utah Admin. Code~~]R940-1 and [~~Utah Code Ann.~~]Section 72-6-118.

R926-9-[~~3~~]4. Tollway Special[~~Restricted~~] Revenue Fund - Enforcement.

(1) Pursuant to state law, tolls collected by the Department and certain funds received by the Department through a tollway development agreement are deposited in the Tollway [~~Restricted~~]Special Revenue Fund established in [~~Utah Code Ann.~~] Section 72-2-120.

(2) Monies from the fund may be used to establish and operate tollways and related facilities, including design, construction, reconstruction, operation (including snow removal), maintenance, enforcement, impacts from tollways, and acquisition of right-of-way, pursuant to [~~Utah Code Ann.~~]Section 72-2-120.

KEY: transportation, tolls, highways, tollways

Date of Enactment or Last Substantive Amendment: [~~October 16, 2008~~]2011

Authorizing, and Implemented or Interpreted Law: 72-2-120; 72-6-118

Transportation, Preconstruction
R930-5-13
Notice on Intended Action

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34452
FILED: 02/17/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to bring the rule into compliance with Section 72-6-114 which authorizes a highway authority to temporarily close or restrict travel on a highway under their jurisdiction due to construction, maintenance work, or emergency without providing notice and hearing.

SUMMARY OF THE RULE OR CHANGE: The amendment adds the word "permanent" to distinguish permanent railroad crossing closures and additions that require notice and hearing, from temporary closures due to highway construction, maintenance work, or emergency that are authorized by Section 72-6-114 and which do not require notice and hearing. (DAR NOTE: A corresponding 120-day (emergency) rule was published in the March 1, 2011, Issue of the Bulletin under DAR No. 34415 and was effective 02/09/2011.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-6a-1205 and Section 54-4-14 and Section 54-4-15 and Section 72-1-201 and Section 72-6-114

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There are no anticipated costs or savings to the state budget because the amendment only adds a distinction between temporary travel restrictions due to construction, maintenance, or emergency, and permanent restrictions that require notice and hearing.

♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government because the amendment only adds a distinction between temporary travel restrictions due to construction, maintenance, or emergency, and permanent restrictions that require notice and hearing.

♦ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses because the amendment only adds a distinction between temporary travel restrictions due

to construction, maintenance, or emergency, and permanent restrictions that require notice and hearing.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities because the amendment only adds a distinction between temporary travel restrictions due to construction, maintenance, or emergency, and permanent restrictions that require notice and hearing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons because the amendment only adds a distinction between temporary travel restrictions due to construction, maintenance, or emergency, and permanent restrictions that require notice and hearing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts on businesses because the amendment only adds a distinction between temporary travel restrictions due to construction, maintenance, or emergency, and permanent restrictions that require notice and hearing.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
PRECONSTRUCTION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2011

AUTHORIZED BY: John Njord, Executive Director

R930. Transportation, Preconstruction.
R930-5. Establishment and Regulation of At-Grade Railroad Crossings.
R930-5-13. Notice of Intended Action.

(1) Public notification of a public hearing opportunity is required, in conformance with Section R930-2, when the Department is considering a proposal to permanently close a Crossing, add a track at a Crossing, or construct a new Crossing. It is the responsibility of the Highway Authority, Railroad, or Company requesting the proposed action, in consultation with the Department, to carry out the requirements of this section unless otherwise agreed to by the Department.

(2) In instances where the action proposed by the Department does not substantially affect the public, the Department may waive the requirement to notice a public hearing opportunity, provided the affected Diagnostic Team members concur in writing.

KEY: railroad, crossing, transportation, safety
Date of Enactment or Last Substantive Amendment: [~~February 8, 2010~~]2011
Notice of Continuation: November 29, 2006
Authorizing, and Implemented or Interpreted Law: 41-6a-1205; 54-4-14; 54-4-15; 72-1-201

Transportation Commission, Administration
R940-1
Establishment of Toll Rates

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 34462
FILED: 02/24/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add a purpose and authority section, make stylistic changes, correct typographical errors, and delete reference to the monthly sticker program which has been eliminated and replaced with an electronic system.

SUMMARY OF THE RULE OR CHANGE: The proposed changes add a purpose and authority section, make stylistic changes, correct typographical errors and delete reference to the monthly sticker program which has been eliminated and replaced with an electronic system.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-2-120 and Section 72-6-118

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: There are no anticipated costs or savings to the state budget because the changes do not affect the toll rates.
♦ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government because the changes do not affect the toll rates.
♦ SMALL BUSINESSES: There are no anticipated costs or savings to small businesses because the changes do not affect the toll rates.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to small businesses, businesses, or local government entities because the changes do not affect the toll rates.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons because the changes do not affect the toll rates.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts on businesses because the changes do not affect the toll rates.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION COMMISSION
ADMINISTRATION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2011

AUTHORIZED BY: John Njord, Executive Director

R940. Transportation Commission, Administration.
R940-1. Establishment of Toll Rates.
R940-1-1. Purpose and Authority.

The purpose of this rule is to establish procedures for the setting of toll rates. This rule is authorized by Section 72-6-118.

R940-1-2. Definitions.

(1) "Commission" means the Transportation Commission, which is created in [~~Utah Code Ann.~~]Section 72-1-301;

(2) "Department" means the Utah Department of Transportation, which is created in [~~Utah Code Ann.~~]Section 72-1-101;

(3) "HOT Lane" means a High Occupancy Vehicle Lane as designated pursuant to [~~Utah Code Ann.~~]Section 41-6a-702 and [~~Utah Admin. Code~~]R926-9.

(4) "Toll" means the toll or user fees that the operator of a motor vehicle must pay for the privilege of driving on a tollway, including the toll or user fees that the operator of a single-occupant motor vehicle must pay for the privilege of driving on a HOT Lane.

(5) "Tollway" has the meaning described in [~~Utah Code Ann.~~]Section 72-6-118.

(6) "Tollway development agreement" has the meaning described in [~~Utah Code Ann.~~]Section 72-6-202.

R940-1-2. Setting Toll Rates.

(1) The Commission shall be responsible for setting toll rates on state highways as specified in this rule[~~Section R940-1~~].

(2) Toll rates for facilities included in a tollway development agreement shall be set in accordance with the terms and conditions of the tollway development agreement. Terms and conditions relating to toll rates are required to be presented to the Commission in connection with award of the tollway development agreement, and any modifications to such terms and conditions will be considered a substantial modification or amendment requiring Commission approval under Section R940-1-3.

(3) The Commission may, in its sole discretion, increase the toll rates for a facility subject to a tollway development agreement above the amount allowed under the tollway development agreement.

R940-1-3. Base Toll Rate and Range for HOT Lanes.

(1) In deciding what Toll is appropriate for HOT Lanes that are not subject to tollway development agreements, the Commission balances the need to obtain revenue against the effect that a certain Toll amount will have on demand. The goal is to set a price that encourages optimal use of the HOT Lane.

[~~(2) For HOT Lanes under a monthly sticker program that are not subject to a tollway development agreement, the initial toll for the HOT Lane is $50 per month.~~

~~(a) With the Commission's approval, the Department may increase the toll described in subsection (2) from $50 per month if it finds that demand on the HOT Lane is too high and needs to be reduced in order to keep the lane freely flowing. Evidence of demand can be shown by traffic counts and evidence of traffic congestion.~~

] ([~~3~~]2) For HOT [~~1~~]Lanes [~~under a dynamically priced electronic payment system that are not subject to a tollway development agreement, ~~]the toll is $0.25 to $1.00 per payment zone. The Department will manage the amount of the toll necessary to keep the lane freely flowing.

([~~4~~]3) Toll rates for HOT Lanes that are subject to a tollway development agreement shall be set in the tollway development agreement.

R940-1-4. Tollway Restricted Special Revenue Fund.

(1) Pursuant to state law, tolls collected by the department and certain funds received by the department through a tollway development agreement are deposited in the Tollway [~~Restricted~~] Special Revenue Fund established in [~~Utah Code Ann.~~]Section 72-2-120.

(2) Monies from the fund may be used to establish and operate tollways and related facilities, including design, construction, reconstruction, operation, maintenance, enforcement, impacts from tollways, and acquisition of right-of-way, pursuant to [~~Utah Code Ann.~~]Section 72-2-120.

KEY: transportation, tolls, HOT Lanes, tollways
Date of Enactment or Last Substantive Amendment: [~~April 7, 2010~~]2011
Authorizing, and Implemented or Interpreted Law: 72-2-120; 72-6-118

End of the Notices of Proposed Rules Section

NOTICES OF
CHANGES IN PROPOSED RULES

After an agency has published a **Proposed Rule** in the *Utah State Bulletin*, it may receive public comment that requires the **Proposed Rule** to be altered before it goes into effect. A **Change in Proposed Rule** allows an agency to respond to comments it receives.

As with a **Proposed Rule**, a **Change in Proposed Rule** is preceded by a **Rule analysis**. This analysis provides summary information about the **Change in Proposed Rule** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **Change in Proposed Rule**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period, and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **Changes in Proposed Rules** published in this issue of the *Utah State Bulletin* ends April 14, 2011.

Following the **Rule Analysis**, the text of the **Change in Proposed Rule** is usually printed. The text shows only those changes made since the **Proposed Rule** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [~~example~~]). A row of dots in the text between paragraphs (**. . . . . .**) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **Change in Proposed Rule** is too long to print, the Division of Administrative Rules will include only the **Rule Analysis**. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

From the end of the 30-day waiting period through July 13, 2011, an agency may notify the Division of Administrative Rules that it wants to make the **Change in Proposed Rule** effective. When an agency submits a **Notice of Effective Date** for a **Change in Proposed Rule**, the **Proposed Rule** as amended by the **Change in Proposed Rule** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **Change in Proposed Rule**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **Change in Proposed Rule** in response to additional comments received. If the Division of Administrative Rules does not receive a **Notice of Effective Date** or another **Change in Proposed Rule** by the end of the 120-day period after publication, the **Change in Proposed Rule** filing, along with its associated **Proposed Rule**, lapses and the agency must start the process over.

Changes in Proposed Rules are governed by Section 63G-3-303; Rule R15-2; and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page

Health, Health Care Financing
R410-14
Administrative Hearing Procedures

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 34147
FILED: 03/01/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change is based on more internal review within the Department to further update and better clarify administrative hearing procedures for the Division of Medicaid and Health Financing (DMHF).

SUMMARY OF THE RULE OR CHANGE: This change clarifies DMHF authority to determine the need for a hearing based on the principle of "disputed issue of fact." It also clarifies the procedures for a recipient to request a hearing, and specifies the authority of the presiding officer to conduct formal or informal hearings. This change further clarifies service procedures upon other named parties and specifies which party has the burden of proof in a formal proceeding. It also clarifies the rules of discovery and spells out DMHF policy to retain written records. This change also clarifies definitions in the text and makes other minor corrections. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed repeal and reenactment that was published in the November 1, 2010, issue of the Utah State Bulletin, on page 19. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed repeal and reenactment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:
♦ THE STATE BUDGET: The Department does not anticipate any impact to the state budget because this change only updates and clarifies DMHF hearing procedures.
♦ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund or provide Medicaid services to Medicaid clients.
♦ SMALL BUSINESSES: The Department does not anticipate any fiscal impact to small businesses because this change only updates and clarifies DMHF hearing procedures.
♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department does not anticipate any fiscal impact to Medicaid providers and to Medicaid clients because this change only updates and clarifies DMHF hearing procedures.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to a single Medicaid provider or to a Medicaid client because this change only updates and clarifies DMHF hearing procedures.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The clarified hearing process proposed by this rule should have a positive fiscal impact on business by avoiding confusion.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH CARE FINANCING
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2011

AUTHORIZED BY: David Patton, Acting Executive Director

R410. Health, Health Care Financing.
R410-14. Administrative Hearing Procedures.
R410-14-1. Introduction and Authority.

(1) This rule [~~outlines~~]sets forth the administrative hearing procedures for the Division of Medicaid and Health Financing.

(2) This rule is authorized by Section 26-1-24, Section 63G-4-102, 42 U.S.C. 1396(a)(3), and 42 CFR 431, Subpart E.

R410-14-2. Definitions.

(1) The definitions in Rule R414-1 and Section 63G-4-103 apply to this rule.

(2) The following definitions also apply:

(a) "Action" means a denial, termination, suspension, or reduction of medical assistance for a recipient, or a reduction, [~~or~~] denial or revocation of reimbursement for services for a provider[~~-~~]; or a denial or termination of eligibility for participation in a program, or as a provider.

(b) "Aggrieved Person" means any recipient or provider who is adversely affected by any action or inaction of the Division of Medicaid and Health Financing (DMHF) within the Department

of Health, the Department of Human Services (DHS), the Department of Workforce Services (DWS), or any managed health care plan.

(c) "Ex Parte" communications mean direct or indirect communication in connection with an issue of fact or law between the presiding officer and one party only.

(d) "Managed Care Organization" means a health maintenance organization or prepaid mental health plan that contracts with DMHF to provide medical or mental health services to medical assistance recipients.

(e) A "medical record" is a record that contains medical data of a client.

(f) "Order" means [~~an agency action that the~~]a ruling by a presiding officer [~~issues to~~]that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons[~~, but not a class of persons~~].

R410-14-3. Administrative Hearing Procedures.

(1) An aggrieved person may file a written request for agency action pursuant to Section 63G-4-201, and in accordance with this rule. If a medical issue is in dispute, each request [~~must~~]should include supporting medical documentation. DMHF will schedule a hearing only when it receives sufficient medical records and may dismiss a request for agency action if it does not receive supporting medical documentation in a timely manner.

(2) DMHF shall conduct the following as formal adjudicative proceedings in accordance with Section R410-14-12:

(a) Preadmission Screening Resident Review (PASRR) Hearings. Pursuant to 42 U.S.C. 1396r, any resident and potential resident of a nursing facility whether Medicaid eligible or not, who disagrees with the preadmission screening and appropriateness of a placement decision that DMHF or its designated agent makes, has the right to a hearing upon request.

(b) Nurse Aide Registry Hearings. Pursuant to 42 U.S.C. 1395i-3, each nurse aide is subject to investigation of allegations of resident abuse, neglect or misappropriation of resident property. DMHF or its designated agent shall investigate each complaint and the nurse aide is entitled to a hearing that DMHF or its designated agent conducts before a substantiated claim can be entered into the registry.

(c) Skilled Nursing Facility (SNF), Intermediate Care Facility (ICF) or Intermediate Care Facility for the Mentally Retarded (ICF/MR) Hearings. 42 CFR 431, Subpart D, requires DMHF to provide SNF, ICF and ICF/MR appeal procedures that satisfy the requirements of 42 CFR 431.153 and 431.154.

(d) Managed Care Plan Hearings. Pursuant to 42 U.S.C. 1396u-2, federal law requires Medicaid and Children's Health Insurance Program managed care organizations to have an internal appeals process for Medicaid enrollees or providers acting on the enrollee's behalf to challenge the denial of payment for medical assistance. The written managed care enrollment information must explain this procedure. DMHF requires exhaustion of the managed care appeals process before an enrollee or provider may request a hearing. An enrollee or provider who submits a hearing request on behalf of another enrollee must include a copy of the final written notice of the appeal decision. An enrollee or provider who acts on the enrollee's behalf must also request a hearing within 30 days from the date of the final written notice of the appeal decision.

(i) A managed care provider has no right to a hearing with DMHF, except if the provider is acting solely on behalf of the client. Nevertheless, if there is an issue that could affect the status of DMHF as the single state agency, DMHF may hold a hearing at its own discretion.

(e) Home and Community-Based Waiver Hearings. 42 CFR 431, Subpart E, requires DMHF to provide appeal procedures that satisfy the requirements 42 CFR 431.200 through 431.250.

(i) For home and community-based waivers in which the Division of Services for People with Disabilities (DSPD) is the designated operating agency and the appeal is based on whether the person meets the eligibility criteria for state matching funds through DHS in accordance with Title 62A, Chapter 5a, the eligibility determination of the operating agency is final. If DSPD determines that an individual does not meet the eligibility criteria for state matching funds through DHS in accordance with Title 62A, Chapter 5a, the operating agency shall inform the individual in writing and provide the individual an opportunity to appeal the decision through the DHS hearing process in accordance with Section R539-3-8. The DSPD decision is dispositive for purposes of this subsection. DMHF shall sustain the determination and there is no right to further agency review.

(3) DMHF shall conduct the following as informal adjudicative proceedings:

(a) Resident Right Hearings. Pursuant to 42 U.S.C. 1396n, the state may restrict access to providers that it designates for services for a reasonable amount of time. The state may also restrict Medicaid recipients that utilize services at a frequency or amount that are not medically necessary, in accordance with state utilization guidelines. DMHF shall give the recipient notice and opportunity for an informal hearing before imposing restrictions.

(4) Eligibility Hearings. If eligibility for medical assistance is at issue, DWS shall conduct the hearing.

R410-14-4. Availability of Hearing.

(1) The presiding officer may not grant a hearing if the issue is a state or federal law[~~, a policy~~] requiring an automatic change in eligibility for medical assistance[~~,~~] or covered services that adversely affect the aggrieved person.

(2) DMHF will [~~only~~]conduct a hearing in connection with the agency action if the aggrieved person requests a hearing and there is a disputed issue of fact. If there is no disputed issue of fact, the presiding officer [~~shall~~]may deny a request for an evidentiary hearing and issue a recommended decision without a hearing.

(3) There is no disputed issue of fact if:[

~~(a) the agency presents facts that establish the agency's right to take the action or obtain the relief sought in the proceeding; and~~]

([~~b~~]a) the aggrieved person submits facts that do not conflict with the facts that the agency relies upon in taking action or seeking relief.

(4) If the aggrieved person objects to the hearing denial, the person may raise that objection as grounds for relief in a request for reconsideration.

(5) DMHF may not grant a hearing to a managed care provider to dispute the terms of a contract or the payment of a claim.

R410-14-5. Notice.

(1) DMHF, DHS, DWS, and a managed health care plan shall provide written notice to each individual or provider affected by an adverse action in accordance with 42 CFR 431.211, 213 and 214. Adverse actions to a recipient include actions that affect:

(a) eligibility for assistance;

(b) scope of service; or

(c) payment of a claim.

(2) Adverse actions to a provider include:

(a) a reduction in payment, denial of reimbursement and claim of payment; and

(b) a sanction that becomes effective.

(3) A notice must contain:

(a) a statement of the action DMHF, DHS, DWS, or a managed health care plan intends to take;

(b) the date the intended action becomes effective;

(c) the reasons for the intended action; and

(d) the specific regulations that support the action, or the change in federal law, state law or DMHF policy, which requires the action;

(e) the right and procedure to request a formal hearing before DMHF or an informal hearing before DHS or DWS;

(f) the right to represent oneself, the right to legal counsel, or the right to use another representative at the formal hearing; and

(g) if applicable, an explanation of the circumstances under which reimbursement for medical services will continue pending the outcome of the proceeding, if DMHF receives a hearing request within ten calendar days from the date of the notice of agency action.

(4) DMHF shall mail the notice at least ten calendar days before the date of the intended action except:

(a) DMHF may mail a notice not later than the date of action in accordance with 42 CFR 431.213.

(5) DMHF may shorten the period of advance notice to five days before the date of action if:

(a) DMHF has facts that indicate it must take action due to probable fraud by the recipient or provider; and

(b) the facts have been verified by affidavit.

R410-14-6. Request for Formal Hearing.

(1) DMHF shall conduct formal hearings for all [~~medical assistance~~]issues except those specifically excluded by this rule. The presiding officer may convert the proceeding to an informal hearing if a recipient or provider requests an informal hearing that meets the criteria set forth in Section 63G-4-202.

(2) [~~A recipient may request a f~~]Formal hearings must be requested within the following deadlines:

(a) A medical assistance provider or recipient may request a formal hearing within 30 calendar days from the date that DMHF sends written notice of its intended action.

(b) A medical assistance recipient may request an informal hearing with DWS regarding eligibility for medical assistance within 90 calendar days from the date that DMHF sends written notice of its intended action.

(c) A medical assistance recipient must request a formal hearing regarding scope of service within 30 calendar days from the date that DMHF issues written notice of its intended action.

(3) Failure to submit a timely request for a formal hearing constitutes a waiver of an individual's due process rights. The request must explain why the recipient is seeking agency relief, and the recipient must submit the request on the "Request for Hearing/Agency Action" form. The recipient must then mail or fax the form to the address or fax number contained on[~~that the agency specifies in~~] the notice of agency action.

(4) DMHF considers a hearing request that a recipient sends via mail to be filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, DMHF considers the request to be filed on the date that DMHF receives it, unless the sender can demonstrate through competent evidence that he mailed it before the date of receipt.

(5) DMHF shall schedule a pre-hearing, or begin negotiations in writing within 30 calendar days from the date it receives the request for a formal hearing or agency action.

(6) DMHF may deny or dismiss a request for a hearing if the aggrieved person:

(a) withdraws the request in writing;

(b) verbally withdraws the hearing request at a prehearing conference;

(c) fails to appear or participate in a scheduled proceeding without good cause;

(d) prolongs the hearing process without good cause;

(e) cannot be located or agency mail is returned without a forwarding address; or

(f) does not respond to any correspondence from the presiding officer or fails to provide medical records that the agency requests.

(7) An aggrieved person must inform DMHF of his current address and telephone number.

R410-14-10. Service.

(1) The individual or party that files a document with DMHF shall also serve the document upon all other named parties to the proceeding and file a proof of service with DMHF that consists of a certificate, affidavit or acknowledgment of service.

(2) Each party must receive one copy by personal delivery or mail to the proper address with postage prepaid. If an individual represents a party, service upon the individual is sufficient.[

~~(3) The Utah Rules of Civil Procedure require a certificate, affidavit or acknowledgment to serve as a proof of service.~~]

([~~4~~]3) If DMHF must provide notice of a formal hearing, the notice becomes effective on the date of first class mailing to the party's address of record.[

~~(5) The Utah Rules of Civil Procedure permit other methods of service in addition to the methods set forth in this section.~~]

(4) In addition to the methods set forth in this rule, a party may be served as permitted by the Utah Rules of Civil Procedure.

R410-14-12. Conduct of Hearing.

(1) DMHF shall conduct hearings in accordance with Section 63G-4-206.

(2) DMHF shall appoint an impartial presiding officer to conduct formal hearings. Previous involvement in the initial determination of the action precludes an officer from appointment.

(3) The presiding officer may elect to hold a prehearing meeting to:

(a) formulate or simplify the issues;

(b) obtain admissions of fact and documents that will avoid unnecessary proof;

(c) arrange for the exchange of proposed exhibits or prepared expert testimony;

(d) outline procedures for the formal hearing; or

(e) to agree to other matters that may expedite the orderly conduct of the hearing or settlement.

(4) DMHF shall record agreements that the parties reach during the prehearing or the parties may enter into a written stipulation.

(5) DMHF may conduct all formal hearings only after adequate written notice of the hearing has been served on all parties setting forth the date, time and place of the hearing.

(6) The presiding officer shall take testimony under oath or affirmation.

(7) Each party has the right to:

(a) present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence;

(b) introduce exhibits;

(c) impeach any witness regardless of which party first called the witness to testify; and

(d) rebut the evidence against the party.

(8) DMHF shall follow the rules of evidence as applied in Utah civil actions. Each party may admit any relevant evidence and use hearsay evidence to supplement or explain other evidence. Hearsay, however, is not sufficient by itself to support a finding unless admissible over objection in civil actions. The presiding officer shall give effect to the rules of privilege recognized by law and may exclude irrelevant, immaterial and unduly repetitious evidence.

(9) The presiding officer may question any party or witness.

(10) The presiding officer shall control the evidence to obtain full disclosure of the relevant facts and to safeguard the rights of the parties. The presiding officer may determine the order in which he receives the evidence.

(11) The presiding officer shall maintain order and may recess the hearing to regain order if a person engages in disrespectful, disorderly or disruptive conduct. The presiding officer may remove any person, including a participant from the hearing, to maintain order. If a person shows persistent disregard for order and procedure, the presiding officer may:

(a) restrict the person's participation in the hearing;

(b) strike pleadings or evidence; or

(c) issue an order of default.

(12) If a party desires to employ a court reporter to make a record of the hearing, it must file an original transcript of the hearing with the presiding officer at no cost to the agency.

(13) [~~DMHF has the burden of proof in any proceeding that it~~]The party that initiates the hearing process through [~~a notice of~~]a request for agency action[~~. A party that seeks action from DMHF, however,~~] has the burden of proof [~~in any proceeding that it initiates through a request for agency action~~]as the moving party.

(14) When a party possesses but fails to introduce certain evidence, the presiding officer may infer that the evidence does not support the party's position.

R410-14-15. Record.

(1) The presiding officer shall make a complete record of all formal hearings. A hearing record is the sole property of DMHF and DMHF shall maintain the complete record in a secure area.

(2) If a party requests a copy of the recording of a formal hearing, that party may transcribe the recording.

(3) DMHF or its designated agent shall retain recordings of formal hearings for a period of one year.

(4) DMHF shall retain written records of formal hearings for a period of [~~three~~]two years pending further litigation.

R410-14-20. Discovery.

(1) The Utah Rules of Civil Procedure do not apply to formal adjudicative proceedings and formal discovery is permitted only as set forth in this section. Each party shall diligently pursue discovery and full disclosure to prevent delay. A party that conducts discovery under this section shall maintain a mailing certificate.

(2) The scope of discovery in formal adjudicative proceedings, unless otherwise limited by order of the presiding officer, is as follows:

(a) DMHF may [~~review all pertinent records in the custody of the recipient~~]request copies of pertinent records in the possession of the recipient and the recipient's health care providers. In the event the recipient or provider fails to produce the records within a reasonable time, DMHF may review all pertinent records in the custody of the recipient or provider during regular working hours after three days of written notice.[

~~(b) DMHF may review all pertinent records at the health care provider's place of business during regular working hours and after three days of written notice.~~]

([e]b) The recipient shall submit medical records with the hearing request whenever possible. Necessary medical records include:

(i) the provision of each service and activity billed to the program;

(ii) the first and last name of the petitioner;

(iii) the reason for performing the service or activity that includes the petitioner's complaint or symptoms;

(iv) the recipient's medical history;

(v) examination findings;

(vi) diagnostic test results;

(vii) the goal or need that the plan of care identifies; and

(viii) the observer's assessment, clinical impression or diagnosis that includes the date of observation and identity of the observer.

(d) The medical records must demonstrate that the service is:

(i) medically necessary;

(ii) consistent with the diagnosis of the petitioner's condition; and

(iii) consistent with professionally recognized standards of care.

(3) DMHF shall allow the aggrieved person or the person's representative to examine all DMHF documents and

records [~~for the hearing~~]upon written request to DMHF at least three days before the hearing.

(4) An individual may request access to protected health information in accordance with Rule 380-250, which implements the privacy rule under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(5) The presiding officer may permit the filing of formal discovery or take depositions only upon a clear showing of necessity that takes into account the nature and scope of the dispute. If the presiding officer allows formal discovery, he shall set appropriate time frames for response and assess sanctions for non-compliance.

(6) The presiding officer may order a medical assessment at the expense of DMHF to obtain information. This information is subject to HIPAA confidentiality requirements and is part of the hearing record.

(7) Each party shall file a signed pretrial disclosure form at least ten calendar days before the scheduled hearing that identifies:

(a) fact witnesses;

(b) expert witnesses;

(c) exhibits and reports the parties intend to offer into evidence at the hearing;

(d) petitioner's specific benefit or relief claimed;

(e) respondent's specific defense;

(f) an estimate of the time necessary to present the party's case; and

(g) any other issues the parties intend to request the presiding officer to adjudicate.

(8) Each party shall supplement the pretrial disclosure form with information that becomes available after filing the original form. The pretrial disclosure form does not replace other discovery that is allowed under this section.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: 2011
Notice of Continuation: October 29, 2007
Authorizing, and Implemented or Interpreted Law: 26-1-24; 26-1-5; 63G-4-102

End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to remove obsolete rules from the Utah Administrative Code. Upon reviewing a rule, an agency may: repeal the rule by filing a **Proposed Rule**; continue the rule as it is by filing a **Notice of Review and Statement of Continuation (Notice)**; or amend the rule by filing a **Proposed Rule** and by filing a **Notice**. By filing a Notice, the agency indicates that the rule is still necessary.

Notices are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. **Notices** are effective upon filing.

Notices are governed by Section 63G-3-305.

Community and Culture, Olene Walker Housing Trust Fund
R235-1
Olene Walker Housing Loan Fund (OWHLF)

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 34463
FILED: 02/24/2011

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: Pursuant to Section 9-4-701 et seq., Subsection 9-4-702(1)(a), and by reference 24 CFR 84-85 as authorized under Sections 9-4-703 through 9-4-708, the Olene Walker Housing Loan Fund (OWHLF) Board determines how federal and state monies deposited to the fund shall be allocated and distributed.

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 law requires this rule be in place. The OWHLF's objective is to develop housing that is affordable to very low, low, and moderate-income persons through a fair and competitive process. Therefore, this rule should be continued. An amendment to this rule was submitted on 02/22/2011. (DAR NOTE: The proposed amendment to Rule R235-1 is under DAR No. 34463 in this issue, March 15, 2011, of the Bulletin.)

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMUNITY AND CULTURE
OLENE WALKER HOUSING TRUST FUND
ROOM 500
324 S STATE ST
SALT LAKE CITY, UT 84111
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Matt Turner by phone at 801-368-1173, by FAX at 801-538-8888, or by Internet E-mail at mjturner@utah.gov

AUTHORIZED BY: Michael Hansen, Interim Executive Director

EFFECTIVE: 02/24/2011

Fair Corporation (Utah State), Administration
R325-1
Utah State Fair Competitive Exhibitor Rules

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 34464
FILED: 02/24/2011

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-3-201(2) requires each agency who: (a) authorizes, requires, or prohibits an action; (b) provides or permits a material benefit, to make rules. Section 9-4-1103 requires the Utah State Fair Corporation to arrange and plan expositions, which requires us to provide, sponsor and promote public entertainment, displays, exhibits, etc. This in turn requires that the Fair Corporation set rules and guidelines for exhibitors, renters, and the public.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There is no record of written comments having 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 Fair has between 6,500 and 6,800 competitive exhibitors each year and must have some basic guidelines that are enforceable. Therefore, this rule should be continued.

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

FAIR CORPORATION (UTAH STATE)
ADMINISTRATION
155 N 1000 W
SALT LAKE CITY, UT 84116-3399
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Judy Duncombe by phone at 801-538-8445, by FAX at 801-538-8455, or by Internet E-mail at Judy@utahstatefair.com
♦ Kelly West by phone at 801-538-8441, by FAX at 801-538-8455, or by Internet E-mail at kelly@utahstatefair.com

AUTHORIZED BY: Judy Duncombe, Acting Executive Director

EFFECTIVE: 02/24/2011

Fair Corporation (Utah State), Administration
R325-2
Utah State Fair Commercial Exhibitor Rules

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 34465
FILED: 02/24/2011

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-3-201(2) requires each agency who: (a) authorizes, requires, or prohibits an action; (b) provides or permits a material benefit, to make rules. Section 9-4-1103 requires the Utah State Fair Corporation to arrange and plan expositions, which requires us to provide, sponsor and promote public entertainment, displays, exhibits, etc. This in turn requires that the Fair Corporation set rules and guidelines for exhibitors, renters, and the public.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There is no record of written comments having 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 Fair rents space to approximately 400 commercial exhibitors each year and must have some basic rules that are enforceable. Therefore, this rule should be continued.

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

FAIR CORPORATION (UTAH STATE)
ADMINISTRATION
155 N 1000 W
SALT LAKE CITY, UT 84116-3399
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Judy Duncombe by phone at 801-538-8445, by FAX at 801-538-8455, or by Internet E-mail at Judy@utahstatefair.com
♦ Kelly West by phone at 801-538-8441, by FAX at 801-538-8455, or by Internet E-mail at kelly@utahstatefair.com

AUTHORIZED BY: Judy Duncombe, Acting Executive Director

EFFECTIVE: 02/24/2011

Fair Corporation (Utah State), Administration
R325-3
Utah State Fair Patron Rules

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 34466
FILED: 02/24/2011

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-3-201(2) requires each agency who: (a) authorizes, requires, or prohibits an action; (b) provides or permits a material benefit, to make rules. Section 9-4-1103 requires the Utah State Fair Corporation to arrange and plan expositions, which requires us to provide, sponsor and promote public entertainment, displays, exhibits, etc. This in turn requires that the Fair Corporation set rules and guidelines for exhibitors, renters, and the public.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There is no record of written comments having 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: Approximately 300,000 patrons come to the Fair annually so there is a need for basic enforceable rules. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
FAIR CORPORATION (UTAH STATE) ADMINISTRATION
155 N 1000 W
SALT LAKE CITY, UT 84116-3399
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Judy Duncombe by phone at 801-538-8445, by FAX at 801-538-8455, or by Internet E-mail at Judy@utahstatefair.com
♦ Kelly West by phone at 801-538-8441, by FAX at 801-538-8455, or by Internet E-mail at kelly@utahstatefair.com

AUTHORIZED BY: Judy Duncombe, Acting Executive Director

EFFECTIVE: 02/24/2011

Fair Corporation (Utah State), Administration
R325-4
Interim Patrons Rules (Other Than Utah State Fair)

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 34467
FILED: 02/24/2011

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-3-201(2) requires each agency who: (a) authorizes, requires, or prohibits an action; (b) provides or permits a material benefit, to make rules. Section 9-4-1103 requires the Utah State Fair Corporation to arrange and plan expositions, which requires us to provide, sponsor and promote public entertainment, displays, exhibits, etc. This in turn requires that the Fair Corporation set rules and guidelines for exhibitors, renters, and the public.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There is no record of written comments having 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: There are over 150 different interim events at the Fairpark each year that must have basic enforceable rules. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
FAIR CORPORATION (UTAH STATE)
ADMINISTRATION
155 N 1000 W
SALT LAKE CITY, UT 84116-3399
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Judy Duncombe by phone at 801-538-8445, by FAX at 801-538-8455, or by Internet E-mail at Judy@utahstatefair.com
♦ Kelly West by phone at 801-538-8441, by FAX at 801-538-8455, or by Internet E-mail at kelly@utahstatefair.com

AUTHORIZED BY: Judy Duncombe, Acting Executive Director

EFFECTIVE: 02/24/2011

Fair Corporation (Utah State), Administration
R325-5
Interim Renters Rules (Other Than Utah State Fair)

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 34468
FILED: 02/24/2011

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-3-201(2) requires each agency who: (a) authorizes, requires, or prohibits an action; (b) provides or permits a material benefit, to make rules. Section 9-4-1103 requires the Utah State Fair Corporation to arrange and plan expositions, which requires us to provide, sponsor and promote public entertainment, displays, exhibits, etc. This in turn requires that the Fair Corporation set rules and guidelines for exhibitors, renters, and the public.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There is no record of written comments having 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: There are over 150 different interim events at the Fairpark each year that must have basic enforceable rules. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
FAIR CORPORATION (UTAH STATE)
ADMINISTRATION
155 N 1000 W
SALT LAKE CITY, UT 84116-3399
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Judy Duncombe by phone at 801-538-8445, by FAX at 801-538-8455, or by Internet E-mail at Judy@utahstatefair.com
♦ Kelly West by phone at 801-538-8441, by FAX at 801-538-8455, or by Internet E-mail at kelly@utahstatefair.com

AUTHORIZED BY: Judy Duncombe, Acting Executive Director

EFFECTIVE: 02/24/2011

Human Services, Child and Family Services
R512-308
Out-of-Home Services, Guardianship Services and Placements

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 34471
FILED: 02/28/2011

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 62A-4a-102 gives authority to the Division of Child and Family Services to promulgate a rule for providing guardianship services and placements.

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: Continuation of this rule is necessary in order for the Division of Child and Family Services to continue to provide guardianship services and placements.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
CHILD AND FAMILY SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

AUTHORIZED BY: Brent Platt, Director

EFFECTIVE: 02/28/2011

Insurance, Administration
R590-144
Commercial Aviation Insurance Exemption from Rate and Form Filings

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 34478
FILED: 03/01/2011

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201 provides general authority to adopt rules to implement Title 31A. Section 31A-19a-103 authorizes the commissioner to exempt any market segment from provisions of Title 31A, Chapter 19a, Rate Regulation. Subsection 31A-21-101(5) allows the commissioner to exempt any class of insurance contract or class of insurer from provisions of Title 31A, Chapter 21, Insurance Contracts in General, and Title 31A, Chapter 22, Contracts in Specific Lines. This rule exempts commercial aviation insurance from the requirement to file insurance policy rates and forms with the department.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received any written comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Because of the unique nature of commercial aviation risks, aviation insurance premiums rely on individual risk analysis, underwriting judgment, and the negotiation of a sophisticated business transaction between the insurer and an informed insured. These types of risks also require individually tailored manuscript-type policies. Because of the uniqueness of each risk, it is not reasonable to set general rates and forms for them. For this reason, it is important that this rule continue in force, exempting commercial aviation insurance from the requirement to file policy rates and forms with the department.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 03/01/2011

Insurance, Administration
R590-177
Life Insurance Illustrations Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 34477
FILED: 03/01/2011

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 31A-2-201(3)(a) authorizes the commissioner to implement the provisions of Title 31A according to rulemaking requirements. Subsection 31A-22-425(1)(c) authorizes the department to make rules to establish standards in connections with life insurance policy and contract illustrations. Subsection 31A-23a-402(8) states that a person may not engage in unfair methods of competition or deception in the practice of insurance. The rule describes filing requirements for life illustrations, standards for the format, use, delivery and retention of life illustrations used in the sale of life policies. Insurers are required to appoint an actuary to certify their illustrations meets certain standards and requirements.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: In the past five years, the department has made a nonsubstantive change and amended this rule. At no time while these changes were being made or during the past five years has the department received any written comments regarding the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides consumer protection by stating the requirements and restrictions on the values that can be shown in the projections contained in the illustrations. Unregulated illustrations have been found to provide values that are unrealistic and could entice a consumer into purchasing a product that will never perform as the company has illustrated. Therefore, this rule should be continued.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 03/01/2011

Insurance, Administration
R590-200
Diabetes Treatment and Management

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 34485
FILED: 03/01/2011

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 31A-2-201(1) and (3)(a) empower the commissioner to enforce and write rules necessary to implement the provisions of Title 31A. Section 31A-22-626 authorizes the commissioner to establish by rule minimum standards of coverage for diabetes for accident, and health policies. It also allows the commissioner to write rules with limits, deductibles, co-insurance, requirements regarding self-management training, and management training that is equitable or identical to coverage provided for the treatment of other diseases or illnesses, as well as requiring coverage for equipment and supplies considered to be medically necessary for that care.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received any written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule goes into detail regarding the minimum standards that must be covered under health care insurance. It includes diabetes education, training, supplies and prescriptions necessary for a person to manage the diabetes. Therefore, this rule should be continued.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 03/01/2011

Transportation, Motor Carrier, Ports of Entry
R912-8
Minimum Tire, Axle and Suspension Ratings for Heavy Vehicles and the Use of Retractable or Variable Load Suspension Axles in Utah

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 34453
FILED: 02/17/2011

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted as part of the Department of Transportation's responsibility to provide and preserve a safe transportation system as generally outlined in Section 72-1-201 and more specifically as described in Sections 72-7-404 and 72-7-406.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received during and since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of the rule helps the Department of Transportation fulfill its responsibility to provide and preserve a safe transportation system.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
MOTOR CARRIER, PORTS OF ENTRY
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 02/17/2011

Transportation, Program Development
R926-9
Establishment Designation and Operation of Tollways

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 34459
FILED: 02/24/2011

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is required by Subsection 72-6-118(5) which requires the Department of Transportation to make rules necessary to establish and operate tollways and establish standards and specifications for automatic tolling systems.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received during and since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it fulfills the requirements of Subsection 72-6-118(5) which requires the Department of Transportation to make rules necessary to establish and operate tollways and establish standards and specifications for automatic tolling systems.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
PROGRAM DEVELOPMENT
CALVIN L RAMPTON COMPLEX

4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 02/24/2011

Transportation Commission, Administration
R940-1
Establishment of Toll Rates

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 34461
FILED: 02/24/2011

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is required by Subsection 72-6-118(4) which authorizes the Transportation Commission to set the amount of any toll imposed or collected on a tollway on a state highway.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no comments received during and since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it provides criteria and procedures for the Transportation Commission to set tolls as authorized by Subsection 72-6-118(4).

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION COMMISSION
ADMINISTRATION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 02/24/2011

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

Alcoholic Beverage Control
Administration
No. 34337 (AMD): R81-1-29. Disclosure of Conflicts of Interest
Published: 01/15/2011
Effective: 02/24/2011

No. 34336 (AMD): R81-1-30. Factors for Granting Licenses
Published: 01/15/2011
Effective: 02/24/2011

No. 34340 (AMD): R81-3-13. Operational Restrictions
Published: 01/15/2011
Effective: 02/24/2011

Commerce
Occupational and Professional Licensing
No. 34323 (AMD): R156-1-102. Definitions
Published: 01/15/2011
Effective: 02/24/2011

No. 34338 (AMD): R156-55c-102. Definitions
Published: 01/15/2011
Effective: 02/24/2011

No. 34339 (AMD): R156-60c. Professional Counselor Licensing Act Rule
Published: 01/15/2011
Effective: 02/24/2011

Education
Administration
No. 34331 (AMD): R277-400. School Emergency Response Plans
Published: 01/15/2011
Effective: 02/22/2011

No. 34332 (AMD): R277-403-1. Definitions
Published: 01/15/2011
Effective: 02/22/2011

No. 34333 (AMD): R277-470-12. Charter School Oversight and Monitoring
Published: 01/15/2011
Effective: 02/22/2011

No. 34334 (AMD): R277-520. Appropriate Licensing and Assignment of Teachers
Published: 01/15/2011
Effective: 02/22/2011

No. 34335 (AMD): R277-602. Special Needs Scholarships - Funding and Procedures
Published: 01/15/2011
Effective: 02/22/2011

Governor
Economic Development, Pete Suazo Utah Athletic Commission
No. 34279 (AMD): R359-1-102. Definitions
Published: 12/15/2010
Effective: 02/22/2011

Health
Health Systems Improvement, Primary Care and Rural Health
No. 34327 (NEW): R434-50. Assistance for People with Bleeding Disorders
Published: 01/15/2011
Effective: 03/01/2011

Public Safety
Criminal Investigations and Technical Services, Criminal Identification
No. 34324 (NEW): R722-350. Certificate of Eligibility
Published: 01/15/2011
Effective: 02/22/2011

Tax Commission
Administration
No. 34326 (AMD): R861-1A-43. Electronic Meetings
Pursuant to Utah Code Ann. Section 52-4-207
Published: 01/15/2011
Effective: 02/23/2011

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, 2011 through March 01, 2011. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division’s web site (http://www.rules.utah.gov/).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

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EMR = Emergency rule (120 day)
NEW = New rule
EXD = Expired
NSC = Nonsubstantive rule change
REP = Repeal
R&R = Repeal and reenact
5YR = Five-Year Review

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
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R27-4-11	Capital Credit or Reservation of Vehicle Allocation for Surrendered Vehicles	34257	AMD	01/25/2011	2010-24/7
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R68-8	Utah Seed Law	34345	5YR	01/05/2011	2011-3/55
R68-18	Quarantine Pertaining to Karnal Bunt	34412	5YR	02/08/2011	2011-5/107
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R81-3-13	Operational Restrictions	34340	AMD	02/24/2011	2011-2/6
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R156-46b	Division Utah Administrative Procedures Act Rule	34397	5YR	01/31/2011	2011-4/36
R156-50	Private Probation Provider Licensing Act Rules	34282	NSC	01/06/2011	Not Printed
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R590-93	Replacement of Life Insurance and Annuities	34026	CPR	01/10/2011	2010-22/116
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R657-55	Wildlife Convention Permits	34303	AMD	02/07/2011	2011-1/35
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R714-162	Equipment Standards for Heavy Truck, Trailer and Bus Safety Inspections	34287	NEW	02/08/2011	2011-1/59
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R895-11	Technology Services Adjudicative Proceedings	34440	5YR	02/15/2011	2011-5/118
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RULES INDEX - BY KEYWORD (SUBJECT)

ABBREVIATIONS

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KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
access to information					
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	34339	R156-60c	AMD	02/24/2011	2011-2/12
	34395	R156-60d	5YR	01/31/2011	2011-4/37
	34360	R156-63a-302f	NSC	01/26/2011	Not Printed
	34283	R156-69	AMD	02/07/2011	2011-1/8
	34237	R156-83-306	AMD	01/10/2011	2010-23/14
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	34226	R162-2c-203	AMD	01/08/2011	2010-23/19
	34227	R162-2c-204	AMD	01/08/2011	2010-23/23
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	34226	R162-2c-203	AMD	01/08/2011	2010-23/19
	34227	R162-2c-204	AMD	01/08/2011	2010-23/23
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	34286	R714-161	NEW	02/09/2011	2011-1/53
	34287	R714-162	NEW	02/08/2011	2011-1/59
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Public Safety, Driver License	34401	R708-20	5YR	01/31/2011	2011-4/47
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Natural Resources, Parks and Recreation	34356	R651-222	5YR	01/11/2011	2011-3/58
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Natural Resources, Forestry, Fire and State Lands	34435	R652-41	5YR	02/14/2011	2011-5/116
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Natural Resources, Forestry, Fire and State Lands	34313	R652-140	AMD	02/07/2011	2011-1/30

	34299	R657-44	AMD	02/07/2011	2011-1/32
	34303	R657-55	AMD	02/07/2011	2011-1/35
	34168	R657-58	AMD	01/04/2011	2010-22/105
wildlife law					
Natural Resources, Wildlife Resources	34167	R657-13	AMD	01/04/2011	2010-22/103
	34168	R657-58	AMD	01/04/2011	2010-22/105
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Natural Resources, Wildlife Resources	34303	R657-55	AMD	02/07/2011	2011-1/35
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Labor Commission, Industrial Accidents	34294	R612-12-2	NSC	01/06/2011	Not Printed
Workforce Investment Act					
Workforce Services, Employment Development	34277	R986-600	AMD	01/26/2011	2010-24/69