

UTAH STATE BULLETIN

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

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

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

Division of Administrative Rules, Salt Lake City 84114

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EXECUTIVE DOCUMENTS

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

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

Governor's Executive Order EO/007/2011: Wildland Fire Management

EXECUTIVE ORDER

Wildland Fire Management

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

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

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

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

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

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

It is found, determined and declared that a "State of Emergency" exists statewide due to the threat to public safety, property, natural resources and the environment for thirty days, effective as of July 10, 2011 requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

IN TESTIMONY, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah this 10th day of July 2011

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Lieutenant Governor
Greg Bell

EO/007/2011

Governor's Executive Order EO/008/2011: Declaring a State of Emergency Due to Flooding and the Potential for Additional Flooding

EXECUTIVE ORDER

Declaring a State of Emergency Due to Flooding and the Potential for Additional Flooding

WHEREAS, Utah received record levels of precipitation between March and May 2011;

WHEREAS, the extremely high levels of precipitation combined with colder than normal temperatures resulted in high water levels, very high levels of snowpack, and significant delays in annual spring runoff;

WHEREAS, the remaining snowpack has been melting and continues to melt, causing rivers, streams, and tributaries to overflow or breach their banks;

WHEREAS, flooding has resulted which has impacted and is impacting many areas throughout the state, causing damage to and continuing to threaten homes, public infrastructure, agricultural production, and private businesses, and increasing the threat of landslides, mudslides, and rock falls;

WHEREAS, the State Emergency Operations Center has received numerous declarations of emergencies from counties in Utah; and

WHEREAS, these conditions do create a "State of Emergency" within the intent of the Disaster Response and Recovery Act found in Title 63K, Chapter 4 of the Utah Code;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, declare a "State of Emergency" due to the aforesaid circumstances requiring aid, assistance, and relief available from state resources. **I HEREBY ORDER** that all agencies of state government utilize state personnel, equipment, and facilities to respond to the aforesaid circumstances as needed and as coordinated with the Department of Public Safety and the Emergency Operations Center.

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done in Salt Lake City, Utah, on this, the 27th day of June 2011.

(State Seal)

Gary R. Herbert
Governor, State of Utah

Attest:

Greg Bell
Lieutenant Governor, State of Utah

EO/008/2011

Governor's Executive Order EO/009/2011: Lieutenant Governor's State Bonding Commission Powers

EXECUTIVE ORDER

Lieutenant Governor's State Bonding Commission Powers

I, GARY R. HERBERT, GOVERNOR OF THE STATE OF UTAH, AUTHORIZE Lieutenant Governor Greg Bell to sign State Bonding Commission documents for me, vote on my behalf as a Member of the Commission, to act in all other respects as my agent and proxy on the Commission. The State Bonding Commission is created by Section 63B-1-201, Utah Code Annotated 1953, as amended.

IN TESTIMONY WHEREOF, I have here unto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, on this, the 5th day of July 2011.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Greg Bell
Lieutenant Governor

EO/009/2011

Governor's Executive Order EO/010/2011: Lieutenant Governor's State Building Ownership Authority Powers

EXECUTIVE ORDER

Lieutenant Governor's State Building Ownership Authority Powers

I, GARY R. HERBERT, GOVERNOR OF THE STATE OF UTAH, AUTHORIZE Lieutenant Governor Greg Bell to sign State Building Ownership Authority documents for me, vote on my behalf as a member of the Authority, and act in all other respects as my agent and proxy on the authority. The State Building Ownership Authority is created by Section 63B-1-304, Utah Code Annotated 1953, as amended.

IN TESTIMONY WHEREOF, I have affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this, the 5th day of July 2011.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Greg Bell
Lieutenant Governor

EO/010/2011

Governor's Proclamation 2011/02/S: Calling the Fifty-Ninth Legislature into a Second Special Session

PROCLAMATION

WHEREAS, since the adjournment of the 2011 General Session of the Fifty-Ninth Legislature of the State of Utah, matters have arisen that require immediate legislative attention;

WHEREAS, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Legislature into Special Session; and

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the laws of the State of Utah, call the Fifty-Ninth Legislature of the State of Utah into a Second Special Session at the Utah State Capitol, in Salt Lake City, Utah, on the 20th day of July 2011, at 2:00 p.m. for the following purposes:

1. To consider amending Utah Code Section 78A-7-202 to modify the requirements under which the Judicial Performance Evaluation Commission must evaluate part-time justice court judges for the 2012, 2014 and 2016 elections and to make technical and conforming amendments;
2. To consider amending the Alcoholic Beverage Control Act to address various issues relating to commission and employee ethics, package agencies, club licenses, certain grandfathered on-premise banquet licensees, requirements for beer retailers, required notices to the department and restrictions on transfer of licenses, beer-only restaurants and to make technical and conforming amendments;
3. To consider amending the Utah Insurance Code to modify the case characteristics that a small employer carrier may use when establishing premium rates for a group, to address marketing and funding issues associated with the Health Insurance Exchange and to make technical and conforming amendments;
4. To consider a concurrent resolution expressing support for an amendment to the United States Constitution requiring Congress to balance the federal budget and restrict tax increases;
5. To consider amending the Prison Relocation and Development Authority Act to modify membership requirements of the prison relocation and development authority, to modify the authority's reporting requirements, to eliminate a provision requiring the Governor to make a recommendation to the Legislative Management Committee, to address legislative approval of matters relating to a prison relocation project and to make technical and conforming amendments;

6. To consider extending the date after which a special service district bond secured by federal mineral lease payments may not be issued and to make technical and conforming amendments;

7. For the Senate to consent to appointments made by the Governor.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 15th day of July, 2011.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Greg Bell
Lieutenant Governor

2011/02/S

End of the Executive Documents Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between July 02, 2011, 12:00 a.m., and July 15, 2011, 11:59 p.m. are included in this, the August 01, 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 August 31, 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 November 29, 2011, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF a CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses and the agency must start the process over.

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

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

The Proposed Rules Begin on the Following Page

**Alcoholic Beverage Control,
Administration
R81-1-11
Multiple-Licensed Facility Storage and
Service**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35052

FILED: 07/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is filed to implement provisions of S.B. 314 passed by the 2011 state legislature.

SUMMARY OF THE RULE OR CHANGE: This year's passage of S.B. 314 created two new license types: the beer-only restaurant; and the recreational amenity on-premise beer license. It is necessary to include these license types in rules which affect them. This rule amendment adds beer-only restaurants and recreational amenity on-premise beer licenses to the multiple storage and service rule. Also, the Alcoholic Beverage Control Act was recodified effective 07/01/2011 and Title 32A was replaced with Title 32B. This rule amendment changes references to 32A to the new Title 32B in this subsection and in the annotation block.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-2-202

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** None--This rule amendment regulates how the newly created licensees will dispense alcoholic beverages as it is now done with existing liquor and beer licensees. There are no costs or savings involved in this rule amendment.

♦ **LOCAL GOVERNMENTS:** None--This rule amendment regulates how the newly created licensees will dispense alcoholic beverages. Dispensing is regulated by state government and does not involve local governments.

♦ **SMALL BUSINESSES:** None--Small businesses that will hold beer-only restaurant licenses and recreational amenity on-premise beer licenses will be authorized by statute to sell and serve alcoholic beverages. This rule amendment clarifies how those products may be sold and served to patrons.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule does nothing more than include newly created license types among the the license types that may dispense alcoholic beverages from a central area on a premises. There will be no cost or savings involved in clarifying these

regulations for beer-only restaurants or recreational amenity on-premise beer licensees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should be no compliance costs for affected persons. Permitting a central dispensing location for multiple licensed facilities is cost effective.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The substantive part of this rule amendment does no more than add two newly created license types to the list of other licensees that must follow the regulations in the rule. There will be no additional fiscal impact for the licensees that are added in this rule amendment.

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

ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION

1625 S 900 W

SALT LAKE CITY, UT 84104-1630

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Neil Cohen by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at ncohen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/22/2011

AUTHORIZED BY: Dennis Kellen, Director

R81. Alcoholic Beverage Control, Administration.

R81-1. Scope, Definitions, and General Provisions.

R81-1-11. Multiple-Licensed Facility Storage and Service.

(1) For the purposes of this rule:

(a) "premises" as defined in Section ~~[32A-1-105(45)]~~32B-1-102(75) shall include the location of any licensed restaurant, limited restaurant, beer-only restaurant, club, or recreational amenity on-premise beer retailer facility or facilities operated or managed by the same person or entity that are located within the same building or complex, and any similar sublicense located within the same building of a resort license under ~~[32A-4a]~~32B-8. Multiple licensed facilities shall be termed "qualified premises" as used in this rule.

(b) the terms "sell", "sale", "to sell" as defined in Section ~~[32A-1-105(53)]~~32B-1-102(92) shall not apply to a cost allocation of alcoholic beverages as used in this rule.

(c) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount sold in each outlet.

(d) "remote storage alcoholic beverage dispensing system" means a dispensing system where the alcoholic product is

stored in a single centralized location, and may have separate dispensing heads at different locations, and is capable of accounting for the amount of alcoholic product dispensed to each location.

(2) Where qualified premises have consumption areas in reasonable proximity to each other, the dispensing of alcoholic beverages may be made from the alcoholic beverage inventory of an outlet in one licensed location to patrons in either consumption area of the qualified premises subject to the following requirements:

(a) point of sale control systems must be implemented that will record the amounts of each alcoholic beverage product sold in each location;

(b) cost allocation of the alcoholic beverage product cost must be made for each location on at least a monthly or quarterly basis pursuant to the record keeping requirements of Section [32A-4-106, 32A-4-307, 32A-5-107, or 32A-10-206]32B-5-302;

(c) dispensing of alcoholic beverages to a licensed location may not be made on prohibited days or at prohibited hours pertinent to that license type;

(d) if separate inventories of liquor are maintained in one dispensing location, the storage area of each licensee's liquor must remain locked during the prohibited hours and days of sale for each license type;

(e) dispensing of alcoholic beverages to a licensed location may not be made in any manner prohibited by the statutory or regulatory operational restrictions of that license type;

(f) alcoholic beverages dispensed under this section may be delivered by servers from one outlet to the various approved consumption areas, or dispensed to each outlet through the use of a remote storage alcoholic beverage dispensing system.

(3) On qualified premises where each licensee maintains an inventory of alcoholic beverage products, the alcoholic beverages owned by each licensee may be stored in a common location in the building subject to the following guidelines:

(a) each licensee shall identify the common storage location when applying for or renewing their license, and shall receive department approval of the location;

(b) each licensee must be able to account for its ownership of the alcoholic beverages stored in the common storage location by keeping records, balanced monthly, of expenditures for alcoholic beverages supported by items such as delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers; and

(c) the common storage area may be located on the premises of one of the licensed liquor establishments.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: [February 24, 2011

Notice of Continuation: May 10, 2011

Authorizing, and Implemented or Interpreted Law: [32A-1-106(9)]32B-2-201(10); [32A-1-107]32B-2-202; [32A-1-119(5)(e)]32B-3-203(3)(c); [32A-1-702]32B-1-305; [32A-1-703]32B-1-306; [32A-1-704]32B-1-307; [32A-1-807]32B-1-607; [32A-3-103(1)(a)]32B-1-304(1)(a); [32A-4-103(1)(a)]; [32A-4-106(1)(a)]; [32A-4-203(1)(a)]; [32A-4-304(1)(a)]; [32A-4-307(1)(a)]; [32A-4-401(1)(a)]; [32A-5-103(1)(a)]; [32A-6-103(2)(a)]; [32A-7-103(2)(a)]; [32A-7-106(5)]32B-6-702; [32A-8-103(1)(a)]; [32A-8-503(1)(a)]; [32A-9-103(1)(a)]; [32A-10-203(1)(a)]; [32A-10-

~~206(14)]32B-6-805(3); [32A-10-303(1)(a)]; [32A-10-306(5)]32B-9-204(4); [32A-11-103(1)(a)]; [32A-12-212(1)(b) and (c)]32B-4-414(1)(b) and (c)~~

**Alcoholic Beverage Control,
Administration
R81-1-14
Americans With Disabilities Act
Complaint Procedure**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35053

FILED: 07/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: When the Americans With Disabilities Act (ADA) was passed by Congress in 1991, states were required to implement rules to establish ADA complaint/grievance procedures. ADA has undergone many revisions, and many of the state's ADA rules have needed updating. The proposed amendments update the DABC's grievance procedures under ADA (patterned after a rule recently enacted by the Department of Administrative Services with the assistance of the Division of Risk Management).

SUMMARY OF THE RULE OR CHANGE: This rule amendment establishes new grievance procedures under the Americans With Disabilities Act (ADA) and mainly eliminates the ADA coordinating committee that has not functioned for many years. It is patterned after a new model rule drafted by the Department of Administrative Services with the assistance of Risk Management.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-2-202

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** None--This rule amendment updates existing ADA grievance procedures and mainly eliminates the ADA coordinating committee that has not functioned for many years. There are no costs or savings involved in this rule amendment.

♦ **LOCAL GOVERNMENTS:** None--This rule amendment provides for ADA grievance procedures on the state level and does not involve local governments.

♦ **SMALL BUSINESSES:** None--This rule amendment affects individuals with a disability and does not regulate or affect small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule amendment clarifies the existing ADA grievance procedures for individuals with disabilities. There will be no cost or savings involved in clarifying these procedures for individuals.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Grievance procedures are established in the existing rule and are simply being clarified due to ADA revisions over the years. There should be no additional compliance costs for affected individuals to comply with the procedures outlined in the rule amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment updates the Department of Alcoholic Beverage Control's ADA grievance procedures due to the revisions in the American with Disabilities Act. The revisions to the procedures will have no additional fiscal impact on individuals who file a grievance.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY, UT 84104-1630
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Neil Cohen by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at ncohen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/22/2011

AUTHORIZED BY: Dennis Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-14. Americans With Disabilities Act [Complaint Procedure]Grievance Procedures.

~~[(1) Authority and Purpose. This rule is promulgated pursuant to Section 63G-3-201(3). The commission, pursuant to 28 CFR 35.107, July 1, 1992 Ed., adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, with the commission or the department.~~

~~(2) No qualified individual with a disability, by reason of disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of the commission, or department, or be subjected to discrimination by the commission or department.~~

~~(3) Definitions.~~

~~"ADA coordinator" means the commission's and department's coordinator or designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.~~

~~"ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies: Office of Planning and Budget; Department of Human Resource Management; Division of Risk Management; Division of Facilities Construction Management; and Office of the Attorney General.~~

~~"Disability" means with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of an impairment; or being regarded as having an impairment.~~

~~"Individual with a disability" means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the commission or department, or who would otherwise be an eligible applicant for vacant positions with the commission or department, as well as those who are employees of the commission or department.~~

~~"Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.~~

~~(4) Filing of Complaints.~~

~~(a) The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts; but no later than 60 days from the date of the alleged act of discrimination.~~

~~(b) The complaint shall be filed with the commission's and department's ADA coordinator in writing or in another accessible format suitable to the individual.~~

~~(c) Each complaint shall:~~

~~(i) include the individual's name and address;~~

~~(ii) include the nature and extent of the individual's disability;~~

~~(iii) describe the commission's or department's alleged discriminatory action in sufficient detail to inform the commission or department of the nature and date of the alleged violation;~~

~~(iv) describe the action and accommodation desire; and~~

~~(v) be signed by the individual or by his legal representative.~~

~~(d) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.~~

~~(5) Investigation of Complaint.~~

~~(a) The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in paragraph (4)(c) of this rule if it is not made available by the individual.~~

~~(b) When conducting the investigation, the ADA coordinator may seek assistance from the commission's or department's legal, human resource, and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve an expenditure of funds which is~~

not absorbable within the commission's or department's budget and would require appropriation authority; facility modifications; or reclassification or reallocation in grade, the ADA coordinator shall consult with the ADA State Coordinating Committee.

~~(6) Issuance of Decision.~~

~~(a) Within 15 working days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing or in another acceptable suitable format stating what action, if any, shall be taken on the complaint.~~

~~(b) If the coordinator is unable to reach a decision within the 15 working day period, he shall notify the individual with a disability in writing or by another acceptable, suitable format why the decision is being delayed and what additional time is needed to reach a decision.~~

~~(7) Appeals.~~

~~(a) The individual may appeal the decision of the ADA coordinator by filing an appeal within five working days from the receipt of the decision.~~

~~(b) Appeals involving the commission shall be filed in writing with the commission. Appeals involving the department shall be filed in writing with the department's executive director or a designee other than the ADA coordinator.~~

~~(c) The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the commission, executive director, or designee.~~

~~(d) The appeal shall describe in sufficient detail why the ADA coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.~~

~~(e) The commission, executive director, or designee, shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the ADA coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making any decision that would involve an expenditure of funds which is not absorbable within the commission's or department's budget and would require appropriation authority; facility modifications; or reclassification or reallocation in grade, the commission, executive director, or designee shall also consult with the State ADA Coordinating Committee.~~

~~(f) The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another accessible suitable format to the individual.~~

~~(g) If the commission, executive director, or designee is unable to reach a decision within the ten working day period, the individual shall be notified in writing or by another acceptable, suitable format why the decision is being delayed and the additional time needed to reach a decision.~~

~~(8) Classification of records. The record of each complaint and appeal, and all written records produced or received as part of the action, shall be classified as protected as defined under Section 63G-2-305 until the ADA coordinator, executive director, or their designees issue the decision, at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63G-2-302, or controlled as defined in Section 63G-2-304. All other information gathered as part of the complaint record shall be~~

~~classified as private information. Only the written decision of the ADA coordinator, executive director, or designees shall be classified as public information.~~

~~(9) Relationship to other laws. This rule does not prohibit or limit the use of remedies available to individuals under the state Anti-Discrimination Complaint Procedures Section 67-19-32; the Federal ADA Complaint Procedures, 28 CFR 35.170, et seq.; or any other Utah or federal law that provides equal or greater protection for the rights of individuals with disabilities.]~~

~~(1) Authority and Purpose.~~

~~(a) This rule is made under authority of Section 32B-2-202 and 63G-3-201(3). As required by 28 CFR 35.107, the Utah Department of Alcoholic Beverage Control, as a public entity that employs more than 50 persons, adopts and publishes the grievance procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act, as amended.~~

~~(b) The purpose of this rule is to implement the provisions of 28 CFR 35 which in turn implements Title II of the Americans with Disabilities Act, which provides that no individual shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the department because of a disability.~~

~~(2) Definitions.~~

~~(a) "ADA Coordinator" means the employee assigned by the executive director to investigate and facilitate the prompt and equitable resolution of complaints filed by qualified persons with disabilities. The ADA Coordinator may be a representative of the Department of Human Resource Management assigned to the Department.~~

~~(b) "Department" means the Department of Alcoholic Beverage Control.~~

~~(c) "Designee" means an individual appointed by the executive director or a director to investigate allegations of ADA non-compliance in the event the ADA Coordinator is unable or unwilling to conduct an investigation for any reason, including a conflict of interest. A designee does not have to be an employee of the department; however, the designee must have a working knowledge of the responsibilities and obligations required of employers and employees by the ADA.~~

~~(d) "Director" means the head of the division of the Department affected by a complaint filed under this rule.~~

~~(e) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.~~

~~(f) "Executive Director" means the executive director of the department.~~

~~(g) "Major life activities" include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, and working. A major life activity also includes the operation of a major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.~~

~~(h) "Qualified Individual" means an individual who meets the essential eligibility requirements for the receipt of~~

services or the participation in programs or activities provided by the Department. A "qualified individual" is also an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that individual holds or desires.

(3) Filing of Complaints.

(a) Any qualified individual may file a complaint alleging noncompliance with Title II of the Americans with Disabilities Act, as amended, or the federal regulations promulgated thereunder.

(b) Qualified individuals shall file their complaints with the Department's ADA Coordinator, unless the complaint alleges that the ADA Coordinator was non-compliant, in which case qualified individuals shall file their complaints with the Department's designee.

(c) Qualified individuals shall file their complaints within 90 days after the date of the alleged noncompliance to facilitate the prompt and effective consideration of pertinent facts and appropriate remedies; however, the Executive Director has the discretion to direct that the grievance process be utilized to address legitimate complaints filed more than 90 days after alleged noncompliance.

(d) Each complaint shall:

(i) include the complainant's name and address;

(ii) include the nature and extent of the individual's disability;

(iii) describe the department's alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;

(iv) describe the action and accommodation desired; and

(v) be signed by the complainant or by his legal representative.

(e) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

(f) If the complaint is not in writing, the ADA coordinator or designee shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

(g) By the filing of a complaint or a subsequent appeal, the complainant authorizes necessary parties to conduct a confidential review all relevant information, including records classified as private or controlled under the Government Records Access and Management Act, Utah Code, Subsection 63G-2-302(1) (b) and Section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4) (A), (B), and (C) and 42 U.S.C. Section 12112(d)(3)(B) and (C), and relevant information otherwise protected by statute, rule, regulation, or other law.

(4) Investigation of Complaints.

(a) The ADA coordinator or designee shall investigate complaints to the extent necessary to assure all relevant facts are collected and documented. This may include gathering all information listed in Subsection R81-1-14(3)(d) and (g) of this rule if it is not made available by the complainant.

(b) The ADA coordinator or designee may seek assistance from the Attorney General's staff, and the department's human resource and budget staff in determining what action, if any, should be taken on the complaint. The ADA coordinator or designee may also consult with the director of the affected division in making a recommendation.

(c) The ADA coordinator or designee shall consult with representatives from other state agencies that may be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any recommendation that would:

(i) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

(ii) require facility modifications; or

(iii) require reassignment to a different position.

(5) Recommendation and Decision.

(a) Within 15 working days after receiving the complaint, the ADA coordinator or designee shall recommend to the director what action, if any, should be taken on the complaint. The recommendation shall be in writing or in another accessible format suitable to the complainant.

(b) If the ADA coordinator or designee is unable to make a recommendation within the 15 working day period, the complainant shall be notified in writing, or in another accessible format suitable to the complainant, stating why the recommendation is delayed and what additional time is needed.

(c) The director may confer with the ADA coordinator or designee and the complainant and may accept or modify the recommendation to resolve the complaint. The director shall render a decision within 15 working days after the director's receipt of the recommendation from the ADA coordinator or designee. The director shall take all reasonable steps to implement the decision. The director's decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

(6) Appeals.

(a) The complainant may appeal the director's decision to the executive director within ten working days after the complainant's receipt of the director's decision.

(b) The appeal shall be in writing or in another accessible format reasonably suited to the complainant's ability.

(c) The executive director may name a designee to assist on the appeal. The ADA coordinator and the director's designee may not also be the executive director's designee for the appeal.

(d) In the appeal the complainant shall describe in sufficient detail why the decision does not effectively address the complainant's needs.

(e) The executive director or designee shall review the ADA coordinator's recommendation, the director's decision, and the points raised on appeal prior to reaching a decision. The executive director may direct additional investigation as necessary. The executive director shall consult with representatives from other state agencies that would be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any decision that would:

(i) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;

(ii) require facility modifications; or
(iii) require reassignment to a different position.
(f) The executive director shall issue a final decision within 15 working days after receiving the complainant's appeal. The decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

(g) If the executive director or designee is unable to reach a final decision within the 15 working day period, the complainant shall be notified in writing, or by another accessible format suitable to the complainant, why the final decision is being delayed and the additional time needed to reach a final decision.

(7) Record Classification.

(a) Records created in administering this rule are classified as "protected" under Subsections 63G-2-305(9), (22), (24), and (25).

(b) After issuing a decision under Section R81-1-14(5) or a final decision upon appeal under Section R81-1-14(6), portions of the record pertaining to the complainant's medical condition shall be classified as "private" under Subsection 63G-2-302(1)(b) or "controlled" under Section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. 12112(d)(3)(B) and (C), at the option of the ADA coordinator.

(a) The written decision of the division director or executive director shall be classified as "public," and all other records, except controlled records under Subsection R81-1-14(7)(b), classified as "private."

(8) Relationship to Other Laws. This rule does not prohibit or limit the use of remedies available to individuals under:

(a) the state Anti-Discrimination Complaint Procedures, Section 34A-5-107, and Section 67-19-32;

(b) the Federal ADA Complaint Procedures, 28 CFR 35.170 through 28 CFR 35.178; or

(c) any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: [February 24, 2011]

Notice of Continuation: May 10, 2011

Authorizing, and Implemented or Interpreted Law: [32A-1-106(9)]32B-2-201(10); [32A-1-107]32B-2-202; [32A-1-119(5)(e)]32B-3-203(3)(c); [32A-1-702]32B-1-305; [32A-1-703]32B-1-306; [32A-1-704]32B-1-307; [32A-1-807]32B-1-607; [32A-3-103(1)(a)]32B-1-304(1)(a); [32A-4-103(1)(a)]; [32A-4-106(1)(a)]; [32A-4-203(1)(a)]; [32A-4-304(1)(a)]; [32A-4-307(1)(a)]; [32A-4-401(1)(a)]; [32A-5-103(1)(a)]; [32A-6-103(2)(a)]; [32A-7-103(2)(a)]; [32A-7-106(5)]32B-6-702; [32A-8-103(1)(a)]; [32A-8-503(1)(a)]; [32A-9-103(1)(a)]; [32A-10-203(1)(a)]; [32A-10-206(14)]32B-6-805(3); [32A-10-303(1)(a)]; [32A-10-306(5)]32B-9-204(4); [32A-11-103(1)(a)]; [32A-12-212(1)(b) and (e)]32B-4-414(1)(b) and (c)

**Alcoholic Beverage Control,
 Administration
 R81-1-29
 Disclosure of Conflict of Interest**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35054

FILED: 07/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to remove this section in its entirety because the content is now in statute.

SUMMARY OF THE RULE OR CHANGE: This rule amendment removes the disclosure of conflicts of interest section because the content is now in statute.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-2-202

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** None--The regulatory provisions in the rule regarding conflicts of interest are now statutory provisions. These provisions do not affect the state's budget.
- ◆ **LOCAL GOVERNMENTS:** None--Persons affected are certain Utah Department of Alcoholic Beverage Control employees and commissioners. The removal of this section does not affect local governments.
- ◆ **SMALL BUSINESSES:** None--Persons affected are certain Utah Department of Alcoholic Beverage Control employees and commissioners. The removal of this section does not affect small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Persons affected are certain Utah Department of Alcoholic Beverage Control employees and commissioners. The removal of this section does not affect other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The amended rule removes the section with the regulatory provisions regarding conflicts of interest that are now in statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The removal of this section of the rule affects only certain Utah Department of Alcoholic Beverage Control employees and commissioners. There is no fiscal impact on businesses.

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

ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY, UT 84104-1630
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Neil Cohen by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at ncohen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO
LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/22/2011

AUTHORIZED BY: Dennis Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
~~**[R81-1-29. Disclosure of Conflicts of Interest.**~~

~~(1) Authority. This rule is pursuant to 32A-12-306 that prohibits a commissioner from having a conflict of interest in the performance of the commissioner's duties, and 67-16-9 that prohibits a public officer from having personal investments in any business entity which will create a substantial conflict between the public officer's private interests and public duties.~~

~~(2) Purpose. This rule provides procedures for a commissioner to disclose an existing or potential conflict of interest to ensure that the decisions of the commission are based on a fair process.~~

~~(3) Application of Rule.~~

~~(a) A commissioner shall disclose during a meeting of the commission any substantial existing or potential conflict of interest including the existence and nature of a professional, financial, business, or personal interest with an applicant for a license or permit or with a licensee or permittee that may impact the commission member's ability to fairly and impartially vote on a particular issue involving that applicant, licensee or permittee.~~

~~(b) A commission member who believes he has a substantial existing or potential conflict of interest that will impact the commissioner's ability to fairly and impartially vote on a particular issue shall recuse himself from voting on that issue.~~

~~(c) If a commission member discloses a substantial existing or potential conflict of interest and does not recuse himself from voting on the particular issue, the commission may, by majority vote, disqualify the commission member from participating and voting on the particular issue if the commission believes the conflict of interest is substantial and will impact the commission member's ability to fairly and impartially vote on the issue. The affected commission member may not participate in this vote.~~

~~(d) Any declaration of a conflict of interest must be recorded in the minutes of the meeting.~~

]KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: [February 24, 2011

Notice of Continuation: May 10, 2011

Authorizing, and Implemented or Interpreted Law: [32A-1-106(9)]32B-2-201(10); [32A-1-107]32B-2-202; [32A-1-119(5)(e)]32B-3-203(3)(c); [32A-1-702]32B-1-305; [32A-1-703]32B-1-306; [32A-1-704]32B-1-307; [32A-1-807]32B-1-607; [32A-3-103(1)(a)]32B-1-304(1)(a); [32A-4-103(1)(a)]; [32A-4-106(1)(a)]; [32A-4-203(1)(a)]; [32A-4-304(1)(a)]; [32A-4-307(1)(a)]; [32A-4-401(1)(a)]; [32A-5-103(1)(a)]; [32A-6-103(2)(a)]; [32A-7-103(2)(a)]; [32A-7-106(5)]32B-6-702; [32A-8-103(1)(a)]; [32A-8-503(1)(a)]; [32A-9-103(1)(a)]; [32A-10-203(1)(a)]; [32A-10-206(14)]32B-6-805(3); [32A-10-303(1)(a)]; [32A-10-306(5)]32B-9-204(4); [32A-11-103(1)(a)]; [32A-12-212(1)(b) and (e)]32B-4-414(1)(b) and (c)

**Alcoholic Beverage Control,
Administration
R81-1-30
Factors for Granting Licenses**

**NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35055
FILED: 07/14/2011**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment clarifies the factors the commission may consider when granting licenses. Because the Alcohol Beverage Control Act was recodified effective 07/01/2011 and Title 32A was replaced with Title 32B, this rule amendment changes the references from the old code 32A to the new code sections in 32B. This rule amendment renumbers this section to take the place of a removed section.

SUMMARY OF THE RULE OR CHANGE: This rule amendment clarifies the nonstatutory factors the commission may consider when granting licenses, adds a factor of whether an applicant is a small or entrepreneurial business that would benefit a community, fixes some grammatical errors, improves syntax, and changes the references from the old code 32A to the new code sections in 32B. The rule amendment also changes the number of the section from R81-1-30 to R81-1-29 to take the place of a removed section.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-2-202 and Section 32B-5-203 and Subsection 32B-2-201(10)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--This rule amendment clarifies the nonstatutory factors the commission may consider when granting licenses. There are no costs or savings to the state budget involved in this rule amendment.
- ◆ LOCAL GOVERNMENTS: None--The commission grants licenses on the state level. The state licensing process will not fiscally affect local government agencies.
- ◆ SMALL BUSINESSES: None--Many applicants for licenses are small businesses. There is no affect to these small businesses because there is no change in license fees and costs associated with applying for a license.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--There are no costs or savings that will affect other persons because they are not license applicants.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Since the license fees remain unchanged, applicants should experience no additional compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment clarifies this recently enacted section that identifies nonstatutory factors the commission may consider when granting licenses. Since the licenses are on a quota system and limited in number, these factors provide important information to prospective licensees in preparing to make presentations to the commission during the application process. Passage of this rule will not have a fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ALCOHOLIC BEVERAGE CONTROL
 ADMINISTRATION
 1625 S 900 W
 SALT LAKE CITY, UT 84104-1630
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Neil Cohen by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at ncohen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/22/2011

AUTHORIZED BY: Dennis Kellen, Director

R81. Alcoholic Beverage Control, Administration.

R81-1. Scope, Definitions, and General Provisions.

[R81-1-30]R81-1-29. Factors for Granting Licenses.

(1) Definition. For purposes of this rule, "license" includes a license, permit, certificate of approval, and package agency.

(2) Authority. This rule is pursuant to ~~[32A-1-107(1)(e)]32B-2-202(1)(c)~~ which gives the commission the authority to set policy by written rules that establish criteria and procedures for granting a license. It is also based on ~~[those statutes throughout the Alcoholic Beverage Control Act such as 32A-4-104(2)(e) that give]~~32B-5-203(2)(f) that gives the commission the authority to consider non-statutory factors or circumstances the commission considers necessary in granting a license.

(3) Purpose. This rule provides a list of non-statutory factors the commission considers in granting a license.

(4) Application of Rule. In addition to any statutory factor for granting a license, the commission also may consider the following non-statutory factors:

- (a) availability of retail licenses under ~~[the]~~a quota;
 - (b) length of time the applicant has ~~[been awaiting]~~waited for a retail license;
 - (c) the scheduled opening date;
 - (d) whether the applicant is a seasonal business;
 - (e) whether the location has been previously licensed or is a new location;
 - (f) whether the application involves a change of ownership of an existing location;
 - (g) whether the applicant holds other alcohol licenses at this or other locations;
 - (h) whether the applicant has a violation history or a pending violation;
 - (i) projected alcohol sales ~~[--]~~ as it relates to the extent to which the retail alcohol license will be utilized;
 - (j) whether the applicant is a small or entrepreneurial business that would benefit the community in which it would be located;
 - (~~h~~)(k) nature of entertainment the applicant proposes;
- and
- (~~k~~)(l) public input in support or opposition to granting the retail license.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: ~~[February 24,]~~2011

Notice of Continuation: May 10, 2011

Authorizing, and Implemented or Interpreted Law: ~~[32A-1-106(9)]32B-2-201(10); [32A-1-107]32B-2-202; [32A-1-119(5)(e)]32B-3-203(3)(c); [32A-1-702]32B-1-305; [32A-1-703]32B-1-306; [32A-1-704]32B-1-307; [32A-1-807]32B-1-607; [32A-3-103(1)(a)]32B-1-304(1)(a); [32A-4-103(1)(a)]; [32A-4-106(1)(a)]; [32A-4-203(1)(a)]; [32A-4-304(1)(a)]; [32A-4-307(1)(a)]; [32A-4-401(1)(a)]; [32A-5-103(1)(a)]; [32A-6-103(2)(a)]; [32A-7-103(2)(a)]; [32A-7-106(5)]32B-6-702; [32A-8-103(1)(a)]; [32A-8-503(1)(a)]; [32A-9-103(1)(a)]; [32A-10-203(1)(a)]; [32A-10-206(14)]32B-6-805(3); [32A-10-303(1)(a)]; [32A-10-306(5)]32B-9-204(4); [32A-11-103(1)(a)]; [32A-12-212(1)(b) and (e)]32B-4-414(1)(b) and (c)~~

**Alcoholic Beverage Control,
Administration
R81-1-30**

Draft Beer Sales/Minors on Premises

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35056

FILED: 07/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsequent to S.B. 314 passed in the 2011 General Session, Alcoholic Beverage Control reviewed all of the administrative rules and determined the need to add a section to Rule R81-1 (new Section R81-1-30) to clarify that minors may be on the premises where draft beer is sold, but not on the premises of a tavern as defined in statute and to clarify that local authorities and licensees have the ability to exclude minors from premises that have the atmosphere or appearance of a tavern.

SUMMARY OF THE RULE OR CHANGE: This rule amendment clarifies that minors are allowed on the premises where draft beer is sold, but not on the premises of a tavern as defined in statute. It also clarifies that local authorities and licensees have the authority to exclude minors from premises or portions of premises that have the atmosphere or appearance of a tavern.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-2-202 and Subsection 32B-6-706(7)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** None--This rule amendment simply clarifies where minors are allowed on licensed premises and there are no costs or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** None--If local governments regulate in this area, the process and any associated costs will be included in established ordinance making procedures. There should be no costs or savings to local governments.

◆ **SMALL BUSINESSES:** None--Many licensees are small businesses, and this amended rule is one of many regulatory rules that licensees must adhere to in the course of their normal business routines. There should be no additional costs or savings to small businesses because of this amended rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None. This rule amendment clarifies where minors may and may not be allowed on the premises or portions of licensed premises. There will be no costs or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amended rule is one of many regulatory rules that licensees must adhere to in the course of their normal business operations. There should be no additional compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amended rule will help licensees and local governments because it clarifies their ability and authority to regulate where minors can be on the portions of premises that have the atmosphere and appearance of a tavern. This is one of many regulations that licensed establishments must abide by. This rule will have no fiscal impact on businesses.

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

ALCOHOLIC BEVERAGE CONTROL

ADMINISTRATION

1625 S 900 W

SALT LAKE CITY, UT 84104-1630

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Neil Cohen by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at ncohen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/22/2011

AUTHORIZED BY: Dennis Kellen, Director

R81. Alcoholic Beverage Control, Administration.

R81-1. Scope, Definitions, and General Provisions.

R81-1-30. Draft Beer Sales/Minors on Premises.

A state license that authorizes the sale of beer on the premises also authorizes the licensee to sell beer on draft regardless of the nature of the business (e.g. cafe, restaurant, pizza parlor, bowling alley, golf course clubhouse, club, tavern, etc.). Minors may not be precluded from establishments based upon whether draft beer is sold. However, minors may not be employed by or be on the premises of any establishment or portion of an establishment which is a "tavern" as defined in Section 32B-1-102(112). This does not preclude local authorities and licensees from excluding minors from premises or portions of premises which have the atmosphere or appearance of a "tavern" as so defined.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: [February 24, 2011

Notice of Continuation: May 10, 2011

Authorizing, and Implemented or Interpreted Law: [32A-1-106(9)]32B-2-201(10); [32A-1-107]32B-2-202; [32A-1-119(5)(e)]32B-3-203(3)(c); [32A-1-702]32B-1-305; [32A-1-703]32B-1-

306; [32A-1-704]32B-1-307; [32A-1-807]32B-1-607; [32A-3-103(1)(a)]32B-1-304(1)(a); [32A-4-103(1)(a)]; [32A-4-106(1)(a)]; [32A-4-203(1)(a)]; [32A-4-304(1)(a)]; [32A-4-307(1)(a)]; [32A-4-401(1)(a)]; [32A-5-103(1)(a)]; [32A-6-103(2)(a)]; [32A-7-103(2)(a)]; [32A-7-106(5)]32B-6-702; [32A-8-103(1)(a)]; [32A-8-503(1)(a)]; [32A-9-103(1)(a)]; [32A-10-203(1)(a)]; [32A-10-206(14)]32B-6-805(3); [32A-10-303(1)(a)]; [32A-10-306(5)]32B-9-204(4); [32A-11-103(1)(a)]; [32A-12-212(1)(b) and (c)]32B-4-414(1)(b) and (c)

**Alcoholic Beverage Control,
Administration
R81-2
State Stores**

**NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35057
FILED: 07/14/2011**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsequent to legislative action, a review of the rules revealed that references to the state stamp needed to be removed from the rule. An amendment is also made to clarify the factors used in determining state store hours. This amendment also makes nonsubstantive changes subsequent to S.B. 314 (2011 General Session) which recodified the Alcoholic Beverage Control Act and replaced Title 32A with Title 32B effective 07/01/2011.

SUMMARY OF THE RULE OR CHANGE: In Section R81-2-2, removes references to the "state stamp" which was previously eliminated from the statute by S.B. 187 passed in the 2009 General Session. In Section R81-2-10, clarifies the factors the DABC may use to adjust state store hours by adding "budgetary constraints" as a factor. Nonsubstantive changes are made to other sections that change references from 32A to the new Title 32B.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-2-202

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: None--The DABC stopped using state stamps in 2009 and this amendment removes an antiquated reference to the state stamp. The department already uses "budgetary constraints" as a factor in determining state store hours, and this amendment makes the rule consistent with current practice. There are no costs or savings associated with this rule amendment.

- ◆ LOCAL GOVERNMENTS: None--State stores are operated by the DABC. This rule amendment will not fiscally affect local governments.
- ◆ SMALL BUSINESSES: None--State stores are operated by the DABC. This rule amendment will not fiscally affect small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--State stores are operated by the DABC. This rule amendment will not fiscally affect other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--There should be no additional compliance costs involved in this rule amendment. State stores are already open and operating and nothing more will be required of them by this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on businesses. It merely brings the rule in line with current practice at the DABC and state stores and changes references to the new Title 32B.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY, UT 84104-1630
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Neil Cohen by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at ncohen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/22/2011

AUTHORIZED BY: Dennis Kellen, Director

R81. Alcoholic Beverage Control, Administration.

R81-2. State Stores.

R81-2-2. Liquor Returns, Refunds and Exchanges.

(1) Purpose. This rule establishes guidelines for accepting liquor returns, refunds and exchanges.

(2) Application of Rule.

(a) Unsaleable Product. Unsaleable product includes product that is spoiled, leaking, contains foreign matter, or is otherwise defective. The department will accept for refund or exchange liquor merchandise that is unsaleable subject to the following conditions and restrictions:

(i) Returns of unsaleable merchandise are subject to approval by the store manager to verify that the product is indeed defective.

(ii) The product must be returned within a reasonable time of the date of purchase. Discontinued products may not be returned. Vintages of wine that are not currently being retailed by the department may not be returned.

~~[(iii) All returned product must have the state stamp attached to each bottle.~~

~~(iv)~~(iii) No refunds shall be given for wines returned due to spoilage such as corkiness, oxidation, and secondary fermentation, or due to the customer's unfamiliarity with the characteristics of the product. Such wines may only be exchanged for another bottle of the same product. Wine will not be accepted for refund or exchange if the return is a result of improper extraction of the cork.

(b) Saleable Product. Store managers are authorized to accept saleable returned merchandise from licensees, single event permit holders, convention groups, and individual customers, subject to the following conditions and restrictions:

(i) Returns of saleable merchandise are subject to approval by the store manager. The customer may receive a refund or exchange of product for the return. Large returns will be accepted from licensees, single event permittees, convention groups and other organizations only if prior arrangements have been made with the store manager.

(ii) Returns should be made within a reasonable amount of time from the date of purchase, and all returned merchandise must be in good condition~~[with a state stamp attached to every bottle]~~. Returns of \$50.00 or more shall not be accepted without a receipt. Therefore, it is necessary for cashiers to print a receipt for all purchases of \$50.00 or more. Signs should be posted at each cash register informing customers of this requirement. Merchandise shall be refunded at the price paid by the customer, or the current price, whichever is lower.

(iii) Wine and beer, due to their perishable nature and susceptibility to temperature changes, should be accepted back with caution. These products can only be returned if the store manager has personal knowledge of how they have been handled and stored.

(iv) If the total amount of the return is more than \$500 the store manager shall fill out a A_Returned Merchandise Acknowledgment Receipt@ (LQ-45), and submit a copy to the office. A refund check will be processed at the office and mailed to the customer. Customers need to be informed that it generally takes three to six weeks to process payment.

(v) If the total value of the returned merchandise is more than \$1,000, a 10% restocking fee shall be charged on the total amount.

(c) Unreturnable Products. The following items may not be returned:

(i) All limited item wines - wines that are available in very limited quantities.

(ii) Any products that have been chilled, over-heated, or label-damaged.

(iii) Outdated (not listed on the department's product/price list) and discontinued products.

(iv) Merchandise purchased by catering services.

(d) A cash register return receipt shall be completed for each product return. The following information must be on the

receipt: the customer's name, address, telephone number, driver's license number, and signature. The cashier must attach the receipt to the cash register closing report.

R81-2-4. Identification Guidelines to Purchase Liquor.

The department accepts only four forms of identification to establish proof of age for the purchase of liquor by customers:

(1) A current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of another state;

(2) A current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, Identification Card Act, or issued by another state that is substantially similar to this state's identification card;

(3) A current valid military identification card that includes date of birth and has a picture affixed; or

(4) A current valid passport.

If a person's age is still in question after presenting proof of age, the department may require the person to also sign a "statement of age" form as provided in ~~[32A-1-303]~~32B-1-405. The form shall be filed alphabetically by the close of the business day, and shall be maintained on file for a period of three years.

R81-2-10. State Store Hours.

(1) Sale or delivery of liquor may not be made on the premises of any state store, nor may any state store be kept open for the sale of liquor:

(a) on any day prohibited by ~~[32A-2-103(5)]~~32B-2-503(5);

(b) on any other day before 10 a.m. or later than 10 p.m.

(2) Subject to the restrictions of subsection (1), the department may adjust the sales hours for each state store based on such factors as the locality of the store, tourist traffic, demographics, population to be served, ~~[and]~~customer demand in the area, and budgetary constraints.

R81-2-11. Industry Members in State Stores.

An industry member, as defined in ~~[32A-12-601]~~32B-4-701, shall be limited to the customer areas of a state store except as follows:

(1) An industry member may be allowed in the storage area of a state store with the approval of the store manager for the limited purpose of stocking the industry member's own products; and

(2) An industry member may be allowed in the office or other suitable area of a state store with the approval of the store manager for the purpose of discussing the industry member's products.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: ~~[November 1, 2005]~~2011

Notice of Continuation: May 10, 2011

Authorizing, and Implemented or Interpreted Law: ~~[32A-1-107; 32A-1-301 to 32A-1-305]~~32B-2-202

**Alcoholic Beverage Control,
Administration
R81-3
Package Agencies**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35058

FILED: 07/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is filed to implement provisions of S.B. 314 passed in the 2011 General Session, to implement several new provisions as a direct result of the recent audit of the Eden package agency by the Office of the Legislative Auditor General; to make nonsubstantive changes that change code references from Title 32A to Title 32B as a result of the Alcoholic Beverage Control Act recodification that became effective on 07/01/2011; and to remove references to the "state stamp" on bottles as state stamps are no longer in use.

SUMMARY OF THE RULE OR CHANGE: This rule amendment clarifies the definition of a type 3 as one that is in existence for the main purpose of selling alcohol, and adds to the definition of a type 4 package agency that it may sell in other than a sealed container (by the drink) for room service as allowed by S.B. 314 and may stock mini-bottles as an alternative to service by the drink. As a result of the audit of the Eden package agency by the Office of the Legislative Auditor General, this rule amendment clarifies and updates the commission's evaluation guidelines. This rule clarifies when type 5 package agencies may operate on Sundays and holidays in accordance with the provisions in S.B. 314. This rule amendment clarifies and revises the consignment inventory management procedures as a result of the recent audit of the Eden package agency by the Office of the Legislative Auditor General. This amendment also clarifies the procedure for handling credit cards to require that consignment package agencies mail all receipts to the DABC on a weekly basis for long-term storage. This rule amendment also includes nonsubstantive changes that change code references from Title 32A to Title 32B as a result of the Alcoholic Beverage Control Act recodification that became effective on 07/01/2011, and removes references to the "state stamp" on bottles as state stamps are no longer in use.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-2-202

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There may be some revenues generated into the state's coffers since package agencies buy

their liquor from the DABC and additional sales on Sundays and legal holidays by type 5 agencies will result in income for the state. It is not possible at this point to determine what that amount may be. There may be some savings to the state as a result of the tightened consignment inventory procedures. Those savings cannot be estimated at this time.

◆ **LOCAL GOVERNMENTS:** Added sales days to type 5 package agencies may increase sales, and consequently, increase taxes paid to local governments. It is not possible to know what the tax increases may be.

◆ **SMALL BUSINESSES:** Some package agencies located in wineries, distilleries, and breweries are small businesses. Their ability to sell on Sundays and legal holidays could potentially increase revenues. What those increases will be cannot be estimated at this time. Most consignment agencies are small businesses. Tightened rules for the control of consignment inventories may result in better inventory management that may save them money. At this time, it is not possible to estimate these savings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Package agencies are operated by private persons under contracts with the state. This rule amendment will not fiscally affect other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should be no additional compliance costs associated with this amendment. These rules clarify operational procedures already required by statute and apply to package agencies that are established and in operation. Nothing more will be required of type 5 agencies to remain open on Sundays and holidays or for consignment agencies to comply with the updated inventory rules. There may be costs involved for type 4 agencies to provide room service by the drink, however room service by the drink is an option for them. Costs will vary by package agency and cannot be estimated at this time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The clarifications and revisions of policy in this rule amendment will benefit the state, local governments, and small businesses due to the tightened control measures and potential increased revenues. There also may be an increase in customer convenience and satisfaction by patrons of the package agencies, both residents and tourists alike.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY, UT 84104-1630
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Neil Cohen by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at ncohen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/22/2011

AUTHORIZED BY: Dennis Kellen, Director

R81. Alcoholic Beverage Control, Administration.

R81-3. Package Agencies.

R81-3-1. Definition.

Package agencies are retail liquor outlets operated by private persons under contract with the department for the purpose of selling packaged liquor from facilities other than state liquor stores for off premise consumption. Package agencies are classified into five types:

Type 1 - A package agency under contract with the department which is operated in conjunction with a resort environment (e.g., hotel, ski lodge, summer recreation area).

Type 2 - A package agency under contract with the department which is in conjunction with another business where the primary source of income to the operator is not from the sale of liquor.

Type 3 - A package agency under contract with the department which is not in conjunction with another business, but is in existence for the ~~sole~~ main purpose of selling liquor.

Type 4 - A package agency under contract with the department which is located within a facility approved by the commission for the purpose of selling and delivering liquor to tenants or occupants of specific rooms which have been leased, rented, or licensed within the same facility. A type 4 package agency shall not be open to the general public. A type 4 package agency may also sell liquor other than in a sealed container (i.e. by the drink) as part of room service.

Type 5 - A package agency under contract with the department which is located within a winery, distillery, or brewery that has been granted a manufacturing license by the commission.

The commission may grant type 4 package agency privileges to a type 1 package agency.

R81-3-2. Change of Location.

Any change of package agency location must be requested in writing and approved in advance by the commission.

R81-3-3. Bonds.

(1) No part of any surety bond required in Section ~~[32A-3-105]~~ 32B-2-604, may be withdrawn during the time the package agency contract is in effect. If the package agent fails to maintain a valid surety bond, the package agency contract shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in an automatic rescission of the package agency contract.

(2) A bond will be issued through the department for type 2 and 3 agencies.

R81-3-4. Change of Package Agent.

Pursuant to Section ~~[32A-3-106(17)]~~ 32B-2-606(12), any change of the package agent designated in the department's package agency agreement is a violation of these rules and shall result in the immediate termination of the package agency contract.

R81-3-5. Special Orders of Liquor by Public.

(1) Purpose. A special order product is any product not listed on the ~~[department's]~~ department's product/price list. This rule outlines the procedures for accepting, processing, ordering and disbursing special orders.

(2) Application of Rule.

(a) Only type 2 and 3 package agencies may process special order requests.

(b) Any individual may place a special order at any type 2 or 3 package agency. Special orders may be placed by groups of individuals, organizations, or retail licensees either at a type 2 or 3 package agency or with the purchasing division of the department. A special order shall be processed as follows:

(i) A special order form must be filled out and signed by the customer for each special order product purchased. The package agency shall forward the form to the department's purchasing division.

(ii) Special orders may be ordered only by the case, not by the bottle. There is no handling fee on special orders.

(iii) Customers should be advised to allow at least two months between processing and delivery of a special order.

(iv) Special orders for beer will be subject to availability and according to the distributor's shipping criteria.

(v) If a group, organization, or retail licensee places a special order, they may designate a particular package agency or state store to which they want the special order items to be sent. They shall include the name and telephone number of the individual who will pick up and pay for the special order product at that location.

(vi) A special order must include the product name and distributor or shipper.

(vii) The ~~[department's]~~ department's special order buyer shall obtain a retail bottle price and call the customer and/or package agent for clearance to proceed with the order.

(viii) When the special order arrives, the package agency or state store to which the special order has been sent shall immediately notify the customer, and the customer shall pick up the order as soon as possible after notification. The customer shall pay for and pick up the entire special order. The package agency or state store is not allowed to warehouse special ordered products. All merchandise must be cleared from the system before a reorder on that special order item is allowed.

(ix) Special orders may only be placed by customers. Package agencies may not place a special order unrelated to a particular customer as a means to sell unlisted products to the general public.

(x) Special orders of beer, wine or spirits with lower prices than quoted to the department on products handled by or similar to products handled by the department will be allowed only on two conditions:

(A) the department has the opportunity to purchase the same product at the same price; or

(B) the individual, group of individuals, organization, or retail licensee name is part of the design of the front label found on the product.

R81-3-6. Liquor Returns, Refunds and Exchanges.

(1) Purpose. This rule establishes guidelines for accepting liquor returns, refunds and exchanges.

(2) Application of Rule.

(a) Unsaleable Product. Unsaleable product includes product that is spoiled, leaking, contains foreign matter, or is otherwise defective. The department will accept for refund or exchange, liquor merchandise that is unaleable subject to the following conditions and restrictions:

(i) Returns of unaleable merchandise are subject to approval by the package agent to verify that the product is indeed defective.

(ii) The product must be returned within a reasonable time of the date of purchase. Discontinued products may not be returned. Vintages of wine that are not currently being retailed by the department may not be returned.

~~[(iii) All returned product must have the state stamp attached to each bottle.~~

~~_____~~(iv)~~[(iii)]~~ No refunds shall be given for wines returned due to spoilage such as corkiness, oxidation, and secondary fermentation, or due to the customer's unfamiliarity with the characteristics of the product. Such wines may only be exchanged for another bottle of the same product. Wine will not be accepted for refund or exchange if the return is a result of improper extraction of the cork.

(v) Unsaleable product shall be held at the package agency and accounted for in the same manner as breakage.

(b) Saleable Product. Package agents are authorized to accept saleable returned merchandise from licensees, single event permit holders, convention groups, and individual customers, subject to the following conditions and restrictions:

(i) Returns of saleable merchandise are subject to approval by the package agent. The customer may receive a refund or exchange of product for the return. Large returns will be accepted from licensees, single event permittees, convention groups and other organizations only if prior arrangements have been made with the package agent.

(ii) Returns should be made within a reasonable amount of time from the date of purchase, and all returned merchandise must be in good condition~~[with a state stamp attached to every bottle]~~. Returns of \$50.00 or more shall not be accepted without a receipt. Therefore, it is necessary for cashiers to print a receipt for all purchases of \$50.00 or more. Signs should be posted at each cash register informing customers of this requirement. Merchandise shall be refunded at the price paid by the customer, or the current price, whichever is lower.

(iii) Wine and beer, due to their perishable nature and susceptibility to temperature changes, should be accepted back with caution. These products can only be returned if the package agent has personal knowledge of how they have been handled and stored.

(iv) If the total amount of the return is more than \$500 the package agent shall fill out a "Returned Merchandise Acknowledgment Receipt" (LQ-45), and submit a copy to the

office. A refund check will be processed at the office and mailed to the customer. Customers need to be informed that it generally takes three to six weeks to process payment.

(v) If the total value of the returned merchandise is more than \$1,000, a 10% restocking fee shall be charged on the total amount.

(c) Unreturnable Products. The following items may not be returned:

(i) All limited item wines - wines that are available in very limited quantities.

(ii) Any products that have been chilled, over-heated, or label-damaged.

(iii) Outdated (not listed on the department's product/price list) and discontinued products.

(iv) Merchandise purchased by catering services.

(v) Unsaleable product shall be held at the package agency and accounted for in the same manner as breakage.

(d) A cash register return receipt shall be completed for each product return. The following information must be on the receipt: the customer's name, address, telephone number, driver's license number, and signature. The cashier must attach the receipt to the cash register closing report.

R81-3-7. Warning Sign.

All package agencies shall display in a prominent place a "warning sign" as defined in R81-1-2.

R81-3-8. Identification Guidelines to Purchase Liquor.

All package agencies shall accept only four forms of identification to establish proof of age for the purchase of liquor by customers:

(1) A current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act or in accordance with the laws of another state;

(2) A current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, Identification Card Act, or issued by another state that is substantially similar to this state's identification card;

(3) A current valid military identification card that includes date of birth and has a picture affixed; or

(4) A current valid passport.

If a person's age is still in question after presenting proof of age, the package agency may require the person to also sign a "statement of age" form as provided in ~~[32A-1-303]~~32B-1-405. The form shall be filed alphabetically by the close of business day, and shall be maintained on file for a period of three years.

R81-3-9. Promotion and Listing of Products.

(1) An operator or employee of a Type 1, 2, or 3 package agency, as defined in R81-3-1, may not promote a particular brand or type of liquor product while on duty at the package agency. An operator or employee may inform a customer as to the characteristics of a particular brand or type of liquor, provided the information is linked to a comparison with other brands or types.

(2) A package agency may not advertise alcoholic beverages on billboards except:

(a) a Type 1 package agency, as defined in R81-3-1, may provide informational signs on the premises of the hotel or resort

directing persons to the location of the hotel's or resort's Type 1 package agency;

(b) a Type 2 package agency, as defined in R81-3-1, may provide informational signs on the premises of its business directing persons to the location of the Type 2 package agency within the business; and

(c) a Type 5 package agency, as defined in R81-3-1, may advertise the location of the winery, distillery, or brewery and the Type 5 package agency, and may advertise the alcoholic beverage products produced by the winery, distillery, or brewery and sold at the Type 5 package agency under the guidelines of R81-1-17 for advertising alcoholic beverages.

(3) A package agency may not display price lists in windows or showcases visible to passersby except:

(a) a Type 1 package agency, as defined in R81-3-1, may provide a price list in each guest room of the hotel or resort containing the code, number, brand, size and price of each item it carries for sale at the Type 1 package agency;

(b) a Type 4 package agency, as defined in R81-3-1, may provide a price list of the code number, brand, size, and price of each item it carries for sale to the tenants or occupants of the specific leased, rented, or licensed rooms within the facility; and

(c) a Type 5 package agency, as defined in R81-3-1, may provide a price list on the premises of the winery, distillery, or brewery, authorized tasting room, and at the entrance of the Type 5 package agency of the code, number, brand, size, and price of each liquor item it carries for sale at the Type 5 package agency.

R81-3-10. Non-Consignment Inventory.

Type 1, 4 and 5 package agencies shall be on a non-consignment inventory status where the agency owns the inventory.

R81-3-11. Application.

An application for a package agency shall be included in the agenda of the monthly commission meeting for consideration for issuance of a package agency contract when the requirements of Sections ~~[32A-3-102, -103, and -105]~~ 32B-1-304 to 307, 32B-2-602 and -604 have been met, a completed application has been received by the department, and when the package agency premises have been inspected by the department. No application fee is required for type 2 and 3 package agency applicants.

R81-3-12. Evaluation Guidelines of Package Agencies.

(1) The commission, after considering information from the applicant for the package agency and from the department, shall determine whether the package agency shall be classified and operated as a Type 1, 2, 3, 4, or 5 package agency.

(2) After a package agency has been classified and issued, a package agent or the department may request that the commission approve a change in the classification of the package agency. Information shall be forwarded to aid in its determination. If the commission determines that the package agency should be reclassified, it shall approve the request.

(3) Type 2 and 3 package agencies shall:

(1)(a) serve a population of at least 6,000 people comprised of both permanent residents and tourists; and

(2)(b) not be established or maintained within a one mile radius of another type 2 or 3 package agency unless it can be

clearly demonstrated that it is in the best interest of the state to establish and maintain the outlet at that location~~[-and~~
~~(3) maintain a gross profit to the state of \$12,000 annually to assure adequate service to the public].~~

(4) The department shall report to the commission on package agency operations as a regular agenda item at each monthly commission meeting. Any significant issues with respect to the operations of a particular package agency shall also be reported to the commission. Recommended closure by the department of a package agency due to payment delinquencies over 30 working days, significant inventory shortages, or any other significant operational deficiencies shall be calendared for the commission's consideration at its next regular monthly meeting or at a special meeting.

R81-3-13. Operational Restrictions.

(1) Hours of Operation.

(a) Type 1, 2, and 5 package agencies may operate from 10:00 a.m. until 12:00 midnight, Monday through Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department. Type 2 agencies shall be open for business at least seven hours a day, five days a week, except where closure is otherwise required by law. Type 5 package agencies may, in the discretion of the package agent, be open as early as 8:00 a.m. for sales to licensees with the approval of the department. Type 5 package agencies may also be open on Sundays and state and federal holidays if the package agency is located at a manufacturing facility licensed by the commission and the manufacturing facility holds a full-service restaurant license, a limited-service restaurant license, or a beer-only restaurant license.

(b) Type 3 package agencies may operate from 10:00 a.m. until 10:00 p.m., Monday through Saturday, but may remain closed on Mondays in the discretion of the package agent. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department, provided the agency operates at least seven hours a day.

(c) Type 4 package agencies may operate from 10:00 a.m. until 1:00 a.m., Monday through Friday, and 10:00 a.m. until 12:00 midnight on Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department. A Type 4 package agency in a resort that is licensed under ~~[32A-4a]~~ 32B-8, may operate 24 hours a day, Monday through Sunday to provide room service to guests of the resort.

(d) Any change in the hours of operation of any package agency requires prior department approval, and shall be submitted in writing by the package agent to the department.

(e)(i) A package agency shall not operate on a Sunday or legal holiday except to the extent authorized by ~~[32A-3-106(9)]~~ 32B-2-606(13) which allows the following to operate on a Sunday or legal holiday:

(A) a package agency located in certain licensed wineries, breweries, and distilleries; and

(B) a package agency held by a resort that is licensed under ~~[32A-4a]~~ 32B-8 that does not sell liquor in a manner similar to a state store which is limited to a Type 4 package agency.

(ii) If a legal holiday falls on a Sunday, the following Monday will be observed as the holiday by a Type 2 and 3 package agency.

(2) Size of Outlet. The retail selling space devoted to liquor sales in a type 2 or 3 package agency must be at least one hundred square feet.

(3) Inventory Size. Type 2 and 3 package agencies must maintain at least fifty code numbers of inventory at a retail value of at least five thousand dollars and must maintain a representative inventory by brand, code, and size.

(4) Access to General Public. Type 1, 2, and 3 package agencies must be easily accessible to the general consuming public.

(5) Purchase of Inventory. All new package agencies, at the discretion of the department, will purchase and maintain their inventory of liquor.

R81-3-14. Type 5 Package Agencies.

(1) Purpose. A type 5 package agency is for the limited purpose of allowing a winery, distillery, or brewery to sell at its manufacturing location the packaged liquor product it actually produces to the general public for off-premise consumption. This rule establishes guidelines and procedures for type 5 package agencies.

(2) Application of Rule.

(a) The package agency must be located on the winery, distillery, or brewery premises at a location approved by the commission.

(b) The package agency may only sell products produced at the winery, distillery, or brewery, and may not carry the products of other alcoholic beverage manufacturers.

(c) The product produced by the winery, distillery, or brewery and sold in the type 5 package agency need not be shipped from the winery, distillery, or brewery to the department warehouse and then back to the package agency. The bottles for sale may be moved directly from the manufacturer's storage area to the package agency provided that proper record-keeping is maintained on forms provided by the department. Records required by the department shall be kept current and available to the department for auditing purposes. Records must be maintained for at least three years. The package agency shall submit to the department a completed monthly sales report form which specifies the variety and number of bottles sold from the package agency. This report must be submitted to the department within the first five working days of the month. A club or restaurant purchases form must be filled out for every license purchase.

(d) Direct deliveries to licensees are prohibited. Products must be purchased and picked up by the licensees or their designated agents at the Type 5 package agency.

(e) The type 5 package agency shall follow the same laws, rules, policies, and procedures applicable to other package agencies as to the retail price of products.

(f) The days and hours of sale of the type 5 package agency shall be in accordance with ~~[32A-3-106(10)]32B-2-605(13)~~ and R81-3-13.

R81-3-15. Refusal of Service.

An employee of the package agency may refuse to sell liquor to any person whom the employee has reason to believe is purchasing or attempting to purchase liquor in violation of the Utah Alcoholic Beverage Control laws. The employee may also detain the person and hold the person's form of identification in a

reasonable manner and for a reasonable length of time for the purpose of informing a peace officer of a suspected violation.

R81-3-16. Minors on Premises.

No person under the age of 21 years may enter a package agency unless accompanied by a parent, legal guardian, or spouse that is 21 years of age or older. Signs notifying the public of this rule shall be posted in a prominent place on the doors or windows of the package agency.

R81-3-17. Consignment Inventory Package Agencies.

(1) Purpose. At the discretion of the department, liquor may be provided by the department to a Type 2 and Type 3 package agency for sale on consignment pursuant to ~~[32A-3-106(2)(b)]32B-2-605(5)~~. This rule provides the procedures for such consignment sales.

(2) Application of the Rule.

(a) Consignment Inventory.

(i) The initial amount of consignment inventory furnished to the package agency shall be established by the department's ~~[regional]audit manager[assigned to the package agency]~~.

(ii) The consignment inventory amount shall be posted to the department's accounting system as "Consignment Inventory Account."

(iii) The consignment inventory amount shall be stated in the department's contract with the package agency.

(iv) Any adjustment to the consignment inventory amount shall be done through the use of a transfer, ~~[authorization]shipment~~, or payment of money. A copy of the transfer, adjusting ~~[authorization]shipment~~, or evidence of payment shall be included in the package agency's file.

(v) The consignment inventory amount may be adjusted from time to time based on the package agency's monthly average sales. Any adjustment shall be made by a properly executed amendment to the department's contract with the package agency.

(b) Payments.

(i) ~~[After receipt of a shipment of merchandise, the package agent shall submit a check to the department within 30 days of the authorization/transfer date]~~All agencies receiving shipments or transfers are required to have an ACH (Automated Clearing House) payment system set up with the department.

(ii) ~~[The check shall be annotated with the authorization, transfer and credit memo numbers to which it applies as follows: Authorization(s) + or - transfers - credit memos = check]~~Statements showing all unpaid debts and unapplied credits will be generated and mailed to the agencies on the 20th or the next available working day of each month. It is the agent's responsibility to review the statement and contact the department with any discrepancies prior to due date of payment.

(iii) ~~[All delivery discrepancies shall be resolved immediately by contacting the department's warehouse shipping manager. Payment shall be made on all authorizations/transfers by their due date whether or not any discrepancies have been resolved]~~Agents will remit payment to the department on the 19th or next available working day of the following month after the last statement was generated. Payment will be for the statement total. Payment will be automatically drawn through the ACH process on the due date unless prior arrangements have been made between the agent and the department.

(iv) ~~[Any returned checks to the department from a package agent is grounds to require the package agent to provide a certified check to pay for future shipments]~~Insufficient funds, returned checks, and unpaid balances from a previous statement are all past due. The department may assess the legal rate of interest on the amount owed. Also, the package agency may be referred to the commission for possible termination of the contract and closure.

(v) ~~[If a check for an authorization is not received by the department within 30 days of its due date, the department may assess the legal rate of interest on the amount owed, or may terminate the contract with the package agent and close the package agency]~~All delivery discrepancies shall be resolved through the use of the LO9 form. Debits or credits shall be issued based on proper completion and submission of the LO9 form to the department. Payment shall be made in accordance with the agency's statement by the due date whether or not any discrepancies have been resolved.

(c) Transfers.

(i) Transfers (+ or -) shall be adjusted to the package agency's next payment due the department.

(ii) Transfer in will add to the amount owed to the department on the next check due to the department.

(iii) Transfer out will subtract from the amount owed to the department on the next check due to the department.

(d) Credit and Debit Card Credits.

(i) Credit for credit and debit cards processed at the agency will be posted to the agency's statement.

(ii) It is the agent's responsibility to mail in their settlement report and individual receipts to the department in order to receive credit.

~~(d)~~(e) Audits.

(i) Any package agency that is on a consignment contract shall keep a daily log of sales.

(ii) The ~~[regional manager]~~auditing division shall audit the package agency at least ~~[once every six months]~~twice each fiscal year.

(iii) The package agency is subject to a department audit at any time.

R81-3-18. Type 4 Package Agency Room Service - Mini-Bottle/187 ml Wine Sales.

(1) Purpose. Pursuant to ~~[32A-1-116]~~32B-2-303, the department may not purchase or stock alcoholic beverages in containers smaller than 200 milliliters, except as otherwise allowed by the commission. The commission hereby allows the limited use of 50 milliliter "mini-bottles" of distilled spirits and 187 milliliter bottles of wine ~~[for]~~as one form of room service sales by Type 4 package agencies located in hotels and resorts. The following conditions are imposed to ensure that these smaller bottle sales are limited to patrons of sleeping rooms, and are not offered to the general public.

(2) Application of Rule.

(a) The department will not maintain a regular inventory of distilled spirits and wine in the smaller bottle sizes, but will

accept special orders for these products from a Type 4 package agency. Special orders may be placed with the department's purchasing division, any state store, or any Type 2 or 3 package agency.

(b) The Type 4 package agency must order in full case lots, and all sales are final.

(c) If the hotel/resort has a Type 1 package agency with Type 4 privileges, the smaller bottle sized products must be stored in a secure area separate from the Type 1 agency inventory.

(d) Sale and use of alcohol in the smaller bottle sizes is restricted to providing one form of room service to guests in sleeping rooms in the hotel/resort, and may not be used for other purposes, or be sold to the general public.

(e) Failure of the Type 4 package agency to strictly adhere to the provisions of this rule is grounds for the department to terminate its contract with the Type 4 package agency.

R81-3-19. Credit Cards.

(1) Purpose. This rule explains the procedures to be followed by consignment package agents in accepting credit cards for the purchase of alcoholic beverages.

(2) Application of Rule.

(a) Licensee purchases may not be paid by credit card. The department will accept only checks and cash from licensees.

(b) Refunds, or exchanges of products of unequal value, will be handled by crediting the customer's credit card account. The cash register must be balanced by doing a return at the register.

(c) The cashier, when applicable, shall examine the security features of the card such as signatures, account numbers, expiration date, hologram, etc., before accepting any card.

(d) No sale may be made without the credit card. Merely having the credit card number available is not acceptable.

(e) All credit cards must be signed by the card holder.

(f) Customers may not use another person's credit card, including their spouse's card.

(g) Credit card receipts contain confidential information that needs to be safeguarded. Cashiers should not throw them in the trash. Consignment package agents and their employees should consult their ~~[regional]~~audit manager concerning proper storage and disposal of such receipts. Package agents will mail all receipts to the department on a weekly basis for long term storage.

(h) If for any reason the credit card cannot be scanned, the credit card number should be hand keyed into the credit card machine keyboard. ~~[An imprinted copy of the credit card must then be made. The imprinted copy must be signed by the card holder.]~~Validate the card with an ID and have the customer sign the printout or electronic pad.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: ~~[February 24, 2011]~~

Notice of Continuation: **May 10, 2011**

Authorizing, and Implemented or Interpreted Law: ~~[32A-1-107; 32A-3-106(9)(e)(iii)]~~32B-2-202

**Alcoholic Beverage Control,
Administration
R81-4A
Restaurant Liquor Licenses**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35059

FILED: 07/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement S.B. 314 which was passed in the 2011 General Session.

SUMMARY OF THE RULE OR CHANGE: This rule amendment clarifies that the newly created "recreational amenity" on-premise beer license is the type of license that a restaurant liquor licensee may operate as a "dually licensed" premises during certain sequential periods of the day or night. The rule amendment also clarifies procedures in handling licensees who do not meet the 70% food requirement. The rule amendment also makes nonsubstantive changes regarding statutory references subsequent to the recodification the Alcoholic Beverage Control Act that replaced Title 32A with Title 32B effective 07/01/2011.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-2-202 and Section 32B-6-202 and Subsection 32B-5-303(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** None--This rule clarifies operational procedures that are already in place for existing beer and restaurant licensees. There are no costs or savings involved in this rule amendment.

◆ **LOCAL GOVERNMENTS:** None--The requirements in this rule are regulated by state government and do not affect local governments.

◆ **SMALL BUSINESSES:** None--Many licensees are small businesses that are already operating under the rules that are being clarified by this amendment. There will be no additional costs or savings associated with this amended rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--These rules affect licensed businesses and there is no affect on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amended rule is one of many regulations that licensees must abide by in the course of their normal business operations. There should be no additional compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amended rule clarifies some of the regulations that beer and liquor licensees operate under on an ongoing basis. This rule will have no fiscal impact on these businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY, UT 84104-1630
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Neil Cohen by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at ncohen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/22/2011

AUTHORIZED BY: Dennis Kellen, Director

R81. Alcoholic Beverage Control, Administration.

R81-4A. Restaurant Liquor Licenses.

R81-4A-1. Licensing.

(1) Restaurant liquor licenses are issued to persons as defined in Section ~~[32A-1-105(44)]~~32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections ~~[32A-4-102(3), 32A-4-103, and 32A-4-106(25)]~~32B-5-310.

(2) A restaurant liquor licensee that wishes to operate the same licensed premises under the operational restrictions of ~~[a]~~a recreational amenity on-premise beer retailer during certain designated periods of the day or night, must apply for and be issued a separate recreational amenity on-premise beer retailer license subject to the following:

(a) The same restaurant licensee must separately apply for a state recreational amenity on-premise beer retailer license pursuant to the requirements of Sections ~~[32A-10-202, -203, and -205]~~32B-5-201, -202 and 32B-6-702 through -705.

(b) Licensees applying for dually licensed premises must notify the department of the time periods under which each license will be operational at the time application is made. Changes must be requested in writing and approved in advance by the department. Licensees may operate sequentially under either license, but not concurrently.

(c) Restaurant liquor licensees holding a separate recreational amenity on-premise beer retailer license must operate in accordance with ~~[32A-10-206]~~32B-6-706 and R81-10A during the hours the on-premise beer retailer license is active.

(d) Liquor storage areas on the restaurant premises shall be deemed to remain on the floor plan of the restaurant premises and shall be kept locked during the hours the recreational amenity on-premise beer retailer license is active.

R81-4A-2. Application.

(1) Except as provided in Subsection (2), a license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a restaurant license when the requirements of Sections ~~[32A-4-102, -103, and -105]~~32B-1-304, 32B-5-201, -204 and 32B-6-204 have been met, a completed application has been received by the department, and the restaurant premises have been inspected by the department.

(2) Subsection (1) does not preclude the commission from considering an application for a conditional restaurant license under the terms and conditions of ~~[32A-4-107(5)]~~32B-5-205.

R81-4A-3. Bonds.

No part of any corporate or cash bond required by Section ~~[32A-4-105]~~32B-5-204 and 32B-6-204(4), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4A-4. Insurance.

Public liability and dram shop insurance coverage required in Section ~~[32A-4-102(1)(h) and (i)]~~32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4A-5. Restaurant Liquor Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when a restaurant liquor licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

- (i) the bottle has not been opened;
 - (ii) the seal remains intact;
 - (iii) the label remains intact; and
 - (iv) upon a showing of the original cash register receipt.
- (b) A restocking fee of 10% shall be assessed on the

entire amount on any returned spirituous liquor order that exceeds \$1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-4A-6. Restaurant Liquor Licensee Operating Hours.

Allowable hours of liquor sales shall be in accordance with Section ~~[32A-4-106(9)]~~32B-6-205(6). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4A-7. Sale and Purchase of Alcoholic Beverages.

(1) Alcoholic beverages (including light beer) must be sold in connection with an order for food placed and paid for by a patron. An order for food may not include food items gratuitously provided by the restaurant to patrons. A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab, as provided in Section ~~[32A-4-106(26)]~~32B-6-205(4), shall be commenced upon the patron's first purchase and shall be maintained by the restaurant during the course of the patron's stay at the restaurant regardless of where the patron orders and consumes an alcoholic beverage.

(2) The restaurant shall maintain at least 70% of its total business from the sale of food pursuant to Section ~~[32A-4-106(23)]~~32B-6-205(7).

(a) The restaurant shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(b) If any inspection or audit discloses that the sales of food are less than 70% for any quarterly period, ~~[an order to show cause shall be issued by the department to determine why the license should not be immediately suspended by the commission. Any suspension shall remain in effect until the licensee is able to prove to the satisfaction of the commission that in the future, the sales of food will meet or exceed 70%]~~the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed 70%. Failure of the licensee to provide satisfactory proof of the required food percentage within ~~[three months of the date the license was suspended;]~~the probationary period shall result in ~~[the revocation of the license]~~issuance of an order to show cause by the department to

determine why the license should not be revoked by the commission.

(3) Liquor dispensing shall be in accordance with Section 32A-4-106; Section R81-1-9 (Liquor Dispensing Systems), and Section R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

R81-4A-14. Brownbagging.

When private [~~social functions or privately hosted~~] events, as defined in [~~32A-1-105(47)]32B-1-102(77), are held on the premises of a licensed restaurant, the proprietor may, in his or her discretion, allow members of the private group to bring onto the restaurant premises, their own alcoholic beverages under the following circumstances:~~

(1) When the entire restaurant is closed to the general public for the private [~~function or~~] event, or

(2) When an entire room or area within the restaurant such as a private banquet room is closed to the general public for the private [~~function or~~] event, and members of the private group are restricted to that area, and are not allowed to co-mingle with public patrons of the restaurant.

R81-4A-15. Grandfathered Bar Structures.

(1) Authority and Purpose.

(a) This rule is pursuant to [~~32A-4-106(7)(a)(i)]32B-6-202 which provides that:~~

(i) a bar structure, as defined in [~~32A-1-105(4)]32B-1-102(7), located in a currently licensed restaurant as of May 11, 2009, may be "grandfathered" to allow alcoholic beverages to continue to be stored or dispensed at the bar structure, and in some instances to be served to an adult patron seated at the bar structure;~~

(ii) a bar structure in a restaurant that is not operational as of May 12, 2009, may be similarly "grandfathered" if, as of May 12, 2009:

(A) a person has applied for a restaurant license from the commission;

(B) the person is "actively engaged in the construction of the restaurant" as defined by commission rule; and

(C) the person is granted a restaurant liquor license by the commission no later than December 31, 2009.

(b) This rule is also pursuant to [~~32A-4-106(7)(a)(ii)]32B-6-202 which provides that:~~

(i) a "grandfathered bar structure" is no longer "grandfathered" once the restaurant "remodels the grandfathered bar structure"; and

(ii) the commission shall define by rule what is meant by "remodels the grandfathered bar structure".

(2) Application of Rule.

(a) "Actively engaged in the construction of the restaurant" for purposes of [~~32A-4-106(7)(a)(i)(B)(1)(Bb) and 32A-4-106(7)(a)(ii)]32B-6-202(1)(a)(ii)(A)(I) means that:~~

(i) a building permit has been obtained to build the restaurant; and

(ii) a construction contract has been executed and the contract includes an estimated date that the restaurant will be completed; or

(iii) work has commenced by the applicant on the construction of the restaurant and a good faith effort is made to complete the construction in a timely manner.

(b) "remodels the grandfathered bar structure" for purposes of [~~32A-4-106(7)(a)(ii)]32B-6-202(1)(b) means that:~~

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons.

(c) "remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to [~~32A-4-106(6)]32B-5-303(3), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the department to determine whether it is:~~

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: [June 24, 2009]2011

Notice of Continuation: May 10, 2011

Authorizing, and Implemented or Interpreted Law: [32A-1-107; ~~32A-4-106(7)(a)(i)(B)(1)(Bb); 32A-4-106(7)(a)(ii)]32B-2-202; 32B-5-303(3); 32B-6-202~~

**Alcoholic Beverage Control,
Administration**

R81-4C

Limited Restaurant Licenses

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35060

FILED: 07/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement S.B. 314 which was passed in the 2011 General Session.

SUMMARY OF THE RULE OR CHANGE: This rule amendment clarifies that the newly created "recreational amenity" on-premise beer license is the type of license that a limited restaurant liquor licensee may operate as a "dually licensed" premises during certain sequential periods of the day or night. The rule amendment also clarifies procedures in handling licensees who do not meet the 70% food requirement and clarifies the "brownbagging" regulations. The rule amendment also makes nonsubstantive changes regarding statutory references subsequent to the recodification the Alcoholic Beverage Control Act that replaced Title 32A with Title 32B effective 07/01/2011.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-2-202 and Section 32B-6-202 and Subsection 32B-5-303(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** None--This rule clarifies operational procedures that are already in place for existing beer and limited restaurant licensees. There are no costs or savings involved in this rule amendment.
- ◆ **LOCAL GOVERNMENTS:** None--The requirements in this rule are regulated by state government and do not affect local governments.
- ◆ **SMALL BUSINESSES:** None--Many licensees are small businesses that are already operating under the rules that are being clarified by this amendment. There will be no additional costs or savings associated with this amended rule.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rules only affect licensed businesses and there is no affect on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amended rule is one of many regulations that licensees must abide by in the course of their normal business operations. There should be no additional compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amended rule clarifies some of the regulations that beer and liquor licensees operate under on an ongoing basis. This rule will have no fiscal impact on these businesses.

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

ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY, UT 84104-1630
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Neil Cohen by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at ncohen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/22/2011

AUTHORIZED BY: Dennis Kellen, Director

R81. Alcoholic Beverage Control, Administration.

R81-4C. Limited Restaurant Licenses.

R81-4C-1. Licensing.

(1) Limited restaurant licenses are issued to persons as defined in Section ~~[32A-1-105(44)]~~32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections ~~[32A-4-303(3), 32A-4-304, and 32A-4-307(25)]~~32B-5-310.

(2) A limited restaurant license that wishes to operate the same licensed premises under the operational restrictions of ~~[an]~~a recreational amenity on-premise beer retailer during certain designated periods of the day or night, must apply for and be issued a separate recreational amenity on-premise beer retailer license subject to the following:

(a) The same limited restaurant licensee must separately apply for a state on-premise beer retailer license pursuant to the requirements of Sections ~~[32A-10-202, -203, and -205]~~32B-5-201, -202 and 32B-6-702 to -705.

(b) Licensees applying for dually licensed premises must notify the department of the time periods under which each license will be operational at the time application is made. Changes must be requested in writing and approved in advance by the department. Licensees may operate sequentially under either license, but not concurrently.

(c) Limited restaurant licensees holding a separate recreational amenity on-premise beer retailer license must operate in accordance with ~~[32A-10-206]~~32B-6-706 and R81-10A during the hours the on-premise beer retailer license is active.

(d) Liquor storage areas on the limited restaurant premises shall be deemed to remain on the floor plan of the limited restaurant premises and shall be kept locked during the hours the recreational amenity on-premise beer retailer license is active.

R81-4C-2. Application.

(1) Except as provided in Subsection (2), a license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a limited restaurant license when the requirements of Sections ~~[32A-4-303, -304, and -306]~~32B-1-304, 32B-5-201, -204, and 32B-6-304 have been met, a completed application has been received by the department, and the limited restaurant premises have been inspected by the department.

(2) Subsection (1) does not preclude the commission from considering an application for a conditional limited restaurant license under the terms and conditions of ~~[32A-1-107(5)]~~32B-5-205.

R81-4C-3. Bonds.

No part of any corporate or cash bond required by Section ~~[32A-4-306]~~32B-5-204 and 32B-6-304(4), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4C-4. Insurance.

Public liability and dram shop insurance coverage required in Section ~~[32A-4-303(1)(h) and (i)]~~32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4C-6. Limited Restaurant Licensee Operating Hours.

Allowable hours of wine and heavy beer sales shall be in accordance with Section ~~[32A-4-307(9)(a)]~~32B-6-305(6). However, the licensee may open the wine and heavy beer storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4C-7. Sale and Purchase of Alcoholic Beverages.

(1) Alcoholic beverages (including beer) must be sold in connection with an order for food placed and paid for by a patron. An order for food may not include food items gratuitously provided by the limited restaurant to patrons. A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab, as provided in Section ~~[32A-4-307(26)]~~32B-6-305(4), shall be commenced upon the patron's first purchase and shall be maintained by the limited restaurant during the course of the patron's stay at the limited restaurant regardless of where the patron orders and consumes an alcoholic beverage.

(2) The limited restaurant shall maintain at least 70% of its total business from the sale of food pursuant to Section ~~[32A-4-307(23)]~~32B-6-305(7).

(a) The limited restaurant shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, wine, and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(b) If any inspection or audit discloses that the sales of food are less than 70% for any quarterly period, ~~[an order to show cause shall be issued by the department to determine why the license should not be immediately suspended by the commission. Any suspension shall remain in effect until the licensee is able to prove to the satisfaction of the commission that in the future, the sales of food will meet or exceed 70%]the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed 70%.~~ Failure of the licensee to provide satisfactory proof of the required food percentage within ~~[three months of the date the license was suspended,]the probationary period shall result in [the revocation of~~

~~the license]issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.~~

(3) Wine dispensing shall be in accordance with Section ~~[32A-4-307]~~32B-5-304(2); and R81-1-11 (Multiple-Licensed Facility Storage and Service) of these rules.

R81-4C-13. Brownbagging.

When private events, as defined in 32B-1-102(77), are held on the premises of a licensed limited restaurant, the proprietor may, in his or her discretion, allow members of the private group to bring onto the restaurant premises, their own wine, heavy beer or beer under the following circumstances:

(1) When the entire limited restaurant is closed to the general public for the private event, or

(2) When an entire room or area within the limited restaurant such as a private banquet room is closed to the general public for the private event, and members of the private group are restricted to that area, and are not allowed to co-mingle with public patrons of the restaurant.

~~[R81-4C-13]~~R81-4C-14. Grandfathered Bar Structures.

(1) Authority and Purpose.

(a) This rule is pursuant to ~~[32A-4-307(7)(a)(i)]~~32B-6-302 which provides that:

(i) a bar structure, as defined in ~~[32A-1-105(4)]~~32B-1-102(7), located in a currently licensed limited restaurant as of May 11, 2009, may be "grandfathered" to allow alcoholic beverages to continue to be stored or dispensed at the bar structure, and in some instances to be served to an adult patron seated at the bar structure;

(ii) a bar structure in a limited restaurant that is not operational as of May 12, 2009, may be similarly "grandfathered" if, as of May 12, 2009:

(A) a person has applied for a limited restaurant license from the commission;

(B) the person is "actively engaged in the construction of the restaurant" as defined by commission rule; and

(C) the person is granted a limited restaurant liquor license by the commission no later than December 31, 2009.

(b) This rule is also pursuant to ~~[32A-4-307(7)(a)(ii)]~~32B-6-302 which provides that:

(i) a "grandfathered bar structure" is no longer "grandfathered" once the limited restaurant "remodels the grandfathered bar structure"; and

(ii) the commission shall define by rule what is meant by "remodels the grandfathered bar structure".

(2) Application of Rule.

(a) "Actively engaged in the construction of the restaurant" for purposes of ~~[32A-4-307(7)(a)(i)(B)(I)(Bb) and 32A-4-307(7)(a)(ii)]~~32B-6-302(1)(a)(ii)(A)(I) means that:

(i) a building permit has been obtained to build the restaurant; and

(ii) a construction contract has been executed and the contract includes an estimated date that the restaurant will be completed; or

(iii) work has commenced by the applicant on the construction of the restaurant and a good faith effort is made to complete the construction in a timely manner.

(b) "remodels the grandfathered bar structure" for purposes of [~~32A-4-307(7)(a)(ii)~~]32B-6-302(1)(b) means that:

(i) the grandfathered bar structure has been altered or reconfigured to:

(A) extend the length of the existing structure to increase its seating capacity; or

(B) increase the visibility of the storage or dispensing area to restaurant patrons.

(c) "remodels the grandfathered bar structure" does not:

(i) preclude making cosmetic changes or enhancements to the existing structure such as painting, staining, tiling, or otherwise refinishing the bar structure;

(ii) preclude locating coolers, sinks, plumbing, cooling or electrical equipment to an existing structure; or

(iii) preclude utilizing existing space at the existing bar structure to add additional seating.

(d) Pursuant to [~~32A-4-307(6)~~]32B-5-303(3), the licensee must first apply for and receive approval from the department for a change of location where alcohol is stored, served, and sold other than what was originally designated in the licensee's application for the license. Thus, any modification of the alcoholic beverage storage and dispensing area at a "grandfathered bar structure" must first be reviewed and approved by the department to determine whether it is:

(i) an acceptable use of an existing bar structure; or

(ii) a remodel of a "grandfathered bar structure".

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment:
~~September 1, 2010~~**2011**

Notice of Continuation: July 31, 2008

Authorizing, and Implemented or Interpreted Law: [~~32A-1-107; 32A-4-307(7)(a)(i)(B)(1)(Bb); 32A-4-407(7)(a)(ii)~~]32B-2-202; 32B-5-303(3); 32B-6-202

**Alcoholic Beverage Control,
Administration
R81-4D
On-Premise Banquet License**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 35061
FILED: 07/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement S.B. 314 which was passed in the 2011 General Session.

SUMMARY OF THE RULE OR CHANGE: This rule amendment clarifies the room service procedures for on-premise banquet licensees that may sell in other than a sealed container (by the drink) as allowed by S.B. 314 and may stock mini bottles as an alternative to service by the drink. The rule amendment also makes nonsubstantive changes regarding statutory references subsequent to the recodification the Alcoholic Beverage Control Act that replaced Title 32A with Title 32B effective 07/01/2011.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-2-202

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** None--This rule clarifies operational procedures for existing beer and restaurant licensees. There are no state budget costs or savings involved in this rule amendment.

◆ **LOCAL GOVERNMENTS:** None--The requirements in this rule are regulated by state government and do not affect local governments.

◆ **SMALL BUSINESSES:** None--Many licensees are small businesses that are already operating under the rules that are being clarified by this amendment. There will be no additional costs or savings associated with this amended rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rules only affect licensed businesses and there is no affect on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amended rule is one of many regulations that licensees must abide by in the course of their normal business operations. There should be no additional compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amended rule clarifies some of the regulations that on-premise banquet licensees are already operating under on an ongoing basis. This rule will have no fiscal impact on these businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY, UT 84104-1630
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Neil Cohen by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at ncohen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/22/2011

AUTHORIZED BY: Dennis Kellen, Director

R81. Alcoholic Beverage Control, Administration.

R81-4D. On-Premise Banquet License.

R81-4D-1. Licensing.

(1) An on-premise banquet license may be issued only to a hotel, resort facility, sports center or convention center as defined in this rule. An on-premise banquet sublicense may be issued to a resort licensee pursuant to ~~[32A-4a]~~32B-6-601 to -604. Any reference in the rules in this chapter 4D to an on-premise banquet license or licensee shall be interpreted as including an on-premise banquet sublicense or sublicense.

(a) "Hotel" is a commercial lodging establishment:

(i) that offers temporary sleeping accommodations for compensation;

(ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iii) that has adequate kitchen or culinary facilities on the premises of the hotel to provide complete meals; and

(iv) that has at least 1000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 75 people, provided that in cities of the third, fourth or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(b) "Resort facility" is a publicly or privately owned or operated commercial recreational facility or area:

(i) that is designed primarily to attract and accommodate people to a recreational or sporting environment;

(ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iii) that has adequate kitchen or culinary facilities on the premises of the resort to provide complete meals; and

(iv) that has at least 1500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(c) "Sports center" is a publicly or privately owned or operated facility:

(i) that is designed primarily to attract people to and accommodate people at sporting events;

(ii) that has a fixed seating capacity for more than 2,000 persons;

(iii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iv) that has adequate kitchen or culinary facilities on the premises of the sports center to provide complete meals; and

(v) that has at least 2500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the

commission shall have the authority to waive the minimum function space size requirements.

(d) "Convention center" is a publicly or privately owned or operated facility:

(i) the primary business or function of which is to host conventions, conferences, and food and beverage functions under a banquet contract;

(ii) that has adequate kitchen or culinary facilities on the premises of the convention center to provide complete meals;

(iii) that is in total at least 30,000 square feet ~~[unless]~~or until October 31, 2011 the facility is a "grandfathered facility" under ~~[32A-4-401(8)]~~32B-6-603(4); and

(iv) that has at least 3000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated counties, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(2)(a) A "banquet contract" as used in this rule means an agreement between an on-premise banquet licensee and a host of a banquet to provide alcoholic beverage services at a meal, reception, or other private banquet function at a defined location on a specific date and time for a pre-arranged, guaranteed number of attendees at a negotiated price.

(b) Each "banquet contract" shall:

(i) clearly define the location of the private banquet function;

(ii) require that the private banquet function be separate from other areas of the facility that are open to the general public; and

(iii) require signage at or near the entrance to the private banquet function to indicate that the location has been reserved for a specific group.

(3) On-premise banquet licenses are issued to persons as defined in Section ~~[32A-1-105(44)]~~32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections ~~[32A-4-402(4), 32A-4-403, and 32A-4-406(24)]~~32B-5-310.

R81-4D-2. Application.

(1) A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of an on-premise banquet license when the requirements of Sections ~~[32A-4-402, 403, and 405]~~32B-1-304, 32B-5-204, and 32B-6-604 have been met, a completed application has been received by the department, and the on-premise banquet premises have been inspected by the department.

(2)(a) The application shall include a floor plan showing the locations of function space in or on the applicant's business premises that may be reserved for private banquet functions where alcoholic beverages may be stored, sold or served, and consumed. Hotels shall also indicate the number of sleeping rooms where room service will be provided and include a sample floor plan of a guest room level. No application will be accepted that merely designates

the entire hotel, resort, sports center or convention center facility as the proposed licensed premises.

(b) Pursuant to ~~[32A-4-402(2) and 32A-4-406(4)]~~32B-6-604(6) after an on-premise banquet license has been issued, the licensee may apply to the department for approval of additional locations in or on the premises of the hotel, resort, sports center or convention center that were not included in the licensee's original application. The additional locations must:

- (i) be clearly defined;
- (ii) be configured to ensure separation between any private banquet function and other areas of the facility that are open to the general public; and
- (iii) be configured to ensure compliance with all operational restrictions with respect to the sale, storage, and consumption of alcoholic beverages required by ~~[32A-4-406]~~32B-5-301 to -308 and 32B-6-605.

R81-4D-3. Bonds.

No part of any corporate or cash bond required by Section ~~[32A-4-405]~~32B-5-204 and 32B-6-604(5)(d), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4D-4. Insurance.

Public liability and dram shop insurance coverage required in Section ~~[32A-4-402(1)(a)(ix)]~~32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4D-6. On-Premise Banquet Licensee Operating Hours.

Allowable hours of alcoholic beverage sales shall be in accordance with Section ~~[32A-4-406(7)]~~32B-6-605(8). However, the licensee may open the alcoholic beverage storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4D-7. Sale and Purchase of Alcoholic Beverages.

Liquor dispensing shall be in accordance with Section ~~[32A-4-406;]~~32B-5-304 and Section R81-1-9 (Liquor Dispensing Systems) of these rules.

R81-4D-13. On-Premise Banquet License Room Service - Mini-Bottle/187 ml Wine Sales.

(1) Purpose. Pursuant to ~~[32A-1-116]~~32B-2-303, the department may not purchase or stock alcoholic beverages in containers smaller than 200 milliliters, except as otherwise allowed by the commission. The commission hereby allows the limited use of 50 milliliter "mini-bottles" of distilled spirits and 187 milliliter bottles of wine ~~[for]~~ as one form of room service sales by on-premise banquet licensees located in hotels and resorts. The following conditions are imposed to ensure that these smaller bottle sales are limited to patrons of sleeping rooms, and are not offered to the general public.

- (2) Application of Rule.

(a) The department will not maintain a regular inventory of distilled spirits and wine in the smaller bottle sizes, but will accept special orders for these products from an on-premise banquet licensee. Special orders may be placed with the ~~[department's]~~department's purchasing division, any state store, or any Type 2 or 3 package agency.

(b) The on-premise banquet licensee must order in full case lots, and all sales are final.

(c) Sale and use of alcohol in the smaller bottle sizes is restricted to providing one form of room service to guests in sleeping rooms in the hotel/resort, and may not be used for other banquet catering services, or be sold to the general public.

(d) Failure of the on-premise banquet licensee to strictly adhere to the provisions of this rule is grounds for the department to take disciplinary action against the on-premise banquet licensee.

R81-4D-14. Reporting Requirement.

(1) Authority. This rule is pursuant to the commission's powers and duties under ~~[32A-1-107]~~32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored, and pursuant to ~~[32A-4-406(21)]~~32B-6-605(3).

(2) Purpose. This rule implements the requirement of 32A-4-406(21) that requires the commission to provide by rule procedures for on-premise banquet licensees or sublicensees to report scheduled banquet events to the department to allow random inspections of banquets by authorized representatives of the commission, the department, or by law enforcement officers to monitor compliance with the alcoholic beverage control laws.

(3) Application of the Rule.

(a) An on-premise banquet licensee and an on-premise banquet sublicense licensed under ~~[32A-4a]~~32B-8 shall file with the department at the beginning of each quarter a report containing advance notice of events ~~[or functions]~~ that have been scheduled as of the reporting date for that quarter to be held under a banquet contract as defined in R81-4D-1.

(b) The quarterly reports are due on or before January 1, April 1, July 1, and October 1 of each year and may be hand-delivered or submitted by mail or electronically.

(c) Each report shall include the name and specific location of each event.

(d) The department shall make copies of the reports available to a commissioner, authorized representative of the department, and any law enforcement officer upon request to be used for the purpose stated in Section (2).

(e) The department shall retain a copy of each report until the end of each reporting quarter.

(f) Because any report filed under this rule contains commercial information, the disclosure of which could reasonably be expected to result in unfair competitive injury to the licensee or sublicensee submitting the information, and the licensee or sublicensee submitting the information has a greater interest in prohibiting access than the public in obtaining access to the report:

(i) any report filed shall be deemed to include a claim of business confidentiality, and a request that the report be classified as protected pursuant to 63G-2-305 and -309;

- (ii) any report filed shall be classified by the department as protected pursuant to 63G-2-305; and
- (iii) any report filed shall be used by the department and law enforcement only for the purposes stated in this rule.
- (g) Failure of an on-premise banquet licensee or sublicensee to timely file the quarterly reports may result in disciplinary action pursuant to ~~[32A-1-119, 32A-4-406]~~32B-3-201 to -207, and R81-1-6 and -7.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~January 26, 2010~~2011
Notice of Continuation: July 31, 2008
Authorizing, and Implemented or Interpreted Law: [~~32A-1-107~~32B-2-202

**Alcoholic Beverage Control,
 Administration
 R81-4F
 Reception Center License**

NOTICE OF PROPOSED RULE
 (New Rule)
 DAR FILE NO.: 35062
 FILED: 07/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is proposed to implement the new reception center license created in S.B. 314 passed in the 2011 General Session.

SUMMARY OF THE RULE OR CHANGE: The 2011 Legislature created a new liquor license type in the Retail License Act. This rule is proposed to ensure that reception center licensees are regulated in the same way as the holders of other license types.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-2-202 and Subsection 32B-6-805(3)

ANTICIPATED COST OR SAVINGS TO:
 ♦ **THE STATE BUDGET:** None--This rule elaborates on the statutory requirements for this license type that are established in Title 32B, Chapter 6, whereby this license type was created. The rule does not affect the state budget.
 ♦ **LOCAL GOVERNMENTS:** None--Reception Centers are regulated on the state level and this rule only affects persons licensed as such. Therefore, this rule will have no costs or savings to local governments.

- ♦ **SMALL BUSINESSES:** None--Some reception centers will be operated by small businesses, however, this rule will not impose any costs or savings to small business because any licensing fees and associated costs are established through the statutory creation of this license.
- ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--The regulations for reception centers will only affect the licensee and no other persons, therefore this rule will have no fiscal impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Statutory requirements establish compliance parameters and any resulting costs. This rule does not impose any additional compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is written to ensure that holders of reception center licenses comply with rules that are required of other license holders. The guidelines are reasonable and will have no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ALCOHOLIC BEVERAGE CONTROL
 ADMINISTRATION
 1625 S 900 W
 SALT LAKE CITY, UT 84104-1630
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Neil Cohen by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at ncohen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/22/2011

AUTHORIZED BY: Dennis Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4F. Reception Center License.
R81-4F-1. Licensing.
(1) Effective November 1, 2011, before a person may store, sell, offer for sale, or furnish an alcoholic product on its premises as a reception center, the person shall first obtain a reception center license from the commission pursuant to 32B-6-803.
(2) A reception center licenses is issued to a person as defined in Section 32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Section 32B-5-310.

R81-4F-2. Application.

(1) A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a reception center license when the requirements of Sections 32B-1-304, 32B-5-201, -204, and 32B-6-804 have been met, a completed application has been received by the department, and the reception center premises have been inspected by the department.

R81-4F-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-804(4), may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4F-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4F-5. Reception Center Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when a reception center licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

- (i) the bottle has not been opened;
- (ii) the seal remains intact;
- (iii) the label remains intact; and
- (iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds \$1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the

same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-4F-6. Reception Center Liquor Licensee Operating Hours.

Allowable hours of liquor sales shall be in accordance with Section 32B-6-805(8). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4F-7. Sale and Purchase of Alcoholic Beverages.

(1) The reception center licensee may not maintain in excess of 30% of its total annual receipts from the sale of an alcoholic product which includes mix for an alcoholic product, or a charge in connection with the furnishing of an alcoholic product pursuant to 32B-6-805(9).

(2) The restaurant shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, service charges, and all other sales. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(3) If any inspection or audit discloses that the sales of alcoholic products exceed 30% of the reception center licensee's total receipts for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's alcohol sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of alcohol do not exceed 30% of the business. Failure of the licensee to provide satisfactory proof of the required alcohol percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.

(4) Liquor dispensing shall be in accordance with Section 32B-5-304 and Section R81-1-9 (Liquor Dispensing Systems).

R81-4F-8. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the reception center as approved by the department.

R81-4F-9. Alcoholic Product Flavoring.

Reception center liquor licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the reception center license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No reception center employee under the age of 21 years may handle alcoholic product flavorings.

R81-4F-10. Table Service.

(1) Alcoholic products may not be sold, offered for sale, or furnished to a patron, and a patron may not consume an alcoholic

product at a bar structure. Alcoholic products may be dispensed from a mobile serving area that is moved only by staff of the reception center licensee, is capable of being moved by only one individual, and is no larger than 6 feet long and 30 inches wide. Otherwise, alcoholic products must be dispensed from an area that is separated from an area for the consumption of food by a patron by a solid, translucent or opaque, permanent structural barrier in accordance with 32B-6-805(15).

(2) A wine service may be performed by the server at the patron's table. The wine may be opened and poured by the server.

(3) Beer and heavy beer, if in sealed containers, may be opened and poured by the server at the patron's table.

(4) A patron's table may be located in waiting, patio, garden and dining areas previously approved by the department.

R81-4F-11. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-4F-12. Reporting Requirement.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32B-2-202 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored, and pursuant to 32B-6-805(3).

(2) Purpose. This rule implements the requirement of 32B-6-805(3) that requires the commission to provide by rule procedures for reception center licensees to report scheduled events to the department to allow random inspections of events by authorized representatives of the commission, the department, or by law enforcement officers to monitor compliance with the alcoholic beverage control laws.

(3) Application of the Rule.

(a) A reception center licensee licensed under 32B-6-801 shall file with the department at the beginning of each quarter a report containing advance notice of events that have been scheduled as of the reporting date for that quarter.

(b) The quarterly reports are due on or before January 1, April 1, July 1, and October 1 of each year and may be hand-delivered or submitted by mail or electronically.

(c) Each report shall include the name and specific location of each scheduled event.

(d) The department shall make copies of the reports available to a commissioner, authorized representative of the department, and any law enforcement officer upon request to be used for the purpose stated in Section (2).

(e) The department shall retain a copy of each report until the end of each reporting quarter.

(f) Because any report filed under this rule contains commercial information, the disclosure of which could reasonably

be expected to result in unfair competitive injury to the licensee submitting the information, and the licensee submitting the information has a greater interest in prohibiting access than the public in obtaining access to the report:

(i) any report filed shall be deemed to include a claim of business confidentiality, and a request that the report be classified as protected pursuant to 63G-2-305 and -309;

(ii) any report filed shall be classified by the department as protected pursuant to 63G-2-305; and

(iii) any report filed shall be used by the department and law enforcement only for the purposes stated in this rule.

(g) Failure of a reception center licensee to timely file the quarterly reports may result in disciplinary action pursuant to 32B-3-201 to -207, and R81-1-6 and -7.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: 2011

Authorizing, and Implemented or Interpreted Law: 32B-2-202; 32B-6-805(3)

Alcoholic Beverage Control, Administration **R81-5** Private Clubs

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35063

FILED: 07/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement S.B. 314 which was passed in the 2011 General Session. The rule amendment also makes nonsubstantive changes regarding statutory references subsequent to the recodification the Alcoholic Beverage Control Act that replaced Title 32A with Title 32B effective 07/01/2011.

SUMMARY OF THE RULE OR CHANGE: This rule amendment is required by and implements a provision of S.B. 314 that requires a rule to implement a procedure allowing a dining club licensee to convert to a different retail license type. The rule also clarifies the procedures for handling dining clubs that do not meet the 60% food requirement and clarifies the "brownbagging regulations". This rule amendment also includes nonsubstantive changes regarding statutory references subsequent to the recodification the Alcoholic Beverage Control Act that replaced Title 32A with Title 32B effective 07/01/2011.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-2-202 and Subsection 32B-6-409(3)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: None--This rule amendment is a result of statutory requirements and clarifies operational procedures that are already in place for existing club licensees. There are no costs or savings involved in this rule amendment.

◆ LOCAL GOVERNMENTS: None--The requirements in this rule are regulated by state government and do not affect local governments.

◆ SMALL BUSINESSES: None--Many club licensees are small businesses that are already operating under the operational guidelines established in statute and rule. This rule is one of many that clubs must abide by on an ongoing basis. There will be no additional costs or savings associated with this amended rule.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--These rules only affect licensed businesses and there is no affect on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amended rule is one of many regulations that licensees must abide by in the course of their normal business operations. There should be no additional compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The statutory mandate that this rule addresses may result in some dining clubs increasing their food sales percentage to the 60% requirement which may or may not be more profitable for them. Many are over 60% already so the fiscal impact will be minimal.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY, UT 84104-1630
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Neil Cohen by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at ncohen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/22/2011

AUTHORIZED BY: Dennis Kellen, Director

R81. Alcoholic Beverage Control, Administration.

R81-5. ~~[Private Clubs]~~ Club Licenses.

R81-5-1. Licensing.

(1) Club liquor licenses are issued to persons as defined in Section ~~[32A-1-105(44)]~~32B-1-102(74). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections ~~[32A-5-102(4), 32A-5-103 and 32A-5-107(26)]~~32B-5-310.

(2)(a) At the time the commission grants a club license the commission must designate whether the club qualifies to operate as an equity, fraternal, dining, or social club based on criteria in ~~[32A-5-101]~~32B-6-404.

(b) ~~[During the June 2009 renewal period, a class C private club licensee or class D private club licensee may request to convert to a different type of club license effective July 1, 2009. Also, after]~~After any club license is granted, a club may request that the commission approve a change in the club's classification in writing supported by evidence to establish that the club qualifies to operate under the new class designation based on the criteria in ~~[32A-5-101]~~32B-6-404.

(c) The department shall conduct an investigation for the purpose of gathering information and making a recommendation to the commission as to whether or not the request should be granted. The information shall be forwarded to the commission to aid in its determination.

(d) If the commission determines that the club has provided credible evidence to establish that it meets the statutory criteria to operate under the new class designation, the commission shall approve the request.

(e)(i) Pursuant to 32B-6-409, a dining club licensee may convert its dining club license to a different type of retail license for which the dining club licensee qualifies. However, the conversion must occur between July 1, 2011 and June 30, 2013.

(ii) The dining club licensee shall request the conversion in writing supported by evidence to establish that the club qualifies to operate under the new retail license based on the statutory criteria for that type of license.

(iii) The department shall conduct an investigation for the purpose of gathering information and making a recommendation to the commission as to whether or not the request should be granted. The information shall be forwarded to the commission to aid in its determination.

(iv) If the commission determines that the club has provided credible evidence to establish that it meets the statutory criteria to operate under the new retail license, the commission shall approve the request.

(v) After the conversion, the licensee must then operate under the provisions relevant to the type of retail license to which the club converted. If the dining club is converted to a full-service restaurant, limited-service restaurant, or beer-only restaurant, the bar structure of the dining club is considered a seating grandfathered bar structure for purposes of a full-service restaurant or limited-service restaurant license, or a grandfathered bar structure for purposes of a beer-only restaurant license.

(vi) Such conversions will not be counted against any quota for the type of retail licensee to which the club converted.

(3)(a) A dining club must operate as described in ~~[32A-5-101(3)(a)(ii)(C)]32B-6-404(3)~~, and must maintain at least ~~[50%]60%~~ of its total ~~[private-]club~~ business from the sale of food, not including mix for alcoholic beverages, ~~and service charges[-, and membership fees]~~. Any dining club that was licensed on or before June 30, 2011, may maintain 50% food sales until July 1, 2012, but must then maintain 60%.

(b) A dining club shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(c) If any inspection or audit discloses that the sales of food are less than ~~[50%]the required percentage~~ for any quarterly period, ~~[an order to show cause shall be issued by the department to determine why the license should not be immediately reclassified by the commission as a social club. If the commission grants the order to show cause, the reclassification shall remain in effect until the licensee files a request for and receives approval from the commission to be classified as a dining club. The request shall provide credible evidence to prove to the satisfaction of the commission that in the future, the sales of food will meet or exceed 50%.]the department shall immediately put the licensee on a probationary status and closely monitor the licensee's food sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of food meet or exceed the required percentage. Failure of the licensee to provide satisfactory proof of the required food percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission, or alternatively, to determine why the license should not be immediately reclassified by the commission as a social club. If the commission grants a reclassification to a social club, the reclassification shall remain in effect until the licensee files a request for and receives approval from the commission to be reclassified a dining club. The request shall provide credible evidence to prove to the satisfaction of the commission that in the future, the sales of food will meet or exceed the required percentage.~~

R81-5-2. Application.

A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a club license when the requirements of Sections ~~[32A-5-102, 103, and 106]32B-1-304, 32B-5-201, -204 and 32B-6-405~~ have been met, a completed application has been received by the department, and the club premises have been inspected by the department.

R81-5-3. Bonds.

No part of any corporate or cash bond required by Section ~~[32A-5-106]32B-5-204 and 32B-6-405(5)~~ may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-5-4. Insurance.

Public liability and dram shop insurance coverage required in Subsections ~~[32A-5-102(1)(i) and (j)]32B-5-201(2)(i)~~ must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-5-5. Advertising.

(1) Authority. This rule is pursuant to the commission's powers and duties under ~~[32A-1-107]32B-2-202~~ to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule furthers the intent of ~~[32A-5-107(1)]32B-6-407(13)~~ that equity and fraternal clubs advertise in a manner that preserves the concept that such clubs are private and not open to the general public.

(3) Application of Rule.

(a) Any public advertising by an equity or fraternal club, its employees, agents, or members, or by any person under contract or agreement with the club shall clearly identify the club as being "a ~~[private-]club~~ for members". In print media, this club identification information must be no smaller than 10 point bold type.

(b) An equity or fraternal club, its employees, agents, or members, or any person under a contract or agreement with the club may not directly or indirectly engage in or participate in any public advertising or promotional scheme that runs counter to the concept that such clubs are private and not open to the general public such as:

- (i) offering or providing complimentary club memberships to the general public;
- (ii) offering or providing full or partial payment of membership fees or dues to members of the general public;
- (iii) offering or implying an entitlement to a club membership to members of the general public; or
- (iv) offering to host members of the general public into the club.

R81-5-7. Club Licensee Operating Hours.

Allowable hours of liquor sales shall be in accordance with Section ~~[32A-5-107(14)]32B-6-406(4)~~. However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-5-8. Sale and Purchase of Alcoholic Beverages.

(1) A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab.

(2) Liquor dispensing shall be in accordance with Section ~~[32A-5-107]32B-5-304~~; and Sections R81-1-9 (Liquor Dispensing Systems) and R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

R81-5-13. Brownbagging.

When private [~~social functions or privately hosted~~] events, as defined in [~~32A-1-105(47)]32B-1-102(77)~~, are held on the premises of a licensed club, the proprietor may, in his or her discretion, allow members of the private group to bring onto the club premises, their own alcoholic beverages under the following circumstances:

(1) When the entire club is closed to regular patrons for the private [~~function or~~] event, or

(2) When an entire room or area within the club such as a private banquet room is closed to regular patrons for the private [~~function or~~] event, and members of the private group are restricted to that area, and are not allowed to co-mingle with regular patrons of the club.

R81-5-14. Membership Fees and Monthly Dues.

(1) Authority. This rule is pursuant to the commission's powers and duties under [~~32A-1-107]32B-2-202~~ to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule furthers the intent of [~~32A-5-107(1)]32B-6-407~~ that equity and fraternal clubs operate in a manner that preserves the concept that they are private and not open to the general public.

(3) Application of Rule.

(a) Each equity and fraternal club shall establish in its by-laws membership application fees and monthly membership dues in amounts determined by the club.

(b) An equity or fraternal club, its employees, agents, or members, or any person under a contract or agreement with the club, may not, as part of an advertising or promotional scheme, offer to pay or pay for membership application fees or membership dues in full or in part for a member of the general public.

R81-5-15. Minors in Lounge or Bar Areas.

(1) Pursuant to [~~32A-5-107(2)]32B-6-406(5)~~, a minor may not be admitted into, use, or be on the premises of any lounge or bar area of an equity, fraternal, or dining club. A minor may not be on the premises of a social club except to the extent allowed under [~~32A-5-107(2)(d)]32B-6-406.1~~, and may not be admitted into, use, or be on the premises of any lounge or bar area of a social club.

(2) "Lounge or bar area" includes:

(a) the bar structure as defined in [~~32A-1-105(4)]32B-1-102(7)~~;

(b) any area in the immediate vicinity of the bar structure where the sale, service, display, and advertising of alcoholic beverages is emphasized; or

(c) any area that is in the nature of or has the ambience or atmosphere of a bar, parlor, lounge, cabaret or night club.

(3) A minor who is otherwise permitted to be on the premises of an equity, fraternal, or dining club may momentarily pass through the club's lounge or bar area en route to those areas of the club where the minor is permitted to be. However, no minor shall remain or be seated in the club's bar or lounge area.

R81-5-18. Age Verification - Dining and Social Clubs.

(1) Authority. [~~32A-1-303 and 32A-1-304.5]32B-1-402, -405, and -407.~~

(2) Purpose.

(a) [~~32A-1-304.5]32B-1-407~~ requires dining and social club licensees to verify proof of age of persons who appear to be 35 years of age or younger either by an electronic age verification device, or an acceptable alternate process established by commission rule.

(b) This rule:

(i) establishes the minimum technology specifications of electronic age verification devices; and

(ii) establishes the procedures for recording identification that cannot be electronically verified; and

(iii) establishes the security measures that must be used by the club licensee to ensure that information obtained is used only to verify proof of age and is not disclosed to others except to the extent authorized by Title [~~32A]32B.~~

(3) Application of Rule.

(a) An electronic age verification device:

(i) shall contain:

(A) the technology of a magnetic stripe card reader;

(B) the technology of a two dimensional ("2d") stack symbology card reader; or

(C) an alternate technology capable of electronically verifying the proof of age;

(ii) shall be capable of reading:

(A) a valid state issued driver's license;

(B) a valid state issued identification card;

(C) a valid military identification card; or

(D) a valid passport;

(iii) shall have a screen that displays no more than:

(A) the individual's name;

(B) the individual's age;

(C) the number assigned to the individual's proof of age

by the issuing authority;

(D) the individual's the birth date;

(E) the individual's gender; and

(F) the status and expiration date of the individual's proof of age; and

(iv) shall have the capability of electronically storing the following information for seven days (168 hours):

(A) the individual's name;

(B) the individual's date of birth;

(C) the individual's age;

(D) the expiration date of the proof of age identification card;

(E) the individual's gender; and

(F) the time and date the proof of age was scanned.

(b) An alternative method of verifying an individual's proof of age when proof of age cannot be scanned electronically:

(i) shall include a record or log of the information obtained from the individual's proof of age including the following information:

(A) the type of proof of age identification document presented;

(B) the number assigned to the individual's proof of age document by the issuing authority;

- (C) the expiration date of the proof of age identification document;
 - (D) the date the proof of age identification document was presented;
 - (E) the individual's name; and
 - (F) the individual's date of birth.
- (c) Any data collected either electronically or otherwise:
- (i) may be used by the licensee, and employees or agents of the licensee, solely for the purpose of verifying an individual's proof of age;
 - (ii) may be acquired by law enforcement, or other investigative agencies for any purpose under Section 32A-5-107;
 - (iii) may not be retained by the licensee in a data base for mailing, advertising, or promotional activity;
 - (iv) may not be retained to acquire personal information to make inappropriate personal contact with the individual; and
 - (v) shall be retained for a period of seven days from the date on which it was acquired, after which it must be deleted.
- (d) Any person who still questions the age of the individual after being presented with proof of age, shall require the individual to sign a statement of age form as provided under ~~[32A-1-303]~~32B-1-405.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: ~~[June 24, 2009]~~2011
Notice of Continuation: May 10, 2011
Authorizing, and Implemented or Interpreted Law: ~~[32A-1-107; 32A-1-304.5(5); 32A-5-107(18); 32A-5-107(23)]~~32B-2-202; 32B-6-409(3)

**Alcoholic Beverage Control,
 Administration
 R81-10A
 On-Premise Beer Retailer Licenses**

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 35064
 FILED: 07/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement S.B. 314 which was passed in the 2011 General Session. The rule amendment also makes nonsubstantive changes regarding statutory references subsequent to the recodification the Alcoholic Beverage Control Act that replaced Title 32A with Title 32B effective 07/01/2011.

SUMMARY OF THE RULE OR CHANGE: This rule amendment is required by S.B. 314 passed in the 2011 General Session. It implements changes made to the on-premise beer licenses that are not taverns. S.B. 314 changed the nontavern on-premise beer license to a "recreational amenity" on-premise beer license. This amendment clarifies the definition of a "recreational amenity" and adds "recreational amenity" to the on-premise beer retailer references in the existing rule. This amendment also removes a section regarding minors on the premises that has been moved to the new Section R81-1-30 and makes nonsubstantive changes regarding statutory references subsequent to the recodification the Alcoholic Beverage Control Act that replaced Title 32A with Title 32B effective 07/01/2011.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-2-202 and Section 32B-6-702

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** None--This rule amendment is the result of statutory requirements and clarifies operational procedures that are already in place for existing and prospective on-premise beer licensees. There are no state budget costs or savings involved in this rule amendment.
- ◆ **LOCAL GOVERNMENTS:** None--The provisions in this rule are regulated by state government and do not affect costs or savings of local governments.
- ◆ **SMALL BUSINESSES:** None--Many licensees are small businesses that are already operating or will operate under the rules that are being amended. There will be no additional costs or savings associated with this amended rule for small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rules only affect licensed businesses and there is no cost or savings affect on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amended rule is one of many statutorily based regulations that licensees must abide by in the course of their normal business operations. There should be no additional compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The statutory mandate that this rule addresses will have no fiscal impact on businesses. It is based on a statutory mandate and amends rules that licensees are already operating under on an ongoing basis.

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

ALCOHOLIC BEVERAGE CONTROL
 ADMINISTRATION
 1625 S 900 W
 SALT LAKE CITY, UT 84104-1630
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Neil Cohen by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at ncohen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/22/2011

AUTHORIZED BY: Dennis Kellen, Director

R81. Alcoholic Beverage Control, Administration.**R81-10A. Recreational Amenity On-Premise Beer Retailer Licenses.****R81-10A-1. Definitions.**

(1) "Recreational Amenity" is one or more of the following or an activity substantially similar to one of the following:

- (a) a billiard parlor;
- (b) a pool parlor;
- (c) a bowling facility;
- (d) a golf course;
- (e) miniature golf;
- (f) a golf driving range;
- (g) a tennis club;
- (h) a sports facility that hosts professional sporting events and has a seating capacity equal to or greater than 6,500;
- (i) a concert venue that has a seating capacity equal to or greater than 6,500;
- (j) one of the following if owned by a government agency:
 - (i) a convention center;
 - (ii) a fair facility;
 - (iii) an equestrian park;
 - (iv) a theater; or
 - (v) a concert venue;
- (k) an amusement park:
 - (i) with one or more permanent amusement rides; and
 - (ii) located on at least 50 acres;
- (l) a ski resort;
- (m) a venue for live entertainment if the venue:
 - (i) is not regularly open for more than five hours on any day;
 - (ii) is operated so that food is available whenever beer is sold, offered for sale, or furnished at the venue; and
 - (iii) is operated so that no more than 15% of its total annual receipts are from the sale of beer; or
- (n) concessions operated within the boundary of a park administered by the:
 - (i) Division of Parks and Recreation; or
 - (ii) National Parks Service.

R81-10A-1]R81-10A-2. Licensing.

(1) [On-premise]Recreational amenity on-premise beer retailer licenses are issued to persons as defined in Section [32A-1-405(44)]32B-1-102(74). The department must be immediately notified of any action or transaction that may alter the

organizational structure or ownership interest of the person to whom the license is issued to ensure there is no violation of Sections [32A-10-202(3), 32A-10-203, and 32A-10-206(17)]32B-5-310.

(2) [An on-premise]A recreational amenity on-premise beer retailer licensee that wishes to operate the same licensed premises under the operational restrictions of a restaurant liquor license or a limited restaurant license during certain designated periods of the day or night, must apply for and be issued a separate restaurant liquor license or a limited restaurant license subject to the following:

(a) The same recreational amenity on-premise beer retailer licensee must separately apply for a state restaurant liquor license pursuant to the requirements of Sections [32A-4-102, -103, and -105]32B-5-202, -204 and 32B-6-204, or a limited restaurant license pursuant to the requirements of Sections [32A-4-303, -304, and -306]32B-5-201, -204 and 32B-6-304.

(b) Licensees applying for dually licensed premises must notify the department of the time periods under which each license will be operational at the time application is made. Changes must be requested in writing and approved in advance by the department. Licensees may operate sequentially under either license, but not concurrently.

(c) [On-premise]Recreational amenity on-premise beer retailer licensees holding a separate restaurant liquor license must operate in accordance with [32A-4-106]32B-5-301 and 32B-6-205 and R81-4A during the hours the restaurant liquor license is active.

(d) [On-premise]Recreational amenity on-premise beer retailer licensees holding a separate limited restaurant license must operate in accordance with [32A-4-307]32B-5-301 and 32B-6-305 and R81-4C during the hours the limited restaurant license is active.

(e) Liquor storage areas on the restaurant or limited restaurant premises shall be deemed to remain on the floor plan of the restaurant or limited restaurant premises and shall be kept locked during the hours the recreational amenity on-premise beer retailer license is active.

[R81-10A-2]R81-10A-3. Application.

A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of [an]a recreational amenity on-premise beer retailer license when the requirements of Sections [32A-10-202, -203, and -205]32B-1-304, 32B-5-201, -204 and 32B-6-705 have been met, and a completed application has been received by the department and the beer retailer premises have been inspected by the department.

[R81-10A-3]R81-10A-4. Bonds.

No part of any corporate or cash bond required by Section [32A-10-205]32B-5-204 and 32B-6-705(4) may be withdrawn during the time the license is in effect. If the recreational amenity on-premise beer licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

[R81-10A-4]R81-10A-5. Insurance.

Public liability and dram shop insurance coverage required in Section [32A-10-202(1)(h) and (i)]32B-5-201(2)(i) must remain in force during the time the license is in effect. Failure of

the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

~~[R81-10A-5. On-premise Beer Licensee Operating Hours.~~

~~Beer sales shall be in accordance with Section 32A-10-206(4). However, on-premise beer licensees may open their beer storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.~~

[R81-10A-6. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

~~[R81-10A-7. Draft Beer Sales/Minors on Premises.~~

~~A state on-premise beer license, restaurant liquor license, airport lounge license, limited restaurant license, on-premise banquet license or private club license authorizes the licensee to sell beer on draft regardless of the nature of the business (e.g. cafe, restaurant, pizza parlor, bowling alley, golf course clubhouse, club, tavern, etc.). Minors may not be precluded from establishments based upon whether draft beer is sold. However, minors may not be employed by or be on the premises of any establishment or portion of an establishment which is a "tavern" as defined in Section 32A-1-105(67). This does not preclude local authorities and licensees from excluding minors from premises or portions of premises which have the atmosphere or appearance of a "tavern" as so defined.~~

]KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment:

~~[September 1, 2010]~~ 2011

Notice of Continuation: November 3, 2010

Authorizing, and Implemented or Interpreted Law: ~~[32A-1-107]~~ 32B-2-202; 32B-6-702

**Alcoholic Beverage Control,
Administration
R81-10C
Beer Only Restaurant Licenses**

**NOTICE OF PROPOSED RULE
(New Rule)**

DAR FILE NO.: 35065
FILED: 07/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is proposed to implement the new beer only restaurant license created in S.B. 314 passed in the 2011 General Session.

SUMMARY OF THE RULE OR CHANGE: The 2011 Legislature created a new beer only restaurant license type in the Retail License Act to be effective on 03/01/2012. This rule is proposed to ensure that beer only restaurant licensees are regulated in the same way as the holders of other license types.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-2-202

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** None--This rule elaborates on the statutory requirements for this license type that are established in Title 32B, Chapter 6, whereby this license type was created. The rule does not affect the state budget.

◆ **LOCAL GOVERNMENTS:** Beer only restaurants are regulated on the state level and this rule only affects persons licensed as such. Therefore, this rule will have no costs or savings to local governments.

◆ **SMALL BUSINESSES:** None--Some beer only restaurants will be operated by small businesses, however, this rule will not impose any costs or savings to small businesses because any licensing fees and associated costs are established through the statutory creation of this license.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None. The regulations for beer only restaurants will only affect the licensee and no other persons, therefore this rule will have no fiscal impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Statutory requirements establish compliance parameters and any resulting costs. This rule does not impose any additional compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is written to ensure that holders of beer only restaurant licenses comply with rules that are required of other license holders. The guidelines are reasonable and will have no fiscal impact on businesses.

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

ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY, UT 84104-1630
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Neil Cohen by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at ncohen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/22/2011

AUTHORIZED BY: Dennis Kellen, Director

R81. Alcoholic Beverage Control, Administration.

R81-10C. Beer-Only Restaurant Licenses.

R81-10C-1. Licensing.

(1) Beer-only restaurant licenses are issued to persons as defined in Section 32B-1-102(74). The department must be immediately notified of any action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued to ensure there is no violation of Sections 32B-5-310.

R81-10C-2. Application.

A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a beer-only restaurant license when the requirements of Sections 32B-1-304, 32B-5-201, -204 and 32B-6-905 have been met, and a completed application has been received by the department and the restaurant premises have been inspected by the department.

R81-10C-3. Bonds.

No part of any corporate or cash bond required by Section 32B-5-204 and 32B-6-904(4) may be withdrawn during the time the license is in effect. If the beer-only restaurant licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-10C-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32B-5-201(2)(j) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-10C-5. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: 2011

Authorizing, and Implemented or Interpreted Law: 32B-2-202

**Alcoholic Beverage Control,
Administration
R81-12**

**Local Industry Representative Licenses
(Distillery, Winery, Brewery)**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35066

FILED: 07/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement S.B. 314 which was passed in the 2011 General Session. The rule amendment also makes nonsubstantive changes regarding statutory references subsequent to the recodification the Alcoholic Beverage Control Act that replaced Title 32A with Title 32B effective 07/01/2011.

SUMMARY OF THE RULE OR CHANGE: This rule amendment changes the references to a "privately hosted event" or "private social function" to be consistent with the definition of a "private event" in S.B. 314 passed in the 2011 General Session. The rule amendment also makes nonsubstantive changes regarding statutory references subsequent to the recodification the Alcoholic Beverage Control Act that replaced Title 32A with Title 32B effective 07/01/2011.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-2-202

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** None. This is an amendment to make the rule consistent with the statute regarding the definition of the terms "privately hosted event" or "private social function". There is no affect on costs or savings to the state budget.

◆ **LOCAL GOVERNMENTS:** None--This is an amendment to make the rule consistent with the statute regarding the definition of the terms "privately hosted event" or "private social function". There is no affect on costs or savings to local governments.

◆ **SMALL BUSINESSES:** None--Some local industry representatives are small businesses, however this amendment does not affect the way their businesses are regulated. It merely changes a definition of a term and will have no cost or savings effect on small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule amendment only affects licensed representatives and will not affect cost or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Various statutory requirements establish compliance parameters for local industry representatives and any resulting costs. This rule amendment does not impose any additional compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This is a housekeeping rule amendment that makes the rule consistent with the new statute in S.B. 314 passed in the 2011 General Session regarding the definition of the terms "privately hosted event" or "private social function". It will have no fiscal impact on businesses.

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

ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY, UT 84104-1630
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Neil Cohen by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at ncohen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/22/2011

AUTHORIZED BY: Dennis Kellen, Director

R81. Alcoholic Beverage Control, Administration.

R81-12. ~~[Manufacturer]~~Local Industry Representative Licenses (Distillery, Winery, Brewery).

R81-12-1. Application.

An application for a local industry representative license shall be included in the agenda of the monthly commission meeting for consideration for issuance of a license when the requirements of ~~[32A-8-502 and -503]~~[32B-1-304 and 32B-11-604 and -606] have been met, and a completed application has been received by the department.

R81-12-2. Industry Participation in Educational Seminars Involving Liquor, Wine and Heavy Beer Products.

(1) Authority. This rule is pursuant to ~~[32A-12-201(1) and (3), 32A-12-603(3) and (4), and 32A-12-606]~~[32B-4-401 and -701 to 708]. These provisions preclude an industry member from selling, shipping, transporting, furnishing or supplying or causing the selling, shipping, transporting, furnishing or supplying of liquor,

wine, and heavy beer products to another within this state other than the department, a military installation, a holder of a special use permit to the extent authorized in the permit, and a bonded liquor warehouse; preclude an industry member from supplying anything of value except as allowed by law; preclude an industry member from giving away any of its alcoholic products to any person except for testing, analysis, and sampling purposes by the department and local industry representative licensees to the extent authorized by the Act; allow an industry member to participate in educational seminars involving the department, retailers, holders of educational or scientific special use permits, or other industry members under certain conditions, but preclude the use of samples at such seminars; and allow an industry member to serve alcoholic products to others at a private social function hosted by the industry member so long as the product is not served as part of a promotion of the industry member's products or as a subterfuge to provide samples to others for product testing, analysis, or sampling purposes.

(2) Definitions. For purposes of this rule:

(a) "Educational seminar" means an educational class involving the study of alcoholic beverages attended only by students who have registered in advance for the course, a privately-hosted event or social function held by a private group engaged in the study of alcoholic beverages, and a private training session held by a retailer for the purpose of educating the retailer and the retailer's employees of the qualities and characteristics of alcoholic beverages. An educational seminar does not include a seminar to which the general public is invited to attend.

(b) "Industry member" means a liquor, wine or heavy beer manufacturer, supplier, importer, wholesaler, or any of its affiliates, subsidiaries, officers, directors, agents, employees, or representatives.

(c) ~~"[Privately-hosted event" or "private social function]"~~Private event means a specific social, business, or recreational event for which an entire room, area, or hall ~~[has been]~~is leased, rented, or reserved, in advance by an identified group, and the event ~~[or function]~~ is limited in attendance to people who ~~[have been]~~are specifically designated and their guests. ~~"[Privately-hosted event" and "private social function]"~~Private event does not include an event ~~[or function]~~ to which the general public is invited whether for an admission fee or not.

(d) "Retailer" means the holder of an alcoholic beverage license or permit issued by the commission to allow the holder to engage in the sale of alcoholic beverages to consumers, or any of the holder's agents, officers, directors, shareholders, partners, or employees.

(e) "Sample" means liquor, wine and heavy beer that is placed in the possession of the department for testing, analysis, and sampling by the department, or for testing, analysis, and sampling by local industry representatives on the premises of the department. Samples are furnished by industry members to the department for these purposes at no cost, and are labeled by the department as samples. Sample does not include liquor, wine and heavy beer that is sold by the department at retail after taxes and markup have been included.

(3) General Purpose. This rule authorizes industry representatives, under certain restrictions, to attend and participate in educational seminars where liquor, wine and heavy beer products are analyzed, tested, and tasted.

(4) Application of Rule.

(a) An industry member may attend and participate in an educational seminar where liquor, wine and heavy beer products are analyzed, tested, and tasted only as the invited guest of the host of the seminar. An industry member may not directly or indirectly host, organize, or otherwise arrange for an educational seminar where such products are present.

(b) Liquor, wine and heavy beer products used at an educational seminar must be purchased by the host from the department at full retail. An industry member may not directly or indirectly furnish or otherwise provide the liquor, wine and heavy beer products for the seminar. No liquor, wine or heavy beer samples may be present or used at an educational seminar. Tastings involving samples may occur only on the department's premises in accordance with Section ~~[32A-12-603(4)(e)]~~ 32B-4-705(5) and (8).

(c) An industry member may be invited by the host to lecture, and analyze, test, and taste the liquor, wine and heavy beer products during the industry member's presentation at an educational seminar.

(d) An educational seminar where liquor, wine and heavy beer products are present may not be used by an industry member to introduce retailers to new products which are not presently listed by the department for sale in this state.

(e) An educational seminar may not be open to the general public.

KEY: alcoholic beverages

Date of Enactment or Last Substantive Amendment: ~~[August 1, 2003]~~ 2011

Notice of Continuation: May 10, 2011

Authorizing, and Implemented or Interpreted Law: ~~[32A-1-107]~~ 32B-4-401; 32b-4-701 to 708

Commerce, Administration
R151-4-708
 Standard of Proof

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35018

FILED: 07/11/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to correct a potential inconsistency within the rule as to the burden of proof in adjudicative proceedings.

SUMMARY OF THE RULE OR CHANGE: Section R151-4-708 is amended to indicate an exception to the preponderance of the evidence standard for certain

contractor license bonds. A clear and convincing standard was previously adopted by the Division of Occupational and Professional Licensing for limited circumstances relating to contractor licensing bonds identified in Subsection R156-55a-602(4). This rule filing merely references that provision for clarification and internal consistency.

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:** No costs are anticipated from this filing which clarifies the standard of proof as to adjudicative proceedings.

◆ **LOCAL GOVERNMENTS:** No costs are anticipated from this filing which clarifies the standard of proof as to adjudicative proceedings.

◆ **SMALL BUSINESSES:** No costs are anticipated from this filing which clarifies the standard of proof as to adjudicative proceedings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No costs are anticipated from this filing which clarifies the standard of proof as to adjudicative proceedings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No costs are anticipated from this filing which clarifies the standard of proof as to adjudicative proceedings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this clarifying rule amendment.

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 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2011

AUTHORIZED BY: Francine Giani, Executive Director

R151. Commerce, Administration.

R151-4. Department of Commerce Administrative Procedures Act Rule.

R151-4-708. Standard of Proof.

Unless otherwise provided by statute or a rule applicable to a specific proceeding, 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.

KEY: administrative procedures, adjudicative proceedings, government hearings

Date of Enactment or Last Substantive Amendment: [~~April 21,~~ 2011]

Authorizing, and Implemented or Interpreted Law: 13-1-6; 63G-4-102(6)

Commerce, Occupational and
Professional Licensing
R156-3a
Architect Licensing Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35034

FILED: 07/12/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Architects Licensing Board reviewed this rule and have determined that the current definition of "recognized jurisdiction" is overly restrictive to applicants applying for licensure by endorsement. This rule filing modifies that definition and makes other minor changes.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-3a-102(11), the proposed amendment modifies the definition of the term "recognized jurisdiction". The current definition is overly restrictive because it prevents qualified architects licensed in other jurisdictions from becoming licensed in Utah. In short, the current definition includes a narrow set of requirements that are not in place in many jurisdictions. In Subsection R156-3a-102(12), the proposed amendment adds the term "by a principal" to clarify the purpose of the definition and statute citations no longer needed are deleted. In Subsection R156-3a-102(14), the statutory citation is updated. In Section R156-3a-201, capitalized the term "board" in this section. In Section R156-3a-304, the current rule incorrectly identifies March 31 as the end of the two year renewal cycle. The proposed amendment corrects the error to reflect May 31. In Subsection R156-3a-502(4), the proposed amendment updates the July 2007

edition of the National Council of Architectural Registration Boards (NCARB) "Rules of Conduct" to the July 2010 edition.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-3a-101 and Section 58-3a-303.5 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Rules of Conduct, published by National Council of Architectural Registration Boards (NCARB), July 2010

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$100 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 architects and applicants for licensure by endorsement in that classification. As a result, the proposed amendments do not apply to local governments.
- ◆ **SMALL BUSINESSES:** The proposed amendments only apply to licensed architects and applicants for licensure by endorsement in that classification. Making the definition of "recognized jurisdiction" less restrictive provides a path to licensure to some out-of-state applicants that does not exist under the current definition. In these cases, some businesses may experience a financial benefit; however the Division is unable to estimate the extent of any cost savings.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to licensed architects and applicants for licensure by endorsement in that classification. Making the definition of "recognized jurisdiction" less restrictive provides a path to licensure to some out-of-state applicants that does not exist under the current definition. As a result, the applicant will experience a financial benefit; however, the Division is unable to estimate the extent of the cost savings due to varying circumstances.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed architects and applicants for licensure by endorsement in that classification. Making the definition of "recognized jurisdiction" less restrictive provides a path to licensure to some out-of-state applicants that does not exist under the current definition. As a result, the applicant will experience a financial benefit; however, the Division is unable to estimate the extent of the cost savings due to varying circumstances.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Out-of-state license applicants and architectural businesses may experience a positive fiscal impact based on this rule filing which amends the educational requirements so as to be in line with the national standard. That impact cannot be estimated. No impact is anticipated from the remaining technical changes made in this filing.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 08/10/2011 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2011

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-3a. Architect Licensing Act Rule.

R156-3a-102. Definitions.

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

(1) "ARE" means the NCARB Architectural Registration Examination.

(2) "Committee" means the IDP Committee created in Section R156-3a-201.

(3) "Complete and final" as used in Subsection 58-3a-603(1) means "complete construction plans" as defined in Subsection 58-3a-102(4).

(4) "EESA" means the Education Evaluation Services for Architects.

(5) "Employee, subordinate, associate, or drafter of an architect" as used in Subsections 58-3a-102(8), 58-3a-603(1)(b) and this rule means one or more individuals not licensed as an architect who are working for, with, or providing architectural services directly to the licensed architect under the supervision of the licensed architect.

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

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

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

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

(d) is work that affects not greater than 49 occupants as determined in Section 1004 of the 2009 International Building Code;

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

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

(7) "Intern Development Program" or "IDP" as used in Subsection R156-3a-302(2) means a NCARB approved training program.

(8) "NAAB" means the National Architectural Accrediting Board.

(9) "NCARB" means the National Council of Architectural Registration Boards.

(10) "Program of diversified practical experience" as used in Subsection 58-3a-302(1)(e) means:

(a) current licensure in a recognized jurisdiction; or

(b) the training standards and requirements set forth in the Intern Development Program.

(11) "Recognized jurisdiction" as used in Subsections 58-3a-302(2)(d)(i) and (iii), for licensure by endorsement, means any jurisdiction that is a member of NCARB [state, district, territory of the United States, or any foreign country who issues licenses for architects, and whose licensure requirements include:

~~_____ (a) a bachelors or post graduate degree in architecture or equivalent education as set forth in Subsection R156-3a-301(2);~~

~~_____ (b) a program of diversified practical experience as set forth in Subsection R156-3a-102(10), or an equivalent training program; and~~

~~_____ (c) passing the ARE or passing a professional architecture examination that is equivalent to the ARE].~~

(12) "Responsible charge" by a principal, as used in Subsection[s] 58-3a-102(7), [~~58-3a-302(2)(d)(iv) and 58-3a-304(6)~~] means direct control and management by a principal over the practice of architecture by an organization.

(13) "Under the direction of the architect" as used in Subsection 58-3a-102(8), as part of the definition of "supervision of an employee, subordinate, associate, or drafter of an architect" means that the unlicensed employee, subordinate, associate, or drafter of the architect engages in the practice of architecture only on work initiated by the architect, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of the architect.

(14) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 3a, is further defined, in accordance with Subsection 58-1-203([~~5~~](e), in Section R156-3a-502.

R156-3a-201. Advisory Peer Committee Created - Membership - Duties.

(1) There is created in accordance with Subsection 58-1-203(1)(f), the IDP Committee as an advisory peer committee to the

Architect Licensing Board consisting of one or more members as follows:

- (a) a State IDP Coordinator;
- (b) an Education Coordinator; or
- (c) an Intern IDP Coordinator.

(2) The committee shall be appointed and serve in accordance with Section R156-1-205.

(3) The duties and responsibilities of the committee shall include assisting the [b]Board in its duties, functions, and responsibilities defined in Subsection 58-1-202(1)(e) as follows:

- (a) promote an awareness of IDP by holding meetings and seminars on IDP;
- (b) establish a network of sponsors and advisors for IDP interns;
- (c) encourage firms to support IDP;
- (d) act as a resource to respond to questions on IDP received from advisors, sponsors, and interns; and
- (e) report to the [b]Board as directed.

R156-3a-304. Continuing Professional Education for Architects.

In accordance with Section 58-3a-303.5, the qualifying continuing professional education standards for architects are established as follows:

(1) During each two year period ending on [~~March~~May] 31 of each even numbered year, a licensed architect shall be required to complete not less than 16 hours of qualified professional education directly related to the licensee's professional practice.

(2) The required number of hours of professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(3) Qualified continuing professional education under this section shall:

(a) have an identifiable, clear statement of purpose and defined objective for the educational program directly related to the practice of an architect and directly related to topics involving the public health, safety, and welfare of architectural practice and the ethical standards of architectural practice;

(i) health, safety, welfare and ethical standards as used in this subsection are defined to include the following:

(A) The definition of "health" shall include, but not be limited to, aspects of architecture that have salutary effects among users of buildings or sites and that address environmental issues. Examples include all aspects of air quality, provisions of personal hygiene, and use of non-toxic materials and finishes.

(B) The definition of "safety" shall include, but not be limited to, aspects of architecture intended to limit or prevent accidental injury or death among users of buildings or construction sites. Examples include fire-rated egress enclosures, automatic sprinkler systems, stairs with correct rise-to-run proportions, and accommodations for users with disabilities.

(C) The definition of "welfare" shall include, but not be limited to, aspects of architecture that consist of values that may be spiritual, physical, aesthetic and monetary in nature. Examples include spaces that afford natural light or views of nature or whose proportions, color or materials engender positive emotional responses from its users.

(D) The definition of "ethical standards of architectural practice" shall include, but not be limited to the NCARB rules of conduct specified in Subsection R156-3a-502(4).

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

(4) Credit for qualified continuing professional education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of eight hours per two year period may be recognized for teaching in a college or university or for teaching qualified continuing professional education courses in the field of architecture, provided it is the first time the material has been taught during the preceding 12 months;

(c) a maximum of three hours per two year period may be recognized for preparation of papers, articles, or books directly related to the practice of architecture and submitted for publication; and

(d) unlimited hours may be recognized for continuing professional education that is provided via the Internet or through home study courses provided the course verifies registration and participation in the course by means of a test which demonstrates that the participant has learned the material presented.

(5) A licensee shall be responsible for maintaining records of completed qualified continuing professional education for a period of four years after the two year period to which the records pertain. It is the responsibility of the licensee to maintain information with respect to qualified continuing professional education to demonstrate it meets the requirements under this section.

(6) If a licensee exceeds the 16 hours of qualified continuing professional education during the two year period, the licensee may carry forward a maximum of 8 hours of qualified continuing professional education into the next two year period.

(7) A licensee who is unable to complete the continuing professional education requirement for reasons such as a medical or related condition, humanitarian or ecclesiastical services, or extended presence in a geographical area where continuing professional education is not available, may be excused from the requirement for a period of up to three years as provided in Section R156-1-308d.

(8) Any licensee who fails to timely complete the continuing professional education hours required by this rule shall be required to complete double the number of hours missed to be eligible for renewal or reinstatement of licensure.

(9) Any applicant for reinstatement shall be required to complete 16 hours of continuing professional education complying with this rule within two years prior to the date of application for reinstatement of licensure.

R156-3a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

- (1) submitting an incomplete final plan, specification, report, or set of construction plans to:
- (a) a client, when the licensee represents, or could reasonably expect the client to consider, the plan, specification, report, or set of construction plans to be complete and final; or
- (b) a building official for the purpose of obtaining a building permit;
- (2) failing as a principal to exercise reasonable charge;
- (3) failing as a supervisor to exercise supervision of an employee, subordinate, associate or drafter;
- (4) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the July [2007]2010 edition of the NCARB "Rules of Conduct", which is hereby incorporated by reference; or
- (5) failing as a supervising architect to verify actual work experience when requested by a subordinate, associate or drafter of an architect who is or has been an employee.

KEY: architects, licensing

Date of Enactment or Last Substantive Amendment:
[November 8, 2010]2011

Notice of Continuation: January 31, 2011

Authorizing, and Implemented or Interpreted Law: 58-3a-101; 58-1-106(1)(a); 58-1-202(1)(a), 58-3a-303.5

Commerce, Occupational and Professional Licensing

R156-15A

State Construction Code Administration and Adoption of Approved State Construction Code Rule

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 35017

FILED: 07/07/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 203, which was passed during the 2011 General Session, rewrote Title 58, Chapter 56, and moved the building code and related provisions to a new Title 15A and left the building inspector licensure and factory built housing provisions in Title 58, Chapter 56. This new rule reestablishes provisions that were formerly located under Rule R156-56. Additional technical changes are included throughout the rule that affect punctuation and citations.

SUMMARY OF THE RULE OR CHANGE: In Section R156-15a-101, the title of the rule is named to correctly encompass the scope of provisions contained in this new rule. In Section R156-15a-102, the definitions that no longer apply to licensing were deleted from Section R156-56-102 and added under this new section. The definitions themselves have not changed from what appears in Section R156-56-102. In Section R156-15a-103, authority for the rule under the new title was added. Section R156-15a-201 was formerly located at Section R156-56-202. Section R156-15a-202 was formerly located at Section R156-56-702. Section R156-15a-210 was formerly located at Section R156-56-105. Section R156-15a-220 was formerly located at Section R156-56-401. Section R156-15a-221 was formerly located at Section R156-56-402. Section R156-15a-230 was formerly located at Section R156-56-106. Section R156-15a-231 was formerly located at Section R156-56-420. Section R156-15a-301 was formerly located at Section R156-56-603. Section R156-15a-401 was formerly located at Subsection R156-56-701(2). Section R156-15a-402 was formerly located in Section R156-56-801. Section R156-15a-403 was formerly located at Section R156-56-802.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 15A-2-205 and Subsection 15A-1-204(6) and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. The Division does not anticipate any other financial impact to the state budget since no substantive requirements have been changed in this new rule from existing requirements in Rule R156-56, which is also being amended.

♦ **LOCAL GOVERNMENTS:** The Division does not anticipate any financial impact to local governments since no substantive requirements have been changed in this new rule from existing requirements in Rule R156-56, which is also being amended.

♦ **SMALL BUSINESSES:** The Division does not anticipate any financial impact to small businesses since no substantive requirements have been changed in this new rule from existing requirements in Rule R156-56, which is also being amended.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Division does not anticipate any financial impact to other persons since no substantive requirements have been changed in this new rule from existing requirements in Rule R156-56, which is also being amended.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division does not anticipate any financial impact to other persons since no substantive requirements have been changed in this new rule from existing requirements in Rule R156-56, which is also being amended.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated with this rule filing, which implements a recent statutory change and renumbers existing rules to match up with the new statutory numbering scheme for building codes.

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 08/31/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 08/10/2011 09:00 AM, State Office Building, 450 N State Street, Room 4112, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2011

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-15A. State Construction Code Administration and Adoption of Approved State Construction Code Rule.

R156-15A-101. Title.

This rule is known as the "State Construction Code Administration and Adoption of Approved State Construction Code Rule".

R156-15A-102. Definitions.

In addition to the definitions in Title 15A, as used in Title 15A or this rule:

(1) "Building permit" means, for the purpose of determining the building permit surcharge under Subsection 15A-1-209(5)(a), a warrant, license or authorization to build or construct a building or structure or any part thereof.

(2) "Building permit fee" means, for the purpose of determining the building permit surcharge under Subsection 15A-1-209(5)(a), fees assessed by a state agency or state political subdivision for the issuance of permits for construction, alteration, remodeling, repair, and installation, including building, electrical, mechanical and plumbing components.

(3) "Permit number", as used in Section 15A-1-209, means the standardized building permit number described below in Sections R156-15A-220 and R156-15A-221.

(4) "Refuses to establish a method of appeal" means, with respect to Subsection 15A-1-207(3)(b), that a compliance agency does not in fact adopt a formal written method of appealing uniform building standard matters in accordance with generally recognized standards of due process; or, that the compliance agency does not convene an appeals board and render a decision in the matter within ninety days from the date on which the appeal is properly filed with the compliance agency.

R156-15A-103. Authority.

This rule is adopted by the Division under the authority of Subsection 15A-1-204(6), Section 15A-2-205 and Subsection 58-1-106(1)(a) to enable the Division to administer Title 15A.

R156-15A-201. Advisory Peer Committees Created - Membership - Duties.

(1) There is created in accordance with Subsections 58-1-203(1)(f) and 15A-1-203(10)(d), the following advisory peer committees to the Uniform Building Codes Commission:

(a) the Education Advisory Committee consisting of nine members, which shall include a design professional, a general contractor, an electrical contractor, a mechanical or plumbing contractor, an educator, and four inspectors (one from each of the specialties of plumbing, electrical, mechanical and general building);

(b) the Plumbing and Health Advisory Committee consisting of nine members;

(c) the Structural Advisory Committee consisting of seven members;

(d) the Architectural Advisory Committee consisting of seven members;

(e) the Fire Protection Advisory Committee consisting of five members;

(i) This committee shall join together with the Fire Advisory and Code Analysis Committee of the Utah Fire Prevention Board to form the Unified Code Analysis Council.

(ii) The Unified Code Analysis Council shall meet as directed by the Utah Fire Prevention Board, or as directed by the Uniform Building Code Commission, or as needed to review fire prevention and building code issues that require definitive and specific analysis.

(iii) The Unified Code Analysis Council shall select one of its members to act as chair and another to act as vice chair. The chair and vice chair shall serve for one-year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

(iv) The chair or vice chair shall report to the Utah Fire Prevention Board or Uniform Building Code Commission recommendations of the council with regard to the review of fire and building codes;

(f) the Mechanical Advisory Committee consisting of seven members; and

(g) the Electrical Advisory Committee consisting of seven members.

(2) The committees shall be appointed and serve in accordance with Subsection 15A-1-203(10)(d). The membership of each committee shall be made up of individuals who have direct knowledge or involvement in the area of code involved in the title of that committee.

(3) The duties and responsibilities of the committees shall include:

(a) reviewing codes proposed for adoption or approval as assigned by the Division in collaboration with the Commission;

(b) reviewing requests for amendments to the adopted codes or approved codes as assigned to each committee by the Division with the collaboration of the Commission; and

(c) submitting recommendations concerning the reviews made under Subsection (a) and (b).

(4) The duties and responsibilities of the Education Advisory Committee shall include:

(a) reviewing and making recommendations regarding funding requests that are submitted; and

(b) reviewing and making recommendations regarding budget, revenue and expenses of the education fund established pursuant to Subsection 15A-1-209(5).

R156-15A-202. Code Amendment Process.

In accordance with Section 15A-1-206, the procedure and manner under which requests for amendments to codes shall be filed with the Division and recommended or declined for adoption are as follows:

(1) All requests for amendments to any of the adopted codes or approved codes shall be submitted to the Division on forms specifically prepared by the Division for that purpose.

(2) The processing of requests for code amendments shall be in accordance with Division policies and procedures.

R156-15A-210. Compliance with Codes - Appeals.

If the Commission is required to act as an appeals board in accordance with the provisions of Subsection 15A-1-207(3)(b), the following shall regulate the convening and conduct of the appeals board:

(1) If a compliance agency refuses to establish a method of appeal regarding a uniform building standard issue, the appellant may petition the Commission to act as the appeals board.

(2) The appellant shall file the request to convene the Commission as an appeals board in accordance with the requirements for a request for agency action, as set forth in Subsection 63G-4-201(3)(a) and Section R151-4-201. A request by other means shall not be considered and shall be returned to the appellant with appropriate instructions.

(3) A copy of the final written decision of the compliance agency interpreting or applying a code which is the subject of the dispute shall be submitted as an attachment to the request. If the appellant requests, but does not receive a timely final written decision, the appellant shall submit an affidavit to this effect in lieu of including a copy of the final written decision with the request.

(4) The request shall be filed with the Division no later than 30 days following the issuance of the compliance agency's disputed written decision.

(5) The compliance agency shall file a written response to the request not later than 20 days after the filing of the request. The request and response shall be provided to the Commission in advance of any hearing in order to properly frame the disputed issues.

(6) Except with regard to the time period specified in Subsection (7), the time periods specified in this section may, upon

a showing of good cause, be modified by the presiding officer conducting the proceeding.

(7) The Commission shall convene as an appeals board within 45 days after a request is properly filed.

(8) Upon the convening of the Commission as an appeals board, the board members shall review the issue to be considered to determine if a member of the board has a conflict of interest which would preclude the member from fairly hearing and deciding the appeal. If it is determined that a conflict does exist, the member shall be excused from participating in the proceeding.

(9) The hearing shall be a formal hearing held in accordance with the Utah Administrative Procedures Act, Title 63G, Chapter 4.

(10) Decisions relating to the application and interpretation of the code made by a compliance agency board of appeals shall be binding for the specific individual case and shall not require Commission approval.

R156-15A-220. Standardized Building Permit Number.

As provided in Section 15A-1-209, any agency issuing a permit for construction within the state of Utah shall use the standardized building permit numbering system. The standardized building permit numbering system described under Subsection 15A-1-209(2)(b) shall include a combination of alpha or numeric characters arranged in a format acceptable to the issuing agency.

R156-15A-221. Standardized Building Permit Content.

As provided in Section 15A-1-209, any agency issuing a permit for construction within the state of Utah shall use a permit form that incorporates standardized building permit content as follows:

(1) the permit number, as set forth in Section R156-15A-220, shall be printed by typewriter, computer printer or rubber stamp in the upper right-hand corner of the building permit in at least 12-point type;

(2) the name of the owner of the project;

(3) the name of the original contractor or owner-builder for the project;

(4) whether the permit applicant is an original contractor or owner-builder; and

(5) the street address of the project or a general description of the project.

R156-15A-230. Building Code Training Fund Fees.

In accordance with Subsection 15A-1-209(5)(a), on April 30, July 31, October 31 and January 31 of each year, each state agency and each state political subdivision that assesses a building permit fee shall file with the Division a report of building fees and surcharge for the immediately preceding calendar quarter; and, shall remit 80% of the amount of the surcharge collected to the Division.

R156-15A-231. Administration of Building Code Training Fund.

In accordance with Subsection 15A-1-209(5)(c), the Division shall use monies received under Subsection 15A-1-209(5)(a) to provide education regarding codes and code amendments to building inspectors and individuals engaged in construction-related trades or professions. The following procedures, standards, and policies are established to apply to the administration of the fund:

(1) The Division shall not approve or deny expenditure requests from the Building Code Training Fund ("the fund") until the Uniform Building Code Commission (UBCC) Education Advisory Committee ("the Committee"), created in accordance with Subsections 58-1-203(1)(f) and R156-15A-201(1)(a), has considered and made its recommendations on the requests.

(2) Appropriate funding expenditure categories include:

(a) grants in the form of reimbursement funding to the following organizations that administer code related educational events, seminars or classes:

(i) schools, colleges, universities, departments of universities, or other institutions of learning;

(ii) professional associations or organizations; and

(iii) governmental agencies.

(b) costs or expenses incurred as a result of educational events, seminars, or classes directly administered by the Division;

(c) expenses incurred for the salary, benefits or other compensation and related expenses resulting from the employment of a Board Secretary;

(d) office equipment and associated administrative expenses required for the performance of the duties of the Board Secretary, including but not limited to computer equipment, telecommunication equipment and costs and general office supplies; and

(e) other related expenses as determined by the Division.

(3) The following procedure shall be used for submission, review and payment of funding grants:

(a) A funding grant applicant shall submit a completed "Application for Building Code Training Funds Grant" a minimum of 15 days prior to the meeting at which the request is to be considered and prior to the training event on forms provided for that purpose by the Division. Applications received less than 15 days prior to a meeting may be denied.

(b) Payment of approved funding grants will be made as reimbursement after the approved event, class, or seminar has been held and the required receipts, invoices and supporting documentation, including proof of payment, if requested by the Division or Committee, have been submitted to the Division.

(4) The Committee shall consider the following in determining whether to recommend approval of a proposed funding request to the Division:

(a) the fund balance available and whether the proposed request meets the overall training objectives of the fund, including but not limited to:

(i) the need for training on the subject matter;

(ii) the need for training in the geographical area where the training is offered; and

(iii) the need for training on new codes being considered for adoption;

(b) the prior record of the program sponsor in providing codes training including:

(i) whether the subject matter taught was appropriate;

(ii) whether the instructor was appropriately qualified and prepared; and

(iii) whether the program sponsor followed appropriate and adequate procedures and requirements in providing the training and submitting requests for funding;

(c) costs of the facility including:

(i) the location of a facility or venue, or the type of event, seminar or class;

(ii) the suitability of said facility or venue with regard to the anticipated attendance at or in connection with additional non-funded portions of an event or conference;

(iii) the duration of the proposed educational event, seminar, or class; and

(iv) whether the proposed cost of the facility is reasonable compared to the cost of alternative available facilities;

(d) the estimated cost for instructor fees including:

(i) the experience or expertise of the instructor in the proposed training area;

(ii) the quality of training based upon events, seminars or classes that have been previously taught by the instructor;

(iii) the drawing power of the instructor, meaning the ability to increase the attendance at the proposed educational event, seminar or class;

(iv) travel expenses; and

(v) whether the proposed cost for the instructor or instructors is reasonable compared to the costs of similar educational events, seminars, or classes;

(e) the estimated cost of advertising materials, brochures, registration and agenda materials, including:

(i) printing costs that may include creative or design expenses; and

(ii) whether delivery or mailing costs, including postage and handling, are reasonable compared to the cost of alternate available means of delivery;

(f) other reasonable and comparable cost alternatives for each proposed expense item; and

(g) any other information the Committee reasonably believes may assist in evaluating a proposed expenditure.

(5) Joint function.

(a) "Joint function" means a proposed event, class, seminar, or program that provides code or code related education and education or activities in other areas.

(b) Only the prorated portions of a joint function that are code and code related education are eligible for a funding grant.

(c) In considering a proposed funding request that involves a joint function, the Committee shall consider whether:

(i) the expenses subject to funding are reasonably prorated for the costs directly related to the code and code amendment education; and

(ii) the education being proposed will be reasonable and successful in the training objective in the context of the entire program or event.

(6) Advertising materials, brochures and agenda or training materials for a funded educational event, seminar, or class shall include a statement that acknowledges that partial funding of the training program has been provided by the Utah Division of Occupational and Professional Licensing from the 1% surcharge funds on all building permits.

R156-15A-301. Factory Built Housing Dispute Resolution.

In accordance with Subsection 15A-1-306(1)(f)(i), the dispute resolution program is defined and clarified as follows:

(1) Persons with manufactured housing disputes may file a complaint with the Division.

(2) The Division shall investigate such complaints and as part of the investigation may take any of the following actions:

(a) negotiate an informal resolution with the parties involved;

(b) take any informal or formal action allowed by any applicable statute, including but not limited to:

(A) pursuing disciplinary proceedings under Section 58-1-401;

(B) assessing civil penalties under Subsection 15A-1-306(2); and

(C) referring matters to appropriate criminal prosecuting agencies and cooperating or assisting with the investigation and prosecution of cases by such agencies.

(3) In addition, persons with manufactured housing disputes may pursue a civil remedy.

R156-15A-401. Adoption - Approved Codes.

Approved Codes. In accordance with Subsection 15A-1-204(6)(a), and subject to the limitations contained in Subsection 15A-1-204(6)(b), the following codes or standards are hereby incorporated by reference and approved for use and adoption by a compliance agency as the construction standards which may be applied to existing buildings in the regulation of building alteration, remodeling, repair, removal, seismic evaluation, and rehabilitation in the state:

(1) the 1997 edition of the Uniform Code for the Abatement of Dangerous Buildings (UCADB) promulgated by the International Code Council;

(2) the 2009 edition of the International Existing Building Code (IEBC), including its appendix chapters, promulgated by the International Code Council;

(3) ASCE 31-03, Seismic Evaluation of Existing Buildings, promulgated by the American Society of Civil Engineers;

(4) ASCE/SEI 41-06, the Seismic Rehabilitation of Existing Buildings, promulgated by the American Society of Civil Engineers, 2007 edition.

R156-15A-402. Statewide Amendments to the IEBC.

The following are adopted as amendments to the IEBC to be applicable statewide:

(1) In Section 101.5 the exception is deleted.

(2) In Section 202 the definition for existing buildings is deleted and replaced with the following:

EXISTING BUILDING. A building lawfully erected under a prior adopted code, or one which is deemed a legal non-conforming building by the code official, and one which is not a dangerous building.

(3) In Section 605.1, Exception number 3, the following is added at the end of the sentence:

"unless undergoing a change of occupancy classification."

(4) Section 606.2.1 is deleted and replaced with the following:

606.2.1 Parapet bracing, wall anchors, and other appendages. Buildings constructed prior to 1975 shall have parapet bracing, wall anchors, and appendages such as cornices, spires, towers, tanks, signs, statuary, etc. evaluated by a licensed engineer

when said building is undergoing reroofing, or alteration of or repair to said feature. Such parapet bracing, wall anchors, and appendages shall be evaluated in accordance with the reduced International Building Code level seismic forces as specified in IEBC Section 101.5.4.2 and design procedures of Section 101.5.4. When found to be deficient because of design or deteriorated condition, the engineer's recommendations to anchor, brace, reinforce, or remove the deficient feature shall be implemented.

EXCEPTIONS:

1. Group R-3 and U occupancies.

2. Unreinforced masonry parapets need not be braced according to the above stated provisions provided that the maximum height of an unreinforced masonry parapet above the level of the diaphragm tension anchors or above the parapet braces shall not exceed one and one-half times the thickness of the parapet wall. The parapet height may be a maximum of two and one-half times its thickness in other than Seismic Design Categories D, E, or F.

(5) Section 907.3.1 is deleted and replaced with the following:

907.3.1 Compliance with the International Building Code. When a building or portion thereof is subject to a change of occupancy such that a change in the nature of the occupancy results in a higher seismic occupancy based on Table 1604.5 of the International Building Code; or where such change of occupancy results in a reclassification of a building to a higher hazard category as shown in Table 912.4; or where a change of a Group M occupancy to a Group A, E, F, M, R-1, R-2, or R-4 occupancy with two-thirds or more of the floors involved in Level 3 alteration work; or when such change of occupancy results in a design occupant load increase of 100% or more, the building shall conform to the seismic requirements of the International Building Code for the new seismic use group.

Exceptions 1-4 remain unchanged.

5. Where the design occupant load increase is less than 25 occupants and the occupancy category does not change.

(6) In Section 912.7.3 exception 2 is deleted.

(7) In Section 912.8 number 7 is added as follows:

7. When a change of occupancy in a building or portion of a building results in a Group R-2 occupancy, not less than 20 percent of the dwelling or sleeping units shall be Type B dwelling or sleeping units. These dwelling or sleeping units may be located on any floor of the building provided with an accessible route. Two percent, but not less than one unit, of the dwelling or sleeping units shall be Type A dwelling units.

R156-15A-403. Local Amendment to the IEBC.

The following are adopted as amendments to the IEBC to be applicable to the following jurisdictions:

None.

KEY: contractors, building codes, building inspections, licensing

**Date of Enactment or Last Substantive Amendment: 2011
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 15A-1-204(6); 15A-2-205**

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

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35035

FILED: 07/12/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Professional Engineers and Professional Land Surveyors Licensing Board reviewed this rule and have determined that the current definition of "recognized jurisdiction" is overly restrictive to applicants applying for licensure by endorsement. This rule filing modifies that definition and makes other minor changes.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-22-102(14), the proposed amendment modifies the definition of the term "recognized jurisdiction". The current definition is overly restrictive because it prevents qualified professional engineers, professional structural engineers and professional land surveyors licensed in other jurisdictions from becoming licensed in Utah. In short, the current definition includes a narrow set of requirements that are not in place in many jurisdictions. Subsection R156-22-302b(1)(c) is updated to reference a new evaluation standard adopted by the National Council of Examiners for Engineering and Surveying (NCEES). This new standard allows for consideration of graduate level coursework in addition to work at the bachelor's level. The former standard, that of equivalency to an Engineering Accreditation Commission/Accreditation Board for Engineering and Technology (EAC/ABET) accredited program, only considered bachelor's level coursework. In Subsection R156-22-302d(2)(b), the proposed amendment deletes a reference to a former title of an examination and replaces it with the current title.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$100 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

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

◆ **SMALL BUSINESSES:** The proposed amendments only apply to licensed professional engineers, professional structural engineers and professional land surveyors and applicants for licensure by endorsement in those classifications. Making the definition of "recognized jurisdiction" less restrictive provides a path to licensure to some out-of-state applicants that does not exist under the current definition. In these cases, some businesses may experience a financial benefit; however, the Division is unable to estimate the extent of any cost savings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to licensed professional engineers, professional structural engineers and professional land surveyors and applicants for licensure by endorsement in those classifications. Making the definition of "recognized jurisdiction" less restrictive provides a path to licensure to some out-of-state applicants that does not exist under the current definition. As a result, the applicant will experience a financial benefit; however, the Division is unable to estimate the extent of the cost savings due to varying circumstances.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed professional engineers, professional structural engineers and professional land surveyors and applicants for licensure by endorsement in those classifications. Making the definition of "recognized jurisdiction" less restrictive provides a path to licensure to some out-of-state applicants that does not exist under the current definition. As a result, the applicant will experience a financial benefit; however, the Division is unable to estimate the extent of the cost savings due to varying circumstances.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Out-of-state license applicants and engineering and land surveying businesses may experience a positive fiscal impact based on this rule filing which amends the educational requirements so as to be in line with the national standard. That impact cannot be estimated. No impact is anticipated from the remaining technical changes made in this filing.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 08/15/2011 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 475, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2011

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.**R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rule.****R156-22-102. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) "NCEES FE", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Fundamentals of Engineering Examination.

(9) "NCEES FS", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Fundamentals of Surveying Examination.

(10) "NCEES PE", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Principles and Practice of Engineering Examination.

(11) "NCEES PS", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Principles and Practice in Surveying Examination.

(12) "NCEES SE", as used throughout this rule, means the National Council of Examiners in Engineering and Surveying Structural Engineering Examination.

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

(14) "Recognized jurisdiction", as used in Subsection 58-22-302(4)(d)(i), for licensure by endorsement, means any state, district or territory of the United States, or any foreign country that issues licenses [for] to professional engineers, professional structural engineers, or professional land surveyors[— and whose licensure requirements, at the time the applicant submits a Utah license application, include:

~~(a) Professional Engineer:~~

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

~~(ii) passing the NCEES PE examination.~~

~~(b) Professional Structural Engineer:~~

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

~~(ii) passing the NCEES SE examination; and~~

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

~~_____ (c) Professional Land Surveyor.~~

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

~~_____ (ii) passing the NCEES PS examination or passing a professional land surveying examination that is substantially equivalent to the NCEES PS examination].~~

(15) "Responsible charge" by a principal, as used in Subsection 58-22-102(7), means that the licensee is assigned to and is personally accountable for the production of specified professional engineering, professional structural engineering or professional land surveying projects within an organization.

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

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

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

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

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

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

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

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

(c) If the degree was earned in a foreign country, the engineering curriculum shall be determined [to be equivalent to an EAC/ABET accredited program] by the NCEES Credentials Evaluations, formerly known as the Center for Professional

Engineering Education Services (CPEES), to fulfill the required curricular content of the NCEES Engineering Education Standard.

Only deficiencies in course work in the humanities, social sciences and liberal arts and no more than five semester hours in math, science or engineering, not to exceed a total of 10 semester hours noted by the credentials evaluation may be satisfied by successfully completing the deficiencies in course work at a recognized college or university approved by the Division in collaboration with the Board. Engineering course work deficiencies must be completed at an EAC/ABET approved program.

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

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

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

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

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

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

- (ii) control systems;
- (iii) drafting, not to exceed six semester hours or eight quarter hours;
- (iv) geodesy;
- (v) geographic information systems;
- (vi) global positioning systems;
- (vii) land development; and
- (viii) survey instrumentation;

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

- (i) Middle States Association of Colleges and Schools;
- (ii) New England Association of Colleges and Schools;
- (iii) North Central Association of Colleges and Schools;
- (iv) Northwest Commission on College and Universities;
- (v) Southern Association of Colleges and Schools; or
- (vi) Western Association of Schools and Colleges.

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

(1) Examination Requirements - Professional Engineer.

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

(i) the NCEES FE examination with a passing score as established by the NCEES except that an applicant who has completed an undergraduate degree from an EAC/ABET accredited

program and has completed a Ph.D. or doctorate in engineering from an institution that offers EAC/ABET undergraduate programs in the Ph.D. field of engineering is not required to pass the FE examination;

(ii) the NCEES PE examination or the NCEES SE examination with a passing score as established by the NCEES; and

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

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

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

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

(2) Examination Requirements - Professional Structural Engineer.

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

(i) the NCEES FE examination with a passing score as established by the NCEES;

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

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

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

(3) Examination Requirements - Professional Land Surveyor.

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

(i) the NCEES FS examination with a passing score as established by the NCEES;

(ii) the NCEES PS examination with a passing score as established by the NCEES; and

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

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

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

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

(4) Examination Requirements for Licensure by Endorsement.

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

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

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

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

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

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

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

Date of Enactment or Last Substantive Amendment: [March 24, 2011]

Notice of Continuation: November 15, 2007

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

**Commerce, Occupational and
Professional Licensing
R156-55a
Utah Construction Trades Licensing Act
Rule**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35013

FILED: 07/07/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Construction Services Commission reviewed the rule and determined that proposed rule amendments should be filed to: 1) update the rule as the result of S.B. 35 which was passed during the 2011 General Session; 2) clarify continuing education requirements for testing for distance learning courses; 3) delete a continuing education cutoff date that is no longer needed; and 4) make additional technical changes.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-55a-303b(2)(g), amendments clarify that test questions for all distance learning must be randomized. This new requirement helps prevent a person from simply buying an answer sheet through the Internet. Subsection R156-55a-303b(7) is being deleted as it is unnecessary due to requirements in other sections. The remaining subsections are renumbered. In Section R156-55a-306, the proposed amendments are needed as the result of S.B. 35. S. B. 35 requires that owner-workers having less than eight percent ownership now must meet financial responsibility requirements. Proposed amendments clarify that the existing financial review requirements will apply to all owner-workers. In Section R156-55a-503, the proposed amendments are needed as the result of S.B. 35 which added new unlawful conduct provisions to the statute. Additions are made to the fine schedule for these new offenses. In Section R156-55a-602, the proposed amendments are needed as the result of S.B. 35. S.B. 35 requires owner-workers having less than eight percent ownership shall post a license bond if they do not meet financial responsibility requirements. The proposed amendments clarify that the existing bond requirements will apply to all owner-workers.

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. No additional costs are added by the proposed rule amendments with respect to S.B. 35 because those costs of implementing the bill were added with the fiscal note attached to the bill.

♦ **LOCAL GOVERNMENTS:** The proposed amendments apply to licensed contractors and applicants for licensure in those classifications as well as continuing education providers. As a result, the proposed amendments do not apply to local governments.

♦ **SMALL BUSINESSES:** The proposed amendments apply to licensed contractors and applicants for licensure in those classifications. Some of the proposed amendments also apply to continuing education providers, which may qualify as a small business. The continuing education providers may have a slight cost increase in preparing randomized questions for distance learning courses. However, the Division is not able to determine an amount of the cost increase due to varying circumstances with the continuing education providers. No additional costs are added by the proposed rule amendments with respect to S.B. 35 because the costs of implementing the bill were not caused by these proposed rule amendments but were caused by the statutory change and those costs were indicated in the fiscal note attached to the bill.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments apply to licensed contractors and applicants for licensure in those classifications. Some of the proposed amendments also apply to continuing education providers. The continuing education providers may have a slight cost increase in preparing randomized questions for distance learning courses. However, the Division is not able to determine an amount of the cost increase due to varying circumstances with the continuing education providers. No additional costs are added by the proposed rule amendments with respect to S.B. 35 because the costs of implementing the bill were not caused by these proposed rule amendments but were caused by the statutory change and those costs were indicated in the fiscal note attached to the bill.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments apply to licensed contractors and applicants for licensure in those classifications. Some of the proposed amendments also apply to continuing education providers. The continuing education providers may have a slight cost increase in preparing randomized questions for distance learning courses. However, the Division is not able to determine an amount of the cost increase due to varying circumstances with the continuing education providers. No additional costs are added by the proposed rule amendments with respect to S.B. 35 because the costs of implementing the bill were not caused by these proposed rule amendments but were caused by the statutory change and those costs were indicated in the fiscal note attached to the bill.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated beyond those

addressed in a recent statutory change and beyond those stated in the rule summary (slight cost to continuing education providers from creating a system to provide random test questions.)

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 08/31/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 08/31/2011 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: 09/07/2011

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-55a. Utah Construction Trades Licensing Act Rule.

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

(1) Required Hours. Pursuant to Subsection 58-55-302.5, each licensee shall complete a total of six hours of continuing education during each two year license term except that for the renewal term ending November 30, 2009, the continuing education must be completed between July 1, 2007 and November 30, 2009. A minimum of three hours shall be core education. The remaining three hours are to be professional education. Additional core education hours beyond the required amount may be substituted for professional education hours.

(a) "Core continuing" education" is defined as construction codes, construction laws, OSHA 10 or OSHA 30 safety training, governmental regulations pertaining to the construction trades and employee verification and payment practices.

(b) "Professional continuing education" is defined as substantive subjects dealing with the practice of the construction trades, including land development, land use, planning and zoning, energy conservation, professional development, arbitration practices, estimating, finance and bookkeeping, marketing techniques, servicing clients, personal and property protection for the licensee and the licensee's clients and similar topics.

(c) The following course subject matter is not acceptable as core education or professional education hours: mechanical office and business skills, such as typing, speed reading, memory

improvement and report writing; physical well-being or personal development, such as personal motivation, stress management, time management, dress for success, or similar subjects; presentations by a supplier or a supplier representative to promote a particular product or line of products; and meetings held in conjunction with the general business of the licensee or employer.

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

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

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

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

(i) a recognized accredited college or university;

(ii) a state or federal agency;

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

(iv) a commercial continuing education provider providing a program related to the construction trades.

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

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

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

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

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

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

(i) the date of the course;

(ii) the name of the course provider;

(iii) the name of the instructor;

(iv) the course title;

(v) the hours of continuing education credit and type of credit (core or professional);

(vi) the attendee's name; and

(v) the signature of the course provider.

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

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

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

(6) The continuing education requirement for electricians, plumbers and elevator mechanics as established in Subsections 58-55-302.7 and 58-55-303(6), which is completed by an employee or owner of a contractor, shall satisfy the continuing education requirement for contractors as established in Subsection 58-55-302.5 and implemented herein. The contractor licensee shall assure that the course provider has submitted the verification of the electrician's attendance on behalf of the licensee to the continuing education registry as specified in Subsection (8).

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

~~(8)~~ A course provider shall submit continuing education courses for approval to the continuing education registry and shall submit verification of attendance and completion on behalf of licensees attending and completing the program directly to the continuing education registry in the format required by the continuing education registry.

~~(9)~~ The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses which meet the standards set forth under this Section.

~~(10)~~ Continuing Education Registry.

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

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

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

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

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

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

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

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

R156-55a-306. Contractor Financial Responsibility - Division Audit.

In accordance with Subsections ~~58-55-302(10)(c), 58-55-306(2), 58-55-306(4)(b), and 58-55-102(19)~~, the Division may consider various relevant factors in conducting ~~an~~ a financial responsibility audit of ~~an applicant, licensee, or any owner,~~ ~~the demonstration of financial responsibility~~ including:

(1)(a) judgments, tax liens, collection actions, bankruptcy schedules and a history of late payments to creditors, including documentation showing the resolution of each of the above actions;

(b) ~~the applicant's or licensee's~~ financial statements and tax returns, including the ability to prepare or have prepared competent and current financial statements and tax returns;

(c) an acceptable current credit report ~~of the applicant or licensee which~~ that meets the following requirements:

(i) for individuals:

(A) a credit report from each of the three national reporting agencies, Trans Union, Experian, and Equifax; or

(B) a merged credit report of the agencies identified in Subsection (A) prepared by the National Association of Credit Managers (NACM); or

(ii) for entities, a business credit report such as an Experian Business Credit Report or a Dun and Bradstreet Report;

(d) ~~the applicant's or licensee's~~ an explanation of the reasons for any financial difficulties and how the financial difficulties were resolved;

(e) any of the factors listed in Subsection R156-1-302 ~~which~~ that may relate to failure to maintain financial responsibility;

(f) each of the factors listed in this Subsection regarding the financial history of the owners of the applicant or licensee;

(g) any guaranty agreements provided for the applicant or licensee ~~and any owners~~; and

(h) any history of prior entities owned or operated by the ~~applicant, the licensee, or any owner~~ ~~of the applicant or licensee which~~ that have failed to maintain financial responsibility.

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

Violation	FIRST OFFENSE	
	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
58-55-501(24)	\$ 500.00	N/A
58-55-501(25)	\$ 500.00	N/A
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
58-55-501(24)	\$1,000.00	N/A
58-55-501(25)	\$1,000.00	N/A
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]~~presented.

R156-55a-602. Contractor License Bonds.

(1) Pursuant to the provisions of Subsections 58-55-306(1)(b) and 58-55-306(4)(c) and except as provided in Subsection R156-55a-602(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]that~~ may occur as the result of the contractor's violation of the unprofessional or unlawful provisions contained in Title 58, Chapters 1 and 55 and rules R156-1 and R156-55a including the failure to maintain financial responsibility.

(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, licensee or any owner ~~[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. The financial history of the applicant, licensee or any

owner, as outlined in Section R156-55a-306 may be reviewed in determining the bond amount required.

(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, licensee or any ~~owner[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 that 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: [April 25, 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, Occupational and Professional Licensing
R156-55b
Electricians Licensing Rule**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35014

FILED: 07/07/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division, Electricians Licensing Board, and Construction Services Commission reviewed the rule and determined that proposed rule amendments should be filed to: 1) change the procedure so that an applicant shall first apply to take the examination and then, once approved, may apply for licensure; 2) clarify continuing education requirements for testing for distance learning courses; 3) delete a continuing education cutoff date that is no longer needed; and 4) make additional technical changes.

SUMMARY OF THE RULE OR CHANGE: Updated the title of rule. In Subsection R156-55b-102(2), minor wording changes are made. In Section R156-55b-302c, the proposed

amendments are being made to accommodate a more efficient procedure for handling applications for both the Division and the applicant. Under current Division procedures, an applicant first submits an application for licensure and, then if approved to test and the applicant passes within six months of the approval date, the license is granted; otherwise, the license is denied. The new, proposed procedure will allow an applicant to first apply for permission to sit for the exam on an indefinite basis. When the applicant subsequently passes the examination, the applicant may then apply for licensure. This revised process eliminates the Division holding applications in pending status for as long as six months and the applicant needing to reapply after those six months have elapsed if the applicant does not pass the examination. The proposed amendments also require the applicant to answer the qualifying questionnaire at the date of the application for licensure to assure that unlawful or unprofessional conduct has not occurred in the interim between the testing period and application for licensure. In Subsection R156-55b-304(6)(g), the amendments clarify that test questions for all distance learning must be randomized. This new requirement helps prevent a person from simply buying an answer sheet through the Internet. Subsection R156-55b-304(10) is being deleted as it is unnecessary due to requirements in other sections. The remaining subsections are renumbered.

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

ANTICIPATED COST OR SAVINGS TO:

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

◆ **LOCAL GOVERNMENTS:** The proposed amendments apply to licensed electricians and applicants for licensure in those classifications as well as continuing education providers. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** The proposed amendments apply to licensed electricians and applicants for licensure in those classifications. Some of the proposed amendments also apply to continuing education providers, which may qualify as a small business. The continuing education providers may have a slight cost increase in preparing randomized questions for distance learning courses. However, the Division is not able to determine an amount of the cost increase due to varying circumstances with the continuing education providers. Also, licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments apply to licensed electricians and applicants for licensure in those classifications. Some of the

proposed amendments also apply to continuing education providers. The continuing education providers may have a slight cost increase in preparing randomized questions for distance learning courses. However, the Division is not able to determine an amount of the cost increase due to varying circumstances with the continuing education providers. It is also determined that some applicants, who have not passed an examination within the first six months, will recognize a savings of a \$110 application fee by not being required to reapply for permission to take the examination again. The Division is not able to determine how many applicants this may apply to as it is unknown how many applicants will not pass the required examinations within the first six months.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments apply to licensed electricians and applicants for licensure in those classifications. Some of the proposed amendments also apply to continuing education providers. The continuing education providers may have a slight cost increase in preparing randomized questions for distance learning courses. However, the Division is not able to determine an amount of the cost increase due to varying circumstances with the continuing education providers. It is also determined that some applicants, who have not passed an examination within the first six months, will recognize a savings of a \$110 application fee by not being required to reapply for permission to take the examination again. The Division is not able to determine how many applicants this may apply to as it is unknown how many applicants will not pass the required examinations within the first six months.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated beyond those stated in the rule summary (slight savings to some new applicants due to being allowed to apply for licensure after passing the examination, and slight cost to continuing education providers from creating a system to provide random test questions.)

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 08/31/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 08/31/2011 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: 09/07/2011

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-55b. Electricians Licensing Act Rule.

R156-55b-101. Title.

This rule is known as the "Electricians Licensing Act Rule".

R156-55b-102. Definitions.

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

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

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

(3) "Minor electrical work incidental to a mechanical or service installation" as used in Subsection 58-55-305(1)(n) means the electrical work involved in installation, replacement or repair of appliances or machinery that utilize electrical power. Minor electrical work does not include modification or repair of "Premises Wiring" as defined in the National Electrical Code, and does not include installation of a disconnecting means or outlet. Electrical work is minor and incidental only when wiring is extended no more than ten feet in length from an outlet or disconnect provided specifically for the piece of equipment.

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

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

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

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

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

(a) Utah Electrical Licensing Examination for Master Electricians;

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

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

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

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

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

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

(b) An applicant ~~[may not retake any part of the examination more than two times and]~~ shall wait at least 25 days between the first two retakes and thereafter shall wait 120 days between retakes. ~~[~~

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

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

(b) Prior to December 31, 2010, if an applicant passed any part of the examination but did not pass the entire examination,

the applicant may use any previously passed part of the examination to pass the entire examination until December 31, 2011. Thereafter, the applicant shall retake the entire examination to support any subsequent application for licensure.

R156-55b-304. Continuing Education.

(1) Required Hours. Pursuant to Sections 58-55-302.7 and 58-55-303, each licensee shall complete 16 hours of continuing education during each two year license term. A minimum of 12 hours shall be core education. The remaining four hours may be professional education.

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

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

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

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

(c) supervision skills related to the electrical trade.

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

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

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

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

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

(5) The Division may:

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

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

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

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

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

(i) a recognized accredited college or university;

(ii) a state or federal agency;

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

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

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

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

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

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

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

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

(i) the date of the course;

(ii) the name of the course provider;

(iii) the name of the instructor;

(iv) the course title;

(v) the hours of continuing education credit;

(vi) the attendee's name;

(vii) the attendee's license number; and

(viii) the signature of the course provider.

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

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

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

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

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

~~(12)~~11 The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses which meet the standards set forth under this section.

~~(13)~~12 Continuing Education Registry.

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

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

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

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

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

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

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

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

KEY: occupational licensing, licensing, contractors, electricians
Date of Enactment or Last Substantive Amendment:
~~November 22, 2010~~ 2011

Notice of Continuation: November 8, 2006

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

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

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35015

FILED: 07/07/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division, Plumbers Licensing Board, and Construction Services Commission reviewed the rule and determined that proposed rule amendments should be filed to: 1) define "immediate supervision" as required by statute; 2) change the procedure so that an applicant shall first apply to take the examination and then, once approved, may apply for licensure; 3) change the rule to allow a journeyman plumber applicant, who has completed the education

requirement, to take the exam before the journeyman has completed the 8,000 hours of experience required for licensure; 4) clarify continuing education requirements for testing for distance learning courses; 5) delete a continuing education cutoff date that is no longer needed; and 6) make additional technical changes.

SUMMARY OF THE RULE OR CHANGE: Updated the title of rule. In Subsection R156-55c-102(2), amendments modify the definition of "direct supervision" to "immediate supervision" and clarify that "immediate supervision" means that the supervisor must be on the same project or job site. The prior definition for "direct supervision" had inadvertently been allowed to remain in the rule rather than using the current language used in statute. In Section R156-55c-302c, the proposed amendments are being made to accommodate a more efficient procedure for handling applications for both the Division and the applicant. Under current Division procedures, an applicant first submits an application for licensure and, then if approved to test and the applicant passes within six months of the approval date, the license is granted; otherwise, the license is denied. The new, proposed procedure will allow an applicant to first apply for permission to sit for the exam on an indefinite basis. When the applicant subsequently passes the examination, the applicant may then apply for licensure. This revised process eliminates the Division holding applications in pending status for as long as six months and the applicant needing to reapply after those six months have elapsed if the applicant does not pass the examination. The proposed amendments also require the applicant to answer the qualifying questionnaire at the date of the application for licensure to assure that unlawful or unprofessional conduct has not occurred in the interim between the testing period and application for licensure. In addition, the amendments in this section allow a journeyman plumber applicant who has completed the education requirement to take the examination before the applicant has completed the 8,000 hours of experience required for licensure. In Subsection R156-55c-302d(2)(c), changed "direct" to "immediate" supervision. In Subsection R156-55c-303b(6)(g), the amendments clarify that test questions for all distance learning must be randomized. This new requirement helps prevent a person from simply buying an answer sheet through the Internet. Subsection R156-55c-303b(10) is being deleted as it is unnecessary due to requirements in other sections. The remaining subsections are renumbered.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to print 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 apply to licensed plumbers and applicants for licensure in those classifications as well as continuing education

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

♦ **SMALL BUSINESSES:** The proposed amendments apply to licensed plumbers and applicants for licensure in those classifications. Some of the proposed amendments also apply to continuing education providers, which may qualify as a small business. The continuing education providers may have a slight cost increase in preparing randomized questions for distance learning courses. However, the Division is not able to determine an amount of the cost increase due to varying circumstances with the continuing education providers. Also, licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments apply to licensed plumbers and applicants for licensure in those classifications. Some of the proposed amendments also apply to continuing education providers. The continuing education providers may have a slight cost increase in preparing randomized questions for distance learning courses. However, the Division is not able to determine an amount of the cost increase due to varying circumstances with the continuing education providers. It is also determined that some applicants, who have not passed an examination within the first six months, will recognize a savings of a \$110 application fee by not being required to reapply for permission to take the examination again. The Division is not able to determine how many applicants this may apply to as it is unknown how many applicants will not pass the required examinations within the first six months.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments apply to licensed plumbers and applicants for licensure in those classifications. Some of the proposed amendments also apply to continuing education providers. The continuing education providers may have a slight cost increase in preparing randomized questions for distance learning courses. However, the Division is not able to determine an amount of the cost increase due to varying circumstances with the continuing education providers. It is also determined that some applicants, who have not passed an examination within the first six months, will recognize a savings of a \$110 application fee by not being required to reapply for permission to take the examination again. The Division is not able to determine how many applicants this may apply to as it is unknown how many applicants will not pass the required examinations within the first six months.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated beyond those stated in the rule summary (slight savings to some new applicants due to being allowed to apply for licensure after passing the examination, and slight cost to continuing education providers from creating a system to provide random test questions.)

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

COMMERCE
OCCUPATIONAL AND PROFESSIONAL
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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 08/31/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 08/31/2011 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: 09/07/2011

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-55c. Plumber Licensing Act Rule.

R156-55c-101. Title.

This rule is known as the "Plumber Licensing Act Rule".

R156-55c-102. Definitions.

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

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

(2) "~~Direct~~Immediate supervision", as used in Subsections 58-55-102(5) and 58-55-102(23) and this rule, means [reasonable direction, oversight, inspection, and evaluation of the work of a person, in or out of the immediate presence of the supervision person, so as to ensure that the end result complies with applicable standards]the apprentice and the supervising plumber are physically present on the same project or job site but are not required to be within sight of one another.

(3) "Minor plumbing work that is incidental", as used in Subsection 58-55-305(1)(k)(i) and this rule, means:

(a) repair or replacement of the following residential type appliances:

- (i) dishwashers;
- (ii) refrigerators;
- (iii) freezers;
- (iv) ice makers;
- (v) stoves;
- (vi) ranges;
- (vii) clothes washers; and
- (viii) clothes dryers; and

(b) repair or replacement of other plumbing fixtures and appliances inside the occupied space of a structure, when the cost of the repair or replacement does not exceed \$300 in total value, including all labor and materials, and including all changes or additions to the contracted or agreed upon work.

(4) "Minor plumbing work that is incidental", as used in Subsection 58-55-305(1)(k)(i), does not include installation or replacement of a water heater.

(5) "Plumber" means apprentice plumber, journeyman plumber, residential journeyman plumber, master plumber and residential master plumber.

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

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

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

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

(2) Admission to the examinations is permitted after:

~~(a) the applicant has completed all requirements for licensure set forth in this section and in Sections R156-55c-302a[-] and R156-55c-302b[- and R156-55c-302e-]; or~~

~~(b) the applicant has completed:~~

~~(i) the apprentice education program set forth in Subsection R156-55c-302b(1)(a)(ii); and~~

~~(ii) not less than 6,000 hours of the experience required under Subsection R156-66c-302b(1)(a)(i).~~

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

~~(b) An applicant [may not retake any section of the examination more than two times and -] shall wait at least 25 days [between retakes] for the first two retakes and thereafter shall wait 120 days between retakes. [~~

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

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

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

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

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

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

(a) supervising employees: 700 hours;

(b) supervising construction projects: 700 hours;

(c) cost/price management: 300 hours; and

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

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

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

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

(c) all supervisory experience shall be under the ~~[direct]~~immediate supervision of the applicant's employer; and

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

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

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

(i) Middle States Association of Colleges and Schools;

(ii) New England Association of Colleges and Schools;

(iii) North Central Association of Colleges and Schools;

(iv) Northwest Commission on Colleges and Universities;

(v) Southern Association of Colleges and Schools; or

(vi) Western Association of Schools and Colleges.

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

(i) accounting;

(ii) apprenticeship;

(iii) business management;

(iv) communications;

(v) computer systems and computer information systems;

- (vi) construction management;
- (vii) engineering;
- (viii) environmental technology;
- (ix) finance;
- (x) human resources; or
- (xi) marketing.

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

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

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

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

(b) the Americans with Disability Act;

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

(d) hydronics and waste water treatment.

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

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

(b) lien laws and Utah construction registry.

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

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

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

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

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

(5) The Division may:

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

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

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

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

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

(i) a recognized accredited college or university;

(ii) a state or federal agency;

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

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

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

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

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

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

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

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

(i) the date of the course;

(ii) the name of the course provider;

(iii) the name of the instructor;

(iv) the course title;

(v) the hours of continuing education credit;

(vi) the attendee's name;

(vii) the attendee's license number; and

(viii) the signature of the course provider.

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

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

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

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

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

(~~[12]~~11) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses [~~which~~that] meet the standards set forth under this section.

(~~[13]~~12) Continuing Education Registry.

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

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

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

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

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

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

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

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

KEY: occupational licensing, licensing, plumbers, plumbing

Date of Enactment or Last Substantive Amendment: [February 24,]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

Commerce, Occupational and Professional Licensing

R156-56

Utah Uniform Building Standard Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35016

FILED: 07/07/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 203, which was passed during the 2011 General Session, rewrote Title 58, Chapter 56, and moved

the building code and related provisions to Title 15A and left the building inspector licensure and factory built housing provisions in Title 58, Chapter 56. The building code provisions deleted in this proposed rule change will be moved to the new Rule R156-15A. This proposed rule change makes technical changes to accomplish this reorganization. Additional technical changes are included throughout the rule that affect punctuation and citations. Finally, this proposed rule change corrects certain references to "codes" previously adopted by rule but now adopted by statute to read "state construction codes adopted under Title 15A."

SUMMARY OF THE RULE OR CHANGE: In Section R156-56-101, the title of the rule is renamed to correctly reflect the revised scope of licensing provisions covered by this rule for building inspectors and factory built housing. In Section R156-56-102, inapplicable definitions are deleted and a definition for "Board" is added to be consistent with the Division's model rule format. The deleted definitions will be moved to new sections established under Rule R156-15A. Sections R156-56-105, R156-56-106, R156-56-202, R156-56-420, R156-56-601, R156-56-701, R156-56-702, R156-56-801, and R156-56-802 are being deleted and will be moved to new sections under Rule R156-15A. In Section R156-56-302, minor wording changes are made throughout this section to be consistent with recent statute changes. In Sections R156-56-401 and R156-56-402, old wording is being deleted and is replaced with information applying to factory built housing which was previously in Sections R156-56-602 and R156-56-604. Section R156-56-403 is being added with wording applying to factory built housing that was previously in Section R156-56-603. In Section R156-56-501, added a statute citation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-56-1 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

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

♦ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed building inspectors and factory built housing dealers 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 building inspectors and factory built housing dealers and applicants for licensure in those classifications. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business. No substantive licensure requirements have been changed in this proposed rule. Therefore, there is no financial impact as a result of the proposed amendments.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments only apply to licensed building inspectors and factory built housing dealers and applicants for licensure in those classifications. No substantive licensure requirements have been changed in this proposed rule. Therefore, there is no financial impact as a result of the proposed amendments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed building inspectors and factory built housing dealers and applicants for licensure in those classifications. No substantive licensure requirements have been changed in this proposed rule. Therefore, there is no financial impact as a result of the proposed amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated with this rule filing, which implements a recent statutory change and renumbers and reorganizes existing provisions.

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 08/31/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 08/10/2011 09:00 AM, State Office Building, 450 N State Street, Room 4112, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2011

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-56. [Utah Uniform Building Standard] Building Inspector and Factory Built Housing Licensing Act Rule.

R156-56-101. Title.

This rule is known as the "[Utah Uniform Building Standard] Building Inspector and Factory Built Housing Licensing Act Rule".

R156-56-102. Definitions.

In addition to the definitions in Title 58, Chapters 1, 55 and 56, as used in Title 58, Chapter 56 or this rule:

~~(1) "Board" means the Building Inspector Licensing Board created in Section 58-56-8.5.~~

~~(1) "Building permit" means, for the purpose of determining the building permit surcharge under Subsection 58-56-9(4), a warrant, license or authorization to build or construct a building or structure or any part thereof.~~

~~(2) "Building permit fee" means, for the purpose of determining the building permit surcharge under Subsection 58-56-9(4), fees assessed by an agency of the state or political subdivision of the state for the issuance of permits for construction, alteration, remodeling, and repair and installation including building, electrical, mechanical and plumbing components.~~

~~(3) "Employed by a local regulator, state regulator or compliance agency" means, with respect to Subsection 58-56-9(1), the hiring of services of a qualified inspector whether by an employer/employee relationship, an independent contractor relationship, a fee-for-service relationship or any other lawful arrangement under which the regulating agency purchases the services of a qualified inspector.~~

~~(4) "Inspector" means a person employed by a local regulator, state regulator or compliance agency for the purpose of inspecting building, electrical, plumbing or mechanical construction, alteration, remodeling, repair or installation in accordance with the state construction codes adopted under [this rule] Title 15A and taking appropriate action based upon the findings made during inspection.~~

~~(5) "Permit number", as used in Sections R156-56-401 and R156-56-402, means the standardized building permit number described below in R156-56-401.~~

~~(6) "Refuses to establish a method of appeal" means with respect to Subsection 58-56-8(3), that a compliance agency does not in fact adopt a formal written method of appealing uniform building standard matters in accordance with generally recognized standards of due process; or, that the compliance agency does not convene an appeals board and render a decision in the matter within ninety days from the date on which the appeal is properly filed with the compliance agency.~~

[R156-56-105. Board of Appeals.

~~If the Commission is required to act as an appeals board in accordance with the provisions of Subsection 58-56-8(3), the following shall regulate the convening and conduct of the special appeals board:~~

~~(1) If a compliance agency refuses to establish a method of appeal regarding a uniform building standard issue, the appealing party may petition the Commission to act as the board of appeals.~~

~~(2) The person making the appeal shall file the request to convene the Commission as an appeals board in accordance with the requirements for a request for agency action, as set forth in Subsection 63G-4-201(3)(a) and Section R151-46b-7. A request by other means shall not be considered. Any request received by the Commission or Division by any other means shall be returned to the appellant with appropriate instructions.~~

~~(3) A copy of the final written decision of the compliance agency interpreting or applying a code which is the subject of the dispute shall be submitted as an attachment to the request. If the~~

person making the appeal requests, but does not timely receive a final written decision, the person shall submit an affidavit to this effect in lieu of the final written decision.

(4) The request shall be filed with the Division no later than 30 days following the issuance of the disputed written decision by the compliance agency.

(5) The compliance agency shall file a written response to the request not later than 20 days after the filing of the request. The request and response shall be provided to the Commission in advance of any hearing in order to properly frame the disputed issues.

(6) Except with regard to the time period specified in Subsection (7), the time periods specified in this section may, upon a showing of good cause, be modified by the presiding officer conducting the proceeding.

(7) The Commission shall convene as an appeals board within 45 days after a request is properly filed.

(8) Upon the convening of the Commission as an appeals board, the board members shall review the issue to be considered to determine if a member of the board has a conflict of interest which would preclude the member from fairly hearing and deciding the issue. If it is determined that a conflict does exist, the member shall be excused from participating in the proceedings.

(9) The hearing shall be a formal hearing held in accordance with the Utah Administrative Procedures Act, Title 63G, Chapter 4.

(10) Decisions relating to the application and interpretation of the code made by a compliance agency board of appeals shall be binding for the specific individual case and shall not require Commission approval.

R156-56-106. Fees.

In accordance with Subsection 58-56-9(4), on April 30, July 31, October 31 and January 31 of each year, each agency of the state and each political subdivision of the state which assesses a building permit fee shall file with the Division a report of building fees and surcharge for the immediately preceding calendar quarter; and, shall remit 80% of the amount of the surcharge to have been assessed to the Division.

R156-56-202. Advisory Peer Committees Created - Membership - Duties.

(1) There is created in accordance with Subsection 58-1-203(1)(f) and 58-56-5(10)(c), the following committees as advisory peer committees to the Uniform Building Codes Commission:

(a) the Education Advisory Committee consisting of nine members, which shall include a design professional, a general contractor, an electrical contractor, a mechanical or plumbing contractor, an educator, and four inspectors (one from each of the specialties of plumbing, electrical, mechanical and general building);

(b) the Plumbing and Health Advisory Committee consisting of nine members;

(c) the Structural Advisory Committee consisting of seven members;

(d) the Architectural Advisory Committee consisting of seven members;

(e) the Fire Protection Advisory Committee consisting of five members;

(i) This committee shall join together with the Fire Advisory and Code Analysis Committee of the Utah Fire Prevention Board to form the Unified Code Analysis Council.

(ii) The Unified Code Analysis Council shall meet as directed by the Utah Fire Prevention Board or as directed by the Uniform Building Code Commission or as needed to review fire prevention and building code issues that require definitive and specific analysis.

(iii) The Unified Code Analysis Council shall select one of its members to act in the position of chair and another to act as vice chair. The chair and vice chair shall serve for one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

(iv) The chair or vice chair shall report to the Utah Fire Prevention Board or Uniform Building Code Commission recommendations of the council with regard to the review of fire and building codes;

(f) the Mechanical Advisory Committee consisting of seven members; and

(g) the Electrical Advisory Committee consisting of seven members.

(2) The committees shall be appointed and serve in accordance with Section R156-1-205. The membership of each committee shall be made up of individuals who have direct knowledge or involvement in the area of code involved in the title of that committee.

(3) The duties and responsibilities of the committees shall include:

(a) review of codes proposed for adoption or approval as assigned by the Division in collaboration with the Commission;

(b) review of requests for amendments to the adopted codes or approved codes as assigned to each committee by the Division with the collaboration of the Commission;

(c) submission of recommendations concerning the reviews made under Subsection (a) and (b); and

(d) the Education Advisory Committee shall review and make recommendations regarding funding requests which are submitted, and review and make recommendations regarding budget, revenue and expenses of the education fund established pursuant to Subsection 58-56-9(4).

JR156-56-302. Qualifications for Licensure of Inspectors - Application Requirements.

In accordance with Subsection 58-56-9(1), the licensee classifications, scope of work, qualifications for licensure, and application for license are established as follows:

(1) License Classifications. Each inspector required to be licensed under Subsection 58-56-9(1) shall qualify for licensure and be licensed by the Division in one of the following classifications:

(a) Combination Inspector; or

(b) Limited Inspector.

(2) Scope of Work. The scope of work permitted under each inspector classification is as follows:

(a) Combination Inspector.

(i) Inspect the components of any building, structure or work for which a standard is provided in the specific edition of the state construction codes adopted under Title 15A [this rule or amendments to these codes as included in this rule].

(ii) Determine whether the construction, alteration, remodeling, repair or installation of all components of any building, structure or work is in compliance with the state construction code adopted under Title 15A~~[eodes]~~.

(iii) After determination of compliance or noncompliance with the state construction codes adopted under Title 15A, ~~[eodes]~~ take appropriate action as is provided in the aforesaid codes.

(b) Limited Inspector.

(i) A Limited Inspector may only conduct activities under Subsections (ii), (iii) or (iv) for which the Limited Inspector has maintained current certificates under ~~[the]state construction codes adopted under Title 15A~~ ~~[adopted codes]~~ as provided under Subsection ~~[s]~~ R156-56-302(3)(b) ~~and R156-56-302(2)(c)(ii)~~.

(ii) Subject to the limitations of Subsection (i), inspect the components of any building, structure or work for which a standard is provided in the state construction codes adopted under Title 15A ~~[specific edition of the codes adopted under this rule or amendments to these codes as included in this rule]~~.

(iii) Subject to the limitations under Subsection (i), determine whether the construction, alteration, remodeling, repair or installation of components of any building, structure or work is in compliance with the state construction codes adopted under Title 15A ~~[adopted codes]~~.

(iv) Subject to the limitations under Subsection (i), after determination of compliance or noncompliance with the state construction codes adopted under Title 15A ~~[eodes]~~, take appropriate action as is provided in the adopted codes.

(3) Qualifications for Licensure. The qualifications for licensure for each inspector classification are as follows:

(a) Combination Inspector.

Has passed the examination for and maintained as current the following national certifications for state construction codes adopted under Title 15A ~~[this rule]~~:

(i) the "Combination Inspector Certification" issued by the International Code Council; or

(ii) all of the following certifications:

(A) the "Building Inspector Certification" issued by the International Code Council or both the "Commercial Building Inspector Certification" and the "Residential Building Inspector Certification" issued by the International Code Council;

(B) the "Electrical Inspector Certification" issued by the International Code Council or the "General Electrical Certification" issued by the International Association of Electrical Inspectors, or both the "Commercial Electrical Inspector Certification" and the "Residential Electrical Inspector Certification" issued by the International Code Council;

(C) the "Plumbing Inspector Certification" issued by the International Code Council, or both the "Commercial Plumbing Inspector Certification" and the "Residential Plumbing Inspector Certification" issued by the International Code Council; and

(D) the "Mechanical Inspector Certification" issued by the International Code Council or both the "Commercial Mechanical Inspector Certification" and the "Residential Mechanical Inspector Certification" issued by the International Code Council.

(b) Limited Inspector.

Has passed the examination for and maintained as current one or more of the following national certifications for state construction codes adopted under Title 15A ~~[this rule]~~:

(i) the "Building Inspector Certification" issued by the International Code Council;

(ii) the "Electrical Inspector Certification" issued by the International Code Council or the "General Electrical Certification" issued by the International Association of Electrical Inspectors;

(iii) the "Plumbing Inspector Certification" issued by the International Code Council;

(iv) the "Mechanical Inspector Certification" issued by the International Code Council;

(v) the "Residential Combination Inspector Certification" issued by the International Code Council;

(vi) the "Commercial Combination Certification" issued by the International Code Council;

(vii) the "Commercial Building Inspector Certification" issued by the International Code Council;

(viii) the "Commercial Electrical Inspector Certification" issued by the International Code Council;

(ix) the "Commercial Plumbing Inspector Certification" issued by the International Code Council;

(x) the "Commercial Mechanical Inspector Certification" issued by the International Code Council;

(xi) the "Residential Building Inspector Certification" issued by the International Code Council;

(xii) the "Residential Electrical Inspector Certification" issued by the International Code Council;

(xiii) the "Residential Plumbing Inspector Certification" issued by the International Code Council;

(xiv) the "Residential Mechanical Inspector Certification" issued by the International Code Council;

(xv) any other special or otherwise limited inspector certifications used by the International Code Council which certifications cover a part of the state construction codes adopted under ~~[this rule]~~ Title 15A, including but not limited to each of the following: Reinforced Concrete Special Inspector, Prestressed Concrete Special Inspector, Structural Masonry Special Inspector, Structural Steel and Bolting Special Inspection, Structural Welding Special Inspection, Spray Applied Fire Proofing Special Inspector, Residential Energy Inspector, Commercial Energy Inspector;

(xvi) the Certified Welding Inspector Certification issued by the American Welding Society;

(xvii) any other certification issued by an agency specified in Chapter 17 of the International Building Code ("IBC") or an agency specified in the referenced standards; or

(xviii) any combination certification which is based upon a combination of one or more of the above listed certifications.

(c) If no qualification is listed in the IBC for a special inspector, the special inspector may submit his qualifications to the licensing board for approval.

(4) Application for License.

(a) An applicant for licensure shall:

(i) submit an application in a form prescribed by the Division; and

(ii) pay a fee determined by the department pursuant to Section 63J-1-504.

(5) Code ~~[t]~~ Transition ~~[p]~~ Provisions.

(a) If an inspector or applicant obtains a new, renewal or recertification or replacement national certificate after a new code or code edition is adopted, the inspector or applicant is required to

obtain that certification under the currently adopted code or code edition.

(b) After a new code or new code edition is adopted under this rule, the inspector is required to re-certify ~~[their]the~~ inspector's national certification to the new code or code edition at the next available renewal cycle of the national certification.

(c) If a licensed inspector fails to obtain the national certification as required in Subsection (a) or (b), ~~[their]the~~ inspector's authority to inspect for the area covered by the national certification automatically expires at the expiration date of the national certification that was not obtained as required.

(d) If an inspector recertifies a national certificate on a newer edition of the codes adopted before that newer edition is adopted under this rule, such recertification shall be considered as a current national certification as required by this rule.

(e) If an inspector complies with these transition provisions, the inspector shall be considered to have a current national certification as required by this rule.

R156-56-401. [Standardized Building Permit Number]Factory Built Housing and Modular Unit Contractor Continuing Education.

~~[As provided in Section 58-56-19, beginning on July 1, 2009, any agency issuing a permit for construction within the state of Utah shall use the standardized building permit numbering system. The standardized building permit numbering system described under Subsection 58-56-19(4) shall include a combination of alpha or numeric characters arranged in a format acceptable to the issuing agency.]In accordance with Subsection 15A-1-306(1)(f) (ii), continuing education required for factory built housing installation contractors and modular construction installation contractors is as stated in Subsection 58-55-303(2)(b).~~

R156-56-402. [Standardized Building Permit Content]Factory Built Housing Dealer Bonds.

~~[As provided in Section 58-56-19, beginning January 1, 2007, any agency issuing a permit for construction within the state of Utah shall use a permit form that incorporates standardized building permit content as follows:~~

~~(1) permit number, as set forth in Subsection R156-56-401(1), shall be printed by typewriter, computer printer or rubber stamp in the upper right-hand corner of the building permit in at least 12-point type;~~

~~(2) the name of the owner of the project;~~

~~(3) the name of the original contractor or owner-builder for the project;~~

~~(4) whether the permit applicant is an original contractor or owner-builder; and~~

~~(5) street address of the project or a general description of the project.](1) In accordance with Subsection 58-56-16(2)(c), a factory built housing dealer shall provide a registration bond issued by a surety acceptable to the Division in the amount of \$50,000. An acceptable surety is one that is listed in the Department of Treasury, Fiscal Service, Circular 570, current revision, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies".~~

~~(2) The coverage of the registration bond shall include losses that may occur as the result of the factory built housing~~

~~dealer's violation of the unprofessional or unlawful conduct provisions contained in Title 58, Chapters 1 and 56.~~

R156-56-403. Factory Built Housing Dispute Resolution Program.

~~(1) In accordance with Subsection 15A-1-306(1)(f)(i), the dispute resolution program is defined and clarified as follows:~~

~~(a) Persons with manufactured housing disputes may file a complaint with the Division.~~

~~(b) The Division shall investigate such complaints and as part of its investigation may take any of the following actions:~~

~~(i) Negotiate an informal resolution with the parties involved.~~

~~(ii) Take any informal or formal action allowed by any applicable statute, including but not limited to:~~

~~(A) pursuing disciplinary proceedings under Section 58-1-401;~~

~~(B) assessing civil penalties under Subsection 15A-1-306(2); and~~

~~(C) referring matters to appropriate criminal prosecuting agencies and cooperating or assisting with the investigation and prosecution of cases by such agencies.~~

~~(c) In addition, persons with manufactured housing disputes may pursue a civil remedy.~~

[R156-56-420. Administration of Building Code Training Fund.

~~In accordance with Subsection 58-56-9(3)(a), the Division shall use monies received under Subsection 58-56-9(4) to provide education regarding codes and code amendments to building inspectors and individuals engaged in construction-related trades or professions. The following procedures, standards and policies are established to apply to the administration of the fund:~~

~~(1) The Division shall not approve or deny expenditure requests from the Building Code Training Fund ("the fund") until the Uniform Building Code Commission (UBCC) Education Advisory Committee ("the Committee"), created in accordance with Subsections 58-1-203(1)(f), 58-56-5(10)(d) and (e), and R156-56-202(1)(a) has considered and made its recommendations on the requests:~~

~~(2) Appropriate funding expenditure categories include:~~

~~(a) grants in the form of reimbursement funding to the following organizations which administer code related educational events, seminars or classes:~~

~~(i) schools, colleges, universities, departments of universities or other institutions of learning;~~

~~(ii) professional associations or organizations; and~~

~~(iii) governmental agencies.~~

~~(b) costs or expenses incurred as a result of educational events, seminars or classes directly administered by the Division;~~

~~(c) expenses incurred for the salary, benefits or other compensation and related expenses resulting from the employment of a Board Secretary;~~

~~(d) office equipment and associated administrative expenses required for the performance of the duties of the Board Secretary, including but not limited to computer equipment, telecommunication equipment and costs and general office supplies; and~~

~~(e) other related expenses as determined by the Division.~~

~~(3) The following procedure shall be used for submission, review and payment of funding grants:~~

~~(a) A funding grant applicant shall submit a completed "Application for Building Code Training Funds Grant" a minimum of 15 days prior to the meeting at which the request is to be considered and prior to the training event on forms provided for that purpose by the Division. Applications received less than 15 days prior to a meeting may be denied.~~

~~(b) Payment of approved funding grants will be made as reimbursement after the approved event, class, or seminar has been held and the required receipts, invoices and supporting documentation, including proof of payment if requested by the Division or Committee, have been submitted to the Division.~~

~~(4) The Committee shall consider the following in determining whether to recommend approval of a proposed funding request to the Division:~~

~~(a) the fund balance available and whether the proposed request meets the overall training objectives of the fund, including but not limited to:~~

~~(i) the need for training on the subject matter;~~

~~(ii) the need for training in the geographical area where the training is offered; and~~

~~(iii) the need for training on new codes being considered for adoption;~~

~~(b) the prior record of the program sponsor in providing codes training including:~~

~~(i) whether the subject matter taught was appropriate;~~

~~(ii) whether the instructor was appropriately qualified and prepared; and~~

~~(iii) whether the program sponsor followed appropriate and adequate procedures and requirements in providing the training and submitting requests for funding;~~

~~(c) costs of the facility including:~~

~~(i) the location of a facility or venue to the type of event, seminar or class;~~

~~(ii) the suitability of said facility or venue with regard to the anticipated attendance at or in connection with additional non-funded portions of an event or conference;~~

~~(iii) the duration of the proposed educational event, seminar or class; and~~

~~(iv) whether the proposed cost of the facility is reasonable compared to the cost of alternative available facilities;~~

~~(d) the estimated cost for instructor fees including:~~

~~(i) the experience or expertise of the instructor in the proposed training area;~~

~~(ii) the quality of training based upon events, seminars or classes that have been previously taught by the instructor;~~

~~(iii) the drawing power of the instructor, meaning the ability to increase the attendance at the proposed educational event, seminar or class;~~

~~(iv) travel expenses; and~~

~~(v) whether the proposed cost for the instructor or instructors is reasonable compared to the costs of similar educational events, seminars or classes;~~

~~(e) the estimated cost of advertising materials, brochures, registration and agenda materials including:~~

~~(i) printing costs which may include creative or design expenses; and~~

~~(ii) whether delivery or mailing costs, including postage and handling, are reasonable compared to the cost of alternate available means of delivery;~~

~~(f) other reasonable and comparable cost alternatives for each proposed expense item; and~~

~~(g) any other information the Committee reasonably believes may assist in evaluating a proposed expenditure.~~

~~(5) Joint Functions:~~

~~(a) "Joint function" means a proposed event, class, seminar or program that provides code or code related education and education or activities in other areas.~~

~~(b) Only the prorated portions of a joint function which are code and code related education are eligible for a funding grant.~~

~~(c) In considering a proposed funding request that involves a joint function, the Committee shall consider whether:~~

~~(i) the expenses subject to funding are reasonably prorated for the costs directly related to the code and code amendment education; and~~

~~(ii) the education being proposed will be reasonable and successful in the training objective in the context of the entire program or event.~~

~~(6) Advertising materials, brochures and agenda or training materials for a funded educational event, seminar or class shall include a statement which acknowledges that partial funding of the training program has been provided by the Utah Division of Occupational and Professional Licensing from the 1% surcharge funds on all building permits.~~

JR156-56-501. Administrative Penalties - Unlawful Conduct.

In accordance with Subsections 58-56-9.1, 58-56-9.3, and 58-56-9.5, unless otherwise ordered by the presiding officer, the following fine schedule shall apply:

(1) Engaging in the sale of factory built housing without being registered.

First offense: \$500

Second offense: \$1,000

(2) Selling factory built housing within the state as a dealer without collecting and remitting to the Division the fee required by Section 58-56-17.

First offense: \$500

Second offense: \$1,000

(3) Acting as a building inspector or representing oneself to be acting as a building inspector, unless licensed or exempted from licensure under Title 58, Chapter 56 or using the title building inspector or any other description, words, letters, or abbreviation indicating that the person is a building inspector if the person has not been licensed under Title 58, Chapter 56.

First offense: \$500

Second offense: \$1,000

(4) Acting as a building inspector beyond the scope of the license held.

First offense: \$500

Second offense: \$1,000

(5) Hiring or employing in any manner an unlicensed person as a building inspector, unless exempted from licensure.

First offense: \$800

Second offense: \$1,600

(6) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Section 58-56-9.5.

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

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

(9) In all cases the presiding officer shall have the discretion, after a review of the aggravating or mitigating circumstances, to increase or decrease the fine amount based on the evidence reviewed.

~~R156-56-601. Modular Unit Construction and Set-up.~~

~~Modular construction and set-up shall be as set forth in accordance with the following:~~

~~(1) Construction shall be in accordance with the building standards accepted by the state pursuant to Section 58-56-4.~~

~~(2) The inspection of the construction, modification of or set-up of a modular unit shall be the responsibility of the local regulator; however, nothing in this rule shall preclude the local regulator from entering into an agreement with another qualified person for the inspection of the unit(s) in the manufacturing facility.~~

~~R156-56-602. Factory Built Housing Dealer Bonds.~~

~~(1) Pursuant to the provisions of Subsection 58-56-16(2) (c), a factory built housing dealer shall provide a registration bond issued by a surety acceptable to the Division in the amount of \$50,000. An acceptable surety is one that is listed in the Department of Treasury, Fiscal Service, Circular 570, current revision, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies".~~

~~(2) The coverage of the registration bond shall include losses which may occur as the result of the factory built housing dealer's violation of the unprofessional or unlawful provisions contained in Title 58, Chapters 1 and 56.~~

~~R156-56-603. Factory Built Housing Dispute Resolution Program.~~

~~(1) Pursuant to Subsection 58-56-15(1)(f)(i), the dispute resolution program is defined and clarified as follows:~~

~~(a) Persons having disputes regarding manufactured housing issues may file a complaint with the Division.~~

~~(b) The Division shall investigate such complaints and as part of the investigation may take any of the following actions:~~

~~(i) The Division may negotiate with the parties involved for informal resolution of such complaints.~~

~~(ii) The Division may take any informal or formal action allowed by any applicable statute including, but not limited to:~~

~~(A) pursuing disciplinary proceedings under Section 58-1-401;~~

~~(B) pursuing civil sanctions under Subsection 58-56-15(2); and~~

~~(C) referring matters to appropriate criminal prosecuting agencies and cooperating or assisting with the investigation and prosecution of cases by such agencies.~~

~~(c) In addition, persons having disputes regarding manufactured housing issues may also institute civil action.~~

~~R156-56-604. Factory Built Housing Continuing Education Requirements.~~

~~Pursuant to Subsection 58-56-15(1)(f)(ii), continuing education required for manufactured housing installation contractors is the continuing education required by Subsection 58-55-303(2)(b).~~

~~R156-56-701. Adopted and Approved Codes.~~

~~(1) Adopted Codes. The Division shall publish the codes adopted by the Legislature pursuant to Section 58-56-4 on its website as a separate document and adopted codes shall be no longer be incorporated into this rule.~~

~~(2) Approved Codes. In accordance with Subsection 58-56-4(6), and subject to the limitations contained in Subsection 58-56-4(7), the following codes or standards are hereby incorporated by reference and approved for use and adoption by a compliance agency as the construction standards which may be applied to existing buildings in the regulation of building alteration, remodeling, repair, removal, seismic evaluation and rehabilitation in the state:~~

~~(a) the 1997 edition of the Uniform Code for the Abatement of Dangerous Buildings (UCADB) promulgated by the International Code Council;~~

~~(b) the 2009 edition of the International Existing Building Code (IEBC), including its appendix chapters, promulgated by the International Code Council;~~

~~(c) ASCE 31-03, Seismic Evaluation of Existing Buildings, promulgated by the American Society of Civil Engineers;~~

~~(d) ASCE/SEI 41-06, the Seismic Rehabilitation of Existing Buildings, promulgated by the American Society of Civil Engineers, 2007 edition.~~

~~R156-56-702. Requests for Code Amendments.~~

~~In accordance with Subsection 58-56-7(1), the procedure and manner under which requests for amendments to codes shall be filed with the Division and recommended or declined for adoption are as follows:~~

~~(1) All requests for amendments to any of the adopted codes or approved codes shall be submitted to the Division on forms specifically prepared by the Division for that purpose.~~

~~(2) The processing of requests for code amendments shall be in accordance with Division policies and procedures.~~

~~R156-56-801. Statewide Amendments to the IEBC.~~

~~The following are adopted as amendments to the IEBC to be applicable statewide:~~

~~(1) In Section 101.5 the exception is deleted.~~

~~(2) In Section 202 the definition for existing buildings is deleted and replaced with the following:~~

~~EXISTING BUILDING. A building lawfully erected under a prior adopted code, or one which is deemed a legal non-dangerous building by the code official, and one which is not a dangerous building.~~

~~(3) In Section 605.1, Exception number 3, the following is added at the end of the sentence:~~

~~"unless undergoing a change of occupancy classification."~~

~~(4) Section 606.2.1 is deleted and replaced with the following:~~

~~606.2.1 Parapet bracing, wall anchors, and other appendages. Buildings constructed prior to 1975 shall have parapet bracing, wall anchors, and appendages such as cornices, spires, towers, tanks, signs, statuary, etc. evaluated by a licensed engineer when said building is undergoing reroofing, or alteration of or repair to said feature. Such parapet bracing, wall anchors, and appendages shall be evaluated in accordance with the reduced International Building Code level seismic forces as specified in IBC Section 101.5.4.2 and design procedures of Section 101.5.4. When found to be deficient because of design or deteriorated condition, the engineer's recommendations to anchor, brace, reinforce, or remove the deficient feature shall be implemented.~~

~~EXCEPTIONS:~~

- ~~1. Group R-3 and U occupancies.~~
- ~~2. Unreinforced masonry parapets need not be braced according to the above stated provisions provided that the maximum height of an unreinforced masonry parapet above the level of the diaphragm tension anchors or above the parapet braces shall not exceed one and one-half times the thickness of the parapet wall. The parapet height may be a maximum of two and one-half times its thickness in other than Seismic Design Categories D, E, or F.~~

~~(5) Section 907.3.1 is deleted and replaced with the following:~~

~~907.3.1 Compliance with the International Building Code. When a building or portion thereof is subject to a change of occupancy such that a change in the nature of the occupancy results in a higher seismic occupancy based on Table 1604.5 of the International Building Code; or where such change of occupancy results in a reclassification of a building to a higher hazard category as shown in Table 912.4; or where a change of a Group M occupancy to a Group A, E, F, M, R-1, R-2, or R-4 occupancy with two-thirds or more of the floors involved in Level 3 alteration work; or when such change of occupancy results in a design occupant load increase of 100% or more, the building shall conform to the seismic requirements of the International Building Code for the new seismic use group.~~

~~Exceptions 1-4 remain unchanged.~~

~~5. Where the design occupant load increase is less than 25 occupants and the occupancy category does not change:~~

~~(6) In Section 912.7.3 exception 2 is deleted.~~

~~(7) In Section 912.8 number 7 is added as follows:~~

~~7. When a change of occupancy in a building or portion of a building results in a Group R-2 occupancy, not less than 20 percent of the dwelling or sleeping units shall be Type B dwelling or sleeping units. These dwelling or sleeping units may be located on any floor of the building provided with an accessible route. Two percent, but not less than one unit, of the dwelling or sleeping units shall be Type A dwelling units.~~

~~R156-56-802. Local Amendment to the IBC.~~

~~The following are adopted as amendments to the IBC to be applicable to the following jurisdictions:~~

~~None.~~

]KEY: factory built housing contractors, [building codes,] building inspections, licensing, building inspectors

Date of Enactment or Last Substantive Amendment: [July 1, 2010]2011

Notice of Continuation: March 29, 2007

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-56-1[; 58-56-4(2); 58-56-6(2)(a); 58-56-19]

Environmental Quality, Radiation Control **R313-26-4** Shipper's Requirements

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35069
FILED: 07/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish procedures, criteria, terms and conditions upon which the Executive Secretary issues permits to generators accessing a land disposal facility located in Utah. This rule also contains requirements for persons who ship radioactive waste or mixed waste to the land disposal facility. The proposed change is to insert an additional requirement into the rule for radioactive waste shipments that are below the U.S. Department of Transportation (DOT) definition of hazardous material Class 7 Radioactive Material.

SUMMARY OF THE RULE OR CHANGE: Much of the waste arriving at the Clive, Utah, disposal facility is regulated by the DOT as a Class 7 Radioactive Material. These regulations are extremely prescriptive in the manner the waste can be packaged and transported. However, there is a segment of waste that contains very low concentrations of radioactivity and/or low total activities, which is not considered to be a hazardous material by the DOT and therefore not subject to DOT hazardous material regulations. Wastes in this category are virtually unregulated with respect to the type and condition of the containers used to transport the material. If a container of waste arrives at the disposal facility with the lower activities or concentrations of radioactivity and the container is breached or damaged or improperly closed, there is no regulation in which to take enforcement action against the shipper. By adding the proposed language to the rule, the gap in the regulations in regard to the packaging of low radioactivity waste will be bridged. Shippers of low-level radioactive wastes will be compelled to adequately containerize their wastes and utilize packaging that meet

minimum containment standards. Shippers will be subject to complying with those minimum standards even when the waste is not subject to DOT hazardous material regulations. Currently, there is limited regulation regarding radioactive material that does not fall under DOT Transportation regulations, therefore, this added language is not more restrictive than federal rules by either DOT or the Nuclear Regulatory Commission of which the Division is aware.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-3-106.4

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The rule change will only affect shippers of low-level radioactive waste (regulated entities) and will not impact the state budget.
- ◆ LOCAL GOVERNMENTS: The rule change will only affect shippers low-level radioactive waste (regulated entities) and will not impact local governments.
- ◆ SMALL BUSINESSES: There is a very small chance that a shipper would be small business, and therefore, if shipments did not meet the proposed requirement then civil penalties could be assessed and ultimately affect the small business. However, this scenario would most likely never happen because most shippers are large companies and or federal contractors. In addition, due to variability of potential enforcement actions, it is not possible to estimate the civil penalty amount.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: It is possible that a shipper would be a person other than a small business, a business, or a local government entity, and therefore, if shipments did not meet the proposed requirement then civil penalties could be assessed and ultimately affect the person. However, due to variability of potential enforcement actions, it is not possible to estimate the civil penalty amount.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Shipments that do not fall under DOT hazardous shipping regulations will require containment of radioactive waste material and therefore costs associated with this requirement are possible. However, because there is so much variability in the methods to package radioactive waste, it is not possible to estimate the compliance costs for those affected by this rule. Shipments that fall under DOT hazardous shipping regulations are already required to meet the proposed requirement therefore no additional cost will be incurred.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule is necessary to fill a gap in requirements for radioactive waste shipments that are not regulated under federal DOT hazardous materials regulations. The proposed rule will assure package integrity regarding radioactive waste shipments traveling through the state to the radioactive waste disposal facility.

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

- ◆ John Hultquist by phone at 801-536-4623, by FAX at 801-536-4250, or by Internet E-mail at jhultquist@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/15/2011

AUTHORIZED BY: Rusty Lundberg, Director

R313. Environmental Quality, Radiation Control.

R313-26. Generator Site Access Permit Requirements for Accessing Utah Radioactive Waste Disposal Facilities.

R313-26-4. Shipper's Requirements.

(1) The shipper shall provide on demand the Executive Secretary a copy of the Nuclear Regulatory Commission's "Uniform Low Level Radioactive Waste Manifest" for shipments consigned for disposal within Utah.

(2) The appropriate Generator Site Access Permit number(s) shall be documented on the manifest.

(3) Waste Generators, Waste Processors and Waste Collectors shall ensure that all Generator Site Access Permits are current prior to shipment of waste to a land disposal facility located in the state of Utah, and that the waste will arrive at the land disposal facility prior to the expiration date of the Generator Site Access Permits.

(4) A Waste Collector, Waste Processor or Waste Generator shall ensure all radioactive waste contained within a shipment for disposal at a land disposal facility in the state is traceable to the original generators and states, regardless of whether the waste is shipped directly from the point of generation to the disposal facility.

(5) The shipper shall ensure waste material is contained where no release of material can occur under conditions normally incident to transportation and shall utilize waste container(s)/package(s) where containment integrity has not been compromised.

KEY: radioactive waste generator permit

Date of Enactment or Last Substantive Amendment: ~~March 16, 2007~~ 2011

Notice of Continuation: April 6, 2011

Authorizing, and Implemented or Interpreted Law: 19-3-106.4

Environmental Quality, Water Quality R317-1-7 TMDLs

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35082

FILED: 07/15/2011

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 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.

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 QUALITY
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 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2011

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: ~~April 13,~~ **2011**

Notice of Continuation: **October 2, 2007**

Authorizing, and Implemented or Interpreted Law: **19-5**

Health, Family Health and Preparedness, Licensing **R432-3-3** Deemed Status

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35025

FILED: 07/11/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 133 passed in the 2003 General Session permitting a health care facility to be issued a license for a period of time not to exceed 24 months. These rule amendments are required to be consistent with the amendments to Section 26-21-8. (DAR NOTE: H.B. 133 is found at UT L 2003 Ch 326, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: These rule amendments align this rule with the current licensing period of 24 months instead of annually.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These rule amendments will have no effect on state budgets since facility licenses have historically (since 2003) been issued every two years. There will be no change in current practice.

◆ **LOCAL GOVERNMENTS:** These rule amendments will have no effect on local government budgets since facility licenses have historically (since 2003) been issued every two years. There will be no change in current practice.

◆ **SMALL BUSINESSES:** These rule amendments will have no effect on small business budgets since facility licenses have historically (since 2003) been issued every two years. There will be no change in current practice.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rule amendments will have no effect on persons since facility licenses have historically (since 2003) been issued every two years. There will be no change in current practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These rule amendments will have no effect on persons since facility licenses have historically (since 2003) been issued every two years. There will be no change in current practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As part of ongoing review of administrative rules in the Department to reduce unnecessary negative business impacts, this rule change confirms an ongoing practice to allow licenses to remain in effect for two years. Positive impact on business.

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

HEALTH
 FAMILY HEALTH AND PREPAREDNESS,
 LICENSING
 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:

◆ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
 ◆ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

R432. Health, Family Health and Preparedness, Licensing.
R432-3. General Health Care Facility Rules Inspection and Enforcement.

R432-3-3. Deemed Status.

The Department may grant licensing deemed status to facilities and agencies accredited by the Joint Commission on Accreditation of Healthcare Organizations (Joint Commission), Accreditation Association for Ambulatory Health Care (AAAHC), Accreditation Commission for Health Care, or Community Health Accreditation Program in lieu of the ~~annual~~ licensing inspection by the Department upon completion of the following by the facility or agency:

- (1) As part of the ~~annual~~ license renewal process, the licensee shall identify on the Request for Agency Action/Application its desire to:
 - (a) initiate deemed status,
 - (b) continue deemed status, or
 - (c) relinquish deemed status during the licensing year of application.
- (2) This request shall constitute written authorization for the Department to attend the accrediting agency exit conference.
- (3) Upon receipt from the accrediting agency, the facility shall submit copies of the following:
 - (a) accreditation certificate;
 - (b) Joint Commission Statement of Construction;
 - (c) survey reports and recommendations;

(d) progress reports of all corrective actions underway or completed in response to accrediting body's action or Department recommendations.

(4) Regardless of deemed status, the Department may assert regulatory responsibility and authority pursuant to applicable state and federal statutes to include:

- (a) ~~annual and follow up~~ inspections,
- (b) complaint investigations,
- (c) verification of the violations of state law, rule, or standard identified in a Department survey or, violations of state law, rule, or standard identified in the accrediting body's survey including:
 - (i) facilities or agencies granted a provisional or conditional accreditation by the Joint Commission until a full accreditation status is achieved,
 - (ii) any facility or agency that does not have a current, valid accreditation certificate, or
 - (iii) construction, expansion, or remodeling projects required to comply with standards for construction promulgated in the rules by the Health Facility Committee.

(5) The Department may annually conduct validation inspections of facilities or agencies accredited for the purpose of determining compliance with state licensing requirements. If a validation survey discloses a failure to comply with the standards for licensing, the provisions relating to regular ~~annual~~ inspections shall apply.

KEY: health care facilities

Date of Enactment or Last Substantive Amendment: [January 5, 2010]2011

Notice of Continuation: December 24, 2008

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-14 through 26-21-16

Health, Family Health and Preparedness, Licensing
R432-31

Life with Dignity Order

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 35029

FILED: 07/11/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Historically the Personal Care Agency Rule was located within the Home Health rule, with very few providers. Over the years more Personal Care agencies have opened and become licensed. The Health Facility Committee recommended a new rule to clarify and define the Personal

Care agencies therefore the Life With Dignity Order rule requires an amendment to add Personal Care Agencies.

SUMMARY OF THE RULE OR CHANGE: Personal Care Agencies need to be added to the Life With Dignity Order rule since Personal Care Agencies will no longer fall under the Home Health rule. There will be no change in how Personal Care Agencies complete Life With Dignity Orders.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** No state budgets will be affected because the provisions of the new rule dealing with Personal Care agencies are similar to the old section under Home Health.

◆ **LOCAL GOVERNMENTS:** No local government budgets will be affected because the provisions of the new rule dealing with Personal Care agencies are similar to the old section under Home Health.

◆ **SMALL BUSINESSES:** No small business budgets will be affected because the provisions of the new rule dealing with Personal Care agencies are similar to the old section under Home Health.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No persons will be affected because the provisions of the new rule dealing with Personal Care agencies are similar to the old section under Home Health.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No persons will be affected because the provisions of the new rule dealing with Personal Care agencies are similar to the old section under Home Health.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As part of ongoing review of administrative rules in the Department to reduce unnecessary negative business impacts, this rule change adds personal care agencies to the list of facilities that must educate patients on end of life care options. Necessary fiscal impact on business to protect public.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
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:

◆ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov

◆ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

R432. Health, Family Health and Preparedness, Licensing.

R432-31. Life with Dignity Order.

R432-31-4. Facilities That Must Offer Life with Dignity Orders-Policies and Procedures.

(1) The following health care facilities must comply with Subsection (2):

(a) a general acute hospital licensed under R432-100;
(b) a long-term acute care hospital licensed under R432-104;

(c) a nursing care facility licensed under R432-150;
(d) a mental disease facility licensed under R432-151;
(e) a mental retardation facility licensed under R432-152;
(f) a small health care facility (four to sixteen beds) licensed under R432-200;

(g) an assisted living facility licensed under R432-270;
(h) a small health care facility - type N licensed under R432-300;

(i) a hospice agency licensed under R432-750, whether inpatient or home-based;

(j) a critical access hospital licensed under R432-106;

[and]

(k) a home health agency licensed under R432-700[-];

and

(l) a personal care agency licensed under R432-725.

(2) Each facility described in Subsection (1) shall establish and follow policies and procedures that conform to Section 75-2a-106 and that assure that:

(a) the facility determines upon admission whether each individual has a Life with Dignity Order;

(b) the facility determines which of those individuals who do not have a Life With Dignity Order should be offered the opportunity to complete a Life with Dignity Order;

(c) the facility identifies circumstances under which the facility shall review for changes or amendments the Life with Dignity Order for each individual who has one;

(d) the facility maintains the Life with Dignity Order in a prominent location in the individual's medical record for each individual who has a Life with Dignity Order; and

(e) the facility identifies circumstances under which it would not follow a Life With Dignity Order.

R432-31-8. Presentation of Life with Dignity Orders to EMS Personnel.

(1) Except for home health agencies, personal care agencies and home-based hospice, a licensed health care facility in possession of a Life with Dignity Order must present the individual's Life with Dignity Order to EMS personnel upon the

arrival of EMS personnel who are present to treat or transport the individual; and

(2) For an individual who resides at home, if home health agency, personal care agency or home-based hospice personnel are present when EMS personnel arrive at the home, the personnel must present the individual's Life with Dignity Order, upon the arrival of the EMS personnel who are present to treat or transport the individual.

R432-31-9. Home Placement of Life with Dignity Orders.

(1) If an individual under the care of a home health agency, personal care agency or a hospice agency possesses a Life with Dignity Order, the agency must ensure that a copy of the Life with Dignity Order is left at the individual's place of residence.

(2) For an individual adult who resides at home, including an emancipated minor, it is recommended that a copy of the Life with Dignity Order be posted on the front of the refrigerator or over the individual's bed.

(3) For a minor who resides at home, it is recommended that a copy of the Life with Dignity Order be placed in a tube and placed on the top shelf of the door of the refrigerator.

KEY: POLST, do not resuscitate, Life with Dignity Order
Date of Enactment or Last Substantive Amendment: [February 25, 2010]2011
Notice of Continuation: November 21, 2007
Authorizing, and Implemented or Interpreted Law: 26-21; 75-2a-106

Health, Family Health and Preparedness, Licensing
R432-35
 Background Screening

NOTICE OF PROPOSED RULE
 (Amendment)

DAR FILE NO.: 35030
 FILED: 07/11/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Historically, the Personal Care Agency Rule was located within the Home Health rule, with very few providers. Over the years more Personal Care agencies have opened and become licensed. The Health Facility Committee recommended a new rule to clarify and define the Personal Care agencies, therefore the background screening rule requires an amendment to add Personal Care Agencies.

SUMMARY OF THE RULE OR CHANGE: Personal Care Agencies need to be added to the background screening rule since Personal Care Agencies will no longer fall under the

Home Health rule. There will be no change in how Personal Care Agencies complete background screening on employees.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No state budgets will be affected because the provisions of the new rule dealing with Personal Care agencies are similar to the old section under Home Health.
- ◆ **LOCAL GOVERNMENTS:** No local government budgets will be affected because the provisions of the new rule dealing with Personal Care agencies are similar to the old section under Home Health.
- ◆ **SMALL BUSINESSES:** No small business budgets will be affected because the provisions of the new rule dealing with Personal Care agencies are similar to the old section under Home Health.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No persons will be affected because the provisions of the new rule dealing with Personal Care agencies are similar to the old section under Home Health.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No persons will be affected because the provisions of the new rule dealing with Personal Care agencies are similar to the old section under Home Health.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As part of ongoing review of administrative rules in the Department to reduce unnecessary negative business impacts, this rule change adds personal care agencies to the list of facilities that must conduct a background screening. Necessary fiscal impact on business to protect public.

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

HEALTH
 FAMILY HEALTH AND PREPAREDNESS,
 LICENSING
 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:

- ◆ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
- ◆ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

R432. Health, Family Health and Preparedness, Licensing.

R432-35. Background Screening.

R432-35-1. Authority.

(1) The Utah Code, Section 26-21-9.5, requires that a Bureau of Criminal Identification screening, referred to as BCI, and a child or disabled or elderly adult licensing information system screening be conducted on each person who provides direct care to a patient for the following covered health care agencies and facilities:

- (~~1~~)a) Home health care agencies;
- (b) Personal Care agencies
- (~~2~~)c) Hospice agencies;
- (~~3~~)d) Nursing Care facilities;
- (~~4~~)e) Assisted Living facilities;
- (~~5~~)f) Small Health Care facilities; and
- (~~6~~)g) End Stage Renal Disease Facilities.

KEY: health care facilities

Date of Enactment or Last Substantive Amendment: [~~January 5, 2010~~2011]

Notice of Continuation: May 27, 2008

Authorizing, and Implemented or Interpreted Law: 26-21-9.5

**Health, Family Health and
 Preparedness, Licensing
 R432-100-8
 Personnel Management Service**

**NOTICE OF PROPOSED RULE
 (Amendment)**

DAR FILE NO.: 35031
 FILED: 07/11/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify and align the tuberculosis testing requirements for licensed health care facilities in Utah. The clarifications are in accordance with current law and will be consistent with all health facility rules. This amendment was approved by the Health Facilities Committee on 11/17/2010. This committee has representation from a broad cross section of the entities affected by this rule.

SUMMARY OF THE RULE OR CHANGE: This amendment will require employee tuberculosis testing to be completed

within two weeks of hire, after suspected exposure or development of symptoms.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: This rule amendment will have no effect on state budgets since there will be no change in current practice.
- ◆ LOCAL GOVERNMENTS: This rule amendment will have no effect on local government budgets since there will be no change in current practice.
- ◆ SMALL BUSINESSES: This rule amendment will have no effect on small businesses since there will be no change in current practice.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule amendment will have no effect on persons since there will be no change in current practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule amendment will have no effect on persons since there will be no change in current practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Screening employees of health care facilities for tuberculosis is a justified fiscal cost to protect patients from being exposed to this deadly disease.

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

HEALTH
 FAMILY HEALTH AND PREPAREDNESS,
 LICENSING
 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:

- ◆ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
- ◆ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

R432. Health, Family Health and Preparedness, Licensing.**R432-100. General Hospital Standards.****R432-100-8. Personnel Management Service.**

(1) The personnel management system is organized to ensure personnel are competent to perform their respective duties, services, and functions.

(2) There shall be written policies, procedures, and performance standards that include:

(a) job descriptions for each position or employee;

(b) periodic employee performance evaluations;

(c) employee health screening, including Tuberculosis testing ~~in accordance with R386-702, The Communicable Disease Rule~~];

(i) Employee skin testing by the Mantoux method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(ii) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(A) initial hiring;

(B) suspected exposure to a person with active tuberculosis; and

(C) development of symptoms of tuberculosis.

(iii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(d) policies to ensure that all employees receive unit specific training;

(e) policies to ensure that all hospital direct care staff receive continued competency training in current patient care practices;

(f) policies to ensure that all hospital direct care staff have current cardiopulmonary resuscitation certification; and

(g) policies to ensure that OSHA regulations regarding Blood Borne Pathogens are implemented and followed.

(3) All personnel shall be registered, certified or licensed as required by the Utah Department of Commerce within 45 days of employment.

(4) A copy of the current certificate, license or registration shall be available for Department review.

(5) All direct care and housekeeping staff shall receive annual documented inservice training in the requirements for reporting abuse, neglect, or exploitation of children or adults.

(6) Volunteers may be utilized in the daily activities of the hospital, but shall not be included in the hospital staffing plan in lieu of hospital employees.

(a) Volunteers shall be screened and supervised according to hospital policy.

(b) Volunteers shall be familiar with hospital volunteer policies, including patient rights and hospital emergency procedures.

(7) If the hospital participates in a professional graduate education program, there shall be policies and procedures specifying the patient care responsibilities and supervision of the graduate education program participants.

KEY: health care facilities

Date of Enactment or Last Substantive Amendment: [~~April 11, 2007~~2011]

Notice of Continuation: December 13, 2010

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-2.1; 26-21-20

**Health, Family Health and
Preparedness, Licensing
R432-200-7
Administration and Organization**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35026

FILED: 07/11/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 133 passed in the 2003 General Session permitting a health care facility to be issued a license for a period of time not to exceed 24 months. These rule amendments are required to be consistent with the amendments to Section 26-21-8. (DAR NOTE: H.B. 133 is found at UT L 2003 Ch 326, and was effective May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: This rule amendment aligns this rule with the current licensing period of 24 months instead of annually.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule amendment will have no effect on state budgets since facility licenses have historically (since 2003) been issued every two years. There will be no change in current practice.

◆ **LOCAL GOVERNMENTS:** This rule amendment will have no effect on local government budgets since facility licenses have historically (since 2003) been issued every two years. There will be no change in current practice.

◆ **SMALL BUSINESSES:** This rule amendment will have no effect on small business budgets since facility licenses have historically (since 2003) been issued every two years. There will be no change in current practice.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule amendment will have no effect on persons since facility licenses have historically (since 2003) been issued every two years. There will be no change in current practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule amendment will have no effect on persons since facility licenses have historically (since 2003) been issued every two years. There will be no change in current practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As part of ongoing review of administrative rules in the Department to reduce unnecessary negative business impacts, this rule change confirms an ongoing practice to allow licenses to remain in effect for two years. Positive impact on business.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
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:

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◆ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

**R432. Health, Family Health and Preparedness, Licensing.
R432-200. Small Health Care Facility (Four to Sixteen Beds).
R432-200-7. Administration and Organization.**

(1) Organization.

Each facility shall be operated by a licensee.

(2) Duties and Responsibilities.

The licensee shall be responsible for compliance with Utah law and licensure requirements and for the organization, management, operation, and control of the facility. Responsibilities shall include at least the following:

(a) Comply with all federal, state and local laws, rules, and regulations;

(b) Adopt and institute by-laws, policies and procedures relative to the general operation of the facility including the health care of the residents and the protection of their rights;

(c) Adopt a policy that states the facility will not discriminate on the basis of race, color, sex, religion, ancestry or national origin in accordance with Section 13-7-1;

(d) Appoint, in writing, a qualified administrator to be responsible for the implementation of facility by-laws and policies and procedures, and for the overall management of the facility;

(e) Secure and update contracts for professional and other services;

(f) Receive and respond, as appropriate, to the [annual licensure] inspection report by the Department;

(g) Notify the Department, in writing, at least 30 days prior to, but not later than five days after, a change of administrator. The notice shall include the name of the new administrator and the effective date of the change.

(3) Administrator.

(a) Administrator's Appointment.

Each facility shall appoint, in writing, an administrator professionally licensed by the Utah Department of Commerce in a health care field.

(b) A copy of the administrator's license or credentials shall be posted alongside the facility's license in a place readily visible to the public.

(c) The administrator shall act as the administrator of no more than four small health care facilities (or a maximum of 60 beds) at any one time.

(d) The administrator shall have sufficient freedom from other responsibilities and shall be on the premises of the facility a sufficient number of hours in the business day (at least four hours per week for each six residents) and as necessary to properly manage the facility and respond to appropriate requests by the Department.

(e) The administrator shall designate, in writing, the name and title of the person who shall act as administrator in his absence. This person shall have sufficient power, authority, and freedom to act in the best interests of resident safety and well-being. It is not the intent of this paragraph to permit an unlicensed de facto administrator to supplant or replace the designated, licensed administrator.

(4) Administrator Responsibilities.

The administrator shall have the following responsibilities:

(a) Complete, submit and file all records and reports required by the Department;

(b) Act as a liaison among the licensee, medical and nursing staff, and other supervisory staff of the facility, as appropriate, and respond to recommendations of the quality assurance committee;

(c) Assure that employees are oriented to their job functions and receive appropriate in-service training;

(d) Implement policies and procedures for the operation of the facility;

(e) Hire and maintain the required number of licensed and non-licensed staff as specified in these rules to meet the needs of residents;

(f) Maintain facility staffing records for 12 months;

(g) Secure and update contracts required for professional and other services not provided directly by the facility;

(h) Verify all required licenses and permits of staff and consultants at the time of hire and effective date of contract;

(i) Review all incident and accident reports and take appropriate action.

(5) Medical Director.

The administrator of each facility shall retain, by formal agreement, a licensed physician to serve as medical director or advisory physician on a consulting basis according to the residents' and facility's needs.

(6) Medical Director Responsibilities.

The medical director or advisory physician shall have responsibility for at least the following:

(a) Review or develop written resident-care policies and procedures including the delineation of responsibilities of attending physicians;

(b) Review resident-care policies and procedures annually with the administrator;

(c) Serve as liaison between the resident's physician and the administrator;

(d) Serve as a member of the quality assurance committee (see R432-200-10);

(e) Review incident and accident reports at the request of the administrator to identify health hazards to residents and employees;

(f) Act as consultant to the health services supervisor in matters relating to resident-care policies.

(7) Staff and Personnel.

(a) Organization.

The administrator shall employ qualified personnel who are able and competent to perform their respective duties, services, and functions.

(b) Qualifications and Orientation.

(i) The administrator shall develop job descriptions including job title, job summary, responsibilities, qualifications, required skills and licenses, and physical requirements for each position or employee.

(ii) Periodic employee performance evaluations shall be documented.

(iii) All personnel shall have access to the facility's policies and procedures manuals, resident-care policies, therapeutic manuals, and other information necessary to effectively perform their duties and carry out their responsibilities.

(8) Health Surveillance.

(a) The facility shall establish a policy and procedure for the health screening of all facility personnel which conforms with the provisions of R432-150-10(4).

(b) All dietary and other staff who handle food shall obtain a Food Handler's Permit from the local health department.

(9) In-service Training.

There shall be planned and documented in-service training for all facility personnel. The following topics shall be addressed annually:

(a) Fire prevention (see R432-200-11);

(b) Accident prevention and safety procedures including instruction in the following:

(i) Body mechanics for all employees required to lift, turn, position, or ambulate residents;

(ii) Proper safety precautions when floors are wet or waxed;

(iii) Safety precautions and procedures for heat lamps, hot water bottles, bathing and showering temperatures;

(c) Review and drill of emergency procedures and evacuation plan (See R432-200-11);

(d) Prevention and control of infections (see R432-150-25);

(e) Confidentiality of resident information;

(f) Residents' rights;

(g) Behavior Management and proper use and documentation of restraints;

(h) Oral hygiene and first aid; and

(i) Training in the principles of Cardiopulmonary Resuscitation (CPR) for licensed nursing personnel and others as appropriate;

(j) Training in habilitative care;

(k) Reporting abuse, neglect and exploitation.

KEY: health care facilities

Date of Enactment or Last Substantive Amendment: ~~March 3, 1995~~ **2011**

Notice of Continuation: October 3, 2007

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-6

Health, Family Health and Preparedness, Licensing **R432-270** Assisted Living Facilities

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35021

FILED: 07/11/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change in Section R432-270-8 is to clarify and align the tuberculosis testing requirements for licensed health care facilities in Utah. The clarifications are in accordance with current law and will be consistent with all health facility rules. This amendment was approved by the Health Facilities Committee on 11/17/2010. This committee has representation from a broad cross section of the entities affected by this rule. The change in Section R432-270-19 is to clarify when and by whom a medication error report is required to be completed in licensed assisted living facilities in Utah. This amendment was approved by the Health Facilities Committee on 09/15/2010. This committee has representation from a broad cross section of the entities affected by this rule. Also a correction of the incorrect numbering in Section R432-270-19.

SUMMARY OF THE RULE OR CHANGE: In Section R432-270-8, this amendment will require employee tuberculosis testing to be completed within two weeks; of hire, after suspected exposure or development of symptoms. In Section R432-270-19, this amendment changes the requirement for assisted living facilities to complete a medication error report when error is made or discovered.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These rule amendments will have no effect on state budgets since there will be no change in current practice.
- ◆ **LOCAL GOVERNMENTS:** These rule amendments will have no effect on local government budgets since there will be no change in current practice.
- ◆ **SMALL BUSINESSES:** These rule amendments will have no effect on small businesses since there will be no change in current practice.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These rule amendments will have no effect on persons since there will be no change in current practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These rule amendments will have no effect on persons since there will be no change in current practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Screening employees of health care facilities for tuberculosis is a justified fiscal cost to protect patients from being exposed to this deadly disease.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
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:

- ◆ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
- ◆ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

R432. Health, Family Health and Preparedness, Licensing.**R432-270. Assisted Living Facilities.****R432-270-8. Personnel.**

(1) Qualified competent direct-care personnel shall be on the premises 24 hours a day to meet residents needs as determined by the residents' assessment and service plans. Additional staff shall be employed as necessary to perform office work, cooking, housekeeping, laundering and general maintenance.

(2) The services provided or arranged by the facility shall be provided by qualified persons in accordance with the resident's written service plan.

(3) All personnel who provide personal care to residents in a Type I facility shall be at least 18 years of age and shall have related experience in the job assigned or receive on the job training.

(4) Personnel who provide personal care to residents in a Type II facility must be certified nurse aides or complete a state certified nurse aide program within four months of the date of hire.

(5) Personnel shall be licensed, certified, or registered in accordance with applicable state laws.

(6) The administrator shall maintain written job descriptions for each position, including job title, job responsibilities, qualifications or required skills.

(7) Facility policies and procedures must be available to personnel at all times.

(8) All personnel must receive documented orientation to the facility and the job for which they are hired. Orientation shall include the following:

- (a) job description;
- (b) ethics, confidentiality, and residents' rights;
- (c) fire and disaster plan;
- (d) policy and procedures; and
- (e) reporting responsibility for abuse, neglect and exploitation.

(9) Each employee shall receive documented in-service training. The training shall be tailored to include all of the following subjects that are relevant to the employee's job responsibilities:

- (a) principles of good nutrition, menu planning, food preparation, and storage;
- (b) principles of good housekeeping and sanitation;
- (c) principles of providing personal and social care;
- (d) proper procedures in assisting residents with medications;
- (e) recognizing early signs of illness and determining when there is a need for professional help;
- (f) accident prevention, including safe bath and shower water temperatures;
- (g) communication skills which enhance resident dignity;
- (h) first aid;
- (i) resident's rights and reporting requirements of Section 62A-3-201 to 312; and
- (j) special needs of the Dementia/Alzheimer's resident.

(10) An employee who reports suspected abuse, neglect, or exploitation shall not be subject to retaliation, disciplinary action, or termination by the facility for that reason alone.

(11) The facility shall establish a personnel health program through written personnel health policies and procedures which protect the health and safety of personnel, residents and the public.

(12) The facility must complete an employee placement health evaluation to include at least a health inventory when an employee is hired. Facilities may use their own evaluation or a Department approved form.

(a) A health inventory shall obtain at least the employee's history of the following:

- (i) conditions that may predispose the employee to acquiring or transmitting infectious diseases; and

(ii) conditions that may prevent the employee from performing certain assigned duties satisfactorily.

(b) The facility shall develop employee health screening and immunization components of the personnel health program.

(c) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis~~[Control Rule]~~.

(i) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:~~[Skin testing must be conducted on each employee within two weeks of hire and after suspected exposure to a resident with active tuberculosis.]~~

(A) initial hiring;

(B) suspected exposure to a person with active tuberculosis; and

(C) development of symptoms of tuberculosis.

(ii) Skin testing shall be exempted for a[A]ll employees with known positive reaction to skin tests~~[are exempt from skin testing]~~.

(d) All infections and communicable diseases reportable by law shall be reported to the local health department in accordance with the Communicable Disease Rule, R386-702-3.

(e) The facility shall comply with the Occupational Safety and Health Administration's Blood-borne Pathogen Standard.

R432-270-19. Medication Administration.

(1) A licensed health care professional must assess each resident to determine what level and type of assistance is required for medication administration. The level and type of assistance provided shall be documented on each resident's assessment.

(2) Each resident's medication program must be administered by means of one of the methods described in (a) through (d) in this section:

(a) The resident is able to self-administer medications.

(i) Residents who have been assessed to be able to self-administer medications may keep prescription medications in their rooms.

(ii) If more than one resident resides in a unit, the facility must assess each person's ability to safely have medications in the unit. If safety is a factor, a resident shall keep his medication in a locked container in the unit.

(b) The resident is able to self-direct medication administration. Facility staff may assist residents who self-direct medication administration by:

(i) reminding the resident to take the medication;

(ii) opening medication containers; and

(iii) reminding the resident or the resident's responsible person when the prescription needs to be refilled.

(c) Family members or a designated responsible person may administer medications from a package set up by a licensed practitioner or licensed pharmacist which identifies the medication and time to administer. If a family member or designated responsible person assists with medication administration, they shall sign a waiver indicating that they agree to assume the responsibility to fill prescriptions, administer medication, and document that the medication has been administered. Facility staff may not serve as the designated responsible person.

(d) For residents who are unable to self-administer or self-direct medications, facility staff may administer medications

only after delegation by a licensed health care professional under the scope of their practice.

(i) If a licensed health care professional delegates the task of medication administration to unlicensed assistive personnel, the delegation shall be in accordance with the Nurse Practice Act and R156-31B-701.

(ii) The medications must be administered according to the service plan.

(iii) The delegating authority must provide and document supervision, evaluation, and training of unlicensed assistive personnel assisting with medication administration.

(iv) The delegating authority or another registered nurse shall be readily available either in person or by telecommunication.

(3) The facility must have a licensed health care professional or licensed pharmacist review all resident medications at least every six months.

(4) Medication records shall include the following:

(a) the resident's name;

(b) the name of the prescribing practitioner;

(c) medication name including prescribed dosage;

(d) the time, dose and dates administered;

(e) the method of administration;

(f) signatures of personnel administering the medication;

and

(g) the review date.

(5) Each facility must have a licensed health care professional or licensed pharmacist document any change in the dosage or schedule of medication in the medication record. The delegating authority must notify all unlicensed assistive personnel who administer medications of the medication change.

(6) Each resident's medication record must contain a list of possible reactions and precautions for prescribed medications.

(7) The facility must notify the licensed health care professional when medication errors occur.

(8) Medication error incident reports shall be completed when a medication error occurs or is identified~~[by the person who makes the error]~~.

(9) Medication errors must be incorporated into the facility quality improvement process.

(10) Medications shall be stored in a locked central storage area to prevent unauthorized access.

(a) If medication is stored in a central location, the resident shall have timely access to the medication.

(b) Medications that require refrigeration shall be stored separately from food items and at temperatures between 36 - 46 degrees Fahrenheit.

(c) The facility must develop and implement policies for the security and disposal of narcotics. Any disposal of controlled substances by a licensee or facility staff shall be consistent with the provisions of 21 CFR 1307.21.

~~(11)~~⁽⁸⁾ The facility shall develop and implement a policy for disposing of unused, outdated, or recalled medications.

(a) The facility shall return a resident's medication to the resident or to the resident's responsible person upon discharge.

(b) The administrator shall document the return to the resident or the resident's responsible person of medication stored in a central storage.

KEY: health care facilities**Date of Enactment or Last Substantive Amendment:** [~~October 15, 2008~~2011]**Notice of Continuation:** December 16, 2009**Authorizing, and Implemented or Interpreted Law:** 26-21-5; 26-21-1

Health, Family Health and
Preparedness, Licensing
R432-300-8
Administration and Organization

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35032

FILED: 07/11/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify and align the tuberculosis testing requirements for licensed health care facilities in Utah. The clarifications are in accordance with current law and will be consistent with all health facility rules. This amendment was approved by the Health Facilities Committee on 11/17/2010. This committee has representation from a broad cross section of the entities affected by this rule.

SUMMARY OF THE RULE OR CHANGE: This amendment will require employee tuberculosis testing to be completed within two weeks of hire, after suspected exposure or development of symptoms.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule amendment will have no effect on state budgets since there will be no change in current practice.

◆ **LOCAL GOVERNMENTS:** This rule amendment will have no effect on local government budgets since there will be no change in current practice.

◆ **SMALL BUSINESSES:** This rule amendment will have no effect on small businesses since there will be no change in current practice.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule amendment will have no effect on persons since there will be no change in current practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule amendment will have no effect on persons since there will be no change in current practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Screening employees of health care facilities for tuberculosis is a justified fiscal cost to protect patients from being exposed to this deadly disease.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
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:

◆ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
◆ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

R432. Health, Family Health and Preparedness, Licensing.**R432-300. Small Health Care Facility - Type N.****R432-300-8. Administration and Organization.**

(1) The licensee is responsible for compliance with Utah law and licensing requirements, management, operation, and control of the facility.

(2) The licensee is responsible to establish and implement facility policies and procedures. Policies and procedures must reflect current facility practice.

(3) The licensee must be a licensed nurse with at least two years experience working in a health care setting, and must provide nursing coverage on a daily basis during daytime hours of operation. Facilities licensed prior to July 1, 1998, that do not have a licensed nurse residing in the facility, must provide 24 hour certified nurse aide coverage.

(4) The licensee must employ sufficient staff to meet the needs of the residents.

(5) All employees must be 18 years of age, and successfully complete an orientation program in order to provide personal care and demonstrate competency.

(a) The licensee must orient employees to the residents' daily routine and train employees to assist the residents in activities of daily living.

(b) Employees must be registered, certified or licensed as required by the Utah Department of Commerce.

(c) Registration, licenses and certificates must be current, filed in the personnel files, and presented to the licensee within 45-days of employment.

(6) The licensee is responsible to establish and implement written policies and procedures for a personnel health program to protect the health and safety of personnel and clients.

(a) Each employee must, upon hire, complete a health evaluation that includes a health inventory.

(b) The health inventory must document the employee's health history of the following:

(i) conditions that predispose the employee to acquiring or transmitting infectious diseases; and

(ii) conditions which may prevent the employee from performing certain assigned duties satisfactorily.

(c) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis~~[-Control Rule]~~.

(i) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(A) initial hiring;

(B) suspected exposure to a person with active tuberculosis; and

(C) development of symptoms of tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(d) The licensee must report all infections and communicable diseases reportable by law to the local health department in accordance with R386-702-2.

KEY: health care facilities

Date of Enactment or Last Substantive Amendment: [~~August 8, 2000~~2011]

Notice of Continuation: September 27, 2007

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-16

Health, Family Health and
Preparedness, Licensing
R432-500-11
Staff and Personnel

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35033

FILED: 07/11/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify and

align the tuberculosis testing requirements for licensed health care facilities in Utah. The clarifications are in accordance with current law and will be consistent with all health facility rules. This amendment was approved by the Health Facilities Committee on 11/17/2010. This committee has representation from a broad cross section of the entities affected by this rule.

SUMMARY OF THE RULE OR CHANGE: This amendment will require employee tuberculosis testing to be completed within two weeks of hire, after suspected exposure or development of symptoms.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule amendment will have no effect on state budgets since there will be no change in current practice.

◆ **LOCAL GOVERNMENTS:** This rule amendment will have no effect on local government budgets since there will be no change in current practice.

◆ **SMALL BUSINESSES:** This rule amendment will have no effect on small businesses since there will be no change in current practice.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule amendment will have no effect on persons since there will be no change in current practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule amendment will have no effect on persons since there will be no change in current practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Screening employees of health care facilities for tuberculosis is a justified fiscal cost to protect patients from being exposed to this deadly disease.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
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:

◆ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
◆ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

**R432. Health, Family Health and Preparedness, Licensing.
R432-500. Freestanding Ambulatory Surgical Center Rules.
R432-500-11. Staff and Personnel.**

(1) Health Surveillance.

(a) The facility shall establish a policy and procedure for the health screening of all personnel which shall protect the health and safety of personnel and patients. Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-704. Communicable Disease rules.

(b) The facility shall prohibit employees with a communicable disease or open skin lesions, or weeping dermatitis, from direct contact with patients, patient care items, if direct contact may result in the transmission of the infection or the disease.

(c) This health screening shall be performed within the first two weeks of employment and as defined in facility protocols.

(d) ~~[Skin testing shall be done within two weeks of beginning employment.]~~ Employee skin testing by the Mantoux method or other FDA approved in-vitro serologic test and follow-up for tuberculosis shall be done in accordance with R388-804[~~386-702-5~~], Special Measures for the Control of Tuberculosis.

(i) ~~The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:~~ ~~[Skin testing shall be conducted on each employee annually and after suspect exposure to a person with active tuberculosis.]~~

~~(A) initial hiring;~~

~~(B) suspected exposure to a person with active tuberculosis; and~~

~~(C) development of symptoms of tuberculosis.~~

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(e) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

(f) The facility shall be in compliance with the Occupational Safety and Health Administrations Bloodborne Pathogen Standard.

(2) In-service Training and Orientation.

(a) There shall be planned and documented in-service training programs for all personnel.

(b) The frequency and content of training programs shall be defined in facility policy.

(c) The training program shall include a review of all facility policies and procedures.

(d) All personnel shall have access and knowledge of the facility's policy and procedure manuals.

KEY: health care facilities

Date of Enactment or Last Substantive Amendment: ~~January 14, 2002~~ **2011**

Notice of Continuation: December 13, 2010

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-16

**Health, Family Health and
Preparedness, Licensing
R432-550-10
Personnel**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 35023
FILED: 07/11/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify and align the tuberculosis testing requirements for licensed health care facilities in Utah. The clarifications are in accordance with current law and will be consistent with all health facility rules. This amendment was approved by the Health Facilities Committee on 11/17/2010. This committee has representation from a broad cross section of the entities affected by this rule.

SUMMARY OF THE RULE OR CHANGE: This amendment will require employee tuberculosis testing to be completed within two weeks of hire, after suspected exposure or development of symptoms.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This rule amendment will have no effect on state budgets since there will be no change in current practice.

♦ **LOCAL GOVERNMENTS:** This rule amendment will have no effect on local government budgets since there will be no change in current practice.

♦ **SMALL BUSINESSES:** This rule amendment will have no effect on small businesses since there will be no change in current practice.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule amendment will have no effect on persons since there will be no change in current practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule amendment will have no effect on persons since there will be no change in current practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Screening employees of health care facilities for tuberculosis is a justified fiscal cost to protect patients from being exposed to this deadly disease.

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

HEALTH
 FAMILY HEALTH AND PREPAREDNESS,
 LICENSING
 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:

◆ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
 ◆ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

**R432. Health, Family Health and Preparedness, Licensing.
 R432-550. Birthing Centers.
 R432-550-10. Personnel.**

(1) The administrator shall employ a sufficient number of qualified professional and support staff who are competent to perform their respective duties, services and functions.

(2) The facility shall maintain written personnel policies and procedures which shall be available to personnel and shall address the following:

- (a) content of personnel records;
- (b) job descriptions, qualifications and validation of licensure or certificates of completion as appropriate for the position held;
- (c) conditions of employment;
- (d) management of employees.

(3) The facility shall maintain personnel records for employees and shall retain personnel records for terminated employees for a minimum of one year following termination of employment.

(4) The facility shall establish a personnel health program through written personnel health policies and procedures which shall protect the health and safety of personnel and patients commensurate with the services offered.

(5) An employee placement health evaluation shall include a health inventory which shall be completed when an employee is hired. The health inventory shall obtain the employee's history of the following:

- (a) conditions that predispose the employee to acquiring or transmitting infectious diseases;
- (b) conditions which may prevent the employee from performing certain assigned duties satisfactorily.

(6) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-702, Code of Communicable Disease Rules.

(7) Employee skin testing by the Mantoux method or other FDA approved in-vitro serologic test~~[shall be done annually or at the time of exposure]~~ and follow-up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(a) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

- (i) initial hiring;
- (ii) suspected exposure to a person with active tuberculosis; and
- (iii) development of symptoms of tuberculosis.

(b) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(8) The birthing center shall provide staff development programs to include at least documented orientation for new staff and ongoing in-service training for personnel.

(a) Facility policy shall define an orientation program, standardized for employee categories of responsibility, and shall specify the time for completion.

(b) The in-service training program shall define the frequency and content of training to include:

- (i) an annual review of facility policies and procedures;
- (ii) infection control, personal hygiene and each employee's responsibility in the personnel health program.

(c) Personnel shall have ready access to the facility's policy and procedure manuals when on duty.

(9) Personnel shall maintain current licensing, certification or registration appropriate for the work performed and as required by the Utah Department of Commerce.

(a) Personnel shall provide evidence of current licensure, registration or certification to the Department upon request.

(b) Failure to ensure personnel are licensed, certified or registered may result in sanctions to the facility license.

KEY: health care facilities

Date of Enactment or Last Substantive Amendment:
~~September 15, 2010~~ 2011

Notice of Continuation: December 13, 2010

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-16

**Health, Family Health and
 Preparedness, Licensing
 R432-650-6
 Personnel Health**

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 35022
 FILED: 07/11/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify and align the tuberculosis testing requirements for licensed health care facilities in Utah. The clarifications are in accordance with current law and will be consistent with all health facility rules. This amendment was approved by the Health Facilities Committee on 11/17/2010. This committee has representation from a broad cross section of the entities affected by this rule.

SUMMARY OF THE RULE OR CHANGE: This amendment will require employee tuberculosis testing to be completed within two weeks of hire, after suspected exposure or development of symptoms.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This rule amendment will have no effect on state budgets since there will be no change in current practice.
- ◆ **LOCAL GOVERNMENTS:** This rule amendment will have no effect on local government budgets since there will be no change in current practice.
- ◆ **SMALL BUSINESSES:** This rule amendment will have no effect on small businesses since there will be no change in current practice.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule amendment will have no effect on persons since there will be no change in current practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule amendment will have no effect on persons since there will be no change in current practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Screening employees of health care facilities for tuberculosis is a justified fiscal cost to protect patients from being exposed to this deadly disease.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
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:

- ◆ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
- ◆ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

**R432. Health, Family Health and Preparedness, Licensing.
R432-650. End Stage Renal Disease Facility Rules.**

R432-650-6. Personnel Health.

(1) Each ESRD facility shall establish a written health surveillance and evaluation program for facility personnel commensurate with the services offered. The program must include applicable portions of:

- (a) The Communicable Disease Rule, R386-702;
- (b) Tuberculosis Control Rule, R388-804; and
- (c) OSHA guidelines for Bloodborne Pathogens, 29 CFR 1910.1030.

(2) All employees shall undergo a health status examination as prescribed in the health surveillance and evaluation program upon hiring and may not be assigned to patient care duties until they are determined to be able to safely discharge their duties.

(3) Each ESRD facility must test all employees who provide direct patient care for Hepatitis B [~~and for Tuberculosis by the Mantoux method~~] within the first two weeks of beginning employment.

(4) Employee skin testing by the Mantoux method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(a) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

- (i) initial hiring;
- (ii) suspected exposure to a person with active tuberculosis; and
- (iii) development of symptoms of tuberculosis.

(b) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

KEY: health care facilities

Date of Enactment or Last Substantive Amendment: ~~January 11, 1999~~ **2011**

Notice of Continuation: September 27, 2007

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-16

Health, Family Health and
Preparedness, Licensing
R432-700
Home Health Agency Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35028

FILED: 07/11/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change in Section R432-700-23 corrects a spelling error. Section R432-700-30 is deleted. Historically the Personal Care Agency Rule was located within the Home Health rule, with very few providers. Over the years more Personal Care agencies have opened and become licensed. The Health Facility Committee recommended a new rule (Rule R432-725) to replace this section to clarify and define the Personal Care agencies.

SUMMARY OF THE RULE OR CHANGE: In Section R432-700-23, corrects a spelling error. Section R432-700-30 is removed. The Health Facility Committee recommended a new rule (R432-725) to replace this section to clarify and define the Personal Care agencies. (DAR NOTE: Rules R432-725 is a proposed new rule published in this issue of the Utah State Bulletin under DAR No. 35027.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: No state budgets will be affected because the provisions of the old section in the Home Health rule are very similar to the provisions of the new rule.
- ◆ LOCAL GOVERNMENTS: No local government budgets will be affected because the provisions of the old section in the Home Health rule are very similar to the provisions of the new rule.
- ◆ SMALL BUSINESSES: No small business budgets will be affected because the provisions of the old section in the Home Health rule are very similar to the provisions of the new rule.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No persons will be affected because the provisions of the old section in the Home Health rule are very similar to the provisions of the new rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No persons will be affected because the provisions of the old section in the Home Health rule are very similar to the provisions of the new rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As part of ongoing review of administrative rules in the Department to reduce unnecessary negative business impacts, this rule change removes personal care agencies from the home health rule. Positive impact on business.

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

HEALTH
 FAMILY HEALTH AND PREPAREDNESS,
 LICENSING
 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:

- ◆ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
- ◆ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

R432. Health, Family Health and Preparedness, Licensing.

R432-700. Home Health Agency Rule.

R432-700-23. Personal Care Aides.

- (1) Personal care aides shall be at least 18 years of age and have the following responsibilities:
 - (a) Receive written instructions from the supervisor;
 - (b) Perform only the tasks and duties outlined in the service agreement;
 - (c) Have knowledge of agency policy and procedures;
 - (d) Be trained in first aid;
 - (e) Be oriented and trained in all aspects of care to be provided to clients;
 - (f) Be able to demonstrate competency in all areas of training for personal care; and
 - (g) Maintain a minimum of six hours of in-service per calendar year, prorated for the first year of employment;
- (2) Personal Care Aides may assist clients with the following activities:
 - (a) Self-administration of medications by:
 - (i) reminding the client to take medications, and
 - (ii) opening containers for the client;
 - (b) Housekeeping;
 - (c) Personal grooming and dressing;
 - (d) Eating and meal preparation;
 - (e) Oral hygiene and denture care;
 - (f) Toileting and toilet hygiene;
 - (g) Arranging for medical and dental care including transportation to and from the appointment;
 - (h) taking and recording oral temperatures;
 - (i) Administering emergency first aid;
 - (j) Providing or arranging for social interaction;
 - (k) Providing transportation.

(3) Personal Care Aides shall document observations and services in the individual client record.

[R432-700-30. Home Health - Personal Care Service Agency.

~~(1) A Home Health - Personal Care Service Agency provides personal care services exclusively.~~

~~(2) The agency shall develop written policies and procedures that address the delivery of personal care services.~~

~~(3) The licensee shall appoint by name and in writing a qualified administrator who is responsible for the agency's overall functions:~~

~~(a) The administrator shall have at least one year or managerial or supervisory experience.~~

~~(b) The administrator shall designate in writing a qualified person who shall act in his absence and the designee shall have sufficient power, authority, and freedom to act in the best interests of the client safety and well being;~~

~~(c) The administrator or designee shall be available during the agency's hours of operation.~~

~~(4) Each employee shall be licensed, certified or registered as required in R432-700-10.~~

~~(5) Each employee shall complete a health screening as described in R432-700-11.~~

~~(6) The agency may accept clients for service if the client's needs do not exceed the level of personal care to be provided by the Home Health - Personal Care Service Agency.~~

~~(7) The agency shall complete a functional assessment for each client receiving personal care services, prior to admission to the agency and annually thereafter, or at earlier intervals when a significant change in condition occurs.~~

~~(a) A licensed health care professional shall complete the functional assessment. The assessment shall include a statement that personal care services can be provided safely to the client.~~

~~(b) If the functional assessment reveals that the client's needs exceed the personal care services, the health care professional shall make a referral to a home health agency or other alternative service.~~

~~(8) The agency shall obtain a signed and dated service agreement from the client and his responsible party, if available. The service agreement shall include the following:~~

~~(a) A description of services to be performed by the Personal Care Aide;~~

~~(b) Charges for the services;~~

~~(c) A statement that a 30-day notice shall be given prior to a change in charges.~~

~~(9) The Home Health - Personal Care Service Agency shall maintain and secure client records for each client receiving services.~~

~~(a) Client records shall be retained by the agency for three years following the last date of service;~~

~~(b) The client record shall contain the following:~~

~~(i) Client's name, date of birth and address;~~

~~(ii) Client service agreement;~~

~~(iii) Name, address, and telephone number of the individual to be notified in case of accident, emergency or death;~~

~~(iv) Documentation of date and reason for the termination of services, which may include the following:~~

~~(A) Payment for services cannot be met;~~

~~(B) The safety of the client or provider cannot be assured;~~

~~(C) The needs of the client exceed the level of care provided by the agency;~~

~~(D) The client requests termination of services; or~~

~~(E) The agency discontinues services.~~

~~(v) Documentation of the Personal Care Aide visit.~~

~~(10) Personal Care Aides shall meet the qualification of R432-700-23 and be supervised by an individual with the following qualifications:~~

~~(a) A Certified Nursing Aide with at least two years experience in personal or home care; or~~

~~(b) A licensed health care professional.~~

~~(11) The supervisor shall evaluate and document the quality of the personal care services provided in the client's place of residence every six months.~~

[R432-700-30[4]. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health care facilities

Date of Enactment or Last Substantive Amendment: [April 11, 2011

Notice of Continuation: September 27, 2007

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-2.1

**Health, Family Health and
Preparedness, Licensing
R432-725
Personal Care Agency Rule**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 35027

FILED: 07/11/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Historically the Personal Care Agency rule was located within the Home Health rule, with very few providers. Over the years more Personal Care agencies have opened and become licensed. The Health Facility Committee recommended this new rule to replace the section within the Home Health rule to clarify and define the Personal Care agencies.

SUMMARY OF THE RULE OR CHANGE: The Health Facility Committee recommended this new rule to replace the section within the Home Health rule to clarify and define the Personal Care agencies.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: No state budgets will be affected because the provisions of the new rule are very similar to the provisions of the old section in the Home Health rule.
- ◆ LOCAL GOVERNMENTS: No local government budgets will be affected because the provisions of the new rule are very similar to the provisions of the old section in the Home Health rule.
- ◆ SMALL BUSINESSES: No small business budgets will be affected because the provisions of the new rule are very similar to the provisions of the old section in the Home Health rule.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No other persons budgets will be affected because the provisions of the new rule are very similar to the provisions of the old section in the Home Health rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No affected persons budgets will be affected because the provisions of the new rule are very similar to the provisions of the old section in the Home Health rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As part of ongoing review of administrative rules in the Department to reduce unnecessary negative business impacts, this rule change separates personal care agencies from the home health rule. Positive impact on business.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
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:

- ◆ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov
- ◆ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2011

AUTHORIZED BY: David Patton, Executive Director

R432. Health, Family Health and Preparedness, Licensing.
R432-725. Personal Care Agency Rule.

R432-725-1. Authority.

This rule is adopted pursuant to Title 26, Chapter 21.

R432-725-2. Purpose.

The purpose of this rule is to promote the public health and welfare through the establishment and enforcement of licensure standards. This rule sets standards for the operation of personal care agencies.

R432-725-3. Compliance.

(1) A personal care agency consists of two or more individuals providing personal care services on a visiting basis.

(2) A Personal Care Agency shall not exceed personal care services as defined in R432-725-4(2)(b).

R432-725-4. Definitions.

(1) See common definitions rule R432-1-3.

(2) Special definitions:

(a) "Licensed health care professional" means a registered nurse, physician assistant, advanced practice registered nurse, or physician licensed by the Utah Department of Commerce who has education and experience to assess and evaluate the health care needs of the resident.

(b) "Personal Care Services" means:

(i) self-administration of medications by:

(A) Reminding the client to take medications, and

(B) Opening containers for the client;

(ii) transferring;

(iii) personal grooming and dressing;

(iv) eating and meal preparation;

(v) oral hygiene and denture care;

(vi) toileting and toilet hygiene;

(vii) bathing;

(viii) taking and recording temperatures and weights;

(ix) administering emergency first aid;

(x) providing transportation.

(c) "Service Agreement" means a written agreement for services between the client and the personal care provider which outlines how the services are to be provided.

R432-725-5. Administrator.

(1) The licensee shall appoint by name and in writing a qualified administrator who is responsible for the agency's overall functions.

(2) The administrator shall be at least 21 years of age and have at least one year of managerial or supervisory experience.

(3) The administrator shall designate in writing a qualified person who is at least 21 years of age and who shall act in his absence. The designee shall have sufficient power, authority, and freedom to act in the best interests of the client safety and well being.

(4) The administrator or designee shall be available during the agency's hours of operation.

R432-725-6. Personnel.

(1) The agency shall maintain documentation for each employee required to be licensed or certified.

(2) Copies shall be maintained for Department review that staff have a current license, certificate, or registration. New employees shall have 45 days to present the original document.

(3) The agency shall ensure each employee maintains a minimum of six hours of in-service per calendar year, prorated for the first year of employment.

(4) An annual in-service shall be documented that staff have been trained in the reporting requirements for suspected abuse, neglect and exploitation.

R432-725-7. Health Surveillance.

(1) The agency shall establish and implement a policy and procedure for health screening of all agency health care workers (persons with direct client contact) to identify any situation which would prevent the employee from performing assigned duties in a satisfactory manner.

(2) Employee health screening and immunization components of personnel health programs shall be developed in accordance with R386-704, Communicable Disease Rules.

(3) Employee skin testing by the Mantoux method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis.

(a) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(i) initial hiring;

(ii) suspected exposure to a person with active tuberculosis; and

(iii) development of symptoms of tuberculosis.

(b) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(4) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

R432-725-8. Orientation.

(1) There shall be documentation that all employees are oriented to the agency and the job for which they are hired.

(2) Orientation shall include but is not limited to:

(a) Job descriptions/duties;

(b) Ethics, confidentiality, and clients' rights;

(c) Reporting requirements for suspected abuse, neglect or exploitation.

R432-725-9. Admission and Retention.

(1) The agency may accept and retain clients for service if the client's needs do not exceed the level of personal care services as determined and documented by a licensed health care professional.

(2) If the client's needs exceed the personal care services, the agency shall make a referral to a licensed health care professional or an appropriate alternative service.

R432-725-10. Service Agreement.

(1) The agency shall obtain a signed and dated service agreement from the client and/or his responsible party. The service agreement shall include the following:

(a) A description of services to be performed by the Personal Care Aide;

(b) Charges for the services;

(c) A statement that a 30-day notice shall be given prior to a change in base charges.

R432-725-11. Termination of Services Policies.

(1) The agency may discharge a client under any of the following circumstances:

(a) Payment for services cannot be met;

(b) The safety of the client or provider cannot be assured;

(c) The needs of the client exceed the level of care provided by the agency;

(d) The client requests termination of services; or

(e) The agency discontinues services.

R432-725-12. Clients' Rights.

(1) Written clients' rights shall be established and made available to the client, guardian, next of kin, sponsoring agency, representative payee, and the public.

(2) Agency policy may determine how clients' rights information is distributed.

(3) The agency shall insure that each client receiving services has the following rights:

(a) To be fully informed of these rights and all rules governing client conduct, as evidenced by documentation in the clinical record;

(b) To be fully informed of services and related charges for which the client or a private insurer may be responsible, and to be informed of all changes in charges;

(c) To be free of mental abuse, physical abuse and/or exploitation;

(d) To be afforded the opportunity to participate in the planning of personal care services, including referral to health care institutions or other agencies, and to refuse to participate in experimental research;

(e) To be assured confidential treatment of personal records, and to approve or refuse their release to any individual outside the agency, except in the case of transfer to another agency or health facility, or as required by law or third-party payment contract;

(f) To be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs;

(g) To be assured that personnel who provide care demonstrate competency through education and experience to carry out the services for which they are responsible;

(h) To receive proper identification from the individual providing personal care services;

(i) To receive information concerning the procedures to follow to voice complaints about services being performed.

R432-725-13. Client Records.

(1) The Personal Care Agency shall maintain accurate and complete records. Records shall be filed, stored safely, and be easily accessible to staff and the Department.

(2) Client records shall be retained by the agency for three years following the last date of service;

(3) The client record shall contain the following:

(a) Client's name, date of birth and address;

(b) Client service agreement;

(c) Name, address, and telephone number of the individual to be notified in case of accident, emergency or death;

(d) Documentation of date and reason for the termination of services.

R432-725-14. Personal Care Aides.

(1) Personal care aides shall be at least 18 years of age and must:

(a) Have knowledge of agency policy and procedures;

(b) Be trained in first aid;

(c) Be able to demonstrate competency in all areas of training for personal care.

(2) Personal Care Aides shall be supervised by an individual with the following qualifications:

(a) A licensed nurse; or

(b) A Certified Nursing Aide with at least two years experience in personal or home care.

(3) The supervisor shall complete an on-site evaluation of the personal care aide and document the quality of the personal care services provided in the client's place of residence every six months.

(4) Personal Care Aides shall document observations and services in the individual client record.

R432-725-15. Penalties.

Any person who violates any provision of this rule may be subject to the penalties enumerated in 26-21-11 and R432-3-6 and be punished for violation of a class A misdemeanor as provided in 26-21-16.

KEY: health care facilities

Date of Enactment or Last Substantive Amendment: 2011

Authorizing, and Implemented or Interpreted Law: 26-21

Health, Family Health and Preparedness, Licensing
R432-750-8
Personnel

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35024

FILED: 07/11/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify and align the tuberculosis testing requirements for licensed health care facilities in Utah. The clarifications are in accordance with current law and will be consistent with all health facility rules. This amendment was approved by the Health Facilities Committee on 11/17/2010. This committee has representation from a broad cross section of the entities affected by this rule.

SUMMARY OF THE RULE OR CHANGE: This amendment will require employee tuberculosis testing to be completed within two weeks of hire, after suspected exposure or development of symptoms.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: This rule amendment will have no effect on state budgets since there will be no change in current practice.

◆ LOCAL GOVERNMENTS: This rule amendment will have no effect on local government budgets since there will be no change in current practice.

◆ SMALL BUSINESSES: This rule amendment will have no effect on small businesses since there will be no change in current practice.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule amendment will have no effect on persons since there will be no change in current practice.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule amendment will have no effect on persons since there will be no change in current practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Screening employees of health care facilities for tuberculosis is a justified fiscal cost to protect patients from being exposed to this deadly disease.

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

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
LICENSING
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:

◆ Carmen Richins by phone at 801-538-9087, by FAX at 801-538-6024, or by Internet E-mail at carmenrichins@utah.gov

◆ Joel Hoffman by phone at 801-538-6279, by FAX at 801-538-6024, or by Internet E-mail at jhoffman@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

R432. Health, Family Health and Preparedness, Licensing.**R432-750. Hospice Rule.****R432-750-8. Personnel.**

The hospice administrator shall maintain qualified personnel who are competent to perform their respective duties, services, and functions.

(1) The agency shall develop and implement written policies and procedures that address the following:

(a) job descriptions, qualifications, and validation of licensure or certificates of completion as appropriate for the position held;

(b) orientation for direct and contract employees, and volunteers;

(c) criteria for, and frequency of, performance evaluations;

(d) work schedules; method and period of payment; fringe benefits such as sick leave, vacation, and insurance;

(e) frequency and documentation of in-service training; and

(f) contents of personnel files of employed and volunteer staff.

(2) Each employee must provide within 45 days of hire proof of registration, certification, or licensure as required by the Utah Department of Commerce.

(3) The agency shall establish and implement a policy and procedure for health screening of all agency personnel.

(a) An employee placement health evaluation to include at least a health inventory shall be completed when an employee is hired.

(b) The health inventory shall obtain at least the employee's history of the following:

(i) conditions that predispose the employee to acquiring or transmitting infectious diseases;

(ii) conditions which may prevent the employee from performing certain assigned duties satisfactorily;

(c) Employee health screening and immunizations components of personnel health programs shall be developed in accordance with R386-702 Communicable Disease Rule.

(d) Employee skin testing by the Mantoux Method or other FDA approved in-vitro serologic test and follow up for tuberculosis shall be done in accordance with R388-804, Special Measures for the Control of Tuberculosis~~[Control Rule]~~.

(i) The licensee shall ensure that all employees are skin-tested for tuberculosis within two weeks of:

(A) initial hiring;

(B) suspected exposure to a person with active tuberculosis; and

(C) development of symptoms of tuberculosis.

(ii) Skin testing shall be exempted for all employees with known positive reaction to skin tests.

(e) All infections and communicable diseases reportable by law shall be reported by the facility to the local health department in accordance with R386-702-2.

(4) The hospice must document that all employees, volunteers, and contract personnel are oriented to the agency and the job for which they are hired.

(a) Orientation shall include:

(i) the hospice concept and philosophy of care;

(ii) the functions of agency employees and the relationships between various positions or services;

(iii) job descriptions;

(iv) duties for which persons are trained, hold certificates, or are licensed;

(v) ethics, confidentiality, and patients' rights;

(vi) information about other community agencies including emergency medical services;

(vii) opportunities for continuing education appropriate to the patient population served;

(viii) policies related to volunteer documentation, charting, hours and emergencies; and

(ix) reporting requirements when observing or suspecting abuse, neglect and exploitation pursuant to 62A-3-302.

(b) The hospice shall provide and document in-service training and continuing education for staff at least annually.

(i) Members of the hospice interdisciplinary team shall have access to in-service training and continuing education appropriate to their responsibilities and to the maintenance of skills necessary for the care of the patient and family.

(ii) The training programs shall include the introduction and review of effective physical and psychosocial assessment and symptom management.

(c) The hospice shall train all personnel in appropriate Centers for Disease Control (CDC) infectious disease protocols.

(5) The hospice administrator shall appoint a person to coordinate the activities of the interdisciplinary team. This individual shall:

(a) annually review and make recommendations where appropriate of agency policies covering admissions and discharge, medical supervision, care plans, clinical records and personnel qualifications;

(b) assure that on-going assessments of the patient and family needs and implementation of the interdisciplinary team care plans are accomplished;

(c) schedule adequate quality and quantity of all levels of hospice care; and

(d) assure that the team meets regularly to develop and maintain appropriate plans of care and to determine which staff will be assigned to each case.

(6) The hospice program shall provide access to individual and/or group support for interdisciplinary team members to assist with stress and/or grief management related to providing hospice care.

KEY: health care facilities

Date of Enactment or Last Substantive Amendment:
[November 6, 2000]2011

Notice of Continuation: September 27, 2007

Authorizing, and Implemented or Interpreted Law: 26-21-5; 26-21-6

Insurance, Administration
R590-172-4
Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35006

FILED: 07/05/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule currently requires health insurers to notify Utah Comprehensive Health Insurance Pool (HIPUtah) on the 1st and 15th of the month of applicants who have been denied health insurance coverage. HIPUtah has asked that reporting be done only on the 1st of the month in an attempt to alleviate duplication in the reporting of these denied applicants.

SUMMARY OF THE RULE OR CHANGE: Subsection R590-172-4(2)(c) changes the requirement of health insurers to report to HIPUtah on the 1st and 15th of the month those individuals without health insurance who have been denied coverage by them.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-29-116

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This change will have no impact on the budget or workload of the department since the reports referred to in the change are submitted to HIPUtah and not the department.
- ◆ **LOCAL GOVERNMENTS:** The change to this rule will have no impact on local governments since it deals solely with the relationship between HIPUtah and licensed health insurers doing business in Utah.
- ◆ **SMALL BUSINESSES:** This rule applies only to individuals applying for health insurance coverage from health insurers that are large businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The change to this rule will eliminate the requirement for health insurers to report to HIPUtah on the 15th of the month, uninsured applicants that they have denied coverage to. Currently the requirement is to provide this information on the 1st and 15th of the month. Reporting is done electronically so there will be no cost savings. The savings will be in time and effort of health insurance company staff.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The change to this rule will eliminate the requirement for health insurers to report to HIPUtah on the 15th of the month, uninsured applicants that they have denied coverage to. Currently the requirement is to provide this information on the

1st and 15th of the month. Reporting is done electronically so there will be no cost savings. The savings will be in time and effort of health insurance company staff.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on businesses in Utah. The elimination of one required report will reduce an insurers workload.

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

INSURANCE
 ADMINISTRATION
 ROOM 3110 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2011

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-172. Notice to Uninsurable Applicants for Health Insurance.

R590-172-4. Rule.

(1) Notification of Denial to Applicants.

Every health insurer writing health insurance in the State of Utah will provide a written notice containing the requirements in R590-176-5(3)(a), Health Benefit Plan Enrollment, and the following language to each applicant for health insurance coverage that is denied coverage by the insurer for reasons relating to health:

"You have been denied health insurance coverage due to a health condition which is uninsurable. The Utah Comprehensive Health Insurance Pool (HIPUtah) was created to provide health insurance to residents of Utah who are denied health insurance and who are considered uninsurable. If you have lived in the State of Utah for 12 consecutive months prior to applying for insurance with this company you may be eligible for health insurance coverage with HIPUtah.

"However, if you have not lived in the state of Utah for 12 consecutive months, but you are a Utah resident and you are coming from another State's high risk pool or have had 18 months of continuous coverage with the most recent coverage being through a group health plan, you may still be eligible for health insurance coverage with the Utah Comprehensive Insurance Pool.

"Part or all of the preexisting waiting period will be waived if you are an eligible individual according to the Health Insurance Portability and Accountability Act (HIPAA) or your

previous coverage was involuntarily terminated for reasons other than for nonpayment of premium or fraud, and application for HIPUtah is made within 63 days of that termination. The amount of credit given will depend on the length of time an applicant was previously covered under that health insurance.

"If application for coverage with HIPUtah is made within 30 days of this denial letter and you are declined coverage with the pool, HIPUtah will issue a certificate of insurability and you may reapply for coverage with this company within 30 days of the certificate date.

"To find out whether you qualify for pool coverage or to make application for pool coverage, Salt Lake City area residents should call 442-6660. Residents of other areas in Utah should call 1-800-638-5038, ext. 6660, toll free. The HIPUtah's mailing address is P.O. Box 30192, Salt Lake City, Utah 84130-0192."

(2) Notification of Denial to HIPUtah.

(a) Every health insurer writing health insurance in the State of Utah shall provide written notice to HIPUtah for each application in which applicant does not have current individual coverage, for insurance the insurer has denied.

(b) The notice to HIPUtah shall contain the name and address of the applicant who was denied insurance, and no other personal information. If the applicant applied for the insurance through an insurance producer, the written notice shall provide the name and the address of the insurance producer. The information must be presented in an excel spreadsheet in the format; Applicant, Last Name, First Name, Mailing Address, Producer, Last Name, First Name, Mailing Address.

(c) The notice shall be submitted to HIPUtah on the 1st [~~and 15th~~] of each month. The notice shall be transmitted electronically to HIPUtah through a secure email address at hiputah@exchangeforum.utah.gov.

KEY: health insurance

Date of Enactment or Last Substantive Amendments: [~~July 15, 2010~~]**2011**

Notice of Continuation: April 29, 2010

Authorizing, and Implemented or Interpreted Law: 31A-29-116

Natural Resources, Wildlife Resources R657-6 Taking Upland Game

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35068

FILED: 07/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting

conducted for taking public input and reviewing the upland game program as approved by the Wildlife Board.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to the above listed rule remove all references to "proclamation" and replace them with "guidebook"; the amendments also remove any reference to "temporary game preserves"; they also correct the listing of Browns Park and Stewart Lake from a State Waterfowl Management area to a State Wildlife Management area and open Manti Meadows and Scott M. Matheson Wetland Preserve to upland game hunting during designated waterfowl hunting seasons.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This amendment is basic housekeeping; it does not make any changes that would impact workload or process. Therefore, the Division of Wildlife Resources (DWR) determines that the proposed changes to the rule do not create a cost or savings impact to the state budget or DWR's budget and can be carried out with current personnel and budget.

♦ **LOCAL GOVERNMENTS:** None--Since this amendment has no negative impact on individual hunters or the local governments, the division finds that this ruling does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

♦ **SMALL BUSINESSES:** This amendment cleans up some language issues as well as opens two additional upland game hunting areas during designated waterfowl seasons and therefore does not have the potential to generate a cost or savings impact to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment cleans up some language issues as well as opens two additional upland game hunting areas during designated waterfowl seasons and therefore does not have the potential to generate a cost or savings impact to sportsmen or other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that this amendment will not create additional costs for those who participate in wildlife-related activities in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE

SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2011

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-6. Taking Upland Game.

R657-6-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2004 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking upland game.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the [~~Upland Game Proclamation~~ guidebook] of the Wildlife Board for taking upland game and wild turkey.

R657-6-3. Migratory Game Bird Harvest Information Program.

(1) A person must obtain a Migratory Game Bird Harvest Information Program (HIP) registration number to hunt migratory game birds.

(2)(a) A person may call the telephone number or register online as published in the [~~proclamation~~ guidebook] of the Wildlife Board for taking upland game and wild turkey to obtain their HIP registration number.

(b) A person must write their HIP registration number on their current valid hunting license.

(3) Any person obtaining a HIP registration number will be required to provide their:

- (a) hunting license number;
- (b) hunting license type;
- (c) name;
- (d) address;
- (e) phone number;
- (f) birth date; and
- (g) information about the previous year's migratory game bird hunts.

(4) Lifetime license holders will receive a sticker every three years from the Division to write their HIP number on and place on their lifetime license card.

(5) Any person hunting migratory game birds will be required, while in the field, to possess a hunting or combination license with the HIP registration number recorded on the license, demonstrating they have registered and provided information for the HIP program.

R657-6-4. Permits for Band-tailed Pigeon, Sage-grouse, Sharp-tailed Grouse and White-tailed Ptarmigan.

(1)(a) A person may not take or possess:

(i) Band-tailed Pigeon without first obtaining a Band-tailed Pigeon permit;

(ii) Sage-grouse without first obtaining a Sage-grouse permit;

(iii) Sharp-tailed Grouse without first obtaining a Sharp-tailed Grouse permit; or

(iv) White-tailed Ptarmigan without first obtaining a White-tailed Ptarmigan permit.

(b) A person may obtain only one permit for each species listed in Subsection (1)(a), except a falconer with a valid Falconry Certificate of Registration may obtain one additional two-bird Sage-grouse permit beginning on the date published in the [~~proclamation~~ guidebook] of the Wildlife Board for taking upland game and wild turkey, if any permits are remaining.

(2)(a) A limited number of two-bird Sage-grouse permits are available in the areas published in the [~~proclamation~~ guidebook] of the Wildlife Board for taking upland game and wild turkey.

(b) A Sage-grouse permit may only be used in one of the open areas as published in the [~~proclamation~~ guidebook] of the Wildlife Board for taking upland game and wild turkey.

(c) Sage-grouse permits will be issued pursuant to R657-62-~~[24]~~22.

(3)(a) A limited number of two-bird, Sharp-tailed Grouse permits are available.

(b) A Sharp-tailed Grouse permit may only be used in one of open areas as published in the [~~proclamation~~ guidebook] of the Wildlife Board for taking upland game and wild turkey.

(c) Sharp-tailed Grouse permits will be issued pursuant to R657-62-~~[24]~~22.

(4) Band-tailed Pigeon and White-tailed Ptarmigan permits are available from Division offices, through the mail, and through the Division's Internet address by the first week in August, free of charge.

R657-6-5. Application Procedure for Sandhill Crane.

(1)(a) Sandhill Crane permits will be issued pursuant to R657-62-~~[20]~~22.

(b) Residents and nonresidents may apply.

(c) The application period for Sandhill Crane is published in the [~~proclamation~~ guidebook] of the Wildlife Board for taking upland game and wild turkey.

(2) A person may obtain only one Sandhill Crane permit each year.

R657-6-6. Firearms and Archery Tackle.

(1) A person may not use any weapon or device to take upland game except as provided in this section.

(2)(a) Upland game may be taken with archery equipment, a shotgun no larger than 10 gauge, or a handgun. Loads for shotguns and handguns must be one-half ounce or more of shot size ranging between no. 2 and no. 8, except:

(i) migratory game birds may not be taken with a handgun, or a shotgun capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells;

(ii) cottontail rabbit and snowshoe hare may be taken with any firearm not capable of being fired fully automatic; and

~~(iii) [a person hunting upland game on a temporary game preserve as defined in Rule R657-5 may not use or possess any broadheads unless that person possesses a valid big game archery permit for the area being hunted;~~

~~(iv) only shotguns, firing shot sizes no. 4 or smaller, may be used on temporary game preserves as specified in Rule R657-5; and~~

~~(v)]Sandhill Crane may be taken with any size of nontoxic shot.~~

(b) Crossbows are not legal archery equipment for taking upland game, except as provided in Rule R657-12.

(3) A person may not use:

(a) a firearm capable of being fired fully automatic; or

(b) any light enhancement device or aiming device that casts a visible beam of light.

R657-6-8. Use of Firearms and Archery Tackle on State Wildlife Management Areas.

(1) A person may not possess a firearm or archery tackle, except during the specified hunting seasons or as authorized by the Division on the following wildlife management areas: Bear River Trenton Property Parcel, Browns Park, Bud Phelps, Castle Dale, Huntington, James Walter Fitzgerald, Mallard Springs, Manti Meadows, Montes Creek, Nephi, Pahvant, Redmond Marsh, ~~Richfield,~~ Roosevelt, Scott M. Matheson Wetland Preserve, Stewart Lake, Vernal, and Willard Bay.

(2) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-6-9. Use of Firearms and Archery Tackle on State Waterfowl Management Areas.

(1) A person may not possess a firearm or archery tackle, except during the specified waterfowl hunting seasons or as authorized by the Division on the following waterfowl management areas: Bicknell Bottoms, Blue Lake, ~~Brown's Park,~~ Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Powell Slough, Public Shooting Grounds, Salt Creek, ~~Stewart Lake,~~ and Timpie Springs.

(2) During the waterfowl hunting seasons, a shotgun is the only firearm that may be held in possession.

(3) The firearm restrictions set forth in this section do not apply to a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take wildlife.

R657-6-10. Shooting Hours.

(1)(a) Except as provided in Subsection (b), shooting hours for upland game are as follows:

(i) Band-tailed Pigeon, Mourning Dove, White-winged Dove, and Sandhill Crane may be taken only between one-half hour before official sunrise through official sunset.

(ii) Sage-grouse, Ruffed Grouse, Blue Grouse, Sharp-tailed Grouse, White-tailed Ptarmigan, Chukar Partridge, Hungarian Partridge, pheasant, quail, cottontail rabbit, and snowshoe hare may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

(b) A person must add to or subtract from the official sunrise and sunset depending on the geographic location of the state. Specific times are provided in a time zone map in the ~~[proclamation]~~ guidebook of the Wildlife Board for taking upland game and wild turkey.

(2) A person may not discharge a firearm on state owned lands adjacent to the Great Salt Lake, state waterfowl management areas or on federal refuges between official sunset through one-half hour before official sunrise.

R657-6-12. Falconry.

(1)(a) Falconers must obtain an annual hunting or combination license and a valid falconry certificate of registration or license to hunt upland game and must also obtain:

(b) a Band-tailed Pigeon permit before taking Band-tailed Pigeon;

(c) a Sage-grouse permit before taking Sage-grouse;

(d) a Sharp-tailed Grouse permit before taking Sharp-tailed Grouse;

(e) a White-tailed Ptarmigan permit before taking White-tailed Ptarmigan; or

(f) a Sandhill Crane permit before taking Sandhill Crane.

(2) Areas open and bag and possession limits for falconry are provided in the ~~[proclamation]~~ guidebook of the Wildlife Board for taking upland game and wild turkey.

R657-6-21. Closed Areas.

A person may not hunt upland game in any area posted closed by the Division or any of the following areas:

(1) Salt Lake International Airport boundaries as posted.

(2) Incorporated municipalities: Most of the incorporated areas of Alta, a portion of Davis County, Garland City, Layton, Logan, Pleasant View City, South Ogden City, Syracuse City, West Jordan, and West Valley City are closed to the discharge of firearms. Check with the respective city officials for specific boundaries. Other municipalities may have additional firearm restrictions.

(3) Wildlife Management Areas:

(a) Waterfowl management areas and federal refuges are open for hunting upland game only during designated waterfowl hunting seasons, including: Bear River National Wildlife Refuge, Bicknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Manti Meadows, Mills Meadows, Ogden Bay, Ouray National Wildlife Refuge, Powell Slough, Public Shooting Grounds, Salt Creek, Scott M. Matheson Wetland Preserve, Stewart Lake, and Timpie Springs.

(b) Fish Springs National Wildlife Refuge is closed to upland game hunting.

(c) Goshen Warm Springs is closed to upland game hunting.

(4) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

R657-6-25. Season Dates, Bag and Possession Limits, and Areas Open.

Season dates, bag and possession limits, areas open, and number of permits for taking upland game are provided in the [~~proclamation~~ guidebook] of the Wildlife Board for taking upland game and wild turkey.

KEY: wildlife, birds, rabbits, game laws

Date of Enactment or Last Substantive Change: [~~August 10, 2009~~] 2011

Notice of Continuation: June 28, 2010

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19

**Natural Resources, Wildlife Resources
R657-54
Taking Wild Turkey**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35067

FILED: 07/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the wild turkey program as approved by the Wildlife Board.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to the above listed rule remove all references to "proclamation" and replace them with "guidebook." The amendment also combines the Upland Game and Wild Turkey guidebooks into one and clarifies the State Waterfowl Management Areas closed to wild turkey hunting.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment only clarifies current regulations, it does not make any changes to the current regulation therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** Since this amendment has no impact on individual hunters or the local governments, the division finds that this filing does not create any direct cost or

savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment replaces terms in the rule for simplification and clarification and therefore does not have the potential to generate a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment replaces terms in the rule for simplification and clarification and therefore does not have the potential to generate a cost or savings impact to sportsmen or the other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that this amendment will not create additional costs for those who participate in wildlife-related activities in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES

WILDLIFE RESOURCES

1594 W NORTH TEMPLE

SALT LAKE CITY, UT 84116-3154

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2011

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-54. Taking Wild Turkey.

R657-54-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 and in accordance with 50 CFR 20, 2003 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking wild turkey.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the [~~Turkey Proclamation~~ guidebook] of the Wildlife Board for taking upland game and wild turkey.

R657-54-3. Application Procedure for Wild Turkey.

(1) Permits for wild turkey will be issued pursuant to R657-62-~~[25-]~~26.

R657-54-4. Landowner Permits.

(1)(a) Up to an additional 20 percent of the limited entry permits authorized for taking Merriam's and Rio Grande turkeys are available to private landowners through a drawing.

(2) Landowners interested in obtaining landowner permits must:

(a) contact the regional Division office in their area on the dates published in the ~~[Turkey Proclamation]~~guidebook of the Wildlife Board for taking upland game and wild turkey;

(b) obtain and complete a landowner application;

(c) obtain a Division representative's signature on the landowner application; and

(d) submit the landowner application in accordance with Section R657-62-~~[25-]~~26.

(4)(a) Landowner permit applications that are not signed by the local Division representative will be rejected.

(5)(a) Only one eligible landowner may submit an application for the same parcel of land within the respective regional hunt boundary area.

(b) In cases where more than one application is received for the same parcel of land, all applications will be rejected.

(6) Applications must include:

(a) description of total acres owned within the respective regional hunt boundary;

(b) evidence of property ownership, including a copy of a title, deed, or tax notice indicating the applicant is the owner of the property; and

(c) the signature of the landowner.

(i) The signature on the application will serve as an affidavit certifying land ownership.

(7)(a) A landowner is eligible to participate in the drawing for available landowner turkey permits provided the landowner owns:

(i) at least 640 acres of essential habitat, or 40 acres of essential habitat that is cleared and planted land, in an open unit designated as a Merriam's unit that supports wild turkeys; or

(ii) at least 20 acres of essential habitat in an open unit designated as a Rio Grande unit that supports wild turkeys.

(b) Land qualifying as essential habitat, or cleared and planted land, and owned by more than one landowner may qualify for a landowner permit. However, the landowners who own the qualifying land must determine the landowner who will be participating in the drawing.

(8)(a) A landowner who applies for a landowner permit may:

(i) be issued the permit; or

(ii) designate a member of the landowner's immediate family or landowner's regular full-time employee to receive the permit.

(b) At the time of application, the landowner must identify the designee who will receive the permit.

(c) The landowner permit may be used only on the open limited entry area in which the landowner's property is located during the open season established for hunting wild turkeys.

(d) A person may not apply for or obtain a landowner permit without possessing a Utah hunting or combination license.

(9) Applicants will be notified by mail or e-mail of the drawing results for landowner permits by the date published in the ~~[Turkey Proclamation]~~guidebook of the Wildlife Board for taking upland game and wild turkey.

(10)(a) Any landowner permits remaining after the landowner drawing shall be converted to public limited entry permits for that specific unit.

(b) These permits shall be issued through the limited entry drawing. Therefore, the number of public permits listed in the ~~[Turkey Proclamation]~~guidebook of the Wildlife Board for taking upland game and wild turkey, may increase.

(11)(a) A waiting period does not apply to landowners applying for landowner permits.

(b) A landowner may apply once annually for a landowner permit and a limited entry permit, but may only draw or obtain one permit.

R657-54-5. Firearms and Archery Tackle.

Wild turkey may be taken only with a bow and broadhead tipped arrows or a shotgun no larger than 10 gauge and no smaller than 20 gauge, firing shot sizes ranging between BB and no. ~~[6-]~~8.

R657-54-6. Shooting Hours.

(1) Wild turkey may be taken only between one-half hour before official sunrise through one-half hour after official sunset.

(b) A person must add to or subtract from the official sunrise and sunset depending on the geographic location of the state. Specific times are provided in a time zone map in the ~~[proclamation]~~guidebook of the Wildlife Board for taking upland game and wild turkey.

R657-54-15. Closed Areas.

A person may not hunt wild turkey in any area posted closed by the Division or any of the following areas:

(1) Salt Lake Airport boundaries as posted.

(2) Incorporated municipalities: Most of the incorporated areas of Alta, a portion of Davis County, Garland City, Layton, Logan, Pleasant View City, South Ogden City, West Jordan, and West Valley City are closed to the discharge of firearms. Check with the respective city officials for specific boundaries. Other municipalities may have additional firearm restrictions.

~~(3) [Wildlife Management Areas:]All State Waterfowl Management Areas except Brown's Park and Stewart Lake.~~

~~[(a) Waterfowl management areas are open for hunting-wild turkey only during designated turkey hunting seasons, including: Bear River National Wildlife Refuge, Biacknell Bottoms, Blue Lake, Brown's Park, Clear Lake, Desert Lake, Farmington Bay, Harold S. Crane, Howard Slough, Locomotive Springs, Mills Meadows, Ogden Bay, Ouray National Wildlife Refuge, Powell Slough, Public Shooting Grounds, Salt Creek, Stewart Lake, and Timpie Springs.~~

~~(b) Fish Springs National Wildlife Refuge is closed to wild turkey hunting.~~

~~(c) Goshen Warm Springs is closed to wild turkey hunting.~~

~~(4) All National Wildlife Refuges unless declared open by the managing authority.~~

(5) Military installations, including Camp Williams, are closed to hunting and trespassing unless otherwise authorized.

R657-54-21. Season Dates, Bag and Possession Limits, and Areas Open.

Season dates, bag and possession limits, areas open, and number of permits for taking wild turkey are provided in the ~~[Turkey-Proclamation of the proclamation]~~ guidebook of the Wildlife Board for taking upland game and wild turkey.

KEY: wildlife, wild turkey, game laws

Date of Enactment or Last Substantive Amendment: ~~[October 22, 2009]~~ 2011

Notice of Continuation: November 30, 2009

Authorizing, and Implemented or Interpreted Law: 23-14-1; 23-14-18; 23-14-19

Workforce Services, Employment
Development
R986-200-215
Family Employment Program Two
Parent Household (FEPTP)

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35081

FILED: 07/14/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to match this rule to prior proposed changes.

SUMMARY OF THE RULE OR CHANGE: On 07/01/2011, the Department filed a change to Section R986-100-136 eliminating Family Employment Program assistance and Family Employment Program Two Parent assistance pending a hearing. It was recently discovered that this section also needs to be changed. The Department is ending payment pending the hearing because it is not required by federal law.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-3-302(5)(b)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This applies to federally-funded programs so there are no costs or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs or savings to the local government.

♦ **SMALL BUSINESSES:** There will be no costs to small businesses to comply with these changes because this is a federally-funded program.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs to any businesses, person, or local government entities to comply with these changes because there are no costs or fees associated with these proposed changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with these changes for any persons because this is a federally-funded program and there are no fees or costs associated with these proposed changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

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

WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/31/2011

THIS RULE MAY BECOME EFFECTIVE ON: 09/07/2011

AUTHORIZED BY: Kristen Cox, Executive Director

R986. Workforce Services, Employment Development.

R986-200. Family Employment Program.

R986-200-215. Family Employment Program Two Parent Household (FEPTP).

(1) FEPTP is for households otherwise eligible for FEP but with two able-bodied parents in the household. Eligible refugee households with two able-bodied parents and at least one dependent child, must first exhaust RRP benefits before considering eligibility for FEPTP.

(2) Families may only participate in this program for seven months out of any 13-month period. Months of participation count toward the 36-month time limit in Sections 35A-3-306 and R986-200-217.

(3) Both parents must participate in eligible activities for a combined total of 60 hours per week, as defined in the

employment plan. At least 50 of those hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. Refugee families may participate in any combination of eligible and priority activities for a combined total of 60 hours per week, as provided in the employment plan.

(4) Both parents are required to participate every week as defined in the employment plan, unless the parent can establish reasonable cause for not participating. Reasonable cause is defined in rule R986-200-212(8),

(5) Payment is made twice per month and only after proof of participation. Payment is based on the number of hours of participation by both parents. The amount of assistance is equal to the FEP payment for the household size prorated based on the number of hours which the parents participated up to a maximum of 60 hours of participation per week. In no event can the financial assistance payment per month for a FEPTP household be more than for the same size household participating in FEP.

(6) If it is determined by the employment counselor that either one of the parents has failed to participate to the maximum extent possible assistance for the entire household unit will terminate immediately.

(7) Because payment is made after performance, advance notice is not required to terminate or reduce assistance payments for households participating in FEPTP. ~~However, if the client requests a hearing within ten days of the termination, payment of financial assistance based on participation of both parents in eligible activities can continue during the hearing process as provided in R986-100-134.]~~

(8) The parents must meet all other requirements of FEP including but not limited to, income and asset limits, cooperation with ORS if there are legally responsible persons outside of the household assistance unit, signing a participation agreement and employment plan and applying for all other assistance or benefits to which they might be entitled.

KEY: family employment program

Date of Enactment or Last Substantive Amendment: ~~[June 15,] 2011~~

Notice of Continuation: September 8, 2010

Authorizing, and Implemented or Interpreted Law: 35A-3-301 et seq.

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 August 31, 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 November 29, 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

Environmental Quality, Administration
R305-6
Administrative Procedures

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 34472

FILED: 07/12/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes correct minor errors, including internal citation errors, and clarify and improve language in the rule, make changes associated with the State's change in work week, delete reference to a "mental processes" privilege, and delete a reference to an Air Quality rule that has been repealed.

SUMMARY OF THE RULE OR CHANGE: The changes correct minor errors, including internal citation errors, and clarify and improve language in the rule. It also makes changes to reflect the change from a proposed four-day work week to a five-day work week, e.g., deleting Friday as a non-work day and making corresponding changes to the number of working days given for various deadlines. The Department has also declined to enact proposed Subsection R305-6-209(2)(f) prohibiting the examination of the Executive Secretary's mental processes; that is one of many privileges that may apply in a proceeding, but it need not be listed specifically. There is also a change to Subsection R305-6-404(4)(d) to delete a reference to an Air Quality rule that has been repealed. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed new rule that was published in the March 15, 2011, issue of the Utah State Bulletin, on page 53. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 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-4-102 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 proposed changes are primarily clarifications and corrections and will not affect the state budget in any way.

◆ **LOCAL GOVERNMENTS:** The proposed changes are primarily clarifications and corrections and will not affect local government budgets in any way.

◆ **SMALL BUSINESSES:** The proposed changes are primarily clarifications and corrections and will not affect small business costs in any way.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed changes are primarily clarifications and corrections and will not affect costs for persons other than small businesses, business or local governmental entity in any way.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None-- The changes correct minor errors, including internal citation errors, and clarify and improve language in the rule, makes changes associated with the State's change in work week, deletes reference to a "mental processes" privilege, and deletes a reference to an Air Quality rule that has been repealed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes are primarily clarifications and corrections and will not affect costs for any persons subject to the rule in any way.

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:

◆ 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

THIS RULE MAY BECOME EFFECTIVE ON: 08/31/2011

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 ~~[+9-1-103]~~19-1-301 to conduct an adjudicatory proceeding.

(2) "Administrative Proceedings Records Officer" means the person ~~[responsible for maintaining the administrative record, as identified]~~who receives the record copies of submissions on behalf of the agency, as specified 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) "RAA" means a Request for Agency Action. See R305-6-202.

(12) ~~["Rule," unless otherwise specified,]~~"Rule" means this Rule R305-6, Administrative Procedures for the Department of Environmental Quality, unless otherwise specified.

(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)(a) 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.

(b) The requirements of R305-6-105(2)(a) are in addition to other requirements in the Rule, such as compliance with R305-6-205.

(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]~~ within the period provided in R305-6-202(8) and (9) 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.

(3) Every filing shall contain the filing date in the upper right hand corner or in the right hand box of a caption.

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)]~~ R305-6-109(3)(a) and (4)(b).

(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 searchable PDF document. ~~[A] If a signed document [shall] cannot be scanned in a searchable format 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 the signature page separately. The signature page may be submitted as a scanned, non-searchable page, or the submitter may file and serve a hard copy of the [document]signature page 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 search[e]able 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 search[e]able 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, DVD, flash drive, or [DVD] other commonly used digital storage medium. 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.

(j) A document is searchable if words in the document can be found using the "Find" or similar function on the software that is routinely used to display the document.

(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:

(i) 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

(ii) 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)(i) 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)]R305-6-112(1)~~, 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)]R305-6-114(2)~~, 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 or she 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 or she 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]~~ expiration of the 30 days specified in R305-6-202(8).

(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]~~ expiration of the 30 days specified in R305-6-202(8).

(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)]~~R305-6-205(4), 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]~~any such 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]~~30 day deadline for filing a Petition to Intervene ~~under R305-6-205(4)~~ 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]~~within 30 calendar days of the issuance of the Initial Order or Notice of Violation.

(b) The ~~[time]~~30 day deadline for filing a ~~[Request for Agency Action]~~Petition to Intervene under R305-6-205(4) 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]~~within 30 calendar days of the issuance of the Initial Order or Notice of Violation.

(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]~~10 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]~~proffered or received into evidence 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)]~~R305-6-109(3). Electronic records shall meet the requirements for electronic filing and service in ~~[R305-6-109(9)(c) and (d)]~~R305-6-109(3).

(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]~~10 business days of the date of the Initial Record. The Executive Secretary may respond to objections within ~~[eight]~~10 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]~~Chapter 2, 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; and

(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 ~~[42]~~15 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]~~seven 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]~~25 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 ~~[40]~~13 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)]~~R305-6-109(3), 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 ~~[40]~~13 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)(i) ~~[A]~~ Except as provided in R305-6-213(3)(c)(ii), all witnesses who have provided pre-filed testimony shall be present at the hearing unless ~~[otherwise ordered by the ALJ or other Presiding Officer]~~ the parties agree that the witness may be excused. 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.

(ii) The pre-filed testimony of any witness who is not present at the hearing will be treated as other hearsay evidence as provided in 63G-4-206(1)(c) and 63G-4-208(3).

(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~~ 13 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~~ 10 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, department or division 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 Section 19-1-202(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;~~

~~[(d)]~~ 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

~~(H)~~(k) 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 based on passing the certification test, submitting verification of citizenship, demonstrating OSHA certification, or paying of the application fee 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, Radiation
Control
R313-17
Administrative Procedures**

NOTICE OF CHANGE IN PROPOSED RULE

DAR FILE NO.: 34684

FILED: 07/07/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Radiation Control Board met on 06/14/2011

to discuss the final adoption of this rule. It was noted that no comments were received on this rulemaking. However, during the deliberation on the action, the Board determined that a change should be made.

SUMMARY OF THE RULE OR CHANGE: The word "shall", in Subsection R313-17-2(1), was proposed to be changed to "may". The Utah Radiation Control Board members determined that the change should not be made. This change in proposed rulemaking reverses the proposed change. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the May 1, 2011, issue of the Utah State Bulletin, on page 36. 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 amendment 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 19-1-301 and Section 63G-4-102 and Sections 63G-4-201 through 63G-4-205 and Subsection 19-3-104(4)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The change to give public notice of and an opportunity to comment on licensing actions for some specific license categories is not expected to be substantial enough to have an impact on the budget of the Department of Environmental Quality.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government because this rulemaking has no direct impact on local government.

◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses because this rulemaking has no direct impact on small businesses. The rulemaking only affects actions taken by the Executive Secretary of the Utah Radiation Control Board.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to individuals, partnerships, and other entities because this rulemaking has no direct impact on such persons. The rulemaking only affects actions taken by the Executive Secretary of the Utah Radiation Control Board.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The cost to comply will be born by the Division of Radiation Control of the Department of Environmental Quality. The costs to give public notice of and an opportunity to comment on licensing actions for certain license categories is not expected to be substantial enough to have an impact on the Division budget.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will not affect businesses because

the cost to comply will be born by the Division of Radiation Control of the Department of Environmental Quality. The costs to give public notice of and an opportunity to comment on licensing actions for certain license categories is not expected to be substantial enough to have an impact on the Division budget.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 RADIATION CONTROL
 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:
 ♦ Craig Jones by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at cwjones@utah.gov

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

THIS RULE MAY BECOME EFFECTIVE ON: 08/31/2011

AUTHORIZED BY: Rusty Lundberg, Director

R313. Environmental Quality, Radiation.

R313-17. Administrative Procedures.

R313-17-1. Authority.

The rules set forth herein are adopted pursuant to the provision of Subsection 19-3-104(4) and Section 63G-4-102 and Sections 63G-4-201 through 63G-4-205.

R313-17-2. Public Notice and Public Comment Period.

(1) The Executive Secretary ~~may~~shall give public notice of, and an opportunity to comment on the following actions:

(a) Proposed licensing action for license categories 2b and c, 4a, b, c, d and 6 identified in Section R313-70-7 or a proposed approval or denial of a significant radioactive materials license, license amendment, or license renewal.

(b) The initial proposed registration of an ionizing radiation producing machine which operates at a kilovoltage potential (kVp) greater than 200 in an open beam configuration. R313-17-2(1)(b) does not apply to ionizing radiation producing machines used in the healing arts.

(c) Board activities that may have significant public interest and the Board requests the Executive Secretary to take public comment on those proposed activities.

(2) Public notice shall allow at least 30 days for public comment.

(3) Public notice may describe more than one action listed in Subsection R313-17-2(1) and may combine notice of a public hearing with notice of the proposed action.

(4) Public notice shall be given by one or more of the following methods:

(a) Publication in a newspaper of general circulation in the area affected by the proposed action,

(b) Publication on the Division of Radiation Control website, or

(c) Distribution by an electronic mail server.

R313-17-3. Administrative Procedures.

Administrative proceedings under the Radiation Control Act are governed by Rule R305-6.

KEY: administrative procedures, comment, hearings, adjudicative proceedings

Date of Enactment or Last Substantive Amendment: 2011

Notice of Continuation: July 10, 2006

Authorizing, and Implemented or Interpreted Law: 19-3-104(4); 63G-4-102; 63G-4-201 through 63G-4-205

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, History **R212-4** Ancient Human Remains

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35051
FILED: 07/13/2011

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 9-8-309 defines the Antiquities Section's duties with respect to recovery, disposition, and determination of ownership of ancient human remains found on nonfederal lands that are not state lands in the state of Utah. This rule outlines how the Antiquities Section will assure that ancient human remains are given respectful, lawful and scientifically-sound treatment, that landowners are not harmed or burdened by a discovery of ancient human remains on their property and to ensure that steps are taken to determine lawful ownership of recovered human remains.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of Rule R212-4 is justified as Section 9-8-309 defines the Antiquities Section is responsible

for ancient human remains found on nonfederal lands that are not state lands in Utah.

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

COMMUNITY AND CULTURE
HISTORY
300 RIO GRANDE
SALT LAKE CITY, UT 84101-1182
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Lynette Lloyd by phone at 801-533-3553, by FAX at 801-533-3567, or by Internet E-mail at lynettelloyd@utah.gov

AUTHORIZED BY: Wilson Martin , Associate Director

EFFECTIVE: 07/13/2011

Environmental Quality, Radiation Control **R313-12** General Provisions

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35008
FILED: 07/07/2011

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 19-1-106 establishes the Radiation Control Board. The Board is authorized to make rules under Section 19-3-104 that are necessary for controlling exposure to sources of radiation that constitute a significant health hazard.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Two substantive changes were made to the rule since the last five-year rule review. The most recent change was effective 10/13/2010 and involved the expanded definition of byproduct material. The U.S. Nuclear Regulatory Commission submitted written comments stating that their reviewers had no comments. The other substantive change was effective 04/11/2008 and it involved the submission of electronic copies of documents. There were 14 commentors and 9 supported the rule and the improved public access they hoped it would provide. The comments received led to a change in proposed rule. Changes were made so that the rule did not apply to public comments received during a formal public comment period; to correspondence received from individuals or organizations that were not currently regulated by the agency, unless that correspondence was about proposing an activity or facility that would be subject to agency regulation; and to documents used to make payments to the agency. The rule was changed so that electronic copies of security-sensitive information did not need to be submitted and so that documents smaller than 25 megabytes could be submitted by email. There were no other written comments received during the comment period associated with the notice of change in proposed 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 is needed because it lays the foundation for establishing radiation safety and protection principles to ensure the radiological safety of the worker, the public and the environment. There have been no opposing comments received regarding this rule. This rule has not been controversial and should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 RADIATION CONTROL
 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:
 ♦ Craig Jones by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at cwjones@utah.gov

AUTHORIZED BY: Rusty Lundberg, Director

EFFECTIVE: 07/07/2011

**Environmental Quality, Radiation
 Control
 R313-14
 Violations and Escalated Enforcement**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 35009
 FILED: 07/07/2011

**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 19-1-106 establishes the Radiation Control Board. The Board is authorized to make rules under Section 19-3-104 that are necessary for controlling exposure to sources of radiation that constitute a significant health hazard.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received since the last five-year review concerning 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 needs to be continued as it establishes actions that may be taken for noncompliance with Title R313. This includes establishing violation severity levels, enforcement sanctions, and assessment of civil penalties.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 RADIATION CONTROL
 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:
 ♦ Craig Jones by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at cwjones@utah.gov

AUTHORIZED BY: Rusty Lundberg, Director

SALT LAKE CITY, UT 84116-3085
or at the Division of Administrative Rules.

EFFECTIVE: 07/07/2011

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Craig Jones by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at cwjones@utah.gov
AUTHORIZED BY: Rusty Lundberg, Director

EFFECTIVE: 07/07/2011

**Environmental Quality, Radiation
Control
R313-16**

**General Requirements Applicable to
the Installation, Registration,
Inspection, and Use of Radiation
Machines**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35010
FILED: 07/07/2011

**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 19-1-106 establishes the Radiation Control Board. The Board is authorized to make rules under Section 19-3-104 that are necessary for controlling exposure to sources of radiation that constitute a significant health hazard.

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 since the last five-year review. This is not a controversial rule and it is necessary that it is continued.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must be continued as it prescribes requirements governing the installation, registration, inspection, and use of sources of electronically produced ionizing radiation. It also allows for the registration of individuals who provide inspection services at a facility where one or more radiation machines are located.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
RADIATION CONTROL
THIRD FLOOR
195 N 1950 W

**Environmental Quality, Radiation
Control
R313-17**

Administrative Procedures

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35011
FILED: 07/07/2011

**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 19-1-106 establishes the Radiation Control Board. The Board is authorized to make rules under Section 19-3-104 that are necessary for controlling exposure to sources of radiation that constitute a significant health hazard.

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 since the last five-year review. This has not been a controversial rule and it is necessary that it is continued.

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 needs to be continued as it describes the categories of radioactive material licensees where licensing actions may lead to requests for public comment. This rule also describes the adjudicative proceedings and procedures of the Radiation Control Board.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
RADIATION CONTROL
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:
♦ Craig Jones by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at cwjones@utah.gov

AUTHORIZED BY: Rusty Lundberg, Director

EFFECTIVE: 07/07/2011

Environmental Quality, Radiation Control **R313-18**

Notices, Instructions and Reports to
Workers by Licensees or Registrants -
Inspections

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35012
FILED: 07/07/2011

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 19-1-106 establishes the Radiation Control Board. The Board is authorized to make rules under Section 19-3-104 that are necessary for controlling exposure to sources of radiation that constitute a significant health hazard.

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 since the last five-year review. This has not been a controversial rule and it is necessary that it is continued.

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 specifies the training and notification requirements, by employers, for workers that use radioactive materials. The rule also provides workers protection from retribution from their employer if a worker informs the Division of Radiation Control about possible violations or safety

concerns in their workplace. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
RADIATION CONTROL
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:
♦ Craig Jones by phone at 801-536-4264, by FAX at 801-533-4097, or by Internet E-mail at cwjones@utah.gov

AUTHORIZED BY: Rusty Lundberg, Director

EFFECTIVE: 07/07/2011

Environmental Quality, Solid and Hazardous Waste **R315-1**

Utah Hazardous Waste Definitions and
References

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35036
FILED: 07/13/2011

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 19-6-104 requires the Solid and Hazardous Waste Control Board to meet the appropriate requirements associated with assuming primacy of the hazardous waste program from the federal government (U.S. Environmental Protection Agency (EPA)). Also, Section 19-6-105 allows the Board to set minimum standards for the protection of human health and the environment, for the storage, collection, transport, recovery, treatment, and disposal of hazardous waste. Section 3006 of the federal Resource Conservation and Recovery Act (RCRA) allows a state to receive primacy and requires that authorized state programs be "equivalent" to the federal program. Therefore, rules adopted by the Board are to be equivalent to the corresponding federal hazardous waste regulations in order to receive primacy from EPA.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary for Utah to maintain its equivalency with EPA regulations for program authorization (primacy) and to provide definitions for terms used in the hazardous waste rules. EPA authorization allows the DSHW to administer the hazardous waste program in lieu of EPA as allowed by Section 3006 of RCRA (42 USC 6926). Therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Susan Toronto by phone at 801-536-0233, by FAX at 801-536-0222, or by Internet E-mail at storonto@utah.gov

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 07/13/2011

Environmental Quality, Solid and
Hazardous Waste
R315-2

General Requirements - Identification
and Listing of Hazardous Waste

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 35038
FILED: 07/13/2011

**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 19-6-104 requires the Solid and Hazardous Waste Control Board to meet the appropriate requirements associated with assuming primacy

of the hazardous waste program from the federal government (U.S. Environmental Protection Agency (EPA)). Also, Section 19-6-105 allows the Board to set minimum standards for the protection of human health and the environment, for the storage, collection, transport, recovery, treatment, and disposal of hazardous waste. Section 3006 of the federal Resource Conservation and Recovery Act (RCRA) allows a state to receive primacy and requires that authorized state programs be "equivalent" to the federal program. Therefore, rules adopted by the Board are to be equivalent to the corresponding federal hazardous waste regulations in order to receive primacy from EPA.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary for Utah to maintain its equivalency with EPA regulations for program authorization (primacy) and to provide definitions for terms used in the hazardous waste rules. EPA authorization allows the DSHW to administer the hazardous waste program in lieu of EPA as allowed by Section 3006 of RCRA (42 USC 6926). Therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 07/13/2011

Environmental Quality, Solid and
Hazardous Waste
R315-3

Application and Permit Procedures for
Hazardous Waste Treatment, Storage,
and Disposal Facilities

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35039
FILED: 07/13/2011

**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 19-6-104 requires the Solid and Hazardous Waste Control Board to meet the appropriate requirements associated with assuming primacy of the hazardous waste program from the federal government (U.S. Environmental Protection Agency (EPA)). Also, Section 19-6-105 allows the Board to set minimum standards for the protection of human health and the environment, for the storage, collection, transport, recovery, treatment, and disposal of hazardous waste. Section 3006 of the federal Resource Conservation and Recovery Act (RCRA) allows a state to receive primacy and requires that authorized state programs be "equivalent" to the federal program. Therefore, rules adopted by the Board are to be equivalent to the corresponding federal hazardous waste regulations in order to receive primacy from EPA.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary for Utah to maintain its equivalency with EPA regulations for program authorization (primacy) and to provide definitions for terms used in the hazardous waste rules. EPA authorization allows the DSHW to administer the hazardous waste program in lieu of EPA as allowed by Section 3006 of RCRA (42 USC 6926). Therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Susan Toronto by phone at 801-536-0233, by FAX at 801-536-0222, or by Internet E-mail at storonto@utah.gov

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 07/13/2011

Environmental Quality, Solid and
Hazardous Waste
R315-4

Procedures for Decisionmaking

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35040
FILED: 07/13/2011

**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 19-6-104 requires the Solid and Hazardous Waste Control Board to meet the appropriate requirements associated with assuming primacy of the hazardous waste program from the federal government (U.S. Environmental Protection Agency (EPA)). Also, Section 19-6-105 allows the Board to set minimum standards for the protection of human health and the environment, for the storage, collection, transport, recovery, treatment, and disposal of hazardous waste. Section 3006 of the federal Resource Conservation and Recovery Act (RCRA) allows a state to receive primacy and requires that authorized state programs be "equivalent" to the federal program. Therefore, rules adopted by the Board are to be equivalent to the corresponding federal hazardous waste regulations in order to receive primacy from EPA.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary for Utah to maintain its equivalency with EPA regulations for program authorization (primacy) and to provide definitions for terms used in the hazardous waste rules. EPA authorization allows the DSHW to administer the hazardous waste program in lieu of EPA as allowed by Section 3006 of RCRA (42 USC 6926). Therefore, this rule should be continued.

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ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Susan Toronto by phone at 801-536-0233, by FAX at 801-536-0222, or by Internet E-mail at storonto@utah.gov

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 07/13/2011

**Environmental Quality, Solid and
 Hazardous Waste
 R315-5
 Hazardous Waste Generator
 Requirements**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 35041
 FILED: 07/13/2011

**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 19-6-104 requires the Solid and Hazardous Waste Control Board to meet the appropriate requirements associated with assuming primacy of the hazardous waste program from the federal government (U.S. Environmental Protection Agency (EPA)). Also, Section 19-6-105 allows the Board to set minimum standards for the protection of human health and the environment, for the storage, collection, transport, recovery, treatment, and disposal of hazardous waste. Section 3006 of the federal Resource Conservation and Recovery Act (RCRA) allows a state to receive primacy and requires that authorized state programs be "equivalent" to the federal program. Therefore, rules adopted by the Board are to be equivalent to the corresponding federal hazardous waste regulations in order to receive primacy from EPA.

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(primacy) and to provide definitions for terms used in the hazardous waste rules. EPA authorization allows the DSHW to administer the hazardous waste program in lieu of EPA as allowed by Section 3006 of RCRA (42 USC 6926). Therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY
 SOLID AND HAZARDOUS WASTE
 SECOND FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3097
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Susan Toronto by phone at 801-536-0233, by FAX at 801-536-0222, or by Internet E-mail at storonto@utah.gov

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 07/13/2011

**Environmental Quality, Solid and
 Hazardous Waste
 R315-6
 Hazardous Waste Transporter
 Requirements**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 35042
 FILED: 07/13/2011

**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 19-6-104 requires the Solid and Hazardous Waste Control Board to meet the appropriate requirements associated with assuming primacy of the hazardous waste program from the federal government (U.S. Environmental Protection Agency (EPA)). Also, Section 19-6-105 allows the Board to set minimum standards for the protection of human health and the environment, for the storage, collection, transport, recovery, treatment, and disposal of hazardous waste. Section 3006 of the federal Resource Conservation and Recovery Act (RCRA) allows a state to receive primacy and requires that authorized state programs be "equivalent" to the federal program. Therefore, rules adopted by the Board are to be equivalent to the

corresponding federal hazardous waste regulations in order to receive primacy from EPA.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received.

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ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Susan Toronto by phone at 801-536-0233, by FAX at 801-536-0222, or by Internet E-mail at storonto@utah.gov

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 07/13/2011

**Environmental Quality, Solid and
Hazardous Waste
R315-7**

**Interim Status Requirements for
Hazardous Waste Treatment, Storage,
and Disposal Facilities**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION
DAR FILE NO.: 35043
FILED: 07/13/2011**

**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 19-6-104 requires the Solid and Hazardous Waste Control Board to meet the appropriate requirements associated with assuming primacy of the hazardous waste program from the federal government (U.S. Environmental Protection Agency (EPA)). Also, Section 19-6-105 allows the Board to set minimum standards for the protection of human health and the environment, for the storage, collection, transport, recovery, treatment, and disposal of hazardous waste. Section 3006 of the federal Resource Conservation and Recovery Act (RCRA) allows a state to receive primacy and requires that authorized state programs be "equivalent" to the federal program. Therefore, rules adopted by the Board are to be equivalent to the corresponding federal hazardous waste regulations in order to receive primacy from EPA.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received.

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

ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Susan Toronto by phone at 801-536-0233, by FAX at 801-536-0222, or by Internet E-mail at storonto@utah.gov

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 07/13/2011

Environmental Quality, Solid and
Hazardous Waste

R315-8

Hazardous Waste Treatment, Storage,
and Disposal Standards for Owners
and Operators of Facilities

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35044

FILED: 07/13/2011

**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 19-6-104 requires the Solid and Hazardous Waste Control Board to meet the appropriate requirements associated with assuming primacy of the hazardous waste program from the federal government (U.S. Environmental Protection Agency (EPA)). Also, Section 19-6-105 allows the Board to set minimum standards for the protection of human health and the environment, for the storage, collection, transport, recovery, treatment, and disposal of hazardous waste. Section 3006 of the federal Resource Conservation and Recovery Act (RCRA) allows a state to receive primacy and requires that authorized state programs be "equivalent" to the federal program. Therefore, rules adopted by the Board are to be equivalent to the corresponding federal hazardous waste regulations in order to receive primacy from EPA.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary for Utah to maintain its equivalency with EPA regulations for program authorization (primacy) and to provide definitions for terms used in the hazardous waste rules. EPA authorization allows the DSHW to administer the hazardous waste program in lieu of EPA as allowed by Section 3006 of RCRA (42 USC 6926). Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE

SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Susan Toronto by phone at 801-536-0233, by FAX at 801-536-0222, or by Internet E-mail at storonto@utah.gov

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 07/13/2011

Environmental Quality, Solid and
Hazardous Waste

R315-9

Emergency Controls

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35045

FILED: 07/13/2011

**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 19-6-104 requires the Solid and Hazardous Waste Control Board to meet the appropriate requirements associated with assuming primacy of the hazardous waste program from the federal government (U.S. Environmental Protection Agency (EPA)). Also, Section 19-6-105 allows the Board to set minimum standards for the protection of human health and the environment, for the storage, collection, transport, recovery, treatment, and disposal of hazardous waste. Section 3006 of the federal Resource Conservation and Recovery Act (RCRA) allows a state to receive primacy and requires that authorized state programs be "equivalent" to the federal program. Therefore, rules adopted by the Board are to be equivalent to the corresponding federal hazardous waste regulations in order to receive primacy from EPA.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE

RULE, IF ANY: The rule is necessary because it requires anyone who spills a certain quantity of hazardous waste or material which when spilled, becomes hazardous waste, to report the spill to the proper authorities. The rule also requires that any size spill be remediated. This rule is easier to implement than the federal requirement for spill reporting. The rule also includes specific wastes that are not covered by the federal rules such as P999, F999, nerve, military, and chemical agents. EPA authorization allows the DSHW to administer the hazardous program in lieu of EPA as allowed by Section 3006 of RCRA (42 USC 6926). Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 SOLID AND HAZARDOUS WASTE
 SECOND FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3097
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Susan Toronto by phone at 801-536-0233, by FAX at 801-536-0222, or by Internet E-mail at storonto@utah.gov

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 07/13/2011

**Environmental Quality, Solid and
 Hazardous Waste
 R315-13
 Land Disposal Restrictions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION
 DAR FILE NO.: 35046
 FILED: 07/13/2011**

**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 19-6-104 requires the Solid and Hazardous Waste Control Board to meet the appropriate requirements associated with assuming primacy of the hazardous waste program from the federal government (U.S. Environmental Protection Agency (EPA)). Also, Section 19-6-105 allows the Board to set minimum standards for the protection of human health and the environment, for the

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SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary for Utah to maintain its equivalency with EPA regulations for program authorization (primacy) and to provide definitions for terms used in the hazardous waste rules. EPA authorization allows the DSHW to administer the hazardous waste program in lieu of EPA as allowed by Section 3006 of RCRA (42 USC 6926). Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ENVIRONMENTAL QUALITY
 SOLID AND HAZARDOUS WASTE
 SECOND FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116-3097
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Susan Toronto by phone at 801-536-0233, by FAX at 801-536-0222, or by Internet E-mail at storonto@utah.gov

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 07/13/2011

**Environmental Quality, Solid and
 Hazardous Waste
 R315-14
 Standards for the Management of
 Specific Hazardous Wastes and
 Specific Types of Hazardous Waste
 Management Facilities**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35047
FILED: 07/13/2011

**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 19-6-104 requires the Solid and Hazardous Waste Control Board to meet the appropriate requirements associated with assuming primacy of the hazardous waste program from the federal government (U.S. Environmental Protection Agency (EPA)). Also, Section 19-6-105 allows the Board to set minimum standards for the protection of human health and the environment, for the storage, collection, transport, recovery, treatment, and disposal of hazardous waste. Section 3006 of the federal Resource Conservation and Recovery Act (RCRA) allows a state to receive primacy and requires that authorized state programs be "equivalent" to the federal program. Therefore, rules adopted by the Board are to be equivalent to the corresponding federal hazardous waste regulations in order to receive primacy from EPA.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary for Utah to maintain its equivalency with EPA regulations for program authorization (primacy) and to provide definitions for terms used in the hazardous waste rules. EPA authorization allows the DSHW to administer the hazardous waste program in lieu of EPA as allowed by Section 3006 of RCRA (42 USC 6926). Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Susan Toronto by phone at 801-536-0233, by FAX at 801-536-0222, or by Internet E-mail at storonto@utah.gov

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 07/13/2011

**Environmental Quality, Solid and
Hazardous Waste**

R315-17

**End of Life Automotive Mercury Switch
Removal Standards**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35050
FILED: 07/13/2011

**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 19-6-105 allows the Board to set minimum standards for protection of human health and the environment. These rules are required as a result of legislation passed in 2006 addressing the storage, collection, transportation, and recovery of mercury from automobile convenience switches.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary to establish safe standards for the removal, collection and storage of mercury switches from vehicles sold within the State of Utah. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Susan Toronto by phone at 801-536-0233, by FAX at 801-536-0222, or by Internet E-mail at storonto@utah.gov

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 07/13/2011

Environmental Quality, Solid and
Hazardous Waste
R315-50
Appendices

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35048
FILED: 07/13/2011

**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 19-6-104 requires the Solid and Hazardous Waste Control Board to meet the appropriate requirements associated with assuming primacy of the hazardous waste program from the federal government (U.S. Environmental Protection Agency (EPA)). Also, Section 19-6-105 allows the Board to set minimum standards for the protection of human health and the environment, for the storage, collection, transport, recovery, treatment, and disposal of hazardous waste. Section 3006 of the federal Resource Conservation and Recovery Act (RCRA) allows a state to receive primacy and requires that authorized state programs be "equivalent" to the federal program. Therefore, rules adopted by the Board are to be equivalent to the corresponding federal hazardous waste regulations in order to receive primacy from EPA.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received.

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ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Susan Toronto by phone at 801-536-0233, by FAX at 801-536-0222, or by Internet E-mail at storonto@utah.gov

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 07/13/2011

Environmental Quality, Solid and
Hazardous Waste
R315-101
Cleanup Action and Risk-Based
Closure Standards

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35049
FILED: 07/13/2011

**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 19-6-105 allows the Board to set minimum standards for development and application of risk assessments.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary to establish information requirements to support risk-based cleanup and closure standards at sites for which remediation or removal of hazardous constituents to background levels will not be achieved. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ENVIRONMENTAL QUALITY
SOLID AND HAZARDOUS WASTE
SECOND FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116-3097
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Susan Toronto by phone at 801-536-0233, by FAX at 801-536-0222, or by Internet E-mail at storonto@utah.gov

AUTHORIZED BY: Scott Anderson, Director

EFFECTIVE: 07/13/2011

Human Services, Substance Abuse
and Mental Health

R523-24

Off Premise Retailer (Clerk, Licensee
and Manager) Alcohol Training and
Education Seminar Rules of
Administration

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35037

FILED: 07/13/2011

**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 adopted under the authority of Section 62A-15-401 authorizing the Division of Substance Abuse and Mental Health to administer the Alcohol Training and Education Seminar Program. The intent of the statute is to require every person to complete the seminar who sells or furnishes alcoholic beverages to the public for off premise consumption in the scope of the person's employment with a general food store or similar business.

This rule is required to provide instruction to the "Off Premise Retailers" on how to comply with this statutory requirement.

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 comments on this rule are that the online classes are subject to fraud, for example: 1) people other than the intended student taking the course and being paid for it; 2) sharing of answers between students; and 3) non-verified ID of a student taking the course. Our program staff investigated the concerns, reviewed the findings with the complainants and explained the processes in place to prevent these issues. Revisions to this rule are in process to address these comments.

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 needs to be continued so that the Division of Substance Abuse and Mental Health can address legislative concerns and continue to provide instruction to off premise retailers so that they can comply with the statutory requirements.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at raywinger@utah.gov

AUTHORIZED BY: Lana Stohl, Director

EFFECTIVE: 07/13/2011

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

Administrative Services

Facilities Construction and Management

No. 34803 (AMD): R23-23. Health Reform - Health

Insurance Coverage in State Contracts - Implementation

Published: 06/01/2011

Effective: 07/11/2011

No. 34802 (NEW): R23-31. Executive Residence

Commission

Published: 06/01/2011

Effective: 07/11/2011

Fleet Operations

No. 34786 (AMD): R27-3-4. Authorized and Unauthorized

Use of State Vehicles

Published: 06/01/2011

Effective: 07/12/2011

Education

Administration

No. 34812 (NEW): R277-404. Requirements for

Assessments of Student Achievement

Published: 06/01/2011

Effective: 07/11/2011

No. 34814 (AMD): R277-407. School Fees

Published: 06/01/2011

Effective: 07/11/2011

No. 34815 (AMD): R277-459-3. Distribution of Funds

Published: 06/01/2011

Effective: 07/11/2011

No. 34828 (REP): R277-464. Highly Impacted Schools

Published: 06/01/2011

Effective: 07/11/2011

No. 34816 (AMD): R277-475. Patriotic Education

Published: 06/01/2011

Effective: 07/11/2011

No. 34817 (AMD): R277-477. Distribution of Funds from the
Interest and Dividend Account (School LAND Trust Funds)

and Administration of the School LAND Trust Program

Published: 06/01/2011

Effective: 07/11/2011

No. 34818 (AMD): R277-480. Charter Schools School

Building Subaccount

Published: 06/01/2011

Effective: 07/11/2011

No. 34819 (AMD): R277-484. Data Standards

Published: 06/01/2011

Effective: 07/11/2011

No. 34820 (AMD): R277-490. Beverley Taylor Sorenson

Elementary Arts Learning Program

Published: 06/01/2011

Effective: 07/11/2011

No. 34821 (AMD): R277-495. Required Policies for

Electronic Devices in Public Schools

Published: 06/01/2011

Effective: 07/11/2011

No. 34822 (NEW): R277-500. Educator Licensing Renewal,

Timelines, and Required Fingerprint Background Checks

(Effective Beginning July 1, 2012)

Published: 06/01/2011

Effective: 07/11/2011

No. 34823 (AMD): R277-501-9. Rule Effective Date

Published: 06/01/2011

Effective: 07/11/2011

No. 34824 (AMD): R277-609. Standards for School District,

School and Charter School Discipline Plans

Published: 06/01/2011

Effective: 07/11/2011

No. 34825 (AMD): R277-613. School District and Charter School Bullying and Hazing Policies and Training
 Published: 06/01/2011
 Effective: 07/11/2011

No. 34826 (NEW): R277-706. Public Education Regional Service Centers
 Published: 06/01/2011
 Effective: 07/11/2011

No. 34829 (REP): R277-710. International Baccalaureate Programs
 Published: 06/01/2011
 Effective: 07/11/2011

No. 34830 (REP): R277-711. Educational Programs for Gifted and Talented Students
 Published: 06/01/2011
 Effective: 07/11/2011

No. 34831 (REP): R277-712. Advanced Placement Programs
 Published: 06/01/2011
 Effective: 07/11/2011

No. 34827 (AMD): R277-713. Concurrent Enrollment of High School Students in College Courses
 Published: 06/01/2011
 Effective: 07/11/2011

No. 34832 (REP): R277-715. English Language Learner Family Literacy Centers
 Published: 06/01/2011
 Effective: 07/11/2011

No. 34833 (REP): R277-717. Mathematics, Engineering, Science Achievement (MESA)
 Published: 06/01/2011
 Effective: 07/11/2011

No. 34834 (REP): R277-760. Flow Through Funds for Students at Risk
 Published: 06/01/2011
 Effective: 07/11/2011

Environmental Quality

Air Quality

No. 34682 (R&R): R307-103. Administrative Procedures
 Published: 05/01/2011
 Effective: 08/29/2011

No. 34689 (AMD): R307-120-8. Appeal and Revocation
 Published: 05/01/2011
 Effective: 08/29/2011

No. 34559 (AMD): R307-204. Emission Standards: Smoke Management
 Published: 05/01/2011
 Effective: 07/07/2011

Drinking Water

No. 34696 (R&R): R309-115. Administrative Procedures
 Published: 05/01/2011
 Effective: 08/29/2011

Environmental Response and Remediation

No. 34698 (AMD): R311-201-9. Revocation of Certification
 Published: 05/01/2011
 Effective: 08/29/2011

No. 34699 (R&R): R311-210. Administrative Procedures for Underground Storage Tank Act Adjudicative Proceedings
 Published: 05/01/2011
 Effective: 08/29/2011

No. 34700 (AMD): R311-500-9. Denial of Application and Revocation of Certification
 Published: 05/01/2011
 Effective: 08/29/2011

Solid and Hazardous Waste

No. 34701 (AMD): R315-2-14. Violations, Orders, and Hearings
 Published: 05/01/2011
 Effective: 08/29/2011

No. 34702 (R&R): R315-12. Administrative Procedures
 Published: 05/01/2011
 Effective: 08/29/2011

Water Quality

No. 34697 (R&R): R317-9. Administrative Procedures
 Published: 05/01/2011
 Effective: 08/29/2011

Health

Administration

No. 34497 (AMD): R380-70-6. Electronic Data Interchange Standards
 Published: 04/01/2011
 Effective: 07/05/2011

Human Services

Substance Abuse and Mental Health

No. 34726 (AMD): R523-20-11. Division Rules of Administration
 Published: 05/15/2011
 Effective: 07/12/2011

Lieutenant Governor

Elections
 No. 34784 (AMD): R623-1-4. Registration/License
 Application Procedure
 Published: 06/01/2011
 Effective: 07/11/2011

Natural Resources

Wildlife Resources
 No. 34807 (AMD): R657-5. Taking Big Game
 Published: 06/01/2011
 Effective: 07/11/2011

Public Safety

Driver License
 No. 34724 (AMD): R708-41-3. Definitions
 Published: 05/15/2011
 Effective: 07/06/2011

No. 34805 (AMD): R708-41-3. Definitions
 Published: 06/01/2011
 Effective: 07/12/2011

No. 34804 (NEW): R708-46. Refugee or Approved Asylee
 Knowledge Test in Applicant's Native Language
 Published: 06/01/2011
 Effective: 07/12/2011

Fire Marshal

No. 34809 (AMD): R710-2. Rules Pursuant to the Utah
 Fireworks Act
 Published: 06/01/2011
 Effective: 07/08/2011

No. 34837 (AMD): R710-8-3. Amendments and Additions
 Published: 06/01/2011
 Effective: 07/08/2011

No. 34836 (AMD): R710-9. Rules Pursuant to the Utah Fire
 Prevention Law
 Published: 06/01/2011
 Effective: 07/08/2011

Regents (Board Of)
 Administration

No. 34798 (AMD): R765-609. Regents' Scholarship
 Published: 06/01/2011
 Effective: 07/11/2011

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 July 15, 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: A processing error caused the exclusion of 110 nonsubstantive changes from the Index. These nonsubstantive changes reflect changed agency names in the Department of Health. The Division is working to correct the error.

Questions regarding the index and the information it contains should be addressed to Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Administration</u>					
R13-3	Americans with Disabilities Act Grievance Procedures	34347	AMD	03/10/2011	2011-3/4
R13-3-2	Definitions	34674	NSC	04/27/2011	Not Printed
<u>Facilities Construction and Management</u>					
R23-23	Health Reform - Health Insurance Coverage in State Contracts - Implementation	34801	EMR	05/10/2011	2011-11/105
R23-23	Health Reform - Health Insurance Coverage in State Contracts - Implementation	34803	AMD	07/11/2011	2011-11/6
R23-31	Executive Residence Commission	34802	NEW	07/11/2011	2011-11/8
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	34764	AMD	07/01/2011	2011-10/6
<u>Fleet Operations</u>					
R27-3	Vehicle Use Standards	34256	AMD	01/25/2011	2010-24/6
R27-3-4	Authorized and Unauthorized Use of State Vehicles	34786	AMD	07/12/2011	2011-11/10
R27-4-11	Capital Credit or Reservation of Vehicle Allocation for Surrendered Vehicles	34257	AMD	01/25/2011	2010-24/7
AGRICULTURE AND FOOD					
<u>Administration</u>					
R51-3	Government Records Access and Management Act	34491	5YR	03/03/2011	2011-7/43
R51-4	ADA Complaint Procedure	34492	5YR	03/03/2011	2011-7/43
<u>Animal Industry</u>					
R58-1	Admission and Inspection of Livestock, Poultry and Other Animals	34343	AMD	03/24/2011	2011-3/7
R58-2	Diseases, Inspections and Quarantines	34352	AMD	03/24/2011	2011-3/13
R58-2	Diseases, Inspections and Quarantines	34975	5YR	06/23/2011	2011-14/135
R58-4	Use of Animal Drugs and Biologicals in the State of Utah	34976	5YR	06/23/2011	2011-14/135
R58-11	Slaughter of Livestock	34694	AMD	06/21/2011	2011-9/2
R58-11-2	Definitions	34914	NSC	06/30/2011	Not Printed
R58-14	Holding Live Raccoons or Coyotes in Captivity	34974	5YR	06/23/2011	2011-14/136
R58-20	Domesticated Elk Hunting Park	34906	EMR	06/07/2011	2011-13/79
<u>Marketing and Development</u>					
R65-8	Management of the Junior Livestock Show Appropriation	34489	5YR	03/03/2011	2011-7/44

Plant Industry

R68-4	Standardization, Marketing, and Phytosanitary Inspection of Fresh Fruits, Vegetables, and Other Plant and Plant Products	34414	5YR	02/08/2011	2011-5/107
R68-7	Utah Pesticide Control Act	34488	5YR	03/02/2011	2011-7/44
R68-7	Utah Pesticide Control Act	34430	AMD	06/02/2011	2011-5/2
R68-7	Utah Pesticide Control Rule	34711	AMD	06/21/2011	2011-10/10
R68-7-10	Responsibilities of Business and Applicator	34456	NSC	06/02/2011	Not Printed
R68-7-10	Responsibilities of Business and Applicator	34498	AMD	06/02/2011	2011-7/2
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
R68-21-2	Authority	34558	NSC	04/27/2011	Not Printed

Regulatory Services

R70-330	Raw Milk for Retail	34518	5YR	03/16/2011	2011-8/29
R70-370	Butter	34519	5YR	03/16/2011	2011-8/29
R70-380	Grade A Condensed and Dry Milk Products and Condensed and Dry Whey	34517	5YR	03/16/2011	2011-8/30
R70-410	Grading and Inspection of Shell Eggs with Standard Grade and Weight Classes	34378	5YR	01/24/2011	2011-4/35

ALCOHOLIC BEVERAGE CONTROL

Administration

R81-1	Scope, Definitions, and General Provisions	34787	5YR	05/10/2011	2011-11/123
R81-1-29	Disclosure of Conflicts of Interest	34337	AMD	02/24/2011	2011-2/4
R81-1-30	Factors for Granting Licenses	34336	AMD	02/24/2011	2011-2/5
R81-2	State Stores	34788	5YR	05/10/2011	2011-11/124
R81-3	Package Agencies	34789	5YR	05/10/2011	2011-11/125
R81-3-13	Operational Restrictions	34340	AMD	02/24/2011	2011-2/6
R81-4A	Restaurant Liquor Licenses	34790	5YR	05/10/2011	2011-11/125
R81-5	Private Clubs	34791	5YR	05/10/2011	2011-11/126
R81-6	Special Use Permits	34792	5YR	05/10/2011	2011-11/127
R81-7	Single Event Permits	34793	5YR	05/10/2011	2011-11/128
R81-8	Manufacturers (Distillery, Winery, Brewery)	34794	5YR	05/10/2011	2011-11/128
R81-9	Liquor Warehousing License	34795	5YR	05/10/2011	2011-11/129
R81-11	Beer Wholesalers	34796	5YR	05/10/2011	2011-11/129
R81-12	Manufacturer Representative (Distillery, Winery, Brewery)	34797	5YR	05/10/2011	2011-11/130

CAPITOL PRESERVATION BOARD (STATE)

Administration

R131-4	Capitol Preservation Board General Procurement Rule	34675	5YR	04/11/2011	2011-9/117
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COMMERCE

Administration

R151-3	Americans With Disabilities Act Rule	34752	AMD	06/21/2011	2011-10/20
R151-4	Department of Commerce Administrative Procedures Act Rule	34479	NEW	04/21/2011	2011-6/4
R151-14	New Automobile Franchise Act Rule	34761	5YR	05/02/2011	2011-10/117
R151-14-3	Adjudicative Proceedings	34735	NSC	05/25/2011	Not Printed
R151-35-3	Adjudicative Proceedings	34736	NSC	05/25/2011	Not Printed
R151-46b	Department of Commerce Administrative Procedures Act Rules	34480	REP	04/21/2011	2011-6/18

Consumer Protection

R152-11-9	Direct Solicitations	34100	AMD	02/07/2011	2010-20/4
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Corporations and Commercial Code

R154-2	Utah Uniform Commercial Code, Revised Article 9 Rules	34785	5YR	05/10/2011	2011-11/131
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Occupational and Professional Licensing

R156-1-102	Definitions	34323	AMD	02/24/2011	2011-2/7
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R156-3a	Architect Licensing Act Rule	34396	5YR	01/31/2011	2011-4/35
R156-9a	Uniform Athlete Agents Act Rules	34499	5YR	03/10/2011	2011-7/45
R156-9a	Uniform Athlete Agents Act Rules	34496	NSC	04/06/2011	Not Printed
R156-15	Health Facility Administrator Act Rule	34545	AMD	05/26/2011	2011-8/10
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rule	34409	AMD	03/24/2011	2011-4/6
R156-46b	Division Utah Administrative Procedures Act Rule	34397	5YR	01/31/2011	2011-4/36
R156-46b	Division Utah Administrative Procedures Act Rule	34469	AMD	04/25/2011	2011-6/33
R156-46b	Division Utah Administrative Procedures Act Rule	34712	NSC	05/25/2011	Not Printed
R156-50	Private Probation Provider Licensing Act Rules	34282	NSC	01/06/2011	Not Printed
R156-55a	Utah Construction Trades Licensing Act Rule	34470	AMD	04/25/2011	2011-6/35
R156-55c-102	Definitions	34338	AMD	02/24/2011	2011-2/10
R156-55e-303a	Continuing Education - Standards	34673	NSC	04/27/2011	Not Printed
R156-60a	Social Worker Licensing Act Rule	34310	AMD	02/10/2011	2011-1/6
R156-60c	Professional Counselor Licensing Act Rule	34339	AMD	02/24/2011	2011-2/12
R156-60d	Substance Abuse Counselor Act Rule	34395	5YR	01/31/2011	2011-4/37
R156-63a	Security Personnel Licensing Act Contract Security Rule	34370	AMD	03/24/2011	2011-4/12
R156-63a-302f	Qualifications for Licensure - Good Moral Character - Disqualifying Convictions	34360	NSC	01/26/2011	Not Printed
R156-63b	Security Personnel Licensing Act Armored Car Rule	34542	AMD	05/26/2011	2011-8/11
R156-67	Utah Medical Practice Act Rule	34504	5YR	03/14/2011	2011-7/46
R156-69	Dentist and Dental Hygienist Practice Act Rule	34283	AMD	02/07/2011	2011-1/8
R156-69	Dentist and Dental Hygienist Practice Act Rule	34500	5YR	03/10/2011	2011-7/46
R156-72	Acupuncture Licensing Act Rules	34543	AMD	05/26/2011	2011-8/14
R156-73	Chiropractic Physician Practice Act Rule	34503	5YR	03/14/2011	2011-7/47
R156-78B	Prelitigation Panel Review Rule	34215	AMD	01/10/2011	2010-23/4
R156-83-306	Drugs Approved for Online Prescribing, Dispensing, and Facilitation	34237	AMD	01/10/2011	2010-23/14
R156-83-306	Drugs Approved for Online Prescribing, Dispensing, and Facilitation	34544	AMD	05/26/2011	2011-8/15
R156-83-306	Drugs Approved for Online Prescribing, Dispensing, and Facilitation	34913	NSC	06/30/2011	Not Printed
<u>Real Estate</u>					
R162-2a	Utah Housing Opportunity Restricted Account	34223	NEW	01/08/2011	2010-23/15
R162-2c	Utah Residential Mortgage Practices and Licensing Rules	34431	AMD	05/10/2011	2011-5/13
R162-2c-201	Licensing and Registration Procedures	34225	AMD	01/08/2011	2010-23/16
R162-2c-203	Utah-Specific Education Certification	34226	AMD	01/08/2011	2010-23/19
R162-2c-204	License Renewal	34227	AMD	01/08/2011	2010-23/23
R162-2c-401	Administrative Proceedings	34737	NSC	05/25/2011	Not Printed
R162-2e	Appraisal Management Company Administrative Rules	34704	AMD	06/22/2011	2011-9/5
R162-12	Utah Housing Opportunity Restricted Account	34224	REP	01/08/2011	2010-23/25
R162-103	Appraisal Education Requirements	34476	AMD	04/27/2011	2011-6/46
R162-104-14	Special Circumstances	34703	AMD	06/22/2011	2011-9/7

COMMUNITY AND CULTURE

History

R212-3	Memberships, Sales, Gifts, Bequests, Endowments	34918	5YR	06/14/2011	2011-13/83
R212-4	Ancient Human Remains	35051	5YR	07/13/2011	Not Printed
R212-6	State Register for Historic Resources and Archaeological Sites	34717	5YR	04/26/2011	2011-10/117
R212-8	Preservation Easements	34919	5YR	06/14/2011	2011-13/83
R212-9	Board of State History as the Cultural Sites Review Committee Review Board	34716	5YR	04/26/2011	2011-10/118

Housing and Community Development

R199-8	Permanent Community Impact Fund Board Review and Approval of Applications for Funding Assistance	34135	AMD	01/13/2011	2010-21/5
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Olene Walker Housing Trust Fund

R235-1	Olene Walker Housing Loan Fund (OWHLF)	34463	5YR	02/24/2011	2011-6/101
R235-1	Olene Walker Housing Loan Fund (OWHLF)	34455	AMD	04/27/2011	2011-6/51

CORRECTIONS

Administration

R251-103	Undercover Roles of Offenders	34838	NSC	06/14/2011	Not Printed
R251-104	Declaratory Orders	34527	5YR	03/24/2011	2011-8/31
R251-104	Declaratory Orders	34839	NSC	06/14/2011	Not Printed
R251-108	Adjudicative Proceedings	34840	NSC	06/14/2011	Not Printed
R251-109	Sex Offender Treatment Providers	34861	NSC	06/14/2011	Not Printed
R251-110	Sex Offender Registration Program	34841	NSC	06/14/2011	Not Printed
R251-111	Government Records Access and Management	34862	NSC	06/14/2011	Not Printed
R251-114	Offender Long-Term Health Care - Notice	34858	NSC	06/14/2011	Not Printed
R251-301	Employment, Educational or Vocational Training for Community Correctional Center Offenders	34859	NSC	06/14/2011	Not Printed
R251-303	Offenders' Use of Telephones	34842	NSC	06/14/2011	Not Printed
R251-305	Visiting at Community Correctional Centers	34843	NSC	06/14/2011	Not Printed
R251-401	Supervision Fees	34844	NSC	06/14/2011	Not Printed
R251-702	Inmate Communication: Telephones	34771	5YR	05/03/2011	2011-11/131
R251-702	Inmate Communication: Telephones	34845	NSC	06/14/2011	Not Printed
R251-703	Vehicle Direction Station	34846	NSC	06/14/2011	Not Printed
R251-704	North Gate	34847	NSC	06/14/2011	Not Printed
R251-706	Inmate Visiting	34848	NSC	06/14/2011	Not Printed
R251-708	Perimeter Patrol	34772	5YR	05/03/2011	2011-11/132
R251-708	Perimeter Patrol	34849	NSC	06/14/2011	Not Printed
R251-709	Transportation of Inmates	34850	NSC	06/14/2011	Not Printed
R251-711	Admission and Intake	34773	5YR	05/03/2011	2011-11/132
R251-711	Admission and Intake	34851	NSC	06/14/2011	Not Printed
R251-712	Release	34528	5YR	03/24/2011	2011-8/31
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CRIME VICTIM REPARATIONS

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ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

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	34272	R311-203	AMD	02/14/2011	2010-24/27
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