

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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EDITOR'S NOTES

Correction to the Amendment on Rule R710-9, DAR No. 35296, in the October 15, 2011, Bulletin

After publication of the October 15, 2011, issue of the Utah State Bulletin, the Division of Administrative Rules became aware of a problem with the rule text published as part of the Notice of Proposed Rule for Rule R710-9 (DAR No. 35296) on page 39. Specifically, in Section R710-9-11, the word " glycerin" which already exists in the text of the effective rule was not printed in subsections 11.1, 11.2, and 11.3. The complete, properly marked text was filed with the Division by the State Fire Marshal's Office. As near as the Division has been able to determine, the omission in the PDF edition of the Bulletin was caused by a sequence of codes used to mark the text to show amendments. This sequence of codes appears to have been misinterpreted by the software the Division uses to produce the Bulletin.

This error affects only the PDF publication. The web publication of the rule is correct (see <http://www.rules.utah.gov/publicat/bulletin/2011/20111015/35296.htm>).

The text filed with the Division appears below:

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 automatic 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 propylene glycol or [50]48% premixed glycerin 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 automatic 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 propylene glycol or [50]48% premixed glycerin 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 automatic 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 propylene glycol or [50]48% premixed glycerin 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.~~]

The Division regrets any confusion caused by this publication error. Questions can be directed to Nancy Lancaster, Publications Editor, at 801-538-3218 or by email at nllancaster@utah.gov

End of the Editor's Notes Section

SPECIAL NOTICES

Commerce Occupational and Professional Licensing

Public Notice of 2012 Board and Committee Meeting Schedules

NOTE: Meetings are subject to change - contact the Division at 801-530-6628 to confirm meetings or check the Public Meeting Notice website (www.pmn.utah.gov). Most meetings are held in the Heber M. Wells Building, 160 East 300 South, Salt Lake City, Utah.

January

- 4, Plumbers Licensing Board, 9:00 a.m.
- 4, Utah Board of Accountancy, 1:30 p.m.
- 5, Alarm System Security and Licensing Board, 9:00 a.m.
- 5, Osteopathic Physician and Surgeons Licensing Board, 9:00 a.m.
- 5, UBCC Structural Advisory Committee, 1:00 p.m.
- 10, UBCC Architectural Advisory Committee, 9:00 a.m.
- 10, UBCC Mechanical Advisory Committee, 1:00 p.m.
- 11, Residence Lien Recovery Fund Advisory Board, 8:15 a.m.
- 11, Substance Abuse Counselor Licensing Board, 9:00 a.m.
- 11, Physicians Licensing Board, 9:00 a.m.
- 11, Hearing Instrument Specialist Licensing Board, 9:00 a.m.
- 11, Uniform Building Code Commission, 9:00 a.m.
- 12, Chiropractic Physician Licensing Board, 9:00 a.m.
- 12, Nursing Education Peer Committee, 8:15 a.m.
- 12, Board of Nursing, 10:00 a.m.
- 12, Radiologic Technologist Licensing Board, 1:00 p.m.
- 12, UBCC Electrical Advisory Committee, 1:00 p.m.
- 17, Unified Code Analysis Council, 9:00 a.m.
- 17, Board of Massage Therapy, 9:00 a.m.
- 17, Psychologist Board, 9:00 a.m.
- 17, Hunting Guides and Outfitters Licensing Board, 1:00 p.m.
- 17, UBCC Education Advisory Committee, 1:00 p.m.
- 18, Professional Engineers and Professional Land Surveyor Licensing Board, 9:00 a.m.
- 18, Speech-Language Pathology and Audiology Licensing Board, 9:00 a.m.
- 19, Electricians Licensing Board, 9:00 a.m.
- 19, Contract Security Education Committee, 10:00 a.m.
- 24, State Board of Pharmacy, 8:30 a.m.
- 25, Construction Services Commission, 9:00 a.m.
- 30, Acupuncture Licensing Board, 9:00 a.m.

February

- 1, Plumbers Licensing Board, 9:00 a.m.
- 1, Utah Board of Accountancy, 1:30 p.m.
- 2, Social Worker Licensing Board, 9:00 a.m.
- 2, Veterinary Licensing Board, 9:00 a.m.
- 2, UBCC Plumbing Advisory Committee, 9:00 a.m.
- 2, UBCC Structural Advisory Committee, 1:00 p.m.
- 7, Unified Code Analysis Council, 9:00 a.m.
- 8, Residence Lien Recovery Fund Advisory Board, 8:15 a.m.
- 8, Architect Licensing Board, 9:00 a.m.
- 8, Optometrist Licensing Board, 9:00 a.m.
- 8, Uniform Building Code Commission, 9:00 a.m.
- 9, Nursing Education Peer Committee, 8:15 a.m.
- 9, Security Services Licensing Board, 9:00 a.m.
- 9, Board of Nursing, 10:00 a.m.
- 9, Professional Geologist Licensing Board, 9:00 a.m.
- 9, UBCC Electrical Advisory Committee, 1:00 p.m.

SPECIAL NOTICES

- 14, Online Prescribing, Dispensing and Facilitation Licensing Board, 9:00 a.m.
- 14, UBCC Architectural Advisory Committee, 9:00 a.m.
- 14, UBCC Mechanical Advisory Committee, 1:00 p.m.
- 15, Funeral Service Board, 9:00 a.m.
- 16, Podiatric Physician Board, 9:00 a.m.
- 16, Electricians Licensing Board, 9:00 a.m.
- 16, Controlled Substance Precursor Board, 2:00 p.m.
- 21, Occupational Therapy Board, 9:00 a.m.
- 21, Unified Code Analysis Council, 9:00 a.m.
- 21, UBCC Education Advisory Committee, 1:00 p.m.
- 28, State Board of Pharmacy, 8:30 a.m.
- 28, Health Facility Administrator Licensing Board, 9:00 a.m.
- 28, Physical Therapy Licensing Board, 9:00 a.m.
- 29, Construction Services Commission, 9:00 a.m.

March

- 1, Alarm System Security and Licensing Board, 9:00 a.m.
- 1, Genetic Counselor Licensing Board, 9:00 a.m.
- 1, UBCC Plumbing Advisory Committee, 9:00 a.m.
- 1, UBCC Structural Advisory Committee, 1:00 p.m.
- 5, Barbering, Cosmetology/Barbering, Esthetics Electrology and Nail Technology Licensing Board, 9:00 a.m.
- 5, Physician Assistant Licensing Board, 9:00 a.m.
- 6, Unified Code Analysis Council, 9:00 a.m.
- 7, Plumbers Licensing Board, 9:00 a.m.
- 7, Utah Board of Accountancy, 1:30 p.m.
- 8, Nursing Education Peer Committee, 8:15 a.m.
- 8, Board of Nursing, 10:00 a.m.
- 8, Radiologic Technologist Licensing Board, 1:00 p.m.
- 8, UBCC Electrical Advisory Committee, 1:00 p.m.
- 12, Board of Massage Therapy, 9:00 a.m.
- 13, UBCC Architectural Advisory Committee, 9:00 a.m.
- 13, UBCC Mechanical Advisory Committee, 1:00 p.m.
- 14, Residence Lien Recovery Fund Advisory Board, 8:15 a.m.
- 14, Physicians Licensing Board, 9:00 a.m.
- 14, Uniform Building Code Commission, 9:00 a.m.
- 15, Marriage and Family Therapist Licensing Board, 9:00 a.m.
- 15, Electricians Licensing Board, 9:00 a.m.
- 20, Professional Counselor Licensing Board, 9:00 a.m.
- 20, Respiratory Care Licensing Board, 9:00 a.m.
- 20, Unified Code Analysis Council, 9:00 a.m.
- 20, Building Inspector Licensing Board, 10:00 a.m.
- 20, UBCC Education Advisory Committee, 1:00 p.m.
- 21, Professional Engineers and Professional Land Surveyor Licensing Board, 9:00 a.m.
- 21, Deception Detection Examiners Licensing Board, 1:00 p.m.
- 22, Dentist and Dental Hygienist Licensing Board, 8:30 a.m.
- 27, State Board of Pharmacy, 8:30 a.m.
- 28, Construction Services Commission, 9:00 a.m.

April

- 3, Unified Code Analysis Council, 9:00 a.m.
- 4, Plumbers Licensing Board, 9:00 a.m.
- 4, Utah Board of Accountancy, 1:30 p.m.
- 5, UBCC Plumbing Advisory Committee, 9:00 a.m.
- 5, Osteopathic Physician and Surgeons Licensing Board, 9:00 a.m.
- 5, Social Worker Licensing Board, 9:00 a.m.
- 5, UBCC Structural Advisory Committee, 1:00 p.m.
- 9, Hearing Instrument Specialist Licensing Board, 9:00 a.m.
- 10, UBCC Architectural Advisory Committee, 9:00 a.m.
- 10, UBCC Mechanical Advisory Committee, 1:00 p.m.

-
- 11, Residence Lien Recovery Fund Advisory Board, 8:15 a.m.
 - 11, Architect Licensing Board, 9:00 a.m.
 - 11, Uniform Building Code Commission, 9:00 a.m.
 - 11, Landscape Architect Licensing Board, 1:00 p.m.
 - 12, Nursing Education Peer Committee, 8:15 a.m.
 - 12, Security Services Licensing Board, 9:00 a.m.
 - 12, Board of Nursing, 10:00 a.m.
 - 12, Chiropractic Physician Licensing Board, 9:00 a.m.
 - 12, UBCC Electrical Advisory Committee, 1:00 p.m.
 - 16, Recreation Therapy Board, 9:00 a.m.
 - 17, Psychologist Board, 9:00 a.m.
 - 17, Unified Code Analysis Council, 9:00 a.m.
 - 17, Hunting Guides and Outfitters Licensing Board, 1:00 p.m.
 - 17, UBCC Education Advisory Committee, 1:00 p.m.
 - 19, Electricians Licensing Board, 9:00 a.m.
 - 19, Certified Court Reporter Board, 2:00 p.m.
 - 24, State Board of Pharmacy, 8:30 a.m.
 - 25, Substance Abuse Counselor Licensing Board, 9:00 a.m.
 - 25, Construction Services Commission, 9:00 a.m.

May

- 1, Unified Code Analysis Council, 9:00 a.m.
- 2, Plumbers Licensing Board, 9:00 a.m.
- 2, Utah Board of Accountancy, 1:30 p.m.
- 3, UBCC Plumbing Advisory Committee, 9:00 a.m.
- 3, Alarm System Security and Licensing Board, 9:00 a.m.
- 3, UBCC Structural Advisory Committee, 1:00 p.m.
- 8, UBCC Architectural Advisory Committee, 9:00 a.m.
- 8, UBCC Mechanical Advisory Committee, 1:00 p.m.
- 9, Residence Lien Recovery Fund Advisory Board, 8:15 a.m.
- 9, Uniform Building Code Commission, 9:00 a.m.
- 10, Nursing Education Peer Committee, 8:15 a.m.
- 10, Board of Nursing, 10:00 a.m.
- 10, Naturopathic Physician Licensing Board, 9:00 a.m.
- 10, UBCC Electrical Advisory Committee, 1:00 p.m.
- 15, Unified Code Analysis Council, 9:00 a.m.
- 15, Board of Massage Therapy, 9:00 a.m.
- 15, UBCC Education Advisory Committee, 1:00 p.m.
- 16, Physicians Licensing Board, 9:00 a.m.
- 16, Professional Engineers and Professional Land Surveyor Licensing Board, 9:00 a.m.
- 16, Funeral Service Board, 9:00 a.m.
- 17, Electricians Licensing Board, 9:00 a.m.
- 17, Contract Security Education Committee, 10:00 a.m.
- 21, Physician Assistant Licensing Board, 9:00 a.m.
- 22, State Board of Pharmacy, 8:30 a.m.
- 22, Online Prescribing, Dispensing and Facilitation Licensing Board, 9:00 a.m.
- 22, Physical Therapy Licensing Board, 9:00 a.m.
- 23, Certified Dietitian Board, 9:00 a.m.
- 23, Vocational Rehabilitation Counselor Licensing Board, 2:00 p.m.
- 30, Construction Services Commission, 9:00 a.m.

June

- 4, Barbering, Cosmetology/Barbering, Esthetics Electrology and Nail Technology Licensing Board, 9:00 a.m.
- 5, Unified Code Analysis Council, 9:00 a.m.
- 6, Plumbers Licensing Board, 9:00 a.m.
- 6, Utah Board of Accountancy, 1:30 p.m.
- 7, UBCC Plumbing Advisory Committee, 9:00 a.m.
- 7, Social Worker Licensing Board, 9:00 a.m.
- 7, Veterinary Licensing Board, 9:00 a.m.

SPECIAL NOTICES

- 7, UBCC Structural Advisory Committee, 1:00 p.m.
- 12, UBCC Architectural Advisory Committee, 9:00 a.m.
- 12, UBCC Mechanical Advisory Committee, 1:00 p.m.
- 13, Residence Lien Recovery Fund Advisory Board, 8:15 a.m.
- 13, Architect Licensing Board, 9:00 a.m.
- 13, Uniform Building Code Commission, 9:00 a.m.
- 14, Nursing Education Peer Committee, 8:15 a.m.
- 14, Board of Nursing, 10:00 a.m.
- 14, Security Services Licensing Board, 9:00 a.m.
- 14, Marriage and Family Therapist Licensing Board, 9:00 a.m.
- 14, Professional Geologist Licensing Board, 9:00 a.m.
- 14, UBCC Electrical Advisory Committee, 1:00 p.m.
- 19, Professional Counselor Licensing Board, 9:00 a.m.
- 19, Respiratory Care Licensing Board, 9:00 a.m.
- 19, Building Inspector Licensing Board, 10:00 a.m.
- 19, UBCC Education Advisory Committee, 1:00 p.m.
- 20, Environmental Health Scientist Licensing Board, 9:00 a.m.
- 20, Athletic Trainers Licensing Board, 9:00 a.m.
- 21, Dentist and Dental Hygienist Licensing Board, 8:30 a.m.
- 21, Electricians Licensing Board, 9:00 a.m.
- 21, Private Probation Provider Board, 10:00 a.m.
- 26, State Board of Pharmacy, 8:30 a.m.
- 26, Occupational Therapy Board, 9:00 a.m.
- 27, Construction Services Commission, 9:00 a.m.

July

- 3, Unified Code Analysis Council, 9:00 a.m.
- 5, UBCC Plumbing Advisory Committee, 9:00 a.m.
- 5, Alarm System Security and Licensing Board, 9:00 a.m.
- 5, UBCC Structural Advisory Committee, 1:00 p.m.
- 9, Hearing Instrument Specialist Licensing Board, 9:00 a.m.
- 10, UBCC Architectural Advisory Committee, 9:00 a.m.
- 10, UBCC Mechanical Advisory Committee, 1:00 p.m.
- 11, Residence Lien Recovery Fund Advisory Board, 8:15 a.m.
- 11, Plumbers Licensing Board, 9:00 a.m.
- 11, Substance Abuse Counselor Licensing Board, 9:00 a.m.
- 11, Physicians Licensing Board, 9:00 a.m.
- 11, Utah Board of Accountancy, 1:30 p.m.
- 12, Nursing Education Peer Committee, 8:15 a.m.
- 12, Board of Nursing, 10:00 a.m.
- 12, Chiropractic Physician Licensing Board, 9:00 a.m.
- 12, Radiologic Technologist Licensing Board, 1:00 p.m.
- 12, UBCC Electrical Advisory Committee, 1:00 p.m.
- 17, Board of Massage Therapy, 9:00 a.m.
- 17, Psychologist Board, 9:00 a.m.
- 17, UBCC Education Advisory Committee, 1:00 p.m.
- 18, Professional Engineers and Professional Land Surveyor Licensing Board, 9:00 a.m.
- 18, Speech-Language Pathology and Audiology Licensing Board, 9:00 a.m.
- 18, Uniform Building Code Commission, 9:00 a.m.
- 19, Osteopathic Physician and Surgeons Licensing Board, 9:00 a.m.
- 19, Electricians Licensing Board, 9:00 a.m.
- 19, Contract Security Education Committee, 10:00 a.m.
- 25, Construction Services Commission, 9:00 a.m.
- 30, Acupuncture Licensing Board, 9:00 a.m.
- 31, State Board of Pharmacy, 8:30 a.m.

August

- 1, Plumbers Licensing Board, 9:00 a.m.
- 1, Utah Board of Accountancy, 1:30 p.m.

-
- 2, UBCC Plumbing Advisory Committee, 9:00 a.m.
 - 2, Social Worker Licensing Board, 9:00 a.m.
 - 2, UBCC Structural Advisory Committee, 1:00 p.m.
 - 7, Unified Code Analysis Council, 9:00 a.m.
 - 8, Residence Lien Recovery Fund Advisory Board, 8:15 a.m.
 - 8, Architect Licensing Board, 9:00 a.m.
 - 8, Optometrist Licensing Board, 9:00 a.m.
 - 8, Uniform Building Code Commission, 9:00 a.m.
 - 9, Nursing Education Peer Committee, 8:15 a.m.
 - 9, Security Services Licensing Board, 9:00 a.m.
 - 9, Board of Nursing, 10:00 a.m.
 - 9, Podiatric Physician Board, 9:00 a.m.
 - 9, UBCC Electrical Advisory Committee, 1:00 p.m.
 - 14, UBCC Architectural Advisory Committee, 9:00 a.m.
 - 14, UBCC Mechanical Advisory Committee, 1:00 p.m.
 - 15, Funeral Service Board, 9:00 a.m.
 - 16, Electricians Licensing Board, 9:00 a.m.
 - 21, Online Prescribing, Dispensing and Facilitation Licensing Board, 9:00 a.m.
 - 21, Physical Therapy Licensing Board, 9:00 a.m.
 - 21, Hunting Guides and Outfitters Licensing Board, 1:00 p.m.
 - 21, UBCC Education Advisory Committee, 1:00 p.m.
 - 28, State Board of Pharmacy, 8:30 a.m.
 - 28, Health Facility Administrator Licensing Board, 9:00 a.m.
 - 29, Construction Services Commission, 9:00 a.m.

September

- 4, Unified Code Analysis Council, 9:00 a.m.
- 5, Plumbers Licensing Board, 9:00 a.m.
- 5, Utah Board of Accountancy, 1:30 p.m.
- 6, UBCC Plumbing Advisory Committee, 9:00 a.m.
- 6, Alarm System Security and Licensing Board, 9:00 a.m.
- 6, UBCC Structural Advisory Committee, 1:00 p.m.
- 10, Barbering, Cosmetology/Barbering, Esthetics Electrology and Nail Technology Licensing Board, 9:00 a.m.
- 11, UBCC Architectural Advisory Committee, 9:00 a.m.
- 11, UBCC Mechanical Advisory Committee, 1:00 p.m.
- 12, Residence Lien Recovery Fund Advisory Board, 8:15 a.m.
- 12, Physicians Licensing Board, 9:00 a.m.
- 12, Uniform Building Code Commission, 9:00 a.m.
- 13, Nursing Education Peer Committee, 8:15 a.m.
- 13, Board of Nursing, 10:00 a.m.
- 13, Marriage and Family Therapist Licensing Board, 9:00 a.m.
- 13, UBCC Electrical Advisory Committee, 1:00 p.m.
- 18, Professional Counselor Licensing Board, 9:00 a.m.
- 18, Board of Massage Therapy, 9:00 a.m.
- 18, Respiratory Care Licensing Board, 9:00 a.m.
- 18, Building Inspector Licensing Board, 10:00 a.m.
- 18, UBCC Education Advisory Committee, 1:00 p.m.
- 19, Professional Engineers and Professional Land Surveyor Licensing Board, 9:00 a.m.
- 20, Electricians Licensing Board, 9:00 a.m.
- 20, Dentist and Dental Hygienist Licensing Board, 8:30 a.m.
- 21, Deception Detection Examiners Licensing Board, 1:00 p.m.
- 25, State Board of Pharmacy, 8:30 a.m.
- 26, Construction Services Commission, 9:00 a.m.
- 26, Vocational Rehabilitation Counselor Licensing Board, 2:00 p.m.

October

- 2, Unified Code Analysis Council, 9:00 a.m.
- 3, Plumbers Licensing Board, 9:00 a.m.
- 3, Utah Board of Accountancy, 1:30 p.m.

SPECIAL NOTICES

- 4, UBCC Plumbing Advisory Committee, 9:00 a.m.
- 4, Osteopathic Physician and Surgeons Licensing Board, 9:00 a.m.
- 4, Social Worker Licensing Board, 9:00 a.m.
- 4, Veterinary Licensing Board, 9:00 a.m.
- 4, UBCC Structural Advisory Committee, 1:00 p.m.
- 9, UBCC Architectural Advisory Committee, 9:00 a.m.
- 9, UBCC Mechanical Advisory Committee, 1:00 p.m.
- 10, Residence Lien Recovery Fund Advisory Board, 8:15 a.m.
- 10, Hearing Instrument Specialist Licensing Board, 9:00 a.m.
- 10, Architect Licensing Board, 9:00 a.m.
- 10, Uniform Building Code Commission, 9:00 a.m.
- 10, Landscape Architect Licensing Board, 1:00 p.m.
- 11, Nursing Education Peer Committee, 8:15 a.m.
- 11, Security Services Licensing Board, 9:00 a.m.
- 11, Board of Nursing, 10:00 a.m.
- 11, Professional Geologist Licensing Board, 9:00 a.m.
- 11, UBCC Electrical Advisory Committee, 1:00 p.m.
- 16, Occupational Therapy Board, 9:00 a.m.
- 16, UBCC Education Advisory Committee, 1:00 p.m.
- 17, Substance Abuse Counselor Licensing Board, 9:00 a.m.
- 18, Deception Detection Examiners Licensing Board, 1:00 p.m.
- 18, Certified Court Reporter Board, 2:00 p.m.
- 23, State Board of Pharmacy, 8:30 a.m.
- 23, Psychologist Board, 9:00 a.m.
- 25, Athletic Trainers Licensing Board, 9:00 a.m.
- 29, Physician Assistant Licensing Board, 9:00 a.m.
- 31, Construction Services Commission, 9:00 a.m.

November

- 1, UBCC Plumbing Advisory Committee, 9:00 a.m.
- 1, Alarm System Security and Licensing Board, 9:00 a.m.
- 1, UBCC Structural Advisory Committee, 1:00 p.m.
- 6, Unified Code Analysis Council, 9:00 a.m.
- 6, Online Prescribing, Dispensing and Facilitation Licensing Board, 9:00 a.m.
- 7, Plumbers Licensing Board, 9:00 a.m.
- 7, Utah Board of Accountancy, 1:30 p.m.
- 8, Naturopathic Physician Licensing Board, 9:00 a.m.
- 8, Radiologic Technologist Licensing Board, 1:00 p.m.
- 8, UBCC Electrical Advisory Committee, 1:00 p.m.
- 13, Nursing Education Peer Committee, 8:15 a.m.
- 13, Board of Nursing, 10:00 a.m.
- 13, State Board of Pharmacy, 8:30 a.m.
- 13, Board of Massage Therapy, 9:00 a.m.
- 13, UBCC Architectural Advisory Committee, 9:00 a.m.
- 13, UBCC Mechanical Advisory Committee, 1:00 p.m.
- 14, Residence Lien Recovery Fund Advisory Board, 8:15 a.m.
- 14, Physicians Licensing Board, 9:00 a.m.
- 14, Uniform Building Code Commission, 9:00 a.m.
- 15, Deception Detection Examiners Licensing Board, 1:00 p.m.
- 15, Contract Security Education Committee, 10:00 a.m.
- 20, UBCC Education Advisory Committee, 1:00 p.m.
- 21, Professional Engineers and Professional Land Surveyor Licensing Board, 9:00 a.m.
- 21, Funeral Service Board, 9:00 a.m.
- 28, Construction Services Commission, 9:00 a.m.

December

- 3, Barbering, Cosmetology/Barbering, Esthetics Electrology and Nail Technology Licensing Board, 9:00 a.m.
- 4, Physical Therapy Licensing Board, 9:00 a.m.
- 4, Unified Code Analysis Council, 9:00 a.m.

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- 5, Plumbers Licensing Board, 9:00 a.m.
 - 5, Utah Board of Accountancy, 1:30 p.m.
 - 6, Dentist and Dental Hygienist Licensing Board, 8:30 a.m.
 - 6, Social Worker Licensing Board, 9:00 a.m.
 - 6, UBCC Plumbing Advisory Committee, 9:00 a.m.
 - 6, UBCC Structural Advisory Committee, 1:00 p.m.
 - 10, Physician Assistant Licensing Board, 9:00 a.m.
 - 11, Nursing Education Peer Committee, 8:15 a.m.
 - 11, Board of Nursing, 10:00 a.m.
 - 11, State Board of Pharmacy, 8:30 a.m.
 - 11, UBCC Architectural Advisory Committee, 9:00 a.m.
 - 11, UBCC Mechanical Advisory Committee, 1:00 p.m.
 - 12, Residence Lien Recovery Fund Advisory Board, 8:15 a.m.
 - 12, Architect Licensing Board, 9:00 a.m.
 - 12, Uniform Building Code Commission, 9:00 a.m.
 - 13, Security Services Licensing Board, 9:00 a.m.
 - 13, Marriage and Family Therapist Licensing Board, 9:00 a.m.
 - 13, UBCC Electrical Advisory Committee, 1:00 p.m.
 - 18, Professional Counselor Licensing Board, 9:00 a.m.
 - 18, Building Inspector Licensing Board, 10:00 a.m.
 - 18, Hunting Guides and Outfitters Licensing Board, 1:00 p.m.
 - 18, UBCC Education Advisory Committee, 1:00 p.m.
 - 19, Respiratory Care Licensing Board, 9:00 a.m.
 - 20, Deception Detection Examiners Licensing Board, 1:00 p.m.
 - 20, Private Probation Provider Board, 10:00 a.m.
 - 26, Construction Services Commission, 9:00 a.m.
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Environmental Quality Air Quality

Notice of Public Comment Period For High Wind Exceptional Events -- Event Date: 03/30/2010

Federal regulations, 40 Code of Federal Regulations (CFR) Part 50, allow states to exclude air quality data that exceed or violate a National Ambient Air Quality Standard (NAAQS) if they can demonstrate that an "exceptional event" has caused the exceedance or violation. Exceptional events are unusual or naturally occurring events that can affect air quality but are not reasonably controllable or preventable using techniques implemented to attain and maintain the NAAQS.

Exceptional events may be caused by human activity that is unlikely to recur at a particular location, or may be due to a natural event. The Environmental Protection Agency (EPA) defines a "natural event" as an event in which human activity plays little or no direct causal role to the event in question. For example, a natural event could include such things as high winds, wild fires, and seismic/volcanic activity. In addition, the EPA will allow states to exclude data from regulatory determinations on a case-by-case basis for monitoring stations that measure values that exceed or violate the NAAQS due to emissions from fireworks displays from cultural events.

Federal regulations (40 CFR Part 50.14(c)(3)(i)) require that all relevant flagged data, the reasons for the data being flagged, and a demonstration that the flagged data are caused by exceptional events be made available by the State for 30 days of public review and comment. These comments will be considered in the final demonstration of the event that is submitted to EPA. The following monitoring station air quality exceedance has been attributed to a high wind exceptional event: Cottonwood, Hawthorne, Lindon, Magna, North Provo, North Salt Lake, Ogden, Bountiful, Highland, Spanish Fork, and Tooele.

The documentation for public review and comment to support removing this data from use in regulatory determinations is available at http://www.airquality.utah.gov/Public-Interest/Public-Commen-Hearings/Exceptional_Events/Exceptional_Events.htm or at the Multi Agency State Office Building, 195 North 1950 West, Salt Lake City. In compliance with the American with Disabilities Act, individuals with special needs (including auxiliary communicative aids and services) should contact Brooke Baker, Office of Human Resources at 801-536-4412 (TDD 536-4414).

The comment period will close at 5:00 p.m. on December 15, 2011. Comments postmarked on or before that date will be accepted. Comments may be submitted by electronic mail to jkarmazyn@utah.gov or may be mailed to: Joel Karmazyn, Utah Division of Air Quality, PO Box 144820, 195 N 1950 W, Salt Lake City, UT 84114-4820

**Environmental Quality
Air Quality**

Notice of Public Comment Period For High Wind Exceptional Events -- Event Date: 04/27/2010

Federal regulations, 40 Code of Federal Regulations (CFR) Part 50, allow states to exclude air quality data that exceed or violate a National Ambient Air Quality Standard (NAAQS) if they can demonstrate that an "exceptional event" has caused the exceedance or violation. Exceptional events are unusual or naturally occurring events that can affect air quality but are not reasonably controllable or preventable using techniques implemented to attain and maintain the NAAQS.

Exceptional events may be caused by human activity that is unlikely to recur at a particular location, or may be due to a natural event. The Environmental Protection Agency (EPA) defines a "natural event" as an event in which human activity plays little or no direct causal role to the event in question. For example, a natural event could include such things as high winds, wild fires, and seismic/volcanic activity. In addition, the EPA will allow states to exclude data from regulatory determinations on a case-by-case basis for monitoring stations that measure values that exceed or violate the NAAQS due to emissions from fireworks displays from cultural events.

Federal regulations (40 CFR Part 50.14(c)(3)(i)) require that all relevant flagged data, the reasons for the data being flagged, and a demonstration that the flagged data are caused by exceptional events be made available by the State for 30 days of public review and comment. These comments will be considered in the final demonstration of the event that is submitted to EPA. The following monitoring stations air quality exceedance has been attributed to a high wind exceptional event: Hawthorne, North Salt Lake, Ogden, Cottonwood, and Rose Park.

The documentation for public review and comment to support removing this data from use in regulatory determinations is available at http://www.airquality.utah.gov/Public-Interest/Public-Commen-Hearings/Exceptional_Events/Exceptional_Events.htm or at the Multi Agency State Office Building, 195 North 1950 West, Salt Lake City. In compliance with the American with Disabilities Act, individuals with special needs (including auxiliary communicative aids and services) should contact Brooke Baker, Office of Human Resources at 801-536-4412 (TDD 536-4414).

The comment period will close at 5:00 p.m. on December 15, 2011. Comments postmarked on or before that date will be accepted. Comments may be submitted by electronic mail to jkarmazyn@utah.gov or may be mailed to: Joel Karmazyn, Utah Division of Air Quality, PO Box 144820, 195 N 1950 W, Salt Lake City, UT 84114-4820.

**Environmental Quality
Water Quality**

Notice to Extend the Public Comment Period on the Amendment to Rule R317-8, Utah Pollutant Discharge Elimination System (UPDES), under DAR No. 35238 from the October 1, 2011, Bulletin

The Division of Water Quality is extending the deadline for public comments on the amendment to Rule R317-8, Utah Pollutant Discharge Elimination system (UPDES), from 11/01/2011 to 12/31/2011. The proposed amendment is under DAR No. 35238 and was published in the October 1, 2011, issue of the Bulletin, 2011-19, pg. 31.

These amendments relate to the establishment and administration of a new program to permit the application of pesticides in Utah under the UPDES Program.

Direct questions or comments to: John Kennington by phone at 801-536-4380, by FAX at 801-536-4301, or by Internet E-mail at jkennington@utah.gov

Health
Health Care Financing, Coverage and Reimbursement Policy
Notice for December 2011 Medicaid Rate Changes

Effective December 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

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between October 15, 2011, 12:00 a.m., and November 01, 2011, 11:59 p.m. are included in this, the November 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 December 15, 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 March 14, 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.

The Proposed Rules Begin on the Following Page

**Commerce, Occupational and
Professional Licensing
R156-67-503
Administrative Penalties**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35389

FILED: 10/31/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Physicians Licensing Board are proposing amendments to comply with S.B. 186 which was passed during the 2011 General Session. S.B. 186 amended Title 58, Chapter 67, to allow the Division to assess administrative penalties as described in Section 58-67-503.

SUMMARY OF THE RULE OR CHANGE: The proposed new Section R156-67-503 establishes a fine and citation schedule for violations which apply to licensed physicians and surgeons and would also apply to any persons who are determined to be engaging in the unlicensed practice of medicine. The proposed schedule will steer and keep the Division consistent with respect to fines issued. Individual modifications can be authorized by exception by the investigative supervisor. In addition, fines issued through a citation can be appealed to a hearing officer and be potentially reduced.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-67-101 and Subsection 58-1-106(1) (a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$100 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. The Division anticipates the amount in the Physician Education Fund will increase as any fine amounts collected are deposited into this account. The authority for fines and citations should make the Division's investigation process more efficient to immediately address violations and decrease the time spent in a disciplinary process.

◆ **LOCAL GOVERNMENTS:** The proposed amendments apply to licensed physicians/surgeons as they clarify violations and create a new standard for discipline which protects the public in a timely manner. The proposed amendments also apply to other persons who may unlawfully engaged in the unlicensed practice of medicine. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** The proposed amendments apply to licensed physicians/surgeons, as well as other persons who may be unlawfully engaged in the unlicensed practice of medicine. Licensed physicians/surgeons and other persons who may be unlawfully engaged in the unlicensed practice of medicine may work in a small business; however, the proposed amendments would not directly affect the business.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments apply to licensed physicians/surgeons, as well as other persons who may be unlawfully engaged in the unlicensed practice of medicine. Individual fine amounts for various offenses are set forth in the proposed amendments. The Division is not able to determine how many persons may receive a fine or citation for such violations since it is unknown how many physicians/surgeons are out of compliance with these proposed amendments or how many persons may be unlawfully engaging in the unlicensed practice of medicine.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments apply to licensed physicians/surgeons, as well as other persons who may be unlawfully engaged in the unlicensed practice of medicine. Individual fine amounts for various offenses are set forth in the proposed amendments. The Division is not able to determine how many persons may receive a fine or citation for such violations since it is unknown how many physicians/surgeons are out of compliance with these proposed amendments or how many persons may be unlawfully engaging in the unlicensed practice of medicine. There should be no costs to licensed physicians/surgeons as long as they remain in compliance with the proposed amendments and do not engage in unprofessional and/or unlawful conduct as defined by statute or rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing establishes a fine schedule to implement statutory changes made by the Legislature in S.B. 186 (2011). No fiscal impact to businesses is anticipated beyond those described in passage of the statutory amendments.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Noel Taxin by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at ntaxin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 12/13/2011 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 475 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2011

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-67. Utah Medical Practice Act Rule.**

R156-67-503. Administrative Penalties.

(1) In accordance with Subsection 58-67-503, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

(a) buying, selling, aiding or abetting or fraudulently obtaining, any medical diploma, license, certificate, or registration in violation of Subsection 58-67-501(1):

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(b) substantially interfering with a licensee's lawful and competent practice of medicine in violation of Subsections 58-67-501(1)(c)(i) or (ii):

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(c) entering into a contract that limits the licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients in violation of Subsection 58-67-501(1)(d):

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(d) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule, or making a material misrepresentation regarding the qualifications for licensure in violation of Section 58-67-502:

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(e) prescribing for oneself any Schedule II or III controlled substance in violation of Subsection R156-67-502(1):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(f) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(1)(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate in violation of Subsection R156-67-502(2):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(g) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered in violation of Subsection R156-67-502(3):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(h) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them in violation of Subsection R156-67-502(4):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(i) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative in violation of Subsection R156-67-502(5):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(j) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Medical Practice Act in violation of Subsection R156-67-502(6):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(k) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed physician and surgeon who is equally qualified to provide that care in violation of Subsection R156-67-502(7):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(l) billing a global fee for a procedure without providing the requisite care in violation of Subsection R156-67-502(8):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(m) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology in violation of Subsection R156-67-502(9):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(n) failing of a licensee without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor in violation of Subsection R156-67-502(10):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(o) failing of a licensee without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure in violation of Subsection R156-67-502(11):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(p) failing to keep the division informed of a current address and telephone number in violation of Subsection R156-67-502(13):

First Offense: \$100-\$500

Second Offense: \$500-\$3,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(q) engaging in alternate medical practice except as provided in Section R156-67-603 in violation of Subsection R156-67-502(14):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(r) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2008-2009 edition, in violation of Subsection R156-67-502(15):

First Offense: \$100-\$5,000

Second Offense: \$500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(s) failing to maintain medical records according to applicable laws, regulations, rules and code of ethics in violation of Section R156-67-602:

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(t) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title in violation of Subsection 58-1-501(1):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(u) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title in violation of Subsection 58-1-501(2)(a):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(v) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title in violation of Subsection 58-1-501(2)(a):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(w) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title in violation of Subsection 58-1-501(2)(b):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(x) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession in violation of Subsection 58-1-501(2)(c):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(y) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401 in violation of Subsection 58-1-501(2)(d):

First Offense: \$1,000-\$5,000
Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(z) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in the occupation or profession in violation of Subsection 58-1-501(2)(e):

First Offense: \$1,000-\$5,000
Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(aa) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so in violation of Subsection 58-1-501(2)(f):

First Offense: \$500-\$5,000
Second Offense: \$1,500-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(bb) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence in violation of Subsection 58-1-501(2)(g):

First Offense: \$1,000-\$5,000
Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(cc) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent in violation of Subsection 58-1-501(2)(h):

First Offense: \$1,000-\$5,000
Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(dd) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education in violation of Subsection 58-1-501(2)(h):

First Offense: \$1,000-\$5,000
Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ee) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education in violation of Subsection 58-1-501(2)(i):

First Offense: \$1,000-\$5,000
Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ff) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license in violation of Subsection 58-1-501(2)(j):

First Offense: \$1,000-\$5,000
Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(gg) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license in violation of Subsection 58-1-501(2)(k):

First Offense: \$1,000-\$5,000
Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(hh) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule in violation of Subsection 58-1-501(2)(l):

First Offense: \$1,000-\$5,000
Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ii) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device in violation of Subsection 58-1-501(2)(m):

First Offense: \$5,000-\$10,000
Second Offense: \$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(jj) violating a provision of Section 58-1-501.5 in violation of Subsection 58-1-501(2)(n):

First Offense: \$500-\$5,000
Second Offense: \$1,500-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(kk) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct in violation of Subsection R156-1-502(1):

First Offense: \$1,000-\$5,000
Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ll) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company in violation of Subsection R156-1-502(2):

First Offense: \$1,000-\$5,000
Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(mm) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd" in the commercial use of the name of the limited partnership in violation of Subsection R156-1-502(3):

First Offense: \$1,000-\$5,000
Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(nn) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation in violation of Subsection R156-1-502(4):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(oo) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing in violation of Subsection R156-1-502(5):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(pp) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", May 2004, established by the Federation of State Medical Boards in violation of Subsection R156-1-501(6):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(qq) prescribing or administering to oneself any Schedule II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug in violation of Subsection R156-37-502(1)(a):

First Offense: \$500-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(rr) prescribing or administering a controlled substance for a condition he/she is not licensed or competent to treat in violation of Subsection R156-37-502(1)(b):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ss) violating any federal or state law relating to controlled substances in violation of Subsection R156-37-502(2):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(tt) failing to deliver to the Division all controlled substance license certificates issued by the Division to the Division upon an action which revokes, suspends or limits the license in violation of Subsection R156-37-502(3):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(uu) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances in violation of Subsection R156-37-502(4):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(vv) being unable to account for shortages of controlled substances any controlled substance inventory for which the licensee has responsibility in violation of Subsection R156-37-502(5):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ww) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law in violation of Subsection R156-37-502(6):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(xx) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records in violation of Subsection R156-37-502(7):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(yy) violating any other provision of Section 58-37-8 "Prohibited Acts" not listed herein:

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

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

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

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

KEY: physicians, licensing

Date of Enactment or Last Substantive Amendment: [August 11, 2009]2011

Notice of Continuation: March 14, 2011

Authorizing, and Implemented or Interpreted Law: 58-67-101; 58-1-106(1)(a); 58-1-202(1)(a)

**Commerce, Occupational and
Professional Licensing
R156-68-503
Administrative Penalties**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35388

FILED: 10/31/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Osteopathic Physician and Surgeon's Licensing Board are proposing amendments to comply with S.B. 186 which was passed during the 2011 General Session. S.B. 186 amended Title 58, Chapter 68, to allow the Division to assess administrative penalties as described in Section 58-68-503.

SUMMARY OF THE RULE OR CHANGE: The proposed new Section R156-68-503 establishes a fine and citation schedule for violations which apply to licensed osteopathic physicians and surgeons and would also apply to any persons who are determined to be engaging in the unlicensed practice of osteopathic medicine. The proposed schedule will steer and keep the Division consistent with respect to fines issued. Individual modifications can be authorized by exception by the investigative supervisor. In addition, fines issued through a citation can be appealed to a hearing officer and be potentially reduced.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-68-101 and Subsection 58-1-106(1) (a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$100 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. The Division anticipates the amount in the Physician Education Fund will increase as any fine amounts collected are deposited into this account. The authority for fines and citations should make the Division's investigation process more efficient to immediately address violations and decrease the time spent in a disciplinary process.

◆ **LOCAL GOVERNMENTS:** The proposed amendments apply to licensed osteopathic physicians/surgeons as they clarify violations and create a new standard for discipline which protects the public in a timely manner. The proposed amendments also apply to other persons who may unlawfully engage in the unlicensed practice of osteopathic medicine. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** The proposed amendments apply to licensed osteopathic physicians/surgeons, as well as other persons who may be unlawfully engaged in the unlicensed practice of osteopathic medicine. Licensed osteopathic physicians/surgeons and other persons who may be unlawfully engaged in the unlicensed practice of osteopathic medicine may work in a small business; however, the proposed amendments would not directly affect the business.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments apply to licensed osteopathic physicians/surgeons, as well as other persons who may be unlawfully engaged in the unlicensed practice of osteopathic medicine. Individual fine amounts for various offenses are set forth in the proposed amendments. The Division is not able to determine how many persons may receive a fine or citation for such violations since it is unknown how many osteopathic physicians/surgeons are out of compliance with these proposed amendments or how many persons may be unlawfully engaging in the unlicensed practice of osteopathic medicine.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments apply to licensed osteopathic physicians/surgeons, as well as other persons who may be unlawfully engaged in the unlicensed practice of osteopathic medicine. Individual fine amounts for various offenses are set forth in the proposed amendments. The Division is not able to determine how many persons may receive a fine or citation for such violations since it is unknown how many osteopathic physicians/surgeons are out of compliance with these proposed amendments or how many persons may be unlawfully engaging in the unlicensed practice of osteopathic medicine. There should be no costs to licensed osteopathic physicians/surgeons as long as they remain in compliance with the proposed amendments and do not engage in unprofessional and/or unlawful conduct as defined by statute or rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing establishes a fine schedule to implement statutory changes made by the Legislature in S.B. 186 (2011). No fiscal impact to businesses is anticipated beyond those described in passage of the statutory amendments.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Noel Taxin by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at ntaxin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2011

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 12/13/2011 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 475 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2011

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-68. Utah Osteopathic Medical Practice Act Rule.
R156-68-503. Administrative Penalties.**

(1) In accordance with Subsection 58-68-503, unless otherwise ordered by the presiding officer, the following fine and citation schedule shall apply:

(a) buying, selling, aiding or abetting or fraudulently obtaining, any medical diploma, license, certificate, or registration in violation of Subsection 58-68-501(1):

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(b) substantially interfering with a licensee's lawful and competent practice of medicine in violation of Subsections 58-68-501(1)(c)(i) or (ii):

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(c) entering into a contract that limits the licensee's ability to advise the licensee's patients fully about treatment options or other issues that affect the health care of the licensee's patients in violation of Subsection 58-68-501(1)(d):

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(d) using or employing the services of any individual to assist a licensee in any manner not in accordance with the generally recognized practices, standards, or ethics of the profession, state law, or division rule, or making a material misrepresentation regarding the qualifications for licensure in violation of Section 58-68-502:

First Offense: \$1,000-\$5,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(e) prescribing for oneself any Schedule II or III controlled substance in violation of Subsection R156-68-502(1):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(f) knowingly prescribing, selling, giving away or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away or administer any scheduled controlled substance as defined in Title 58, Chapter 37 to a drug dependent person, as defined in Subsection 58-37-2(1)(s) unless permitted by law and when it is prescribed, dispensed or administered according to a proper medical diagnosis and for a condition indicating the use of that controlled substance is appropriate in violation of Subsection R156-68-502(2):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(g) knowingly engaging in billing practices which are abusive and represent charges which are grossly excessive for services rendered in violation of Subsection R156-68-502(3):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(h) directly or indirectly giving or receiving any fee, commission, rebate or other compensation for professional services not actually and personally rendered or supervised; however, nothing in this section shall preclude the legal relationships within lawful professional partnerships, corporations or associations or the relationship between an approved supervising physician and physician assistants or advanced practice nurses supervised by them in violation of Subsection R156-68-502(4):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(i) knowingly failing to transfer a copy of pertinent and necessary medical records or a summary thereof to another physician when requested to do so by the subject patient or by his legally designated representative in violation of Subsection R156-68-502(5):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(j) failing to furnish to the board information requested by the board which is known by a licensee with respect to the quality and adequacy of medical care rendered to patients by physicians licensed under the Utah Osteopathic Medical Practice Act in violation of Subsection R156-68-502(6):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(k) failing as an operating surgeon to perform adequate pre-operative and primary post-operative care of the surgical condition for a patient in accordance with the standards and ethics of the profession or to arrange for competent primary post-operative care of the surgical condition by a licensed osteopathic physician and surgeon who is equally qualified to provide that care in violation of Subsection R156-68-502(7):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(l) billing a global fee for a procedure without providing the requisite care in violation of Subsection R156-68-502(8):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(m) supervising the providing of breast screening by diagnostic mammography services or interpreting the results of breast screening by diagnostic mammography to or for the benefit of any patient without having current certification or current eligibility for certification by the American Board of Radiology in violation of Subsection R156-68-502(9):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(n) failing of a licensee without just cause to repay as agreed any loan or other repayment obligation legally incurred by the licensee to fund the licensee's education or training as a medical doctor in violation of Subsection R156-68-502(10):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(o) failing of a licensee without just cause to comply with the terms of any written agreement in which the licensee's education or training as a medical doctor is funded in consideration for the licensee's agreement to practice in a certain locality or type of locality or to comply with other conditions of practice following licensure in violation of Subsection R156-68-502(11):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(p) failing to keep the division informed of a current address and telephone number in violation of Subsection 58-1-501(2)(a) and Section 58-1-301.7:

First Offense: \$100-\$500

Second Offense: \$500-\$3,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(q) engaging in alternate medical practice except as provided in Section R156-68-603 in violation of Subsection R156-68-502(13):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(r) violation of any provision of the American Medical Association (AMA) "Code of Medical Ethics", 2008-2009 edition, in violation of Subsection R156-68-502(14):

First Offense: \$100-\$5,000

Second Offense: \$500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(s) failing to maintain medical records according to applicable laws, regulations, rules and code of ethics in violation of Section R156-68-602:

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(t) practicing or engaging in, representing oneself to be practicing or engaging in, or attempting to practice or engage in any occupation or profession requiring licensure under this title in violation of Subsection 58-1-501(1):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(u) violating, or aiding or abetting any other person to violate, any statute, rule, or order regulating an occupation or profession under this title in violation of Subsection 58-1-501(2)(a):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(v) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title in violation of Subsection 58-1-501(2)(a):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(w) violating, or aiding or abetting any other person to violate, any generally accepted professional or ethical standard applicable to an occupation or profession regulated under this title in violation of Subsection 58-1-501(2)(b):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(x) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation with respect to a crime of moral turpitude or any other crime that, when considered with the functions and duties of the occupation or profession for which the license was issued or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely or competently practice the occupation or profession in violation of Subsection 58-1-501(2)(c):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(y) engaging in conduct that results in disciplinary action, including reprimand, censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary proceedings under Section 58-1-401 in violation of Subsection 58-1-501(2)(d):

First Offense: \$1,000-\$5,000
Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(z) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the ability of the licensee or applicant to safely engage in the occupation or profession in violation of Subsection 58-1-501(2)(e):

First Offense: \$1,000-\$5,000
Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(aa) practicing or attempting to practice an occupation or profession regulated under this title despite being physically or mentally unfit to do so in violation of Subsection 58-1-501(2)(f):

First Offense: \$500-\$5,000
Second Offense: \$1,500-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(bb) practicing or attempting to practice an occupation or profession regulated under this title through gross incompetence, gross negligence, or a pattern of incompetency or negligence in violation of Subsection 58-1-501(2)(g):

First Offense: \$1,000-\$5,000
Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(cc) practicing or attempting to practice an occupation or profession requiring licensure under this title by any form of action or communication which is false, misleading, deceptive, or fraudulent in violation of Subsection 58-1-501(2)(h):

First Offense: \$1,000-\$5,000
Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(dd) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education in violation of Subsection 58-1-501(2)(h):

First Offense: \$1,000-\$5,000
Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ee) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's competency, abilities, or education in violation of Subsection 58-1-501(2)(i):

First Offense: \$1,000-\$5,000
Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ff) practicing or attempting to practice an occupation or profession regulated under this title beyond the scope of the licensee's license in violation of Subsection 58-1-501(2)(j):

First Offense: \$1,000-\$5,000
Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(gg) verbally, physically, mentally, or sexually abusing or exploiting any person through conduct connected with the licensee's practice under this title or otherwise facilitated by the licensee's license in violation of Subsection 58-1-501(2)(k):

First Offense: \$1,000-\$5,000
Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(hh) acting as a supervisor without meeting the qualification requirements for that position that are defined by statute or rule in violation of Subsection 58-1-501(2)(l):

First Offense: \$1,000-\$5,000
Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ii) issuing, or aiding and abetting in the issuance of, an order or prescription for a drug or device in violation of Subsection 58-1-501(2)(m):

First Offense: \$5,000-\$10,000
Second Offense: \$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(jj) violating a provision of Section 58-1-501.5 in violation of Subsection 58-1-501(2)(n):

First Offense: \$500-\$5,000
Second Offense: \$1,500-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(kk) surrendering licensure to any other licensing or regulatory authority having jurisdiction over the licensee or applicant in the same occupation or profession while an investigation or inquiry into allegations of unprofessional or unlawful conduct is in progress or after a charging document has been filed against the applicant or licensee alleging unprofessional or unlawful conduct in violation of Subsection R156-1-502(1):

First Offense: \$1,000-\$5,000
Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ll) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company in violation of Subsection R156-1-502(2):

First Offense: \$1,000-\$5,000
Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(mm) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd" in the commercial use of the name of the limited partnership in violation of Subsection R156-1-502(3):

First Offense: \$1,000-\$5,000
Second Offense: \$5,000-\$10,000
Ongoing Offense(s): \$2,000 per day but not less than the second offense

(nn) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation in violation of Subsection R156-1-502(4):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(oo) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing in violation of Subsection R156-1-502(5):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(pp) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", May 2004, established by the Federation of State Medical Boards in violation of Subsection R156-1-501(6):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(qq) prescribing or administering to oneself any Schedule II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug in violation of Subsection R156-37-502(1)(a):

First Offense: \$500-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(rr) prescribing or administering a controlled substance for a condition he/she is not licensed or competent to treat in violation of Subsection R156-37-502(1)(b):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ss) violating any federal or state law relating to controlled substances in violation of Subsection R156-37-502(2):

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(tt) failing to deliver to the Division all controlled substance license certificates issued by the Division to the Division upon an action which revokes, suspends or limits the license in violation of Subsection R156-37-502(3):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(uu) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances in violation of Subsection R156-37-502(4):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(vv) being unable to account for shortages of controlled substances any controlled substance inventory for which the licensee has responsibility in violation of Subsection R156-37-502(5):

First Offense: \$1,000-\$5,000

Second Offense: \$5,000-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(ww) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(1)(s), except for legitimate medical purposes as permitted by law in violation of Subsection R156-37-502(6):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(xx) refusing to make available for inspection controlled substance stock, inventory, and records as required under this rule or other law regulating controlled substances and controlled substance records in violation of Subsection R156-37-502(7):

First Offense: \$5,000-\$10,000

Second Offense: \$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(yy) violating any other provision of Section 58-37-8 "Prohibited Acts" not listed herein:

First Offense: \$500-\$5,000

Second Offense: \$1,500-\$10,000

Ongoing Offense(s): \$2,000 per day but not less than the second offense

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

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

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

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

KEY: osteopaths, licensing, osteopathic physician

Date of Enactment or Last Substantive Amendment: [August 11, 2009]2011

Notice of Continuation: March 27, 2008

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-68-101

Education, Administration
R277-480
 Charter School Revolving Account

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 35375
 FILED: 10/25/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to add a definition in Section R277-480-1 and add language using the definition in Section R277-480-4.

SUMMARY OF THE RULE OR CHANGE: The amendment adds the definition of "Urgent facility need" in Section R277-480-1 and adds "urgent facility need" in the body of the rule in Section R277-480-4.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3) and Subsection 53A-1a-522(2)(b)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The added definition and usage of the definition are for clarification and do not result in costs or savings.
- ◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The added definition and usage of the definition are for clarification and do not result in costs or savings.
- ◆ **SMALL BUSINESSES:** There are no anticipated costs or savings to small businesses. This rule applies to public education and does not affect businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities. The added definition and usage of the definition are for clarification and do not result in costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The added definition and usage of the definition are for clarification and do not result in costs or savings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule and I see no fiscal impact on businesses.

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

EDUCATION
 ADMINISTRATION

250 E 500 S
 SALT LAKE CITY, UT 84111-3272
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2011

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

R277. Education, Administration.

R277-480. Charter School Revolving Account.

R277-480-1. Definitions.

- A. "Board" means the Utah State Board of Education.
- B. "Charter schools" means schools acknowledged as charter schools by local boards of education under Section 53A-1a-515, by the Board under Section 53A-1a-505, and by boards of trustees of higher education institutions under Section 53A-1a-501.3.
- C. "Charter School Revolving Account" means a restricted account created within the Uniform School fund to provide assistance to charter schools to:
 - (1) meet school building construction and renovation needs; and
 - (2) pay for expenses related to the start up of a new charter school or the expansion of an existing charter schools.
- D. "Charter School Revolving Account Committee" means the committee established by the Board under Section 53A-1a-522(6).
- E. "Superintendent" means the State Superintendent of Public Instruction as designated under 53A-1-301.
- F. "Urgent facility need," as provided for in Section 53A-1a-522(5)(d), means an unexpected exigency that affects the health and safety of students such as:
 - (1) to satisfy an unforeseen condition that precludes a school's qualification for an occupancy permit; or
 - (2) to address an unforeseen circumstance that keeps the school from satisfying provisions of public safety, public health, or public school laws or Board rules.
- [F]E. "USOE" means the Utah State Office of Education.

R277-480-4. Charter School Revolving Account Application and Conditions.

A. The Charter School Revolving Account Committee shall develop and the USOE shall make available a loan application that includes criteria designated under Section 53A-1a-522, including urgent facility need criteria.

B. The Charter School Revolving Account Committee shall include other criteria or information from loan applicants that the committee or the Board determines to be necessary and helpful, including considerations of Section 53A-1a-522(5), in making final

recommendations to the Superintendent, the State Charter School Board and the Board.

C. Applications for loans shall be accepted on an ongoing basis, subject to eligibility criteria and availability of funds.

(1) To apply for a loan, a charter school shall submit the information requested on the Board's most current loan application form together with the requested supporting documentation.

(2) The application shall include a resolution from the governing board of the charter school that the governing board, at a minimum:

(a) agrees to enter into the loan as provided in the application materials;

(b) agrees to the interest established by the Charter School Revolving Account Committee and repayment schedule of the loan designated by the Charter School Revolving Account Committee and the Board;

(c) agrees that loan funds shall only be used consistent with the purposes of Section 53A-1a-522 and the purpose of the approved charter;

(d) agrees to any and all inspections, audits or financial reviews ordered by the Charter School Revolving Account Committee or the Board; and

(e) understands that repayment, including interest, shall be deducted automatically from the charter school's monthly fund transfers, as appropriate.

D. The Charter School Revolving Account Committee shall establish terms and conditions for loan repayment, consistent with Section 53A-1a-522. Terms shall include:

(1) A tiered schedule of loan fund distribution:

(a) 50 percent (up to \$150,000) disbursed no more than 12 months prior to August 15 in the school's first year of operations;

(b) 25 percent (up to \$75,000) disbursed no more than six months prior to August 15 in the school's first year of operation;

(c) the balance of loan funds disbursed no more than three months prior to August 15 in the school's first year of operations.

(2) The loan amount to a charter school board awarded under Section 53A-1a-522 shall not exceed:

(a) \$1,000 per pupil based on prior year October 1 enrollment count for operational schools; or

(b) \$1,000 per pupil based on approved enrollment capacity of the first year of operation for pre-operational schools; or

(c) \$300,000 of the total of all current loan awards by the Board to a charter school board.

R277-480-5. Charter School Revolving Account Committee Recommendations and Board Approval.

A. The Charter School Revolving Account Committee shall make recommendations to the State Charter School Board and the Board only upon receipt of complete and satisfactory information from the applicant and upon a majority recommendation from the Charter School Revolving Account Committee.

B. The submission of intentionally false, incomplete or inaccurate information from a loan applicant may result in immediate cancellation of any previous loan(s), the requirement for immediate repayment of any funds received, denial of subsequent applications for a 12 month period from the date of the initial application, and possible Board revocation of a charter.

C. The Board staff and State Charter Board staff shall review recommendations from the Charter School Revolving Account Committee.

D. Final recommendations from the Charter School Revolving Account Committee shall be submitted to the Board no more than 60 days after submission of all information and materials from the loan applicant to the Charter School Revolving Account Committee.

E. The Board may request additional information from loan applicants or a reconsideration of a recommendation by the Charter School Revolving Account Committee.

F. The Board's approval or denial of loan applications constitutes the final administrative action in the charter school building revolving loan process.

KEY: charter schools, revolving account

Date of Enactment or Last Substantive Amendment: [July 11,] 2011

Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-1a-522(2)(b); 53A-1-401(3)

Health, Disease Control and Prevention, Epidemiology **R386-705** Epidemiology, Health Care Associated Infection

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 35376
FILED: 10/26/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Due to a new regulatory requirement from the Centers for Medicaid and Medicare Services (CMS), the Utah Department of Health (UDOH) proposes to amend the Healthcare Associated Infection (HAI) rule to allow hospitals to meet both UDOH and CMS requirements by reporting Central Line Associated Blood Stream Infections (CLABSI) to the National Healthcare and Safety Network (NHSN). The revised rule also defines new CLABSI required reporting elements. In addition, changes to the rule include the addition of a new reporting requirement to the current HAI rule. The revised rule adds laboratory identified *Clostridium difficile* infection (CDI) events as a reportable condition, as well as requiring reporting facilities to report *C. difficile* events to NHSN. The rule defines the required reporting elements for *C. difficile* and establishes standardized definitions of reporting elements that replicate NHSN requirements and definitions. In addition, changes to the rule standardize definitions of "health care worker" to meet those of CDC.

SUMMARY OF THE RULE OR CHANGE: The rule change would establish the reporting mechanisms to begin tracking laboratory identified *C. difficile* infections, and allow reporting facilities to report CLABSI and *C. difficile* to NHSN. Changes in the rule also define reporting elements and update reporting definitions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-6-3 and Section 26-6-7 and Subsections 26-1-30(2)(a), (b), (d), (e) and (g)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** Bureau of Epidemiology staff assigned to this program will conduct periodic statewide analysis of CLABSI and CDI data as part of existing duties. Efforts to improve rates of health care acquired infections (once baseline rates have been established) will in the long run benefit all Utah patients including Medicaid recipients and the costs associated with excess health care expenditures. Analysis of the data will be achieved electronically. Reports sent to facilities will be a combination of electronic and printed materials. Printed materials are expected to cost about \$100 for printing materials, excluding personnel time.

◆ **LOCAL GOVERNMENTS:** If a local government owns a health care facility, this may have an indirect impact on the subsidy they are providing to that facility. Currently there are only a few that fall in this category, and these are rural. The incidence of these types of events in rural facilities tends to be low due to the low number of hospital and patient days, and in many cases the lack of an Intensive Care Unit (ICU). The impact will be negligible for facilities with electronic laboratory reporting of CDIs, internet-based reporting, and a streamlined process. Costs will be higher in facilities where infection control preventionists will need to collect data manually. There will be an initial personnel time cost for facility staff to learn NHSN's reporting system and requirements.

◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to this type of business as all reporting facilities will have 50 or more employees.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** A facility that is accredited by The Joint Commission should currently be providing similar reports to The Joint Commission. Those facilities represent urban and community hospitals, or the majority of hospitals in Utah. Hospitals not accredited by The Joint Commission include rural hospitals. Rural Utah hospitals owned by major corporations already gather this information if the hospital has an ICU. There are only seven rural Utah hospitals that are not owned by a major corporation. Aggregate reporting costs for seven rural hospitals are estimated at approximately \$24 per year per hospital or \$168 (3 CLA-BSI infections per year x \$8). Industry infection control experts and health care system representatives estimate that the reporting cost will be ten minutes per report, or \$8 per report for The Joint Commission accredited hospitals. Patients will not initially be affected by the reporting requirement, but should benefit from the reporting implementation. As statewide interventions are in

place, benefits from reductions in hospital-associated infection rates, improvements in patient safety, reduction in mortality and morbidity, and reduction in expenses associated with healthcare associated infections will be achieved. Projected savings include a decrease in length of stay and improved employee productivity as the infections are reduced due to statewide surveillance and implementation of science-based interventions.

COMPLIANCE COSTS FOR AFFECTED PERSONS:

Patients will not initially be affected by the reporting requirement, but should benefit from the reporting implementation. As statewide interventions are in place, benefits from reductions in hospital-associated infection rates, improvements in patient safety, reduction in mortality and morbidity, and reduction in expenses associated with health care-associated infections will be achieved. Average cost per facility will depend on the number of admissions, number of patient days, size of the facility, and whether it currently has an ICU. Because there are so few reportable incidents for all non-accredited hospitals, it is not possible to estimate the total cost for any one non-accredited facility. Whether the hospital has an ICU will dictate the number of CLABSIs likely to be reported. Based on 2008 and 2009 CLABSI reports from hospitals with an ICU, there were an average of 90 infections reported in Utah per year (as estimated from the total of actual hospital reports for 2008 and 2009 divided by 2) due to CLABSIs. Industry infection control experts and health care system representatives estimate that the cost will be 10 minutes per report, or \$8 per report for The Joint Commission accredited hospitals. Total cost to the health care industry is estimated to be \$720 per year for CLABSI reporting. Based on 2008 and 2009 hospital discharge data, there are an average of 1,100 CDIs in Utah each year. National prevalence studies by the Association of Professionals in Infection Control indicate that 73% of CDIs are health care associated. Based on that information, Utah would expect to see approximately 800 health care associated CDIs per year. Applying the above industry costs, the estimated cost to comply with the revised rule and report CDIs will be 10 minutes, or \$8 per report for The Joint Commission accredited hospitals, resulting in total cost to the healthcare industry of approximately \$6,400 a year for *C. difficile* reporting.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:

This proposed rule change was developed in close collaboration with the affected hospital providers and reflects their input. By adopting the federal standards for reporting required by CDC, duplication of effort is minimized and costs reduced. Patients will benefit from this reporting and monitoring.

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

HEALTH
DISEASE CONTROL AND PREVENTION,
EPIDEMIOLOGY

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:

♦ Melissa Stevens Dimond by phone at 801-538-6810, by FAX at 801-538-9923, or by Internet E-mail at melissastevens@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

R386. Health, Disease Control and Prevention, Epidemiology, R386-705. Epidemiology, Health Care Associated Infection. R386-705-1. Authority and Purpose.

This rule establishes reporting requirements for health care associated infections and for influenza vaccination of health care workers. It is authorized by Utah Code Subsections 26-1-30(2) (a), (b), (d), (e), and (g), 26-6-3, and 26-6-7.

R386-705-2. Definitions.

For purposes of this rule:

(1) "Admissions" means the total number of inpatient admissions to the facility per month, with the exception of neonatal and well baby nursery admissions.

(2) "BSI" means a primary blood stream infection that meets the criteria in Subsection 22(4) in the Centers for Disease Control and Prevention National Healthcare Safety Network Patient Safety Component Manual, Chapter 4 - Central Line Associated Bloodstream Infection Event, June 2011.

(3) "CDI Laboratory-Identified Event" or "LabID Event" refers to all non-duplicate CDI positive laboratory assays collected from inpatients, including specimens collected during an emergency department visit if collected same day as the inpatient admission.

(4) "CDI positive laboratory assay" refers to stool specimens with a positive laboratory result for Clostridium difficile toxin A and/or B, or with a C. difficile organism cultured and confirmed to be toxin producing through other laboratory testing.

(5) "Centers for Disease Control and Prevention (CDC)" is an agency of the United States Department of Health and Human Services.

(6) "Central line" means an intravascular venous [vascular access] catheter that terminates at [passes through] or [has a tip ending at or] close to the heart or in one of the great vessels which is used for infusion, withdrawal of blood, or hemodynamic monitoring. [Great vessels include] The following are considered great vessels for the purpose of reporting central-line associated BSIs and counting central-line days: aorta, pulmonary artery, superior vena cava, inferior vena cava, brachiocephalic veins, internal jugular veins, subclavian veins, external iliac veins, common iliac veins, [or common] femoral veins and in neonates, the umbilical artery/vein. [The following vascular access catheters are

central lines: subclavian vein catheter, internal jugular vein catheter, PICC (peripherally inserted central catheter), Swan-Ganz catheter, Cook, Shiley, Port-a-Cath, Broviac, Groshong, Hickman, or dialysis catheter. The following catheters are not central lines for purposes of this rule: arterial catheters inserted into an artery, midline PICC, and pacemaker wires.]

(7) "Central line associated blood stream infection" or "[CLA-BSI][CLABSI]" [means] is a primary BSI [blood stream infection that is associated with the presence of] in a patient that had a central line [that meets the criteria in Subsection 21 (3)] or umbilical catheter in place at the time of onset of the BSI and that is not related to an infection at another site.

(8) "Central Line Days" means a daily count at the same time each day of the number of patients with a central line in place.

(9) "Clostridium difficile" or "C. difficile" is a species of an anaerobic, gram-positive, spore-forming bacillus that when toxin producing may cause diarrhea and other intestinal diseases when the normal flora of the intestinal tract is disrupted (for example, from the use of antibiotics). In the case of toxin producing C. difficile, C. difficile attaches to the mucosa of the colon and sets the stage for toxin production with resultant mucosal disease.

(10) "Clostridium difficile infection" or "CDI" is an infection that meets the required reporting criteria in the Centers for Disease Control and Prevention National Healthcare Safety Network Patient Safety Component Manual, Chapter 12 - Multidrug-Resistant Organism and Clostridium difficile Infection (MDRO/CDI) Module Protocol, June 2011.

(11) "Common skin commensal" means microorganisms that are commonly found on the skin and often indicate eontamination of the blood culture media rather than identification of a pathogenic organism when identified in blood culture tests, and include coagulase negative staphylococci, propionibacterium species, corynebacterium species, diphtheroids, bacillus species, and micrococcus species.

(12) "Health care facility" means a facility or agency licensed pursuant to Utah Code Title 26, Chapter 21.

(13) "Health care worker" means any person employed by a health care facility and who in the usual course of work either enters patient rooms or provides direct patient care. Health care workers may include personnel such as physicians, nurses, nursing assistants, therapists, technicians, emergency medical service personnel, dental personnel, pharmacists, laboratory personnel, dietary, housekeeping, and maintenance personnel.

(14) "Critical [intensive] care unit" or "ICU" (CCU)" means any general or specialty unit that provides intensive observation, diagnosis, and therapeutic procedures for patients who are critically ill [who are 1 year of age or older]. A CCU excludes nursing areas that provide step-down, intermediate care or telemetry only. An [ICU] adult CCU includes [coronary care units, medical intensive care units, medical/surgical intensive care units, surgical intensive care units, trauma intensive care units, neurosurgical intensive care units, burn trauma intensive care units, and pediatric intensive care units that provide care for at least some patients] burn, medical cardiac, medical, medical/surgical, neurologic, neurosurgical, prenatal, respiratory, surgical cardiothoracic, surgical and trauma critical care units. A pediatric CCU includes burn, cardiothoracic, medical, medical/surgical, neurology, neurosurgical, respiratory, surgical, and trauma critical care units. A neonatal CCU includes infants in NICU level II/III and III. [

~~(8) "Pathogenic organism" means a microorganism that is not a common skin commensal.]~~

(12) "Health care facility" means a facility or agency licensed pursuant to Utah Code Title 26, Chapter 21.

(13) "Health care worker" or "HCW", includes (but are not limited to) physicians, nurses, nursing assistants, therapists, technicians, dental personnel, pharmacists, laboratory personnel, autopsy personnel, contractual staff not employed by the health-care facility, and persons (e.g., clerical, dietary, housekeeping, maintenance, and volunteers) not directly involved in patient care but potentially exposed to infectious agents that can be transmitted to and from employees of a healthcare facility.

(14) "Inpatient" is defined as a patient whose date of admission to the healthcare facility and the date of discharge are different calendar days. Observation patients are to be counted as inpatient if date of discharge is different from admission.

(15) "National Healthcare Safety Network" or "NHSN" is a secure internet-based surveillance system managed by CDC's Division of Healthcare Quality Promotion (DHQP).

(16) "Patient days" means the total daily count of the number of patients in the patient care location during a time period.

(17) "Patient ID" refers to a unique patient identifier assigned by the hospital and may consist of any combination of numbers and/or letters. This should be an ID that remains the same for the patient across all visits and admissions. This may be the patient's medical record number, but could be any identifier the facility creates to identify the patient. This is needed for CDI reporting to capture recurrent cases, but is also used for CLABSI reporting.

R386-705-3. Reports.

(1) All hospitals shall, for ~~[at]~~each general or specialty care ~~[H]CCU[beds], not including[except] bone marrow transplant units[, newborn or neonatal intensive care units,]~~ or nursing areas that provide step-down, intermediate care, or telemetry monitoring only, report:

- (a) the number of central line patient days; and
- (b) each case of ~~[CLA-BSI]~~CLABSI.

(2) Each hospital and each long term care facility shall report its influenza vaccination rates for its healthcare workers.

(3) All facilities shall, for all inpatients facility wide, except patients in neonatal intensive care units and well baby nurseries, report:

- (a) all non-duplicate CDI-positive laboratory assays
- (b) the number of facility-wide admissions
- (c) the number of facility-wide patient days.

R386-705-4. Health Care Associated Infection Report Methodology.

The information required by this rule shall be reported to the Utah Department of Health, Bureau of Epidemiology using ~~[a form or]~~an electronic system approved by the Department. All facilities required to report shall report ~~[CLA-BSI]~~CLABSI and CDI data at least quarterly for the January through March quarter by May 15, for the April through June quarter by August 15, for the July through September quarter by November 15, and for the October through December quarter by February 15. Facilities are required to report to the NHSN reporting site for CLABSI and CDI and the Utah Facility On-line Reporting System (UFORS) for HCW

influenza data. Facilities reporting via NHSN must share data with the Utah Department of Health through conference of rights functionality in NHSN through joining the UDOH HAI group in NHSN. Data shared with the Utah Department of Health under this rule shall exclude patient identifiers, unless necessary for reporting requirements. The Utah Department of Health shall evaluate the case definitions and reporting algorithm at least annually with input from the users group and make any needed clarifications or changes.

R386-705-10. Health Care Associated Infection Prevention.

Each facility required to report under Subsection 3(1) shall implement processes to prevent ~~[central line associated blood stream infections]~~CLABSI.

(1) The processes shall include at least one intervention proven by scientifically valid means to be effective in preventing ~~[CLA-BSI]~~CLABSI. Interventions that have been recommended by an accepted health authority, including the Centers for Disease Control and Prevention, or the federal Hospital Infection Control Practices Advisory Committee, meet this requirement.

(2) The facility shall have a system to monitor that program and shall make information about the program available upon request from the Utah Department of Health.

R386-705-20. Central Line Days.

(1) Each facility required to report under this rule shall report central line patient days.

(a) The facility shall count the number of patients ~~[who were at least one year of age and]~~with a central line in place and resident in the ~~[H]CCU~~ at the time of the count.

(b) The count shall be performed at the same time each day, within 1 hour before or after the target time, during the reporting period.

(c) A patient with two or more central lines in place at the time of the count is counted as one patient with a central line on that day.

(d) The facility shall calculate the sum of the individual daily counts for each day in the reporting period for each CCU to arrive at the total central line days for each CCU for the reporting period.

(2) The number of central line days may be estimated based on a valid sampling method.

R386-705-21. Blood Stream Infection Reports.

(1) Each facility required to report under this rule shall report each case of ~~[CLA-BSI]~~CLABSI that occurs in each patient ~~[who is at least one year of age and who was either:]~~in a CCU or NICU. Facilities shall follow the current definition for CLABSI as defined in the National Healthcare Safety Network Patient Safety Component Manual, Chapter 4 - Central Line Associated Bloodstream Infection Event, June 2011.

~~_____ (a) in an ICU at the time the CLA-BSI was identified and had been in the ICU for at least 2 days prior to that time; or~~

~~_____ (b) had been in an ICU within 2 days prior to the time the CLA-BSI was identified;~~

~~_____ (2) The time the CLA-BSI is identified is the time that the first positive blood culture result used to identify the CLA-BSI was collected from the patient.~~

~~(3) A case of CLA-BSI is reportable if meets the criteria in Subsections 22(1), (4), and (5) and does not meet the criteria in Subsection 22(3).]~~

~~[(4)](2) For each case of [CLA-BSI]CLABSI, the hospital shall report [current required NHSN reporting elements as defined in Section 705-2(2) and 705-21.~~

~~(3) For each CLABSI, the hospital will confer rights to the Utah Department of Health through NHSN without patient identifiers, unless necessary for reporting requirements.~~

~~[(a) the date the CLA-BSI was identified;~~

~~(b) the type of ICU in which the case occurred, i.e., the ICU in which the patient resided at identification of the CLA-BSI if in ICU at the time, or the ICU from which patient was most recently discharged if not in ICU at the time;~~

~~(c) the organism or organisms isolated from blood cultures associated with the CLA-BSI episode; and~~

~~(d) whether the CLA-BSI was considered a mixed BSI episode based on meeting the criteria in Subsections 22(2).~~

~~(5) The Utah Department of Health shall evaluate the case definitions and reporting algorithm at least annually with input from the users group and make any needed clarifications or changes.~~

~~]~~

~~**R386-705-22. [Classification Criteria for Central Line Associated Bloodstream Infections.] Facility Wide Admissions.**~~

~~[Definitions of bloodstream infections established in this rule are not to be construed as technical medical definitions of bloodstream infections, but only as definitions necessary to establish a reporting requirement. In reporting CLA-BSI under this rule, facilities shall apply the following criteria as required by Section R386-705-21:~~

~~(1) Criteria 1-BSI:~~

~~(a) at least one blood culture result includes a pathogenic organism;~~

~~(b) at least two blood culture results from specimens obtained at different times or from specimens drawn at different phlebotomy sites, e.g., left arm and right arm, within a 2-day period include the same type of common skin commensal organism; or~~

~~(c) at least one blood culture result includes a common skin commensal organism and antibiotic treatment effective against that organism was started on the day that the culture was collected and was continued for greater than three days.~~

~~(2) Criteria 2-Mixed BSI:~~

~~A BSI is a mixed BSI episode if more than one type of organism is identified in blood culture results obtained within a 5-day period.~~

~~(3) Criteria 3-Secondary BSI:~~

~~(a) A BSI is a secondary BSI if the organism is a pathogenic organism and is detected in a culture from a source other than blood that:~~

~~(i) was obtained from the patient within the 3 days before or 7 days after the positive blood culture;~~

~~(ii) is not a surveillance culture, i.e., a culture obtained routinely to detect carriage of an organism and not to diagnose an infection that is suspected based on clinical findings;~~

~~(iii) is not a culture of a catheter tip; and~~

~~(iv) is not a yeast obtained in a culture from respiratory source.~~

~~(b) A mixed BSI episode is secondary if any one of the organisms detected in blood cultures during the current episode meets the criteria for a secondary BSI.~~

~~(4) Criteria 4-New Episode:~~

~~A primary BSI is a new episode of BSI if:~~

~~(a) it is the first BSI in the patient during the patient's current hospitalization;~~

~~(b) it is the first time this organism is detected in the patient and no other BSI was detected in the patient in the previous 5 days; or~~

~~(c) the organism was detected in a previous blood culture from this patient and that blood culture was collected more than 30 days before the blood culture indicating the current BSI episode.~~

~~(5) Criteria 5-Central Line:~~

~~A BSI is a CLA-BSI if a central line was in place for at least two days before the first blood culture identifying the BSI was collected.~~

~~](1) Each facility required to report CDI-positive laboratory assays under this rule shall report overall facility wide admissions.~~

~~(a) The facility shall count the number of overall facility admissions.~~

~~(b) The count shall be performed at the same time each day, within 1 hour before or after the target time, during the reporting period.~~

~~(c) A patient is considered admitted to the facility if the date of discharge is different from the date of admit.~~

~~(d) The facility shall calculate the sum of the individual daily counts for each day in the reporting period to arrive at the total for the reporting period.~~

~~(e) Counts for NICUs and well-baby nurseries should be excluded from the daily counts.~~

~~(2) The number of facility wide admissions may be estimated based on a valid sampling method.~~

~~**R386-705-23. Patient Days Report.**~~

~~(1) Each facility required to report CDI-positive laboratory assays under this rule shall report patient days.~~

~~(a) The facility shall count the total daily number of inpatients in the facility at the time of the count and record the number of inpatients.~~

~~(b) The count shall be performed at the same time each day, within 1 hour before or after the target time, during the reporting period.~~

~~(c) The facility shall calculate the sum of the individual daily counts for each day in the reporting period to arrive at the total for the reporting period.~~

~~(d) Counts for NICUs and well-baby nurseries should be excluded from the counts.~~

~~(2) The number of facility wide admissions may be estimated based on a valid sampling method.~~

~~**R386-705-24. Clostridium Difficile LabID Event Reports.**~~

~~(1) Facilities shall report for each CDI LabID Event that occurs in each inpatient consistent with the current NHSN definition for CDI positive laboratory assays. Facilities must report to NHSN.~~

(2) Facilities reporting CDI LabID Events to NHSN are required to report current required NHSN reporting elements that meet the criteria in Section 705-2(10).

(3) For each CDI LabID Event reported to NHSN, the facility will confer rights to the Utah Department of Health through NHSN without patient identifiers, unless necessary for reporting requirements.

R386-705-25. Influenza Vaccination Rate Reporting.

(1) Reports of influenza vaccination rates shall include the number of health care workers and the number of those workers who are documented to have received an influenza vaccine for the current influenza season. Influenza vaccination rates may be measured by complete enumeration of all health care workers in the facility during the season and the number of them who were vaccinated during that season or may be estimated by a cross-sectional assessment.

(2) Each hospital and licensed long term care facility shall report its influenza vaccination rates for the current influenza season by January 31.

R386-705-100. Attestation Required.

Each facility required to report under Subsection 3(1)[;] shall attest to the implementation and effectiveness of its health care infection prevention program and its systems for reporting[;] as required by this rule, once every three years.

R386-705-101. Penalties.

As required by Section 63-46a-3(5): An entity that violates any provision of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

KEY: ~~[hospitals,]~~ quality improvement, patient safety, healthcare, infection control

Date of Enactment or Last Substantive Amendment: March 15, 2010

Authorizing, and Implemented or Interpreted Law: 26-1-30(2)(a); 26-1-30(2)(b); 26-1-30(2)(d); 26-1-30(2)(e); 26-1-30(2)(g); 26-6-3; 26-6-7

Health, Health Care Financing,
Coverage and Reimbursement Policy

R414-2A

Inpatient Hospital Services

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35390

FILED: 10/31/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to implement a change in inpatient hospital services policy.

SUMMARY OF THE RULE OR CHANGE: This amendment removes language that defines an inpatient as one who requires at least 24 hours of care in a hospital. It also removes language which defines an inpatient stay as one that exceeds 24 hours.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR 447.272 and Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The Department does not anticipate any impact to the state budget because inpatient hospital services have always needed to meet medical necessity criteria.

♦ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide inpatient hospital services to Medicaid recipients.

♦ **SMALL BUSINESSES:** The Department does not anticipate any impact to small businesses because inpatient hospital services have always needed to meet medical necessity criteria.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate any impact to Medicaid providers and to Medicaid recipients because inpatient hospital services have always needed to meet medical necessity criteria.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not anticipate any impact to a Medicaid provider or to a Medicaid recipient because inpatient hospital services have always needed to meet medical necessity criteria.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment removes an obsolete 24 hours of care requirement to qualify as an inpatient stay for Medicaid reimbursement. The new standard, which is consistent with current practice, requires a showing of medical necessity. No adverse fiscal impact is expected as there should be no change in current approvals or denials for reimbursement.

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 12/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2011

AUTHORIZED BY: David Patton, PhD, Executive Director

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

R414-2A. Inpatient Hospital Services.

R414-2A-2. Definitions.

(1) "Admission" means the acceptance of a Medicaid client for inpatient hospital services.

(2) "Diagnosis Related Group (DRG)" is the CMS-coding that determines reimbursement for the resources that a hospital uses to treat a client with a specific diagnosis or medical need and is further described in Section R414-2A-9 of this rule.

(3) "Hyperbaric Oxygen Therapy" is therapy that places the patient in an enclosed pressure chamber for medical treatment.

(4) "Inpatient" is an individual whose severity of illness and intensity of service requires [24 hours or more of] continuous care in a hospital, as noted by InterQual Criteria as noted in Section R414-1-12.

(5) "Inpatient Hospital Services" are services that a hospital provides for the care and treatment of inpatients with disorders other than mental illness, under the direction of a physician or other practitioner of the healing arts.

(6) "Leave of Absence" from an inpatient facility is a patient's absence for therapeutic or rehabilitative purposes where the patient does not return by midnight of the same day.

(7) "Observation" means monitoring a patient to evaluate the patient's condition, symptoms, diagnosis, or appropriateness of inpatient admission.

(8) "Other Practitioner of the Healing Arts" means a doctor of dental surgery or a podiatrist.

(9) "Prepaid Mental Health Plan" means the prepaid, capitated program through which the Department pays contracted community mental health centers to provide all needed inpatient and outpatient mental health services to residents of the community mental health center's catchment area who are enrolled in the plan.

R414-2A-9. Reimbursement Methodology.

(1) Payments for inpatient hospital services are paid on a prospectively determined amount for each qualifying patient discharge under a Diagnosis Related Group (DRG) system. DRG weights are established to recognize the relative amount of resources consumed to treat a particular type of patient. The DRG classification scheme assigns each hospital patient to one of over 500 categories or DRGs based on the patient's diagnosis, age and sex, surgical procedures performed, complicating conditions, and discharge status. Each DRG is assigned a weighting factor which reflects the quantity and type of hospital services generally needed to treat a patient with that condition. A preset reimbursement is assigned to each DRG. The DRG system allows for outliers for those discharges that have significant variance from the norm.

(2) For purposes of reimbursement, the day of admission is counted as a full day and the day of discharge is not counted.

(3) When a patient receives SNF-level, ICF-level, or other sub-acute care in an acute-care hospital or in a hospital with swing-bed approval, payment is made at the swing-bed rate.

(4) Reimbursement for services in the emergency department is limited to codes and diagnoses that are medically necessary emergency services. The provider manual lists appropriate emergency codes. The provider must list the discharge diagnosis on the claim form as one of the first five diagnoses.

(5) If a patient is readmitted for the same or a similar diagnosis within 30 days of a discharge, the Department may review and evaluate both claims to determine if, based on severity of illness and intensity of service, the claims should be combined into a single DRG payment or paid separately. Cost effectiveness may also be part of this determination but is not a primary factor.

(6) Exceptions to the 30-day readmission policy must still meet the severity of illness requirements for the allowance of a second DRG payment and are limited to:

(a) pregnancy;

(b) chemotherapy; and

(c) hyperbilirubinemia appearing in newborn infants within the first week of life.

(7) The Department pays for physician interpretation of laboratory services separately from the DRG payment. Laboratory technical services are included within the DRG for the inpatient admission.

(8) If an observation stay meets the intensity and severity for inpatient hospitalization, ~~and exceeds 24 hours,~~ the patient becomes an inpatient and the observation services are reimbursed as part of payment under the DRG.

KEY: Medicaid

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

Notice of Continuation: **November 8, 2007**

Authorizing, and Implemented or Interpreted Law: **26-1-5; 26-18-3; 26-18-3.5**

Insurance, Administration **R590-160** Administrative Proceedings

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 35387

FILED: 10/28/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed to update the days the department is open for business, correct a code citation and to simplify the rule's adjudicative proceedings.

SUMMARY OF THE RULE OR CHANGE: In Subsection R590-160-5(3), eliminates the reference to "Fridays" which was considered a weekend day while the department was on its 4/10 work week. Now that the work week has changed

back to a 5-day work week, Friday's are no longer a part of the weekend. A Code citation correction is in Subsection R590-160-6(1). Changes to Subsection R590-160-6(7) makes it possible for the presiding officer in a formal hearing to simplify the rules of a proceeding, as agreed on by the parties involved, as seen fit for the situation.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 31A-2-201(3)(a) and Subsection 63G-4-102(6) and Subsection 63G-4-203(1) and Title 63G, Chapter 4

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The proposed changes to this rule will have no fiscal impact on the department or state's budget. It could free up time the department spends on proceedings.
- ◆ LOCAL GOVERNMENTS: This will have no fiscal impact on local governments since the rule relates solely with the relationship between the department and its licensees and those performing the business of insurance without a license.
- ◆ SMALL BUSINESSES: The changes could affect any person involved in a proceeding before the department. As a result of the change, the presiding officer can relax the rules, expedite the proceedings when possible. When this is done, it could save the respondent time and money for legal fees and save their attorney time for other business.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The changes could affect any person, whether acting for him or herself, an agency or insurer involved in a proceeding before the department. As a result of the change, the presiding officer can relax the rules, expedite the proceedings when possible. When this is done, it could save the respondent time and money for legal fees and save their attorney time for other business.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes could affect any person, whether acting for him or herself, an agency or insurer involved in a proceeding before the department. As a result of the change, the presiding officer can relax the rules, expedite the proceedings when possible. When this is done, it could save the respondent time and money for legal fees and save their attorney time for other business.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is a possibility for savings due to possibly shorter hearings but this cannot be calculated. It will be determined on a case-by-case basis. The changes are mainly for clarification.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2011

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-160. Administrative Proceedings.

R590-160-5. Rules Applicable to All Proceedings.

(1) Liberal Construction. These rules shall be liberally construed to secure just, speedy and economical determination of all issues presented to the commissioner.

(2) Deviation from Rules. The commissioner or presiding officer may permit a deviation from these rules insofar as compliance is found to be impracticable or unnecessary or for other good cause.

(3) Computation of Time. The time within which any act shall be done, as herein provided, shall be computed by excluding the first day and including the last unless the last day is a [~~Friday,~~] Saturday, Sunday or a legal holiday, and then it is excluded and the period runs until the end of the next day that is not a [~~Friday,~~] Saturday, Sunday, or a legal holiday.

(4) Parties.

(a) Parties to a proceeding before the commissioner may be:

(i) Any person, including the Insurance Department, who has a statutory right to be a party or any person who has a legally protected interest or right in the subject matter that may be affected by the proceeding.

(ii) Any person may become an intervening party when it is established to the satisfaction of the commissioner or presiding officer that the person has a substantial interest in the subject matter of the proceeding and that intervention will be relevant and material to the issues before the commissioner;

(iii) The Insurance Department staff;

(iv) Other persons permitted by the commissioner or presiding officer.

(b) Classification. Participants in a proceeding shall be styled "applicants", "petitioners", "complainants", "respondents", or "intervenor", according to the nature of the proceeding and the relation of the parties thereto.

(5) Appearances and Representation.

(a) Making an Appearance. A party enters an appearance by filing an initial pleading or an initial response to a notice of agency action at the beginning of the proceeding, giving the party's name, address, telephone number, and stating the party's position or interest in the proceeding.

(b) Representation of Parties. An attorney who is an active member of the Utah State Bar may represent any party. An individual who is a party to a proceeding may represent himself or

herself. An officer duly authorized by corporate resolution may represent a corporation. A general partner may represent a partnership, and a member or manager may represent a limited liability company.

(c) An attorney or other authorized representative authorized in Subsection R590-160-5(5)(b) above, if previous appearance has not been entered, shall file a Notice of Appearance with the commissioner or presiding officer no later than five days before any hearing at which the attorney or other authorized representative shall appear.

(d) Insurance Department Staff. Members of the Insurance Department staff may appear either in support of or in opposition to any cause, or solely to discover and present facts pertinent to the issue.

(6) Pleadings.

(a) Pleadings Enumerated. Pleadings before the commissioner shall consist of petitions, complaints, requests for hearing, responsive pleadings, motions, stipulations, affidavits, memoranda, orders, or other notices used by the commissioner in initiating a proceeding.

(b) Docket Number. Upon the commencement of an adjudicative proceeding, the commissioner shall assign a docket number to the proceeding.

(c) Title. Pleadings before the commissioner shall be titled in substantially the following form:

(i) Centered, heading: BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF UTAH;

(ii) Left side, identification of parties: (COMPLAINANT:, RESPONDENT:, PETITIONER:, etc.);

(iii) Right side, identification of type of action: (NOTICE OF HEARING, ORDER TO SHOW CAUSE, etc.);

(iv) Right side, docket number.

(d) Size and Content of Pleadings. Pleadings shall be typewritten, double-spaced on white 8-1/2 x 11-inch paper. They must identify the proceedings by title and docket number, if known, and shall contain a clear and concise statement of the matter relied upon as a basis for the pleading, together with an appropriate request for relief when relief is sought.

(e) Amendments to Pleadings. The presiding officer may allow pleadings to be amended or corrected. Amendments to pleadings shall be allowed in accordance with the Utah Rules of Civil Procedure.

(f) Signing of Pleadings. Pleadings shall be signed and dated by the party or by the party's attorney or other authorized representative and shall show the signer's address, telephone number, and email address, if available. The signature shall be deemed to be a certificate by the signer that the signer has read the pleading and that, to the best of the signer's knowledge and belief, there are good grounds in support of it.

(g) Petitions. All pleadings praying for affirmative relief (other than applications, complaints, notices of adjudicative proceedings, or responsive pleadings), including requests to intervene shall be styled "petitions."

(h) Motions.

(i) No proceeding before the commissioner may be initiated by a motion except in the case of a Motion for an Order to Show Cause.

(ii) Motions, other than at a hearing, shall be in writing and submitted for ruling on either written or oral argument. The filing of affidavits in support of the motions or in opposition thereto may be permitted by the presiding officer. Oral motions may be allowed at a hearing at the discretion of the presiding officer.

(iii) Any motion shall be filed at least ten days prior to the date set for the hearing.

(7) Filing and Service.

(a) A document shall be deemed filed on the date it is delivered to and stamped received by the department.

(b) An original and one copy of any pleading shall be filed with the department and a copy served upon all other parties to the proceeding. The presiding officer may direct that a copy of all pleadings and other papers be made available by the party filing the same to any person requesting copies thereof who the presiding officer determines may be affected by the proceedings.

(c) Service may be made upon any party or other person by ordinary mail, by certified mail with return receipt requested, in accordance with the Utah Rules of Civil Procedure, or by any person specifically designated by the commissioner. Service upon licensees, if by mail, shall be to the mailing address or other address on file with the department.

(d) There shall appear on all documents required to be served a Certificate of Service or Certificate of Mailing in substantially the following form: I do hereby certify that on (date), I (served or mailed by regular mail or certified mail return receipt requested, postage prepaid) (the original/a true and correct copy) of the foregoing (document title) to (name and address), (signed).

(e) When any party has appeared by attorney or other authorized representative, service upon the attorney or representative constitutes service upon the party.

(8) Presiding Officers - Disqualification for Bias.

(a) Any party to a proceeding may move for the disqualification of an assigned presiding officer by filing with the commissioner an Affidavit of Bias alleging facts sufficient to support disqualification.

(b) The commissioner shall determine the issue of disqualification as a part of the record of the case, and may request and receive any additional evidence or testimony as deemed necessary to make this determination. The hearing will not proceed until the commissioner makes this determination. No appeal shall be taken from the commissioner's Order on the determination of disqualification for bias except as part of an appeal of a final agency action.

(i) If the commissioner finds that a motion for disqualification was filed without a reasonable basis or good faith belief in the facts asserted, the commissioner may order that the offending party be subject to the appropriate sanctions as are authorized to be imposed by statute or this rule.

(ii) When a presiding officer is disqualified or it becomes impractical for the presiding officer to continue, the commissioner shall appoint another presiding officer.

(c) A presiding officer may at any time voluntarily disqualify himself or herself.

(9) Ex Parte Contacts Prohibited. Except as to matters that by law are subject to disposition on an ex parte basis, the commissioner and the presiding officer involved in a hearing shall

not have ex parte contact with persons and parties, including staff members of the department appearing as parties to a proceeding, directly or indirectly involved in any matter that is the subject of a pending administrative proceeding unless all parties are given notice and an opportunity to participate.

(10) Standard of Proof. All issues of fact in administrative proceedings before the commissioner shall be decided upon the basis of a preponderance of the evidence standard.

R590-160-6. Rules Applicable to Formal Proceedings.

Hearings.

(1) Conduct of Hearing. All hearings shall be conducted pursuant to the provisions of Section ~~[63G-4-202]~~63G-4-206.

(2) Continuance. If application is made to the presiding officer within a reasonable time prior to the date of hearing, upon proper notice to the other parties, the presiding officer may grant a motion for continuance or other change in the time and place of hearing, upon good cause shown. The presiding officer may also, for good cause, continue a hearing in process if such continuance will not substantially prejudice the rights of any party.

(3) Public Hearings. Unless ordered by the presiding officer for good cause, all hearings shall be open to the public.

(4) Telephonic Testimony. The presiding officer may, when the identity of a witness can be established with reasonable assurance, take testimony telephonically. Telephonic testimony shall be taken under conditions that permit all parties to hear the testimony and examine or cross-examine the witness. It shall be within the discretion of the presiding officer as to whether or not telephonic testimony shall be allowed.

(5) Record of Hearing.

(a) Transcript of Hearing. Upon two days' notice, any party may request that, at the party's own expense, a certified shorthand reporter be used to record the proceedings. If such a transcript is made, the original transcript of the proceeding shall be filed with the commissioner at no cost to the commissioner. Parties wanting a copy of the certified shorthand reporter's transcript may purchase it from the reporter at the parties' own expense.

(b) Recording Device. Unless otherwise ordered, the record of the proceedings shall be made by means of a tape recorder or other recording device. A duplicate copy of the tape, or other recording, will be provided by the commissioner at the request and expense of any party, providing that a copy of any transcription of any portion of the record is simultaneously provided at no cost to the commissioner. Transcriptions shall be done by a certified shorthand reporter.

(6) Subpoenas and Fees.

(a) Subpoenas. On the motion of the commissioner or the presiding officer, or at the request of any party for the production of evidence or the attendance of any person in a formal adjudicative proceeding, the commissioner or the presiding officer may issue a subpoena. Any subpoena so issued shall be served in accordance with the Utah Rules of Civil Procedure or by a person designated by the commissioner.

(b) Witness Fees. Each witness, other than department staff, who appears before the commissioner or the presiding officer shall be entitled to receive the same fees and mileage allowed by law to witnesses in a district court, to be paid by the party at whose request the witness is subpoenaed. Witnesses appearing at the

request of the commissioner shall be entitled to payment from the funds appropriated for the use of the Insurance Department. Any witness subpoenaed at the request of a party other than the commissioner may, at the time of service of the subpoena, demand one day's witness fee and mileage in advance and unless such fee is tendered, that witness shall not be required to appear.

(7) Discovery. Discovery ~~[and motions thereupon]~~ may be had as the parties may agree or pursuant to an order of the presiding officer~~[in accordance with the Utah Rules of Civil Procedure, Rules 27 through 37].~~

(8) At the close of the formal hearing, the presiding officer shall issue an order based upon evidence presented in the hearing. The order shall be final on the date the order is issued unless otherwise provided in the order.

KEY: insurance

Date of Enactment or Last Substantive Amendment: ~~[March 10, 2010]~~2011

Notice of Continuation: October 30, 2008

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 63G-4-102; 63G-4-203

Labor Commission, Adjudication **R602-2-4** Attorney Fees

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 35377
FILED: 10/27/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is correct a typographical error in the effective date of attorney fees set by the rule. It also makes other grammatical corrections. (DAR NOTE: The error occurred in the proposed amendment to Section R602-2-4 that was published under DAR No. 35092 in the August 15, 2011, issue of the Bulletin and was made effective 09/21/2011.)

SUMMARY OF THE RULE OR CHANGE: This proposed rule change corrects the effective date of the fees set by the rule to October 1, 2011. It also corrects two nonsubstantive grammatical errors.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-1-301 et seq. and Section 63G-4-102 et seq.

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There should be no cost or savings to the state budget as the attorney fees set in this rule are paid to injured worker attorneys out of compensation awarded to the injured worker.

◆ LOCAL GOVERNMENTS: There should be no cost or savings to local governments as the attorney fees set in this rule are paid to injured worker attorneys out of compensation awarded to the injured worker.

◆ SMALL BUSINESSES: There should be no cost or savings to small businesses as the attorney fees set in this rule are paid to injured worker attorneys out of compensation awarded to the injured worker.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There should be no cost or savings to persons other than small businesses, businesses, or local government entities as the attorney fees set in this rule are paid to injured worker attorneys out of compensation awarded to the injured worker.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should be no compliance costs for affected persons as the attorney fees set in this rule are paid to injured worker attorneys out of compensation awarded to the injured worker.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There should be no fiscal impact on businesses as the attorney fees set in this rule are paid to injured worker attorneys out of compensation awarded to the injured worker.

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

LABOR COMMISSION
ADJUDICATION
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:

◆ Alan Hennebold by phone at 801-530-6937, by FAX at 801-530-6390, or by Internet E-mail at ahennebold@utah.gov
◆ Richard Lajeunesse by phone at 801-536-7928, by FAX at 801-530-6333, or by Internet E-mail at rlajeunesse@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2011

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R602. Labor Commission, Adjudication.

R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.

R602-2-4. Attorney Fees.

A. Pursuant to Section 34A-1-309, the Commission adopts the following rule to regulate and fix reasonable fees for attorneys representing applicants in workers' compensation or occupational illness claims.

1. This rule applies to all fees awarded after October 1, 2011.

2. Fees awarded prior to the effective date of this rule are determined according to the prior version of this rule in effect on the date of the award.

B. Upon written agreement, when an attorney's services are limited to consultation, document preparation, document review, or review of settlement proposals, the attorney may charge the applicant an hourly fee of not more than \$125 for time actually spent in providing such services, up to a maximum of four hours.

1. Commission approval is not required for attorneys fees charged under this subsection B. It is the applicant's responsibility to pay attorneys fees permitted by this subsection B.

2. In all other cases involving payment of applicants' attorneys fees which are not covered by this subsection B., the entire amount of such attorneys fees are subject to subsection C. or D. of this rule.

C. Except for legal services compensated under subsection B. of this rule, all legal services provided to applicants shall be compensated on a contingent fee basis.

1. For purposes of this subsection C., the following definitions and limitations apply:

a. The term "benefits" includes only death or disability compensation and interest accrued thereon.

b. Benefits are "generated" when paid as a result of legal services rendered after Adjudication Form 152 Appointment of Counsel form is signed by the applicant. A copy of this form must be filed with the Commission by the applicant's attorney.

c. In no case shall an attorney collect fees calculated on more than the first 312 weeks of any and all combinations of workers' compensation benefits.

2. Fees and costs authorized by this subsection shall be deducted from the applicant's benefits and paid directly to the attorney on order of the Commission. A retainer in advance of a Commission approved fee is not allowed.

3. Attorney fees for benefits generated by the attorney's services shall be computed as follows:

a. For all legal services rendered through final Commission action, the fee shall be 25% of weekly benefits generated for the first \$25,000, plus 20% of the weekly benefits generated in excess of \$25,000 but not exceeding \$50,000, plus 10% of the weekly benefits generated in excess of \$50,000, to a maximum of \$17,125.

b. For legal services rendered in prosecuting or defending an appeal before the Utah Court of Appeals, an attorney's fee shall be awarded amounting to 30% of the benefits in dispute before the Court of Appeals. This amount shall be added to any attorney's fee awarded under subsection C.3.a. for benefits not in dispute before the Court of Appeals. The total amount of fees awarded under subsection C.3.a. and this subsection C.3.b. shall not exceed \$24,706;

c. For legal services rendered in prosecuting or defending an appeal before the Utah Supreme Court, an attorney's fee shall be awarded amounting to 35% of the benefits in dispute before the Supreme Court. This amount shall be added to any attorney's fee awarded under subsection C.3.a. and subsection C.3.b. for benefits not in dispute before the Supreme Court. The total amount of fees awarded under subsection C.3.a, subsection C.3.b. and this subsection C.3.c shall not exceed \$30,321.

D. The following expenses, fees and costs shall be presumed to be reasonable and necessary and therefore reimbursable in a workers' compensation claim:

1. Medical records and opinion costs;
2. Deposition transcription costs;
3. Vocational and Medical Expert Witness fees;
4. Hearing transcription costs;
5. Appellate filing fees; and
6. Appellate briefing expenses.

F. Other reasonable expenses, fees and costs may be awarded as reimbursable as the Commission may in its discretion decide[s] in a particular workers compensation claim.

E. In "medical only" cases in which awards of attorneys' fees are authorized by Subsection 34A-1-309(4), the amount of such fees and costs shall be computed according to the provisions of subsection C and D.

KEY: workers' compensation, administrative procedures, hearings, settlements

Date of Enactment or Last Substantive Amendment: [September 21,]2011

Notice of Continuation: August 15, 2007

Authorizing, and Implemented or Interpreted Law: 34A-1-301 et seq.; 63G-4-102 et seq.

Public Safety, Fire Marshal R710-6 Liquefied Petroleum Gas Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35401

FILED: 11/01/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Liquefied Petroleum Gas Board met on 10/14/2011, in a regularly scheduled Board meeting and unanimously voted to update the currently adopted reference, National Fire Protection Association (NFPA), Standard 58, Liquefied Petroleum Gas Code, 2008 edition, to the 2011 edition.

SUMMARY OF THE RULE OR CHANGE: A summary of the proposed rule amendments are as follows: 1) in Subsection R710-6-1(1.1), the Board proposes to update the currently adopted 2008 edition of NFPA, Standard 58, Liquefied Petroleum Gas Code, to the 2011 edition; and 2) in Subsections R710-6-8(8.6.1) through (8.6.7), the Board proposes to amend several sections with regard to numbering to match the numerical sequence of the 2011 edition of the NFPA standard.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-305

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Liquefied Petroleum Gas Code, published by National Fire Protection Association, 08/25/2010

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The only aggregate anticipated cost to the state budget would be to purchase the newly updated 2011 edition of NFPA 58 at \$43 each and the full standard at \$122 each. The aggregate anticipated cost for the needed standards would be approximately \$800.

◆ **LOCAL GOVERNMENTS:** There is no aggregate anticipated cost or savings to local government because these proposed amendments do not affect local government or local government's functions in any way.

◆ **SMALL BUSINESSES:** There would be an aggregate anticipated cost to small businesses of approximately \$400 per LP Gas container to monitor and test the cathodic protection on these containers. The testing on new LP Gas underground or mounded containers are required upon installation, 12 to 18 months later, and then every 3 years after that. The agency has no possible way of knowing how many containers will be installed after the adoption of this standard, and no way of being able to compute an aggregate amount with the alternating testing required.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There would now be a cost of approximately \$400 per cathodic protection examination. These would be required at the time of installation, 12 to 18 months after installation, and every 3 years thereafter. This would only apply to those persons who owned an LP Gas container and it was mounded or underground.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost for affected persons would be approximately \$400 per underground or mounded container to complete a cathodic protection examination for proper protection.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There would be no fiscal impact on LP Gas businesses for the enactment of these proposed rule amendments. The LP Gas companies that would be conducting these required tests would be passing the cost of the cathodic protection monitoring onto the owner of the new installation. If the new owner of the LP Gas container was a business, there would be a charge of approximately \$400 per test to make sure the cathodic protection was adequate. No cathodic protection would allow the ground to deteriorate the metal container and the container leaking would become a public safety hazard.

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 12/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2011

AUTHORIZED BY: Brent Halladay, State Fire Marshal

R710. Public Safety, Fire Marshal.**R710-6. Liquefied Petroleum Gas Rules.****R710-6-1. Adoption, Title, Purpose and Scope.**

Pursuant to Title 53, Chapter 7, Section 305, Utah State Code Annotated 1953, the Liquefied Petroleum Gas (LPG) Board adopts minimum rules to provide regulation to those who distribute, transfer, dispense or install LP Gas and/or its appliances in the State of Utah.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 58, LP Gas Code, [~~2008~~2011] edition, except as amended by provisions listed in R710-6-8, et seq.

1.2 National Fire Protection Association (NFPA), Standard 54, National Fuel Gas Code, 2009 edition, except as amended by provisions listed in R710-6-8, et seq.

1.3 National Fire Protection Association (NFPA), Standard 1192, Standard on Recreational Vehicles, 2008 Edition, except as amended by provisions listed in R710-6-8, et seq.

1.4 International Fire Code (IFC), Chapter 38, 2009 edition, as published by the International Code Council, Inc. (ICC), and as enacted and amended by the Utah State Legislature in Sections 102 and 201 of the State Fire Code Adoption Act.

1.5 A copy of the above codes are on file with the Division of Administrative Rules, and the State Fire Marshal's Office. The definitions contained in the afore referenced codes shall also pertain to these rules.

1.6 Title.

These rules shall be known as "Rules Governing LPG Operations in the State of Utah" and may be cited as such, and will be hereinafter referred to as "these rules".

1.7 Validity.

If any article, section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the LPG Board such decision shall not affect the validity of the remaining portion of these rules.

1.8 Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes or standards as adopted, the more restrictive requirement shall govern, as determined by the enforcing authority.

R710-6-8. Amendments and Additions.

The following amendments and additions are hereby adopted by the Board:

8.1 All LP Gas facilities that are located in a public place shall be inspected by a certified LP Gas serviceman every five (5) years for leaks in all buried piping as follows:

8.1.1 All buried piping shall be pressure tested and inspected for leaks as set forth in NFPA Standard 54, Sections 4.1.1 through 4.3.4.

8.1.2 If a leak is detected and repaired, the buried piping shall again be pressure tested for leaks.

8.1.3 The certified LP Gas serviceman shall keep a written record of the inspection and all corrections made to the buried piping located in a public place.

8.1.4 The inspection records shall be available to be inspected on a regular basis by the Division.

8.2 Whenever the Division is required to complete more than two inspections to receive compliance on an LP Gas System, container, apparatus, appliance, appurtenance, tank or tank trailer, or any pertinent equipment for the storage, transportation or dispensation of LP Gas, the Division shall charge to the owner for each additional inspection, the re-inspection fee as stated in R710-6-6.1(e).

8.3 All LP Gas containers of more than 5000 water gallons shall be inspected at least biannually for compliance with the adopted statute and rules. The following containers are exempt from this requirement:

8.3.1 Those excluded from the act in UCA, Section 53-7-303.

8.3.2 Containers under federal control.

8.3.3 Containers under the control of the U.S. Department of Transportation and used for transportation of LP Gas.

8.3.4 Containers located at private residences.

8.4 Those using self-serve key or card services shall be trained in safe filling practices by the licensed dealer providing the services. A letter shall be sent to the Division by the licensed dealer stating that those using the self-serve key or card service have been trained.

8.5 IFC Amendments:

8.5.1 IFC, Chapter 38, Section 3801.2 Permits. On line 2 after the word "105.7" add "and the adopted LPG rules".

8.5.2 IFC, Chapter 38, Section 3803.1 is deleted and rewritten as follows: General. LP Gas equipment shall be installed in accordance with NFPA 54, NFPA 58, the adopted LP Gas Administrative Rules, and the International Fuel Gas Code, except as otherwise provided in this chapter.

8.5.3 IFC, Chapter 38, Section 3809.12 is deleted and rewritten as follows: In Table 3809.12, Doorway or opening to a building with two or more means of egress, with regard to quantities 720 or less and 721-2,500, the currently stated "5" is deleted and replaced with "10".

8.5.4 IFC, Chapter 38, Section 3810.1 is amended as follows: On line two after the word "discontinued" add the words "for more than one year or longer as allowed by the Authority Having Jurisdiction (AHJ)".

8.6 NFPA, Standard 58 Amendments:

8.6.1 NFPA, Standard 58, Section 5.2.1.1 is amended to add the following section: [(e)](d) All new, used or existing containers of 5000 water gallons or less, installed in the State of Utah or relocated within the State of Utah shall be marked with the ASME stamp as defined in Section 2.1 of these rules. All new, used

or existing containers of more than 5000 water gallons, installed in the State of Utah or relocated within the State of Utah, shall be marked with the ASME stamp as defined in Section 2.1 of these rules, and shall be inspected for approval by the Division. If the Division has concerns about the integrity or condition of the container, additional nondestructive testing may be required to include but not limited to hydrostatic testing, ultrasonic metal thickness testing or any other testing as determined necessary by the Division. All incurred costs for additional testing required by the Division shall be the responsibility of the owner.

8.6.2 NFPA, Standard 58, Section 5.2.1.1 is amended to add the following section: [(+) (e)] If an existing U68, U69, U200 or U201 specification container, more than 5000 water gallons, is relocated within the State of Utah, and does not bear the required ASME stamp as defined in Section 2.1 of these rules, the container cannot be reinstalled unless the container has received a "Special Classification Permit" from the Division. Specifications of the type of container, container history if known, material specifications and calculations, and condition of the container shall be submitted to the Division by the person seeking the "Special Classification Permit". The Division shall inspect the container for approval. If the Division has concerns about the integrity or condition of the container, additional nondestructive tests such as hydrostatic testing, ultrasonic metal thickness testing or any other testing as determined necessary by the Division. All incurred costs of testing and evaluations shall be the responsibility of the owner. The Division will approve or disapprove the proposed container. Approval by the Division shall be obtained before the container is set or filled with LP Gas.

8.6.3 NFPA, Standard 58, Section 5.2.1.[5]6 is amended to add the following sentence at the end of the section: (A) Repairs and alterations shall only be made by those holding a National Board "R" Certificate of Authorization commonly known as an R Stamp.

8.6.4 NFPA Standard 58, Sections 5.9.3.2([3]2)(a) and (b) are deleted and rewritten as follows:

Type K copper tubing without joints below grade may be used in exterior LP Gas piping systems only.

8.6.5 NFPA, Standard 58, Section 6.6.1.2 is amended to add the following at the end of the section: When guard posts are installed they shall be installed meeting the following requirements:

8.6.5.1 Constructed of steel not less than four inches in diameter and filled with concrete.

8.6.5.2 Set with spacing not more than four feet apart.

8.6.5.3 Buried three feet in the ground in concrete not less than 15 inches in diameter.

8.6.5.4 Set with the tops of the posts not less than three feet above the ground.

8.6.6 NFPA, Standard 58, Section 6.6.3 is amended to add the following section: 6.6.3.9 Skid mounted ASME horizontal containers greater than 2000 water gallons, with non-fireproofed steel mounted attached supports, resting on concrete, pavement, gravel or firm packed earth, may be mounted on the attached supports to a maximum of 12 inches from the top of the skid to the bottom of the container.

8.6.7 NFPA, Standard 58, Section 6.6.6 is amended to add the following: [(L)P] All metallic equipment and components that are buried or mounded shall have cathodic protection installed to protect the metal and shall meet the following requirements:

8.6.7.1 Sacrificial anodes shall be installed as required by the size of the container. If more than one sacrificial anode is required they shall be evenly distributed around the container.

8.6.7.2 Sacrificial anodes shall be connected to the container or piping as recommended by the manufacturer or using accepted engineering practices.

8.6.7.3 Sacrificial anodes shall be placed as near the bottom of the container as possible and approximately two feet away from the container.

8.6.8 NFPA, Standard 58, Section 6.24.3.16 is added as follows: On dispensing installations, 1000 gallon water capacity or less, where the dispensing cabinet is located next to the LP Gas container, stainless steel wire braid hose of more than 36 inches in length may be used on vapor and liquid return lines only. The hose shall be secured and routed in a safe and professional manner, marked with the date of installation, and shall be replaced every five years from that installation date.

8.6.9 NFPA, Standard 58, Section 6.25.3.2, the last sentence of the section is deleted and rewritten as follows: Existing installations shall comply with this requirement by March 31, 2011.

8.6.10 NFPA, Standard 58, Section 8.4.1.1(1) is amended as follows: On line one remove "5ft (1.5m)" and replace it with "10 ft (3m)".

KEY: liquefied petroleum gas

Date of Enactment or Last Substantive Amendment:
[~~April 21, 2011~~]**December 22, 2011**

Notice of Continuation: March 16, 2011

Authorizing, and Implemented or Interpreted Law: 53-7-305

**School and Institutional Trust Lands,
Administration
R850-8
Adjudicative Proceedings**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 35400

FILED: 11/01/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2011 General Session, amendments were made to the Trust Lands Management Act specifying that agency decisions to sell, exchange, or lease specific property would not be subject to administrative appeal. Third parties seeking to challenge these decisions would need to seek injunctive relief in the court system rather than filing an appeal with the Trust Lands Administration's Board of Trustees. As a result of these legislative amendments, the agency's administrative rule for adjudicative proceedings needs to be amended to reflect the statutory change. A few clarifications are also being made to better address the agency's practices.

SUMMARY OF THE RULE OR CHANGE: Changes made in Subsections R850-8-300(1) and (3) clarify that final agency actions must directly determine the legal rights of a person before they are appealable and add a definition for the Director's Minutes, which is the recordkeeping document issued weekly by the agency to report administrative actions. Changes made in Subsection R850-8-300(4) provide that the Notice of Cancellation issued by the agency's business office to each entity who has not made a required contractual payment is the final agency action rather than the later entry on the Director's Minutes; and agency decisions to sell, exchange, or lease specific property are not subject to administrative appeal. Changes to Section R850-8-900 eliminate the requirement that Notices of Cancellation be physically signed since they are automatically generated by the computer; clarify that the agency is not required to notify lessees or third parties by mail for routine items ordinarily noted on the Director's Agenda; and, those situations where written mailed notices will be required. Changes to Section R850-8-1000 clarify that the right of administrative review is limited to persons who are parties to the agency contract, or whose legal rights have been directly determined by the final agency action, and eliminates the conflict between the 14-day period requirement for administrative appeals to be brought to the board and the 30-day cure period provided in many of the contracts.

TATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53C-1-304 and Subsection 53C-1-204(1)(c) and Subsection 53C-1-204(3)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** It is not anticipated that there will be any additional cost or savings to the state budget as a result of these changes because they mainly clarify and bring the rule in line with processes that have been in place for some time. Also, the agency hasn't received any challenges by third parties to agency administrative actions for over a year or more. The fact that agency decisions to sell, exchange, or lease specific property are not subject to administrative appeal could, potentially, save the agency the time and energy previously required to review and participate in these types of administrative appeals.

◆ **LOCAL GOVERNMENTS:** It is not anticipated that there will be any additional cost or savings to local government. Unless the local government is party to a contract with the agency, or whose rights have been directly determined by the final agency action, they would not be seeking administrative review. If they were to seek administrative review, the costs would be the same as prior to these rule changes.

◆ **SMALL BUSINESSES:** It is not anticipated that there will be any additional cost or savings to small businesses as a result of these rule changes. The changes are mostly for clarification purposes and do not require any additional effort or action on the part of the small businesses beyond what previously existed.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** It is not anticipated that there will be any additional cost or

savings to persons other than small businesses, businesses, or local government entities as a result of these rule changes. These changes are mostly for clarification purposes and do not require additional effort or action beyond what previously existed.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is not anticipated that there will be any compliance costs for affected persons as a result of these rule changes as they are basically for clarification purposes. The same procedures and practices are still in place for any agency action that is deemed to be in need of administrative review and the costs for participating in that review remain the same.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule streamlines the adjudicative review process so that valuable time is not wasted on appeals to the Board of Trustees when judicial review is more appropriate

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
ROOM 500
675 E 500 S
SALT LAKE CITY, UT 84102-2818
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ John Andrews by phone at 801-538-5180, by FAX at 801-538-5118, or by Internet E-mail at jandrews@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2011

AUTHORIZED BY: Kevin Carter, Director

R850. School and Institutional Trust Lands, Administration.

R850-8. Adjudicative Proceedings.

R850-8-300. Definitions.

1. **Adjudicative proceeding** - means a review by the board of a final [~~Trust Lands Administration~~]agency action that directly determines the legal rights, duties, [~~privileges, immunities,~~] or other legal interests of one or more identifiable persons.

2. **Board** - means School and Institutional Trust Lands Administration Board of Trustees. References to the board shall also apply to any hearing examiner appointed unless the context of rules requires otherwise.

3. **Director's Minutes** - means the weekly compendium of actions taken by the Director and posted on the agency's website to provide public notice for record keeping purposes.

[3]4. **Final agency action** - means a written determination by the Trust Lands Administration of the legal rights, duties, [~~privileges, immunities,~~] or other legal interests of one or more

identifiable persons. The determination ~~shall~~ may be in any form deemed appropriate by the Trust Lands Administration, including but not limited to, a notation on the ~~[d]~~ Director's ~~[m]~~ Minutes, a narrative record of decision, a notice that an instrument will be canceled for nonpayment issued pursuant to R850-5-200(5), or a decision letter. Decisions by the director or the agency to sell, exchange, or lease specific real property are not subject to administrative review pursuant to Subsection 53C-1-304(2)(b), and therefore do not constitute final agency actions.

~~[4]~~5. Party - means the Trust Lands Administration or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the board to intervene in the proceeding, and all persons authorized by statute or Trust Lands Administration rule to participate as parties in an adjudicative proceeding.

~~[5]~~6. Person - means an individual, group of individuals, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency.

~~[6]~~7. Petitioner - means a person who requests the initiation of any proceeding.

~~[7]~~8. Respondent - means a person against whom an adjudicative proceeding is initiated, or whose property interest is directly affected by a proceeding initiated by the board or by another person.

R850-8-900. Final Agency Action.

1. The final agency action shall be in writing ~~[-and shall include the date that it was mailed and]~~ Except for a notice that an instrument will be canceled for nonpayment issued pursuant to R850-5-200(5), the final agency action shall be signed by the director or his designee.

~~[----- 2. The Trust Lands Administration shall mail the final agency action to any other person who has a right to notice under statute or rule.~~

~~]~~ 2. Nothing in this rule 850-8 shall require the agency to mail notice of routine administrative and record-keeping matters otherwise noted on the Director's Minutes to any person, including without limitation assignments, reinstatements, notifications of the expiration of any lease or instrument by its own terms, cancellations of instruments for nonpayment after a notice of cancellation issued pursuant to R850-5-200(5), voluntary relinquishments or amendments, approvals of range improvements or grazing permit renewals, or fee waivers.

3. Final agency actions requiring the payment of funds: providing notice pursuant to R850-5-200(5) that an instrument will be subject to cancellation unless payment of funds is made; exercising any discretionary right of the agency to readjust or otherwise modify an existing agreement; declaring any default under an existing agreement; declining or conditioning any assignment; making rule-based determinations where administrative review is provided by rule; or otherwise directly determining the legal rights or obligations of a person will be mailed to that person and any other person with a right to notice by statute, rule or contract.

R850-8-1000. Appeal of Final Agency Action.

1. The Trust Lands Administration may by rule specifically designate certain categories of Trust Lands Administration actions that are not subject to appeal.

2. Except where no appeal is available pursuant to statute or rule, an appeal may be initiated only by ~~[any person]~~ a party to a contract that is the subject of a final agency action, or whose legal interests are directly ~~[affected]~~ determined by the ~~[Trust Lands Administration]~~ final agency action. A written petition must be filed within 14 days of the mailing date of the final agency action requesting an adjudicative proceeding, unless a longer date is specified in writing in the final agency action or required by statute, rule, or contract. In the event an appeal is not filed in the ~~[14 day]~~ applicable time period, the final Trust Lands Administration action shall become unappealable. The petition for an adjudicative proceeding shall be filed according to the following requirements:

(a) the petition shall be filed at the office of the director pursuant to R850-8-800.

(b) the petition shall state:

i) all facts upon which the petition is based;

ii) any statute, rule, contract provision, or board policy which the final agency action is alleged to violate;

iii) the nature of the violation of the final agency action with the statute, rule, contractual provision or board policy, and the injury that is specific to the petitioner arising from the final agency action. If the injury identified by the petition is not peculiar to the petitioner as a result of the action, the board will decline to hear the appeal; and

iv) the relief requested.

3. Upon receipt of a petition, the director shall initially stay any further actions with respect to the matter for which the adjudicative proceeding is being sought by the petitioner. The board, in its discretion, may lift such suspension or condition the continuation of the stay upon filing of a surety, in an amount specified by the board, sufficient to protect the interests of the beneficiaries.

4. Upon receipt the director shall promptly mail the petition to the board.

5. When the date of mailing is at least ten days prior to a regularly scheduled board meeting, the board may consider the petition at that meeting. In the event that the date of mailing is within ten days of a regularly scheduled board meeting, the petition will be considered at the next succeeding board meeting.

6. In its initial consideration of any petition, the board may schedule the petition for hearing at a future date, make determinations concerning whether the adjudicative proceeding will be formal or informal, address procedural matters such as stays, discovery, etc., or hear the matter on the merits.

7. The board may decline to conduct adjudicative proceedings in response to a petition, in which case the petitioner shall be entitled to judicial review pursuant to Section 63G-4-402.

KEY: administrative procedures, public petitions, right of petition, adjudicative proceedings

Date of Enactment or Last Substantive Amendment: ~~[November 19, 1996]~~ December 22, 2011

Notice of Continuation: November 6, 2006
Authorizing, and Implemented or Interpreted Law: 53C-1-204(3); 53C-1-204(10)(c); 53C-1-304

Tax Commission, Auditing
R865-4D-24
Special Fuel Tax License Pursuant to
Utah Code Ann. Section 59-13-302

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 35380
FILED: 10/27/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-13-302 provides that a special fuels tax license is invalid if the licensee has ceased to do business or has changed the business address.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment sets forth the parameters for determining that a special fuels tax licensee has ceased to do business or has changed the business address. These procedures mirror the procedures currently in rule for sales and withholding tax licensees.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-13-302

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--Under the proposed amendment, the licenses that will be held invalid are those for which the Tax Commission is not receiving special fuel tax returns.
- ◆ LOCAL GOVERNMENTS: None--Under the proposed amendment, the licenses that will be held invalid are those for which the Tax Commission is not receiving special fuel tax returns.
- ◆ SMALL BUSINESSES: None--Under the proposed amendment, the licenses that will be held invalid are those for which the Tax Commission is not receiving special fuel tax returns.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Under the proposed amendment, the licenses that will be held invalid are those for which the Tax Commission is not receiving special fuel tax returns.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Under the proposed amendment, the licenses that will be held invalid are those for which the Tax Commission is not receiving special fuel tax returns.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This process for invalidating special fuels of licenses should have no fiscal impact on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R865. Tax Commission, Auditing.
R865-4D. Special Fuel Tax.
R865-4D-24. Special Fuel Tax License Pursuant to Utah Code Ann. Section 59-13-302.

- (1) The holder of a license issued under Section 59-13-302 shall notify the commission:
 - (a) of any change of address of the business;
 - (b) of a change of character of the business; or
 - (c) if the license holder ceases to do business.
- (2) The commission may determine that a person has ceased to do business or has changed that person's business address if:
 - (a) mail is returned as undeliverable as addressed and unable to forward;
 - (b) the person fails to file four consecutive special fuel tax returns;
 - (c) the person fails to renew its annual business license with the Department of Commerce; or
 - (d) the person fails to renew its local business license.
- (3) If the requirements of Subsection (2) are met, the commission shall notify the license holder that the license will be considered invalid unless the license holder provides evidence within 15 days that the license should remain valid.
- (4) A person may request the commission to reopen a special fuel tax license that has been determined invalid under Subsection (3).
- (5) The holder of a license issued under Section 59-13-302 shall be responsible for any special fuel tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

KEY: taxation, fuel, special fuel
Date of Enactment or Last Substantive Amendment: ~~August 25,~~ 2011
Notice of Continuation: February 26, 2007
Authorizing, and Implemented or Interpreted Law: 59-13-102; 59-13-301; 59-13-302; 59-13-303; 59-13-304; 59-13-305; 59-13-307; 59-13-312; 59-13-313; 59-13-501

Tax Commission, Auditing
R865-6F-8
Allocation and Apportionment of Net
Income (Uniform Division of Income for
Tax Purposes Act) Pursuant to Utah
Code Ann. Sections 59-7-302 through
59-7-321

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 35381
 FILED: 10/27/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Recent legislation made significant changes to the manner in which a multistate corporation apportions income to this state for purposes of corporate taxation. The proposed amendments provide guidance and clarification of the statutory language.

SUMMARY OF THE RULE OR CHANGE: The proposed changes to this rule were made necessary by legislative changes in S.B. 136 of the 2008 General Session. In the bill, changes were made to Section 59-7-319 effective for tax years beginning in 2009. These changes repealed the "cost of performance" method formerly used to source sales of other than tangible property, and essentially replaced it with a "market sourcing" approach. This statute pertains to the sales factor of the three-factor formula, used to apportion income of a multistate corporate taxpayer. The new statute attributes a sale of services to this state if the purchaser of the service receives a greater benefit of the service in this state than in any other state. This legislative change is a substantive change in methodology for sourcing income from services, as well as income from intangible property (addressed below). Based on the legislative change, additional guidance is needed to clarify basic policies, as well as to provide examples of the application of those policies in a variety of industries. Further, the section also references certain special industry rules and statutes where Utah had previously adopted a "market approach" for sourcing income in connection with the sales factor. The section also contains changes dealing with the sourcing of income from intangible property, based on legislative changes in the bill mentioned above. The prior statute sourced income from intangible property based on the cost of performance method, similar to the prior law dealing with the sourcing of services. The new statute sources income from intangible property to the state in which the intangible property is used. Provisions of the new rule dealing with income from intangible property merely incorporate the statutory changes into several subsections in

the section. Note that the statute dealing with the sourcing of income from intangible property not only attributes income to Utah's sales numerator if the intangible property is exclusively used in this state but also to the extent the intangible property is used in this state.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-7-302 through 59-7-321

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** None--The proposed amendments provide guidance for implementing S.B. 136 (2008).
- ◆ **LOCAL GOVERNMENTS:** None--The proposed amendments provide guidance for implementing S.B. 136 (2008).
- ◆ **SMALL BUSINESSES:** None--The proposed amendments provide guidance for implementing S.B. 136 (2008).
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--The proposed amendments provide guidance for implementing S.B. 136 (2008).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Corporations are required by statute to apportion income to the state using a market sourcing approach. This is a change from the prior method of apportioning income to the state. As a result, some corporations may have seen an increase in Utah tax and others a decrease in Utah tax with the passage of the legislation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--Corporations are required by statute to apportion income to the state using a market sourcing approach. This is a change from the prior method of apportioning income to the state. As a result, some corporations may have seen an increase in Utah tax and others a decrease in Utah tax with the passage of the legislation.

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TAX COMMISSION
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THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R865. Tax Commission, Auditing.

R865-6F. Franchise Tax.

R865-6F-8. Allocation and Apportionment of Net Income (Uniform Division of Income for Tax Purposes Act) Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.

.....

(4) Apportionment and Allocation.

(a)(i) If the business activity with respect to the trade or business of a taxpayer occurs both within and without this state, and if by reason of that business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from the trade or business derived from sources within this state shall be determined by apportionment in accordance with Sections 59-7-311 to 59-7-319.

(ii) For purposes of determining the fraction by which business income shall be apportioned to this state under Section 59-7-311:

(A) ~~Except as provided in Subsection (4)(a)(ii)(B), if~~ If a taxpayer ~~does not make~~ makes an election to ~~double weight the sales factor~~ calculate its apportionment fraction under Subsection 59-7-311(2)(~~d~~)(c) and one or more of the factors listed in Subsection 59-7-311(2)(c)(i) is missing, the fraction by which business income shall be apportioned to the state shall be determined by adding the factors present and dividing that sum by the number of factors present.

(B) If a taxpayer ~~has made~~ makes an election to double weight the sales factor under ~~Section~~ Subsection 59-7-311(2)(~~e~~)(d) and ~~if the sales factor is present, the denominator of the fraction described in Subsection (4)(a)(ii)(A) shall be increased by one~~ one or more of the factors listed in Subsection 59-7-311(2)(d)(i) is missing, the fraction by which business income shall be apportioned to the state shall be determined by adding the factors as provided in subsection 59-7-311(2)(d)(i), and dividing that sum by the denominator indicated in Subsection 59-7-311(2)(d)(ii), reduced by the sum of one if the property factor is missing, one if the payroll factor is missing, and two if the sales factor is missing.

(C) For a taxable year that begins on or after January 1, 2011, but begins on or before December 31, 2011, in the case of a sales factor weighted taxpayer, if one or more of the factors listed in Subsection 59-7-311(3)(a)(i) is missing and if the sales factor is present, the fraction by which business income shall be apportioned to the state shall be determined by adding the factors as provided in Subsection 59-7-311(3)(a)(i), and dividing that sum by the denominator, indicated in Subsection 59-7-311(3)(a)(ii), reduced by the number of missing factors.

(D) For a taxable year that begins on or after January 1, 2012, but begins on or before December 31, 2012, in the case of a sales factor weighted taxpayer, if one or more of the factors listed in Subsection 59-7-311(3)(b)(i) is missing and if the sales factor is present, the fraction by which business income shall be apportioned to the state shall be determined by adding the factors as provided in Subsection 59-7-311(3)(b)(i), and dividing that sum by the denominator, indicated in Subsection 59-7-311(3)(b)(ii), reduced by the number of missing factors.

(b) Allocation. Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with Sections 59-7-306 to 59-7-310.

(5) Consistency and Uniformity in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under UDITPA are not uniform in the classification of income as business or nonbusiness income, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(6) Taxable in Another State.

(a) In General. Under Section 59-7-303 the taxpayer is subject to the allocation and apportionment provisions of UDITPA if it has income from business activity that is taxable both within and without this state. A taxpayer's income from business activity is taxable without this state if the taxpayer, by reason of business activity (i.e., the transactions and activity occurring in the regular course of the trade or business), is taxable in another state within the meaning of Section 59-7-305. A taxpayer is taxable within another state if it meets either one of two tests:

(i) if by reason of business activity in another state the taxpayer is subject to one of the types of taxes specified in Section 59-7-305(1), namely: a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(ii) if by reason of business activity another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether the state imposes that tax on the taxpayer. A taxpayer is not taxable in another state with respect to the trade or business merely because the taxpayer conducts activities in that state pertaining to the production of nonbusiness income or business activities relating to a separate trade or business.

(b) When a Taxpayer Is Subject to a Tax Under Section 59-7-305. A taxpayer is subject to one of the taxes specified in Section 59-7-305(1) if it carries on business activity in a state and that state imposes such a tax thereon. Any taxpayer that asserts that it is subject to one of the taxes specified in Section 59-7-305(1) in another state shall furnish to the Tax Commission, upon its request, evidence to support that assertion. The Tax Commission may request that the evidence include proof that the taxpayer has filed the requisite tax return in the other state and has paid any taxes imposed under the law of the other state. The taxpayer's failure to produce that proof may be taken into account in determining whether the taxpayer is subject to one of the taxes specified in Section 59-7-305(1) in the other state. If the taxpayer voluntarily files and pays one or more taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization, or for the privilege of doing business in that state, but

(i) does not actually engage in business activity in that state, or

(ii) does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activity within that state, the taxpayer is not subject to one of the taxes specified within the meaning of Section 59-7-305(1).

(c) When a State Has Jurisdiction to Subject a Taxpayer to a Net Income Tax. The second test, that of Section 59-7-305(2), applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of business activity under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U. S. C. A. Sec. 381-385 (P.L. 86-272). In the case of any state as defined in Section 59-7-302~~(6)~~, other than a state of the United States or political subdivision of a state, the determination of whether a state has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdictional standards applicable to a state of the United States applied in that state. If jurisdiction is otherwise present, the state is not considered as without jurisdiction by reason of the provisions of a treaty between that state and the United States.

(7) Apportionment Formula. All business income of the taxpayer shall be apportioned to this state by use of the apportionment formula set forth in Section 59-7-311. The elements of the apportionment formula are the property factor, see Subsection (8), the payroll factor, see Subsection (9), and the sales factor, see Subsection (10) of the trade or business of the taxpayer. For exceptions see Subsection (11).

(8) Property Factor.

(a) In General.

(i) The property factor of the apportionment formula shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of its trade or business. Real and tangible personal property includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency.

(ii) Property used in connection with the production of nonbusiness income shall be excluded from the property factor. Property used both in the regular course of the taxpayer's trade or business and in the production of nonbusiness income shall be included in the factor only to the extent the property is used in the regular course of the taxpayer's trade or business. The method of determining the portion of the value to be included in the factor will depend upon the facts of each case.

(iii) The property factor shall reflect the average value of property includable in the factor. Refer to Subsection (8)(g).

(b) Property Used for the Production of Business Income. Property shall be included in the property factor if it is actually used or is available for or capable of being used during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period, except inventoriable goods in process, shall be excluded from the factor until the property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor. Property used in the regular course of the trade or business of the taxpayer shall remain in the property factor until its permanent withdrawal is established by an identifiable event such

as its conversion to the production of nonbusiness income, its sale, or the lapse of an extended period of time, normally five years, during which the property is no longer held for use in the trade or business.

(c) Consistency in Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the valuation of property and in the exclusion or inclusion of property in the property factor, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(d) Property Factor Numerator. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the trade or business of the taxpayer. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller that is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment that are located within and without this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

(e) Valuation of Owned Property.

(i) Property owned by the taxpayer shall be valued at its original cost. As a general rule original cost is deemed to be the basis of the property for state franchise or income tax purposes (prior to any adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reasons including sale, exchange, and abandonment. However, capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state tax purposes.

(ii) Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for state tax purposes.

(iii) Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation.

(f) Valuation of Rented Property.

(i) Property rented by the taxpayer is valued at eight times its net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for the property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. See Subsection (11)(b) for special rules where the use of the net annual rental rate produces a negative or clearly inaccurate value or where property is used by the taxpayer at no charge or rented at a nominal rental rate.

(ii) Subrents are not deducted when the subrents constitute business income because the property that produces the subrents is used in the regular course of the trade or business of the taxpayer when it is producing the income. Accordingly there is no reduction in its value.

(iii) Annual rental rate is the amount paid as rental for property for a 12-month period; i.e., the amount of the annual rent. Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the annual rental rate for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month to month basis.

(iv) Annual rent is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

(A) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(B) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items that are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, and janitor services. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and other items.

(v) Annual rent does not include:

(A) incidental day-to-day expenses such as hotel or motel accommodations, or daily rental of automobiles;

(B) royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from that property, irrespective of the method of payment or how that consideration may be characterized, whether as a royalty, advance royalty, rental, or otherwise.

(vi) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

(g) Averaging Property Values. As a general rule, the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and end of the tax period. However, the Tax Commission may require or allow averaging by monthly values if that method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.

(i) Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

(ii) Example: The monthly value of the taxpayer's property was as follows:

TABLE

January	\$2,000
February	2,000
March	3,000
April	3,500
May	4,500
June	10,000
July	15,000
August	17,000
September	23,000
October	25,000
November	13,000
December	2,000
Total	\$120,000

The average value of the taxpayer's property includable in the property factor for the income year is determined as follows:

$$\$120,000 / 12 = \$10,000$$

(iii) Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of the property as set forth in Subsection (8)(g).

(9) Payroll Factor.

(a) The payroll factor of the apportionment formula shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

(b) The total amount paid to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report compensation under that method for unemployment compensation purposes. The compensation of any employee on account of activities that are connected with the production of nonbusiness income shall be excluded from the factor.

(c) Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded from the payroll factor. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services.

(d) Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act. However, since certain individuals are included within the term employees in the Federal Insurance Contributions Act who would not be employees under the usual common law rules, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this rule.

(e)(A) In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(B) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the treatment of compensation paid, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(f) Denominator. The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by P.L. 86-272, are included in the denominator of the payroll factor.

(g) Numerator. The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in Section 59-7-316 to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report compensation under that method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitute compensation paid in this state except for compensation excluded under this Subsection (9). The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

(h) Compensation Paid in this State. Compensation is paid in this state if any one of the following tests applied consecutively are met:

(i) The employee's service is performed entirely within the state.

(ii) The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The word incidental means any service that is temporary or transitory in nature, or that is rendered in connection with an isolated transaction.

(iii) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

(A) if the employee's base of operations is in this state; or

(B) if there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or

(C) if the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

(10) Sales Factor. In General.

(a) Section 59-7-302[(5)] defines the term "sales" to mean all gross receipts of the taxpayer not allocated under Section 59-7-306 through 59-7-310. Thus, for purposes of the sales factor of the apportionment formula for the trade or business of the taxpayer, the term sales means all gross receipts derived by the taxpayer from transactions and activity in the regular course of the trade or business. The following are rules determining sales in various situations.

(i) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, sales includes all gross receipts from the sales of goods or products (or

other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to sales. Federal and state excise taxes (including sales taxes) shall be included as part of receipts if taxes are passed on to the buyer or included as part of the selling price of the product.

(ii) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, sales includes the entire reimbursed cost, plus the fee.

(iii) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, or research and development contracts, sales includes the gross receipts from the performance of services including fees, commissions, and similar items.

(iv) In the case of a taxpayer engaged in renting real or tangible property, sales includes the gross receipts from the rental, lease or licensing of the use of the property.

(v) In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, sales includes the gross receipts therefrom.

(vi) If a taxpayer derives receipts from the sale of equipment used in its business, those receipts constitute sales. For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

(vii) In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the income of the taxpayer's trade or business. See Subsection (11) (c).

(viii) In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(ix) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the inclusion or exclusion of gross receipts, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

(b) Denominator. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business, except receipts excluded under Subsection (11)[(e)](d).

(c) Numerator. The numerator of the sales factor shall include gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.

(d) Sales of Tangible Personal Property in this State.

(i) Gross receipts from the sales of tangible personal property (except sales to the United States government; see Subsection (10)(e) are in this state:

(A) if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale; or

(B) if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and the taxpayer is not taxable in the state of the purchaser.

(ii) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

(iii) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

(iv) The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

(v) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

(vi) If the taxpayer is not taxable in the state of the purchaser, the sale is attributed to this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state.

(vii) If a taxpayer whose salesman operates from an office located in this state makes a sale to a purchaser in another state in which the taxpayer is not taxable and the property is shipped directly by a third party to the purchaser, the following rules apply:

(A) If the taxpayer is taxable in the state from which the third party ships the property, then the sale is in that state.

(B) If the taxpayer is not taxable in the state from which the property is shipped, the sale is in this state.

(e)(i) Sales of Tangible Personal Property to United States Government in this state.

(ii) Gross receipts from the sales of tangible personal property to the United States government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For purposes of this rule, only sales for which the United States government makes direct payment to the seller pursuant to the terms of a contract constitute sales to the United States government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States government, do not constitute sales to the United States government.

(f)(i) Sales Other than Sales of Tangible Personal Property in this State.

~~(+)(ii)~~ (ii) In general, ~~[Section]~~Subsections 59-7-319~~(+)~~(2) through (7) ~~provides~~ provide for the inclusion in the numerator of the sales factor of gross receipts from transactions other than sales of tangible personal property (including transactions with the United States government).

~~(g)~~ Receipts from the Performance of Services.

~~(i)~~ Under ~~[Section]~~Subsection 59-7-319~~(+)~~(3), gross receipts ~~[are attributed to this state if the income producing activity that gave rise to the receipts is performed wholly within this state. Also, gross receipts are attributed to this state if, with respect to a~~

~~particular item of income, the income producing activity is performed within and without this state but the greater proportion of the income producing activity is performed in this state, based on costs of performance.]~~from the performance of a service are considered to be in this state if the purchaser of the service receives a greater benefit of the service in this state than in any other state. In general, the "benefit of the service" approach under the statute reflects a market based approach, and the greater benefit of the service is typically received in the state in which the market for the service exists and where the purchaser is located.

~~(ii)~~ For businesses engaged in certain industries, specific sourcing rules and guidelines that address the attribution of gross receipts from the performance of a service have been adopted. See Subsection (11)(b).

~~(iii)~~ The benefit from performance of a service is in this state if any of the following conditions are met:

~~(A)~~ The service relates to tangible personal property and is performed at a purchaser's location in this state.

~~(B)~~ The service relates to tangible personal property that the service provider delivers directly or indirectly to a purchaser in this state after the service is performed.

~~(C)~~ The service is provided to an individual who is physically present in this state at the time the service is received.

~~(D)~~ The service is provided to a purchaser exclusively engaged in a trade or business in this state and relates to that purchaser's business in this state.

~~(E)~~ The service is provided to a purchaser that is present in this state and the service relates to that purchaser's activities in this state.

~~(iv)~~ If the benefit of the service is received in more than one state, the gross receipts from the service are to be sourced using reasonable and consistent methods of analysis to determine in which state the greater benefit of the service is received. Such methods must be supported by the service provider's business records at the time the service was provided. If the benefit of a service is received in Utah and one or more other states and the state where the greater benefit of the service is received cannot otherwise be readily determined through the provisions of this rule, the following sourcing rules are applied in sequential order:

~~(A)~~ The receipt is sourced to this state if the office from which the purchaser placed the order for the service is in this state.

~~(B)~~ If the office from which the order was placed cannot be determined, the receipt is sourced to this state if the purchaser's billing address is in this state.

~~(C)~~ If the state of the purchaser's billing address cannot be determined, the receipt shall be included in the sales factor in this state.

~~(v)~~ The term, "gross receipt from the performance of a service" applies to each individual sales transaction, and each sales transaction is considered a discrete transaction for purposes of determining whether the purchaser of the service receives a greater benefit of the service in this state than in any other state.

~~(vi)~~ In determining whether the greater benefit from the performance of a service is received in this state, the benefit of the service in this state must be compared to the benefit of the service received in each individual state in which any benefit of the service is received, i.e., the benefit of the service received in Utah is not compared to the benefit of the service received in all other states combined.

(vii) In the context of a combined report, the sale of services between members of a unitary group included in a combined report shall be excluded from the combined report sales factor.

(viii) The following examples are provided to illustrate the application of Utah law in regard to receipts from the performance of a service:

(A) A company headquartered and primarily conducting business in Utah contracts for general accounting services with an accounting firm located in another state. The receipts for the accounting service are sourced to Utah regardless of where the services are performed, since the greater benefit of the services is received in this state.

(B) A Utah retailer hires a California agency to develop an advertising campaign targeting its Utah customers. The receipts for the advertising services are sourced to Utah regardless of where the services are actually performed.

(C) A multistate company hires a Colorado firm to perform an appraisal of its business properties in Utah and Colorado. The company has several locations in Utah. However, the headquarters of the company is in Colorado and the value of its properties located in Colorado exceed the value of its properties in Utah. The appraisal fee is not broken down by location of the assets or properties of the company. Use of the property values for each state to determine where the greater benefit of the appraisal services occurred is a reasonable method to determine where the appraisal service fees should be sourced and the service would be sourced to Colorado. However, if the appraisal fees are broken out separately for Colorado and Utah properties or the billing information by state is known, the appraisal fees pertaining to the Utah properties are sourced to Utah and the appraisal fees pertaining to the Colorado properties are sourced to Colorado.

(D) An Internet/cable television service provider provides services to purchasers in Utah as well as other surrounding states. As all of the benefit from the services provided to Utah purchasers is received at residences or business locations in Utah, the receipts from the services provided to Utah purchasers are sourced to Utah.

(E) Data processing services are performed for a company conducting interstate business. The services relate to computer systems that are mainly located in Utah although a few terminals are spread over several other states. Since the data processing services relate to the computer systems that are mainly located in Utah, the greater benefit of the service is considered to be received in Utah and the receipts from the services are sourced to Utah regardless of where the services are actually performed. The location of data processing equipment associated with the data processing services is a reasonable method of sourcing receipts from those services.

(F) Engineering services are performed in connection with a property being constructed in Utah. Since all of the benefit of the service is received in Utah where the construction takes place, the receipts from the engineering services are sourced to Utah regardless of where the actual engineering services are performed.

(G) A California law firm is retained to represent multiple plaintiffs in a class action lawsuit filed against a Utah corporation in a Utah court. Receipts received by the firm for the legal services are sourced to Utah notwithstanding the fact that some of the services were performed outside Utah. The greater benefit of the

services is received in Utah since the lawsuit was filed against a Utah corporation in a Utah court.

(H) A moving company performs a moving service for an individual that has been transferred from New Jersey to Utah. The charges for services in connection with the move and unpacking services are sourced to Utah because the greater benefit of the moving services is received by the purchaser in the state to which the property is moved. However, any charges for specific services such as storage or packing that are performed outside of Utah, and that are separately stated, are not sourced to Utah.

(I) A car rental agency rents a vehicle that is picked up from and returned to one of its business locations in Utah. The receipts from the rental are sourced to Utah regardless of whether the vehicle leaves this state for the duration of the rental period.

[(ii) The term "income producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Income producing activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, the income producing activity includes the following:

(A) the rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service;

(B) the sale, rental, leasing, or licensing or other use of real property;

(C) the rental, leasing, licensing or other use of intangible personal property; or

(D) the sale, licensing or other use of intangible personal property. The mere holding of intangible personal property is not, of itself, an income producing activity.

(iii) The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

(iv) Receipts (other than from sales of tangible personal property) in respect to a particular income producing activity are in this state if:

(A) the income producing activity is performed wholly within this state; or

(B) the income producing activity is performed both in and outside this state and a greater proportion of the income producing activity is performed in this state than in any other state, based on costs of performance.

(v) The following are special rules for determining when receipts from the income producing activities described below are in this state:

(A) Gross receipts from the sale, lease, rental or licensing of real property are in this state if the real property is located in this state.

(B) Gross receipts from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing or other use of tangible personal property in this state is a separate income producing activity from the rental, lease, licensing or other use of the same property while located in another state. Consequently, if the property is within and without this state during the rental, lease or licensing period, gross receipts attributable to this state shall be

measured by the ratio that the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during the period.

~~(C) Gross receipts for the performance of personal services are attributable to this state to the extent services are performed in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts for the performance of services shall be attributable to this state only if a greater portion of the services were performed in this state, based on costs of performance. Usually where services are performed partly within and partly without this state, the services performed in each state will constitute a separate income-producing activity. In that case, the gross receipts for the performance of services attributable to this state shall be measured by the ratio that the time spent in performing services in this state bears to the total time spent in performing services everywhere. Time spent in performing services includes the amount of time expended in the performance of a contract or other obligation that gives rise to gross receipts. Personal service not directly connected with the performance of the contract or other obligations, as for example, time expended in negotiating the contract, is excluded from the computations.~~

~~_____](11) Special Rules:~~

~~(a) Section 59-7-320 provides that if the allocation and apportionment provisions of UDITPA do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:~~

- ~~(i) separate accounting;~~
- ~~(ii) the exclusion of any one or more of the factors;~~
- ~~(iii) the inclusion of one or more additional factors that will fairly represent the taxpayer's business activity in this state; or~~
- ~~(iv) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.~~

~~(b) For businesses engaged in one or more of the following industries, specific statutes, rules, and guidelines have been adopted:~~

~~(i) airlines see Sections 59-7-312, 59-7-315, and 59-7-317;~~

~~(ii) financial institutions see rule R865-6F-32;~~

~~(iii) long term construction contractors see rule R865-6F-16;~~

~~(iv) publishing companies see rule R865-6F-31;~~

~~(v) railroads see rule R865-6F-29;~~

~~(vi) registered securities or commodities brokers and dealers see rule R865-6F-36;~~

~~(vii) telecommunications companies see rule R865-6F-33; and~~

~~(viii) trucking companies see rule R865-6F-19; and~~

~~(ix) businesses or affiliates of businesses providing services to a regulated investment company see Section 59-7-319.~~

~~_____ [(b)](c) Property Factor.~~

The following special rules are established in respect to the property factor of the apportionment formula:

(i) If the subrents taken into account in determining the net annual rental rate under Subsection (8)(f)~~(h)](i)~~ produce a negative or clearly inaccurate value for any item of property, another method that will properly reflect the value of rented property may be required by the Tax Commission or requested by

the taxpayer. In no case however, shall the value be less than an amount that bears the same ratio to the annual rental rate paid by the taxpayer for property as the fair market value of that portion of property used by the taxpayer bears to the total fair market value of the rented property.

(ii) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for the property shall be determined on the basis of a reasonable market rental rate for that property.

~~[(e)](d) Sales Factors.~~

The following special rules are established in respect to the sales factor of the apportionment formula:

(i) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, those gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded.

(ii) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from such transactions as the sale of office furniture, and business automobiles.

~~(iii) Where [the income producing activity in respect to] intangible property generates business income [from intangible personal property] and the state in which that intangible property is being used can be [readily identified] determined, that income is included in the denominator of the sales factor and, if [the income producing activity occurs] and to the extent that property is used in this state, in the numerator of the sales factor as well. For example, usually the [income producing activity] state in which the intangible property is being used can be readily identified in respect to interest income received on deferred payments on sales of tangible property, see Subsection (10)(a)(i), and income from the sale, licensing or other use of intangible personal property [; see Subsection (10)(f)(ii) (D)].~~

~~(A) Where [business income from] intangible property [cannot readily be attributed to any particular income producing activity of the taxpayer, the income] generates business income and the state in which that intangible property is being used cannot be [assigned] determined, the income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor. For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, such dividends and interest shall be excluded from the denominator of the sales factor.~~

~~(B) Exclude from the denominator of the sales factor, receipts from the sales of securities unless the taxpayer is a dealer therein.~~

~~(iv) Where gains and losses on the sale of liquid assets are not excluded from the sales factor by other provisions under Subsections (11)~~(e)](d)(i)~~ through (iii), such gains or losses shall be treated as provided in this Subsection (11)~~(e)](d)(iv)~~. This Subsection (11)~~(e)](d)(iv)~~ does not provide rules relating to the~~

treatment of other receipts produced from holding or managing such assets.

(A) If a taxpayer holds liquid assets in connection with one or more treasury functions of the taxpayer, and the liquid assets produce business income when sold, exchanged or otherwise disposed, the overall net gain from those transactions for each treasury function for the tax period is included in the sales factor. For purposes of this Subsection (11)(e)(d)(iv), each treasury function will be considered separately.

(B) For purposes of this Subsection (11)(e)(d)(iv), a liquid asset is an asset (other than functional currency or funds held in bank accounts) held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. Liquid assets include:

(I) foreign currency (and trading positions therein) other than functional currency used in the regular course of the taxpayer's trade or business;

(II) marketable instruments (including stocks, bonds, debentures, options, warrants, futures contracts, etc.); and

(III) mutual funds which hold such liquid assets.

(C) An instrument is considered marketable if it is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. Stock in a corporation which is unitary with the taxpayer, or which has a substantial business relationship with the taxpayer, is not considered marketable stock.

(D) For purposes of this Subsection (11)(e)(d)(iv)(D), a treasury function is the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, business acquisitions, etc. A taxpayer principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets set forth herein is not performing a treasury function with respect to income so produced.

(E) Overall net gain refers to the total net gain from all transactions incurred at each treasury function for the entire tax period, not the net gain from a specific transaction.

(f) Domestic International Sales Corporation (DISC). In any case in which a corporation, subject to the income tax jurisdiction of Utah, owns 50 percent or more of the voting power of the stock of a corporation classified as a DISC under the provisions of Sec. 992 Internal Revenue Code, a combined filing with the DISC corporation is required.

(g) Partnership or Joint Venture Income. Income or loss from partnership or joint venture interests shall be included in income and apportioned to Utah through application of the three-factor formula consisting of property, payroll and sales. For apportionment purposes, the portion of partnership or joint venture property, payroll and sales to be included in the corporation's property, payroll and sales factors shall be computed on the basis of the corporation's ownership interest in the partnership or joint venture, and otherwise in accordance with other applicable provisions of this rule.

KEY: taxation, franchises, historic preservation, trucking industries

Date of Enactment or Last Substantive Amendment: [August 11, 2011]

Notice of Continuation: March 8, 2007

Authorizing, and Implemented or Interpreted Law: 9-2-401 through 9-2-415; 16-10a-1501 through 16-10a-1533; 53B-8a-112; 59-1-1301 through 59-1-1309; 59-6-102; 59-7; 59-7-101; 59-7-102; 59-7-104 through 59-7-106; 59-7-108; 59-7-109; 59-7-110; 59-7-112; 59-7-302 through 59-7-321; 59-7-402; 59-7-403; 59-7-501; 59-7-502; 59-7-505; 59-7-601 through 59-7-614; 59-7-608; 59-7-701; 59-7-703; 59-10-603; 59-13-202; 59-13-301; 63M-1; 63M-1-401 through 63M-1-416

**Tax Commission, Auditing
R865-6F-28
Enterprise Zone Corporate Franchise
Tax Credits Pursuant to Utah Code
Ann. Sections 63M-1-401 through 63M-1-416**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35382

FILED: 10/27/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment is required to implement H.B. 17 from the 2011 General Session.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment deletes language relating to employer reports to the Department of Workforce Services since the statutory requirements for those reports has been repealed in H.B. 17 (2011). In addition, because that legislation also provides that a business entity may not claim enterprise zone credits if the business entity is primarily engaged in retail trade, the proposed amendment states that a business entity is primarily engaged in retail trade if the retail trade operations constitute more than 50% of the entity's total operations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63M-1-401 through 63M-1-416

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** None--Any impact would have been considered in H.B. 17 (2011).

♦ **LOCAL GOVERNMENTS:** None--Any impact would have been considered in H.B. 17 (2011).

♦ **SMALL BUSINESSES:** None--Any impact would have been considered in H.B. 17 (2011).

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Any impact would have been considered in H.B. 17 (2011).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None-- Under the provisions of H.B. 17 (2011), some business entities may qualify for enterprise zone credits that previously did not qualify.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment creates no fiscal impact beyond any considered in the passage of H.B. 17 (2011).

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

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R865. Tax Commission, Auditing.

R865-6F. Franchise Tax.

R865-6F-28. Enterprise Zone Corporate Franchise Tax Credits Pursuant to Utah Code Ann. Sections 63M-1-401 through 63M-1-416.

(1) Definitions:

(a) "Based" means exclusively stored or maintained at a facility owned by the taxpayer:

(i) that is designed, constructed, and used to store or maintain equipment:

(A) that is transported outside of the enterprise zone; and
(B) for which the credit is taken;

(ii) where the equipment is located when it is not being used at facilities outside the enterprise zone, as evidenced by invoices, equipment logs, photographs, or similar documentation; and

(iii) from where the use of the equipment is directed or managed.

(b) "Business engaged in retail trade" means a business that makes a retail sale as defined in Section 59-12-102.

(c) "Construction work" does not include facility maintenance or repair work.

(d) "Employee" means a person who qualifies as an employee under Internal Revenue Service Regulation 26 CFR 31.3401(c)(1).

(e) "Public utilities business" means a public utility under Section 54-2-1.

(f) "Qualifying investment" does not include an investment made by a member of a unitary group in plant, equipment, or other depreciable property of another member of that unitary group.

(g) "Taxpayer" means the person claiming the tax credits in section 63M-1-413.

(h) "Transfer" pursuant to Section 63M-1-411, means the relocation of assets and operations of a business, including personnel, plant, property, and equipment.

(i) "Unitary group" is as defined in Section 59-7-101.

(2) For purposes of the investment tax credit, an investment is a qualifying investment if the plant, equipment, or other depreciable property for which the credit is taken is:

(a)(i) located within the boundaries of the enterprise zone; and

(ii) used exclusively in business operations conducted within the enterprise zone; or

(b) in the case of equipment or other depreciable property, based in the enterprise zone.

(3) The following examples relate to the investment tax credit.

(a) A furniture manufacturer operates a manufacturing facility that is located in an enterprise zone. The manufacturer purchases two trucks that are used exclusively at the facility and used to pick up raw materials from suppliers, some or all of whom may be outside the enterprise zone, and to deliver finished product to final customers, some or all of whom may be outside the enterprise zone. The trucks qualify for the investment tax credit because they are used exclusively in a business operation, the furniture manufacturing facility, that is located within the enterprise zone, even if they are stored or maintained at a facility located outside of the enterprise zone.

(b) If the same manufacturer described in Subsection [(4)](3)(a) had two facilities, one located within the enterprise zone, and one located outside the enterprise zone, and used the same two trucks for the same purposes for both facilities. The trucks are not based at a facility in the enterprise zone. The trucks would not qualify for the investment tax credit because they are not used exclusively at the facility located within the enterprise zone, and are not based in the enterprise zone.

(c) A business consists of a mine office located in an enterprise zone and a mine located outside the enterprise zone. Mining equipment is used exclusively at the mine and is not based in the enterprise zone. The business may claim the investment tax credit for plant, equipment, or other depreciable property located in the mine office, but not for plant, equipment, or other depreciable property used in the mine outside the enterprise zone.

(d) A business purchases equipment such as an oil rig, which is transported outside the enterprise zone to service facilities such as oil fields. If the use of the equipment is directed or managed from the enterprise zone and the equipment returns to a facility, within the enterprise zone, that is owned by the business for regular maintenance or storage, the equipment is based in the enterprise zone and therefore qualifies for the investment tax credit.

(e) The same business described in Subsection [(4)](3)(d) purchases equipment that is primarily stored or maintained at facilities that are located outside of the enterprise zone, but which may be occasionally stored or maintained in the enterprise zone.

This equipment would not be based in the enterprise zone, and would not qualify for the investment tax credit, even if the business has other facilities in the enterprise zone.

~~[(4)]~~ The calculation of the number of full-time positions for purposes of the credits allowed under Subsections 63M-1-413(1) (a) through (d) shall be based on the average number of employees reported to the Department of Workforce Services for the four quarters prior to the area's designation as an enterprise zone.

~~[(5)]~~ To determine whether at least 51 percent of the business firm's employees reside in the county in which the enterprise zone is located, the business firm shall consider every employee reported to the Department of Workforce Services for the tax year for which an enterprise zone credit is sought.

~~[(6)]~~⁽⁴⁾ A business ~~[firm]~~entity that conducts non-retail operations and is engaged in retail trade ~~[qualifies for the credits under Section 63M-1-413]~~is primarily engaged in retail trade if the retail trade operations constitute ~~[a de minimis portion]~~more than 50% of the business ~~[firm's]~~entity's total operations.

~~[(7)]~~⁽⁵⁾ An employee whose duties include both non-construction work and construction work does not perform a construction job if the construction work performed by the employee constitutes a de minimis portion of the employee's total duties.

~~[(8)]~~⁽⁶⁾ Corporate franchise tax credits may not be used to offset or reduce the \$100 minimum tax per corporation.

~~[(9)]~~⁽⁷⁾ Records and supporting documentation shall be maintained for three years after the date any returns are filed to support the credits taken. For example: If credits are originally taken in 1988 and unused portions are carried forward to 1992, records to support the original credits taken in 1988 must be maintained for three years after the date the 1992 return is filed.

~~[(10)]~~⁽⁸⁾ If an enterprise zone designation is revoked prior to the expiration of the period for which it was designated, only tax credits earned prior to the loss of that designation will be allowed.

KEY: taxation, franchises, historic preservation, trucking industries

Date of Enactment or Last Substantive Amendment: ~~[August 11,]~~2011

Notice of Continuation: March 8, 2007

Authorizing, and Implemented or Interpreted Law: 9-2-401 through 9-2-415; 16-10a-1501 through 16-10a-1533; 53B-8a-112; 59-1-1301 through 59-1-1309; 59-6-102; 59-7; 59-7-101; 59-7-102; 59-7-104 through 59-7-106; 59-7-108; 59-7-109; 59-7-110; 59-7-112; 59-7-302 through 59-7-321; 59-7-402; 59-7-403; 59-7-501; 59-7-502; 59-7-505; 59-7-601 through 59-7-614; 59-7-608; 59-7-701; 59-7-703; 59-10-603; 59-13-202; 59-13-301; 63M-1; 63M-1-401 through 63M-1-416

Tax Commission, Auditing
R865-91-2
Determination of Utah Resident
Individual Status Pursuant to Utah
Code Ann. Section 59-10-103

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35384

FILED: 10/27/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment is required to implement S.B. 21 from the 2011 General Session.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment deletes language that defines domicile since S.B. 21 (2011) provides guidance on domicile that supersedes the rule language.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-10-103 and Section 59-10-136

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--Any impact would have been considered in S.B. 21 (2011).
- ◆ LOCAL GOVERNMENTS: None--Any impact would have been considered in S.B. 21 (2011).
- ◆ SMALL BUSINESSES: None--Any impact would have been considered in S.B. 21 (2011).
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Any impact would have been considered in S.B. 21 (2011).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--S.B. 21 (2011) makes significant changes to the definition of domicile that may impact whether a particular taxpayer is considered to have domicile in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment creates no fiscal impact beyond any considered in the passage of S.B. 21 (2011).

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

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R865. Tax Commission, Auditing.

R865-91. Income Tax.

R865-91-2. Determination of Utah Resident Individual Status Pursuant to Utah Code Ann. [Section]Sections 59-10-103 and 59-10-136.

~~(1) Domicile:~~

~~(a) Domicile is the place where an individual has a permanent home and to which he intends to return after being absent. It is the place at which an individual has voluntarily fixed his habitation, not for a special or temporary purpose, but with the intent of making a permanent home.~~

~~(b) For purposes of establishing domicile, an individual's intent will not be determined by the individual's statement, or the occurrence of any one fact or circumstance, but rather on the totality of the facts and circumstances surrounding the situation.~~

~~(i) Tax Commission rule R884-24P-52, Criteria for Determining Primary Residence, provides a non-exhaustive list of factors or objective evidence determinative of domicile.~~

~~(ii) Domicile applies equally to a permanent home within and without the United States.~~

~~(c) A domicile, once established, is not lost until there is a concurrence of the following three elements:~~

~~(i) a specific intent to abandon the former domicile;~~

~~(ii) the actual physical presence in a new domicile; and~~

~~(iii) the intent to remain in the new domicile permanently.~~

~~(d) An individual who has not severed all ties with the previous place of residence may nonetheless satisfy the requirement of abandoning the previous domicile if the facts and circumstances surrounding the situation, including the actions of the individual, demonstrate that the individual no longer intends the previous domicile to be the individual's permanent home, and place to which he intends to return after being absent.~~

~~(2)(1) For purposes of determining whether an individual spends in the aggregate 183 or more days of the taxable year in this state, a "day" means a day in which the individual spends more time in this state than in any other state.~~

~~(3)(2) Determination of resident individual status for military servicepersons.~~

~~(a) The status of a military serviceperson as a resident individual or a nonresident individual is determined as follows.~~

~~(i) A resident individual in active military service does not lose his status as a resident individual if the resident individual's absence from the state is a result of military orders.~~

~~(ii) A nonresident individual in active military service who is stationed in Utah does not become a resident individual for income tax purposes if the nonresident individual's presence in Utah is due solely to military orders.~~

~~(b) Subject to federal law, an individual in active military service may change from a resident individual to a nonresident individual or from a nonresident individual to a resident individual if he establishes that he satisfies the conditions of [Subsection (1) (e)]Section 59-10-136.~~

~~(c) A nonresident individual serviceperson is exempt from Utah income tax only on his active service pay. All other Utah source income received by the nonresident individual serviceperson is subject to Utah income tax as provided by Section 59-10-116.~~

~~(d) The spouse of an individual in active military service generally is considered to have the same residency status as that individual for purposes of Utah income tax.]~~

KEY: historic preservation, income tax, tax returns, enterprise zones

Date of Enactment or Last Substantive Amendment: ~~[September 23, 2010]~~2011

Notice of Continuation: March 20, 2007

Authorizing, and Implemented or Interpreted Law: 31A-32A-106; 53B-8a-112; 59-1-1301 through 59-1-1309; 59-2-1201 through 59-2-1220; 59-6-102; 59-7-3; 59-10; 59-10-103; 59-10-108 through 59-10-122; 59-10-108.5; 59-10-114; 59-10-124; 59-10-127; 59-10-128; 59-10-129; 59-10-130; 59-10-207; 59-10-210; 59-10-303; 59-10-401 through 59-10-403; 59-10-405.5; 59-10-406 through 59-10-408; 59-10-501; 59-10-503; 59-10-504; 59-10-507; 59-10-512; 58-10-514; 59-10-516; 59-10-517; 59-10-522; 59-10-533; 59-10-536; 59-10-602; 59-10-603; 59-10-1003; 59-10-1006; 59-10-1014; 59-10-1017; 59-10-1021; 59-10-1023; 59-10-1106; 59-10-1403; 59-10-1403.2; 59-10-1405; 59-13-202; 59-13-301; 59-13-302; 63M-1; 63M-1-401 through 63M-1-414

Tax Commission, Auditing
R865-91-18
Taxpayer Records, Statements, and
Special Returns Pursuant to Utah Code
Ann. Section 59-10-501

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35385

FILED: 10/27/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment updates a statutory reference.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment updates a statutory reference to match numbering changes in the statutes, and makes technical changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-1-1406

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** None--The amendments update a statutory reference.

♦ **LOCAL GOVERNMENTS:** None--The amendments update a statutory reference.

♦ **SMALL BUSINESSES:** None--The amendments update a statutory reference.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--The amendments update a statutory reference.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The amendments update a statutory reference.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This updates a statutory reference, and creates no fiscal impact.

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

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R865. Tax Commission, Auditing.

R865-9I. Income Tax.

R865-9I-18. Taxpayer Records, Statements, and Special Returns Pursuant to Utah Code Ann. Section ~~[59-10-501]~~[59-1-1406].

[A-](1) Every taxpayer shall keep adequate records for income tax purposes of a type which clearly reflect income and expense, gain or loss, and all transactions necessary in the conduct of business activities.

[B-](2) Records of all transactions affecting income or expense, or gain or loss, and of all transactions for which deductions may be claimed, should be preserved by the taxpayer to enable preparation of returns correctly and to substantiate claims. All ~~[such]~~ records shall be made available to an authorized agent of the ~~[Tax Commission]~~commission when requested, for review or audit.

KEY: historic preservation, income tax, tax returns, enterprise zones

Date of Enactment or Last Substantive Amendment: ~~[September 23, 2010]~~2011

Notice of Continuation: March 20, 2007

Authorizing, and Implemented or Interpreted Law: 31A-32A-106; 53B-8a-112; 59-1-1301 through 59-1-1309; 59-2-1201

through 59-2-1220; 59-6-102; 59-7-3; 59-10; 59-10-103; 59-10-108 through 59-10-122; 59-10-108.5; 59-10-114; 59-10-124; 59-10-127; 59-10-128; 59-10-129; 59-10-130; 59-10-207; 59-10-210; 59-10-303; 59-10-401 through 59-10-403; 59-10-405.5; 59-10-406 through 59-10-408; 59-10-501; 59-10-503; 59-10-504; 59-10-507; 59-10-512; 58-10-514; 59-10-516; 59-10-517; 59-10-522; 59-10-533; 59-10-536; 59-10-602; 59-10-603; 59-10-1003; 59-10-1006; 59-10-1014; 59-10-1017; 59-10-1021; 59-10-1023; 59-10-1106; 59-10-1403; 59-10-1403.2; 59-10-1405; 59-13-202; 59-13-301; 59-13-302; 63M-1; 63M-1-401 through 63M-1-414

Tax Commission, Auditing
R865-9I-37
Enterprise Zone Individual Income Tax
Credits Pursuant to Utah Code Ann.
Sections 63M-1-401 through 63M-1-
414

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35386

FILED: 10/27/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment is required to implement H.B. 17 from the 2011 General Session.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment deletes language relating to employer reports to the Department of Workforce Services since the statutory requirements for those reports has been repealed in H.B. 17 (2011). In addition, because that legislation also provides that a business entity may not claim enterprise zone credits if the business entity is primarily engaged in retail trade, the proposed amendment states that a business entity is primarily engaged in retail trade if the retail trade operations constitute more than 50% of the entity's total operations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63M-1-401 through 63M-1-414

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: None--Any impact would have been considered in H.B. 17 (2011).

◆ LOCAL GOVERNMENTS: None--Any impact would have been considered in H.B. 17 (2011).

◆ SMALL BUSINESSES: None--Any impact would have been considered in H.B. 17 (2011).

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Any impact would have been considered in H.B. 17 (2011).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None-- Under the provisions of H.B. 17 (2011), some business entities may qualify for enterprise zone credits that previously did not qualify.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment creates no fiscal impact beyond any created by the passage of H.B. 17 (2011).

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

TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY, UT 84134
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R865. Tax Commission, Auditing.

R865-91. Income Tax.

R865-91-37. Enterprise Zone Individual Income Tax Credits Pursuant to Utah Code Ann. Sections 63M-1-401 through 63M-1-414.

(1) Definitions:

(a) "Based" means exclusively stored or maintained at a facility owned by the taxpayer:

(i) that is designed, constructed, and used to store or maintain equipment:

(A) that is transported outside of the enterprise zone; and
(B) for which the credit is taken;

(ii) where the equipment is located when it is not being used at facilities outside the enterprise zone, as evidenced by invoices, equipment logs, photographs, or similar documentation; and

(iii) from where the use of the equipment is directed or managed.

(b) "Business engaged in retail trade" means a business that makes a retail sale as defined in Section 59-12-102.

(c) "Construction work" does not include facility maintenance or repair work.

(d) "Employee" means a person who qualifies as an employee under Internal Revenue Service Regulation 26 CFR 31.3401(c)(1).

(e) "Public utilities business" means a public utility under Section 54-2-1.

(f) "Taxpayer" means the person claiming the tax credits in section 63M-1-413.

(g) "Transfer" pursuant to Section 63M-1-411, means the relocation of assets and operations of a business, including personnel, plant, property, and equipment.

(2) For purposes of the investment tax credit, an investment is a qualifying investment if the plant, equipment, or other depreciable property for which the credit is taken is:

(a)(i) located within the boundaries of the enterprise zone; and

(ii) used exclusively in business operations conducted within the enterprise zone or

(b) in the case of equipment or other depreciable property, based in the enterprise zone.

(3) The following examples relate to the investment tax credit.

(a) A furniture manufacturer operates a manufacturing facility that is located in an enterprise zone. The manufacturer purchases two trucks that are used exclusively at the facility and used to pick up raw materials from suppliers, some or all of whom may be outside the enterprise zone, and to deliver finished product to final customers, some or all of whom may be outside the enterprise zone. The trucks qualify for the investment tax credit because they are used exclusively in a business operation, the furniture manufacturing facility, that is located within the enterprise zone, even if they are stored or maintained at a facility located outside of the enterprise zone.

(b) If the same manufacturer described in Subsection [(4)](3)(a) had two facilities, one located within the enterprise zone, and one located outside the enterprise zone, and used the same two trucks for the same purposes for both facilities. The trucks are not based at a facility in the enterprise zone. The trucks would not qualify for the investment tax credit because they are not used exclusively at the facility located within the enterprise zone, and are not based in the enterprise zone.

(c) A business consists of a mine office located in an enterprise zone and a mine located outside the enterprise zone. Mining equipment is used exclusively at the mine and is not based in the enterprise zone. The business may claim the investment tax credit for plant, equipment, or other depreciable property located in the mine office, but not for plant, equipment, or other depreciable property used in the mine outside the enterprise zone.

(d) A business purchases equipment such as an oil rig, which is transported outside the enterprise zone to service facilities such as oil fields. If the use of the equipment is directed or managed from the enterprise zone and the equipment returns to a facility, within the enterprise zone, that is owned by the business for regular maintenance or storage, the equipment is based in the enterprise zone and therefore qualifies for the investment tax credit.

(e) The same business described in Subsection [(4)](3)(d) purchases equipment that is primarily stored or maintained at facilities that are located outside of the enterprise zone, but which may be occasionally stored or maintained in the enterprise zone. This equipment would not be based in the enterprise zone, and would not qualify for the investment tax credit, even if the business has other facilities in the enterprise zone.

~~[(4) The calculation of the number of full-time positions for purposes of the credits allowed under Subsections 63M-1-413(1)~~

(a) through (d) shall be based on the average number of employees reported to the Department of Workforce Services for the four quarters prior to the area's designation as an enterprise zone.

~~(5) To determine whether at least 51 percent of the business firm's employees reside in the county in which the enterprise zone is located, the business firm shall consider every employee reported to the Department of Workforce Services for the tax year for which an enterprise zone credit is sought.~~

~~(6)(4) A business [firm]entity that conducts non-retail operations and is engaged in retail trade [qualifies for the credits under Section 63M-1-413]is primarily engaged in retail trade if the retail trade operations constitute [a de minimis portion]more than 50% of the business [firm's]entity's total operations.~~

~~(7)(5) An employee whose duties include both non-construction work and construction work does not perform a construction job if the construction work performed by the employee constitutes a de minimis portion of the employee's total duties.~~

~~(8)(6) Records and supporting documentation shall be maintained for three years after the date any returns are filed to support the credits taken. For example: If credits are originally taken in 1988 and unused portions are carried forward to 1992, records to support the original credits taken in 1988 must be maintained for three years after the date the 1992 return is filed.~~

~~(9)(7) If an enterprise zone designation is revoked prior to the expiration of the period for which it was designated, only tax credits earned prior to the loss of that designation will be allowed.~~

KEY: historic preservation, income tax, tax returns, enterprise zones

Date of Enactment or Last Substantive Amendment: [September 23, 2010]2011

Notice of Continuation: March 20, 2007

Authorizing, and Implemented or Interpreted Law: 31A-32A-106; 53B-8a-112; 59-1-1301 through 59-1-1309; 59-2-1201 through 59-2-1220; 59-6-102; 59-7-3; 59-10; 59-10-103; 59-10-108 through 59-10-122; 59-10-108.5; 59-10-114; 59-10-124; 59-10-127; 59-10-128; 59-10-129; 59-10-130; 59-10-207; 59-10-210; 59-10-303; 59-10-401 through 59-10-403; 59-10-405.5; 59-10-406 through 59-10-408; 59-10-501; 59-10-503; 59-10-504; 59-10-507; 59-10-512; 58-10-514; 59-10-516; 59-10-517; 59-10-522; 59-10-533; 59-10-536; 59-10-602; 59-10-603; 59-10-1003; 59-10-1006; 59-10-1014; 59-10-1017; 59-10-1021; 59-10-1023; 59-10-1106; 59-10-1403; 59-10-1403.2; 59-10-1405; 59-13-202; 59-13-301; 59-13-302; 63M-1; 63M-1-401 through 63M-1-414

Tax Commission, Auditing

R865-13G-17

Motor Fuel Tax License Pursuant to
Utah Code Ann. Section 59-13-203.1

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35383

FILED: 10/27/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-13-203.1 provides that a motor fuels tax license is invalid if the licensee has ceased to do business or has changed the business address.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment sets forth the parameters for determining that a motor fuels tax licensee has ceased to do business or has changed the business address. These procedures mirror the procedures currently in rule for sales and withholding tax licensees.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-13-203.1

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** None--Under the proposed amendment, the licenses that will be held invalid are those for which the Tax Commission is not receiving motor fuel tax returns.

♦ **LOCAL GOVERNMENTS:** None--Under the proposed amendment, the licenses that will be held invalid are those for which the Tax Commission is not receiving motor fuel tax returns.

♦ **SMALL BUSINESSES:** None--Under the proposed amendment, the licenses that will be held invalid are those for which the Tax Commission is not receiving motor fuel tax returns.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Under the proposed amendment, the licenses that will be held invalid are those for which the Tax Commission is not receiving motor fuel tax returns.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Under the proposed amendment, the licenses that will be held invalid are those for which the Tax Commission is not receiving motor fuel tax returns.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This process for invalidating motor fuels tax licenses should have no fiscal impact on business.

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

TAX COMMISSION

AUDITING

210 N 1950 W

SALT LAKE CITY, UT 84134

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2011

AUTHORIZED BY: Michael Cragun, Tax Commissioner

R865. Tax Commission, Auditing.

R865-13G. Motor Fuel Tax.

R865-13G-17. Motor Fuel Tax License Pursuant to Utah Code Ann. Section 59-13-203.1.

(1) The holder of a license issued under Section 59-13-203.1 shall notify the commission:

- (a) of any change of address of the business;
- (b) of a change of character of the business; or
- (c) if the license holder ceases to do business.

(2) The commission may determine that a person has ceased to do business or has changed that person's business address if:

- (a) mail is returned as undeliverable as addressed and unable to forward;
- (b) the person fails to file four consecutive motor fuel tax returns;
- (c) the person fails to renew its annual business license with the Department of Commerce; or
- (d) the person fails to renew its local business license.

(3) If the requirements of Subsection (2) are met, the commission shall notify the license holder that the license will be considered invalid unless the license holder provides evidence within 15 days that the license should remain valid.

(4) A person may request the commission to reopen a motor fuel tax license that has been determined invalid under Subsection (3).

(5) The holder of a license issued under Section 59-13-203.1 shall be responsible for any motor fuel tax, interest, and penalties incurred under that license whether those taxes and fees are incurred during the time the license is valid or invalid.

KEY: taxation, motor fuel, gasoline, environment

Date of Enactment or Last Substantive Amendment: [August 25, 2011]

Notice of Continuation: March 9, 2007

Authorizing, and Implemented or Interpreted Law: 59-13-201; 59-13-202; 59-13-203.1; 59-13-204; 59-13-208; 59-13-210; 59-13-404

**Workforce Services, Employment
Development
R986-200
Family Employment Program**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35402

FILED: 11/01/2011

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify current practice regarding household eligibility.

SUMMARY OF THE RULE OR CHANGE: If a parent receives TANF-funded financial assistance in another state or a tribe, the household is not eligible in Utah. If a child is on a TANF-funded case, the child cannot be considered a dependent in another household.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-3-302(5)(b)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This applies to federally-funded programs so there are no costs or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs or savings to the local government.

♦ **SMALL BUSINESSES:** There will be no costs to small businesses to comply with these changes because this is a federally-funded program.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs to any persons to comply with these changes because there are no costs or fees associated with these proposed changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no costs to for any affected persons because there are no costs or fees associated with these proposed changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with these changes for any persons because this is a federally-funded program and there are no fees or costs associated with these proposed changes. There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

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

WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 12/15/2011

THIS RULE MAY BECOME EFFECTIVE ON: 12/22/2011

AUTHORIZED BY: Kristen Cox, Executive Director

R986. Workforce Services, Employment Development.**R986-200. Family Employment Program.****R986-200-204. Eligibility Requirements.**

(1) To be eligible for financial assistance under the FEP or FEPTP a household assistance unit must include:

(a) a pregnant woman when it has been medically verified that she is in the third calendar month prior to the expected month of delivery, or later, and who, if the child were born and living with her in the month of payment, would be eligible. The unborn child is not included in the financial assistance payment; or

(b) at least one minor dependent child who is a citizen or meets the alienage criteria. All minor children age 6 to 16 must attend school, or be exempt under 53A-11-102, to be included in the household assistance unit for a financial assistance payment for that child.

(i) A minor child is defined as being under the age of 18 years and not emancipated by marriage or by court order; or

(ii) an unemancipated child, at least 18 years old but under 19 years old, with no high school diploma or its equivalent, who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and the school has verified a reasonable expectation the 18 year old will complete the program before reaching age 19.

(2) Households must meet other eligibility requirements of income, assets, and participation in addition to the eligibility requirements found in R986-100.

(3) Persons who are fleeing to avoid prosecution of a felony are ineligible for financial assistance.

(4) All clients who are required to complete a negotiated employment plan as provided in R986-200-206 must attend a FEP orientation meeting, sign a FEP Agreement, and negotiate and sign an employment plan within 30 days of submitting his or her application for assistance. Attendance at the orientation meeting can only be excused for reasonable cause as defined in R986-200-212(8). The application for assistance will not be complete until the client has attended the meeting.

(5) If a parent in the financial assistance household received TANF funded financial assistance benefits from another state or from a tribe, the entire household is ineligible to receive TANF funded financial assistance in Utah the same month. This is true even if household composition has changed. If a child in the household has received TANF funded financial assistance in another household, in this or any other state, the child will be excluded from the household determination in the same month according to the provisions of R986-200-205(2)(d). TANF funded financial assistance in Utah is FEP, FEP-TP, Emergency Assistance and AA.

R986-200-205. How to Determine Who Is Included in the Household Assistance Unit.

The amount of financial assistance for an eligible household is based on the size of the household assistance unit and the income and assets of all people in the household assistance unit.

(1) The income and assets of the following individuals living in the same household must be counted in determining eligibility of the household assistance unit:

(a) all natural parents, adoptive parents, parents listed on the birth certificate and stepparents, unless expressly excluded in this section, who are related to and residing in the same household as an eligible dependent child. Natural parentage is determined as follows:

(i) A woman is the natural parent if her name appears on the birth record of the child.

(ii) For a man to be determined to be the natural parent, that relationship must be established or acknowledged or his name must appear on the birth record. If the parents have a solemnized marriage at the time of birth, relationship is established and can only be rebutted by a DNA test;

(b) household members who would otherwise be included but who are absent solely by reason of employment, school or training, or who will return home to live within 30 days;

(c) all minor siblings, half-siblings, and adopted siblings living in the same household as an eligible dependent child; and

(d) all spouses living in the household.

(2) The following individuals in the household are not counted in determining the household size for determining payment amount nor are the assets or income of the individuals counted in determining household eligibility:

(a) a recipient of SSI benefits. If the SSI recipient is the parent and is receiving FEP assistance for the child(ren) residing in the household, the SSI parent must cooperate with establishing paternity and child support enforcement for the household to be eligible. If the only dependent child is a SSI recipient, the parent or specified relative may receive a FEP assistance payment which does not include that child, provided the parent or specified relative is not on SSI and can meet all other requirements;

(b) a child during any month in which a foster care maintenance payment is being provided to meet the child's needs. If the only dependent child in the household is receiving a foster care maintenance payment, the parent or specified relative may still receive a FEP assistance payment which does not include the child, provided all other eligibility, income and asset requirements are met;

(c) an absent household member who is expected to be gone from the household for 180 days or more unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included.

(d) a child who was counted as a dependent in a household that received TANF funded financial assistance or in a specified relative household in the same month. A child cannot be counted as a dependent in two households that receive TANF funded financial assistance or specific relative assistance in the same month.

(3) The household assistance unit can choose whether to include or exclude the following individuals living in the household. If included, all income and assets of that person are counted:

(a) all absent household members who are expected to be temporarily absent from the home for more than 30 but not more than 180 consecutive days unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included;

(b) Native American children, or deaf or blind children, who are temporarily absent while in boarding school, even if the temporary absence is expected to last more than 180 days;

(c) an adopted child who receives a federal, state or local government special needs adoption payment. If the adopted child receiving this type of payment is the only dependent child in the household and excluded, the parent(s) or specified relative may still receive a FEP or FEPTP assistance payment which does not include the child, provided all other eligibility requirements are met. If the household chooses to include the adopted child in the household assistance unit under this paragraph, the special needs adoption payment is counted as income;

(d) former stepchildren who have no blood relationship to a dependent child in the household;

(e) a specified relative. If a household requests that a specified relative be included in the household assistance unit, only one specified relative can be included in the financial assistance payment regardless of how many specified relatives are living in the household. The income and assets of all household members are counted according to the provisions of R986-200-241.

(4) In situations where there are children in the home for which there is court order regarding custody of the children, the Department will determine if the children should be included in the household assistance unit based on the actual living arrangements of the children and not on the custody order. If the child lives in the

home 50% or more of the time, the child must be included in the household assistance unit and duty of support completed. It is not an option to exclude the child. This is true even if the court awarded custody to the other parent or the court ordered joint custody. If the child lives in the household less than 50% of the time, the child cannot be included in the household. It is not an option to include the child. This is true even if the parent applying for financial assistance has been awarded custody by the court or the court ordered joint custody. If financial assistance is allowed, a joint custody order might be modified by the court under the provisions of 30-3-10.2(4) and 30-3-10.4.

(5) The income and assets of the following individuals are counted in determining eligibility even though the individual is not included in the assistance payment:

(a) a household member who has been disqualified from the receipt of assistance because of an IPV, (fraud determination);

(b) a household member who does not meet the citizenship and alienage requirements; or

(c) a minor child who is not in school full time or participating in self sufficiency activities.

KEY: family employment program

Date of Enactment or Last Substantive Amendment:
[September 7, 2011]

Notice of Continuation: September 8, 2010

Authorizing, and Implemented or Interpreted Law: 35A-3-301 et seq.

End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to remove obsolete rules from the Utah Administrative Code. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **NOTICE**. By filing a Notice, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. **NOTICES** are effective upon filing.

NOTICES are governed by Section 63G-3-305.

Commerce, Occupational and Professional Licensing **R156-71** Naturopathic Physician Practice Act Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 35370
FILED: 10/20/2011

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 71, provides for the licensure of naturopathic physicians. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-71-201(3)(a) provides that the Naturopathic Physician 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 71, with respect to naturopathic physicians.

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 2007, it has been amended several times. The Division received a 06/01/2010 email from Michelle S. McOmber, Utah Medical Association, in which they opposed some of the proposed amendments to the naturopathic formulary listing in this rule. The Division also received the following written

comments in which all supported the proposed amendments to the naturopathic formulary and provided reasons why the proposed amendments to the formulary should be made effective: a 06/12/2010 email from Benton Bramwell, ND; a 06/16/2010 email from Matthew Burnett, ND; a 06/16/2010 email from Jeff Wright, ND; and a 06/24/2010 email from Alisa Bangerter. The Division and the Naturopathic Physicians Licensing Board reviewed and considered the written comments received and made the proposed amendments to the rule effective with no further changes. No other written comments have been received by the Division with respect to this rule since the last five-year review conducted in January 2007.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: With respect to the opposing comments to proposed rule amendments which would allow licensed naturopathic physicians to prescribe various noncontrolled substance medications, including antidepressants, which were submitted by Michelle S. McOmber, Utah Medical Association, and Utah Psychiatric Association as referenced above, the Division's Director Mark Steinagel in a 06/29/2010 email to Ms. McOmber informed her that their association's comments had been distributed to members of the Naturopathic Physicians Licensing Board at its June 2010 meeting. His email to Ms. McOmber continued that he had requested the naturopathic physician community to submit their comments in response. Mr. Steinagel's goal was to get as much information as possible that allow him to make an informed decisions with respect to the proposed rule amendments. He further indicated in the 06/29/2010 email to Ms. McOmber: "It is apparent to me from everyone's comments that there is some difference of opinion regarding the purpose and scope of the naturopathic physician practice. My goal is to review the rule at had and decide whether it meets statute. Based on my review, I can summarize the issue this way: (1) The Legislature created a license for naturopathic physicians with a different scope of practice from physicians or osteopathic physicians. (2) Natural medicine is

defined in statute and includes the prescription of drugs: (i) that, except as provided in Subsection (8)(e) are not controlled substances as defined in Section 58-37-2; (ii) the prescription of which is consistent with the competent practice of naturopathic medicine; and (iii) the prescription of which is approved by the division in collaboration with the naturopathic formulary advisory peer committee. (3) The proposed rule change appears to meet (i) and (iii) so the main question is whether the prescription is consistent with the competent practice of naturopathic medicine. (4) The comments on either side of the issue seem to focus on the education and experience that a naturopathic physician receives and whether that education and experience prepare the naturopathic physician to prescribe these drugs." Following Mr. Steinagel's receipt of additional written comments from various members of the Naturopathic Physicians Licensing Board in support of the proposed rule amendments as referenced above, he determined on behalf of the Division that the education and scope of practice of naturopathic physicians supported making the proposed rule amendments effective with no further changes despite the written comments in opposition submitted by the Utah Medical Association/Utah Psychiatric Association. 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 71, with respect to naturopathic physicians. 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:
 ♦ Sally Stewart by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at sstewart@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 10/20/2011

**Commerce, Occupational and
 Professional Licensing
 R156-72
 Acupuncture Licensing Act Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION
 DAR FILE NO.: 35371
 FILED: 10/20/2011**

**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 72, provides for the licensure of acupuncturists. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-72-201(3)(a) provides that the Acupuncture 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 72, with respect to acupuncturists.

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 2007, the Division has received no written comments.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule 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 72, with respect to acupuncturists. 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:
 ♦ Noel Taxin by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at ntaxin@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 10/20/2011

**Commerce, Occupational and
Professional Licensing
R156-75**

Genetic Counselors Licensing Act Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35372
FILED: 10/20/2011

**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 75, provides for the licensure of genetic counselors. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-75-201(3) provides that the Genetic Counselors 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 75, with respect to genetic counselors.

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 2007, the Division has received no written comments.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule 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 75, with respect to genetic counselors. 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:

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

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 10/20/2011

**Education, Administration
R277-604**

**Private School, Home School,
Electronic High School (EHS), and
Bureau of Indian Affairs (BIA) Student
Participation in Public School
Achievement Tests**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35378
FILED: 10/27/2011

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-401(3) allows the Utah State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary. It provides standards and procedures for students who are Utah residents and not enrolled in the public education system to be able to participate in public school assessments. Therefore, this rule should be continued.

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY, UT 84111-3272
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 10/27/2011

**Education, Administration
 R277-914**

**Applied Technology Education (ATE)
 Leadership**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 35379
 FILED: 10/27/2011

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-15-202(1) directs the Utah State Board of Education to establish minimum standards for career and technical education programs in the public education system.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary. Significant amendments have recently been made as a result of the review process. The amended rule is scheduled to be effective in December 2011. Therefore, this rule should be continued.

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

EDUCATION
 ADMINISTRATION
 250 E 500 S
 SALT LAKE CITY, UT 84111-3272
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

AUTHORIZED BY: Carol Lear, Director, School Law and Legislation

EFFECTIVE: 10/27/2011

**Health, Disease Control and
 Prevention; HIV/AIDS, Tuberculosis
 Control/Refugee Health
 R388-803
 HIV Test Reporting**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 35373
 FILED: 10/21/2011

**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: This rule establishes requirements for: reporting, screening, diagnostic and treatment test results to Human Immunodeficiency Virus (HIV) and Acquired Immunodeficiency Syndrome (AIDS) and partner identification and notification as required by Sections 26-6-3 and 26-6-3.5 of the Utah Communicable Disease Control Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have not been any written comments received during and since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is authorized and mandated by state law, and implements or interprets Sections 26-6-3 and 26-6-3.5 of the Utah Communicable Disease Control Act. The rule is worded in such a way as to give laboratories, providers, or other reporting sources the option of reporting to either the local health department or the Utah Department of Health. Clear mechanisms are in place that state that local health departments must report morbidity and positive HIV test results to the Utah Department of Health. Therefore, this rule should be continued.

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

HEALTH
 DISEASE CONTROL AND PREVENTION;
 HIV/AIDS,

TUBERCULOSIS CONTROL/REFUGEE HEALTH
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:
♦ Cristie Chesler by phone at 801-538-9465, by FAX at 801-538-9913, or by Internet E-mail at cchesler@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 10/21/2011

**Health, Disease Control and
Prevention; HIV/AIDS, Tuberculosis
Control/Refugee Health
R388-804
Special Measures for the Control of
Tuberculosis**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35367
FILED: 10/18/2011

**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 establishes standards for the control and prevention of tuberculosis as required by Section 26-6-4, Section 26-6-6, Section 26-6-7, Section 26-6-8, and Section 26-6-9 of the Utah Communicable Disease Control Act and Title 26, Chapter 6b, Communicable Diseases - Treatment, Isolation, and Quarantine Procedures.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have not been any written comments received during and since the last five-year review of the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of this rule is to focus the efforts of tuberculosis control on disease elimination. This rule is aimed at all persons who advocate, plan, and work at controlling and preventing tuberculosis in Utah. The standards outlined in this rule constitute the minimum

expectations in the care and treatment of individuals diagnosed with, suspected to have, or exposed to tuberculosis. Continuation of the rule is critical to providing a coherent and practical approach to providing significant science-based protection of the population against tuberculosis.

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

HEALTH
DISEASE CONTROL AND PREVENTION;
HIV/AIDS,
TUBERCULOSIS CONTROL/REFUGEE HEALTH
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:
♦ Cristie Chesler by phone at 801-538-9465, by FAX at 801-538-9913, or by Internet E-mail at cchesler@utah.gov

AUTHORIZED BY: Jennifer Brown, Bureau Director

EFFECTIVE: 10/18/2011

**Health, Disease Control and
Prevention; HIV/AIDS, Tuberculosis
Control/Refugee Health
R388-805
Ryan White Program**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35368
FILED: 10/18/2011

**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 governs program eligibility, benefits, and administration by the Department for the Ryan White HIV/AIDS Treatment Modernization Act of 2009 Part B Program (Ryan White Program). It is authorized by Section 26-1-5, Section 26-1-15, Section 26-1-18, and Subsections 26-1-30(2)(a), (b), (c), and (g).

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 not been any written comments received since the rule was enacted.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of this rule is to provide reimbursement to providers for services rendered to HIV positive individuals who meet specific eligibility requirements. The standards outlined in the rule describe Ryan White Program eligibility, benefits, and administration. Continuation of this rule is critical to providing care for individuals living with HIV/AIDS who have no health insurance, have insufficient health care coverage, or who lack financial resources to get the care they need for their HIV disease.

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

HEALTH
DISEASE CONTROL AND PREVENTION;
HIV/AIDS,
TUBERCULOSIS CONTROL/REFUGEE HEALTH
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:
♦ Cristie Chesler by phone at 801-538-9465, by FAX at 801-538-9913, or by Internet E-mail at cchesler@utah.gov

AUTHORIZED BY: Jennifer Brown, Bureau Director

EFFECTIVE: 10/18/2011

**Insurance, Administration
R590-236**

**HIPAA Eligibility Following Receipt of a
Certificate of Insurability or Denial by
an Individual Carrier**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35374
FILED: 10/25/2011

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3) authorizes the commissioner to write rules to implement the provisions of Title 31A. Subsection 31A-29-106(1)(f) gives the HIPUtah Pool authority to write rules, conditions, and procedures for reinsuring risks. Subsection 31A-30-104(7)

authorizes the commissioner to make rules that require marketing practices to be consistent with Title 31A, Chapter 30, for small employer carriers, their agents, insurance producers, and consultants. These citations provide the department and HIPUtah Pool with authority to write rules that state how the HIPAA laws are to be applied to HIPUtah applicants and the HIPUtah board and insurance carriers.

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 substantive changes in the past five years and no written comments have been sent to the department 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: This rule is necessary in that it provides interpretation of interplay between federal and state statutes that affect protections provided by federal Health Insurance Portability and Accountability Act (HIPAA) to those that apply for coverage with HIPUtah and receive a certificate of insurability from HIPUtah, or denial of coverage by an individual carrier. The rule addresses effective dates of coverage for HIPAA eligible applicants applying for coverage with an individual carrier or HIPUtah. The rule also provides guidance for actual and potential interplay between HIPAA code sections and individual carriers, the HIPUtah pool administrator and HIPUtah applicants. Therefore, this rule should be continued.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 10/25/2011

**School and Institutional Trust Lands,
Administration
R850-8
Adjudicative Proceedings**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**DAR FILE NO.: 35366
FILED: 10/18/2011**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 53C-1-304 requires the Board of Trustees for the School and Institutional Trust Lands Administration to establish due process rules for the resolution of conflicts regarding actions by the board, director, and the agency. This rule provides the procedures for aggrieved parties to petition for administrative or judicial review of the actions taken by those entities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received by the Agency concerning this rule since the previous 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: There continues to be a need for a mechanism for aggrieved parties to petition for redress of agency/board actions which affect an interest held by the parties. This rule provides for a reasonable and effective way for the board to address challenges to agency and board actions. Therefore, this rule should be continued.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
ROOM 500
675 E 500 S
SALT LAKE CITY, UT 84102-2818
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ John Andrews by phone at 801-538-5180, by FAX at 801-538-5118, or by Internet E-mail at jandrews@utah.gov

AUTHORIZED BY: Kevin Carter, Director

EFFECTIVE: 10/18/2011

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**DAR FILE NO.: 35391
FILED: 11/01/2011**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under the authority of Section 72-9-301 of the Motor Carrier Safety Act which directs the department to enforce the Federal Motor Carrier Safety Regulations as contained in Title 49, Code of Federal Regulations, and under Section 72-9-103 which directs the department to make rules adopting the Federal Motor Carrier Safety Regulations.

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 from interested persons received during and since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule adopts regulations for the safe operation of motor carriers. The continuation of this rule ensures the safety of motor carrier companies operating in the state and continues to protect the motoring public. 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.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 11/01/2011

Transportation, Motor Carrier
R909-1
Safety Regulations for Motor Carriers

**Transportation, Motor Carrier
R909-75**

**Safety Regulations for Motor Carriers
Transporting Hazardous Materials
and/or Hazardous Wastes**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35394
FILED: 11/01/2011

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under the authority of Sections 72-9-103, 72-9-104, and 72-9-301 which give the department authority to regulate motor carriers who transport hazardous materials in commerce within the state.

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 from interested persons received during and since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R909-75 adopts regulations for the safe transportation of hazardous materials and continuation of this rule provides regulations which enable motor carriers to offer or transport these products in a safe and efficient manner, thus protecting the public. 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.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 11/01/2011

**Transportation, Program Development
R926-5**

**State Park Access Highways
Improvement Program**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35395
FILED: 11/01/2011

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under Section 72-3-207 which authorizes the department to administer the State Park Access Highways Improvement Program and to establish procedures for a county, city, or town to apply for a grant of program money.

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 from interested persons received during and since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law requiring the department to administer a State Park Access Highways Improvement Program remains in force, and the department complies with the law by having this rule in place to administer the program and establish procedures for a county or municipality to apply for a grant of program money. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
PROGRAM DEVELOPMENT
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 11/01/2011

Transportation, Program Development
R926-6
 Transportation Corridor Preservation
 Revolving Loan Fund

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 35396
 FILED: 11/01/2011

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under Subsection 72-2-117(6)(f) and Subsection 72-2-117(9)(a) which authorize the Utah Transportation Commission to make this rule which establishes procedures for: 1) the Utah Department of Transportation to apply for fund money; 2) the Utah Transportation Commission to award fund money; 3) repayment conditions; and 4) establishing a corridor preservation advisory council.

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 from interested persons received during and since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law requiring administration of a Transportation Corridor Preservation Revolving Loan Fund remains in force and the Department complies with the law by having this rule in place to establish procedures for: 1) the Utah Department of Transportation to apply for fund money; 2) the Utah Transportation Commission to award fund money; 3) repayment conditions; and 4) establishing a corridor preservation advisory council. Therefore, this rule should be continued.

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

TRANSPORTATION
 PROGRAM DEVELOPMENT
 CALVIN L RAMPTON COMPLEX
 4501 S 2700 W
 SALT LAKE CITY, UT 84119-5998
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 11/01/2011

Transportation, Preconstruction
R930-1
 Installation of New Mailboxes and
 Correction of Nonconforming Mailboxes

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**

DAR FILE NO.: 35397
 FILED: 11/01/2011

**NOTICE OF REVIEW AND STATEMENT OF
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under Sections 72-3-102 and 72-7-102 to provide a procedure for installation of new mailboxes and for the correction of nonconforming mailboxes.

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 from interested persons received during and since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law requiring the department to maintain and control state highways remains in force, and the department complies with the law by having this rule to regulate the installation of new mailboxes and the correction of nonconforming mailboxes. Therefore, this rule should be continued.

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

TRANSPORTATION
 PRECONSTRUCTION
 CALVIN L RAMPTON COMPLEX
 4501 S 2700 W
 SALT LAKE CITY, UT 84119-5998
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 11/01/2011

**Transportation, Preconstruction
R930-3
Highway Noise Abatement**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 35398
FILED: 11/01/2011

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by and enacted under Section 72-6-111 which requires the department to make rules regulating the department's noise abatement measures.

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 received during and since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law requiring the department to enact this rule is still in place and the department complies with the law by having this rule which allows the department to address highway noise impacts and determine the conditions under which noise abatement may be approved. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
PRECONSTRUCTION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 11/01/2011

**Transportation, Preconstruction, Right-
of-way Acquisition
R933-1
Right of Way Acquisition**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 35399
FILED: 11/01/2011

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under Section 72-5-117 which requires the Utah Department of Transportation to provide procedures for right of way acquisition and the purchase, sale, and exchange of real property.

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 from interested persons received during and since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The law requiring this rule remains in effect and the department complies with the law by having this rule in place to provide procedures for right of way acquisition and the purchase, sale, and exchange of real property. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
PRECONSTRUCTION, RIGHT-OF-WAY
ACQUISITION
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5998
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 11/01/2011

**NOTICES OF
FIVE-YEAR REVIEW EXTENSIONS**

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).

**Transportation, Motor Carrier
R909-16**

Overall Motor Carrier Safety Standing

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 35392

FILED: 11/01/2011

EXTENSION REASON AND NEW DEADLINE: An extension is requested because the deadline for the five-year review will be before the repeal of this rule can be put through the process. New deadline date is 03/28/2012.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 11/01/2011

**Transportation, Motor Carrier
R909-17**

**Appeal Process for Utah Commercial
Vehicle Safety Alliance Inspections**

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 35393

FILED: 11/01/2011

EXTENSION REASON AND NEW DEADLINE: An extension is requested because the deadline for the five-year review will be before the repeal of this rule can be put through the process. New deadline date is 03/28/2012.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Linda Barrow by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at lindabarrow@utah.gov

AUTHORIZED BY: John Njord, Executive Director

EFFECTIVE: 11/01/2011

End of the Notices of Five-Year Review Extensions Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a Notice of Effective Date within 120 days from the publication of a Proposed Rule or a related Change in Proposed Rule the rule lapses and the agency must start the rulemaking process over.

Notices of Effective Date are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

No. 34944 (REP): R162-104. Experience Requirement

Published: 07/15/2011

Effective: 11/01/2011

No. 34945 (REP): R162-105. Scope of Authority

Published: 07/15/2011

Effective: 11/01/2011

Attorney General

Administration

No. 35195 (AMD): R105-2. Records Access and Management

Published: 09/15/2011

Effective: 10/25/2011

No. 34946 (REP): R162-106. Professional Conduct

Published: 07/15/2011

Effective: 11/01/2011

No. 34947 (REP): R162-107. Unprofessional Conduct

Published: 07/15/2011

Effective: 11/01/2011

Commerce

Real Estate

No. 34917 (CPR): R162-2g. Real Estate Appraiser Licensing and Certification Administrative Rules

Published: 10/01/2011

Effective: 11/01/2011

No. 34948 (REP): R162-109. Administrative Proceedings

Published: 07/15/2011

Effective: 11/01/2011

No. 34949 (REP): R162-110. Trainee Registration

Published: 07/15/2011

Effective: 11/01/2011

No. 34917 (NEW): R162-2g. Real Estate Appraiser

Licensing and Certification Administrative Rules

Published: 07/01/2011

Effective: 11/01/2011

No. 35090 (AMD): R162-2g-304d. Experience Hours

Published: 08/15/2011

Effective: 11/01/2011

Environmental Quality

Water Quality

No. 35203 (AMD): R317-10. Certification of Wastewater Works Operator

Published: 09/15/2011

Effective: 10/26/2011

No. 34941 (REP): R162-101. Authority and Definitions

Published: 07/15/2011

Effective: 11/01/2011

Health

Family Health and Preparedness, WIC Services

No. 35084 (AMD): R406-100. Special Supplemental Nutrition Program for Women, Infants and Children

Published: 08/15/2011

Effective: 10/28/2011

No. 34942 (REP): R162-102. Application Procedures

Published: 07/15/2011

Effective: 11/01/2011

No. 34943 (REP): R162-103. Appraisal Education Requirements

Published: 07/15/2011

Effective: 11/01/2011

No. 35085 (AMD): R406-200. Program Overview

Published: 08/15/2011

Effective: 10/28/2011

NOTICES OF RULE EFFECTIVE DATES

No. 35086 (AMD): R406-202-1. Certification and Eligibility
Published: 08/15/2011
Effective: 10/28/2011

Human Services

Child and Family Services
No. 35181 (NEW): R512-44. Choose Life Adoption Support
Restricted Account
Published: 09/15/2011
Effective: 10/26/2011

Substance Abuse and Mental Health

No. 35191 (AMD): R523-24. Off Premise Retailer (Clerk,
Licensee and Manager) Alcohol Training and Education
Seminar Rules of Administration
Published: 09/15/2011
Effective: 10/24/2011

Insurance

Administration
No. 35202 (NEW): R590-263. Commonly Selected Health
Benefit Plans
Published: 09/15/2011
Effective: 10/27/2011

Money Management Council

Administration
No. 35204 (AMD): R628-13. Collateralization of Public
Funds
Published: 09/15/2011
Effective: 10/24/2011

Natural Resources

Oil, Gas and Mining; Non-Coal
No. 35185 (AMD): R647-1-106. Definitions
Published: 09/15/2011
Effective: 10/26/2011

No. 35184 (AMD): R647-2-111. Surety
Published: 09/15/2011
Effective: 10/26/2011

No. 35186 (AMD): R647-3. Small Mining Operations
Published: 09/15/2011
Effective: 10/26/2011

No. 35187 (AMD): R647-4-118. Revisions
Published: 09/15/2011
Effective: 10/26/2011

Wildlife Resources

No. 35213 (AMD): R657-9. Taking Waterfowl, Common
Snipe and Coot
Published: 09/15/2011
Effective: 10/24/2011
No. 35208 (AMD): R657-10. Taking Cougar
Published: 09/15/2011
Effective: 10/24/2011

No. 35212 (AMD): R657-11. Taking Furbearers
Published: 09/15/2011
Effective: 10/24/2011

No. 35214 (AMD): R657-56. Recreational Lease of Private
Lands for Free Public Walk-in Access
Published: 09/15/2011
Effective: 10/24/2011

Tax Commission

Property Tax
No. 35152 (AMD): R884-24P-57. Judgment Levies Pursuant
to Utah Code Ann. Sections 59-2-918.5, 59-2-924, 59-2-1328,
and 59-2-1330
Published: 09/01/2011
Effective: 10/27/2011

No. 35183 (AMD): R884-24P-71. Agreements with
Commercial or Industrial Taxpayers for Equal Property Tax
Payments Pursuant to Utah Code Ann. Section 59-2-1308.5
Published: 09/15/2011
Effective: 10/27/2011

Workforce Services

Employment Development
No. 35219 (AMD): R986-200-247. Utah Back to Work Pilot
Program (BWP)
Published: 09/15/2011
Effective: 11/01/2011

No. 35218 (AMD): R986-700-714. CC Payment Method
Published: 09/15/2011
Effective: 11/01/2011

End of the Notices of Rule Effective Dates Section

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2011 through November 01, 2011. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Administration</u>					
R13-2	Access to Records	35309	5YR	10/04/2011	2011-21/155
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	2011-20/65
R25-7	Travel-Related Reimbursements for State Employees	34764	AMD	07/01/2011	2011-10/6
<u>Fleet Operations</u>					
R27-3	Vehicle Use Standards	34256	AMD	01/25/2011	2010-24/6
R27-3-4	Authorized and Unauthorized Use of State Vehicles	34786	AMD	07/12/2011	2011-11/10
R27-4-11	Capital Credit or Reservation of Vehicle Allocation for Surrendered Vehicles	34257	AMD	01/25/2011	2010-24/7
<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>					
R33-11	State Surplus Property Disposal	34884	NEW	09/13/2011	2011-12/8
AGRICULTURE AND FOOD					
<u>Administration</u>					
R51-3	Government Records Access and Management Act	34491	5YR	03/03/2011	2011-7/43
R51-4	ADA Complaint Procedure	34492	5YR	03/03/2011	2011-7/43
<u>Animal Industry</u>					
R58-1	Admission and Inspection of Livestock, Poultry and Other Animals	34343	AMD	03/24/2011	2011-3/7
R58-2	Diseases, Inspections and Quarantines	34352	AMD	03/24/2011	2011-3/13

R58-2	Diseases, Inspections and Quarantines	34975	5YR	06/23/2011	2011-14/135
R58-4	Use of Animal Drugs and Biologicals in the State of Utah	34976	5YR	06/23/2011	2011-14/135
R58-11	Slaughter of Livestock	34694	AMD	06/21/2011	2011-9/2
R58-11-2	Definitions	34914	NSC	06/30/2011	Not Printed
R58-14	Holding Live Raccoons or Coyotes in Captivity	34974	5YR	06/23/2011	2011-14/136
R58-20	Domesticated Elk Hunting Park	34906	EMR	06/07/2011	2011-13/79
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

Marketing and Development

R65-8	Management of the Junior Livestock Show Appropriation	34489	5YR	03/03/2011	2011-7/44
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Plant Industry

R68-4	Standardization, Marketing, and Phytosanitary Inspection of Fresh Fruits, Vegetables, and Other Plant and Plant Products	34414	5YR	02/08/2011	2011-5/107
R68-7	Utah Pesticide Control Act	34488	5YR	03/02/2011	2011-7/44
R68-7	Utah Pesticide Control Act	34430	AMD	06/02/2011	2011-5/2
R68-7	Utah Pesticide Control Rule	34711	AMD	06/21/2011	2011-10/10
R68-7-10	Responsibilities of Business and Applicator	34456	NSC	06/02/2011	Not Printed
R68-7-10	Responsibilities of Business and Applicator	34498	AMD	06/02/2011	2011-7/2
R68-8	Utah Seed Law	34345	5YR	01/05/2011	2011-3/55
R68-18	Quarantine Pertaining to Karnal Bunt	34412	5YR	02/08/2011	2011-5/107
R68-21-2	Authority	34558	NSC	04/27/2011	Not Printed

Regulatory Services

R70-330	Raw Milk for Retail	34518	5YR	03/16/2011	2011-8/29
R70-370	Butter	34519	5YR	03/16/2011	2011-8/29
R70-380	Grade A Condensed and Dry Milk Products and Condensed and Dry Whey	34517	5YR	03/16/2011	2011-8/30
R70-410	Grading and Inspection of Shell Eggs with Standard Grade and Weight Classes	34378	5YR	01/24/2011	2011-4/35
R70-920	Packaging and Labeling of Commodities	35177	5YR	08/22/2011	2011-18/85
R70-930	Method of Sale of Commodities	35127	5YR	08/11/2011	2011-17/89
R70-940	Standards and Testing of Motor Fuel	35128	5YR	08/11/2011	2011-17/90

ALCOHOLIC BEVERAGE CONTROL

Administration

R81-1	Scope, Definitions, and General Provisions	34787	5YR	05/10/2011	2011-11/123
R81-1	Scope, Definitions, and General Provisions	35070	NSC	08/04/2011	Not Printed
R81-1	Scope, Definitions, and General Provisions	35098	AMD	10/01/2011	2011-16/4
R81-1-11	Multiple-Licensed Facility Storage and Service	35052	AMD	10/01/2011	2011-15/8
R81-1-14	Americans With Disabilities Act Complaint Procedure	35053	AMD	10/01/2011	2011-15/9
R81-1-29	Disclosure of Conflicts of Interest	34337	AMD	02/24/2011	2011-2/4
R81-1-29	Disclosure of Conflict of Interest	35054	AMD	10/01/2011	2011-15/13
R81-1-30	Factors for Granting Licenses	34336	AMD	02/24/2011	2011-2/5
R81-1-30	Factors for Granting Licenses	35055	AMD	10/01/2011	2011-15/14
R81-1-30	Draft Beer Sales/Minors on Premises	35056	AMD	10/01/2011	2011-15/16
R81-2	State Stores	34788	5YR	05/10/2011	2011-11/124
R81-2	State Stores	35057	AMD	10/01/2011	2011-15/17
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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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	34805	R708-41-3	AMD	07/12/2011	2011-11/82

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	34877	R873-22M-31	AMD	08/11/2011	2011-12/76
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	35096	R156-1	NSC	08/16/2011	Not Printed
	34323	R156-1-102	AMD	02/24/2011	2011-2/7
	34396	R156-3a	5YR	01/31/2011	2011-4/35
	35034	R156-3a	AMD	09/08/2011	2011-15/45
	35293	R156-9	5YR	09/26/2011	2011-20/65
	34499	R156-9a	5YR	03/10/2011	2011-7/45
	34496	R156-9a	NSC	04/06/2011	Not Printed
	34545	R156-15	AMD	05/26/2011	2011-8/10
	35117	R156-15	NSC	08/31/2011	Not Printed
	35360	R156-15	5YR	10/13/2011	2011-21/155
	35017	R156-15A	NEW	09/12/2011	2011-15/48
	35231	R156-15A-103	NSC	09/30/2011	Not Printed
	34887	R156-17b-310	AMD	07/26/2011	2011-12/22
	34888	R156-39a	REP	07/26/2011	2011-12/25
	35160	R156-40	5YR	08/15/2011	2011-17/92
	34983	R156-47b	AMD	08/23/2011	2011-14/9
	34282	R156-50	NSC	01/06/2011	Not Printed
	35112	R156-53	AMD	10/13/2011	2011-17/12
	35158	R156-54	AMD	10/13/2011	2011-17/16
	34470	R156-55a	AMD	04/25/2011	2011-6/35
	35013	R156-55a	AMD	09/12/2011	2011-15/57
	35308	R156-55a	5YR	10/04/2011	2011-21/156
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	35306	R156-55b	5YR	10/04/2011	2011-21/157
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	35307	R156-55c	5YR	10/04/2011	2011-21/158
	34338	R156-55c-102	AMD	02/24/2011	2011-2/10
	35230	R156-55c-302c	NSC	09/30/2011	Not Printed
	34673	R156-55e-303a	NSC	04/27/2011	Not Printed
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	34310	R156-60a	AMD	02/10/2011	2011-1/6
	34952	R156-60b	AMD	08/22/2011	2011-14/13
	34339	R156-60c	AMD	02/24/2011	2011-2/12
	34395	R156-60d	5YR	01/31/2011	2011-4/37
	34370	R156-63a	AMD	03/24/2011	2011-4/12
	34360	R156-63a-302f	NSC	01/26/2011	Not Printed
	34542	R156-63b	AMD	05/26/2011	2011-8/11
	34504	R156-67	5YR	03/14/2011	2011-7/46
	34283	R156-69	AMD	02/07/2011	2011-1/8
	34500	R156-69	5YR	03/10/2011	2011-7/46
	35370	R156-71	5YR	10/20/2011	Not Printed
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	35159	R156-77	5YR	08/15/2011	2011-17/93
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	34237	R156-83-306	AMD	01/10/2011	2010-23/14
	34544	R156-83-306	AMD	05/26/2011	2011-8/15
	34913	R156-83-306	NSC	06/30/2011	Not Printed
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	34907	R162-2c	AMD	08/08/2011	2011-13/6
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	34986	R162-2c-202	AMD	08/22/2011	2011-14/16

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	34737	R162-2c-401	NSC	05/25/2011	Not Printed
	34987	R162-2c-401	AMD	08/22/2011	2011-14/18
	35174	R162-2f	NSC	09/15/2011	Not Printed
	34908	R162-2f-102	AMD	08/10/2011	2011-13/8
	34909	R162-2f-205	AMD	08/10/2011	2011-13/10
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	34911	R162-2f-403	AMD	08/10/2011	2011-13/14
	34738	R162-2f-407	NSC	08/17/2011	Not Printed
	34988	R162-2f-407	AMD	08/22/2011	2011-14/20
	34942	R162-102	REP	11/01/2011	2011-14/23
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	35287	R313-36	5YR	09/23/2011	2011-20/70
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	34366	R359-1-501	AMD	03/28/2011	2011-4/19
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	34901	R359-1-501	AMD	07/26/2011	2011-12/43
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	34900	R359-1-515	AMD	07/26/2011	2011-12/45
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	34225	R162-2c-201	AMD	01/08/2011	2010-23/16
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	34226	R162-2c-203	AMD	01/08/2011	2010-23/19
	34227	R162-2c-204	AMD	01/08/2011	2010-23/23
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	34987	R162-2c-401	AMD	08/22/2011	2011-14/18
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	34553	R309-705-6	AMD	07/01/2011	2011-9/25
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	34893	R414-3A-6	AMD	09/01/2011	2011-12/46
	34894	R414-4A	REP	08/01/2011	2011-12/47
	34524	R414-14	AMD	05/25/2011	2011-8/9
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	34509	R414-14A	AMD	05/16/2011	2011-7/5
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	34669	R444-11	NSC	05/03/2011	Not Printed
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	34662	R434-40	NSC	05/03/2011	Not Printed
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Health, Family Health and Preparedness, WIC Services	35084	R406-100	AMD	10/28/2011	2011-16/22	
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	35235	R380-210	5YR	09/14/2011	2011-19/66
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	34963	R313-25-8	NSC	07/13/2011	Not Printed
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unarmed combat

Governor, Economic Development, Pete Suazo Utah Athletic Commission	34407	R359-1-301	AMD	03/28/2011	2011-4/18
	34366	R359-1-501	AMD	03/28/2011	2011-4/19
	34408	R359-1-501	AMD	03/28/2011	2011-4/21
	34901	R359-1-501	AMD	07/26/2011	2011-12/43
	34482	R359-1-511	AMD	04/26/2011	2011-6/76
	34483	R359-1-512	AMD	04/26/2011	2011-6/78
	34484	R359-1-515	AMD	04/26/2011	2011-6/79
	34900	R359-1-515	AMD	07/26/2011	2011-12/45

unattended death

Health, Medical Examiner	34671	R448-10	NSC	05/03/2011	Not Printed
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underground injection control

Environmental Quality, Water Quality	34951	R317-7	5YR	06/20/2011	2011-14/139
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underground storage tanks

Environmental Quality, Environmental Response and Remediation	34270	R311-200	AMD	02/14/2011	2010-24/19
	34271	R311-201	AMD	02/14/2011	2010-24/23
	34698	R311-201-9	AMD	08/29/2011	2011-9/27
	34739	R311-201-11	LNR	05/01/2011	2011-10/123
	34272	R311-203	AMD	02/14/2011	2010-24/27
	34275	R311-205	AMD	02/14/2011	2010-24/30
	34273	R311-206	AMD	02/14/2011	2010-24/33
	34274	R311-207	AMD	02/14/2011	2010-24/35
	35155	R311-207	AMD	10/17/2011	2011-17/42
	34740	R311-207-9	LNR	05/01/2011	2011-10/123
	34699	R311-210	R&R	08/29/2011	2011-9/29
	34269	R311-212	AMD	02/14/2011	2010-24/38
	35156	R311-212	AMD	10/17/2011	2011-17/47

underserved

Health, Health Systems Improvement, Primary Care and Rural Health	34664	R434-100	NSC	05/03/2011	Not Printed
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unemployed workers

Workforce Services, Unemployment Insurance	34899	R994-207-101	AMD	08/02/2011	2011-12/82
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unemployment compensation

Workforce Services, Unemployment Insurance	34899	R994-207-101	AMD	08/02/2011	2011-12/82
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	34776	R994-302	5YR	05/05/2011	2011-11/133
	34777	R994-308	5YR	05/05/2011	2011-11/134
	34898	R994-403-112c	AMD	08/02/2011	2011-12/83
	34361	R994-403-113c	AMD	03/15/2011	2011-3/52
	34445	R994-508	AMD	04/11/2011	2011-5/97
<u>unincorporated entity</u>					
Labor Commission, Administration	35093	R600-3	NEW	09/21/2011	2011-16/43
<u>units</u>					
Environmental Quality, Radiation Control	35008	R313-12	5YR	07/07/2011	2011-15/129
<u>universal service</u>					
Public Service Commission, Administration	34176	R746-360-8	AMD	01/19/2011	2010-22/109
<u>universal service fund</u>					
Public Service Commission, Administration	34979	R746-360-4	AMD	09/01/2011	2011-14/81
<u>UPP</u>					
Health, Health Care Financing, Coverage and Reimbursement Policy	35336	R414-320	5YR	10/13/2011	2011-21/159
<u>Utah 911 Committee</u>					
Public Safety, Criminal Investigations and Technical Services, 911 Committee (Utah)	34501	R720-1	NEW	05/11/2011	2011-7/22
<u>Utah Housing Opportunity Restricted Account</u>					
Commerce, Real Estate	34223	R162-2a	NEW	01/08/2011	2010-23/15
	34224	R162-12	REP	01/08/2011	2010-23/25
<u>vacations</u>					
Human Resource Management, Administration	34745	R477-7	AMD	07/01/2011	2011-10/45
	34996	R477-7	AMD	09/03/2011	2011-14/62
<u>vaccinations</u>					
Health, Health Systems Improvement, Licensing	34639	R432-40	NSC	05/03/2011	Not Printed
<u>vehicle replacement</u>					
Administrative Services, Fleet Operations	34257	R27-4-11	AMD	01/25/2011	2010-24/7
<u>ventilation</u>					
Health, Epidemiology and Laboratory Services, Environmental Services	34584	R392-510	NSC	05/03/2011	Not Printed
	34733	R392-510	AMD	09/12/2011	2011-10/24
<u>victim compensation</u>					
Crime Victim Reparations, Administration	34990	R270-1	5YR	06/29/2011	2011-14/137
<u>victims of crime</u>					
Crime Victim Reparations, Administration	34990	R270-1	5YR	06/29/2011	2011-14/137
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<u>violations</u>					
Environmental Quality, Radiation Control	35009	R313-14	5YR	07/07/2011	2011-15/130
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<u>vital statistics</u>					
Health, Center for Health Data, Vital Records and Statistics	34493	R436-3	NSC	04/06/2011	Not Printed
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	35311	R610-2	5YR	10/05/2011	2011-21/162	
	35313	R610-3	5YR	10/05/2011	2011-21/162	
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	35082	R317-1-7	AMD	10/04/2011	2011-15/77	
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Environmental Quality, Water Quality	34978	R317-11	5YR	06/27/2011	2011-14/140	
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Environmental Quality, Water Quality	35203	R317-10	AMD	10/26/2011	2011-18/11	
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Environmental Quality, Water Quality	34437	R317-1-7	AMD	04/13/2011	2011-5/26	
	35082	R317-1-7	AMD	10/04/2011	2011-15/77	
	35203	R317-10	AMD	10/26/2011	2011-18/11	
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	34427	R651-802	5YR	02/10/2011	2011-5/113	
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Health, Disease Control and Prevention, Environmental Services	35113	R392-302	NSC	08/31/2011	Not Printed	
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	34541	R655-4	NSC	04/12/2011	Not Printed	
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	35213	R657-9	AMD	10/24/2011	2011-18/54	
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	34407	R359-1-301	AMD	03/28/2011	2011-4/18
	34366	R359-1-501	AMD	03/28/2011	2011-4/19
	34408	R359-1-501	AMD	03/28/2011	2011-4/21
	34901	R359-1-501	AMD	07/26/2011	2011-12/43
	34278	R359-1-506	AMD	01/31/2011	2010-24/42
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	34484	R359-1-515	AMD	04/26/2011	2011-6/79
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	35068	R657-6	AMD	09/12/2011	2011-15/100
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	35213	R657-9	AMD	10/24/2011	2011-18/54
	35172	R657-10	5YR	08/16/2011	2011-18/89
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	34167	R657-13	AMD	01/04/2011	2010-22/103
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	35214	R657-56	AMD	10/24/2011	2011-18/74
	34168	R657-58	AMD	01/04/2011	2010-22/105
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	34981	R657-12	AMD	08/23/2011	2011-14/80
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	34595	R406-201	NSC	05/03/2011	Not Printed
	34596	R406-202	NSC	05/03/2011	Not Printed
	34597	R406-301	NSC	05/03/2011	Not Printed
Health, Family Health and Preparedness, WIC Services	35084	R406-100	AMD	10/28/2011	2011-16/22
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