

# UTAH STATE BULLETIN

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

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

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

Division of Administrative Rules, Salt Lake City 84114

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# SPECIAL NOTICES

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## Health

### Health Care Financing, Coverage and Reimbursement Policy

#### Notice for September 2011 Children's Health Insurance Program (CHIP)

The Utah Department of Health has submitted two amendments to the CHIP State Plan. The first, Amendment #10, gives CHIP enrollees the option of using their adjusted gross income (AGI) from their most recent Utah State tax return as income verification at application and review. The second, Amendment #11, implements the benefit plan for medical and dental services for July 1, 2011, through June 30, 2012. It contains changes to cost sharing for specialist and urgent care as well as emergency department visits. Changes are posted to the web and can be viewed at <http://health.utah.gov/chip/>.

The proposed changes are subject to Centers for Medicare and Medicaid Services approval.

*For questions regarding this notice, please contact Leigha Rodak at 801-538-6806, or [lrodak@utah.gov](mailto:lrodak@utah.gov).*

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## Health

### Health Care Financing, Coverage and Reimbursement Policy

#### Notice for November 2011 Medicaid Rate Changes

Effective November 1, 2011, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>

**End of the Special Notices Section**





# EXECUTIVE DOCUMENTS

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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).

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## **Governor's Proclamation 2011/003/S: Calling the Fifty-Ninth Legislature into the Third 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 Third Special Session at the Utah State Capitol, in Salt Lake City, Utah, on the 3rd day of October 2011, at 9:00 a.m., for the following purposes:

1. to divide the state into congressional, legislative and other districts pursuant to Utah Constitution Article IX and to address related matters;
2. to consider amendments to the Utah Labor Code to address requirements related to workers' compensation insurance for owners of certain entities and to make technical and related changes;
3. to consider amendments to the Elections Code to modify the requirements for placing presidential candidates on the regular primary ballot and to make technical and related changes;
4. to consider amendments to the Uniform Driver License Act to modify provisions relating to the driver license suspension period and other sentencing requirements for certain alcohol or drug related offenses and to make technical and related changes;
5. to consider amendments to the State System of Higher Education Code to modify the requirements for the appointment of representatives of less populous counties to the Board of Regents and to make technical and related changes;
6. to consider a concurrent resolution recognizing the 75th Anniversary of the Welfare System of The Church of Jesus Christ of Latter-day Saints;
7. to consider a concurrent resolution urging Utah's Congressional delegation to resolve the Scofield land transfer issue.

**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 28th day of September, 2011.

(State Seal)

**Gary R. Herbert**  
Governor

**ATTEST:**

**Greg Bell**  
Lieutenant Governor

2011/003/S

**End of the Executive Documents Section**

## NOTICES OF PROPOSED RULES

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A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between September 16, 2011, 12:00 a.m., and September 30, 2011, 11:59 p.m. are included in this, the October 15, 2011 issue of the *Utah State Bulletin*.

In this publication, each **PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **PROPOSED RULE** is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [~~example~~]). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (. . . . .) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not printed. If a **PROPOSED RULE** is too long to print, the Division of Administrative Rules will include only the **RULE ANALYSIS**. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least November 14, 2011. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through February 12, 2012, 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.

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**The Proposed Rules Begin on the Following Page**

**Administrative Services, Archives**  
**R17-9**  
**Electronic Participation at Meetings**

**NOTICE OF PROPOSED RULE**

(New Rule)  
 DAR FILE NO.: 35304  
 FILED: 09/29/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This proposed new rule establishes a procedure for electronic participation of the Utah State Historical Records Advisory Board (USHRAB) board members at meetings.

**SUMMARY OF THE RULE OR CHANGE:** The rule establishes provisions for one or more members of the board to participate in a meeting electronically or telephonically. Members participating in this way are counted as present for purposes of a quorum and may fully participate and vote on any matter. Public notices for the meeting indicate the anchor location where the members not participating electronically or telephonically will be meeting. The chair will identify for the record any member participating electronically or telephonically.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 52-4-207

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** A savings will be realized when members use this option to participate in meetings. A telephone call costs less than reimbursing a member of the board for mileage. The savings is estimated at \$200 per year.
- ◆ **LOCAL GOVERNMENTS:** Budget savings are estimated at \$200 per year.
- ◆ **SMALL BUSINESSES:** Allowing board members to participate electronically places no burden on small businesses. Therefore, no small business are affected.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No persons affected who are not board members.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Cost savings will be realized if a board member participates telephonically rather than driving to the anchor location in Salt Lake City. Members are reimbursed mileage costs for attendance at meetings.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:**  
 Fiscal impact statement: I believe electronic meetings improve the efficiency and effectiveness of government. I approve the rule.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ADMINISTRATIVE SERVICES  
 ARCHIVES  
 346 S RIO GRANDE  
 SALT LAKE CITY, UT 84101-1106  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ◆ Susan Mumford by phone at 801-531-3861, by FAX at 801-531-3867, or by Internet E-mail at smumford@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/22/2011

AUTHORIZED BY: Patricia Smith-Mansfield, Director

**R17. Administrative Services, Archives and Records Service.**  
**R17-9. Electronic Participation at Meetings.**

**R17-9-1. Authority and Purpose.**

In accordance with Section 52-4-207, this rule establishes a procedure for electronic participation at meetings.

**R17-9-2. Electronic Participation at Meetings.**

(1) Electronic participation at meetings. The following provisions govern any meeting at which one or more members of the Board appears telephonically or electronically pursuant to Utah Code Section 52-4-207.

(a) The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. The anchor location, unless otherwise designated in the notice, shall be at the offices of the Division of State Archives, Salt Lake City, Utah.

(b) If one or more members of the Board participate electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the Board not participating electronically or telephonically will be meeting and where interested persons and the public may attend and monitor the open portions of the meeting.

(c) When notice is given of the possibility of a member of the Board appearing electronically or telephonically, any member of the Board may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the Board. At the commencement of the meeting, or at such time as any member of the Board initially appears electronically or telephonically, the Chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the Board who are not at the physical location of the meeting shall be confirmed by the Chair.

**KEY:** electronic participation, telephonic participation, USHRAB board meetings, anchor location  
**Date of Enactment or Last Substantive Amendment:** 2011  
**Authorizing, and Implemented or Interpreted Law:** 52-4-207

**Alcoholic Beverage Control,  
Administration  
R81-3-13  
Operational Restrictions**

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR FILE NO.: 35299  
FILED: 09/29/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule amendment is being proposed to implement a provision of S.B. 2002 passed by the Legislature in the 2011 Second Special Session.

**SUMMARY OF THE RULE OR CHANGE:** To implement S.B. 2002 passed by the Legislature in the 2011 Second Special Session, this proposed amendment to the package agency Section R81-3-13, adds a dining club to the list of licenses that may be held by a brewery, winery, or distillery that would allow its Type 5 package agency to operate on a Sunday or legal holiday.

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

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** None--This rule amendment clarifies a provision that is already in statute. The statutory provision may add revenue to the state's coffers due to fees and taxes collected through additional sales on Sundays and Holidays, so the rule itself has no effect on the state budget for either costs or savings. Very few Type 5 package agencies are affected at this time and it is not possible at this point to determine any added revenue amounts.

◆ **LOCAL GOVERNMENTS:** None--This rule amendment clarifies a provision that is already in statute. The statutory provision may add revenue to local government coffers due to sales tax collected through additional sales on Sundays and Holidays, so the rule itself will have no effect on local budgets. Very few Type 5 package agencies are affected at this time and it is not possible at this point to determine any added revenue amounts.

◆ **SMALL BUSINESSES:** Some of the Type 5 package agencies that also operate a "dining club" are operated by small businesses. Their ability to operate on Sundays and holidays could potentially increase revenues. What those increases may be cannot be estimated at this time.

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

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--This rule amendment provides for operational restrictions that are already in place for Type 5 package agencies. Nothing more will be required of the affected Type 5 agencies to remain open on Sundays and Holidays.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The statutory provision clarified by this rule is supported by the businesses affected. Businesses could potentially see an increase in revenues due to being able to operate on Sundays and holidays. There may also be an increase in customer convenience and satisfaction for both residents and tourist 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 11/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/22/2011

AUTHORIZED BY: Francine Giani, Executive Director

**R81. Alcoholic Beverage Control, Administration.**

**R81-3. Package Agencies.**

**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~~[-], or a dining club 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 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 32B-2-605(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 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.

**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: 32B-2-202**

**Alcoholic Beverage Control,  
Administration  
R81-3-20**

**Type 4 Package Agency Room Service  
- Dispensing**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35300

FILED: 09/29/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule amendment is being proposed to implement a provision of S.B. 314 passed by the Legislature in the 2011 General Session relating to a certain type of package agency.

**SUMMARY OF THE RULE OR CHANGE:** S. B. 314 allows Type 4 package agencies in hotels and resorts to provide room service of liquor to guest rooms in either sealed containers or by the drink and requires those package agencies to dispense drinks according to statutory requirements. This proposed rule amendment (a new Section R81-3-20) is needed to establish the dispensing system requirements and portion size requirements for Type 4 Package Agencies that dispense room service alcoholic beverages in other than sealed containers (by the drink). It also provides an optional method to use an existing dispensing outlet in a club, restaurant, or on-premise banquet licensee in the hotel for the dispensing of room service drinks.

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

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** None--This rule clarifies a provision that is already in statute that gives Type 4 package agencies that provide room service the option to sell liquor in other than a sealed container. Whether or not sales in other than sealed containers will increase or decrease package agency sales cannot be determined at this time. Therefore the rule itself will have no effect on the state budget for costs or savings.

◆ **LOCAL GOVERNMENTS:** None--This rule clarifies a provision that is already in statute that gives Type 4 package agencies that provide room service the option to sell liquor in other than a sealed container. Whether or not sales in other than sealed containers will increase or decrease package agency sales that affect local sales tax collections cannot be determined at this time. Therefore the rule itself will have no effect on local governments for costs or savings.

◆ **SMALL BUSINESSES:** None--Most Type 4 package agencies are operated by large hotels that are not small businesses. Those few that are small businesses will not be affected by this rule because it is the statute that gives them the option to dispense liquor for room service in other than a sealed container. If they do choose that dispensing option, they will have to purchase dispensing equipment. However, this rule amendment allows for the use of an existing dispensing outlet, which would not require additional expense.

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

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons due to this rule amendment because it is the statute that gives them the option to dispense liquor for room service in other than a sealed container. This rule clarifies the statutory provision which is an option, not a requirement, for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule clarifies the statute that provides an option, not a requirement, for Type 4 package agencies that offer room service to hotel guest rooms. The 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 11/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/22/2011

AUTHORIZED BY: Francine Giani, Executive Director

**R81. Alcoholic Beverage Control, Administration.**

**R81-3. Package Agencies.**

**R81-3-20. Type 4 Package Agency Room Service - Dispensing.**

(1) A Type 4 package agency that sells liquor other than in a sealed container (i.e. by the drink) as part of room service, shall dispense liquor in accordance with Section 32B-5-304 and Section R81-1-9 (Liquor Dispensing Systems).

(2) A Type 4 package agency located in a hotel or resort facility that has a retail license or sublicense may provide room service of liquor in other than a sealed container through the dispensing outlet of the retail license or sublicense under the following conditions:

(a) point of sale control systems must be implemented that will record the amounts of alcoholic beverage products sold by the retail license or sublicense on behalf of the Type 4 package agency.

(b) the alcoholic beverage product cost must be allocated to the Type 4 package agency on at least a quarterly basis pursuant to the record keeping requirements of Section 32B-5-302;

(c) dispensing of alcoholic beverages from a retail license or sublicense location may not be made at prohibited hours pertinent to that license or sublicense type;

(d) A Type 4 package agency held by a resort licensee that operates seven days a week, 24 hours per day, must have a separate dispensing outlet for use during the times that a sublicense is not allowed to sell liquor.

**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: 32B-2-202**

**Alcoholic Beverage Control,  
 Administration  
 R81-4D-7  
 Sale and Purchase of Alcoholic  
 Beverages**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35301

FILED: 09/29/2011

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement a provision of S.B. 314 passed by the Legislature in the 2011 General Session relating to the on-premise banquet license 50% food sales requirement.

SUMMARY OF THE RULE OR CHANGE: S.B. 314 requires that on-premise banquet licensees maintain 50% of gross sales from the sale of food, and this rule amendment clarifies the regulation of non compliance. The full service, limited service, and dining club (60% food requirement) rules have a provision to regulate this food % requirement that include procedures for non compliance. This proposed substantive rule amendment adds a section to the on-premise banquet license rule to make the regulation consistent with the other licenses that have a food percentage requirement.

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

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: None--This rule amendment elaborates on a statutory mandate for on-premise banquet licensees therefore there are no state budget costs or savings involved.

- ◆ LOCAL GOVERNMENTS: None--The provisions in this rule amendment 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 under the statutory provisions that are being clarified by this rule amendment. There will be no additional costs or savings associated with this amended rule.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule amendment only affects licensed businesses and there is no cost or savings effect on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons created by this rule amendment as it is based on an existing statutory requirement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Licensed businesses are required by existing statute to comply with alcoholic beverage laws or face disciplinary action which could result in the revocation of a license. Any fiscal impact is established by statute. This rule amendment, which clarifies the governing statute, would 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 11/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2011

AUTHORIZED BY: Francine Giani, Executive Director

**R81. Alcoholic Beverage Control, Administration.**

**R81-4D. On-Premise Banquet License.**

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

(1) The on-premise banquet licensee shall maintain at least 50% of its total business from the sale of food pursuant to Section 32B-6-605(9).

(a) The on-premise banquet licensee 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 50% for any quarterly period, 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 50%. 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.

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

**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: 32B-2-202**

**Alcoholic Beverage Control,  
Administration  
R81-10C  
Beer Only Restaurant Licenses**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35302

FILED: 09/29/2011

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement provisions of S.B. 314 passed by the Legislature in the 2011 General Session relating to beer only restaurants.

SUMMARY OF THE RULE OR CHANGE: This proposed rule amendment adds subsections that make the beer only restaurant rules consistent with full service and limited service restaurants. These subsections clarify the sale of beer with food requirement; establish procedures for regulating beer only restaurants that do not meet the 70% food sales requirement; clarify the use of alcoholic products as flavoring; clarify that beer may be opened and poured at a patron's table, counter or grandfathered bar; clarify where a patron's table can be located and that consumption must be at a reasonable proximity to the table to insure that a written beverage tab can be maintained; and defines "remodeling" of a grandfathered bar.

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



ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--This rule amendment elaborates on a statutory mandates for beer only restaurant licenses therefore there are no state budget costs or savings involved.
- ◆ LOCAL GOVERNMENTS: None--The provisions in this rule amendment are regulated by state government and do not affect costs or savings of local governments.
- ◆ SMALL BUSINESSES: Many licensees are small businesses that are already operating under the statutory provisions that are being clarified by this rule amendment. There will be no additional costs or savings associated with this amended rule.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule amendment only affects licensed businesses and there is no cost or savings effect on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons created by this rule amendment as it is based on existing statutory requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Licensed businesses are required by existing statute to comply with alcoholic beverage laws or face disciplinary action which could result in fines or the revocation of a license. Any fiscal impact is established by the statutes. This rule amendment, which clarifies the governing statutes, would 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 11/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/22/2011

AUTHORIZED BY: Francine Giani, Executive Director

**R81. Alcoholic Beverage Control, Administration.**

**R81-10C. Beer Only Restaurant Licenses.**

**R81-10C-6. Sale and Purchase of Beer.**

(1) 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 32B-6-905(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 32B-6-905(7).

(a) The restaurant shall maintain records separately showing quarterly expenditures and sales for beer 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, 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 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.

(3) Beer dispensing shall be in accordance with Section 32B-5-304(5) and Section R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

**R81-10C-7. Alcoholic Product Flavoring.**

Beer Only Restaurant licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) 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 restaurant employee under the age of 21 years may handle alcoholic product flavorings.

**R81-10C-8. Table, Counter, and "Grandfathered Bar Structure" Service.**

(1) Beer, if in sealed containers, may be opened and poured by the server at the patron's table, counter, or "grandfathered bar structure".

**R81-10C-9. Consumption at Patron's Table, Counter, and "Grandfathered Bar Structure".**

(1) A patron's table, counter, or "grandfathered bar structure" may be located in waiting, patio, garden and dining areas previously approved by the department.

(2) Consumption of any alcoholic beverage must be within a reasonable proximity of a patron's table, counter, or "grandfathered bar structure so as to ensure that the server can maintain a written beverage tab on the amount of alcoholic beverages consumed.

**R81-10C-10. Grandfathered Bar Structures.**

(1) Authority and Purpose.

(a) This rule is pursuant to 32B-6-902 which provides that:

(i) a bar structure, as defined in 32B-1-102(7), located in an establishment licensed as an on-premise beer retailer and operational as of August 1, 2011, may be "grandfathered" to allow beer 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;

(b) This rule is also pursuant to 32B-6-902 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) "remodels the grandfathered bar structure" for purposes of 32B-6-902(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 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: 2011**

**Authorizing, and Implemented or Interpreted Law: 32B-2-202**

## Commerce, Occupational and Professional Licensing **R156-17b-102** Definitions

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 35274

FILED: 09/20/2011

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division needs to update the United States Pharmacopeia-National Formulary (USP-NF) books which are incorporated by reference to the most current edition available.

**SUMMARY OF THE RULE OR CHANGE:** In Subsection R156-17b-102(41), updated the USP-NF books to the USP34-NF29, 2011 edition, which is official from 05/01/2011 through Supplement 1, dated 08/01/2011.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-17b-101 and Section 58-37-1 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a) and Subsection 58-17b-601(1)

#### MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates the United States Pharmacopeia-National Formulary (USP 34-NF 29), The United States Pharmacopeial Convention, 2011 edition, which is official from May 1, 2011 through Supplement 1, dated August 1, 2011

#### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$75 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. The Division also incurs a yearly expense of approximately \$1,725 to purchase two copies of the referenced books, one copy for Division use and one copy to be sent to Division of Administrative Rules.

◆ **LOCAL GOVERNMENTS:** Proposed amendment is only updating a series of books which are incorporated by reference and are used by the pharmacy profession. As a result, proposed amendment does not affect local governments.

◆ **SMALL BUSINESSES:** Licensed pharmacies, some of which may qualify as a small business, who are required to maintain a copy of the current edition of the USP-NF books will incur a cost of approximately \$860 per year to update their subscription.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Licensed pharmacies who are required to maintain a copy of the current edition of the USP-NF books will incur a cost of approximately \$860 per year to update their subscription. There are currently 1,435 licensed pharmacies (Class A through Class E) for an aggregate yearly cost of \$1,234,100.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Licensed pharmacies who are required to maintain a copy of the current edition of the USP-NF books will incur a cost of approximately \$860 per year to update their subscription.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule filing updates references to the most current edition

of the pharmacopoeia formulary. No fiscal impact to businesses is anticipated beyond those described in the rule summary.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Debra Hobbins by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at dhobbins@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2011

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.**

**R156-17b. Pharmacy Practice Act Rule.**

**R156-17b-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 17b, as used in Title 58, Chapters 1 and 17b or this rule:

(1) "ACPE" means the American Council on Pharmaceutical Education or Accreditation Council for Pharmacy Education.

(2) "Analytical laboratory":

(a) means a facility in possession of prescription drugs for the purpose of analysis; and

(b) does not include a laboratory possessing prescription drugs used as standards and controls in performing drug monitoring or drug screening analysis if the prescription drugs are pre-diluted in a human or animal body fluid, human or animal body fluid components, organic solvents, or inorganic buffers at a concentration not exceeding one milligram per milliliter when labeled or otherwise designated as being for in-vitro diagnostic use.

(3) "Authorized distributor of record" means a pharmaceutical wholesaler with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drugs. An ongoing relationship is deemed to exist between such pharmaceutical wholesaler and a manufacturer, as defined in Section 1504 of the Internal Revenue Code, when the pharmaceutical wholesaler has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship, and the pharmaceutical wholesaler is listed on the manufacturer's current list of authorized distributors of record.

(4) "Authorized personnel" means any person who is a part of the pharmacy staff who participates in the operational processes of the pharmacy and contributes to the natural flow of pharmaceutical care.

(5) "Central Order Entry" means a pharmacy where functions are performed at the request of another pharmacy to perform processing functions such as dispensing, drug review, refill authorizations, and therapeutic interventions.

(6) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of the prescription drugs to a group of chain pharmacies that have the same common ownership and control.

(7) "Co-licensed partner or product" means an instance where two or more parties have the right to engage in the manufacturing and/or marketing of a prescription drug, consistent with FDA's implementation of the Prescription Drug Marketing Act.

(8) "Cooperative pharmacy warehouse" means a physical location for drugs that acts as a central warehouse and is owned, operated or affiliated with a group purchasing organization (GPO) or pharmacy buying cooperative and distributes those drugs exclusively to its members.

(9) "Counterfeit prescription drug" has the meaning given that term in 21 USC 321(g)(2), including any amendments thereto.

(10) "Counterfeiting" means engaging in activities that create a counterfeit prescription drug.

(11) "Dispense", as defined in Subsection 58-17b-102(23), does not include transferring medications for a patient from a legally dispensed prescription for that particular patient into a daily or weekly drug container to facilitate the patient taking the correct medication.

(12) "Drop shipment" means the sale of a prescription drug to a pharmaceutical wholesaler by the manufacturer of the drug; by the manufacturer's co-licensed product partner, third party logistics provider, or exclusive distributor; or by an authorized distributor of record that purchased the product directly from the manufacturer or from one of these entities; whereby:

(a) the pharmaceutical wholesale distributor takes title to but not physical possession of such prescription drug;

(b) the pharmaceutical wholesale distributor invoices the pharmacy, pharmacy warehouse, or other person authorized by law to dispense to administer such drug; and

(c) the pharmacy, pharmacy warehouse, or other person authorized by law to dispense or administer such drug receives delivery of the prescription drug directly from the manufacturer; from the co-licensed product partner, third party logistics provider, or exclusive distributor; or from an authorized distributor of record that purchases the product directly from the manufacturer or from one of these entities.

(13) "Drug therapy management" means the review of a drug therapy regimen of a patient by one or more pharmacists for the purpose of evaluating and rendering advice to one or more practitioners regarding adjustment of the regimen.

(14) "Drugs", as used in this rule, means drugs or devices.

(15) "ExCPT", as used in this rule, means the Exam for the Certification of Pharmacy Technicians.

(16) "FDA" means the United States Food and Drug Administration and any successor agency.

(17) "High-risk, medium-risk, and low-risk drugs" refers to the risk to a patient's health from compounding sterile preparations, as referred to in USP-NF Chapter 797, for details of determining risk level.

(18) "Hospice facility pharmacy" means a pharmacy that supplies drugs to patients in a licensed healthcare facility for terminal patients.

(19) "Hospital clinic pharmacy" means a pharmacy that is located in an outpatient treatment area where a pharmacist or pharmacy intern is compounding, admixing, or dispensing prescription drugs, and where:

(a) prescription drugs or devices are under the control of the pharmacist, or the facility for administration to patients of that facility;

(b) prescription drugs or devices are dispensed by the pharmacist or pharmacy intern; or

(c) prescription drugs are administered in accordance with the order of a practitioner by an employee or agent of the facility.

(20) "Legend drug" or "prescription drug" means any drug or device that has been determined to be unsafe for self-medication or any drug or device that bears or is required to bear the legend:

(a) "Caution: federal law prohibits dispensing without prescription";

(b) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian"; or

(c) "Rx only".

(21) "Maintenance medications" means medications the patient takes on an ongoing basis.

(22) "Manufacturer's exclusive distributor" means an entity that contracts with a manufacturer to provide or coordinate warehousing, distribution, or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the drug's sale or disposition. Such manufacturer's exclusive distributor must be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

(23) "MPJE" means the Multistate Jurisprudence Examination.

(24) "NABP" means the National Association of Boards of Pharmacy.

(25) "NAPLEX" means North American Pharmacy Licensing Examination.

(26) "Normal distribution channel" means a chain of custody for a prescription drug that goes directly, by drop shipment as defined in Subsection (12), or via intracompany transfer from a manufacturer; or from the manufacturer's co-licensed partner, third-party logistics provider, or the exclusive distributor to:

(a) a pharmacy or other designated persons authorized under this chapter to dispense or administer prescription drugs to a patient;

(b) a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control;

(c) a cooperative pharmacy warehouse to a pharmacy that is a member of the pharmacy buying cooperative or GPO to a patient;

(d) an authorized distributor of record, and then to either a pharmacy or other designated persons authorized under this chapter to dispense or administer such drug for use by a patient;

(e) an authorized distributor of record, and then to a chain pharmacy warehouse that performs intracompany sales or transfers of such drugs to a group of pharmacies under common ownership and control; or

(f) an authorized distributor of record to another authorized distributor of record to a licensed pharmaceutical facility or a licensed healthcare practitioner authorized under this chapter to dispense or administer such drug for use by a patient.

(27) "Parenteral" means a method of drug delivery injected into body tissues but not via the gastrointestinal tract.

(28) "Pedigree" means a document or electronic file containing information that records each distribution of any given prescription drug.

(29) "PIC", as used in this rule, means the pharmacist-in-charge.

(30) "Prescription files" means all hard-copy and electronic prescriptions that includes pharmacist notes or technician notes, clarifications or information written or attached that is pertinent to the prescription.

(31) "PTCB" means the Pharmacy Technician Certification Board.

(32) "Qualified continuing education", as used in this rule, means continuing education that meets the standards set forth in Section R156-17b-309.

(33) "Refill" means to fill again.

(34) "Repackage" means repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug, excluding that completed by the pharmacist responsible for dispensing the product to a patient.

(35) "Reverse distributor" means a person or company that retrieves unusable or outdated drugs from a pharmacy or pharmacist for the purpose of removing those drugs from stock and destroying them.

(36) "Sterile products preparation facility" means any facility, or portion of the facility, that compounds sterile products using aseptic technique.

(37) "Third party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution, or other similar services on behalf of a manufacturer, but does not take title to the prescription drug or have any authoritative control over the prescription drug's sale. Such third party logistics provider must be licensed as a pharmaceutical wholesaler under this chapter and be an "authorized distributor of record" to be considered part of the "normal distribution channel".

(38) "Unauthorized personnel" means any person who is not participating in the operational processes of the pharmacy who in some way would interrupt the natural flow of pharmaceutical care.

(39) "Unit dose" means the ordered amount of a drug in a dosage form prepared for a one-time administration to an individual and indicates the name, strength, lot number and expiration date for the drug.

(40) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 17b, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-17b-502.

(41) "USP-NF" means the United States Pharmacopeia-National Formulary (USP [32]34-NF [27]29), [2009]2011 edition,

which is official from May 1, ~~2009~~2011 through Supplement [2]1, dated ~~December 1, 2009~~August 1, 2011, which is hereby adopted and incorporated by reference.

(42) "Wholesaler" means a wholesale distributor who supplies or distributes drugs or medical devices that are restricted by federal law to sales based on the order of a physician to a person other than the consumer or patient.

(43) "Wholesale distribution" means the distribution of drugs to persons other than consumers or patients, but does not include:

(a) intracompany sales or transfers;

(b) the sale, purchase, distribution, trade, or other transfer of a prescription drug for emergency medical reasons, as defined under 21 CFR 203.3(m), including any amendments thereto;

(c) the sale, purchase, or trade of a drug pursuant to a prescription;

(d) the distribution of drug samples;

(e) the return or transfer of prescription drugs to the original manufacturer, original wholesale distributor, reverse distributor, or a third party returns processor;

(f) the sale, purchase, distribution, trade, or transfer of a prescription drug from one authorized distributor of record to one additional authorized distributor of record during a time period for which there is documentation from the manufacturer that the manufacturer is able to supply a prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had until that time been exclusively in the normal distribution channel;

(g) the sale, purchase or exchange of blood or blood components for transfusions;

(h) the sale, transfer, merger or consolidation of all or part of the business of a pharmacy;

(i) delivery of a prescription drug by a common carrier; or

(j) other transactions excluded from the definition of "wholesale distribution" under 21 CFR 203.3 (cc), including any amendments thereto.

**KEY: pharmacists, licensing, pharmacies**

**Date of Enactment or Last Substantive Amendment: ~~July 26,~~ 2011**

**Notice of Continuation: February 23, 2010**

**Authorizing, and Implemented or Interpreted Law: 58-17b-101; 58-17b-601(1); 58-37-1; 58-1-106(1)(a); 58-1-202(1)(a)**

**Commerce, Real Estate**  
**R162-2f-202b**  
**Principal Broker Licensing Fees and**  
**Procedures**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35278

FILED: 09/21/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** To broaden, in one instance, the time frame in which an individual may acquire experience in order to qualify for a principal broker license.

**SUMMARY OF THE RULE OR CHANGE:** An individual who applies for licensure within two years after allowing a principal broker license to expire must demonstrate having amassed three years of full-time professional real estate experience within the seven-year period preceding the date of application.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 61-2f-103(1)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This amendment applies only to a principal broker who reappplies for a license within two years of allowing a license to expire. In that case, this amendment changes the look-back period for experience from five years to seven years. As such, it changes the way Division staff will analyze an application, but does not create any new requirements or standards that the state will have to oversee or enforce. Therefore, no fiscal impact to the state budget is anticipated.

◆ **LOCAL GOVERNMENTS:** Local governments are not subject to the real estate licensing rules and requirements. Therefore no fiscal impact to local governments is anticipated from this amendment.

◆ **SMALL BUSINESSES:** This amendment would affect a principal broker and, therefore, might affect a small business that employs or is owned by an affected individual. However, it does not impose any standards or requirements that involve paying costs or fees (such as additional education). Therefore, no costs to small businesses are anticipated.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment makes it easier for a principal broker to satisfy the experience requirement when reapplying for licensure after allowing a license to expire for up to two years. It does not impose any additional requirements or costs beyond those already in place for obtaining a new license. Therefore, no new costs to affected persons are anticipated.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** To comply, an affected person must demonstrate three years of full-time professional real estate experience amassed during the seven-year period prior to the date of application. There are no associated costs.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No fiscal impact to businesses is anticipated from this rule filing that extends the time frame in which experience may be acquired for relicensure.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at [jjonsson@utah.gov](mailto:jjonsson@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2011

AUTHORIZED BY: Jonathan Stewart, Director

**R162. Commerce, Real Estate.**  
**R162-2f. Real Estate Licensing and Practices Rules.**  
**R162-2f-202b. Principal Broker Licensing Fees and Procedures.**

(1) To obtain a Utah license to practice as a principal broker, an individual shall:

- (a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);
- (b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);

(c)(i) successfully complete 120 hours of approved prelicensing education, including:

- (A) 45 hours of broker principles;
- (B) 45 hours of broker practices; and
- (C) 30 hours of Utah law and testing; or

(ii) apply to the division for waiver of all or part of the education requirement by virtue of:

(A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree; or

(B) completing other equivalent real estate education within the 12-month period prior to the date of application;

(d)(i) apply with a testing service designated by the division to sit for the licensing examination; and

(ii) pay a nonrefundable examination fee to the testing center;

(e) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination;

(f)(i) unless Subsection (2)(a) applies, evidence the individual's having, within the five-year period preceding the date of application, a minimum of three years [full-time]-experience [as a]related to real estate[licensee], including the following:

(A) at least two years full-time licensed, active experience selling, listing, or managing the property types identified in Appendix 1; and following types of properties:

- ~~(A) one- to four-unit residential dwellings;~~
- ~~(B) apartments, 5 units or over;~~
- ~~(C) improved lots;~~

- ~~(D) vacant lands/subdivisions;~~
- ~~(E) hotels or motels;~~
- ~~(F) industrial or warehouse property;~~
- ~~(G) office buildings;~~
- ~~(H) retail buildings; or~~
- ~~(I) leases of commercial space; and ]~~
- (B) up to one year full-time professional experience related to real estate, as outlined in Appendix 3; and

(ii) evidence having accumulated, within the five-year period preceding the date of application, a total of at least 60 experience points as follows:

(A) 45 to 60 points pursuant to the experience points tables found in Appendices 1 and 2; and

(B) 0 to 15 points pursuant to the experience point table found in Appendix 3;

(g) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:

(i) documentation indicating successful completion of the approved broker prelicensing education;

(ii) a report of the examination showing a passing score for each component of the examination; and

(iii) the applicant's business, home, and e-mail addresses;

(h) provide from any state where licensed as a real estate agent or broker:

(i) a written record of the applicant's license history; and

(ii) complete documentation of any disciplinary action taken against the applicant's license;

(i) if applying for an active license, affiliate with a registered company;

(j) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund; and

(k) establish a trust account pursuant to Section R162-2f-403.

(2)(a) If an individual applies under this Subsection R162-2f-202b within two years of allowing a principal broker license to expire, the experience required under Subsection (1)(f) shall be accumulated within the seven-year period preceding the date of application.

(b) Pursuant to Section R162-2f-407, an individual whose application is denied by the division for failure to meet experience requirements under this Subsection (1)(f) may bring the application before the commission.

(3) Deadlines.

(a) If an individual passes one test component but fails the other, the individual shall retake and pass the failed component:

(i) within six months of the date on which the individual achieves a passing score on the passed component; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(b) An application for licensure shall be submitted:

(i) within 90 days of the date on which the individual achieves passing scores on both examination components; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(c) If any deadline in this Section R162-2f-202b falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

**KEY: real estate business, licensing, enforcement**

**Date of Enactment or Last Substantive Amendment: [~~August 22, 2011~~2011]**

**Authorizing, and Implemented or Interpreted Law: 61-2f-103(1)**

## Health, Children's Health Insurance Program **R382-10** Eligibility

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35298

FILED: 09/28/2011

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to modify the periodic review process to comply with federal due process requirements under the Children's Health Insurance Program (CHIP).

**SUMMARY OF THE RULE OR CHANGE:** This amendment modifies the requirements for completing a periodic review of an individual's continued eligibility for medical assistance to comply with federal due process requirements. It also clarifies the requirements for a recipient to make timely reports of changes and to provide verification of changes. It further clarifies that the agency cannot end eligibility while it gives recipients time to respond to a request for verification and while it makes a redetermination decision. In addition, this amendment clarifies the requirement to provide appropriate advance notice of an adverse action in accordance with due process requirements, changes the benefit effective date to the first day of the application month subject to certain limitations, updates citations, removes provisions that no longer apply, and makes other minor corrections.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Title 26, Chapter 40

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Updates Sections 2110(b) and (c) of the Compilation of Social Security Laws, published by Social Security Administration, 01/01/2011

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Department does not anticipate any impact to the state budget because most CHIP recipients whose eligibility ends for failure to complete a periodic review usually complete the review process during the month that follows and their medical assistance is reinstated without a break in coverage. Further, the Department does not

anticipate any impact for the change to the benefit effective date because the Department pays a set rate to managed health organizations for CHIP eligible children, the rate for the first month of coverage is the same for a full or partial month, and the Department does not modify these rates for this change.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not determine CHIP eligibility or fund services for CHIP recipients.

◆ **SMALL BUSINESSES:** The Department does not anticipate any impact to small businesses because most CHIP recipients whose eligibility ends for failure to complete a periodic review usually complete the review process during the month that follows and their medical assistance is reinstated without a break in coverage. Further, the Department does not anticipate any impact for the change to the benefit effective date because the Department pays a set rate to managed health organizations for CHIP eligible children, the rate for the first month of coverage is the same for a full or partial month, and the Department does not modify these rates for this change.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate any impact to CHIP providers and no out-of-pocket expenses for CHIP recipients because most recipients whose eligibility ends for failure to complete a periodic review usually complete the review process during the month that follows and their medical assistance is reinstated without a break in coverage. Further, the Department does not anticipate any impact for the change to the benefit effective date because the Department pays a set rate to managed health organizations for CHIP eligible children, the rate for the first month of coverage is the same for a full or partial month, and the Department does not modify these rates for this change.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The Department does not anticipate any compliance costs to a single CHIP provider and no out-of-pocket expenses to a CHIP recipient because most recipients whose eligibility ends for failure to complete a periodic review usually complete the review process during the month that follows and their medical assistance is reinstated without a break in coverage. Further, the Department does not anticipate any cost for the change to the benefit effective date because the Department pays a set rate to managed health organizations for a CHIP eligible child, the rate for the first month of coverage is the same for a full or partial month, and the Department does not modify these rates for this change.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This proposed rule amendment strengthens due process protections consistent with federal law that will avoid Medicaid providers extending services and inappropriately being denied reimbursement. Requirements for periodic reviews of an individual's continued eligibility for medical assistance are strengthened and requirements for a recipient to make timely reports of changes and to provide verification

of changes are mandated. It further clarifies that the agency cannot end eligibility while it gives recipients time to respond to a request for verification and while it makes a redetermination decision. In addition, this amendment clarifies the requirement to provide appropriate advance notice of an adverse action in accordance with due process requirements.

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

HEALTH  
CHILDREN'S HEALTH INSURANCE PROGRAM  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

### **R382. Health, Children's Health Insurance Program.**

#### **R382-10. Eligibility.**

##### **R382-10-1. Authority.**

(1) This rule is authorized by Title 26, Chapter 40.

(2) The purpose of this [This] rule is to set[s] forth the eligibility requirements for coverage under the Children's Health Insurance Program (CHIP).~~[It is authorized by Title 26, Chapter 40.]~~

##### **R382-10-2. Definitions.**

(1) The Department ~~[adopts]~~incorporates by reference the definitions found in Sections 2110(b) and (c) of the Compilation of Social Security Laws, in effect January 1, 2011~~[Act as enacted by Pub. L. No. 105-33 which is incorporated by reference in this rule].~~

(2) ~~["Agency" means any local office or outreach location of either the Department of Health or Department of Workforce Services that accepts and processes applications for CHIP.]~~The Department adopts the definitions in Section R382-10-2.

(3) "American Indian or Alaska Native" means someone having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

~~["Applicant" means a child on whose behalf an application has been made for benefits under the Children's Health Insurance Program, but who is not an enrollee.]~~

(4) "Best estimate" means the [Department's]eligibility agency's determination of a household's income for the upcoming

eligibility period, based on past and current circumstances and anticipated future changes.

(5) "Children's Health Insurance Program" or "CHIP" means the program for benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40.

(6) "Co-payment and co-insurance" means a portion of the cost for a medical service for which the enrollee is responsible to pay for services received under CHIP.

~~[(6)]~~ "Department" means the Utah Department of Health.

(8) "Due process month" means the month that allows time for the enrollee to return all verification, and for the eligibility agency to determine eligibility and notify the enrollee.

(9) "Eligibility agency" means the Department of Workforce Services (DWS) that determines eligibility for CHIP under contract with the Department.

~~[(7)]~~10 "Employer-sponsored health plan" means health insurance that meets the requirements of Subsection R414-320-2[(8)(a)(b)(c)(d) and (e)](19).

(11) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

~~["Income averaging" means a process of using a history of past or current income and averaging it over a determined period of time that is representative of future income.]~~

~~[(9)]~~12 "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(13) "Income averaging" means a process of using a history of past or current income and averaging it over a determined period of time that is representative of future income.

~~["Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.]~~

~~["Local office" means any office location, outreach location, or telephone location where an individual may apply for medical assistance.]~~

~~[(12)]~~14 "Quarterly Premium" means a payment that enrollees must pay every three months to receive coverage under CHIP.

~~[(13)]~~15 "[Renewal]Review month" means the last month of the eligibility period for an enrollee[-] during which the eligibility agency redetermines an enrollee's eligibility for a new certification period.

~~[(14)]~~16 "Utah's Premium Partnership for Health Insurance" or "UPP" means the program described in Rule R414-320.

~~[(15)]~~17 "Verification[s]" means the proof[s] needed to decide if a child meets the eligibility criteria to be enrolled in the program. Verification[s] may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of a child.

##### **R382-10-3. Actions on Behalf of a Minor.**

(1) A parent, legal guardian or an adult who ~~[has-] assume[d]s~~ responsibility for the care or supervision of a child who is under 19 years of age may apply for CHIP enrollment, provide



information required by this rule, or otherwise act on behalf of a child in all respects under the statutes and rules governing the CHIP program.

~~(a)2~~ ~~If the child, if 18 years old or an emancipated minor,~~ the child's parent, responsible adult, or legal guardian wants to designate an authorized representative, he must so indicate in writing to the [Department] eligibility agency [who is authorized as the child's representative].

~~(b)3~~ A child who is under 19 years of age and is independent of a parent or legal guardian may assume these responsibilities. The [Department] eligibility agency may not require a child who is independent to have an authorized representative if the child can act on his own behalf; however, the eligibility agency may designate an authorized representative if the child needs a representative but [is unable to] cannot make a choice either in writing or orally in the presence of a witness.

~~(2)4~~ Where the statutes or rules governing the CHIP program require a child to take an action, the parent, legal guardian, designated representative or adult who ~~[has—]~~ assume[s] responsibility for the care or supervision of the child is responsible to take the action on behalf of the child. If the parent or adult who ~~[has—]~~ assume[s] responsibility for the care or supervision of the child fails to take an action, the failure is attributable as the child's failure to take the action.

~~(3)5~~ The eligibility agency shall consider [N] notice to the parent, legal guardian, designated representative, or adult who [has—] assume[s] responsibility for the care or supervision of [the] a child [is] to be notice to the child. The eligibility agency shall send notice to a child who assumes responsibility for himself.

#### **R382-10-4. Applicant and Enrollee Rights and Responsibilities.**

(1) A parent or an adult who ~~[has—]~~ assume[s] responsibility for the care or supervision of a child may apply or reapply for ~~[Children's Health Insurance Program] CHIP~~ benefits on behalf of a child. ~~[An emancipated child or an 18-year-old] A~~ child who is independent may apply on his own behalf.

(2) If a person needs assistance to apply, the person may request assistance from a friend, family member, the eligibility agency, or outreach staff.

~~(2)3~~ The applicant must provide verification[s] requested by the eligibility agency to establish the eligibility of the child, including information about the parents.

~~(3)4~~ Anyone may look at the eligibility policy manuals located on-line or at any [local] eligibility agency office, except at outreach or telephone locations.

~~(4)5~~ ~~[The parent or other individual who arranged for medical services on behalf of the child shall repay the Department for services paid for by the Department under this program if the child is determined not to be eligible for CHIP.]~~ If the eligibility agency determines that the child is not eligible for CHIP, the parent or legal guardian who arranges for medical services on behalf of the child must repay the Department for the cost of services.

~~(5)6~~ The parent ~~(s)~~ or child, or other responsible person acting on behalf of a child must report certain changes to the ~~[local office] eligibility agency~~ within ten calendar days of the day the change becomes known. Some examples of reportable changes include:

(a) An enrollee begins to receive coverage or to have access to coverage under a group health plan or other health insurance coverage.

~~(b) An enrollee begins to have access to coverage under a group health plan or other health insurance coverage.~~

~~(c) An enrollee leaves the household or dies.~~

~~(d) An enrollee or the household moves out of state.~~

~~(e) Change of address of an enrollee or the household.~~

~~(f) An enrollee enters a public institution or an institution for mental diseases.~~

~~(7) An applicant and enrollee may review the information that the eligibility agency uses to determine eligibility.~~

~~(6)8~~ An [A] applicant[s] and enrollee[s] have the right to be notified about actions that the agency takes [regarding their] to determine their eligibility or continued eligibility, the reason the action was taken, and the right to request an agency conference or agency action as defined in Sections R414-301-5 and R414-301-6.

~~(9) An enrollee in CHIP must pay quarterly premiums, co-payments, or co-insurance amounts to providers for medical services that the enrollee receives under CHIP.~~

#### **R382-10-5. Verification and Information Exchange.**

~~(1) The applicant and enrollee upon renewal must provide verification of eligibility factors as requested by the agency.~~

~~(a) The agency will provide the enrollee a written request of the needed verifications.~~

~~(b) The enrollee has at least 10 calendar days from the date the agency gives or mails the verification request to the enrollee to provide verifications.~~

~~(c) The due date for returning verifications, forms or information requested by the agency is the close of business on the date the agency sets as the due date in a written request to the enrollee, but not less than 10 calendar days from the date such request is given to or mailed to the enrollee.~~

~~(d) The agency allows additional time to provide verifications if the enrollee requests additional time by the due date. The agency will set a new due date that is at least 10 calendar days from the date the enrollee asks for more time to provide the verifications or forms.~~

~~(e) If an enrollee has not provided required verifications by the due date, and has not contacted the agency to ask for more time to provide verifications, agency denies the application, renewal, or ends eligibility. (1) The provisions of Section R414-308-4 apply to applicants and enrollees of CHIP.~~

~~(2) The Department and the eligibility agency shall safeguard applicant and enrollee information in accordance with Section R414-301-4.~~

~~(2)3~~ The Department or the eligibility agency may release information concerning applicants and enrollees and their households to other state and federal agencies to determine eligibility for other public assistance programs.

~~(3)4~~ The Department and the eligibility agency ~~[must] shall~~ release information to the Title IV-D agency and Social Security Administration to determine benefits.

~~(4)5~~ The Department and the eligibility agency may verify information by exchanging information with other public agencies as described in 42 CFR 435.945, 435.948, 435.952, 435.955, and 435.960.

**R382-10-6. Citizenship and Alienage.**

(1) To be eligible to enroll in ~~[the program]~~CHIP, a child must be a citizen or national of the United States or a qualified alien~~[as defined in Pub. L. No. 104-193(401) through (403), (411), (412), (421) through (423), (431), and (435), and amended by Pub. L. No. 105-33(5302)(b) and (c), (5303), (5305)(b), (5306), (5562), (5563), and (5571)].~~

(2) The provisions of Section R414-302-1 regarding citizenship and alien status requirements apply to applicants and enrollees of CHIP.

~~[(2) Hmong or Highland Lao veterans who fought on behalf of the Armed Forces of the United States during the Vietnam conflict and who are lawfully admitted to the United States for permanent residence, and their family members who are also qualified aliens, may be eligible to enroll in the program regardless of their date of entry into the United States.~~

~~(3) One adult household member must declare the citizenship or alien status of all applicants in the household. The applicant must provide verification of his citizenship or alien status.~~

~~(4) A qualified alien, as defined in Pub. L. No. 104-193(431) and amended by Pub. L. No. 105-33(5302)(c)(3), (5562), and (5571), admitted into the United States prior to August 22, 1996, may enroll in the program.~~

~~(5) A qualified alien, as defined in Pub. L. No. 104-193(431) and amended by Pub. L. No. 105-33(5302)(c)(3), (5562), and (5571), newly admitted into the United States on or after August 22, 1996, may enroll in the program after five years have passed from his date of entry into the United States.~~

**R382-10-7. Utah Residence.**

(1) A child must be a Utah resident to be eligible to enroll in the program.

(2) An American Indian or Alaska Native child in a boarding school is a resident of the state where his parents reside. A child in a school for the deaf and blind is a resident of the state where his parents reside.

(3) A child is a resident of the state if he is temporarily absent from Utah due to employment, schooling, vacation, medical treatment, or military service.

(4) The child need not reside in a home with a permanent location or fixed address.

**R382-10-8. Residents of Institutions.**

(1) Residents of institutions described in Section 2110(b)(2)(A) of the Compilation of Social Security Laws~~[Act as enacted by Pub. L. No. 105-33]~~ are not eligible for the program.

(2) A child under the age of 18 is not a resident of an institution if he is living temporarily in the institution while arrangements are being made for other placement.

(3) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.

**R382-10-9. Social Security Numbers.**

(1) The ~~[Department]~~eligibility agency may request an applicant[s] to provide the correct Social Security Number (SSN) or proof of application for a SSN for each household member at the time of application for the program. The eligibility agency shall use the SSN in accordance with the requirements of 42 CFR 457.340.

~~(2) [A child may not be denied CHIP enrollment for failure to provide a SSN.]~~The eligibility agency shall require that each applicant claiming to be a U.S. citizen or national provide their SSN for the purpose of verifying citizenship through the Social Security Administration in accordance with Section 2105(c)(9) of the Compilation of the Social Security Laws.

(3) The eligibility agency may request the SSN of a lawful permanent resident alien applicant, but may not deny eligibility for failure to provide a SSN.

**R382-10-10. Creditable Health Coverage.**

(1) To be eligible for enrollment in the program, a child must meet the requirements of Sections 2110(b)(1)(C) and (2)(B) of the Compilation of Social Security Laws~~[Act as enacted by Pub. L. No. 105-33]~~.

(2) A child who is covered under a group health plan or other health insurance that provides coverage in Utah, including coverage under a parent's or legal guardian's employer, as defined in 29 CFR 2590.701-4, 2010 ed.~~[by the Health Insurance Portability and Accountability Act of 1996 (HIPAA)]~~, is not eligible for CHIP assistance.

(3) A child who is covered under health insurance that does not provide coverage in the State of Utah is eligible for enrollment.

(4) A child who is covered under a group health plan or other health coverage but ~~[has]reache[d]~~ the lifetime maximum coverage under that plan is eligible for enrollment.

(5) A child who has access to health insurance coverage, where the cost to enroll the child in the least expensive plan offered by the employer is less than 5% of the household's gross annual income, is not eligible for CHIP. The child is considered to have access to coverage even ~~[if]when~~ the employer only offers coverage ~~[only]~~ during an open enrollment period, and the child has had at least one chance to enroll.

~~[(6) A child who has access to an employer-sponsored health plan where the least expensive plan is equal to or greater than 5% of the household's gross annual income, and the employer offers an employer-sponsored health plan that meets the requirements of R414-320-2(8)(a), (b), (c), (d) and (e), may choose to enroll in the employer-sponsored health plan and receive reimbursement through the UPP program or may choose to enroll in the CHIP program.~~

~~(a) If the employer-sponsored health plan does not include dental benefits, the child may enroll in CHIP dental benefits.~~

~~(b) A child who chooses to enroll in the UPP program may switch to CHIP coverage at any time.~~(6) An eligible child who has access to an employer-sponsored health plan may choose to enroll in either CHIP or the employer-sponsored health plan.

(a) If the child chooses to enroll in the employer-sponsored health plan, the child may enroll in and receive premium reimbursement through the UPP program if enrollment is not closed. The health plan must meet the following conditions:

(i) The cost of the least expensive plan equals or exceeds 5% of the household's gross annual income; and

(ii) The plan meets the requirements of Subsection R414-320-2(19).

(b) The cost of coverage includes a deductible if the employer plan is one that must be met before it will pay any claims.

For a dependent child, if the employee must enroll to enroll the dependent child, the cost of coverage will include the cost to enroll the employee and the dependent child.

(c) If the child enrolls in the employer-sponsored health plan or COBRA coverage and UPP, but the plan does not include dental benefits, the child may receive dental-only benefits through CHIP.

(d) If the applicant enrolls the child in the employer-sponsored health plan or COBRA coverage and the plan includes dental, the applicant may choose to enroll the child in the dental plan and receive an additional reimbursement of up to \$20 per month, or may choose not to enroll the child in the dental plan and receive dental-only benefits through CHIP.

(e) A child who chooses to enroll in the employer-sponsored health plan or COBRA coverage may switch to CHIP coverage at any time without a 90-day ineligibility period for voluntarily discontinuing health insurance. Eligibility continues through the current certification period without a new eligibility determination.

(7) The [Department]eligibility agency shall deny eligibility if the applicant or a custodial parent [has-]voluntarily terminate[d]s health insurance that provides coverage in Utah within the 90 days [prior to]before the application date for enrollment under CHIP.

(a) If the 90-day ineligibility period for CHIP ends in the month of application, or by the end of the month that follows, the eligibility agency shall determine the applicant's eligibility.

(b) If eligible, enrollment in CHIP begins the day after the 90-day ineligibility period ends.

(c) If the 90-day ineligibility period does not end by the end of the month that follows the application month, the eligibility agency shall deny the application.

(8) If an[A] applicant or an applicant's parent[~~(s)~~ who] voluntarily terminates coverage under a Consolidated Omnibus Budget Reconciliation Act (COBRA) plan or under the Health Insurance Pool (HIP), or [who]if an applicant is involuntarily terminated from an employer's plan, the applicant is eligible for CHIP without a 90-day [waiting]ineligibility period.

([8]9) A child with creditable health coverage operated or financed by the Indian Health Services is not excluded from enrolling in the program.

([9]10) An applicant must report at application and [renewal]review whether any of the children in the household for whom enrollment is being requested has access to or is covered by a group health plan, other health insurance coverage, or a state employee's health benefits plan.

([10]11) The [Department shall deny]eligibility agency shall deny an application or [renewal]review if the enrollee fails to respond to questions about health insurance coverage for children that the household seeks to enroll or renew in the program.

(12) A recipient must report when a child enrolls in health insurance coverage within ten calendar days of the date of enrollment or the date that benefits are effective, whichever is later. The eligibility agency shall end eligibility after the month in which the agency sends proper notice of the closure. A child may switch to UPP in accordance with Subsection R382-10-10(6) if the change is reported timely. Failure to make a timely report may result in overpayment.

### **R382-10-11. Household Composition.**

(1) The following individuals who reside together must be included in the household for purposes of determining the household size~~[and whose income will be counted]~~, whether or not the individual is eligible to enroll in the program:

(a) At least one child who meets the CHIP age requirement and who does not have access to and is not covered by a group health plan or other health insurance;

(b) Siblings, half-siblings, adopted siblings, and step-siblings of the eligible child if they are under 19 years of age. They may also be eligible for CHIP if they meet the CHIP eligibility criteria~~[who meets the CHIP age requirement if these individuals also meet the CHIP age requirement]~~;

(c) Parents and stepparents of any child who is included in the household size;

(d) Children of any child included in the household size;

(e) The spouse of any child who is included in the household size;~~[and]~~

(f) Unborn children of anyone included in the household size~~[-]; and~~

(g) Children of a former spouse when a divorce ~~[has been]~~is finalized.

(2) Any individual described in Subsection R382-10-11(1)~~[of this Section]~~who is temporarily absent solely by reason of employment, school, training, military service, or medical treatment, or who will return home to live within 30 days from the date of application, is part of the household.

~~[(3) A household member described in Subsection (1) of this Section who does not qualify to enroll in the CHIP program due to his alien status is included in the household size and his income is counted as household income.]~~(3) Any household member described in Subsection R382-10-11 (1) who is not a citizen, a national, or a qualified alien is included in the household size. The eligibility agency counts the income of these individuals the same way that it counts the income for household members who are citizens, nationals, or qualified aliens.

### **R382-10-12. Age Requirement.**

(1) A child must be under 19 years of age some time during the application month to enroll in the program. An otherwise eligible child who turns 19 years of age during the application month may receive CHIP for the application month and the four-day grace period.

(2) The month in which a child~~[s 19th birthday occurs]~~ turns 19 years of age is the last month of eligibility for CHIP enrollment.

### **R382-10-16. Application and [Renewal]Eligibility Reviews.**

~~[The application is the initial request from an applicant for CHIP enrollment for a child. The application process includes gathering information and verifications to determine the child's eligibility for enrollment in the program. Renewal is the process of gathering information and verifications on a periodic basis to determine continued eligibility of an enrollee.]~~

(1) The applicant must complete and sign a written application or an on-line application to ~~[become enrolled]~~enroll in the CHIP program. The application process includes gathering information and verification to determine the child's eligibility for enrollment in the program.

(2) The ~~[Department]~~eligibility agency may accept[s] any Department-approved application form for medical assistance programs offered by the state as an application for CHIP enrollment.

(3) Individuals may apply for enrollment in person, through the mail, by fax, or online.

~~(4) The provisions of Section R414-308-3 apply to applicants for CHIP.~~

~~(4)5~~ The ~~[Department]~~eligibility agency may interview applicants, the applicant's parents, and any adult who ~~[has-]~~ assume[d]s responsibility for the care or supervision of the child to assist in determining eligibility.

~~(6) The eligibility agency shall complete a periodic review of an enrollee's eligibility for CHIP medical assistance at least once every 12 months. The periodic review is a review of eligibility factors that may be subject to change. The eligibility agency shall use available, reliable sources to gather necessary information to complete the review.~~

~~(7) The eligibility agency may ask the enrollee to respond to a request to complete the review process. If the enrollee fails to respond to the request during the review month, the agency shall end the enrollee's eligibility after the review month. If the enrollee responds to the review or reapplies in the month after the review month, the eligibility agency shall treat the response as a new application. The application processing period then applies for this new request for coverage.~~

~~(a) The eligibility agency may ask the enrollee for verification to redetermine eligibility.~~

~~(b) Upon receiving verification, the eligibility agency shall redetermine eligibility and notify the enrollee. If the enrollee fails to return verification within the application processing period or if the enrollee is determined ineligible, the eligibility agency shall send a denial notice to the enrollee.~~

~~(c) The eligibility agency may not continue eligibility while it makes a new eligibility determination.~~

~~(d) If the eligibility agency closes the case for one or more calendar months, the enrollee must reapply for CHIP.~~

~~(e) If the enrollee becomes eligible, the new certification period begins the first day of the month after the closure date.~~

~~(8) If the enrollee responds to the review request during the review month, the eligibility agency may request verification from the enrollee.~~

~~(a) The eligibility agency shall send a written request for the necessary verification.~~

~~(b) The enrollee has at least ten calendar days to provide the requested verification to the eligibility agency.~~

~~(c) If the enrollee provides all verification by the due date in the review month, the eligibility agency shall determine eligibility and notify the enrollee of its decision.~~

~~(i) If the eligibility agency sends proper notice of an adverse decision during the review month, the agency shall change eligibility for the month that follows.~~

~~(ii) If the eligibility agency does not send proper notice of an adverse change for the month that follows, the agency shall extend eligibility to that month. The eligibility agency shall send proper notice of an adverse decision that becomes effective after the due process month and the enrollee does not owe a premium for the due process month.~~

~~(9) If the enrollee responds to the review in the review month and the verification due date is in the month that follows, the eligibility agency shall extend eligibility to the month that follows. The enrollee must provide all verification by the verification due date.~~

~~(a) If the enrollee provides all requested verification by the verification due date, the eligibility agency shall determine eligibility and send proper notice of the decision.~~

~~(b) If the enrollee does not provide all requested verification by the verification due date, the eligibility agency shall end eligibility after the month in which the eligibility agency sends proper notice of the closure.~~

~~(c) If the enrollee returns all verification after the verification due date and before the effective closure date the eligibility agency shall treat the date that it receives all verification as a new application date. The eligibility agency shall determine eligibility and send a notice to the enrollee.~~

~~(d) The eligibility agency may not continue eligibility while it determines eligibility. The new certification date for the application is the day after the effective closure date if the enrollee is found eligible.~~

~~(10) The eligibility agency shall provide ten-day notice of case closure if the enrollee is determined to be ineligible or if the enrollee fails to provide verification by the verification due date.~~

~~(11) If eligibility for CHIP enrollment ends, the [Department shall]eligibility agency shall review the case for eligibility under any other medical assistance program without requiring a new application. The [Department]eligibility agency may request additional verification from the household if there is insufficient information to make a determination.~~

#### **R382-10-17. Eligibility Decisions.**

~~(1) The [Department must]eligibility agency shall determine eligibility for CHIP within 30 days of the date of application. If the eligibility agency [a decision can not]cannot make a decision [be made]in 30 days because the applicant fails to take a required action and requests additional time to complete the application process, or if circumstances beyond the [Department's]eligibility agency's control delay the eligibility decision, [the Department shall]the eligibility agency shall document the reason for the delay in the case record.[The Department must inform the applicant of the status of the application and the time frame for completing the application process.]~~

~~(2) The [Department]eligibility agency may not use the time standard as a waiting period before determining eligibility, or as a reason for denying eligibility [because the Department]when the agency [has]does not determine[d] eligibility within that time.~~

~~(3) The [Department shall]eligibility agency shall complete a determination of eligibility or ineligibility for each application unless:~~

~~(a) the applicant voluntarily [withdrew]withdraws the application and the [Department sent]eligibility agency sends a notice to the applicant to confirm the withdrawal;~~

~~(b) the applicant died; or~~

~~(c) the applicant [can not]cannot be located or [has]does not respond[ed] to requests for information within the 30-[-]day application period.~~

(4) The ~~[Department must]~~eligibility agency shall redetermine eligibility at least every 12 months.

(5) At application and ~~[renewal]~~review, the ~~[Department must]~~eligibility agency shall determine if any child applying for CHIP enrollment is eligible for coverage under Medicaid.

~~(a) The enrollee must provide any additional verification needed to determine if a child is eligible for Medicaid or the eligibility agency shall deny the application or review.~~

~~(b) A child who is eligible for Medicaid coverage is not eligible for CHIP.~~

~~(c) An eligible child who must meet a spend[-]down to receive Medicaid and chooses not to meet the spenddown ~~[can be enrolled]~~may enroll in CHIP.~~

~~(d) If the use of the adjusted gross income (AGI) at a review causes the household to appear eligible for Medicaid, the eligibility agency shall request verification of current income and other factors needed to determine Medicaid eligibility. The eligibility agency cannot renew CHIP coverage if the household fails to provide requested verification.~~

~~(e) If the AGI causes the household to qualify for a more expensive CHIP plan, the household may choose to verify current income. If current income verification shows the family is eligible for a lower cost plan, the eligibility agency shall change the household's eligibility to the lower cost plan effective the month after verification is provided.~~

~~(6) If an enrollee asks for a new income determination during the CHIP certification period and the eligibility agency finds the child is eligible for Medicaid, the agency shall end CHIP coverage and enroll the child in Medicaid.~~

#### **R382-10-18. Effective Date of Enrollment and Renewal.**

(1) ~~[The]~~Subject to the limitations in Sections R414-306-6 and R382-10-10, the effective date of CHIP enrollment is the ~~[date]~~first day of the application month, ~~[a completed and signed application is received at a local office by the close of normal business hours on a weekday and not on a Saturday, Sunday, or a state or federal holiday. This applies to paper applications delivered in person or by mail, paper applications sent via facsimile transmission, and electronic applications sent via the internet. If a local office receives an application after the normal close of business hours on a weekday or on a Saturday, Sunday, or a state or federal holiday, the effective date of CHIP enrollment is the next weekday.~~

~~(2) The effective date of CHIP enrollment for applications delivered to an outreach location is as follows:~~

~~(a) If the application is delivered at a time when the outreach staff is working at that location, the effective date of enrollment is the date the outreach staff receives the application.~~

~~(b) If the application is delivered on a non-business day or at a time when the outreach office is closed, the effective date of enrollment is the last business day that a staff person from the state medical eligibility agency was available to receive or pick up applications from the location.~~

~~(3) An applicant must provide the verifications needed to process an application and determine eligibility no later than the close of business on the last day of the application period. If the last day of the application processing period falls on a day of the week when the medical eligibility office is closed, then the applicant has until the close of business on the next day that the~~

medical eligibility agency is open. An applicant may request more time to provide verifications. The request must be made by the last day of the application processing period.]

~~([4]2) If the eligibility agency receives an application during the first four days of a month, [T]the ~~[Department may]~~agency shall allow a grace enrollment period ~~[beginning]~~[that begins no earlier than four days before the date that the agency receives a completed and signed application ~~[is received by the Department]. During the grace enrollment period, the individual must receive medical services, meet eligibility criteria, and have an emergency situation that prevents the individual from applying. The Department ~~[shall]~~may not pay for any services that the individual receive[d]s before the effective enrollment date.~~~~

~~([5]3) For a family who enrolls[has] a child ~~[enrolled]~~in CHIP and who adds a newborn or adopted child, the effective date of enrollment is the date of birth or placement for adoption if the family requests the coverage within 30 days of the birth or adoption. If the family makes the request ~~[is made]~~more than 30 days after the birth or adoption, enrollment in CHIP will be effective beginning the first day of the month in which the date of report occurs, subject to the limitations in Sections R414-306-6, R382-10-10 and the provisions of Subsection R382-10-18(2)~~[except as otherwise provided in R382-10-18(1)].~~~~

~~([6]4) The effective date of enrollment for a ~~[renewal]~~new certification period after the review month is the first day of the month after the ~~[renewal]~~review month, if the ~~[renewal]~~review process is completed by the end of the ~~[renewal]~~review month. If a due process month is approved, the effective date of enrollment for a renewal is the first day of the month after the due process month. The enrollee must complete the review process and continue to be eligible to be reenrolled in CHIP at review ~~[or by the last day of the month immediately following the renewal month, and the child continues to be eligible].~~~~

~~(7) If the renewal process is not completed by the end of the renewal month, the case will be closed unless the enrollee has good cause for not completing the renewal process on time. Good cause includes a medical emergency, death of an immediate family member, or natural disaster, or other similar occurrence.~~

~~(8) The Department may require an interview with the parent, child, or adult who has assumed responsibility for the care or supervision of a child, or other authorized representative as part of the renewal process.~~

]

#### **R382-10-19. Enrollment Period.**

~~(1) The enrollment period begins with either the date of application, or an earlier date as defined in R382-10-18, if the applicant is determined eligible for CHIP enrollment. Covered services the child received on or after the effective date of enrollment are payable by CHIP for a child who was eligible upon application.~~

~~([2]1) [A]Subject to the provisions in Subsection R382-10-19(2), a child eligible for CHIP enrollment receives 12 months of coverage that begins with the effective month of enrollment. If the eligibility agency allows a grace enrollment period that extends into the month before the application month, the days of the grace enrollment period do not count as a month in the 12-month enrollment period.~~

~~(2) CHIP coverage may end before the end of the 12-month certification period if the child:~~

\_\_\_\_\_ (a) ~~unless the child~~ turns 19 years of age before the end of the 12-month enrollment period[;];

\_\_\_\_\_ (b) moves out of the state[;];

\_\_\_\_\_ (c) becomes eligible for Medicaid[;];

\_\_\_\_\_ (d) begins to be covered under a group health plan or other health insurance coverage[;];

\_\_\_\_\_ (e) enters a public institution or an institution for mental diseases[;]; or

\_\_\_\_\_ (f) does not pay ~~his or her~~ the quarterly premium.

(3) The month that a child turns 19 years of age is the last month that the child ~~is~~ may be eligible for CHIP.

(4) Certain changes affect an enrollee's eligibility during the 12-month certification period.

(a) If an enrollee gains access to health insurance under an employer-sponsored plan or COBRA coverage, the enrollee may switch to UPP. The enrollee must report the health insurance within ten calendar days of enrolling, or within ten calendar days of when coverage begins, whichever is later. The employer-sponsored plan must meet UPP criteria.

(b) If income decreases, the enrollee may report the income and request a redetermination. If the change makes the enrollee eligible for Medicaid, the eligibility agency shall end CHIP eligibility and enroll the child in Medicaid.

(c) If the decrease in income causes the child to be eligible for a lower premium, the change in eligibility becomes effective the month after the eligibility agency receives verification of the change.

(d) If income increases during the certification period, eligibility remains unchanged through the end of the certification period.

(5) Failure to make a timely report of a reportable change may result in an overpayment of benefits.

#### **R382-10-20. Quarterly Premiums.**

(1) Each family with children enrolled in the CHIP program must pay a quarterly premium based on the countable income of the family during the first month of the quarter.

(a) A family whose countable income is equal to or less than 100% of the federal poverty level or who are American Indian or Alaska Native pays no premium.

(b) A family with countable income greater than 100% and up to 150% of the federal poverty level must pay a quarterly premium of \$30.

(c) A family with countable income greater than 150% and up to 200% of the federal poverty level must pay a quarterly premium of \$75.

(2) The eligibility agency shall end CHIP coverage and assess a \$15 late fee to ~~[A]~~ a family who does not pay its quarterly premium by the premium due date ~~[will be terminated from CHIP and assessed a \$15 late fee]. The agency may reinstate coverage [Coverage may be reinstated]~~ when any of the following events occur:

(a) The family pays the premium and the late fee by the last day of the month immediately following the termination;

(b) The family's countable income decreased to below 100% of the federal poverty level prior to the first month of the quarter.

(c) The family's countable income decreases prior to the first month of the quarter and the family owes a lower premium amount. The new premium must be paid within 30 days.

(3) A family whose CHIP coverage ~~was terminated~~ ends ~~from CHIP~~ and who reapplies within one year ~~for coverage~~ ~~of the termination date,~~ must pay any outstanding premiums and late fees before the children can be re-enrolled.

(4) The eligibility agency may not charge the household a premium during a due process month associated with the periodic eligibility review.

(5) The eligibility agency shall assess premiums that are payable each quarter for each month of eligibility.

#### **R382-10-21. Termination and Notice.**

(1) The ~~[Department shall notify]~~ eligibility agency shall notify an applicant or enrollee in writing of the eligibility decision made on the application or ~~[at renewal]~~ periodic eligibility review.

(2) The ~~[Department shall notify]~~ eligibility agency shall notify an enrollee in writing ten calendar days before taking a proposed action that adversely affect~~ing~~s the enrollee's eligibility.

(3) Notices under ~~[this section]~~ Section R382-10-21 shall provide the following information:

(a) the action to be taken;

(b) the reason for the action;

(c) the regulations or policy that support the action when the action is a denial, closure or an adverse change to eligibility;

(d) the applicant's or enrollee's right to a hearing;

(e) how an applicant or enrollee may request a hearing;

and

(f) the applicant's or enrollee's right to represent himself, ~~or~~ use legal counsel, a friend, relative, or other spokesperson.

(4) The ~~[Department]~~ eligibility agency need not give ten-day notice of termination if:

(a) the child is deceased;

(b) the child ~~[has]~~ move~~d~~s out~~[-]~~of~~[-]~~ state and is not expected to return;

(c) the child ~~[has]~~ enter~~ed~~s a public institution or an institution for mental diseases; or

~~[\_\_\_\_\_ (d) the child has enrolled in other health insurance coverage, in which case eligibility ends the day before the new coverage begins.~~

~~]~~ ([e]d) the child's whereabouts are unknown and the post office has returned mail to indicate that there is no forwarding address.

#### **R382-10-22. Case Closure or Withdrawal.**

The ~~[Department shall]~~ eligibility agency shall ~~[terminate]~~ end a child's enrollment upon enrollee request or upon discovery that the child is no longer eligible. An applicant may withdraw an application for CHIP benefits any time ~~[prior to approval of]~~ before the eligibility agency makes a decision on the application.

#### **KEY: children's health benefits**

**Date of Enactment or Last Substantive Amendment:** ~~[August 22, ]2011~~

**Notice of Continuation:** May 19, 2008

**Authorizing, and Implemented or Interpreted Law:** 26-1-5; 26-40

**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-40-4  
Service Coverage for Private Duty  
Nursing**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35303

FILED: 09/29/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to clarify Medicaid policy on the number of private duty nursing (PDN) hours that a patient may receive.

**SUMMARY OF THE RULE OR CHANGE:** This change clarifies that the number of PDN hours that a patient may receive depends on how the patient scores on the PDN Acuity Grid. It also removes language that no longer applies to service coverage for PDN patients.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 26-1-5 and Section 26-18-3

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no impact to the state budget because this change simply allows for a redistribution of resources to cover Medicaid recipients who do not have access to PDN services. The allocation of resources to provide these services is ongoing so there is no cost or savings to the General Fund.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide PDN services in the home.

◆ **SMALL BUSINESSES:** There is no impact to small businesses because this change simply allows for a redistribution of resources to cover Medicaid recipients who do not have access to PDN services. The allocation of resources to provide these services is ongoing so there is no increase or loss in provider revenue.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and recipients because this change simply allows for a redistribution of resources to cover recipients who do not have access to PDN services. The allocation of resources to provide these services is ongoing so there is no increase or loss in provider revenue and Medicaid recipients do not incur any out-of-pocket expenses.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no impact to a Medicaid provider or recipient because this change simply allows for a redistribution of resources to cover a recipient who does not have access to PDN services. The

allocation of resources to provide these services is ongoing so there is no loss in provider revenue and a Medicaid recipient does not incur any out-of-pocket expenses.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact on business, either small or regular, is expected due to this change as private duty nursing services will be allocated through a widely recognized industry standard.

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

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY, UT 84116-3231  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-40. Private Duty Nursing Service.**

**R414-40-4. Service Coverage for Private Duty Nursing.**

(1) Private duty nursing service is a limited benefit that is provided with the expectation that the patient's need for private duty nursing service will decrease over time.

(2) Medicaid covers medically necessary and appropriate private duty nursing service for a limited time to provide skilled nursing care in the home. Medicaid provides private duty nursing service while the private duty nursing service provider trains the recipient's caregivers to provide the necessary care. Once the caregivers have been given sufficient training for the recipient's needs, the private duty nursing service ends. However, a client who still requires more than four hours of ongoing skilled nursing service may receive private duty nursing service as provided in this rule. [~~Ventilator dependent recipients who require frequent ventilator checks may receive up to eight hours per day of continued private duty nursing. Ventilator dependency means the recipient requires at least eight continuous hours on the ventilator per day to compensate for decreased lung function.~~]

(3) The number of private duty nursing (PDN) hours that a patient may receive is based on how the patient scores on the PDN Acuity Grid. The PDN provider shall provide supporting

documentation to justify the patient's score. The PDN Acuity Grid must reflect the average daily care given by the nurse during the previous certification period.

~~[(3) Medicaid covers medically necessary and appropriate private duty nursing for the following. To receive these services, a patient must be in transition from the hospital, be ventilator-dependent, or be a patient with a tracheostomy who is unable to manage secretions:~~

- ~~— (a) tracheostomy care;~~
- ~~— (b) total parenteral nutrition;~~
- ~~— (c) intravenous therapy where a single intravenous therapy infusion takes at least four continuous hours and requires monitoring and treatment by a skilled nurse;~~
- ~~— (d) decubitus ulcer care for stage three or four ulcers;~~
- ~~— (e) colostomy or ileostomy care;~~
- ~~— (f) suprapubic catheter care;~~
- ~~— (g) continuous nasogastric or gastrostomy tube feeding;~~
- ~~— (h) mechanical ventilator support;~~
- ~~— (i) monitoring a patient on oxygen who experiences frequent oxygen desaturation.~~

] (4) After informing the recipient's family or similar representatives who live with the recipient and in coordination and consultation with the physician, the private duty nurse shall attempt to wean the patient from a device or service and identify new problems.

(5) Private duty nursing is not covered to provide services solely for the following:

- (a) custodial or sitter care to ensure the patient is compliant with treatment;
- (b) respite care;
- (c) monitoring behavioral or eating disorders; and
- (d) observation or monitoring medical conditions that do not require skilled nursing care.

(6) Private duty nursing service is not covered if the service is available from another funding source, agency, or program.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment:** ~~[June 23, 2008]~~**2011**

**Notice of Continuation:** October 14, 2010

**Authorizing, and Implemented or Interpreted Law:** 26-1-5; 26-18-3

## Judicial Performance Evaluation Commission, Administration **R597-3**

### Judicial Performance Evaluations

#### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 35281  
FILED: 09/22/2011

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The rule clarifies some provisions and further defines the refined survey process and the standards for the courtroom observation program. It also adds new sections establishing minimum performance standards and providing for public comment.

**SUMMARY OF THE RULE OR CHANGE:** The rule sets forth dates for the evaluation cycles for 2016 judges; provides additional detail about the survey process; eliminates language relevant to litigant surveys which have been statutorily eliminated; adds Juvenile Court Professionals as a survey respondent group; establishes Procedural Fairness as the guideline for the courtroom observation program; reworks the criteria for Procedural Fairness; and adds sections governing Minimum Performance Standards and Public Comments.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 78A-12-201 through 78A-12-206

#### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Because the rule does not create any new programs but rather articulates requirements and procedures for existing programs, there is no anticipated cost or savings for the state budget. While litigant surveys have been eliminated, juvenile court professional surveys have been added, so the budget remains the same.

◆ **LOCAL GOVERNMENTS:** Because the commission has no authority with respect to local government, there is no anticipated cost or savings to local government.

◆ **SMALL BUSINESSES:** Because the commission has no authority with respect to small businesses, there is no anticipated cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Because the commission has no authority with respect to small businesses, businesses, or local government entities, there is no anticipated cost or savings to such entities.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The commission assumes all statutory compliance costs. Affected persons do not assume any compliance costs.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Because the commission does not regulate businesses, there is no fiscal impact on businesses.

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

JUDICIAL PERFORMANCE EVALUATION  
COMMISSION  
ADMINISTRATION  
ROOM B-330 SENATE BUILDING  
420 N STATE ST  
SENATE BUILDING B-330  
SALT LAKE CITY, UT 84114



or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Joanne Slotnik by phone at 801-538-1652, by FAX at 801-538-1024, or by Internet E-mail at [jslotnik@utah.gov](mailto:jslotnik@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2011

AUTHORIZED BY: V. Lowry Snow, Chair

**R597. Judicial Performance Evaluation Commission, Administration.**

**R597-3. Judicial Performance Evaluations.**

**R597-3-1. Evaluation Cycles.**

(1) For judges not serving on the supreme court:

(a) The mid-term evaluation cycle. Except as provided in subsection (4) [F]the mid-term evaluation cycle begins upon the appointment of the judge or on the first Monday in January following the retention election of the judge and ends 2 1/2 years later, on June 30th of the third year preceding the year of the judge's next retention election.

(b) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the judge's next retention election.

(2) For justices serving on the supreme court:

(a) The initial evaluation cycle. The initial evaluation cycle begins upon the appointment of the justice or on the first Monday in January following the retention election of the justice and ends 2 1/2 years later, on June 30th of the seventh year preceding the year of the justice's next retention election.

(b) The mid-term evaluation cycle. The mid-term evaluation cycle begins the day after the initial evaluation cycle is finished and ends four years later, on June 30th of the third year preceding the year of the justice's next retention election.

(c) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the justice's next retention election.

(3) Transition Evaluation Cycles

(a) For judges standing for retention election in 2012:

(i) The mid-term evaluation cycle for attorney surveys shall begin on January 1, 2008 and end on December 31, 2009.

(ii) The mid-term evaluation cycle for all other survey categories shall begin in 2009 and end on January 31, 2010.

(iii) The retention evaluation cycle for all surveys shall begin no later than July 1, 2010, and end on June 30, 2011.

(b) For judges not on the supreme court standing for retention election in 2014:

(i) The mid-term evaluation cycle for surveys of attorneys and jurors shall begin in 2009 and finish on June 30, 2011.

(ii) The mid-term evaluation cycle for all pilot program categories shall begin no later than July 1, 2010, and end on June 30, 2011.

(iii) The retention evaluation cycle will be as described in R597-3-1(1)(b), supra.

(c) For supreme court justices standing for retention election in 2014:

(i) The mid-term evaluation cycle for surveys of attorneys shall begin in 2009 and end on June 30, 2011.

(ii) The mid-term evaluation cycle for relevant pilot programs categories shall begin no later than July 1, 2010, and end on June 30, 2011.

(iii) The retention evaluation cycle shall be as described in R597-3-1(2)(b)-(c).

(d) For judges not on the supreme court standing for retention election in 2016:

(i) Except as provided in subsection (4), the mid-term evaluation cycle shall begin on July 1, 2011 and end two years later on June 30, 2013.

(ii) The retention evaluation cycle shall be as described in R597-3(1)(b), supra.

(e) For supreme court justices standing for retention election in 2016:

(i) The initial evaluation cycle shall be combined with the mid-term evaluation, beginning in 2009 and ending on June 30, 2013.

(ii) The combined initial/mid-term evaluation cycle for surveys of attorneys shall begin in 2009 and end on June 30, 2013.

(iii) The combined initial/mid-term evaluation cycle for relevant pilot programs categories shall begin no later than July 1, 2010.

(iv) The retention evaluation cycle shall be as described in R597-3-1(2)(c).

**R597-3-2. Survey.**

(1) General provisions.

(a) All surveys shall be conducted according to the evaluation cycles described in R597-3-1, supra.

(b) The commission shall ~~post on its website~~ the survey questionnaires upon which the judge shall be evaluated ~~to each judge~~ at the beginning of the survey cycle.

(c) ~~In 2010, the commission shall finalize survey questionnaires and implementation procedures for each respondent classification.~~

~~—(d)—~~The commission may select retention survey questions from among the midterm survey questions.

(d) Periodically, reviews may be conducted to ensure compliance with administrative rules governing the survey process.

(e) The commission may consider narrative survey comments that cannot be reduced to a numerical score.

(2) Respondent Classifications

(a) Attorneys

(i) Identification of survey respondents. Within 10 business days of the end of the evaluation cycle, the clerk for the judge or the Administrative Office of the Courts shall identify as potential respondents all attorneys who have appeared before the judge who is being evaluated at a minimum of one hearing or trial during the evaluation cycle. Attorneys who have been confirmed as judges during the evaluation cycle shall be excluded from the attorney pool.

(ii) Number of survey respondents.

(A) For each judge who is the subject of a survey, the surveyor shall identify the number of attorneys most likely to produce a response level yielding reliability at a 95% confidence level with a margin of error of +/- 5%.

(B) ~~[; or, i]~~ In the event that the attorney appearance list from the Administrative Office of the Courts contains an insufficient number of attorneys with one trial appearance or at least three total appearances~~[have appeared]~~ before the evaluated judge to achieve th~~[at]~~e required confidence level, then the surveyor shall supplement the survey pool with other~~[at]~~ attorneys who have appeared before the judge during the evaluation cycle.

(iii) Sampling. The surveyor shall design the survey to comply with generally-accepted principles of surveying. All attorneys with one trial appearance or at least three total appearances before the evaluated judge shall be surveyed.

(iv) Distribution of surveys. Surveys shall be distributed by the third-party contractor engaged by the commission to conduct the survey. The contractor shall determine the maximum number of survey requests sent to a single attorney based on an analysis of the Administrative Office of the Courts appearance data at the time of the survey. In no event shall any attorney receive more than nine survey requests.

(b) Jurors

(i) Identification and number of survey respondents. All jurors who participate in deliberation shall be eligible to receive an online juror survey.

(ii) Distribution of surveys. Prior to the jury being dismissed, the bailiff or clerk in charge of the jury shall collect email addresses from all jurors. If email addresses are not available, street addresses shall be collected. The bailiff or clerk shall transmit all such addresses to the surveyor within 24 hours of collection. The surveyor shall administer the survey online and deliver survey results electronically to each judge. Paper surveys may be sent to those jurors who do not have access to email.

(c) Court Staff

(i) Definition of court staff who have worked with the judge. Court staff who have worked with the judge refers to employees of the judiciary who have regular contact with the judge as the judge performs judicial duties and also includes those who are not employed by the judiciary but who have ongoing administrative duties in the courtroom.

(ii) Identification of survey respondents. Court staff who have worked with the judge include, but are not limited to:

- (A) judicial assistants;
- (B) case managers;
- (C) clerks of court;
- (D) trial court executives;
- (E) interpreters;
- (F) bailiffs;
- (G) law clerks;
- (H) central staff attorneys;

~~(I) juvenile probation and intake officers;~~

~~([H]J) other courthouse staff, as appropriate;~~

~~([F]K) Administrative Office of the Courts staff.~~

~~[(ii) Pilot program. The commission shall run a pilot program to evaluate the methodology, content, and administrative feasibility of surveying court staff.~~

~~(d) Litigants~~

~~(i) Identification of survey respondents. The following categories are litigants for purposes of the judicial performance evaluation survey:~~

~~(A) any named party to an action; and~~

~~(B) any of the following if involved directly or indirectly in litigation before the judge:~~

~~(I) any person 14 years of age or older;~~

~~(II) the parent, foster parent, guardian, or legal custodian of any minor;~~

~~(III) the designated representative of a corporate or like entity;~~

~~(IV) an executor, administrator, guardian, or like person representing a real party in interest who has appeared before the judge.~~

~~(ii) The representative of the prosecuting entity in a criminal case shall be surveyed as an attorney. Prosecutor responses to the judicial temperament part of the survey shall be reported in both the attorney and litigant portions of the judicial evaluation report.~~

~~(iii) Pilot Program. The commission shall run a pilot program to evaluate the methodology, content, and administrative feasibility of surveying litigants.~~

~~(f) Juvenile Court Professionals~~

(i) Definition of juvenile court professional. A juvenile court professional is someone whose professional duties place that individual in court on a regular and continuing basis to provide substantive input to the court.

(ii) Identification of survey respondents. Juvenile court professionals shall include, where applicable:

(A) Division of Child and Family Services ("DCFS") child protection services workers;

(B) Division of Child and Family Services ("DCFS") case workers;

(C) Juvenile Justice Services ("JJS") Observation and Assessment Staff;

(D) Juvenile Justice Services ("JJS") case managers;

(E) Juvenile Justice Services ("JJS") secure care staff;

(F) Others who provide substantive professional services on a regular basis to the juvenile court.

~~(iii) [The commission shall run a pilot program to evaluate the methodology, content, and administrative feasibility of surveying juvenile court professionals.] Beginning with juvenile court judges standing for retention in 2014, juvenile court professionals shall be included as an additional survey respondent group for both the midterm and retention evaluation cycles.~~

~~(3) Anonymity and Confidentiality~~

~~(a) Definitions~~

~~(i) Anonymous.~~

(A) "Anonymous" means that the identity of the individual who authors any survey response, including comments, will be protected from disclosure.

(B) The independent contractor conducting the surveys shall provide to the commission all written comments from the surveys, redacted to remove any information that identifies the person commenting. The contractor shall also redact any information that discloses the identity of any crime victims referenced in a written comment.

(C) The submission of a survey form containing an anonymous narrative comment does not preclude any survey respondent from submitting a public comment in writing pursuant to the Judicial Performance Evaluation Commission Act.

(ii) Confidentiality: Confidentiality means information obtained from a survey respondent that the respondent may reasonably expect will not be disclosed other than as indicated in the survey instrument.

(iii) The raw form of survey results consists of all quantitative survey data that contributes to the minimum score on the judicial performance survey.

(iv) The summary form of survey results consists of quantitative survey data in aggregated form.

### **R597-3-3. Courtroom Observation.**

#### (1) General Provisions.

(a) Courtroom observations shall be conducted according to the evaluation cycles described in R597-3-1(1) and (2), supra.

(b) The commission shall provide notice to each judge at the beginning of the survey cycle of the courtroom observation process and of the instrument to be used by the observers.

#### (2) Courtroom Observers.

##### (a) Selection of Observers

(i) Courtroom observers shall be volunteers, recruited by the commission through public outreach and advertising.

(ii) Courtroom observers shall be selected by the commission staff, based on written applications and an interview process.

(b) Selection Criteria. Observers with a broad and varied range of life experiences shall be sought. The following persons shall be excluded from eligibility as courtroom observers:

(i) persons with a professional involvement with the state court system, the justice courts, or the judge;

(ii) persons with a fiduciary relationship with the judge;

(iii) persons within the third degree of relationship with a state or justice court judge (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);

(iv) persons lacking computer access or basic computer literacy skills;

(v) persons currently involved in litigation in state or justice courts;

(~~vi~~) convicted felons;

(~~vii~~) persons whose background or experience suggests they may have a bias that would prevent them from objectively serving in the program.

##### (c) Terms and Conditions of Service

(i) Courtroom observers shall serve at the will of the commission staff.

(ii) Courtroom observers shall commit to one one-year term of service.

(iii) Courtroom observers may serve up to three one-year terms, subject to annual renewal at the discretion of the commission.

(iv) Courtroom observers shall not disclose the content of their courtroom evaluations in any form or to any person except as designated by the commission.

##### (d) Training of Observers

(i) Courtroom observers must satisfactorily complete a training program developed by the commission before engaging in courtroom observation.

(ii) Elements of the training program shall include:

(A) Orientation and overview of the commission process and the courtroom observation program;

(B) Classroom training addressing each level of court;

(C) In-court group observations, with subsequent classroom discussions, for each level of court;

(D) Training on proper use of observation instrument;

(E) Training on confidentiality and non-disclosure issues;

(F) Such other periodic trainings as are necessary for effective observations.

#### (3) Courtroom Observation Program.

##### (a) Courtroom Requirements

(i) During each midterm and retention evaluation cycle, a minimum of four different observers shall observe each judge subject to that evaluation cycle.

(ii) Each observer shall observe each judge in person while the judge is in the courtroom and for a minimum of two hours while court is in session. The observations may be completed in one sitting or over several courtroom visits.

(iii) If a judge sits in more than one geographic location at the judge's appointed level or a justice court judge serves in more than one jurisdiction, the judge may be observed in any location or combination of locations in which the judge holds court.

(iv) When the observer completes the observation of a judge, the observer shall complete the observation instrument, which will be electronically transferred to the commission or the third party contractor for processing.

##### (b) Travel and Reimbursement

(i) All travel must be preapproved by the executive director.

(ii) All per diem and lodging will be reimbursed, when appropriate, in accordance with Utah state travel rules and regulations.

(iii) Travel reimbursement forms shall be submitted on a monthly basis or whenever the observer has accumulated a minimum of 200 miles of travel.

(iv) Travel may be reimbursed only after the observer has satisfactorily completed and successfully submitted the courtroom observation report for which the reimbursement is sought.

##### (~~iv~~) Overnight lodging

(A) Overnight lodging is reimbursable when the courtroom is located over 100 miles from home base and court is scheduled to begin before 9:30 a.m., with any exceptions preapproved by commission staff.

(B) Multiple overnight lodging is reimbursable where the commission staff determines it is cost-effective to observe several courtrooms in a single trip.

(v) Each courtroom observer must provide a social security number or tax identification number to the commission in order to process state reimbursement.

(4) Principles and Standards used to evaluate the behavior observed.

(a) Procedural fairness, which focuses on the treatment judges accord people in their courts, shall be used to evaluate the judicial behavior observed in the courtroom observation program.

~~(b) To assess a judge's conduct in court with respect to procedural fairness, observers shall respond in narrative form to the following principles and behavioral standards:~~

~~[(a) Courtroom observers shall respond to questions concerning a judge's:~~

~~]~~ (i) Neutrality, including but not limited to:  
(A) displaying fairness and impartiality toward all ~~[parties]~~ court participants;

(B) acting as a fair and principled decision maker who applies rules consistently across ~~[people and over]~~ court participants and cases;

(C) explaining transparently and openly how rules are applied and how decisions are reached.

~~(D) listening carefully and impartially;~~

(ii) Respect, including but not limited to:

(A) demonstrating courtesy toward attorneys, court staff, and others in the court;

(B) treating all people with dignity;

~~(C) [demonstrating appropriate consideration for people's rights;~~

~~(D)]~~ helping interested parties understand decisions and what the parties must do as a result;

~~(E)]~~ maintaining decorum in the courtroom.

~~[(iii) Trustworthiness, including:~~

~~(A) demonstrating interest in the needs, problems, and concerns of court participants;~~

~~(B) listening carefully and impartially;~~

~~(C) avoiding impropriety and the appearance of impropriety;~~

~~(D)]~~(E) demonstrating adequate preparation to hear scheduled cases;

(F)] acting in the interests of the parties, not out of demonstrated personal prejudices;

(G)] managing the ~~[workload, including the practical impact on the parties and the effect of delay.]~~ caseload efficiently and demonstrating awareness of the effect of delay on court participants;

(H) demonstrating interest in the needs, problems, and concerns of court participants.

(iii)(v) Voice, including but not limited to:

(A) giving parties the opportunity, where appropriate, to ~~[tell their story or]~~ give voice to their perspectives or situations and demonstrating that they ~~have[ir story or perspective has]~~ been heard;

(B) behaving in a manner that demonstrates full consideration of the case as presented through witnesses, arguments, pleadings, and other documents.

(C) attending, where appropriate, to the participants' comprehension of the proceedings.

(b)c) Courtroom observers may also be asked ~~[additional]~~ questions to help the commission assess the overall performance of the judge with respect to procedural fairness.

#### **R597-3-4. Minimum Performance Standards.**

(1) In addition to the minimum performance standards specified by statute or administrative rule, the judge shall:

(a) Demonstrate by a preponderance of the evidence, based on courtroom observations and relevant survey responses,

that the judge's conduct in court promotes procedural fairness for court participants.

(b) Meet all performance standards established by the Judicial Council, including but not limited to:

(i) annual judicial education hourly requirement;

(ii) case-under-advisement standard; and

(iii) physical and mental competence to hold office.

(2) No later than October 1st of the year preceding each general election year, the Judicial Council shall certify to the commission whether each judge standing for retention election in the next general election has satisfied its performance standards.

#### **R597-3-5. Public Comments.**

(1) Persons desiring to comment about a particular judge with whom they have had first-hand experience may do so at any time, either by submitting such comments on the commission website or by mailing them to the executive director.

(2) In order for the commission to consider comments in making its retention recommendation on a particular judge, comments about that judge must be received no later than November 1<sup>st</sup> of the year preceding the election in which the judge's name appears on the ballot.

(3) Persons submitting comments pursuant to this section must include their full name, address, and telephone number with the submission.

(4) All comments must be based upon first-hand experience with the judge.

**KEY: judicial performance evaluations, judges, evaluation cycles, surveys**

**Date of Enactment or Last Substantive Amendment: [October 22, 2010]2011**

**Authorizing, and Implemented or Interpreted Law: 78A-12**

## Labor Commission, Antidiscrimination and Labor, Antidiscrimination **R606-2** Pre-Employment Inquiry Guide

### NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 35297

FILED: 09/28/2011

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Labor Commission proposes to repeal the existing Rule R606-2, "Pre-Employment Inquiry Guide," because the information contained therein is a restatement of principles derived from state and federal case law and other sources. Since the rule is intended to be informational rather than directive, the Commission believes the subject matter is more properly disseminated through educational materials rather than by rule.

SUMMARY OF THE RULE OR CHANGE: The proposed change repeals Rule R606-2 in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-5-101 et seq. and Section 63G-4-102 et seq.

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The standards of conduct described in Rule R606-2 are established by other sources of law. Consequently, repeal of Rule R606-2's restatement of those standards will have no substantive effect and will not result in cost or savings to the state budget.
- ◆ LOCAL GOVERNMENTS: The standards of conduct described in Rule R606-2 are established by other sources of law. Consequently, repeal of Rule R606-2's restatement of those standards will have no substantive effect and will not result in cost or savings to local government.
- ◆ SMALL BUSINESSES: The standards of conduct described in Rule R606-2 are established by other sources of law. Consequently, repeal of Rule R606-2's restatement of those standards will have no substantive effect and will not result in cost or savings to small business.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The standards of conduct described in Rule R606-2 are established by other sources of law. Consequently, repeal of Rule R606-2's restatement of those standards will have no substantive effect and will not result in cost or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Repeal of Rule R606-2 will not eliminate or impose any additional requirements on businesses, workers, or other affected persons. Consequently, the rule's repeal will not impose any compliance costs on affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because Rule R606-2 merely recapitulates for preemployment inquiries what has been established elsewhere, repeal of the rule will have no fiscal impact on businesses.

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

LABOR COMMISSION  
 ANTIDISCRIMINATION AND LABOR,  
 ANTIDISCRIMINATION  
 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:  
◆ Heather Gunnarson by phone at 801-530-6921, by FAX at 801-530-7601, or by Internet E-mail at hgunnarson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2011

AUTHORIZED BY: Sherrie Hayashi, Commissioner

**R606. Labor Commission, Antidiscrimination and Labor, Antidiscrimination.**

**[R606-2. Pre-Employment Inquiry Guide.**

**R606-2-1. Authority.**

~~—————~~ This rule is established pursuant to Section 34A-5-104.

**R606-2-2. Guidelines.**

~~—————~~ Any inquiry is improper which, although not specifically listed below, is designed to elicit information as to Race, Color, Sex, Age, Religion, National Origin, or Disability. The prime consideration for any job is the ability to perform it.

~~—————~~ A. NAME

~~—————~~ 1. Proper Pre-Employment Inquiries:

~~—————~~ First, Middle, and Last Name and any other name used for prior employment.

~~—————~~ 2. Improper Pre-Employment Inquiries:

~~—————~~ Inquiry into original name cannot be used for discriminatory purposes. Inquiries concerning specific questions about the name which would indicate applicant's lineage, ancestry, national origin, or descent; or to require prefix to applicant's name; (Mr., Mrs., Miss, Ms.); or to inquire into marital status unless based on legitimate bona fide occupational qualifications or prior employment history are considered improper.

~~—————~~ B. ADDRESS

~~—————~~ 1. Proper Pre-employment Inquiries:

~~—————~~ Applicant's place of residence.

~~—————~~ 2. Improper Pre-employment Inquiries:

~~—————~~ Inquiry into foreign addresses which would indicate national origin.

~~—————~~ C. BIRTHPLACE

~~—————~~ 1. Proper Pre-employment Inquiries:

~~—————~~ Proof of citizenship may be requested prior to hiring in accordance with the Immigration Reform and Control Act of 1986 (IRCA).

~~—————~~ 2. Improper Pre-Employment Inquiries:

~~—————~~ Inquiry into birthplace of applicant, or birthplace of applicant's parents, spouse, or relatives. Require prior to hiring, birth certificate, naturalization or baptismal record.

~~—————~~ D. RACE OR COLOR

~~—————~~ 1. Proper Pre-Employment Inquiries:

~~—————~~ None.

~~—————~~ 2. Improper Pre-Employment Inquiries:

~~—————~~ Any inquiry which would indicate race or color is prohibited.

~~—————~~ E. AGE

~~—————~~ 1. Proper Pre-Employment Inquiries:

~~—————~~ Are you under the age of 18? If there is a question as to applicant being of legal working age, proof may be requested in form of work permit.

~~2. Improper Pre-Employment Inquiries:  
Requesting an individual's date of birth prior to employment is prohibited, unless relative to whether the individual is a minor.~~

~~F. DISABILITY~~

~~1. Proper Pre-Employment Inquiries:  
a. an inquiry about ability to perform job-related functions as long as the questions are not phrased in terms of a disability.~~

~~b. asking a job applicant to describe or demonstrate, with or without reasonable accommodation, his ability to perform job-related functions.~~

~~2. Improper Pre-Employment Inquiries:~~

~~a. any inquiry whether an applicant is disabled or about the nature or severity of a disability.~~

~~b. any requirement for an applicant to take a medical examination prior to an offer of employment.~~

~~G. SEX~~

~~1. Proper Pre-Employment Inquiries:~~

~~Where a bona fide occupational qualification is reasonably necessary to the normal operation of that business or enterprise:~~

~~2. Improper Pre-Employment Inquiries:~~

~~Any other inquiry which would indicate sex or related conditions such as pregnancy or plans to have children. Inquiry into sex of applicant.~~

~~H. PHOTOGRAPHS~~

~~1. Proper Pre-Employment Inquiries:~~

~~Photograph may be requested only after hiring and then only for legitimate business purpose.~~

~~2. Improper Pre-Employment Inquiries:~~

~~Any request for photograph prior to hiring is prohibited.~~

~~I. RELIGION-CREED~~

~~1. Proper Pre-Employment Inquiries:~~

~~None.~~

~~2. Improper Pre-Employment Inquiries:~~

~~Inquiry into an applicant's religious denomination, religious affiliations, church, parish, pastor, or religious holidays observed prior to hiring is prohibited.~~

~~J. RELATIVES~~

~~1. Proper Pre-Employment Inquiries:~~

~~Inquiry into name and address and relationship of persons to be notified in case of emergency. For a minor it must be a parent or guardian.~~

~~2. Improper Pre-Employment Inquiries:~~

~~Names and addresses of any relatives other than those listed as proper.~~

~~K. ORGANIZATIONS~~

~~1. Proper Pre-Employment Inquiries:~~

~~Inquiry into organization memberships including professional, scientific and civic groups, but excluding any organization, the name or charter of which indicate the race, religion, color, sex, and national origin of its members.~~

~~2. Improper Pre-Employment Inquiries:~~

~~Requirement that applicant list all organizations, clubs, societies, and lodges to which he belongs.~~

~~Unlawful to inquire into organizations which may indicate race, religion, color, sex, and national origin of their members.~~

~~L. NOTICE IN CASE OF EMERGENCY~~

~~1. Proper Pre-Employment Inquiries:~~

~~Name and address and relationship of "Persons" to be notified in case of accident or emergency.~~

~~2. Improper Pre-Employment Inquiries:~~

~~Name and address of all others except those listed as proper.~~

~~M. REFERENCES~~

~~1. Proper Pre-Employment Inquiries:~~

~~Persons willing to give references.~~

~~2. Improper Pre-Employment Inquiries:~~

~~Request of name of applicant's bishop, pastor, or religious leader.~~

~~N. MILITARY EXPERIENCE~~

~~1. Proper Pre-Employment Inquiries:~~

~~Inquiry into applicant's military experience or duties in United States Armed Forces.~~

~~2. Improper Pre-Employment Inquiries:~~

~~To require copy of military discharge paper or type of discharge, unless such inquiry is based upon a bona fide occupational qualification.~~

~~O. EXPERIENCE~~

~~1. Proper Pre-Employment Inquiries:~~

~~Inquiry into work experience.~~

~~2. Improper Pre-Employment Inquiries:~~

~~Any inquiries into work history which are not work-related.~~

~~P. CHARACTER~~

~~1. Proper Pre-Employment Inquiries:~~

~~Permissible to ask applicant for character references.~~

~~2. Improper Pre-Employment Inquiries:~~

~~Questions about applicant's sexual preferences or economic status.~~

~~Q. NUMBER OF DEPENDENTS~~

~~1. Proper Pre-Employment Inquiries:~~

~~This information may be requested only after hiring for legitimate purposes.~~

~~2. Improper Pre-Employment Inquiries:~~

~~Asking an applicant's number of dependents prior to employment is prohibited.~~

~~R. COLOR OF HAIR OR EYES~~

~~1. Proper Pre-Employment Inquiries:~~

~~None. Asking questions regarding hair color and eye color are not job relevant.~~

~~S. HEIGHT AND WEIGHT~~

~~1. Proper Pre-Employment Inquiries:~~

~~None.~~

~~2. Improper Pre-Employment Inquiries:~~

~~It is unlawful for an employer to set minimum height or weight requirements for hiring unless based on a bona fide occupational qualification.~~

~~T. EDUCATION~~

~~1. Proper Pre-Employment Inquiries:~~

~~Inquiry into what academic, professional, or vocational schools attended.~~

~~2. Improper Pre-Employment Inquiries:~~

~~It is unlawful to ask specifically the nationality, racial, or religious affiliation of a school attended by the applicant.~~

~~U. PRIOR ARREST RECORD~~

~~1. Proper Pre-Employment Inquiries:~~

~~None. It is not proper to ask about arrest records.~~  
~~V. CRIMINAL RECORD~~  
~~1. Proper Pre-Employment Inquiries:~~  
~~Have you ever been convicted of a felony? It is proper to ask about a felony conviction.~~  
~~2. Improper Pre-Employment Inquiries:~~  
~~Inquiry advisable only if job related.~~  
~~W. ECONOMIC STATUS~~  
~~1. Proper Pre-Employment Inquiries:~~  
~~None.~~  
~~2. Improper Pre-Employment Inquiries:~~  
~~It is generally prohibited to inquire as to bankruptcy, car ownership, rental or ownership of a house, length of residence at an address, or past garnishment of wages as poor credit ratings have a disparate impact on women and minorities.~~

~~KEY: discrimination, employment, time~~  
~~Date of Enactment or Last Substantive Amendment: 1994~~  
~~Notice of Continuation: October 13, 2006~~  
~~Authorizing, and Implemented or Interpreted Law: 34A-5-101 et seq.; 63G-4-102 et seq.]~~

**Labor Commission, Industrial Accidents**  
**R612-2-5**  
**Regulation of Medical Practitioner Fees**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 35305  
 FILED: 09/30/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Pursuant to authority granted by Subsection 34A-2-407(9) of the Utah Workers' Compensation Act, this amendment constitutes the Utah Labor Commission's annual update of its regulation of medical fees for treatment of injured workers. The amendment incorporates by reference the most current relative value scale, coding guidelines, and medical fee guidelines. The amendment also adjusts conversion rates used in computing fees for various medical disciplines.

**SUMMARY OF THE RULE OR CHANGE:** This amendment incorporates by reference the: 1) Ingenix Essential RBRVS, 2011 1st Quarter Emergency Update (RBRVS); 2) Ingenix 2011 Current Procedural Coding Expert (CPT). Although the titles of these incorporated materials have changed from previous versions of this rule, their scope remains the same. The amendment incorporates by reference the Labor Commission 2012 Medical Fee Guidelines. The amendment reduces conversion rates for various medical disciplines in order to partially offset increases in the RBRVS, and modifies the conversion rate for pathology and laboratory services from a percentage to dollar factor. Finally, the amendment conforms the description of the conversion rate for restorative

services to the provisions of the Commission's 2012 Medical Fee Guideline.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 34A-1-104 and Section 34A-2-101 et seq. and Section 34A-3-101 et seq.

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Updates Medical Fee Guidelines, published by Utah Labor Commission, 2012
- ◆ Updates Current Procedural Coding Expert, published by Ingenix, 2011
- ◆ Updates Essential RBRVS 1st Quarter Emergency Update, published by Ingenix, 2011

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The amendment will have no effect on the Labor Commission's cost in administering the Utah Workers' Compensation Act. With respect to the amendment's fiscal effect on the state in its capacity as an employer, changes incorporated within the RBRVS are offset to some extent by the reduction in conversion rates. The net effect will increase workers' compensation medical expense by approximately 2% and overall workers' compensation expense by approximately 1.3%.
- ◆ **LOCAL GOVERNMENTS:** As a result of this amendment, local governments, in their capacities as employers, can anticipate a net increase in workers' compensation medical expenses of approximately 2%, which will in turn result in an increase in overall-workers' compensation expenses of approximately 1.3%.
- ◆ **SMALL BUSINESSES:** As a result of this amendment, small businesses can anticipate a net increase in workers' compensation medical expenses of approximately 2%, which will in turn result in an increase in overall-workers' compensation expenses of approximately 1.3%.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Overall, physicians, therapists and others who provide medical services to injured workers can anticipate a 2% increase in payments for those services.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed rule does not impose any additional procedural requirements. It includes only a small increase in workers' compensation medical expenses, which should in turn result in only minimal compliance costs for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** With the assistance and approval of the Utah Workers' Compensation Advisory Council, this amendment carefully balances the cost to employers from slightly higher workers' compensation medical payments with the need to maintain a medical fee structure that will encourage medical providers to provide services to injured workers. While it is anticipated that the amendment will increase workers' compensation costs by approximately 1.3%, this modest increase is unlikely to have any significant fiscal impact on businesses, but is

necessary to maintain the participation of medical providers within Utah's workers' compensation system.

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

LABOR COMMISSION  
INDUSTRIAL ACCIDENTS  
HEBER M WELLS BLDG  
160 E 300 S  
SALT LAKE CITY, UT 84111-2316  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Ron Dressler by phone at 801-530-6841, by FAX at 801-530-6804, or by Internet E-mail at [rdressler@utah.gov](mailto:rdressler@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2011

AUTHORIZED BY: Sherrie Hayashi, Commissioner

**R612. Labor Commission, Industrial Accidents.  
R612-2. Workers' Compensation Rules-Health Care Providers.  
R612-2-5. Regulation of Medical Practitioner Fees.**

Pursuant to Section 34A-2-407(9):

A. The Labor Commission of Utah:

1. Establishes and regulates fees and other charges for medical provider services as required for the treatment of a work-related injury or illness.

2. Adopts and by this reference incorporates the [~~National Centers for Medicare and Medicaid Services (CMS) for the Medicare Physician Fee Schedule (MPFS) "Resource-Based Relative Value Scale" (RBRVS), 2010 edition~~]Ingenix Essential RBRVS, 2011 1st Quarter Emergency Update ("RBRVS"), as the method for calculating reimbursement and the [~~American Medical Association's CPT-4, 2010 edition, coding guidelines~~]Ingenix 2011 Current Procedural Coding Expert ("CPT").

a. The non-facility total unit value will apply in calculating the reimbursement, except that procedures provided in a facility setting shall be reimbursed at the facility total unit value and the facility may bill a separate facility charge.

b. The CPT[~~4~~] coding guidelines and 2011 First Quarter RBRVS, 1761 Edition, are subject to the Utah Labor Commission's [~~2011~~] Medical Fee Guidelines and the following Labor Commission conversion factors for medical care rendered for a work-related injury or illness, effective December 1, 201[~~0~~]1: (Conversion Rates below EFFECTIVE December 1, 20[~~09~~]11, to be used with the RBRVS procedural Unit value as per specialty.)

Anesthesiology \$4[~~4~~]0.00 (1 unit per 15 minutes of anesthesia);

Medicine, E and M \$4[~~6~~]4.00;

Evaluation and Management codes 99201 - 99204 and 99211 - 99214 \$4[~~6~~]4.00;

Pathology and Laboratory [~~+150% of Utah's published Medicare carrier~~]\$50.00;

Radiology \$5[~~3~~]1.00;

Restorative Services \$4[~~6~~]4.00;~~[with Utah code 97001 and 97003 at a 1.5 relative value unit and Utah code 97002 and 97004 at a 1.0 of relative value unit.]~~

Surgery \$3[~~7~~]6.00;

All 20000 codes, codes 49505 thru 49525 and all 60000 codes of the CPT-4 coding guidelines \$5[~~8~~]6.00.

3. Adopts and incorporates by this reference the Utah Labor Commission's 201[~~1~~]2 Medical Fee Guidelines, effective December 1, 201[~~0~~]1. The Utah Medical Fee Guidelines can be obtained from the division for a fee sufficient to recover costs of development, printing, and mailing or can be downloaded at the Labor Commission's website at <http://laborcommission.utah.gov/Provider%20Page.html#WorkersCompensation>.

4. Decides appropriate billing procedure codes when disputes arise between the medical practitioner and the employer or its insurance carrier. In no instance will the medical practitioner bill both the employer and the insurance carrier.

B. Employees cannot be billed for treatment of their work-related injuries or illnesses.

C. Discounting from the fees established by the Labor Commission is allowed only through specific contracts between a medical provider and a payor for treatment of work-related injury or illness.

D. Restocking fee 15%. Rule R612-2-16 covers the restocking fee.

E. Dental fees are not published. Rule R612-2-18 covers dental injuries.

F. Ambulance fees are not published. Rule R612-2-19 covers ambulance charges.

G. For procedures not covered by other provisions of this rule, medical providers have three options.

1. Medical providers may request preauthorization for a procedure from the insurance carrier.

2. Medical providers may present evidence to Medical Fee Committee for incorporating a procedure into the Commission's fee schedule. However, such incorporation will have prospective effect only.

3. Medical providers may apply for hearing before the Commission's Adjudication Division pursuant to Subsection 34A-2-801(1)(c) to establish a reasonable fee for the procedure.

**KEY: workers' compensation, fees, medical practitioner  
Date of Enactment or Last Substantive Amendment:  
[~~November 22, 2010~~]2011**

**Notice of Continuation: April 28, 2008**

**Authorizing, and Implemented or Interpreted Law: 34A-2-101 et seq.; 34A-3-101 et seq.; 34A-1-104**

Public Safety, Administration  
**R698-5**  
Hazardous Chemical Emergency  
Response Commission



**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35295

FILED: 09/27/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** On 09/21/2011, the State Hazardous Chemical Emergency Response Commission (SERC) met in a regularly scheduled meeting and voted by unanimous vote to amend the adopted administrative rules. The SERC decided to add an additional member to the SERC Advisory Committee and add proposed administrative rules to create the needed steps required for a Local Emergency Planning Committee (LEPC) to dissolve. It is also proposed that every July the LEPCs submit to the SERC a current list of voting members to include the chair and vice chair. The SERC also made a couple of minor changes to the rule, to include one new definition, and to add the ability of the rule to be properly used and understood.

**SUMMARY OF THE RULE OR CHANGE:** The SERC proposed to make the following amendments to the administrative rule as follows: 1) in Subsection R698-5-2(2.6), the SERC proposed to add the definition of USC meaning United States Code; 2) in Subsection R698-5-3(3.2.9), the SERC proposed to add an additional member to the SERC Advisory Board representing the Utah National Guard; 3) in Subsection R698-5-4(4.2), the SERC proposed to make amendments that clarifies currently enacted administrative rules in the procedures to create a Local Emergency Planning Committee (LEPC); 4) in Subsection R698-5-4(4.3), the SERC proposed to create rules that establishes the procedure required for an LEPC to dissolve, the transfer of remaining funds, notification to the facilities involved with the LEPC that submitted chemical inventory to the LEPC, and stating the address of the LEPC that will assume the duties of the dissolving LEPC; and 5) in Subsection R698-5-4(4.4), the SERC proposed to establish the requirement that by July 1 of each year all existing LEPCs shall submit to the SERC a current list of members of the LEPC and the contact information for the chair and vice chair of the LEPC.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63K-3-301

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The only anticipated cost to the state budget would be the addition of a representative to the SERC Advisory Committee that would represent the Utah National Guard. The cost would be adsorbed by the Utah National Guard for the representative's time to be involved as a member of the SERC Advisory Committee.
- ◆ **LOCAL GOVERNMENTS:** The only anticipated cost or savings to local government would be the cost if a Local Emergency Planning Committee (LEPC) would dissolve and

another LEPC would be required to assume the dissolving LEPCs duties. There would be a savings from the dissolving of the LEPC and yet an anticipated cost to the LEPC that would be required to assume the duties of the dissolving LEPC.

- ◆ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to small businesses because the proposed amendments and additions to the administrative rule do not effect small businesses. The only effect noted would be the changing of addresses from the dissolving Local Emergency Planning Committee (LEPC) to the LEPC that will assume the duties of the dissolving LEPC. This would require small businesses to change mailing addresses but would not be an anticipated cost.

- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no aggregate anticipated cost or savings to persons other small businesses, businesses or local government entities because these persons are not affected by the proposed amendments to the administrative rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The only compliance costs for affected persons to enact the proposed amendments to the administrative rule would be to the Utah National Guard for the additional member of the SERC Advisory Committee and the cost of the time for that person to participate in the SERC Advisory Committee meetings.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** As a voting member of the State Hazardous Chemical Emergency Response Commission (SERC), there is no fiscal impact to businesses from the enactment of these proposed administrative rule amendments except to change mailing addresses if an LEPC decides to dissolve.

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

PUBLIC SAFETY  
ADMINISTRATION  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W 1ST FLR  
SALT LAKE CITY, UT 84119-5994  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Brent Halladay by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at [bhallada@utah.gov](mailto:bhallada@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2011**

**THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2011**

**AUTHORIZED BY:** Lance Davenport, Commissioner

**R698. Public Safety, Administration.****R698-5. Hazardous Chemical Emergency Response Commission.****R698-5-1. Adoption, Title, Purpose, and Prohibitions.**

Pursuant to Section 63K-3-301(2), Utah Code Annotated 1953, the Department of Public Safety adopts minimum rules establishing a state hazardous chemical emergency response commission advisory committee, the creation, modification or dissolving of local emergency planning committees, and supervising the overall planning and direction of the local emergency planning committees.

**R698-5-2. Definitions.**

2.1 "Advisory Committee" means State Emergency Response Commission Advisory Committee.

2.2 "EPCRA" means Emergency Planning and Community Right-to-Know Act of 1986.

2.3 "LEPC" means Local Emergency Planning Committee.

2.4 "SERC" means State Hazardous Chemical Emergency Response Commission.

2.5 "SERC Advisory Committee" means State Hazardous Chemical Emergency Response Commission Advisory Committee.

2.6 "USC" means United States Code.

**R698-5-3. State Emergency Response Commission Advisory Committee.**

3.1 There is created by the Department of Public Safety, the State Hazardous Chemical Emergency Response Commission Advisory Committee, whose duties are to provide direction to the SERC in the following matters: the creation, modification or dissolving of local emergency planning committees; methods and procedures to improve the effectiveness of the LEPC; the review of LEPC hazardous materials emergency response plans; the development of procedures for collection, processing, use and public access to information submitted as required by EPCRA; procedures for the distribution of funding to each LEPC obtained through the US Department of Transportation Hazardous Materials Emergency Preparedness Grant; ~~and~~ assist in stated hazardous materials emergency response planning efforts; and, the review of the Statewide Hazardous Materials Plan (ESF10).

3.2 The Advisory Committee's members shall be appointed by the SERC, shall serve four year terms, and shall consist of the following members:

3.2.1 A member representing the hazardous chemical transportation industry.

3.2.2 Two members representing fixed site regulated industries.

3.2.3 A member representing the environmental cleanup contractors.

3.2.4 A member representing the local health departments.

3.2.5 A member representing the urban LEPC.

3.2.6 A member representing the rural LEPC.

3.2.7 A member representing the Hazardous Materials Advisory Council.

3.2.8 A member representing established environmental interest groups.

3.2.9 A member representing the Utah National Guard.

3.2.[9]10 Two members from the general public.

3.3 The Advisory Committee shall meet quarterly or as directed, and a majority of the members shall be present to constitute a quorum.

3.4 The Advisory Committee shall select one of its members to act in the position of chair, and another member to act as vice chair. The chair and vice chair shall serve one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the first quarter of each calendar year. If voted upon by the Advisory Committee, the vice chair will become the chair the next succeeding calendar year.

3.5 If an Advisory Committee member has two or more unexcused absences during a 12 month period, from regularly scheduled meetings, it is considered grounds for dismissal pending review by the SERC.

3.6 A member of the Advisory Committee that cannot be in attendance, may have a representative of their respective organization attend and vote by proxy for that member or the member may have another Advisory Committee member vote by proxy, if submitted and approved by the chair prior to the meeting.

3.7 The Chair or Vice Chair of the Advisory Committee shall report to the SERC the activities of the Advisory Committee at regularly scheduled SERC meetings. A member of the Advisory Committee may report to the SERC the activities of the Advisory Committee in the absence of the Chair or Vice Chair.

3.8 The Advisory Committee shall consider all subjects presented to them, subjects assigned to them by the SERC, and shall report their recommendations to the SERC at scheduled SERC meetings.

3.9 One-half of the members of the Advisory Committee shall be reappointed or replaced by the SERC every two years. When a vacancy occurs in the Advisory Committee, a replacement shall be appointed by the SERC to complete the remainder of the term.

3.10 Members who are not government employees shall receive no compensation or benefits for their services, but may receive per diem and expenses incurred in the performance of the member's official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

3.10.1 Members may decline to receive per diem and expenses for their service.

3.11 State government officer and employee members who do not receive salary, per diem, or expenses from their agency for their service may receive per diem and expenses incurred in the performance of their official duties from the board at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

3.11.1 State government officer and employee members may decline to receive per diem and expenses for their service.

3.12 Local government members who do not receive salary, per diem, or expenses from the entity that they represent for their service may receive per diem and expenses incurred in the performance of their official duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

3.12.1 Local government members may decline to receive per diem and expenses for their service.

**R698-5-4. Local Emergency Planning Committee.**

4.1 The creation, modification or dissolution of an LEPC shall be approved by the SERC.

~~4.2 When evaluating the need to create an LEPC, the SERC Advisory Committee shall use the following criteria and procedures:~~

~~4.2.1 The jurisdiction requesting the formation of an LEPC shall provide the following information to the SERC Advisory Committee:~~

~~4.2.1.a A plan for coordinating the proposed additional LEPC with the county LEPC and/or any other city formed LEPC in that county.~~

~~4.2.2 The jurisdiction requesting the formation of an LEPC shall provide to the SERC Advisory Committee an assessment of the jurisdiction's population and hazardous materials risk, to include but not limited to fixed facilities, rail, highways, and hazardous material pipelines.~~

~~4.2.3 The jurisdiction requesting the formation of an LEPC shall provide to the SERC Advisory Committee a determination of how that agency, if allowed to form an LEPC, would meet all federal LEPC standards as identified in 42 USC Chapter 116.~~

~~4.3 An LEPC wishing to dissolve shall submit the following to the SERC Advisory Committee:~~

~~4.3.1 Reasons why the dissolution is in the best interest of the public served by the LEPC.~~

~~4.3.2 A formal agreement with another LEPC addressing:~~

~~4.3.2.1 The assumption of LEPC duties identified in 42 USC Chapter 116.~~

~~4.3.2.2 The transfer of remaining LEPC operational funds.~~

~~4.3.2.3 The assumption of outstanding LEPC financial obligations.~~

~~4.3.3 A plan to notify facilities located within the jurisdiction of the dissolving LEPC who submitted chemical inventory or chemical emergency planning information to the LEPC within the previous year, providing notice of the LEPC dissolution and providing the name and mailing address of the LEPC assuming the dissolving LEPC duties.~~

~~4.4 By July 1 of each year LEPCs shall submit to the SERC Advisory Committee: a current list of voting members, the group or organization represented by each voting member, a designation of and contact information for the LEPC chair, or co-chairs, and vice-chairs.~~

~~4.3.5 The SERC Advisory Committee shall evaluate the information submitted by the jurisdiction in accordance with Sections 4.2, 4.3 or 4.4 of these rules and shall make a recommendation to the SERC concerning LEPC creation, modification or dissolution.~~

~~4.4.6 The SERC shall include the recommendation of the SERC Advisory Committee, all information submitted by the requesting agency to the SERC Advisory Committee, and the views/comments of the county directly affected LEPCs, in its decision to approve or disapprove the formation, modification or dissolution of a new an LEPC.~~

~~4.5.7 The LEPC shall coordinate its overall planning and direction with the SERC. The SERC shall supervise the overall planning and direction of the LEPC.~~

~~4.6.8 The LEPC shall submit a copy of their hazardous materials emergency response plan to the SERC for review.~~

~~4.7.9 The SERC shall approve the amount of US Department of Transportation Hazardous Materials Emergency Preparedness Grant funding to be given to each LEPC and shall establish criteria for that funding to be awarded.~~

**R698-5-5. Adjudicative Proceedings.**

5.1 All adjudicative proceedings performed by the SERC shall proceed informally as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

5.2 An agency whose request to create, modify or dissolve an LEPC is denied by the SERC shall have an opportunity for a hearing before the SERC if requested by that agency within 20 days after receiving notice.

5.3 All adjudicative proceedings, other than criminal prosecution taken by the SERC, shall commence in accordance with UCA, Section 63G-4-201.

5.4 The SERC shall act as the hearing authority, and shall convene after timely notice to all parties involved. The members of the SERC acting as the hearing authority shall consist of the Commissioner of Public Safety and the Executive Director of the Department of Environmental Quality. The SERC shall also be joined when acting as the hearing authority by a representative from the Attorney General's Office.

5.5 After acting as the hearing authority, the SERC shall direct the secretary to issue a signed order to the agency involved giving the decision of the SERC within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

5.6 Reconsideration of the SERC decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

5.7 Judicial review of all final SERC actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63G-4-402.

**KEY: state emergency response commission**

**Date of Enactment or Last Substantive Amendment:**  
~~December 22, 2010~~ **November 21, 2011**

**Authorizing, and Implemented or Interpreted Law: 63K-3-301**

**Public Safety, Fire Marshal**  
**R710-9**  
**Rules Pursuant to the Utah Fire**  
**Prevention and Safety Act**

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 35296

FILED: 09/28/2011

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met on 09/14/2011 in a regularly scheduled Board meeting and

proposed to amend Rule R710-9 by establishing a new definition on premixed antifreeze solution, establishing the requirements for the installation and usage of antifreeze in fire sprinkler systems involving new construction, removing limitations to the system in sprinkler heads, maximizing the allowable gallons of antifreeze allowed, and limiting the percentages of antifreeze you can use in each individual system.

**SUMMARY OF THE RULE OR CHANGE:** The Board proposed to make the following amendments to the administrative rule as follows: 1) in Subsection R710-9-2(2.8), the Board proposed to add the definition of Premixed to define what is allowed in a premixed antifreeze system by solution percentages; 2) in Subsections R710-9-11(11.1), (11.2), and (11.3), the Board proposed to limit the percentage of antifreeze allowed in new antifreeze system mixture to 38% premixed propylene glycol and 48% premixed glycerin in NFPA 13, 13R, and 13D fire sprinkler systems; 3) in Subsections R710-9-11(11.1), (11.2), and (11.3), the Board proposed to limit the capacity of the antifreeze systems in new NFPA 13, 13R, and 13D systems to 150 gallons; 4) in Subsections R710-9-11(11.1), (11.2), and (11.3), the Board proposed by amendment to remove the limit of 20 heads in antifreeze systems in NFPA 13, 13R, and 13D systems; 5) In Subsections R710-9-11(11.1), (11.2), and (11.3), the Board proposed to remove the Authority Having Jurisdiction (AHJ) from being allowed to increase the concentration of antifreeze in new systems; and 6) in Subsection R710-9-11(11.4), the Board proposed to require that a tag be attached to the riser and that the tag should indicate the date the antifreeze was tested, the type and concentration of antifreeze solution, the name of the contractor, the contractor's license number, and a statement indicating that the entire system was drained and replaced with antifreeze.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53-7-204

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no aggregate anticipated cost or savings to the state budget because the state budget is not effected in any way from the completion of these amendments.
- ◆ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local government because these amendments have no effect on local government whatsoever.
- ◆ **SMALL BUSINESSES:** There is no aggregate anticipated cost or savings to small businesses due to the fact that using a different design system and running the fire sprinkler piping up the interior of the occupancy and not up the inside of the outside wall and across the attic will not add significant cost to the system.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no aggregate anticipated cost or savings to other persons due to the fact that the fire sprinkler contractors will have to design the systems to use the interior of the structure

instead of the outside wall and attic system to make sure the freezing temperatures will remain under the allowable percentages of antifreeze mixture.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no compliance costs for affected persons to accomplish this new design procedure. It requires that the automatic fire sprinkler system designer have the riser and fire sprinkler system enter the interior portion of the structure to provide heat and the protection allowed to prevent the system from freezing due to the new limitations of antifreeze in the water in the fire sprinkler system.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Due to the injuries and death that have occurred from the release of antifreeze rich automatic fire sprinkler systems, and the need to keep the antifreeze percentages below the proven allowed percentages researched by the National Fire Protection Association (NFPA), it is now necessary to design these fire protection systems differently by using the interior of the structure to help prevent freezing. The difference in design from the outside wall and attic to the interior of the structure will add no fiscal impact to the automatic fire sprinkler companies. It is just a matter of using a different design system.

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

PUBLIC SAFETY  
FIRE MARSHAL  
ROOM 302  
5272 S COLLEGE DR  
MURRAY, UT 84123-2611  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Brent Halladay by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2011**

**THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2011**

**AUTHORIZED BY:** Brent Halladay, State Fire Marshal

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**R710. Public Safety, Fire Marshal.**

**R710-9. Rules Pursuant to the Utah Fire Prevention and Safety Act.**

**R710-9-2. Definitions.**

2.1 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Committee" means the Firefighter Support Restricted Account Advisory Committee.

2.4 "Dwelling Unit" means one or more rooms arranged for the use of one or more individuals living together, as in a single housekeeping unit normally having cooking, living, sanitary, and sleeping facilities. For purposes of this standard, dwelling unit includes hotel rooms, dormitory rooms, apartments, condominiums, sleeping rooms in nursing homes, and similar living units.

2.5 "Division" means State Fire Marshal.

2.6 "IFC" means International Fire Code.

2.7 "LFA" means Local Fire Authority.

2.8 "Premixed" means the mixing of antifreeze with water that is prepared by the manufacturer with a quality control procedure that ensures that the antifreeze and water solution does not separate.

2.[8]9 "Restricted Account" means Firefighter Support Restricted Account.

2.[9]10 "SFM" means State Fire Marshal or authorized deputy.

2.[10]11 "Sub-Committee" means Fire Prevention Board Budget Sub-Committee or Amendment Sub-Committee.

2.[11]12 "UCA" means Utah Code Annotated, 1953.

#### **R710-9-11. Amendments and Additions.**

The following amendments and additions are hereby adopted by the Board for application statewide:

11.1 IFC, Chapter 9, Section 903.3.1.1 is amended by adding the following subsection: 903.3.1.1.2 Antifreeze Limitations. The use of antifreeze in new sprinkler systems [~~in new construction in the dwelling unit portion of an occupancy.~~] installed in accordance with NFPA 13, [~~is allowed up to 20 heads. The number of sprinkler heads can be expanded as allowed by the AHJ. The mixture of the antifreeze~~] shall be limited to a maximum concentration of [40]38% premixed glycol or [50]48% premixed and the capacity of the system shall not exceed 150 gallons. [~~The AHJ can allow the concentration of antifreeze to be increased due to temperature concerns.~~]

11.2 IFC, Chapter 9, Section 903.3.1.2 is amended by adding the following subsection: 903.3.1.2.2 Antifreeze Limitations. The use of antifreeze in new sprinkler systems [~~in new construction in the dwelling unit portion of an occupancy.~~] installed in accordance with NFPA 13R, [~~is allowed up to 20 heads. The number of sprinkler heads can be expanded as allowed by the AHJ. The mixture of the antifreeze~~] shall be limited to a maximum concentration of [40]38% premixed glycol or [50]48% premixed and the capacity of the system shall not exceed 150 gallons. [~~The AHJ can allow the concentration of antifreeze to be increased due to temperature concerns.~~]

11.3 IFC, Chapter 9, Section 903.3.1.3 is amended by adding the following subsection: 903.3.1.3.1 Antifreeze Limitations. The use of antifreeze in new sprinkler systems [~~in new construction~~] installed in accordance with NFPA 13D, [~~is allowed up to 20 heads. The number of sprinkler heads can be expanded as allowed by the AHJ. The mixture of the antifreeze~~] shall be limited to a maximum concentration of [40]38% premixed glycol or [50]48% premixed and the capacity of the system shall not exceed 150 gallons. [~~The AHJ can allow the concentration of antifreeze to be increased due to temperature concerns.~~]

[~~11.4 IFC, Chapter 9, Section 903.5 is amended to add the following subsection: 903.5.1 Antifreeze Replacement. Whenever the automatic sprinkler system protecting residences and~~

~~dwelling units of mixed occupancies that use antifreeze is drained, the replacement antifreeze shall be properly mixed and tested, but shall not exceed a maximum concentration of 40% propylene glycol or a maximum concentration of 50% glycerin. The AHJ can allow the concentration of antifreeze to be increased due to temperature concerns.]~~ 11.4 IFC, Chapter 9, Section 903.5 is amended to add the following subsection: 903.5.1 Tag and Information. A tag shall be attached to the riser indicating the date the antifreeze solution was tested. The tag shall also indicate the type and concentration of antifreeze solution by volume with which the system is filled, the date the antifreeze was replaced if applicable, the name of the contractor that tested and/or replaced the antifreeze solution, the contractor's license number, a statement indicating if the entire system was drained and replaced with antifreeze, and a warning to test the concentration of the antifreeze solutions at yearly intervals.

**KEY:** fire prevention, law

**Date of Enactment or Last Substantive Amendment:** [~~July 8, 2011~~]**November 21, 2011**

**Notice of Continuation:** June 8, 2007

**Authorizing, and Implemented or Interpreted Law:** 53-7-204

## Transportation, Motor Carrier **R909-2** Utah Trucking Guide

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR FILE NO.: 35262  
FILED: 09/19/2011

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of the amendment is to adopt the latest version of the Utah Trucking Guide which establishes permit conditions and assists motor carriers to be in compliance with over dimensional and over weight vehicles and loads.

**SUMMARY OF THE RULE OR CHANGE:** This change incorporates the latest version of the Utah Trucking Guide which includes updates to chapters 18, 19, 21, 29, and 36 to include the entire contents of Rules R912-2, R912-9, R912-14, and R912-76. These chapters and rules cover permit conditions pertaining to Mobile and Manufactured Homes, Pilot/Escort Requirements and Certification, Oversize/Overweight Permits, and Single Tire Configuration. The Utah Trucking Guide is available at [http://www.utahmc.com/trucking\\_guide/](http://www.utahmc.com/trucking_guide/). To prevent duplication, Rules R912-2, R912-9, R912-14, and R912-76 will be repealed because the same provisions are included in the Utah Trucking Guide being incorporated into this rule. (DAR NOTE: The repeal of Rule R912-2 is under DAR No. 35263; the repeal of Rule R912-9 is under DAR No. 35265; the repeal of Rule R912-14 is under DAR No. 35266; and the repeal of Rule R912-76 is under

DAR No. 35264 all in this issue, October 15, 2011, of the Bulletin.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-1-102 and Section 72-1-201 and Section 72-7-406 and Section 72-7-408 and Section 72-9-303 and Section 72-9-701 and Section 72-9-702

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Updates Utah Trucking Guide, published by Motor Carrier Division, Utah Department of Transportation, 07/17/2011

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no anticipated costs or savings to the state budget because the change only incorporates the current version of the Utah Trucking Guide which has been updated to include the existing provisions of Rules R912-2, R912-9, R912-14, and R912-76.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated costs or savings to local government because the change only incorporates the current version of the Utah Trucking Guide which has been updated to include the existing provisions of Rules R912-2, R912-9, R912-14, and R912-76.
- ◆ **SMALL BUSINESSES:** There is no anticipated costs or savings to small businesses because the change only incorporates the current version of the Utah Trucking Guide which has been updated to include the existing provisions of Rules R912-2, R912-9, R912-14, and R912-76.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated costs or savings to persons other than small businesses, businesses, or local government entities because the change only incorporates the current version of the Utah Trucking Guide which has been updated to include the existing provisions of Rules R912-2, R912-9, R912-14, and R912-76.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no anticipated compliance costs for affected persons because the change only incorporates the current version of the Utah Trucking Guide which has been updated to include the existing provisions of Rules R912-2, R912-9, R912-14, and R912-76.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is no anticipated fiscal impact on businesses because the change only incorporates the current version of the Utah Trucking Guide which has been updated to include the existing provisions of Rules R912-2, R912-9, R912-14, and R912-76.

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

TRANSPORTATION  
MOTOR CARRIER  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W

SALT LAKE CITY, UT 84119-5998  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2011

AUTHORIZED BY: John Njord, Executive Director

**R909. Transportation, Motor Carrier.**

**R909-2. Utah Trucking Guide.**

**R909-2-1. Authority.**

This rule is enacted under the authority of Sections 72-7-406.

**R909-2-2. Applicability.**

All commercial motor vehicle operators and motor carriers engaged in the movement of over dimensional and over weight vehicles and loads must comply with permit conditions as specified in the Utah Trucking Guide.

**R909-2-3. Adoption of the Utah Trucking Guide.**

Permit conditions as specified in July 19, 20[09]11 edition of the Utah Trucking Guide, Chapters 14 thru 27, ~~and~~ 29, 31 thru 33 and 36 are hereby incorporated by reference. These ~~changes~~ conditions apply to all private, common, and contract carriers.

**R909-2-4. Annual Review of Permit Regulations and Conditions.**

(1) During the regularly scheduled Motor Carrier Advisory Board meeting in May of each year, the board will review permit conditions and regulations as needed. The board is not required to review each of these items every year.

(2) This meeting will provide a forum for interested parties to provide evidence in support of regulation or permit condition modification.

(3) All interested parties must notify the Department of Transportation Motor Carriers Division of these issues by April 1st of each year to ensure placement on the agenda.

(4) Any approved changes to permit conditions or regulations will be noted in the ~~[July 1st adoption of the]~~ Utah Trucking Guide, and the revised edition of the Utah Trucking Guide will be incorporated into this rule.

**KEY: trucks, safety regulations, permits**

**Date of Enactment or Last Substantive Amendment:** ~~[September 9, 2009]~~ 2011

**Authorizing, and Implemented or Interpreted Law:** 72-1-102; 72-1-201; 72-7-406; 72-7-408; 72-9-303; 72-9-701; 72-9-702

**Transportation, Motor Carrier**  
**R909-19**  
**Safety Regulations for Tow Truck**  
**Operations - Tow Truck Requirements**  
**for Equipment, Operation and**  
**Certification**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35256

FILED: 09/19/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of the change is to include a definition for "life-essential personal property" referred to in H.B. 81 (2011 General Session), to add a definition for "normal office hours," to clarify the notice requirements and to make other clarifications and clerical corrections.

**SUMMARY OF THE RULE OR CHANGE:** The proposed change would add definitions for "life essential personal property" and "normal office hours," revise fines and place them in order of severity, combine notice requirements for all non-consent police generated tows and non-consent non-police generated tows, add Utah Safety Council as an accepted certification program and require drivers to carry evidence of certification, update the information required on the towing receipt to include the fuel surcharge, administration fee and total hours. To avoid confusion on when a fuel surcharge can be included in the costs of a non-consent tow, a table is provided in Section R909-19-14. Telephone numbers are updated.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 41-6a-1404 and Section 41-6a-1405 and Section 41-6a-1406 and Section 53-1-106 and Section 53-8-105 and Section 72-9-301 and Section 72-9-303 and Section 72-9-601 and Section 72-9-602 and Section 72-9-603 and Section 72-9-604 and Section 72-9-701 and Section 72-9-702 and Section 72-9-703

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** The Department anticipates a reduction in the costs of employees investigating complaints that lien-holders were not notified that a vehicle was impounded.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government because no new requirements will be created with this amendment that will impact local government.

◆ **SMALL BUSINESSES:** The amount of money that lien-holders pay to retrieve a vehicle will be reduced as the vehicle will be stored for a shorter period of time due to amended notification requirements.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Owners of vehicles that are not state impounded, and still towed at an officers request will see a savings on their tow bill due to amended notification requirements.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** A company operating as a "tow truck motor carrier" will see the additional cost of the certified letter to the lien-holder and owner of the vehicle.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** By modifying the definition and restriction pertaining to a tow truck carrier's ability to hold personal property, the tow industry may better be able to receive payment for services provided. In addition, this rule clarifies when a tow truck carrier may charge a fuel surcharge. This will aid them in their ability to recuperate business expenses.

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

TRANSPORTATION  
 MOTOR CARRIER  
 CALVIN L RAMPTON COMPLEX  
 4501 S 2700 W  
 SALT LAKE CITY, UT 84119-5998  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2011**

**THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2011**

**AUTHORIZED BY: John Njord, Executive Director**

**R909. Transportation, Motor Carrier.**

**R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification.**

**R909-19-1. Authority.**

This rule is enacted under the authority of Sections 72-9-601, 72-9-602, 72-9-603, 72-9-604, 53-1-106, 41-6a-1405, Utah Code.

**R909-19-2. Applicability.**

All tow truck motor carriers and employees must comply and observe all rules, including R909-1, regulations, traffic laws and guidelines as prescribed by State Law, including [and 49 CFR Part 350 - 399, hereby incorporated by reference in accordance with] Sections 41-6a-1404, 41-6a-1405, 41-6a-1406, 72-9-301, 72-9-303, 72-9-601, 72-9-602, 72-9-603, 72-9-604, 72-9-701, 72-9-702, [72-9-703,] and 72-9-703[; Utah Code].

**R909-19-3. Definitions.**

(1) "Consent Tow" means any tow truck service that is done at the vehicle, vessel, or outboard motor owner's, or its legal operator, knowledge and/or approval.

(2) "Department" means the Utah Department of Transportation.

(3) "Division" means the Motor Carrier Division.

(4) "Gross Combination Weight Rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GVCR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

(5) "Gross Vehicle Weight Rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

(6) "Life-Essential personal property" includes those items essential to sustain life or health including: prescription medication, medical equipment, essential clothing (e.g. shoes, coat), food and water, child safety seats, government issued photo-identification, credit cards, cash, and checkbook.

(7) "Non-Consent Police Generated Tow" means tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority, as defined in Section 72-1-102.

([7]8) "Non-consent Non Police Generated Tow" means towing services performed without the prior consent or knowledge of the owner of the vehicle or the person authorized by the owner to operate the vehicle from private property. The tow truck service must be from private property, at the request of the property landowner or agent for the landowner.

([8]9) "Normal Office Hours" means hours of operation where the office or yard shall be staffed and open for public business during normal business hours Monday thru Friday, except for designated state and federal holidays. ~~["Personal Property" means articles associated with a person, such as property having a more or less intimate relation to a person, home or family, including clothing, medicine, tools, etc. Items not considered as personal property are considered to be the original manufactured equipment, and/or attached property to the vehicle, including tires, rims, vehicle stereos, speakers, or CD changers and will remain in the vehicle.]~~

([9]10) "Recovery Operation" means a towing service that may require charges in addition to the normal one-truck/one-driver towing service requirements. The additional charges may include charges for manpower, extra equipment, traffic control, and special recovery equipment and supplies.

(1[0]1) "Tow Truck" means a motor vehicle constructed, designed, altered, or equipped primarily for the purpose of towing or removing damaged, disabled, abandoned, seized, repossessed or impounded vehicles from highway or other place by means of a crane, hoist, tow bar, tow line, dolly tilt bed, or other similar means of vehicle transfer without its own power or control.

(1[+]2) "Tow Truck Certification Program" means a program to authorize and approve tow truck motor carrier owners, operators, and vehicles is the process by which the Department, acting under Section 72-9-602, shall verify compliance with the State and Federal Motor Carriers Safety Regulations.

(1[2]3) "Tow Truck Motor Carrier" means any company that provides for-hire, private, salvage, or repossession towing services. It includes the company's agents, officers, and representatives as well as employees responsible for hiring, training, supervisory, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of equipment and/or accessories.

(1[3]4) "Tow Truck Service" means the functions and any ancillary operations associated with recovering, removing, and towing a vehicle and its load from a highway or other place by means of a tow truck.

(a) Tow Truck Service, with regards to authorized towing fees, is determined by the type and size of the towed vehicle, not the type and size of the tow truck performing the service.

(b) Towed Vehicle Classifications will be used when determining authorized fees. Information regarding the GVWR to determine classification category of towed vehicle can be found on the identification plate on the vehicle driver side doorframe. Towed vehicle classifications are as follows:

(i) "Light Duty" means any towed vehicle with a GVWR 10,000 pounds or less;

(ii) "Medium Duty" means any towed vehicle with a GVWR between 10,001 and 26,000 pounds;

(iii) "Heavy Duty" means any towed vehicle with a GVWR or GCWR 26,001 pounds and greater.

(1[4]5) "Tow Truck Motor Carrier Steering Committee" means a committee established by the Motor Carrier Division and will include enforcement personnel, industry representatives and other persons as deemed necessary.

**R909-19-4. Duties - Enforcement - Compliance Audits, Inspections and Right of Entry.**

The Department shall administer and in cooperation with the Department of Public Safety, Utah Highway Patrol Division as specified under Section 53-8-105, ~~[Utah Code,]~~ shall administer and enforce state and federal laws related to the operation of tow truck motor carriers within the state. In addition, a tow truck motor carrier shall submit its lands, property, buildings, equipment for inspection and examination and shall submit its accounts, books, records, or other documents for inspection and copying to verify compliance as authorized by Section 72-9-301.

**R909-19-5. Insurance.**

(1) Non-consent police generated tows are required to maintain at least \$750,000 of liability insurance.

(2) Tow Truck Motor Carriers performing non-consent non-police generated tows ~~and~~ or consent tows are required to maintain at least \$1,000,000 of liability insurance plus the MCS-90 endorsement for environmental restoration as required in 49 CFR Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers.

(3) Evidence of required insurance will be maintained at the principal place of business and made available to the Department and/or Investigator upon request and prior to the Tow Truck Motor Carrier certification.

**R909-19-6. Penalties and Fines.**

(1) Any tow truck motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations,



other statutes, any part of this rule, any term or condition of the permit or any materials that it incorporates either by reference or attachment, or a Departmental order, is subject to:

(a) a civil penalty as authorized by Section 72-9-701, and 72-9-703;

(b) ~~issuance of a cease-and-desist order as authorized by section 72-9-303~~ suspension or revocation of a carrier or tow truck certification (suspension or revocation will be based upon the severity of violations to this rule, Sections 41-6a-1406 and 72-9-603); ~~and~~

(c) issuance of a cease-and-desist order as authorized by Section 72-9-303; and

(d) the revocation or suspension of registration by the Utah State Tax Commission pursuant to Section 72-9-303.

~~(2) The fact of non-compliance will be considered sufficient cause for the Department to revoke tow truck motor carrier, driver, and/or vehicle certification(s).~~

#### **R909-19-7. Towing Notice Requirements.**

~~(1) A tow truck motor carrier after performing a tow truck service, that was not ordered by a peace officer, or a person acting on behalf of a law enforcement agency or a highway authority, as defined in R909-19-3, without the vehicle, vessel, or outboard motor owner's knowledge shall immediately upon arriving at the place of storage or impound of the vehicle contact by radio or phone, the law enforcement agency having jurisdiction over the area where the vehicle, vessel, or outboard motor was picked up and notify the agency as per requirements set forth in 72-9-603.~~

~~Pursuant to the requirement to "immediately" ... "contact the law enforcement agency having jurisdiction" as required by Section 72-9-603, Utah Code, a tow truck motor carrier operator shall:~~

~~(a) Report the removal immediately upon arriving at the place of storage or impound of the vehicle, if removal was completed during posted office hours.~~

~~(b) Report the removal within 2 hours of the next business day if the removal occurred after normal posted office hours.~~

~~(c) For purposes of Section 72-9-603, the "contact" to the law enforcement agency shall be considered accomplished if made as authorized by 41-6a-1406.~~

~~(d) If reporting is not completed within the time frame, the Tow Truck Motor Carrier or operator will not be allowed to collect any fees or begin charging storage fees as authorized under Section 72-9-603.~~

#### **~~R909-19-8. Requirement for Tow Truck Motor Carriers to input required information for Government and Public Notification:~~**

~~(1) All non-consent police generated and non-consent non-police generated tows conducted by Tow Truck Motor Carriers must input required information in electronic form on the Division of Motor Vehicles Utah State Tax Commission's website, at "https://secure.utah.gov/ivs/ivs" as required by 41-6a-1406(11).~~

~~(2)a) Tow Truck Motor Carriers may charge an administrative fee up to but not exceeding \$30.00 per vehicle notification for reporting non-consent tows to the Department of Motor Vehicles.~~

(2) Tow Truck Motor Carriers must notify the local enforcement agency having jurisdiction over the area from where the vehicle, vessel, or outboard motor was removed on all non-consent non-police generated tows immediately upon arrival at the impound or storage yard.

(a) For tows conducted on vehicles, vessels, and outboard motors and the owner information does not appear in the IVS or TLR (Title License Registration) systems, a Tow Truck Motor Carrier has met this requirement if they can provide proof that a certified letter has been sent to the Utah State Tax Commission Division of Motor Vehicle or the appropriate state where the vehicle, vessel, and outboard motor is registered, within two business days requesting the needed information to send the letter.

(3) If required notifications to the Division of Motor Vehicles and local law enforcement is not completed as required by Sections 41-6a-1406 and 72-9-603, the Tow Truck Motor Carrier or operator may not collect any fees associated with the removal or begin charging storage fees as authorized under Sections 41-6a-1406 and 72-9-603 until the removal has been reported to the Motor Vehicle Division and the local law enforcement agency.

(4) If notification to the last known owner and lien holder is not made as required by this rule, the Tow Truck Motor Carrier may be subject to penalties as outlined in this rule.

#### **R909-19-9]8. Certification.**

There are three (3) certifications required by the Department.

(1) Tow Truck Driver Certification[?].

(a) Effective July 1, 2004 all tow truck drivers will be tested and certified in accordance with National Driver Certification Procedure (NDCP) standards and carry evidence of certification for the appropriate level of vehicle they are operating. These standards of conduct and proficiency may be tested and certified through[?] an accepted program approved by the Department.

(i) Towing and Recovery Association of America (TRAA) Testing Program;

(ii) Wreckmaster Certification Program;

(iii) AAA Certification Program;

(iv) Utah Safety Council; or

(i)v) Other driver testing certification programs approved by the Department to meet certification requirements however; the Tow Truck Motor Carrier must obtain prior approval in writing from the Motor Carrier Division Administrator or Division representative by calling (801) 965-4892.]

(b) Information on qualified[the above mentioned] certification programs may be obtained by contacting the Motor Carrier Division at (801) 965-4[559]892.

(c) Tow Truck Motor Carriers shall ensure that all drivers are:

(i) [P]properly trained to operate tow truck equipment;

(ii) [E]licensed, as required under Sections 53-3-101, through 53-3-909 Uniform Driver License Act; and

(iii) [P]properly certified.

(2) Tow Truck Vehicle Certification[?].

(a) All tow trucks shall be inspected and certified biannually[?].

(b) All tow trucks must be equipped with required safety equipment. Safety Equipment List can be found at <http://www.udot.utah.gov/index.php/m=c/tid=396> or by calling 801-965-4[559]892.

(c) Upon vehicle certification, a UDOT safety sticker will be issued and shall be affixed on the driver's side rear window.

(d) Documentation of UDOT tow truck vehicle inspection certification shall be kept in the vehicle files and be available upon request by Department personnel.

(3) Tow Truck Motor Carrier Certification[?].

(a) Tow Truck Motor Carriers shall be certified biannually to ensure compliance as required by the Federal Motor Carrier Safety Regulations, Utah Code Annotated, and local laws where applicable.

**R909-19-1[10]2. Certification Fees.**

The Department may charge Tow Truck Motor Carrier[?]s a fee biannually as authorized by Section 72-9-603 to cover costs associated with driver, vehicle, and carrier certifications.

**R909-19-1[10]0. Information Required on Towing Receipt.**

Charges for services provided must be clearly reflected on a company receipt and a copy shall be provided to the customer. The receipt must include the following information:

- (a) company name;
- (b) address;
- (c) phone number;
- (d) transportation, administration, fuel surcharge, and storage fees charged;
- (e) name of company driver;
- (f) unit number;
- (g) license plate of the towed vehicle;
- (h) make, model, Vehicle Identification Number, and year of the towed vehicle[?]; and[?]
- (i) start and end time with total hours for services provided.

**R909-19-1[2]1. Maximum Towing Rates. Non-Consent Police Generated Tows.**

(1) \$145 per hour, per unit, when towing a "Light Duty" vehicle[?].

(a) An additional 15% per hour may be charged if the towed vehicle is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(2) \$240 per hour, per unit, when towing a "Medium Duty" vehicle[?].

(a) An additional 15% per hour may be charged if the towed vehicle is used in the ~~[transport]~~transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(3) \$300 per hour, per unit, when towing a "Heavy Duty" vehicle[?].

(a) An additional 15% per hour may be charged if the towed vehicle is used in the ~~[transport]~~transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(4) If a tow truck apparatus is mechanically connected to a vehicle, the tow truck will be considered in possession of the vehicle.

(a) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle, is attempting to retrieve said vehicle before the tow truck is mechanically connected, no fee(s) will be charged to the vehicle owner.

(b) If the owner, authorized operator, or authorized agent of the owner of the vehicle, is attempting to retrieve said vehicle before the vehicle is removed from the property or scene, the maximum fee shall not exceed 50% of the posted rate schedule.

(5) ~~[As fuel increases .50 per gallon from the base rate of \$3.00, a surcharge shall be allowed of 10% of the base rate. Conversely, if prices drop, they will decrease by the same amount.~~

~~(a) To determine the average daily per gallon diesel cost, refer to "http://tonto.cia.doc.gov/oog/info/wohdp/diescl.asp".~~

~~(6)~~Charges for recovery operations, as defined by R909-19-3, shall be coordinated with the towed vehicle owner prior to initiating the additional charges relating to the recovery operation. Coordination with the towed vehicle owner should result in an agreement between the tow vehicle owner and Tow Truck Motor Carrier.

~~(7)~~Pursuant to ~~[Utah Code Ann.]~~Section 72-9-603 it is illegal for a Tow Truck Motor Carrier to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule. Any tow truck service charging more than the maximum approved rates may be assessed civil penalties determined by the Department, as authorized under Section 72-9-303.

~~(8)~~Tow Truck Motor Carriers shall obey all local city and county laws, when applicable, pertaining to placement of signs, notification, and other towing related ordinances. Strobe lights are not allowed on Tow Trucks. The acceptable color for tow truck lights is amber.

**R909-19-1[3]2. Maximum Non-Consent Non Police Generated Towing Rate.**

(1) The maximum rate for a "Light Duty" vehicle is \$145 per tow.

(2) The maximum rate for a "Medium Duty" vehicles is \$240 per tow.

(3) The maximum rate for a "Heavy Duty" vehicle is \$300 per tow.

(4) If a tow truck apparatus is mechanically connected to a vehicle, the tow truck will be considered in possession of the vehicle.

(a) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle, is attempting to retrieve said vehicle before the tow truck is mechanically connected, no fee(s) will be charged to the vehicle owner.

(b) If the owner, authorized operator, or authorized agent of the owner of the vehicle, is attempting to retrieve said vehicle before the vehicle is removed from the property or scene, the maximum fee shall not exceed 50% of the posted rate schedule.

(5) Pursuant to Section 72-9-603, it is illegal for a Tow Truck Motor Carrier to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule. Any tow truck service charging more than the maximum

approved rates may be assessed civil penalties determined by the Department, as authorized under Section 72-9-303.

(6) Tow Truck Motor Carriers shall obey all local city and county laws, when applicable, pertaining to placement of signs, notification, and other towing related ordinances.

**R909-19-11[4]3. Maximum Storage Rates. Non-Consent Tows.**

(1) \$25 Maximum per day, per unit, for outside storage of "Light Duty" vehicles[;].

(2) \$30 Maximum per day, per unit may be charged for inside storage of "Light Duty" vehicles only at the owner's request, or at the order of a law enforcement agency or highway authority.

(3) \$45 Maximum per day, per unit for outside storage of "Medium/Heavy Duty" vehicles[;].

(4) \$70 Maximum per day, per unit may be charged for inside storage of "Medium/Heavy Duty" vehicles only at the owner's request, or at the order of a law enforcement agency or highway authority.

(5) \$100 Maximum per day, per unit for outside storage of vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(6) \$150 Maximum per day, per unit may be charged for inside storage of vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F, only at the owner's request, or at the order of a law enforcement agency or highway authority.

(7) Pursuant to Section 72-9-603, it is illegal for a Tow Truck Motor Carrier to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule. Any tow truck service charging more than the maximum approved rates may be assessed civil penalties determined by the Department, as authorized under Section 72-9-303.

(8) For the purpose of calculating storage rates, if the first six (6) hours of storage for a vehicle includes more than one day, the authorized storage fee is only the charge for one day.

**R909-19-14. Fuel Surcharge for Non-Consent Police and Non-Consent Non-Police Generated Tows.**

(1) When the daily Rocky Mountain Average, as determined by the Department of Energy, for the price of fuel raises \$0.50 from the base rate of \$3.00 to \$3.50 per gallon, a tow truck motor carrier may charge a 10% surcharge of the base tow rate. An additional 10% shall be allowed for each \$0.50 per gallon increase. Conversely, as the price of fuel drops, the fuel surcharge shall decrease by the same rate.

TABLE

Fuel Surcharge	Fuel Price				
	Base Rate	\$3.50	\$4.00	\$4.50	\$5.00
Light Duty	\$145.00	\$14.50	\$29.00	\$43.50	\$58.00
Medium Duty	\$240.00	\$24.00	\$48.00	\$72.00	\$96.00
Heavy duty	\$300.00	\$30.00	\$60.00	\$90.00	\$120.00

(a) To determine the Rocky Mountain daily average per gallon diesel cost, refer to <http://tonto.eia.doe.gov/oog/info/wohdp/diesel.sap>.

(b) The fuel surcharge may be charged on non-consent police generated tow when the vehicle is being used in the function of a tow vehicle i.e. travel to and from the scene and during the operation of equipment for recovery operation. Non-consent non-police tows may charge a one time fee.

(c) Surcharge fee shall be listed as a separate fee on the tow bill.

**R909-19-15. Towing and Storage Rates. Public Consent Tows.**

Towing rates for public consent tows are the responsibility of the consumer and the tow truck motor carrier as contracted for services rendered and are not regulated by the Department.

**R909-19-16. Rates and Storage Posting Requirements.**

Pursuant to Section 72-9-603, a tow truck motor carrier or impound yard shall clearly and conspicuously post and disclose all its current non-consent fees and rates for towing and storage of a vehicle.

**R909-19-17. Federal Motor Carrier Safety Requirements.**

All tow truck motor carriers that meet the definition of a commercial motor carrier shall comply with all State and Federal Motor Carrier Safety Regulations, in addition to any other legal requirements established in statute, rule, or permit.

**R909-19-18. Consumer Protection Information.**

Pursuant to Section 72-9-602, the Department shall make consumer protection information available to the public that may use a tow truck motor carrier. To obtain such information, the public can call the Motor Carrier Division at (801) 965-4[26+]892.

**R909-19-19. Establishment of Tow Truck Steering Committee and Work Group.**

(1) The Administrator for the Motor Carrier Division will establish a Steering Committee to provide advisory information and input.

(2) The Motor Carrier Advisory Board, established by the Governor, will serve as the steering body for regulatory guidance and the Department's certification process.

**R909-19-20. Annual Review of Rates, Fees and Certification Process.**

(1) During the regularly scheduled Motor Carrier Advisory Board meeting in August of each year, the board will review rates, fees, tow truck motor carrier procedures, and the certification process. The board is not required to review each of these items every year.

(2) This meeting will provide a forum for interested parties to provide evidence in support of any rate or fee increase or issue[d] related to procedures regarding the certification process.

(3) All interested parties must notify the Department of these issues by August 1 of each year to ensure placement on the agenda.

(4) An annual report will be issued by the Department regarding any rate, fees, tow truck motor carrier procedures and certification process changes will be made available at the Motor Carrier Division office.

**R909-19-21. Ability to Petition for Review.**

Any Tow Truck Carrier who believes the Division has acted wrongfully in denying or suspending certification or in imposing a cease-and-desist order may petition the Department for review of that action pursuant to Utah Admin. Code R907-1, Appeal of Departmental Actions.

**R909-19-22. Record Retention.**

Tow Truck Motor Carriers shall retain records relating to rates charged for services for a period of six months after the service has been provided. However, if the Division or the vehicle owner have notified the carrier that it disputes its ability to charge a particular fee, the carrier shall retain the record until six months after the dispute has concluded or a court rule or order requires a longer retention period.

**R909-19-23. ~~Information to be Included on Company's Receipt.~~**

~~Charges for services provided must be listed and itemized on a receipt and provided to the customer. The information on the receipt must include company name, address, phone number, transportation and storage fees charged, name of driver, unit number of towing vehicle or license plate, description of the vehicle that was towed, and the total breakdown of time and services rendered.~~

**R909-19-24. ~~Personal Life Essential Property.~~**

~~Property[;] which is deemed[;] as [personal property]life essential shall be given to the [property]vehicle owner[s of the vehicle] regardless of payment for rendered services.~~

**KEY: safety regulations, trucks, towing, certifications**

**Date of Enactment or Last Substantive Amendment:**

~~[December 22, 2009]2011~~

**Notice of Continuation: September 25, 2006**

**Authorizing, and Implemented or Interpreted Law: 41-6a-1404; 41-6a-1405; 41-6a-1406; 53-1-106; 53-8-105; [63J-1-303;]72-9-601; 72-9-602; 72-9-603; 72-9-604; 72-9-301; 72-9-303; 72-9-701; 72-9-702; 72-9-703**

Transportation, Motor Carrier, Ports of  
Entry  
**R912-2**  
Mobile and Manufactured Homes

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 35263

FILED: 09/19/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being repealed to eliminate duplication because the regulations for mobile and manufactured homes are included in the Utah Trucking Guide which is incorporated into Rule R909-2. (DAR NOTE: The proposed amendment to Rule R909-2 is under DAR No. 35262 in this issue, October 15, 2011, of the Bulletin.)

**SUMMARY OF THE RULE OR CHANGE:** The repeal of this rule will eliminate duplication of regulations for mobile and manufactured homes which are also included in the Utah Trucking Guide, which is incorporated into Rule R909-2. There are no substantive changes between this rule and the regulations for mobile and manufactured homes found in the Utah Trucking Guide. This rule is repealed in its entirety.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 72-7-401 and Section 72-7-402 and Section 72-7-403 and Section 72-7-404 and Section 72-7-405 and Section 72-7-406 and Section 72-7-407 and Section 72-7-408 and Section 72-7-409

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget because the rule is being repealed to eliminate duplication with no substantive change to the requirements or permit conditions for mobile and manufactured homes.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government because the rule is being repealed to eliminate duplication with no substantive change to the requirements or permit conditions for mobile and manufactured homes.

◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses because the rule is being repealed to eliminate duplication with no substantive change to the requirements or permit conditions for mobile and manufactured homes.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the rule is being repealed to eliminate duplication with no substantive change to the requirements or permit conditions for mobile and manufactured homes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no anticipated cost for affected persons because the rule is being repealed to eliminate duplication with no substantive change to the requirements or permit conditions for mobile and manufactured homes.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is no anticipated fiscal impact on businesses because the rule is being repealed to eliminate duplication with no substantive change to the requirements or permit conditions for mobile and manufactured homes.

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

TRANSPORTATION  
MOTOR CARRIER, PORTS OF ENTRY  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2011

AUTHORIZED BY: John Njord, Executive Director

**R912. Transportation, Motor Carrier, Ports of Entry.**

**[R912-2. Mobile and Manufactured Homes.**

**R912-2-1. Authority:**

\_\_\_\_\_ This rule is enacted under the authority of Section 72-7-401 through 72-7-409.

**R912-2-2. Legal Dimensions. No Permit Required.**

- \_\_\_\_\_ (1) Width: 8 feet 6 inches.
  - \_\_\_\_\_ (a) Measured horizontally and at right angles to longitudinal center line between two vertical points established at the outside of any protuberance on the mobile/manufactured home. Safety appurtenances such as binder chains, clearance lights, rub rails, and load securing devices, may extend up to 3 inches beyond the prescribed width on either side.
- \_\_\_\_\_ (2) Height: 14 feet.
  - \_\_\_\_\_ (a) Measured vertically from level road surface top highest point of mobile/manufactured home when hitched to tow vehicle and ready for the road or loaded on semi-trailer ready for the road.
- \_\_\_\_\_ (3) Length:
  - \_\_\_\_\_ (a) 45 feet. Single unit only.
    - \_\_\_\_\_ (i) Measured horizontally along the longitudinal centerline from the top trailer hitch to a right-angled vertical plane established to reference the rearmost protuberance on the mobile/manufactured home, or semi-trailer lowboy.
  - \_\_\_\_\_ (b) 65 feet. Combination of unit and tow vehicle.
    - \_\_\_\_\_ (i) Trailer-tow combination or truck-trail and semi-trailer lowboy, measured horizontally along the longitudinal centerline from the front bumper of the tow vehicle to a right-angle vertical plane at the rearmost protuberance on the mobile/manufactured home, or semi-trailer lowboy.

**R912-2-3. Measuring Homes Exceeding 14 Feet 6 Inches.**

- \_\_\_\_\_ (1) When the legal dimensions are exceeded, an oversize permit is required.

- \_\_\_\_\_ (2) Mobile and manufactured homes with eaves greater than 12 inches shall be measured for overall width including eaves and pilot/escort vehicles assigned as specified in R912-9-13.

**R912-2-4. Mobile/Manufactured Homes Exceeding 14 Feet 6 Inches.**

- \_\_\_\_\_ (1) Mobile/manufactured homes exceeding 14 feet 6 inches up to 16 feet in wall-to-wall width, transported on their own running gear, may be issued a single trip permit under the following conditions:
  - \_\_\_\_\_ (a) All tires shall be in compliance with the manufacture's tire load rating as indicated on the tire sidewall in accordance with 49 CFR 393.75(g)(1)(2).
  - \_\_\_\_\_ (b) Axle/suspensions shall not exceed manufacture's capacity rating.
  - \_\_\_\_\_ (c) All trailer axles shall be equipped with operational brakes.
  - \_\_\_\_\_ (d) Mobile homes in excess of 16 feet wall-to-wall width may be permitted on a case-by-case basis however; prior authorization must be received by contacting the Motor Carrier Division at (801) 964-4588 or (801) 965-4508.

**R912-2-5. Permit Provisions.**

- \_\_\_\_\_ (1) Mobile/manufactured homes to be moved on semi-trailer lowboys may be permitted.
- \_\_\_\_\_ (2) For loads originating with Utah, a copy of the Tax Commission Movable Structure Tax Clearance/Moving Permit (TC-138) must be:
  - \_\_\_\_\_ (a) Affixed to the rear end of the mobile/manufactured home or moveable structure, and
  - \_\_\_\_\_ (b) Be visible to any enforcement officer or agent.
- \_\_\_\_\_ (3) Proof of obtaining a TC-138 permit must be submitted to the Department at the time of application for an Oversize Special Transportation Permit.
- \_\_\_\_\_ (4) The oversize load permit will not be issued without proof of a TC-138 permit as specified in 41-1a-1320.

**R912-2-6. Axle and Tire Requirements.**

\_\_\_\_\_ Mobile/manufactured home units see Tables I and II below for axle and tire requirements.

Width of Home	Length of Home	Number of Rated Axles	Minimum Standards of Mobile/Manufactured Home Rated Tires
12 feet wide	To 60 feet	2 axles	7 x 14.5 / 8 ply
	Greater than 60 feet to 80 feet	3 axles	7 x 14.5 / 8 ply
14 feet wide	To 52 feet	2 axles	7 x 14.5 / 8 plywide
	To 72 feet	3 axles	7 x 14.5 / 8 ply
	To 80 feet	4 axles	7 x 14.5 / 8 ply

TABLE II

Axle and Tire Requirements

Width of Home	Length of Home	Number of Rated Axles	Minimum Standards of Mobile/Manufactured Home Rated Tires
12 feet wide	To 65 feet	2 axles	8 x 14.5 / 8 ply
	Greater than 65 feet to 80 feet	3 axles	8 x 14.5 / 8 ply
14 feet wide	To 56 feet	2 axles	8 x 14.5 / 8 ply
	Greater than 56 feet to 80 feet	3 axles	8 x 14.5 / 8 ply

**R912-2-7. Tow Vehicles.**

(1) Tow vehicles shall comply with the following minimum requirements outlined in Table III:

TABLE III

Tow Vehicle Requirements

Width of Vehicle to be towed	Tire Width	Drive Axle Tire Rating Requirement	GVWR	Weight	Rear Axle Rating
Over 8' to 10'	7.00"	6-ply	N/A	6,000 lbs	N/A
Over 10' to 12'	8.00"	8-ply	35,000 GVW	8,000 lbs	15,000 lbs
Over 12' to 14.6"	8.25"	10-ply	35,000 GVW	9,000 lbs	15,000 lbs

(2) Conventional or cab-forward configuration shall have a minimum wheelbase of 120 inches.

(3) Cab-over engine tow vehicles shall have minimum wheelbase of 89 inches.

(4) Have a minimum of four rear tires.

(5) Certified pilot/escort vehicles must have two-way communication capabilities in accordance with R912-9 Pilot/Escort Requirements and Certification Program.

**R912-2-8. Trailer Brakes.**

(1) Trailer in excess of 8 feet 6 inches wide, up to 12 feet wide and equipped with one axle, must have operational brakes on each wheel.

(2) A minimum of two axles equipped with operative brake assemblies is required on each mobile/manufactured home unit in excess of 12 feet wide.

**R912-2-9. Movement Requirements.**

(1) In addition to permit provisions as specified, mobile/manufactured homes will observe the following additional requirements:

(a) Emergency Stops:

(i) When a mobile/manufactured home must stop because of emergency conditions, it shall be moved as far right as practicable away from highway traffic.

(ii) If any part of the combination is less than 3 feet from the right hand edge of the nearest traffic lane, reflective triangles as outlined under 49 CFR 393.95(h) shall be posted at 100 feet and 300 feet behind the vehicle to warn oncoming traffic.

(iii) When an emergency dictates night parking next to the highway, an amber flashing light (minimum diameter 4 inches) shall be placed on the corner of the trailer closest to the road so as to be clearly visible to approaching traffic.

(iv) The height of the light shall not be less than 3 feet above the surface of the highway and not more than 8 feet above the height of the mobile/manufactured home.

(b) Stop and Turn Signals:

(i) Rear mounted stop and turn signal lights shall be minimum 6 inches in diameter with 35 red reflector type lens.

(ii) The lens shall be mounted not more than 18 inches from the outer edge of the unit and not less than 15 inches nor more than 72 inches above the road surface.

(c) Load Securement Requirements:

(i) A minimum of four 3/4 inch diameter bolts will be used to directly connect the main support members of the modular home to the support frame of moving equipment.

(ii) Each of the four bolts shall be at least 4 feet apart.

(iii) Two bolts each shall be located not less than 12 feet from the forward and rear ends of the modular home.

(iv) Equivalent methods of fastening may be accepted provided fastening is not accomplished with clamps that rely on friction contact between the modular home and the moving equipment.

(d) Safety Chains:

(i) Two safety chains shall be used, one each on right and left sides of (but separate from) the coupling mechanism connecting the tow vehicle and the modular home while in transit.

(ii) Chains shall be 3/8 inch in diameter steel capable of passing a minimum brake test load of 16,200 pounds. Chains shall be strongly fastened at each end to connect the tow vehicle and manufactured home and assure that in the event of a coupling failure the manufactured home will track behind the tow vehicle.

(iii) When the mobile/manufactured home is transported on a semi-trailer lowboy coupled to the tow vehicles with a fifth wheel and kingpin assembly the two safety chains are not required.

(c) Paneling of the open sides of mobile/manufactured home:

(i) Rigid material or 0.5 millimeter plastic sheathing backed by a rigid grillwork not exceeding squares of 4 feet to prevent billowing must fully enclose the open sides of units in transit.

**KEY: permitted vehicles, mobile and manufactured homes**

**Date of Enactment or Last Substantive Amendment: October 13, 2005**

**Notice of Continuation: October 13, 2010**

**Authorizing, and Implemented or Interpreted Law: 72-7-401; 72-7-402; 72-7-403; 72-7-404; 72-7-405; 72-7-406; 72-7-407; 72-7-408; 72-7-409]**

# Transportation, Motor Carrier, Ports of Entry **R912-9** Pilot/Escort Requirements and Certification Program

## NOTICE OF PROPOSED RULE

(Repeal)  
DAR FILE NO.: 35265  
FILED: 09/19/2011

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed to eliminate duplication because the provisions of the Pilot/Escort Certification Program are included in the Utah Trucking Guide which is incorporated into Rule R909-2. (DAR NOTE: The proposed amendment to Rule R909-2 is under DAR No. 35262 in this issue, October 15, 2011, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The repeal of this rule will eliminate duplication of the provisions of the Pilot/Escort Certification Program which are also included in the Utah Trucking Guide, which is incorporated into Rule R909-2. There are no substantive changes between this rule and the provisions for the Pilot/Escort Certification Program found in the Utah Trucking Guide. This rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-1-201 and Section 72-7-406

#### ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There is no anticipated cost or savings to the state budget because the rule is being repealed to eliminate duplication with no substantive change to the requirements of the Pilot/Escort Certification Program.
- ◆ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government because the rule is being repealed to eliminate duplication with no substantive change to the requirements of the Pilot/Escort Certification Program.
- ◆ SMALL BUSINESSES: There is no anticipated cost or savings to small business because the rule is being repealed to eliminate duplication with no substantive change to the requirements of the Pilot/Escort Certification Program.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the rule is being repealed to eliminate duplication with no substantive change to the requirements of the Pilot/Escort Certification Program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no anticipated cost for affected persons because the rule is being repealed to eliminate duplication with no substantive

change to the requirements of the Pilot/Escort Certification Program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact to businesses because the rule is being repealed to eliminate duplication with no substantive change to the requirements of the Pilot/Escort Certification Program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
TRANSPORTATION  
MOTOR CARRIER, PORTS OF ENTRY  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
◆ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2011

AUTHORIZED BY: John Njord, Executive Director

**R912. Transportation, Motor Carrier, Ports of Entry.**  
~~**R912-9. Pilot/Escort Requirements and Certification Program.**~~  
~~**R912-9-1. Authority.**~~

~~This rule is enacted under the authority of Section 72-7-406.~~

~~**R912-9-2. Purpose.**~~

~~This rule establishes procedures for pilot/escort driver certification and vehicle equipment requirements for pilot/escort services.~~

~~**R912-9-3. Definitions.**~~

~~"Department" means the Utah Department of Transportation.~~

~~"Division" means the Motor Carrier Division.~~

~~"Authorized Personnel" means a Certified Pilot/Escort Driver as described in MUTCD 6C.02, and also classified as a "Flagger" as set forth in Chapter 6E of the MUTCD.~~

~~"MUTCD" means Manual on Uniform Traffic Control Devices.~~

~~"Special Event" means the movement of an over-dimensional load/vehicle as described in MUTCD 6C.02, and also the movement of an over-dimensional load/vehicle shall be classified as an "emergency road user occurrence" as described in MUTCD 6I.01.~~

**R912-9-4. Pilot/Escort Driver Requirements.**

Individuals who operate a pilot/escort vehicle must meet the following requirements:

- (1) Must be a minimum of 18 years of age.
- (2) Possess a valid drivers license for the state jurisdiction in which he/she resides.
- (3) Pilot/Escort driver's will be issued a certification card by an authorized Qualified Certification Program as outlined in R912-10, and shall have it in their possession at all times while in pilot/escort operations.
- (4) Initial certification will be valid for four years from the date of issue. One additional four-year certification may be obtained through a mail in or on-line recertification process provided by a Qualified Pilot/Escort Training Entity/Institution.
- (5) Pilot/escort drivers must provide a current (within 30 days) Motor Vehicle Record (MVR) certification to the Qualified Certification Program at the time of the course.
- (6) Current certification for pilot/escort operators will be honored through expiration date. Prior to expiration of pilot/escort certification it will be the responsibility of the operator to attend classroom instruction provided by an authorized Pilot/Escort Qualified Certification Program. A list of these providers can be obtained by calling (801) 965-4508.
- (7) No passengers under 16 years of age are allowed in pilot/escort vehicles during movement of oversize loads.
- (8) A Pilot/escort driver may not perform as a tillerman while performing pilot escort operations.
- (9) A pilot /escort driver must meet the requirements of 49 CFR 391.11 if using a vehicle for escort operations in excess of 10,000 lbs GVWR.

**R912-9-5. Driver Certification Process.**

- (1) Drivers domiciled in Utah must complete a pilot/escort certification course authorized by the Department. A list of authorized instructors may be obtained by contacting (801) 965-4508.
- (2) Pilot/ Escort drivers domiciled outside of Utah may operate as a certified pilot/escort driver with another State's certification credential, provided the course meets the minimum requirements outlined in the Pilot/ Escort Training Manual Best Practices Guidelines as endorsed by the Specialized Carriers and Rigging Association, Federal Highway Administration, and the Commercial Vehicle Safety Alliance; and/or
- (3) The Department may enter into a reciprocal agreement with other states provided they can demonstrate that course materials are comprehensive and meet minimum requirements outlined by the Department. For a current listing of these states, contact the Central Permit Office at 801-965-4302.
- (4) Pilot/escort driver certification expires four years from the date issued. It will be the responsibility of the driver to maintain certification.

**R912-9-6. Suspensions and Revocations of Pilot/Escort Driver Certification.**

Pilot/escort drivers may have their certification denied, suspended, or revoked by the Department if it is determined that a disqualifying offense has occurred within the previous 4 years.

- (1) Drivers convicted of serious traffic violations such as excessive speed, reckless driving and driving maneuvers reserved

for emergency vehicles, driving under the influence of alcohol or controlled substances may have their certification denied, suspended, or revoked by the Department.

- (2) The Department may suspend for first offenses up to one year. Subsequent offenses may result in permanent revocation of driver certification.

**R912-9-7. Steering Committee. Appeal Process.**

When a driver is denied pilot/escort driving privileges for reasons other than the conditions set forth in R912-9-6, the individual may file an appeal. The appeals shall be handled by a steering committee created by the Division. The steering committee shall have the powers granted to the Deputy Director in R907-1-3 for appeals from other Motor Carrier Division administrative actions. This committee's decision, if adopted by the Director of the Motor Carrier Division, will be considered a final agency order under the Utah Administrative Act.

**R912-9-8. Pilot/Escort Vehicle Standards.**

- (1) Pilot/Escort vehicles may be either a passenger vehicle or a two-axle truck with a 95-inch minimum wheelbase and a maximum gross vehicle weight of 12,000 lbs and properly registered and licensed as required under Sections 41-1a-201 and 41-1a-401.
- (2) Equipment shall not reduce visibility or mobility of pilot/escort vehicle while in operation.
- (3) Trailers may not be towed at any time while in pilot/escort operations.
- (4) Pilot/escort vehicles shall be equipped with a two-way radio capable of transmitting and receiving voice messages over a minimum distance of one-half mile. Radio communications must be compatible with accompanying pilot/escort vehicles, utility company vehicles, permitted vehicle operator and police escort, when necessary. When operating with police escorts a CB radio is required.
- (5) Pilot/Escort vehicles may not carry a load.

**R912-9-9. Pilot/Escort Vehicle Signing Requirements.**

- (1) Sign requirements on pilot/escort vehicles are as follows:
  - (a) Pilot escort vehicles must display an "Oversize Load" sign, which must be mounted on the top of the pilot/escort vehicle.
  - (b) Signs must be a minimum of 5 feet wide by 10 inch high visible surface space, with a solid yellow background and 8 inch high by 1 inch wide black letters. Solid defined as: when being viewed from the front or rear at a 90-degree angle, no light can transmit through.
  - (c) The sign for the front/pilot escort vehicle shall be displayed so as to be clearly legible and readable by oncoming traffic at all times.
  - (d) The rear pilot/escort vehicle shall display its sign so as to be readable by traffic overtaking from the rear and clearly legible at all times.

**R912-9-10. Pilot/Escort Vehicle Lighting Requirements.**

- (1) Two methods of lighting are authorized by the Department. Requirements are as follows:
  - (a) Two AAMVA approved amber flashing lights mounted with one on each side of the required sign. These shall be



a minimum of 6 inches in diameter with a capacity of 60 flashes per minute with warning lights illuminated at all times during operation, or

(b) An AAMVA approved amber rotating, oscillating, or flashing beacon/light bar mounted on top of the pilot/escort vehicle. This beacon/light bar must be unobstructed and visible for 360 degrees with warning lights illuminated at all times during operation.

(2) Incandescent, strobe or diode (LED) lights may be used provided they meet the above criteria.

#### **R912-9-11. Pilot/Escort Vehicle Equipment Requirements.**

(1) Pilot/Escort vehicles shall be equipped with the following safety items:

(a) Standard 18-inch or 24-inch red/white "STOP" and black/orange "SLOW" paddle signs. Construction zone flagging requires the 24-inch sign. For nighttime travel moves signs must be reflective in accordance with MUTCD standards

(b) Nine reflective triangles or 18-inch reflective orange traffic cones (not to replace items (c) or (d).

(c) Eight red-burning flares, glow sticks or equivalent illumination device approved by the Department.

(d) Three orange, 18 inch high cones.

(e) Flashlight. With a minimum 1 1/2-inch lens diameter, with extra batteries or charger (emergency type shake or crank -- will not be allowed).

(f) 6-inch minimum length red or orange cone or traffic wand for use when directing traffic.

(g) Orange hardhat and Class 2 safety vest for personnel involved in pilot/escort operations. Class 3 safety vests are required for nighttime moves.

(h) A height-measuring pole made of a non-conductive, non-destructive, flexible or frangible material, only required when escorting a load exceeding 16 feet in height.

(i) Fire extinguisher.

(j) First aid kit must be clearly marked.

(k) One spare "oversize load" sign, 7 feet by 18 inches.

(l) Serviceable Spare tire, tire jack and lug wrench.

(m) Handheld two-way simplex radio or other compatible form of communication for operations outside pilot/escort vehicles.

(2) Vehicles shall not have unauthorized equipment on the vehicle such as those generally reserved for law enforcement personnel.

#### **R912-9-12. Police Escort Vehicle Equipment and Safety Requirements.**

(1) Police escort vehicles shall be equipped with the following safety items:

(a) All officers must have a CB radio to communicate with the pilot and transport vehicles.

(b) Officers shall complete a Utah Law Enforcement Check List and Reporting Criteria Form.

(c) Officers shall verify that all pilot/escorts are in possession of current pilot/escort inspections, or they shall complete an inspection prior to load movement.

(d) Police vehicles must be clearly marked with emergency lighting visible 360 degrees;

(e) Officers shall be in uniform while conducting police escort moves.

#### **R912-9-13. Insurance.**

(1) Driver shall possess a current certificate of insurance or endorsement which indicates that the operator, or the operator's employer, has in full force and effect not less than \$750,000 combined single limit coverage for bodily injury and/or property damage as a result of the operation of the escort vehicle, the escort vehicle operator, or both causing the bodily injury and/or property damage arising out of an act or omission by the pilot/escort vehicle operator of the escort duties required by the Rules. Such insurance or endorsement, as applicable, must be maintained at all times during the term of the pilot/escort certification.

(2) Pilot/escort vehicles shall have a minimum amount of \$750,000 liability. This is not a cumulative amount.

#### **R912-9-14. Operating Conditions Requiring Pilot/Escort Vehicles.**

(1) One pilot vehicle is required for vehicles/loads, which exceed the following dimensional conditions;

(a) 12 feet in width on secondary highways (non-interstate) and 14 feet in width on divided highways (interstates).

(b) 105 feet in length on secondary highways and 120 feet in length on divided highways.

(c) Overhangs in excess of 20 feet shall have pilot/escort vehicle positioned to the front for front overhangs and to the rear for rear overhangs.

(2) Two pilot/escort vehicles are required for vehicles/loads which exceed the following dimensional conditions:

(a) 14 feet in width on secondary highways and 16 feet in width on divided highways, except for

(i) Mobile and manufactured homes with eaves 12 inches or less on either roadside or curbside shall be measured for box width only and assigned escort vehicles as specified above in R912-9-1.

(ii) Mobile and manufactured homes with eaves greater than 12 inches shall be measured for overall width including eaves and pilot/escort vehicles assigned as specified above R912-9-2; or

(b) 120 feet in length on secondary highways.

(c) 16 feet in height on all highways.

(d) When otherwise required by the Department.

#### **R912-9-15. Convoy Allowances For Permitted Vehicles.**

The movement of more than one permitted vehicle is allowed provided prior authorization is obtained from the Motor Carrier Division with the following conditions:

(1) The number of permitted vehicles in the convoy shall not exceed two.

(2) Load may not exceed 12 feet wide or 150' overall length.

(3) Distance between vehicles shall not be less than 500 feet or more than 700 feet.

(4) Distance between convoys shall be a minimum of one mile.

(5) All convoys shall have a certified pilot/escort in the front and rear with proper signs.

(6) Police escorts or Utah Department of Transportation personnel may be required.

(7) Convoys must meet all lighting requirements set forth in 49 CFR 393.11 and in the lighting section for nighttime travel.

~~(8) Convoys are restricted to freeway and interstate systems.~~

~~(9) Nighttime travel is encouraged with Motor Carrier Division authorization.~~

~~(10) Approval for convoys and/or nighttime travel may be obtained by contacting the Central Permit Office at (801) 965-4508 or the nearest Port of Entry.~~

**R912-9-16. Pre-Trip Planning and Coordination Requirements.**

~~(1) A coordination and planning meeting shall be held prior to load movement. The driver(s) carrying or pulling the oversize load(s), the pilot/escort vehicle driver(s), law enforcement officers (if assigned), Department personnel (if involved), and public utilities company representatives (if involved) shall attend. When police escorts are present, a Utah Law Enforcement Check List and Reporting Criteria Form must be completed. This meeting shall include discussion and coordination on the conduct of the move, including at least the following topics:~~

~~(a) The person designated as being in charge (usually a Department representative or a law enforcement officer).~~

~~(b) Authorized routing and permit conditions. Ensure that all documentation is distributed to all appropriate individuals involved in the move.~~

~~(c) Communication and signals coordination.~~

~~(d) Verification/measurement of load dimensions. Compare with permitted dimensions~~

~~(e) Copies of permit and routing documents shall be provided to all parties involved with the permitted load movement.~~

**R912-9-17. Permitted Vehicle Restrictions on Certain Highways.**

~~Certified pilot/escort operators must refer to highway restrictions specified in R912-11 prior to all load movements.~~

**R912-9-18. Flagging Requirements.**

~~(1) During the movement of an over-dimensional load/vehicle, the pilot/escort driver, in the performance of the flagging duties required by these rules, may control and direct traffic to stop, slow or proceed in any situation(s) where it is deemed necessary to protect the motoring public from the hazards associated with the movement of the over-dimensional load/vehicle. The pilot/escort driver, acting as a flagger, may aid the over-dimensional load/vehicle in the safe movement along the highway designated on the over-dimensional load permit and shall:~~

~~(a) Assume the proper flagger position outside the pilot/escort vehicle, and as a minimum standard, have in use the necessary safety equipment as defined in 6E.1 of the MUTCD, and~~

~~(b) Use "STOP"/"SLOW" paddles or a 24-inch red/orange square flag to indicate emergency situations, and other equipment as described in 6E.1 of the MUTCD; and~~

~~(c) Comply with the flagging procedures and requirements as set forth in the MUTCD and the Utah Department of Transportation Flagger Training Handbook.~~

**KEY: permitted vehicles, trucks, pilot/escort vehicles**

**Date of Enactment or Last Substantive Amendment: July 27, 2007**

**Notice of Continuation: July 14, 2010**

**Authorizing, and Implemented or Interpreted Law: 72-1-201; 72-7-406]**

## Transportation, Motor Carrier, Ports of Entry R912-14

### Changes in Utah's Oversized/Overweight Permit Program - Semitrailer Exceeding 48 Feet Length

#### NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE NO.: 35266

FILED: 09/19/2011

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being repealed to eliminate duplication because regulations for oversize/overweight semitrailers are included in the Utah Trucking Guide which is incorporated into Rule R909-2. (DAR NOTE: The proposed amendment to Rule R909-2 is under DAR No. 35262 in this issue, October 15, 2011, of the Bulletin.)

**SUMMARY OF THE RULE OR CHANGE:** The repeal of this rule will eliminate duplication of regulations for oversize/overweight semitrailers which are also included in the Utah Trucking Guide, which is incorporated into Rule R909-2. There are no substantive changes between this rule and the regulations for oversize/overweight semitrailers found in the Utah Trucking Guide. This rule is repealed in its entirety.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 72-7-402

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget because the rule is being repealed to eliminate duplication with no substantive change to the requirements or permit conditions for oversize/overweight semitrailers.

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government because the rule is being repealed to eliminate duplication with no substantive change to the requirements or permit conditions for oversize/overweight semitrailers.

♦ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses because the rule is being repealed to eliminate duplication with no substantive change to the requirements or permit conditions for oversize/overweight semitrailers.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the rule is being repealed to eliminate duplication with no substantive change to the requirements or permit conditions for oversize/overweight semitrailers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no anticipated cost or savings to the state budget because the rule is being repealed to eliminate duplication with no substantive change to the requirements or permit conditions for oversize/overweight semitrailers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact on businesses because the rule is being repealed to eliminate duplication with no substantive change to the requirements or permit conditions for oversize/overweight semitrailers.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 TRANSPORTATION  
 MOTOR CARRIER, PORTS OF ENTRY  
 CALVIN L RAMPTON COMPLEX  
 4501 S 2700 W  
 SALT LAKE CITY, UT 84119-5998  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ◆ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2011

AUTHORIZED BY: John Njord, Executive Director

**R912. Transportation, Motor Carrier, Ports of Entry.**  
~~[R912-14. Changes in Utah's Oversize/Overweight Permit Program - Semitrailer Exceeding 48 Feet Length.~~

~~**R912-14-1. Purpose.**  
 Semi-trailers exceeding 48 feet, and up to 53 feet in length will no longer require oversize permits when operating on or within one mile of routes designated by the Utah Department of Transportation.~~

~~**R912-14-2. Authority.**  
 This rule is authorized under Section 72-7-402.~~

~~**R912-14-3. Provisions.**  
 (1) Designated routes include: All State and US Highways.~~

~~(2) Vehicles operating more than one mile from the routes listed above will require an oversize permit. These permits will be available on a single trip, semi-annual or annual basis.~~

~~(3) The following restrictions will continue to apply to trailers exceeding 48 feet in length on all highways in Utah:~~

~~(a) Dual or super single tires (14 inches or greater) are required on all trailer axles.~~

~~(b) Rear under ride protection is required.~~

~~(c) The maximum gross vehicle weight will be determined by Bridge Table B Extended, Section 72-7-404.~~

~~(4) Trailers exceeding 53 feet will require a single trip permit. Trailers exceeding 57 feet will require a special approval prior to entering the state. All of the restrictions in the preceding paragraphs apply also to these trailers.~~

~~**KEY: trucks, permits**  
**Date of Enactment or Last Substantive Amendment: July 18, 2005**  
**Notice of Continuation: August 7, 2008**  
**Authorizing, and Implemented or Interpreted Law: 72-7-402]**~~

Transportation, Motor Carrier, Ports of Entry  
**R912-76**  
 Single Tire Configuration

**NOTICE OF PROPOSED RULE**  
 (Repeal)  
 DAR FILE NO.: 35264  
 FILED: 09/19/2011

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being repealed to eliminate duplication because tire specifications for overweight or oversize permitted vehicles are included in the Utah Trucking Guide which is incorporated into Rule R909-2. (DAR NOTE: The proposed amendment to Rule R909-2 is under DAR No. 35262 in this issue, October 15, 2011, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The repeal of this rule will eliminate duplication of the specifications for overweight or oversize permitted vehicles which are also included in the Utah Trucking Guide, which is incorporated into Rule R909-2. There are no substantive changes between this rule and the specifications for overweight or oversize permitted vehicles found in the Utah Trucking Guide. This rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-1-102 and Section 72-7-404 and Section 72-7-406

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget because the rule is being repealed to eliminate duplication with no substantive change to the tire specifications for overweight or oversize permitted vehicles.

◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government because the rule is being repealed to eliminate duplication with no substantive change to the tire specifications for overweight or oversize permitted vehicles.

◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses because the rule is being repealed to eliminate duplication with no substantive change to the tire specifications for overweight or oversize permitted vehicles.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the rule is being repealed to eliminate duplication with no substantive change to the tire specifications for overweight or oversize permitted vehicles.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no anticipated cost for affected persons because the rule is being repealed to eliminate duplication with no substantive change to the tire specifications for overweight or oversize permitted vehicles.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is no anticipated fiscal impact on businesses because the rule is being repealed to eliminate duplication with no substantive change to the tire specifications for overweight or oversize permitted vehicles.

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

TRANSPORTATION  
MOTOR CARRIER, PORTS OF ENTRY  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2011

AUTHORIZED BY: John Njord, Executive Director

**R912. Transportation, Motor Carrier, Ports of Entry.****[R912-76. Single Tire Configuration:****R912-76-1. Purpose.**

~~———— The use of single tires on heavy vehicles has been indicated to be one of the factors damaging to pavements, in the form of increased fatigue and rutting. Significant pavement rutting can result in an unsafe condition to the traveling public, and is very costly to correct, the Utah Department of Transportation finds it in the best interest of the safety and convenience of the traveling public to limit and discourage the use of single tires in Utah.~~

**R912-76-2. Authority.**

~~———— Sections 72-1-102, 72-7-404, 72-7-406, 72-1-201.~~

**~~R912-76-3. Tire Specifications for Overweight or Oversize Permitted Vehicles.~~**

~~———— (1) The use of narrow single tires (less than 14 inches wide) on any combination vehicle requiring an overweight or oversize permit shall not be allowed on single axles, except for steering axles, including self steering VLS, or retractable axles, or wide base tires (14 inches or greater). All axles having a weight in excess of 10,000 lbs shall be equipped with four tires per axle, or wide base single tires (14 inches wide or greater as indicated by the manufacturer's sidewall rating).~~

~~———— (a) Exemption: 14 inch wide single tire requirement does not apply to steering axles, or self steering VLS retractable axles.~~

~~———— (2) No tire shall exceed the manufacturer's tire rating as indicated on the sidewall.~~

~~———— (3) For Non-permitted/legal vehicles no tire shall exceed 600 per inch of tire width as indicated on the sidewall.~~

~~———— (4) Tire loading on vehicles requiring an overweight or oversize permit shall not exceed 500 pounds per inch of tire width for tires eleven inches wide and greater.~~

~~———— (5) Tire loading on vehicles requiring an overweight or oversize permit shall not exceed 450 pounds per inch of tire width for tires less than eleven inches wide, as designated by the tire manufacturer on the side wall of the tire.~~

~~———— (6) Except as provided in R912-76-3-1, single axle loading shall not exceed 20,000 pounds, and tandem axle loading shall not exceed 34,000 pounds.~~

~~———— (7) Non-divisible loads may be exempt from these restrictions upon written approval from the Department.~~

**KEY: tires**

**~~Date of Enactment or Last Substantive Amendment: October 13, 2005~~**

**~~Notice of Continuation: January 19, 2007~~**

**~~Authorizing, and Implemented or Interpreted Law: 72-1-102; 72-7-404; 72-7-406; 72-1-201]~~**

## Transportation, Operations, Traffic And Safety

### R920-6

## Snow Tire and Chain Requirements

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 35277

FILED: 09/21/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule change is to delegate authority over travel restrictions from the Executive Director to the Region Directors, to expand the season when restrictions are allowed, to clarify when and what equipment is required, and to make other stylistic and grammatical changes. The general purpose of these changes is to improve traffic safety on certain state highways in hazardous weather conditions.

**SUMMARY OF THE RULE OR CHANGE:** This rule change would delegate authority from the Executive Director to the Region Directors over travel restrictions, expand the season when restrictions are allowed, clarify when chains are required and how many are required on commercial and recreational vehicles and buses, allow the Executive Director or his designee to control use of highways where avalanche danger is concerned instead of the Transportation Commission, and make other stylistic and grammatical changes.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 41-6a-1636 and Section 41-6a-302 and Section 72-1-201 and Section 72-3-102

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget because the rule change only delegates authority from the Executive Director to the Region Directors over travel restrictions, expands the season when restrictions are allowed, clarifies when chains are required and makes other stylistic and grammatical changes.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government because the rule change only delegates authority from the Executive Director to the Region Directors over travel restrictions, expands the season when restrictions are allowed, clarifies when chains are required and makes other stylistic and grammatical changes.
- ◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses because the rule change only delegates authority from the Executive Director to the Region Directors over travel restrictions, expands the season when restrictions are allowed, clarifies when chains are required and makes other stylistic and grammatical changes.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the rule change only delegates authority from the Executive Director to the Region Directors over travel restrictions, expands the season when restrictions are allowed, clarifies when chains are required and makes other stylistic and grammatical changes.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no anticipated compliance costs for affected persons because the rule change only delegates authority from the Executive Director to the Region Directors over travel restrictions, expands the season when restrictions are allowed, clarifies when chains are required and makes other stylistic and grammatical changes.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is no anticipated fiscal impact on businesses because the rule change only delegates authority from the Executive Director to the Region Directors over travel restrictions, expands the season when restrictions are allowed, clarifies when chains are required and makes other stylistic and grammatical changes.

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

TRANSPORTATION  
OPERATIONS, TRAFFIC AND SAFETY  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2011**

**THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2011**

**AUTHORIZED BY: John Njord, Executive Director**

**R920. Transportation, Operations, Traffic and Safety.****R920-6. Snow Tire and Chain Requirements.****R920-6-1. Purpose.**

The purpose of this rule is to allow ~~[the Executive]~~ a Region Director of the Utah Department of Transportation to designate travel restrictions on certain state highways located in ~~[canyon areas of]~~ the State of Utah, that may not be safely traversed by the public or which would tend to create a hazard or hamper road maintenance activities ~~[of the Utah Department of Transportation]~~, unless the vehicle ~~[or motor vehicle]~~ traversing said highway is adequately equipped with certain safety devices.

**R920-6-2. Authority.**

The authority for this rule is in Sections 72-1-201 and 72-3-102; Title 72, Chapter 4, Part 1, Transportation Code, and Sections ~~41-6a-302 and 41-6a-1636~~ ~~[-2+]~~.

**R920-6-3. Provisions.**

~~[A-]~~(1) Locations shall be ~~[requested]~~ designated by the Department ~~[s]~~ of Transportation's ~~[District]~~ Region Director after

coordinating with the local Utah Highway Patrol office. The designations by the ~~[Executive]~~Region Director shall be established through a Traffic Engineering Order (TEO) from the Division of Traffic and Safety to the ~~[District]~~Region Director's office wherein the designated highway is located.

~~[B-]~~(2) The Utah Department of Transportation's Division of Traffic and Safety shall maintain and annually publish a listing of those highways so designated for distribution to:

~~[1-]~~(a) Utah Department of Transportation ~~[District]~~Region Offices;

~~[2-]~~(b) Utah Highway Patrol;

~~[3-]~~(c) county offices; and

~~[4-]~~(d) local law enforcement officials.

~~[E-]~~(3) When any designated highway is so restricted~~[-]~~ no vehicle ~~[or motor vehicle-]~~ shall be allowed or permitted the use of the highway, during the period between ~~[November 1 and March 31]~~October 1 and April 30, or when conditions warrant due to adverse, or hazardous weather or roadway conditions, as determined by the Utah Department of Transportation, unless:

~~[1-]~~(a) ~~[S]~~said vehicle is equipped with either:

~~[a-]~~(i) ~~[S]~~steel link chains or have chains in possession; or

~~[b-]~~(ii) ~~[M]~~mounted snow tires; ~~(tires with an M/S designation with or without studs);~~~~[-or]~~

~~[e-]~~(iii) ~~[E]~~elastomeric tire chains, designed for use with radial tires~~[-]; or~~

~~[2-]~~(iv) ~~[F]~~four-wheel drive vehicles ~~[must have]~~with a minimum of two mounted snow tires~~[- to meet the requirements].~~

~~[3-]~~(4) Radial tires without snow tread do not meet the requirements.

(5) An operator of a commercial vehicle with four or more drive wheels, other than a bus, shall affix tire chains to at least four of the drive wheel tires.

(6) An operator of a bus or recreational vehicle shall affix tire chains to at least two of the drive wheel tires.

#### **R920-6-4. Responsibilities.**

~~[A-]~~(1) ~~[Personnel of the Utah Department of Transportation or the Utah Highway Patrol;]~~Authorized personnel on location to enforce this ~~r[esolution]~~rule, may permit vehicles ~~[or motor vehicles-]~~not equipped with the traction aids defined in the preceding paragraph to travel a designated state highway if, in the opinion of said personnel, the vehicle ~~[or motor vehicle-]~~may do so without endangering the public safety or creating a hazard to or interference with, highway maintenance operations.

~~[B-]~~(2) The Utah Department of Transportation requests the Utah Highway Patrol, or designated local law enforcement agency, to enforce this rule. The Utah Highway Patrol may request to enforce this rule be enforced by contacting the Region Director, or designated Department of Transportation representative where designated highway is located.

~~[C-]~~(3) The Utah Department of Transportation will notify the county officials of counties in which highways are so restricted, as outlined above.

~~[D-]~~(4) All authority shall rest with the ~~[Transportation Commission]~~Executive Director or his designee to control use of highways where avalanche danger and other threats to the public safety are concerned.

~~[E-]~~(5) The ~~[District]~~Region Director or designee shall work with the Utah Highway Patrol in establishing working criteria for the adequate enforcement of the above provisions.

**KEY: tires, snow[\*]**

**Date of Enactment or Last Substantive Amendment: 1992**

**Notice of Continuation: ~~[August 13, 2007]~~2011**

**Authorizing, and Implemented or Interpreted Law: 72-1-201, 72-3-102, 41-6a-302, 41-6a-1636~~[21]~~**

## Transportation, Program Development **R926-3** Class B and Class C Road Funds

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35260

FILED: 09/19/2011

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to incorporate the updated Regulations Governing Class B and Class C Road Funds.

**SUMMARY OF THE RULE OR CHANGE:** This amendment incorporates the updated Regulations Governing Class B and Class C Road Funds, which have been updated to clarify the use of "centerline" mileage in B and C road funding and to eliminate alleys as being eligible B and C road mileage sections.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 72-2-103 and Section 72-2-104 and Section 72-2-107 and Section 72-2-108 and Section 72-2-109 and Section 72-2-110

#### MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Regulations Governing Class B and Class C Road Funds, published by Utah Department of Transportation, 04/29/2011

#### ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget because the amendment only clarifies existing practice with regard to Class B and C road funds.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government because the amendment only clarifies existing practice with regard to Class B and C road funds.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses because the amendment only clarifies existing practice with regard to Class B and C road funds.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There are no anticipated costs or savings to persons other than small businesses, businesses or local government because the amendment only clarifies existing practice with regard to Class B and C road funds.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs for affected persons because the amendment only clarifies existing practice with regard to Class B and C Road Funds.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact on businesses because the amendment only clarifies existing practice with regard to Class B and C Road Funds.

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

TRANSPORTATION  
PROGRAM DEVELOPMENT  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2011

AUTHORIZED BY: John Njord, Executive Director

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**R926. Transportation, Program Development.**

**R926-3. Class B and Class C Road Funds.**

**R926-3-1. Authority.**

Utah Code Ann. Sections 72-2-109, 72-3-103, and 72-3-104 authorize the Utah Department of Transportation and city and county officials to mutually adopt rules governing the expenditure of class B and class C road funds.

**R926-3-2. Purpose.**

The following rules are to govern the expenditure of class B and C road funds as mutually agreed on by the City and County Joint Highway Committee and the Utah Department of Transportation.

**R926-3-3. Incorporation of B and C Regulations by Reference.**

The Department incorporates by reference the latest UDOT publication "Regulations Governing Class B and Class C Road Funds" dated [~~September 19, 2008~~]April 29, 2011. This may be found on website <http://www.udot.utah.gov>.

**KEY: transportation policy, highway finances, highway, roads**  
**Date of Enactment or Last Substantive Amendment: [~~August 13, 2009~~]2011**

**Notice of Continuation: November 29, 2006**

**Authorizing, and Implemented or Interpreted Law: 72-2-107 through 72-2-110**

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## Veterans' Affairs, Administration R978-1

### Rule Governing Veterans' Affairs

#### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 35261

FILED: 09/19/2011

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule is to define the functions and mission of the Department of Veterans' Affairs as required by statute.

**SUMMARY OF THE RULE OR CHANGE:** This rule outlines the primary responsibilities and functions of the Department of Veteran Affairs. Specifically it outlines responsibilities for state veteran's nursing homes, the veterans' cemetery and memorial park, homeless veterans, veteran education programs, advocacy and informational outreach activities on veteran benefits, tracking veterans employed by the state and creating a database of Utah veterans.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 71-8-2

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This is an informational rule. There is no change to the state budget over current appropriations. No additional funding is required to fully enact this rule.

◆ **LOCAL GOVERNMENTS:** The Department of Veterans' Affairs does not have any authority to impact or regulate local governments. Nothing in this rule is anticipated to impact any local government.

◆ **SMALL BUSINESSES:** The Department does not have authority to regulate small business. The Department is authorized to contract with local businesses in carrying out some of its functions, such as management of the state veterans' homes, and maintaining a database of Utah veterans. These individual contracts may have a positive fiscal impact on the contracted business, but no impact on the greater small business community.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The target population served by the Department is veterans living in Utah. There is no cost to any individual veteran for the services that are provided. There are significant cost benefits to veterans who take advantage of the services

provided by the Department. Veterans receiving services in a state veterans' home will spend only about half as much for comparable care, and some will spend even less. This can be an individual savings of from \$35,000 to \$70,000 for each veteran or their family per year. Veterans buried at the veterans cemetery can save their families several hundreds in burial costs. Veterans participating in educational programs assisted by the G.I. bill can save thousands in post-secondary education. Veterans who avail themselves of the many state benefits can save money on everything from bus passes to fishing licenses to national parks passes. One area where veterans will benefit financially is in the applications process to receive state and federal veterans benefits. Outside firms are charging anywhere from several hundred to several thousand dollars to assist veterans in applying for aid, pensions, medical benefits and other benefits. A primary function of the department is to assist veterans in applying for all available benefits at no charge to the veteran. Collectively, the saving to Utah veterans is many millions.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no compliance cost to veterans. All of the services and information provided are at no cost. Nursing home care, burial expenses, educational expenses and other cost-based services are provided to veterans at significant cost savings.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule will have minimal fiscal impact on businesses. Those businesses and veterans service organizations that contract with the department in provision of services will enjoy a positive fiscal impact, but there is nothing in the rule that will otherwise impact state or local businesses. Those businesses that charge excessive fees to veterans for assistance with basic veteran benefits may be impacted negatively as the department provides this assistance at no cost to the veterans, but nothing in the rule prevents them from continuing such business practices.

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

VETERANS' AFFAIRS  
ADMINISTRATION  
ROOM 202  
550 FOOTHILL BOULEVARD  
SALT LAKE CITY, UT 84113  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ W. Todd Hansen by phone at 801-584-1914, by FAX at 801-584-1916, or by Internet E-mail at [wthansen@utah.gov](mailto:wthansen@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2011

THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2011

AUTHORIZED BY: Terry Schow, Executive Director

**R978. Veterans' Affairs, Administration.**

**R978-1. Rule Governing Veterans' Affairs.**

**R978-1-1. Authority.**

(1) This rule is established pursuant to Section 71-8-2, which established the Department of Veterans' Affairs. This rule is made pursuant to Title 63G, Chapter 3 of the Utah Administrative Rulemaking Act.

**R978-1-2. Purpose.**

(1) The purpose of this rule is to define the functions and mission of the Department of Veterans' Affairs under Sections 71-8-1 through 71-11-10 and 38 CFR.

**R978-1-3. Definitions.**

(1) Terms used in this rule are defined in Sections 71-8-1, 71-10-1, and 71-11-2.

(2) Additional terms are defined as follows:

(a) "Homeless veteran" means a qualified veteran who is currently experiencing an episode of homelessness without a stable, regular indoor place of residence.

(b) "Nursing Home" means a State licensed facility accommodating persons who require skilled nursing care and related medical services.

(c) "Stand down" is a term derived from the Vietnam war meaning a place of safe refuge from operations where soldiers can get clean clothes, warm food, basic medical and dental care, hygiene services and camaraderie. It is here applied to the provision of these services for homeless veterans.

(d) "State Officer" means the State official authorized to oversee the operations of the State veterans nursing home.

(e) "Widow" means the unmarried spouse of a deceased veteran of either sex.

**R978-1-4. Nursing Homes.**

(1) The department shall administer the various state veterans' nursing homes in accordance with Title 71, Chapter 11, Utah Veterans' Nursing Home Act.

(2) Each nursing home shall have a State Officer who shall act as the department's liaison to carry out the requirements of this act.

(3) Each home shall enforce admission requirements in accordance with Section 71-11-6 as established by the department.

(4) Each home shall comply with 38 CFR 51, "Per Diem for Nursing Home Care of Veterans" for per diem payments, per diem payments for veterans with service connected disabilities, payments for drugs and medicines for certain veterans, and nursing home standards.

(5) The department may contract with reputable nursing home management firms for the day-to-day operation of the nursing homes as provided in 38 CFR 51.210. Selection shall be by a competitive bid process with criteria established by the department. The department shall establish the duration for the management contracts and other contractual terms and conditions in the best interests of the residents.



(6) Notwithstanding the authority of the management firm to employ and direct all nursing home employees, the State Officer shall be an employee of the department and shall be independent of the management firm. The State Officer shall oversee the operations of the state nursing home.

**R978-1-5. Cemetery and Memorial Park.**

(1) The department shall administer the state veterans' cemetery and memorial park in accordance with Section 71-7-3.

(2) Fees charged for burial expenses shall be posted at the cemetery office and on the department website. Fees charges for other funeral expenses, including headstone replacement, shall be posted at the cemetery office and on the department website.

**R978-1-6 Homeless Veterans.**

(1) The department shall coordinate with local, state and federal programs providing short and long term housing for homeless veterans in the state as provided in Subsection 71-8-3 (1) (d).

(2) The department shall direct a stand down for homeless veterans to assist in their temporal, physical and mental needs at least annually.

**R978-1-7. Education Programs.**

(1) The department shall administer the State Approving Agency (SAA) for Veterans Education as directed in Subsection 71-8-3(1)(e).

(2) The SAA shall perform all duties necessary for the inspection, approval and supervision of educational programs offered by qualified educational institutions, training establishments, and tests for licensing and certification in accordance with the standards and provisions of 38 U.S.C. 30, 32, 33, 35, and 36, and 10 U.S.C. 1606 and 1607.

(3) The SSA shall provide in-depth technical assistance and outreach liaison with all related organizations, agencies, individuals and activities to help veterans and other eligible persons achieve their educational and vocational goals.

(4) The SSA shall reach out to eligible persons and inform them of their benefits through the GI Bill, which will assist veterans in making the most informed decision toward their vocational and educational goals.

(5) The SSA shall perform other duties and functions as determined by the U.S. Department of Veteran Affairs via annual contract for SSA services.

**R978-1-8. State Benefits.**

(1) The department shall assist veterans, their widows and dependents in procurement of all rights and benefits which may accrue to them by reason of military service to the United States in accordance with Section 71-9-1. Specifically, the department shall disseminate information on benefits to veterans and interested parties via:

- (a) community outreach
- (b) fairs, exhibits and community events
- (c) the Utah Veterans Voice newspaper and other appropriate media
- (d) the department's public website (<http://veterans.utah.gov>)

(e) cooperative activities with other veterans organizations

(2) Specific state benefits that the department shall assist veterans and their dependents in securing include:

- (a) Disabled Veteran Property Tax Abatement
- (b) Purple Heart Tuition Waiver
- (c) Purple Heart Fee Exemption
- (d) Scott B Lundell Tuition Waiver for military members' surviving dependents
- (e) Honorary high school diplomas
- (f) Veteran's license plates
- (g) Free use of armories
- (h) Fishing license privileges
- (i) Special fun tags
- (j) America the Beautiful pass
- (k) Trax/bus reduced fare cards
- (l) Veterans Upward Bound
- (m) Such other state benefits to veterans as may be established by statute

**R978-1-9. Federal Benefits.**

(1) The department cannot administer any federal veterans benefit programs, but it shall provide information and assistance to veterans, their widows and dependents in understanding and navigating the rules of federal veterans' benefits. These federal benefits include:

- (a) veterans compensation and pensions
- (b) Dependency and indemnity compensation (DIC) payments
- (c) Disability compensation
- (d) Home loan guarantee program
- (e) Post 9-11 G.I. Bill

(2) The department may contract with other military service organizations to assist veterans, their spouses, widows and dependents in securing their rights, benefits, and employment preferences as provided in Section 71-9-1.

**R978-1-10. Tracking Veteran Employees.**

(1) The department shall coordinate with the Utah State Department of Human Resource Management (DHRM) to maintain current counts of the number of veterans employed by the State of Utah in each department, as provided in Subsection 71-8-3 (5). The department shall encourage state agencies and departments to properly record veteran status for all employees.

(2) A count of veterans in state government shall be updated and kept on file at least twice per year.

**R978-1-11. Record of Veterans.**

(1) The department shall create and maintain a record of veterans in Utah as provided in Subsection 71-8-3 (6).

(2) The department shall maintain a searchable self-registration for Utah veterans on the department website.

(3) The department shall work with the Utah Department of Information Technology, the Department of Workforce Services, and the Utah Drivers License Division to develop a searchable, digital database of Utah veterans.

(4) The department shall secure paper and digital copies of veterans' form DD-214 to assist in creating a database of verified veterans from Utah and to assist Utah veterans in securing all available benefits.

(5) The department shall contract, as appropriate, for technical assistance in creating and maintaining veterans' databases.

**KEY: veterans' affairs**

**Date of Enactment or Last Substantive Amendment: 2011**

**Authorizing, and Implemented or Interpreted Law: 71-8-2**

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**End of the Notices of Proposed Rules Section**

## NOTICES OF CHANGES IN PROPOSED RULES

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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 November 14, 2011.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [~~example~~]). A row of dots in the text between paragraphs (. . . . .) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Division of Administrative Rules will include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

From the end of the 30-day waiting period through February 12, 2012, 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.

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**The Changes in Proposed Rules Begin on the Following Page**

**Labor Commission, Antidiscrimination  
And Labor, Fair Housing  
R608-1-17  
Assistance Animals**

**NOTICE OF CHANGE IN PROPOSED RULE**

DAR FILE NO.: 35094  
FILED: 09/28/2011

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change in proposed rule is to conform the proposed rule provisions to the requirements of existing federal regulations.

**SUMMARY OF THE RULE OR CHANGE:** The rule clarifies that federal and state Fair Housing laws permit an individual with a disability to have an assistance animal in a housing facility that would otherwise restrict such animals, provided that the service animal is necessary to the disabled individual's use and enjoyment of the housing. The rule allows a housing provider to verify the need for such an assistance animal and to disallow a service animal on the grounds of undue financial or administrative burden, safety, or other such reasons. Additionally, the rule clarifies the definition of "assistance animal." The rule also distinguishes between standards that apply to service animals in housing situations and standards that apply to service animals in public areas, common carriers, and similar settings. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the August 15, 2011, issue of the Utah State Bulletin, on page 47. 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 57-21-1 et seq. and Section 63G-4-102 et seq.

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The rule will not have any appreciable effect on the state's costs in administering and enforcing Fair Housing laws, nor is the rule expected to have any other fiscal impact on the state budget.
- ◆ **LOCAL GOVERNMENTS:** To the extent that local governments provide housing to disabled individuals, such governments may be subject to this rule's requirements.

Because the rule merely restates and clarifies the existing requirements of state and federal statutes, adoption of the rule will not result in any cost or savings to local governments.

◆ **SMALL BUSINESSES:** To the extent that small businesses provide housing to disabled individuals, such small businesses may be subject to this rule's requirements. Because the rule merely restates and clarifies the existing requirements of state and federal statutes, adoption of the rule will not result in any cost or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** In addition to local governments and small businesses, other entities that provide housing to disabled individuals may be subject to this rule's requirements. Because the rule merely restates and clarifies the existing requirements of state and federal statutes, adoption of the rule will not result in any cost or savings.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This rule imposes no compliance costs on affected persons. The rule's substantive provisions are already part of state and federal Fair Housing law. Consequently, housing providers and housing consumers are already subject to the requirements contained in the rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** By clarifying and explaining to housing providers and housing consumers the rules that apply to assistance animals, the proposed rule should avoid conflict and reduce the number of adjudicative proceedings on this issue. To that extent, the proposed rule will reduce litigation costs for businesses and individuals.

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

LABOR COMMISSION  
ANTIDISCRIMINATION AND LABOR,  
FAIR HOUSING  
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:**

- ◆ Heather Gunnarson by phone at 801-530-6921, by FAX at 801-530-7601, or by Internet E-mail at hgunnarson@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 11/14/2011**

**THIS RULE MAY BECOME EFFECTIVE ON: 11/21/2011**

**AUTHORIZED BY: Sherrie Hayashi, Commissioner**

**R608. Labor Commission, Antidiscrimination and Labor, Fair Housing.**

**R608-1. Utah Fair Housing Rules.**

**R608-1-17. Assistance Animals.**

A. General

1. Pursuant to the Utah Fair Housing Act and the federal Fair Housing Act, this rule defines the circumstances in which an individual with a disability is entitled to an assistance animal as a reasonable accommodation in a ~~[housing facility]~~dwelling that would otherwise restrict or prohibit the presence of an animal. ~~[This rule applies only to tenants, prospective tenants and those authorized by the housing provider to live at the housing facility.]~~The term "assistance animals" as used in this rule means animals that assist, support, or provide service to persons with disabilities and may include or otherwise be referred to as service animals, emotional support animals, assistive animals, or therapy animals.

2. The ~~[proposed]~~assistance animal must be necessary to afford the individual an equal opportunity to use and enjoy a dwelling or to participate in the housing service or program. This requires a demonstrable relationship between the individual's disability and the assistance the animal provides.

a. Housing providers are entitled to verify the existence of the individual's disability as well as the need for the assistance animal as an accommodation for that disability if either is not readily apparent. Accordingly, an individual proposing an assistance animal as a reasonable accommodation for a disability may be required to provide documentation from a physician, psychiatrist, or other qualified healthcare professional that the animal provides support that alleviates a symptom or effect of the disability.

b. Housing providers need not permit an assistance animal as an accommodation to a person with a disability if the provider demonstrates that allowing the assistance animal would

impose an undue financial or administrative burden or would fundamentally alter the nature of ~~[the]~~a housing facility, program or service.

c. Housing providers are not required to provide an accommodation that poses a direct threat to the health or safety of others. Thus, if a particular assistance animal has a history of dangerous behavior, if the animal is out of control and its handler does not take effective action to control it, ~~[or if the animal is not housebroken,]~~the housing provider is not required to accept the assistance animal~~[into the housing]~~.

B. Relationship of this rule to other laws addressing service animals.

~~[While federal and state]~~1. The federal Fair Housing Act, the Utah Fair Housing Act [fair housing laws] and this rule establish the standards for assistance animals as a reasonable accommodation in housing~~[- this rule does not apply to use of service animals in public areas, common carriers, public conveyances, public accommodations or places of amusement, which are governed by standards set forth in Utah Code Ann. Section 62A-5b-101 et seq., "Rights and Privileges of a Person with a Disability."].~~

2. This rule does not apply to use of service animals in public areas, common carriers, public conveyances, public accommodations or places of amusement, which are governed by standards set forth in Utah Code Ann. Section 62A-5b-101 et seq., "Rights and Privileges of a Person with a Disability."

**KEY: housing, fair housing, discrimination, time**

**Date of Enactment or Last Substantive Amendment: 2011**

**Notice of Continuation: November 30, 2006**

**Authorizing, and Implemented or Interpreted Law: 57-21-1 et seq.; 63G-4-102 et seq.**

**End of the Notices of Changes in Proposed Rules Section**



# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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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.

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## Administrative Services, Finance **R25-2**

### Finance Adjudicative Proceedings

#### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 35276  
FILED: 09/21/2011

#### **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: The Utah Administrative Procedures Act, Title 63G, Chapter 4, requires state agencies to allow adjudicative proceedings. Section 63G-4-202 allows agencies to designate all adjudicative proceedings as informal.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Division of Finance has not received any written comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Division of Finance has reviewed this rule and determined that the rule must continue to comply with the statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
ADMINISTRATIVE SERVICES  
FINANCE  
ROOM 2110 STATE OFFICE BLDG

450 N STATE ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Richard Beckstead by phone at 801-538-3100, by FAX at 801-538-3562, or by Internet E-mail at rbeckstead@utah.gov

AUTHORIZED BY: John Reidhead, Director

EFFECTIVE: 09/21/2011

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## Commerce, Occupational and Professional Licensing **R156-9**

### Funeral Service Licensing Act Rule

#### **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

DAR FILE NO.: 35293  
FILED: 09/26/2011

#### **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: Title 58, Chapter 9, provides for the licensure of funeral service directors, funeral service interns, funeral service establishments, and preneed funeral arrangement sales agents. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-9-201(3)(A) provides that the Funeral Service Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This

rule was enacted to clarify the provisions of Title 58, Chapter 9, with respect to funeral service directors, funeral service interns, funeral service establishments and preneed funeral arrangement sales agents.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in October 2006, it has been amended once in three times in March 2007, December 2007 and November 2010. However, the Division has received no written comments with respect to this rule since it was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 9, with respect to funeral service directors, funeral service interns, funeral service establishments and preneed funeral arrangement sales agents. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions and ethical standards relating to the profession.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Clyde Ormond by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at [cormond@utah.gov](mailto:cormond@utah.gov)

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 09/26/2011

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**Commerce, Occupational and  
 Professional Licensing  
 R156-57  
 Respiratory Care Practices Act Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 35292  
 FILED: 09/26/2011

**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: Title 58, Chapter 57, provides for the licensure of respiratory care practitioners. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-57-3(3) provides that the Respiratory Care Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 57, with respect to respiratory care practitioners.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in October 2006, it has been amended once in February 2007. However, the Division has received no written comments with respect to this rule since it was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 57, with respect to respiratory care practitioners. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions and ethical standards relating to the profession.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Clyde Ormond by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at [cormond@utah.gov](mailto:cormond@utah.gov)



AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 09/26/2011

**Environmental Quality, Radiation  
Control  
R313-19**

**Requirements of General Applicability  
to Licensing of Radioactive Material**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35282

FILED: 09/23/2011

**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 within the Department of Environmental Quality. In accordance with Section 19-3-104, the Board is authorized to make rules 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: One comment was made by a representative of the U.S. Nuclear Regulatory Commission. It was received since the last five-year review and the representative noted that Utah needs to add a paragraph to Subsection R313-19-13(2)(a) that is essentially identical to 10 CFR 30.14(c) in order to meet the Compatibility Category "B" designation assigned to 10 CFR 30.14(c). The comment was resolved by filing DAR No. 33919. 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: It is necessary to continue this rule because it prescribes requirements governing the licensing of radioactive material. This rule also needs to be continued to ensure that the state's rules are adequate to protect public health and safety, and meet compatibility requirements of the U. S. Nuclear Regulatory Commission's program. The rule identifies certain concentrations or quantities of radioactive material which are exempt from licensing. The rule also establishes the conditions for safe transportation of radioactive material, provides for reciprocal recognition of out-of-state licenses, and identifies terms and conditions of licenses. No opposing comments have been received.

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: 09/23/2011

**Environmental Quality, Radiation  
Control  
R313-22  
Specific Licenses**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35283

FILED: 09/23/2011

**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 within the Department of Environmental Quality. In accordance with Section 19-3-104, the Board is authorized to make rules that are necessary for controlling exposures 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: Some comments were made by a representative of the U.S. Nuclear Regulatory Commission. They were received since the last five-year review. The representative noted that Utah's rules, in Section R313-22-75, includes requirements essentially equivalent to 10 CFR 32.11(b) and (c) as well as 10 CFR 32.12. However, the rules do not address the change in compatibility designation from Category "C/B" to "NRC." The commenter noted that Utah needs to revise its rules in Section R313-22-75 by: 1) removing those rules that are reserved to NRC; or 2) revising Subsections R313-22-75(1) and (2) to include the distribution of radioactive material in exempt concentrations in the

authority reserved to NRC. These two comments were resolved by filing DAR No. 33912. It was also noted by the NRC that Subsection R313-22-75(9)(b)(v) omitted some text found in 10 CFR 32.72(b)(5)(iv) and the text needs to be inserted into the rule to meet the Compatibility Category "B" designation of 10 CFR 32.72(b)(5)(iv). The NRC acknowledged that this comment may be addressed when Rule R313-22 is next required to be modified.

**REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY:** It is necessary to continue this rule because it prescribes requirements for the issuance of "specific licenses" for control of radioactive material. This rule also needs to be continued to ensure that the state's rules are adequate to protect public health and safety, and meet compatibility requirements of the U. S. Nuclear Regulatory Commission's program. The rule prescribes procedures for filing an application, assuring financial surety for decommissioning facilities where radioactive materials are used, and requirements for "specific licenses" of broad scope. The requirements for issuance of "specific licenses" help ensure protection of public health and safety or property. No opposing comments have been received.

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](mailto:cwjones@utah.gov)

AUTHORIZED BY: Rusty Lundberg, Director

EFFECTIVE: 09/23/2011

**Environmental Quality, Radiation  
Control  
R313-25  
License Requirements for Land  
Disposal of Radioactive Waste**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35284

FILED: 09/23/2011

**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 within the Department of Environmental Quality. In accordance with Section 19-3-104, the Board is authorized to make rules that are necessary for controlling exposures 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:** On 12/14/2009, the Division of Radiation Control (hereafter, Agency) submitted a proposed rule change to Section R313-25-8 (DAR No. 33267). During the 30-day public comment period (01/01/2010 to 02/02/2010), the Agency received 38 comments regarding the proposed rule. Eighteen comments were in support of the rule. Thirteen comments opposed the disposal of depleted uranium in Utah from a policy perspective, but said little about the proposed rule. Five opposed the rule, indicating that the rule was more restrictive than federal requirements or the Agency should wait for the U. S. Nuclear Regulatory Commission (NRC) to revise federal regulations (10 CFR Part 61) regarding the land disposal of depleted uranium. Two comments were made regarding the risk from uranium and they suggested that a performance assessment (PA) review panel or committee be established to review the site specific PA as described in the proposed rule. A comment from the NRC about the compatibility of Section R313-25-8 with federal requirements caused a Notice of Change in Proposed Rule to be submitted to DAR on 04/14/2010. The change added the word "concentrated" before the term "depleted uranium" throughout the text. This rule change was effective on June 2, 2010. On November 15, 2010, the Agency submitted another proposed rule change to Section R313-25-8 (DAR No. 34240). This proposed rule was published in the 12/01/2010, Utah State Bulletin, initiating a 30-day public comment period. Fourteen comments were received by the Agency. Written comments ranged from a single issue to as many as eight separate issues from individual commentors. Each separate comment (fourteen in all) was determined to be either related or unrelated to the proposed rule. For comments judged to be applicable to the proposed rule, a response was prepared in a "Summary of Public Comments and Response to Comments" document. Eleven of the fourteen comments were unrelated to the proposed rule because they involved public policy matters or were outside the scope of the proposed rule. These comments were not addressed by the Agency. Specific comments relating to the proposed rule resulted in a Notice of Change in Proposed Rule, which was filed on 02/15/2011. The effective date for the rulemaking was 04/04/2011.

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 establishes the procedures, criteria, and terms and conditions upon which a license may be issued for the land disposal of radioactive wastes. It is necessary to continue this rule because of the presence of an active low-level radioactive waste disposal facility in the State of Utah. This rule also needs to be continued to ensure that the State's rules are adequate to protect public health and safety, and meet compatibility requirements of the U. S. Nuclear Regulatory Commission's program.

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](mailto:cwjones@utah.gov)  
♦ John Hultquist by phone at 801-536-4623, by FAX at 801-536-4250, or by Internet E-mail at [jhultquist@utah.gov](mailto:jhultquist@utah.gov)

AUTHORIZED BY: Rusty Lundberg, Director

EFFECTIVE: 09/23/2011

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**Environmental Quality, Radiation  
Control  
R313-28  
Use of X-Rays in the Healing Arts**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35285  
FILED: 09/23/2011

**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 within the Department of Environmental Quality. In accordance with Section 19-3-104, the Board is authorized to make rules that are necessary for controlling exposures 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: This is not a controversial rule, as no comments have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule because it prescribes the requirements for the use of X-rays in the healing arts. The rule establishes X-ray machine parameters for limiting the size of the X-ray beam, controlling radiation exposure, maintaining accuracy and linearity, and defining performance of mammography X-ray systems. No opposing comments have been received.

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](mailto:cwjones@utah.gov)

AUTHORIZED BY: Rusty Lundberg, Director

EFFECTIVE: 09/23/2011

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**Environmental Quality, Radiation  
Control  
R313-32  
Medical Use of Radioactive Material**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35286  
FILED: 09/23/2011

**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 within the Department of Environmental Quality. In accordance with Section 19-3-104,

the Board is authorized to make rules that are necessary for controlling exposures 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: This is not a controversial rule, as no comments have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule because it establishes the requirements for the medical use of radiation and radioactive material. This rule also needs to be continued to ensure that the state's rules are adequate to protect public health and safety, and meet compatibility requirements of the U. S. Nuclear Regulatory Commission's program. The rule provides for protection of the public health and safety by controlling the internal or external administration of radioactive material to humans. The rule also establishes training requirements for individuals who are authorized to use radioactive material in the practice of medicine.

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: 09/23/2011

## Environmental Quality, Radiation Control

### **R313-36**

## Special Requirements for Industrial Radiographic Operations

### FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35287

FILED: 09/23/2011

### 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 within the Department of Environmental Quality. In accordance with Section 19-3-104, the Board is authorized to make rules that are necessary for controlling exposures 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: This is not a controversial rule, as no comments have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule because it establishes the radiation safety requirements for persons who use radioactive material to examine the macroscopic structure of materials. This rule also needs to be continued to ensure that the state's rules are adequate to protect public health and safety, and meet compatibility requirements of the U. S. Nuclear Regulatory Commission's program. The rule establishes the training criteria a person must meet to utilize a radiographic exposure device in the industrial setting. The rule is also needed to meet the requirements of federal law relating to radiation control. No opposing comments have been received.

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: 09/23/2011

Environmental Quality, Radiation  
Control

**R313-70**

Payments, Categories and Types of  
Fees

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35288  
FILED: 09/23/2011

**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 within the Department of Environmental Quality. In accordance with Section 19-3-104, the Board is authorized to make rules that are necessary for controlling exposures 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: This is not a controversial rule, as no comments have been received since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule because it establishes the requirements for payment of fees for the registration or licensing of sources of radiation. The rule identifies registration or license categories, the time period that a license is valid, and the types of fees the Agency has established pursuant to the Legislative Appropriation Act.

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: 09/23/2011

Human Services, Child and Family  
Services

**R512-43**

Adoption Assistance

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35253  
FILED: 09/19/2011

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 62A-4a-901 et seq. authorizes Child and Family Services to provide adoption assistance and supplemental adoption assistance to help in providing a permanent family for a child in public foster care by providing financial and medical assistance for the child's benefit and best interest of the family who adopts the child.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary to provide Child and Family Services the ability to administer the adoption assistance program.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

AUTHORIZED BY: Brent Platt, Director

EFFECTIVE: 09/19/2011

**Human Services, Child and Family  
Services  
R512-60  
Children's Trust Account**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35254  
FILED: 09/19/2011

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 62A-4a-309 requires Child and Family Services to administer the Children's Account.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary in order for Child and Family Services to carry out the purposes of the Children's Account, which is to be used for community-based education, service, and treatment programs to prevent the occurrence and recurrence of child abuse and neglect.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

AUTHORIZED BY: Brent Platt, Director

EFFECTIVE: 09/19/2011

**Natural Resources, Geological Survey  
R638-1  
Acceptance and Maintenance of  
Confidential Information**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**

DAR FILE NO.: 35294  
FILED: 09/26/2011

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsections 79-3-202(2)(a), (b), and (c) enables the Utah Geological Survey (UGS) to have access to confidential information which it otherwise could not acquire, or which is beyond the financial capability of the UGS to acquire. This statute also allows the UGS Board to adopt rules determining what types of information may be kept confidential. This geologic information is given to or purchased by the UGS with the stipulation from the information source that the information be kept confidential.

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 Utah Geological Survey has received no comments on this rule since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The UGS will continue this rule, as the agency continues to acquire confidential geologic information (for example, from private energy-exploration companies) that is useful to studies performed by the UGS. The information sources still require that the UGS keep this information confidential. Discontinuation of the rule would not allow the UGS to collect and maintain these data for the benefit of the State of Utah.

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

NATURAL RESOURCES  
GEOLOGICAL SURVEY  
ROOM 3110  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Kimm Harty by phone at 801-537-3313, by FAX at 801-537-3400, or by Internet E-mail at [kimmharty@utah.gov](mailto:kimmharty@utah.gov)

AUTHORIZED BY: Rick Allis, Director

EFFECTIVE: 09/26/2011

Transportation, Administration  
**R907-62**  
 Americans with Disabilities Act

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 35258  
 FILED: 09/19/2011

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under the provisions of Section 63G-3-201 and 28 CFR 35.107 (Americans with Disabilities Act) which require public entities to designate an ADA coordinator and adopt grievance procedures under the ADA.

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 from interested persons during and since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule should remain in effect to comply with the Americans with Disabilities Act and so the department will continue to have a designated person to handle grievances in a formal grievance procedure. Therefore, this rule should be continued.

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

TRANSPORTATION  
 ADMINISTRATION  
 CALVIN L RAMPTON COMPLEX  
 4501 S 2700 W  
 SALT LAKE CITY, UT 84119-5998  
 or at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at [lindabarrow@utah.gov](mailto:lindabarrow@utah.gov)

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 09/19/2011

Transportation, Motor Carrier  
**R909-19**  
 Safety Regulations for Tow Truck  
 Operations - Tow Truck Requirements  
 for Equipment, Operation and  
 Certification

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**

DAR FILE NO.: 35255  
 FILED: 09/19/2011

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under the authority of Title 72, Chapter 9, Motor Carrier Safety Act which authorizes the Department to make rules to administer and enforce the act including provisions for required equipment, operation and certification of tow truck operators. More specifically, Section 72-9-603 authorizes the Department to set maximum rates for tow, storage, and administrative fee and establishes authorized towing certification requirements and the posting of tow rates.

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 written comments received during and since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule must remain in effect in order for the Department to fulfill its regulatory responsibilities under the Motor Carrier Safety Act and to ensure the safe operation of motor carriers on state roads and to ensure that rates are regulated so the public is not exploited or overcharged and the tow truck industry is fairly compensated for services rendered. Therefore, this rule should be continued.

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

TRANSPORTATION  
 MOTOR CARRIER

CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Division of Administrative Rules.

4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

AUTHORIZED BY: John Njord, Executive Director

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 09/19/2011

EFFECTIVE: 09/19/2011

**Transportation, Program Development  
R926-2  
Evaluation of Proposed Additions to or  
Deletions from the State Highway  
System**

**Transportation, Program Development  
R926-3  
Class B and Class C Road Funds**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 35257  
FILED: 09/19/2011

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 35259  
FILED: 09/19/2011

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under the authority of Section 72-4-102.5 which requires the Department of Transportation to make rules establishing and defining a functional classification of highways.

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 authorized and required by Section 72-2-109 to provide for uniform accounting of funds to be expended upon class B and C roads.

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 from interested persons during and since the last five-year review of this rule.

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 Joint Highway Committee, representing counties and cities, has reviewed and approved the Regulations Governing Class B and Class C Road Funds incorporated by this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should continue in order to meet the requirements of Section 72-4-102.5 and to maintain a functional highway classification system.

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 to give guidance to cities and counties regarding use of the B and C Road Fund. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
TRANSPORTATION  
PROGRAM DEVELOPMENT  
CALVIN L RAMPTON COMPLEX

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
TRANSPORTATION  
PROGRAM DEVELOPMENT  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Division of Administrative Rules.



DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

EFFECTIVE: 09/19/2011

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AUTHORIZED BY: John Njord, Executive Director

**End of the Five-Year Notices of Review and Statements of Continuation Section**



**NOTICES OF  
FIVE-YEAR REVIEW EXTENSIONS**

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Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules. The extension permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed extensions for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date.

The five-year review extension is governed by Subsections 63G-3-305(4) and (5).

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**Corrections, Administration  
R251-106  
Media Relations**

**FIVE-YEAR REVIEW EXTENSION**  
DAR FILE NO.: 35267  
FILED: 09/19/2011

EXTENSION REASON AND NEW DEADLINE:  
Miscommunication within the agency when personnel changed, new person was unaware of five-year review deadline. New deadline: 01/17/2012.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Lori Worthington by phone at 801-545-5799, by FAX at 801-545-5702, or by Internet E-mail at [lworthin@utah.gov](mailto:lworthin@utah.gov)

AUTHORIZED BY: Thomas Patterson, Executive Director

EFFECTIVE: 09/19/2011

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**Corrections, Administration  
R251-107  
Executions**

**FIVE-YEAR REVIEW EXTENSION**  
DAR FILE NO.: 35268  
FILED: 09/19/2011

EXTENSION REASON AND NEW DEADLINE:  
Miscommunication within the agency when personnel changed, new person was unaware of five-year review deadline. New deadline: 01/17/2012.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Lori Worthington by phone at 801-545-5799, by FAX at 801-545-5702, or by Internet E-mail at [lworthin@utah.gov](mailto:lworthin@utah.gov)

AUTHORIZED BY: Thomas Patterson, Executive Director

EFFECTIVE: 09/19/2011

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**Corrections, Administration  
R251-108  
Administrative Proceedings**

**FIVE-YEAR REVIEW EXTENSION**  
DAR FILE NO.: 35269  
FILED: 09/19/2011

EXTENSION REASON AND NEW DEADLINE:  
Miscommunication within the agency when personnel changed, new person was unaware of five-year review deadline. New deadline: 01/17/2012.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Lori Worthington by phone at 801-545-5799, by FAX at 801-545-5702, or by Internet E-mail at [lworthin@utah.gov](mailto:lworthin@utah.gov)

AUTHORIZED BY: Thomas Patterson, Executive Director

EFFECTIVE: 09/19/2011

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**Corrections, Administration  
R251-703  
Vehicle Direction Station**

**FIVE-YEAR REVIEW EXTENSION**  
DAR FILE NO.: 35270  
FILED: 09/19/2011

EXTENSION REASON AND NEW DEADLINE:  
Miscommunication within the agency when personnel  
changed, new person was unaware of five-year review  
deadline. New deadline: 01/17/2012.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Lori Worthington by phone at 801-545-5799, by FAX at 801-  
545-5702, or by Internet E-mail at lworthin@utah.gov

AUTHORIZED BY: Thomas Patterson, Executive Director

EFFECTIVE: 09/19/2011

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**Corrections, Administration**  
**R251-704**  
North Gate

**FIVE-YEAR REVIEW EXTENSION**  
DAR FILE NO.: 35271  
FILED: 09/19/2011

EXTENSION REASON AND NEW DEADLINE:  
Miscommunication within the agency when personnel  
changed, new person was unaware of five-year review  
deadline. New deadline: 01/17/2012.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Lori Worthington by phone at 801-545-5799, by FAX at 801-  
545-5702, or by Internet E-mail at lworthin@utah.gov

AUTHORIZED BY: Thomas Patterson, Executive Director

EFFECTIVE: 09/19/2011

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**Corrections, Administration**  
**R251-705**  
Inmate Mail Procedures

**FIVE-YEAR REVIEW EXTENSION**  
DAR FILE NO.: 35272  
FILED: 09/19/2011

EXTENSION REASON AND NEW DEADLINE:  
Miscommunication within the agency when personnel  
changed, new person was unaware of five-year review  
deadline. New deadline: 01/17/2012.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Lori Worthington by phone at 801-545-5799, by FAX at 801-  
545-5702, or by Internet E-mail at lworthin@utah.gov

AUTHORIZED BY: Thomas Patterson, Executive Director

EFFECTIVE: 09/19/2011

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**Corrections, Administration**  
**R251-706**  
Inmate Visiting

**FIVE-YEAR REVIEW EXTENSION**  
DAR FILE NO.: 35273  
FILED: 09/19/2011

EXTENSION REASON AND NEW DEADLINE:  
Miscommunication within the agency when personnel  
changed, new person was unaware of five-year review  
deadline. New deadline: 01/17/2012.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Lori Worthington by phone at 801-545-5799, by FAX at 801-  
545-5702, or by Internet E-mail at lworthin@utah.gov

AUTHORIZED BY: Thomas Patterson, Executive Director

EFFECTIVE: 09/19/2011

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**Labor Commission, Antidiscrimination  
and Labor, Antidiscrimination**  
**R606-2**  
Pre-Employment Inquiry Guide

**FIVE-YEAR REVIEW EXTENSION**  
DAR FILE NO.: 35289  
FILED: 09/26/2011

EXTENSION REASON AND NEW DEADLINE: The Division  
of Administrative Rules has advised the Labor Commission  
that a five-year review is due for the above-referenced rule by  
10/12/2011. However, the Commission has determined that  
the rule is no longer needed; the Commission has submitted  
a Notice of Proposed Rule Repeal to the Division. Because  
the process of repealing the rule cannot be completed prior to  
the five-year review deadline, the Commission hereby  
requests that the deadline for completing the five-year review  
be extended by 120 days. New deadline: 02/10/2012. (DAR  
NOTE: The proposed repeal of Rule R606-2 is under DAR  
No. 35297 in this issue, October 15, 2011, of the Bulletin.)

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Alan Hennebold by phone at 801-530-6937, by FAX at 801-  
530-6390, or by Internet E-mail at ahennebold@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

EFFECTIVE: 09/26/2011

## NOTICES OF RULE EFFECTIVE DATES

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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.

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### Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

### Alcoholic Beverage Control

#### Administration

No. 35098 (AMD): R81-1. Scope, Definitions, and General Provisions  
Published: 08/15/2011  
Effective: 10/01/2011

No. 35052 (AMD): R81-1-11. Multiple-Licensed Facility Storage and Service  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35053 (AMD): R81-1-14. Americans With Disabilities Act Complaint Procedure  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35054 (AMD): R81-1-29. Disclosure of Conflict of Interest  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35055 (AMD): R81-1-30. Factors for Granting Licenses  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35056 (AMD): R81-1-30. Draft Beer Sales/Minors on Premises  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35057 (AMD): R81-2. State Stores  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35058 (AMD): R81-3. Package Agencies  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35059 (AMD): R81-4A. Restaurant Liquor Licenses  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35060 (AMD): R81-4C. Limited Restaurant Licenses  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35061 (AMD): R81-4D. On-Premise Banquet License  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35062 (NEW): R81-4F. Reception Center License  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35063 (AMD): R81-5. Private Clubs  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35099 (AMD): R81-6-6. Religious Wine Permits  
Published: 08/15/2011  
Effective: 10/01/2011

No. 35064 (AMD): R81-10A. On-Premise Beer Retailer Licenses  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35065 (NEW): R81-10C. Beer Only Restaurant Licenses  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35097 (NEW): R81-10D. Tavern Beer Licenses  
Published: 08/15/2011  
Effective: 10/01/2011

No. 35066 (AMD): R81-12. Local Industry Representative Licenses (Distillery, Winery, Brewery)  
Published: 08/01/2011  
Effective: 10/01/2011

NOTICES OF RULE EFFECTIVE DATES

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Commerce

Occupational and Professional Licensing  
No. 35102 (AMD): R156-38b. State Construction Registry  
Rule  
Published: 08/15/2011  
Effective: 09/26/2011

Education

Administration  
No. 35101 (AMD): R277-404-3. Board Responsibilities  
Published: 08/15/2011  
Effective: 09/23/2011

Environmental Quality

Radiation Control  
No. 35069 (AMD): R313-26-4. Shipper's Requirements  
Published: 08/01/2011  
Effective: 09/22/2011

Health

Health Care Financing, Coverage and Reimbursement Policy  
No. 35100 (AMD): R414-308. Application, Eligibility  
Determinations and Improper Medical Assistance  
Published: 08/15/2011  
Effective: 10/01/2011

Family Health and Preparedness, Licensing  
No. 35025 (AMD): R432-3-3. Deemed Status  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35029 (AMD): R432-31. Life with Dignity Order  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35030 (AMD): R432-35. Background Screening  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35031 (AMD): R432-100-8. Personnel Management  
Service  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35026 (AMD): R432-200-7. Administration and  
Organization  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35021 (AMD): R432-270. Assisted Living Facilities  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35032 (AMD): R432-300-8. Administration and  
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Published: 08/01/2011  
Effective: 10/01/2011

No. 35033 (AMD): R432-500-11. Staff and Personnel  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35023 (AMD): R432-550-10. Personnel  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35022 (AMD): R432-650-6. Personnel Health  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35028 (AMD): R432-700. Home Health Agency Rule  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35027 (NEW): R432-725. Personal Care Agency Rule  
Published: 08/01/2011  
Effective: 10/01/2011

No. 35024 (AMD): R432-750-8. Personnel  
Published: 08/01/2011  
Effective: 10/01/2011

Labor Commission

Administration  
No. 35093 (NEW): R600-3. Definitions Applicable to  
Construction Licensees  
Published: 08/15/2011  
Effective: 09/21/2011

Adjudication

No. 35092 (AMD): R602-2-4. Attorney Fees  
Published: 08/15/2011  
Effective: 09/21/2011

**End of the Notices of Rule Effective Dates Section**

**RULES INDEX  
BY AGENCY (CODE NUMBER)  
AND  
BY KEYWORD (SUBJECT)**

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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 September 30, 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).

Questions regarding the index and the information it contains should be addressed to Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

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## 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
<b>ADMINISTRATIVE SERVICES</b>					
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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
R23-25	Administrative Rules Adjudicative Proceedings	35157	5YR	08/15/2011	2011-17/89
R23-31	Executive Residence Commission	34802	NEW	07/11/2011	2011-11/8
<u>Finance</u>					
R25-2	Finance Adjudicative Proceedings	35276	5YR	09/21/2011	Not Printed
R25-7	Travel-Related Reimbursements for State Employees	34764	AMD	07/01/2011	2011-10/6
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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
<u>Fleet Operations, Surplus Property</u>					
R28-1	State Surplus Property Disposal	34780	REP	09/13/2011	2011-11/12
R28-2	Surplus Firearms	34781	REP	09/13/2011	2011-11/15
R28-3	Utah State Agency for Surplus Property Adjudicative Proceedings	34782	REP	09/13/2011	2011-11/16
R28-7	Surplus Property Rate Schedule	34783	REP	09/13/2011	2011-11/18
<u>Purchasing and General Services</u>					
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<u>Administration</u>					
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R51-4	ADA Complaint Procedure	34492	5YR	03/03/2011	2011-7/43
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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
R58-24	Community Spay and Neuter Grants	34957	NEW	08/26/2011	2011-14/4

Horse Racing Commission (Utah)

R52-7	Horse Racing	35192	EXT	08/29/2011	2011-18/91
R52-7	Horse Racing	35193	5YR	08/30/2011	2011-18/85

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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
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R70-370	Butter	34519	5YR	03/16/2011	2011-8/29
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R81-1	Scope, Definitions, and General Provisions	35070	NSC	08/04/2011	Not Printed
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R81-6	Special Use Permits	35074	NSC	08/04/2011	Not Printed
R81-7	Single Event Permits	34793	5YR	05/10/2011	2011-11/128
R81-7	Single Event Permits	35075	NSC	08/04/2011	Not Printed
R81-8	Manufacturers (Distillery, Winery, Brewery)	34794	5YR	05/10/2011	2011-11/128
R81-8	Manufacturers (Distillery, Winery, Brewery)	35076	NSC	08/04/2011	Not Printed
R81-9	Liquor Warehousing License	34795	5YR	05/10/2011	2011-11/129
R81-9	Liquor Warehousing License	35077	NSC	08/04/2011	Not Printed
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R81-11	Beer Wholesalers	34796	5YR	05/10/2011	2011-11/129
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R151-4	Department of Commerce Administrative Procedures Act Rule	34479	NEW	04/21/2011	2011-6/4
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R152-11	Utah Consumer Sales Practices Act	35121	5YR	08/09/2011	2011-17/91
R152-11-9	Direct Solicitations	34100	AMD	02/07/2011	2010-20/4
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R156-1	General Rule of the Division of Occupational and Professional Licensing	35096	NSC	08/16/2011	Not Printed
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R156-3a	Architect Licensing Act Rule	35034	AMD	09/08/2011	2011-15/45
R156-9	Funeral Service Licensing Act Rule	35293	5YR	09/26/2011	Not Printed
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
R156-11a	Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule	34982	AMD	08/23/2011	2011-14/5
R156-15	Health Facility Administrator Act Rule	34545	AMD	05/26/2011	2011-8/10
R156-15	Health Facility Administrator Act Rule	35117	NSC	08/31/2011	Not Printed
R156-15A	State Construction Code Administration and Adoption of Approved State Construction Code Rule	35017	NEW	09/12/2011	2011-15/48
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R156-38b	State Construction Registry Rule	35102	AMD	09/26/2011	2011-16/11
R156-39a	Alternative Dispute Resolution Providers Certification Act	34888	REP	07/26/2011	2011-12/25

R156-40	Recreational Therapy Practice Act Rule	35160	5YR	08/15/2011	2011-17/92
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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
R156-46b	Division Utah Administrative Procedures Act Rule	34886	AMD	07/26/2011	2011-12/27
R156-46b-403	Evidentiary Hearings in Informal Adjudicative Proceedings	35095	NSC	08/16/2011	Not Printed
R156-47b	Massage Therapy Practice Act Rule	34983	AMD	08/23/2011	2011-14/9
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R156-55a	Utah Construction Trades Licensing Act Rule	35013	AMD	09/12/2011	2011-15/57
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R156-55c-302c	Qualifications for Licensure - Examination Requirements	35230	NSC	09/30/2011	Not Printed
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R156-60b	Marriage and Family Therapist Licensing Act Rule	34952	AMD	08/22/2011	2011-14/13
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
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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
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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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	35114	R277-436-6	NSC	08/31/2011	Not Printed	
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	34758	R861-1A-13	NSC	05/25/2011	Not Printed	
	34753	R861-1A-29	AMD	06/23/2011	2011-10/107	
	34326	R861-1A-43	AMD	02/23/2011	2011-2/42	
	34687	R861-1A-43	AMD	06/23/2011	2011-9/102	
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	35096	R156-1	NSC	08/16/2011	Not Printed	
	34323	R156-1-102	AMD	02/24/2011	2011-2/7	
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	34243	R309-110-4	CPR	05/09/2011	2011-7/28	
	34375	R309-215-16	NSC	02/14/2011	Not Printed	
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	34498	R68-7-10	AMD	06/02/2011	2011-7/2	
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	34744	R477-6	AMD	07/01/2011	2011-10/41	
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	34312	R590-148-24	AMD	02/08/2011	2011-1/27	
	34896	R590-149	AMD	08/02/2011	2011-12/51	
	34236	R590-152	AMD	01/20/2011	2010-23/57	
	34477	R590-177	5YR	03/01/2011	2011-6/105	
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	34769	R590-192	AMD	06/30/2011	2011-10/61
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	34827	R277-713	AMD	07/11/2011	2011-11/61

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	35114	R277-436-6	NSC	08/31/2011	Not Printed
	34828	R277-464	REP	07/11/2011	2011-11/25

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	35096	R156-1	NSC	08/16/2011	Not Printed
	34323	R156-1-102	AMD	02/24/2011	2011-2/7
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	34688	R865-19S-78	NSC	04/27/2011	Not Printed
	34756	R865-19S-92	AMD	06/23/2011	2011-10/110
	34757	R865-19S-103	AMD	06/23/2011	2011-10/112

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	34964	R865-4D-19	AMD	08/25/2011	2011-14/82
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	34755	R865-6F-40	AMD	06/23/2011	2011-10/109
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	34969	R865-7H-3	AMD	08/25/2011	2011-14/85
	34535	R865-11Q	NSC	04/12/2011	Not Printed
	34965	R865-13G-13	AMD	08/25/2011	2011-14/86
	34966	R865-13G-15	AMD	08/25/2011	2011-14/87
	34872	R865-13G-16	AMD	08/11/2011	2011-12/70
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	35092	R602-2-4	AMD	09/21/2011	2011-16/45
	34732	R602-4-4	AMD	06/22/2011	2011-10/82
Labor Commission, Industrial Accidents	34725	R612-12	R&R	06/22/2011	2011-10/93

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	34294	R612-12-2	NSC	01/06/2011	Not Printed
<u>Workforce Investment Act</u>					
Workforce Services, Employment Development	34277	R986-600	AMD	01/26/2011	2010-24/69
<u>x-ray</u>					
Environmental Quality, Radiation Control	35285	R313-28	5YR	09/23/2011	Not Printed
	35288	R313-70	5YR	09/23/2011	Not Printed
<u>x-rays</u>					
Environmental Quality, Radiation Control	35010	R313-16	5YR	07/07/2011	2011-15/131