

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, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3764, FAX 801-537-9240. 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

Wrong Effective Date on Rule R277-100 for the February Administrative Code Update

An error occurred while codifying amendments to Rule R277-100 for the 02/01/2012, update to the *Utah Administrative Code*. As a result, the date of last substantive amendment reported at the bottom of the rule reads "October 10, 2012." The correct date is "January 10, 2012." The date has been corrected in all pertinent places. The Division regrets any inconvenience caused by the error.

Questions regarding this error should be addressed to Mike Broschinsky at 801-538-3003 or by email at mbroschi@utah.gov. The Division of Administrative Rules regrets any inconvenience caused by this error.

End of the Editor's Notes Section

SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for April 2012 Medicaid Rate Changes

Effective April 1, 2012, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies, potential adjustments to existing codes, and nursing home rate changes to case mix components consistent with adopted payment methodology. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between February 16, 2012, 12:00 a.m., and March 01, 2012, 11:59 p.m. are included in this, the March 15, 2012 issue of the *Utah State Bulletin*.

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

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 Rules being repealed are completely struck out.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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least April 16, 2012. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through July 13, 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

Attorney General, Administration
R105-1
 Attorney General's Selection of Outside
 Counsel, Expert Witnesses and Other
 Litigation Support Services

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 35904

FILED: 03/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to provide the requirements for procurements that are managed by the Attorney General, including the hiring of outside counsel, litigation support services, and procurement items.

SUMMARY OF THE RULE OR CHANGE: The purpose of this rule is to provide the requirements for procurements that are managed by the Attorney General, including the hiring of outside counsel, litigation support services, and procurement items.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Art VII, Sec 16 and Title 63G, Chapter 6 and Title 67, Chapter 5

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This rule will not affect the state budget, since it is simply providing the requirements for procurements that are managed by the Attorney General.
- ◆ **LOCAL GOVERNMENTS:** This rule will not affect the budget of our local government, since it is simply providing the requirements for procurements that are managed by the Attorney General.
- ◆ **SMALL BUSINESSES:** This rule will not affect the budget of small businesses, since it is simply providing the requirements for procurements that are managed by the Attorney General.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule will not affect the budget of persons other than small businesses, or local government entities, since it is simply providing the requirements for procurements that are managed by the Attorney General.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule will not affect compliance costs for any persons or local governmental entities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This will not impact business as the rule provides compliance with applicable law and an oversight process.

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

ATTORNEY GENERAL
 ADMINISTRATION
 ROOM 230 UTAH STATE CAPITOL
 350 NORTH STATE STREET
 SALT LAKE CITY, UT 84114
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
- ◆ Chiarina Gleed by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov
- ◆ Laura Lockhart by phone at 801-366-0283, by FAX at 801-366-0292, or by Internet E-mail at llockhart@utah.gov
- ◆ Paul Tonks by phone at 801-538-9501, or by Internet E-mail at ptonks@utah.gov
- ◆ Priscilla Anderson by phone at 801-538-9595, by FAX at 801-538-3378, or by Internet E-mail at phanderson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/16/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/23/2012

AUTHORIZED BY: John Swallow, Deputy Attorney General

R105. Attorney General, Administration.

R105-1. Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services.

R105-1-1. Purpose and Authority.

A. This purpose of this rule is to provide the requirements for procurements that are managed by the Attorney General, including the hiring of outside counsel, expert witnesses, litigation support services and procurement items.

B. This rule is adopted pursuant to authority granted by the Utah Procurement Code including authority to manage procurement of procurement items directly or by delegation of the Chief Procurement Officer of the Division of Purchasing of the Department of Administrative Services.

R105-1-2. Definitions.

Terms in this Rule R105-1 shall be as defined in the Utah Procurement Code. Additional definitions are provided below.

A. "Agency" means any department, division, agency, commission, board, council, committee, authority, institution, or other entity within the State government of Utah (see Utah Code Ann. Sec. 67-5-3).

B. "Attorney General" means the Attorney General of the State of Utah, or the Attorney General's designee.

C. "Emergency" means a determination by the Attorney General in writing that a provision of this Rule needs to be waived due to the need for timeliness, litigation deadlines, confidentiality, or other emergency circumstances.

D. "Expert witness" means a person whose knowledge, skill, experience, training or education in a scientific, technical or other specialized area would enable the person to give testimony under Rule 702 of the Utah Rules of Evidence.

E. "Litigation Support Services" includes any goods, services, software or technology.

F. "Outside counsel" means an attorney or attorneys who are not, or a law firm whose attorneys are not, employed by the Attorney General's office pursuant to Utah Code Ann. Sec. 67-5-7 et seq., which the Attorney General appoints, pursuant to Utah Code Ann. Sec. 67-5-5, to represent, or provide legal advice or counsel to, an agency of the State. "Outside counsel" may or may not be designated as "Special Assistant Attorney General", as the Attorney General determines.

G. "Procurement item" or "Procurement Items" means any goods, services, software or technology.

H. "Small purchase" means a determination by the Attorney General in writing that the fee expected to be charged:

1. By outside counsel, expert witnesses or other professional litigation support services will be \$100,000.00 or less;

2. A procurement item for litigation support services, will be \$50,000 or less; or

3. Such other small purchase delegated to the Attorney General by the Chief Procurement Officer pursuant to the Utah Procurement Code.

I. "Sole source" means a determination by the Attorney General in writing, that the sole source requirements of the Utah Procurement Code and this Rule have been met.

J. "State" means the State of Utah.

R105-1-3. Special Considerations to Best Serve the Public.

A. This rule applies to the procurement and appointment by of outside counsel, expert witnesses and litigation support services by the Attorney General.

B. In order to have an effective legal strategy or to protect reputations, the procurement of outside counsel, expert witnesses and litigation support services often requires that public notice of a particular procurement not be provided. The provisions of the Utah Procurement Code and this Rule regarding an emergency procurement must be met.

C. The Attorney General may select outside counsel, expert witnesses and professional litigation support services pursuant to a request for proposals under the Utah Procurement Code, rather than an Invitation for Bids, whenever the Attorney General does not make those selections through the small purchase, sole source, or emergency provisions of this rule. In any such selection process, it may be specified that the outside counsel is responsible for providing the expert witnesses or other litigation goods and services through the outside counsel's selection process and pursuant to the contract provisions with the Attorney General.

D. If a procurement item is not procured through the request for proposals, small, purchase, sole source or emergency provisions of this rule, the Attorney General may determine to use an Invitation for Bids or any other procurement process allowed by the Utah Procurement Code provided that the following applicable Utah laws are met:

1. The Utah Procurement Code; and

2. Administrative Rules of the Division of Purchasing and General Services.

E. The Attorney General's office shall ensure that the procurement for outside counsel is supported by a determination by the Attorney General that the procurement is in the best interests of the state, in light of available resources of the Attorney General's office.

F. The Attorney General's office shall provide for the fair and equitable treatment of all potential providers of outside counsel, expert witnesses and other litigation support services.

R105-1-4. Initial Determination of Whether the Procurement is a Small Purchase, Sole Source or Emergency.

Prior to any procurement, the Attorney General shall first determine whether the provisions in this rule for a small purchase, sole source or emergency procurement are applicable and if so, may use such provisions.

R105-1-5. Use of Request for Proposal Process.

If the procurement is not a small purchase, sole source or emergency procurement, the request for proposal process may be used when the procurement includes a factor other than price. This will often apply to professional services, such as outside counsel, expert witnesses and professional litigation support services. In any such selection process, it may be specified that the outside counsel is responsible for providing the expert witnesses or other litigation goods and services through the outside counsel's selection process and pursuant to the contract provisions with the Attorney General.

R105-1-6. Request for Proposal Process.

The Requests for Proposals shall be subject to the following:

A. The requirements of the Utah Procurement Code for Requests for Proposals shall be met, except that the emergency procurement provisions of the Utah Procurement Code and this Rule may be used to waive certain requirements as necessary.

B. The Request for Proposal process may be issued in stages or may be issued after a request for information or other procurement process allowed by the Utah Procurement Code or this Rule.

C. The Request for Proposal, shall contain, at a minimum, the following information:

1. A description of the project.

2. Any fee arrangements.

3. The persons or entities being sought in the procurement, including whether an individual person, firm or association of firms may respond.

4. The qualification criteria and the relative importance of the criteria. Examples of criteria include:

a. Identification by name and experience of the proposed service provider(s);

b. A description of the duties and responsibilities of each person providing the service; and

c. The ability of the persons providing the service to meet the needs of the project, including the consideration of any association with other persons, expert witnesses or firms;

5. The Contractual Requirements, which may be accomplished by including a copy of the contract.

6. A request for a conflicts analysis, including potential conflicts of interest or other related matters concerning the offeror's ability to ethically perform the requested services.

7. Requirements regarding the date, time, place, form and method concerning the filing of the Response to the Request for Proposals.

8. A statement that the Attorney General reserves the right to reject late-filed or nonconforming proposals.

9. A statement that the Attorney General reserves the right to reject all proposals. The Attorney General also reserves the right to modify or cancel the Request for Proposal Process and may or may not initiate a new Request for Proposal Process for the particular procurement matter.

D. Public notice of the Request for Proposals shall be provided in accordance with the Utah Procurement Code.

E. The award process, including notice of award, shall be made by the Attorney General in accordance with the Utah Procurement Code and this Rule.

F. A record of the procurement shall be made in accordance with the Utah Procurement Code and this Rule, including Rule R105-1-14.

R105-1-7. Small Purchases.

A. If the Attorney General determines that an anticipated procurement meets the definition of a small purchase under this Rule, the Attorney General shall make a finding in writing to that effect prior to the procurement.

B. Upon making the finding in writing required by subsection A of this Rule, the Attorney General may proceed with the procurement in accordance with the small purchase requirements of the Utah Procurement Code.

C. Small purchases may be by a direct award, by the use of a request for quotes or rotational system among qualified providers in accordance with policies established by the Attorney General.

D. The procurement shall be made with as much competition as reasonably practicable while avoiding harm, or a risk of harm, to public health, safety, welfare or property.

R105-1-8. Sole Source.

A. If the Attorney General determines in writing after reasonable efforts to locate providers for a project, that the circumstances described for a sole source in accordance with the Utah Procurement Code exists, or if a sole source may be justified based on another provision of the Utah Procurement Code, the Attorney General may use the Sole Source procedures of the Utah Procurement Code.

B. The Attorney General may publish notice of the sole source procurement on the internet or other means in order to learn if there is any other qualified entity or product that meets the needs of the procurement.

C. The Attorney General shall negotiate with the provider to ensure that the terms of the contract, including price and delivery, are in the best interest of the state.

R105-1-9. Emergency Procurements and Waiver of Requirements.

A. If an emergency as defined in this Rule or the Utah Procurement Code exists, the Attorney General may authorize waiver of any provision of this Rule in order to eliminate or reduce the impact of the emergency situation.

B. An emergency procurement, or the balance of the procurement that is not waived, shall be processed in accordance with the Utah Procurement Code and this Rule.

C. The authorization shall be in writing, stating the emergency condition upon which the emergency procurement or waiver of the requirement is made.

D. The procurement shall be made with as much competition as reasonably practicable while avoiding harm, or a risk of harm, to public health, safety, welfare or property.

R105-1-10. Confidentiality.

Except when an emergency exists under Rule R105-1-9 and in accordance with applicable law, where public inspection may be delayed until such time as the cause for the emergency no longer exists, the following shall be met:

A. Receipt, Opening, and Recording of Bids.

1. Receipt. Upon receipt, all bids and modifications will be time stamped, but not opened. Bids submitted through electronic means shall be received in such a manner that the time and date of submittal, along with the contents of such bids shall be securely stored until the time and date set for bid opening. They shall be stored in a secure place until bid opening time.

2. Opening and Recording. Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the Invitation for Bids. The names of the bidders, the bid price, and other information as is deemed appropriate by the procurement officer, shall be read aloud or otherwise be made available. The opened bids shall be available for public inspection except to the extent the bidder designates trade secrets or other proprietary data to be confidential as set forth in subsection 3 of this section. Material so designated shall accompany the bid and shall be readily separable from the bid in order to facilitate public inspection of the non-confidential portion of the bid. Make and model, and model or catalogue numbers of the items offered, deliveries, and terms of payment shall be publicly available at the time of bid opening regardless of any designation to the contrary. Bids submitted through electronic means shall be received in such a manner that the requirements of this section can be readily met.

3. Confidential Data. The Attorney General shall examine the bids to determine the validity of any requests for nondisclosure of trade secrets and other proprietary data identified in writing. If the parties do not agree as to the disclosure of data, the Attorney General shall inform the bidders in writing what portions of the bids will be disclosed.

B. Protected Records. The following are protected records and will be redacted subject to the procedures described below. From any public disclosure of records as allowed by the Governmental Records Access and Management Act (GRAMA) Title 63G, Chapter 2 of the Utah Code. The protections below apply to the various procurement records including records submitted by offerors and their subcontractors or consultants at any tier.

1. Trade Secrets. Trade Secrets, as defined in Utah Code Ann. Section 13-24-2, will be protected and not be subject to public disclosure if the procedures of subsection C of this Rule are met.

2. Certain commercial information or non-individual financial information. Commercial information or non-individual financial information subject to the provisions of Utah Code Ann. Section 63G-2-305(2) will be a protected record and not be subject to public disclosure if the procedures of subsection C of this Rule are met.

3. Other Protected Records under GRAMA. There will be no public disclosure of other submitted records that are subject to non-disclosure or being a protected record under a GRAMA statute provided that the requirements of subsection C of this Rule are met unless GRAMA requires such nondisclosure without any preconditions.

C. Process for Requesting Non-Disclosure. Any person (firm) who believes that a record should be protected under subsection B of this Rule shall include with their proposal or submitted document:

1. A written indication of which provisions of the submittal(s) are claimed to be considered for business confidentiality (including trade secret or other reason for non-disclosure under GRAMA; and

2. A concise statement of reasons supporting each claimed provision of business confidentiality.

D. Notification. The person who complies with subsection C of this Rule shall be notified by the governmental entity prior to the public release of any information for which business confidentiality has been asserted.

E. Non-Disclosure and Dispute Process. Except as provided by court order, the governmental entity to whom the request for a record is made under GRAMA, may not disclose a record claimed to be protected under subsection B of this Rule but which the governmental entity or State Records Committee determines should be disclosed until the period in which to bring an appeal expires or the end of the appeals process, including judicial appeal. This subsection E does not apply where the claimant, after notice, has waived the claim by not appealing or intervening before the records committee. To the extent provided by law, the parties to a dispute regarding the release of a record may agree in writing to an alternative dispute resolution process.

F. Timing of Public Disclosure. Any allowed public disclosure of records submitted in the request for proposal process will only be made after the selection of the successful offeror(s) has been made public.

G. Publicizing Awards.

1. After the selection of the successful offeror(s), notice of award shall be available in the purchasing agency's office and may be available on the internet.

2. The following shall be disclosed to the public after notice of the selection of the successful offeror(s) and after receipt of a GRAMA request and payment of any lawfully enacted and applicable fees:

a. The contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that are to be non-disclosed under R33-3-204;

b. The unsuccessful proposals, except for those portions that are to be non-disclosed under R33-3-204;

c. The rankings of the proposals;

d. The names of the members of any selection committee (reviewing authority);

e. The final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores or rankings; and

f. The written justification statement supporting the selection, except for those portions that are to be non-disclosed under this Rule.

3. After due consideration and public input, the following has been determined by the Attorney General to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with the Attorney General, and will not be disclosed by the Attorney General at any time to the public including under any GRAMA request:

a. The names of individual scorers in relation to their individual scores or rankings;

b. Non-public financial statements; and

c. Past performance and reference information, which is not provided by the offeror and which is obtained as a result of the efforts of the Attorney General. To the extent such past performance or reference information is included in the written justification statement, it is subject to public disclosure.

R105-1-11. Special Provisions regarding Contingency Fee contracts for Outside Counsel.

A. Attorney General shall not enter into a contingency fee contract for outside litigation or anticipated litigation counsel services unless the following requirements are met throughout the contract period and extensions thereof:

1. The Attorney General shall retain complete oversight and control over the course and conduct of the litigation or anticipated litigation;

2. The Attorney General shall appoint a member of the Utah Attorney General's Office to personally oversee the litigation;

3. The Utah Attorney General shall retain veto power over any decisions made by outside counsel;

4. The Utah Attorney General shall be apprised, attend and/or participate in all settlement conferences; and

5. Decisions regarding settlement of the case shall be made by the Utah Attorney General and not the outside counsel.

B. This Rule R105-1-11 does not apply to the hiring of outside bond counsel.

R105-1-12. Transparency in Contingency Fee Contracts with Outside Counsel.

A. as otherwise provided by GRAMA, applicable law, Rules of Professional Conduct or this Rule, a copy of the executed contingency fee contract shall be made available for public inspection in accordance with GRAMA.

B. payment by the Attorney General under a contingency fee contract shall be made available for public inspection in accordance with GRAMA.

C. request of the President of the Utah Senate or Speaker of the Utah House of Representatives, the Utah Attorney General shall make available all contracts for hiring outside counsel on a contingency fee basis in the preceding year from the date of the request as well as any known names of the parties to the legal matter, the amount of any recovery and the amount of any

contingency fee paid. Notwithstanding this, the Attorney General may withhold information that is confidential under GRAMA, Rules of Professional Conduct or applicable law unless the Attorney General determines that such release of information to the President of the Utah Senate or Speaker of the Utah House of Representatives can be adequately assured of confidentiality through a confidential agreement or similar document.

R105-1-13. Contracts.

Those awarded a contract under this Rule shall be required to enter into a written contract with the Attorney General. The written contract shall contain all material terms set forth in:

A. The final procurement documents issued by the Utah Attorney General;

B. The provisions in documents submitted by the provider to the extent such provisions are accepted by the Attorney General;

C. A termination for cause and a termination for convenience clause; and

D. Any terms required by law, whether by the constitutions, statutes, or rules or regulations of the United States or the State of Utah.

R105-1-14. Retention and Non-availability of Files.

A. All proposals submitted to the Attorney General under this rule become the property of the State of Utah and the office of the Attorney General.

B. All information in all proposals shall be placed in a file relating to the project for which the proposal was submitted. Each file shall contain:

1. If applicable, a copy of all written determinations of the Attorney General required by the Utah Procurement Code or this Rule;

2. A copy of the procurement documents and any written documentation related to notification requirements; and

3. All responses to procurements and modifications, in writing, to any procurement if those modifications have been negotiated by the Attorney General.

KEY: Attorney General, litigation support, outside counsel, expert witnesses

Date of Enactment or Last Substantive Amendment: 2012 Authorizing, and Implemented or Interpreted Law: Art VII Sec 16; 67-5; 63G-6

Community and Culture, Housing and
Community Development

R199-12

State Small Business Credit Initiative
Program Fund

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 35886

FILED: 02/17/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to identify procedures the Division will utilize in the administration and issuance of loans and loan guarantees from the State Small Business Credit Initiative Program Fund.

SUMMARY OF THE RULE OR CHANGE: The rule identifies the process and procedures on how the Division will issue loan and loan guarantees to small businesses; establishes a loan loss reserve fund and a credit advisory committee; and notifies the public how the funds will be administered.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 9-4-1601 and Section 9-4-1602 and Section 9-4-1603

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no anticipated cost or savings by this rule implementation. The rule requires no additional staffing or other cost structures not already contemplated by statute other than the formation of the credit advisory committee which is entirely voluntary and does not require even per diem expenses.

♦ **LOCAL GOVERNMENTS:** No anticipated cost or savings to local government through this rule. The rule will not affect local governments as they are not an eligible entity for participation.

♦ **SMALL BUSINESSES:** This program should improve the availability of credit to the small business community by providing credit enhancements to enable more issuance of credit to eligible small businesses that otherwise would not be available. Over the next six years, the program is projected to leverage the initial \$13,000,000 federal award into \$290,000,000 in credit to small businesses. Small businesses in most cases will still need to work with their local financial institution prior to being able to access the fund. This should not negatively affect them as this is a new process designed to enhance their viability and does not impede any existing avenue for small business to obtain credit.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Not affected--The program is entirely structured to work with small business in partnership with financial institutions as described in prior responses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated additional costs to affected persons as the program will dovetail with financial institution reporting requirements when loans and loan guarantees are in place. In addition, these requirements are set forth in statute rather than rule and no additional rules regarding compliance are in place.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses--The rule requires no additional burden to be placed on businesses, but rather

creates a unique program to enhance the viability of business.

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

COMMUNITY AND CULTURE
HOUSING AND COMMUNITY DEVELOPMENT
ROOM 500
324 S STATE ST
SALT LAKE CITY, UT 84111-2388
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jonathan Hardy by phone at 801-538-8650, by FAX at 801-538-8888, or by Internet E-mail at jhardy@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/16/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/23/2012

AUTHORIZED BY: Gordon Walker, Director

R199. Community and Culture, Housing and Community Development.

R199-12. State Small Business Credit Initiative Program Fund.

R199-12-1. Authority.

Pursuant to Section 9-4-1601 et seq., Utah Code, the Division of Housing Community Development is the administrator of the State Small Business Credit Initiative Program Fund.

R199-12-2. Purpose.

The State Small Business Credit Initiative Program Fund provides loans and loan guarantees to encourage lending from financial institutions to eligible small businesses within the state as defined by the funding sources contributing to the Fund.

R199-12-3. Definitions.

"Annual Receipts" to the fund include grants made by the federal government and state legislative appropriations if any, but does not include program income.

"Program Income" is defined as fees and interest income generated by participation in the program.

R199-12-4. Credit Advisory Committee.

The Division will establish a Credit Advisory Committee. Utah lending institutions shall submit an application of a small business borrower for private funding to the Committee. The Committee will evaluate the application provided by the lending institutions and make recommendations to the Division on the size, scope, and loan or loan loss reserve participation amount suitable for the applicant.

Additionally, the Committee will advise on application processes, underwriting criteria and other procedural elements of the Fund to ensure that program objectives are met.

R199-12-5. Eligibility.

Only those applications for funding assistance which are submitted by an eligible applicant for an eligible project shall be considered by the Division.

Eligible applicants include Small Businesses (defined as having no more than 750 employees), which:

A. applied for a credit product and were denied by a financial institution; and

B. the financial institution sponsors the application to the Fund as described in the Application Procedures; or

C. directly respond to a specific Request for Applications (RFA) published by the Division.

R199-12-6. Application Requirements.

A. Applications shall be submitted on forms published, and in accordance with the procedures outlined by the Division with the advice of the Committee. Completed applications which have been accepted for processing will be placed on the next available Committee agenda for review and recommendation.

B. The primary process for submitting proposals to the fund is as follows:

1. An Eligible Small Business must apply for a credit product at a financial institution which has signed a State Small Business Credit Initiative Program Fund Participation Agreement with the Division.

2. The small business applicant must be denied for current banking products offered by the financial institution.

3. The participating financial institution will submit a sponsorship application form, in addition to the relevant documentation and underwriting criteria, to the Division and specify the type, amount and reason for a loan participation or loan guarantee on the transaction.

4. The Committee at its discretion may interview parties involved in the transaction to further clarify any information as part of the application review prior to issuing a recommendation to the Director.

C. An applicant may respond to a specific Request for Applications issued by the Division on forms prescribed by the Division.

R199-12-7. Application Review Procedures.

A. The Committee will review applications and make recommendations on whether to fund a loan or loan guarantee at regularly scheduled review meetings as published on the Division's website.

B. The process for review of new applications for loans and loan guarantees shall be as follows:

1. Submission of an application, on or before the applicable deadline to the Division program staff for technical review and analysis.

2. Incomplete applications will be held by the staff pending submission of required information.

3. Complete applications accepted for processing will be placed on the next available review agenda.

4. At the review the Committee may either recommend:

a. denial of the application;

b. the issuance of the requested loan or loan guarantee

- c. a modified issuance of a loan or loan guarantee
d. further analysis of the viability of the project through further collection of documentation prior to issuing a decision on the funding request.
 5. Final recommendations of the Committee on issuance or denial of applications will be forwarded to the Director.
 6. The Director may issue loans or loan guarantees after reviewing the recommendation of the Committee.

R199-12-8. Loan Loss Reserve Fund.

There is created a loan loss reserve fund to be used to secure the loan guarantees issued by the Division. The Division may issue guarantees in an amount up to a ten to one ratio of balances within the loan loss reserve fund. Neither the State nor the Division are liable for guarantees issued beyond the balance of the reserve fund. Each participating financial institution shall be informed of this stipulation via a participation agreement with the Division prior to participating in the loan guarantee program.

R199-12-9. Procedures for Electronic Meetings.

- A. These provisions govern any meeting at which one or more members of the Committee or one or more applicants appear telephonically or electronically pursuant to Section 52-4-207.
 B. If one or more members of the Committee or one or more applicants or sponsors can not attend a regularly scheduled Committee meeting in person, that member, applicant or sponsor may participate in the meeting electronically or telephonically.

KEY: small business loans, loan guarantees

Date of Enactment or Last Substantive Amendment: 2012
Authorizing, and Implemented or Interpreted Law: 9-4-1601; 9-4-1602; 9-4-1603

Environmental Quality, Water Quality
R317-801
 Utah Sewer Management Program
 (USMP)

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 35903

FILED: 03/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the proposed rule is to provide a basis for a new management program for public sewer collection systems. The program is needed to provide standards for the planning, design, operation, and maintenance of Utah's public sewer collection systems.

SUMMARY OF THE RULE OR CHANGE: The rule outlines the requirements for overall management of sewer collection

systems including plans to define and report sanitary sewer overflows, maintain and operate the system, assure adequate capacity, and finance the systems. The program will be implemented through the issuance of a general permit. The program employs a phased implementation schedule of up to five years for certain components to ease the burden on permittees.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-5-105

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The proposed rule will be implemented using existing state resources.
- ◆ LOCAL GOVERNMENTS: The proposed rule only affects public sewer entities. The long term effects of the program should result in increased efficiencies in planning operation and maintenance, thereby reducing spills and system upsets, and attendant long term costs. Compliance costs are difficult to quantify due to the wide range of current compliance among different systems and collection system size. The agency anticipates that the majority of the additional compliance burden can be absorbed by existing resources. There are approximately 180 systems statewide affected by the proposed rule.
- ◆ SMALL BUSINESSES: No impacts to businesses are anticipated. The proposed rule applies only to public sewer collection systems.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: No impacts to other person are anticipated. The proposed rule applies only to public sewer collection systems.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs are difficult to quantify due to the wide range of current compliance among different systems and collection system size. Many systems are currently meeting many of the program requirements. The agency anticipates that the majority of the additional compliance burden can be absorbed by existing resources.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No impacts to businesses are anticipated. The proposed rule only applies to public sewer collection systems.

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

ENVIRONMENTAL QUALITY
 WATER QUALITY
 THIRD FLOOR
 195 N 1950 W
 SALT LAKE CITY, UT 84116
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ John Kennington by phone at 801-536-4380, by FAX at 801-536-4301, or by Internet E-mail at jkennington@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/16/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/23/2012

AUTHORIZED BY: Walter Baker, Director

R317. Environmental Quality, Water Quality.

R317-801. Utah Sewer Management Program (USMP).

R317-801-1. Applicability and Definitions.

1.1 APPLICABILITY. Any federal or state agency, municipality, county, district, and other political subdivision of the state that owns or operates a sewer collection system is required to comply with this rule, R317-801.

1.2 DEFINITIONS. The following definitions are to be used in conjunction with those in R317-1-1 and R317-8-1. The following terms have the meaning as set forth unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of these rules:

- (1) "BMP" means "best management practice".
- (2) "CCTV" means "closed circuit television".
- (3) "CIP" means a "Capital Improvement Plan".
- (4) "DWQ" means "the Utah Division of Water Quality".
- (5) "FOG" means "fats, oils and grease".
- (6) "I/I" means "infiltration and inflow".
- (7) "Permittee" means the federal and state agency, municipality, county, district, and other political subdivision of the state that owns or operates a sewer collection system or who is in direct responsible charge for operation and maintenance of the sewer collection system. When two separate federal and state agency, municipality, county, district, and other political subdivision of the state are interconnected, each shall be considered a separate Permittee.
- (8) "SECAP" means "System Evaluation and Capacity Assurance Plan".
- (9) "Sewer Collection System" means a system for the collection and conveyance of wastewaters or sewage from domestic, industrial and commercial sources. The Sewer Collection System does not include sewer laterals under the ownership and control of an owner of real property, private sewer systems owned and operated by an owner of real property, and systems that collect and convey stormwater exclusively.
- (10) "SORP" means "Sewer Overflow Response Plan"
- (11) "SSMP" means "Sewer System Management Plan".
- (12) "SSO" means "sanitary sewer overflow", the escape of wastewater or pollutants from, or beyond the intended or designed containment of a sewer collection system.
- (13) "Class 1 SSO" (Significant SSO) means a SSO or backup that is not caused by a private lateral obstruction or problem that:
 - (a) effects more than five private structures;
 - (b) affects one or more public, commercial or industrial structure(s);
 - (c) may result in a public health risk to the general public;
 - (d) has a spill volume that exceeds 5,000 gallons, excluding those in single private structures; or

(e) discharges to Waters of the state.

(14) "Class 2 SSO" (Non Significant SSO) means a SSO or backup that is not caused by a private lateral obstruction or problem that does not meet the Class 1 SSO criteria.

(15) "USMP" means the "Utah Sewer Management Program".

R317-801-2. General Permit Requirements.

2.1 GENERAL PERMIT FOR SEWER COLLECTION SYSTEM. All permittees are required to operate under the General Permit for sewer collection systems as required by this rule, R317-801.

2.2 NOTICE OF INTENT REQUIREMENTS.

(1) A permittee shall submit a Notice of Intent to be covered by the General Permit for sewer collection systems between October 1, 2012 and November 30, 2012. A new permittee for a sewer collection system shall submit a Notice of Intent to be covered by the General Permit for sewer collection systems at least three (3) months prior to operation of the system.

(2) Forms and instructions for submitting a Notice of Intent can be obtained online on the DWQ's website.

2.3 EFFECTIVE DATE OF GENERAL PERMIT.

General permit coverage will be in effect when the Notice of Intent has been submitted, approved and declared complete by the Executive Secretary.

R317-801-3. General Permit Provisions.

3.1 PROHIBITIONS.

(1) SSO that results in a discharge of untreated or partially treated wastewater to Waters of the state is prohibited.

(2) Any SSO that results in a discharge of untreated or partially treated wastewater that creates a health hazard, nuisance, or is a threat to the environment is prohibited.

3.2 GENERAL SSO REQUIREMENTS.

1) permittee shall take all feasible steps to eliminate SSOs to include:

(a) properly managing, operating, and maintaining all parts of the sewer collection system;

(b) training system operators;

(c) allocating adequate resources for the operation, maintenance, and repair of its sewer collection system, by establishing a proper rate structure, accounting mechanisms, and auditing procedures to ensure an adequate measure of revenues and expenditures in accordance with generally acceptable accounting practices; and

(d) providing adequate capacity to convey base flows and peak flows, including flows related to normal wet weather events. Capacity shall meet or exceed the design criteria of R317-3.

(2) SSOs shall be reported in accordance with the requirements of R317-801-4.

(3) When an SSO occurs, the permittee shall take all feasible steps to:

(a) control, contain, or limit the volume of untreated or partially treated wastewater discharged;

(b) terminate the discharge;

(c) recover as much of the wastewater discharged as possible for proper disposal, including any wash down water; and

(d) mitigate the impacts of the SSO.

R317-801-4. General Permit SSO Reporting Requirements.

4.1 SSO REPORTING. shall be reported as follows:

(1) A Class 1 SSO shall be reported orally within 24 hrs and with a written report submitted to the DWQ within five calendar days. Class 1 SSO's shall be included in the annual USMP report.

(2) Class 2 SSOs shall be reported on an annual basis in the USMP annual report.

4.2 ANNUAL REPORT. A permittee shall submit to DWQ a USMP annual operating report covering information for the previous calendar year by April 15 of the following year.

R317-801-5. SSMP Requirements.

5.1 SSMP. The permittee shall have and implement a written SSMP and shall make it available to DWQ upon request. A copy of the SSMP shall be publicly available at the permittee's office and/or available on the Internet. The SSMP must be publicly noticed by the permittee and approved by the permittee's governing body at a public meeting. main purpose of the SSMP is to provide a plan and schedule to properly manage, operate, and maintain all parts of the sewer collection system to reduce and prevent SSOs, as well as minimize impacts of any SSOs that occur.

5.2 CONTENTS OF SSMP. The SSMP shall include:

(1) Organization information to include:

(a) The name or position of the responsible or authorized representative;

(b) The names and telephone numbers for management, administrative, and maintenance positions responsible for implementing specific measures in the SSMP. The SSMP must identify lines of authority through an organization chart or similar document with a narrative explanation; and,

(c) chain of communication for reporting SSOs, from receipt of a complaint or other information, including the person responsible for reporting SSOs to DWQ, the public (if needed) and other agencies if applicable (such as County Health Department).

(2) Sewer collection system use ordinances, service agreements, or other legally binding methods, that:

(a) Prohibit unauthorized discharges into its sewer collection system i.e. I/I, stormwater, chemical dumping, unauthorized debris and cut roots;

(b) Require that sewers and connections be properly designed and constructed;

(c) Ensure access for maintenance, inspection, or repairs for portions of the laterals owned or maintained by the permittee;

(d) Limit the discharge of FOG and other debris that may cause blockages;

(e) Require compliance with pretreatment requirements;

(f) Provide authority to inspect industrial users; and,

(g) Provide for enforcement for violations of the requirements.

(3) An Operations and Maintenance Plan which includes:

(a) An up-to-date map of the sewer collection system, showing all gravity line segments, manholes, pumping facilities, pressure pipes, gates and all other applicable conveyance facilities;

(b) A description of routine preventative operation and maintenance activities by staff and contractors, including a system for scheduling regular maintenance and cleaning of the sewer collection system with more frequent cleaning and maintenance targeted at known problem areas. The plan should include regular

visual and TV inspection of manholes and sewer pipes and a system of ranking the condition of sewer pipe and manholes. The plan should have an appropriate system to document scheduled and all other types of work activities, such as a maintenance, management, system, or paper work orders;

(c) A Rehabilitation, Replacement and Improvement Plan to identify and prioritize system deficiencies and implement short-term and long-term rehabilitation actions to address each class of deficiencies. Rehabilitation and replacement should focus on sewer pipes that are at risk of failure or prone to more frequent blockages due to pipe defects. The rehabilitation and replacement plan shall include a CIP, if required, that addresses proper management and protection of the infrastructure assets;

(d) Schedule for training on a regular basis for staff and contractors in operations and maintenance consistent with DWQ continuing education requirements for certified operators; and,

(e) Providing for equipment and replacement part inventories, including identification of critical replacement parts. (This may include a list of vendors that the equipment and/or part can be purchased from, or local agreements).

(4) Design and performance provisions which include:

(a) Design, construction standards and specifications that meet or exceed R317-3 for the installation of new sewer collection systems, pump stations and other appurtenances and for the rehabilitation and repair of existing sewer collection systems; and,

(b) Procedures and standards for inspecting, testing and documenting the installation of new sewers, pumps, and other appurtenances and for rehabilitation and repair projects.

(5) A SORP which has the following measures to protect public health and the environment:

(a) A program to respond to overflows which addresses:

1. Receipt and documentation of information regarding a sewer overflow;

2. Dispatch of appropriate crews to the site of the sewer overflow;

3. Overflow correction, containment, and cleanup including procedures to ensure that all reasonable steps are taken to contain and prevent the discharge of untreated and partially treated wastewater to Waters of the state and to minimize or correct any adverse impact on the environment resulting from the sewer overflow;

4. Preparation of an overflow report by responding personnel; and,

5. Follow up with affected persons,

(b) Procedures for prompt notification to the public,

(c) Procedures to notify appropriate regulatory agencies and other potentially affected entities to include:

1. DWQ to comply with SSO reporting requirements;

2. County Health Department, local water supply agencies as appropriate, and other affected agencies should the SSO potentially affect the public health or reach the Waters of the state;

3. Utah Division of Emergency Response and Remediation, if hazardous materials are or may be involved; and,

4. Any other required UPDES, State, or Federal reporting requirements.

(d) Procedures to ensure that appropriate staff personnel are aware of and follow the SORP and are appropriately trained.

(6) For permittees with 2000 or more connections, and at the option of permittees with less than 2000 connections, a FOG

control plan consistent with the potential for FOG discharge from commercial and industrial dischargers. Where required, the FOG control plan shall include some or all of the following:

(a) An implementation plan and schedule for a residential and commercial public education outreach for the FOG control plan that promotes proper disposal of FOG;

(b) A plan for the disposal of FOG generated within the permittee's service area. This may include a list of acceptable disposal facilities and/or additional facilities needed to adequately dispose of FOG;

(c) Sewer collection system use ordinances, service agreements, or other legally binding methods, that prohibit FOG discharges to the system;

(d) Requirements to install grease removal devices (such as traps or interceptors), design standards for the removal devices, maintenance requirements, BMP requirements, record keeping and reporting requirements;

(e) A FOG inspection, monitoring and evaluation plan;

(f) Identification of resources to do inspections and enforce the FOG control plan; and

(g) A maintenance schedule for lines affected by FOG blockages.

(7) For permittees with 2000 or more connections, and at the option of permittees with less than 2000 connections, a SECAP. Where required, the SECAP shall include the following:

(a) an evaluation of the wastewater collection system's existing hydraulic capacity using historical information such as flow, system records, current zoning, local development options, and maintenance records;

(b) identification of system deficiencies; and,

(c) a CIP that includes an appropriate model for the system that can be used to evaluate the hydraulic conditions in the system and identify existing and forecast future deficiencies to provide hydraulic capacity such as for future dry weather peak flow conditions, as well as the appropriate design for storm or wet weather events. The CIP shall establish a short and long term schedule to address the deficiencies and conditions identified, including a priority list, alternative analysis, and schedule for recommended upgrades. The CIP shall include increases in pipe size, I/I reduction plans, increases in pumping capacities and/or redundancies, storage capacity increases and recommended trunk line cleaning schedules or other monitoring activities. The CIP shall identify the sources of funding. The schedule shall be reviewed and adjusted yearly.

5.3 MONITORING, MEASUREMENT, AND SSMP MODIFICATIONS.

(1) The permittee shall maintain relevant information that can be used to establish and prioritize appropriate SSO prevention activities and shall document all monitoring activities (i.e. daily cleaning activities, CCTV video records, manhole inspections, and hot spot activities).

(2) The permittee shall regularly review the effectiveness of each element of the SSMP and shall monitor the SECAP implementation (when required).

(3) The permittee shall annually assess the success of the operation and maintenance plan (i.e. line cleaning, CCTV inspections and manhole inspections, and SSO events) and adjust the operation and maintenance plan as needed based on system performance.

(4) The permittee shall update SSMP elements, as appropriate, based on monitoring or performance evaluations.

(5) The permittee shall regularly identify and illustrate SSO trends, including frequency, location, and volume.

(6) The permittee shall conduct periodic internal audits, appropriate to the size of the system and the number of SSOs. At a minimum, these audits must occur every five years and a report must be prepared and kept on file. This audit shall focus on evaluating the effectiveness of the SSMP and the permittee's compliance with the SSMP, including identification of any deficiencies in the SSMP and steps to correct them.

(7) The permittee is encouraged to communicate with the public, as needed, on the development, implementation, and performance of the SSMP. The permittee may establish a public outreach/communication plan which shall provide the public with the opportunity to provide input to the permittee as the SSMP is developed and implemented.

(8) The SSMP shall be prepared by, or under the direction of, a Utah certified professional engineer or another qualified professional.

(9) The SSMP must be completed by the deadlines listed in the Timeframe for Implementation in R317-801-6.

R317-801-6. Certification, Submission and Implementation Requirements.

6.1 TIMELINE FOR NOTICE, SSMP, AND CERTIFICATION. The permittee shall certify to DWQ that a SSMP is in place that is in compliance with the USMP by submitting a notice to DWQ within the time frames identified in the following time schedule:

Table 1. Timeframe for Implementation.

Task	Completion Dates by Population			
	>50,000 population	15,001 to 50,000 population	3,501 to 15,000 population	3,500 and Less population
Notice of Intent to be covered by General Permit	4 - 6 Months after effective date of rule			
Completion of SSMP (excluding SECAP)	24 months after effective date	30 months after effective date	36 months after effective date	42 months after effective date
Completion of SECAP when required	36 months after effective date	42 months after effective date	48 months after effective date	60 months after effective date

6.2 SIGNIFICANT MODIFICATIONS. Significant modification of the SSMP must be public noticed by the permittee and approved by the permittee's governing body at a public meeting. A new notice certifying the revised SSMP is in place shall be sent to DWQ.

6.4 INCOMPLETE REPORTS. If a permittee becomes aware that it failed to submit required information in any notice or report, the permittee shall promptly amend the notice or report.

6.5 CERTIFICATION OF NOTICES AND REPORTS.
All notices and reports submitted to DWO shall be signed and certified as required in R317-8-3.4.

KEY: sewer collection systems, Utah Sewer Management Program

Date of Enactment or Last Substantive Amendment: 2012

Authorizing, and Implemented or Interpreted Law: 19-5-105

Health, Health Care Financing **R410-14** Administrative Hearing Procedures

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35901

FILED: 02/29/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify definitions, hearing procedures, hearing availability, and notice requirements for the administrative hearing process.

SUMMARY OF THE RULE OR CHANGE: This change clarifies definitions, hearing procedures, hearing availability, notice requirements for the administrative hearing process, and the role of a hearing officer. It also makes other minor corrections.

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

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The Department does not anticipate any impact to the state budget because this change only clarifies certain sections of the rule text.

◆ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund the Medicaid and Children's Health Insurance Program (CHIP).

◆ SMALL BUSINESSES: The Department does not anticipate any impact to small businesses because this change only clarifies certain sections of the rule text.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department does not anticipate any impact to providers or recipients of Medicaid and CHIP because this change only clarifies certain sections of the rule text.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not anticipate any cost to a single provider or recipient of Medicaid and CHIP because this change only clarifies certain sections of the rule text.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact on business is predicted, as these amendments will clarify the current process while imposing no new costs on providers in the Medicaid program or recipients. Public comment will be carefully evaluated before any further action on the rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/16/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/23/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R410. Health, Health Care Financing.

R410-14. Administrative Hearing Procedures.

R410-14-2. Definitions.

(1) The definitions in Rule R414-1 and Section 63G-4-103 apply to this rule.

(2) The following definitions also apply:

(a) "Action" means a denial, termination, suspension, or reduction of medical assistance for a recipient, or a reduction, denial or revocation of reimbursement for services for a provider; or a denial or termination of eligibility for participation in a program, or as a provider.

(b) "Aggrieved Person" means any recipient or provider who is adversely affected by any action or inaction of the Division of Medicaid and Health Financing (DMHF) within the Department of Health, the Department of Human Services (DHS), the Department of Workforce Services (DWS), or any managed health care plan.

(c) "Ex Parte" communications mean direct or indirect communication in connection with an issue of fact or law between the [presiding] hearing officer and one party only.

(d) "Hearing Officer" means solely any person designated by the DMHF Director to conduct administrative hearings for the Medicaid program.

([d]e) "Managed Care Organization" means a health maintenance organization or prepaid mental health plan that contracts with DMHF to provide medical or mental health services to medical assistance recipients.

([e]f) A "medical record" is a record that contains medical data of a client.

([f]g) "Order" means a ruling by a [presiding]hearing officer that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons.

R410-14-3. Administrative Hearing Procedures.

(1) An aggrieved person may file a written request for agency action pursuant to Section 63G-4-201, and in accordance with this rule. If a medical issue is in dispute, each request should include supporting medical documentation. DMHF will schedule a hearing only when it receives sufficient medical records and may dismiss a request for agency action if it does not receive supporting medical documentation in a timely manner.

(2) DMHF shall conduct the following as formal adjudicative proceedings in accordance with Section R410-14-12:

(a) Preadmission Screening Resident Review (PASRR) Hearings. Pursuant to 42 U.S.C. 1396r, any resident and potential resident of a nursing facility whether Medicaid eligible or not, who disagrees with the preadmission screening and appropriateness of a placement decision that DMHF or its designated agent makes, has the right to a hearing upon request.

(b) Nurse Aide Registry Hearings. Pursuant to 42 U.S.C. 1395i-3, each nurse aide is subject to investigation of allegations of resident abuse, neglect or misappropriation of resident property. DMHF or its designated agent shall investigate each complaint and the nurse aide is entitled to a hearing that DMHF or its designated agent conducts before a substantiated claim can be entered into the registry.

(c) Skilled Nursing Facility (SNF), Intermediate Care Facility (ICF) or Intermediate Care Facility for the Mentally Retarded (ICF/MR) Hearings. 42 CFR 431, Subpart D, requires DMHF to provide SNF, ICF and ICF/MR appeal procedures that satisfy the requirements of 42 CFR 431.153 and 431.154.

(d) Managed Care [Plan]Entity Hearings. Pursuant to 42 U.S.C. 1396u-2, federal law requires Medicaid and Children's Health Insurance Program (CHIP) managed care [organizations] entities to have an internal grievance and appeal[s] process for Medicaid and CHIP enrollees or providers acting on the enrollee's behalf to challenge the denial of payment for medical assistance. The MCE shall provide to enrollees written information that explains the grievance and appeals process[written managed care enrollment information must explain this procedure]. DMHF requires exhaustion of the [managed care]MCE appeals process before an enrollee or provider may request a hearing. An enrollee or provider who submits a hearing request on behalf of another enrollee must include a copy of the final written notice of the appeal decision. An enrollee or provider who acts on the enrollee's behalf must also request a hearing within 30 days from the date of the MCE final written notice of the appeal decision.

~~(e) Home and Community-Based Waiver Hearings. 42 CFR 431, Subpart E, requires DMHF to provide appeal procedures that satisfy the requirements of 42 CFR 431.200 through 431.250.~~

~~(i) A managed care provider has no right to a hearing with DMHF, except if the provider is acting solely on behalf of the client. Nevertheless, if there is an issue that could affect the status of DMHF as the single state agency, DMHF may hold a hearing at its own discretion.~~

~~(e) Home and Community-Based Waiver Hearings. 42 CFR 431, Subpart E, requires DMHF to provide appeal procedures that satisfy the requirements 42 CFR 431.200 through 431.250.~~

(i) For home and community-based waivers in which the Division of Services for People with Disabilities (DSPD) is the designated operating agency and the appeal is based on whether the person meets the eligibility criteria for state matching funds through DHS in accordance with Title 62A, Chapter 5a, the eligibility determination of the operating agency is final. If DSPD determines that an individual does not meet the eligibility criteria for state matching funds through DHS in accordance with Title 62A, Chapter 5a, the operating agency shall inform the individual in writing and provide the individual an opportunity to appeal the decision through the DHS hearing process in accordance with Section R539-3-8. The DSPD decision is dispositive for purposes of this subsection. DMHF shall sustain the determination and there is no right to further agency review.

(3) DMHF shall conduct the following as informal adjudicative proceedings:

(a) Resident Right Hearings. Pursuant to 42 U.S.C. 1396n, the state may restrict access to providers that it designates for services for a reasonable amount of time. The state may also restrict Medicaid recipients that utilize services at a frequency or amount that are not medically necessary, in accordance with state utilization guidelines. DMHF shall give the recipient notice and opportunity for an informal hearing before imposing restrictions.

(4) Eligibility Hearings. If eligibility for medical assistance is at issue, DWS shall conduct the hearing. DMHF, however, shall conduct any hearing to determine an applicant's or recipient's disability.

R410-14-4. Availability of Hearing.

(1) The [presiding]hearing officer may not grant a hearing if the issue is a state or federal law requiring an automatic change in eligibility for medical assistance or covered services that adversely affect the aggrieved person.

(2) DMHF [will]shall conduct a hearing in connection with the agency action if the aggrieved person requests a hearing and there is a disputed issue of fact. If there is no disputed issue of fact, the [presiding]hearing officer may deny a request for an evidentiary hearing and issue a recommended decision without a hearing.

(3) There is no disputed issue of fact if:

~~(a)~~ the aggrieved person submits facts that do not conflict with the facts that the agency relies upon in taking action or seeking relief.

(4) If the aggrieved person objects to the hearing denial, the person may raise that objection as grounds for relief in a request for reconsideration.

(5) DMHF may not grant a hearing to a managed care provider to dispute the terms of a contract[or the payment of a claim]. This provision also applies to terms in a contract for rates of reimbursement.

R410-14-5. Notice.

(1) DMHF, DHS, DWS, and an MCE [managed health care plan]shall provide written notice to each individual or provider affected by an adverse action in accordance with 42 CFR 431.211,

213 and 214. Adverse actions to a recipient include actions that affect:

- (a) eligibility for assistance;
 - (b) scope of service;[-or]
 - (c) denial or limited prior authorization of a requested service including the type or level of service; or
 - ([e]d) payment of a claim.
- (2) Adverse actions to a provider include:
- (a) a reduction in payment, denial of reimbursement and claim of payment; and
 - (b) a sanction that becomes effective.
- (3) A notice must contain:
- (a) a statement of the action DMHF, DHS, DWS, or an MCE[~~managed health care plan~~] intends to take;
 - (b) the date the intended action becomes effective;
 - (c) the reasons for the intended action; and
 - (d) the specific regulations that support the action, or the change in federal law, state law or DMHF policy, which requires the action;
 - (e) the right and procedure to request a formal hearing before DMHF or an informal hearing before DHS or DWS;
 - (f) the right to represent oneself, the right to legal counsel, or the right to use another representative at the formal hearing; and
 - (g) if applicable, an explanation of the circumstances under which reimbursement for medical services will continue pending the outcome of the proceeding, if DMHF receives a hearing request within ten calendar days from the date of the notice of agency action.
- (4) DMHF shall mail the notice at least ten calendar days before the date of the intended action except:
- (a) DMHF may mail a notice not later than the date of action in accordance with 42 CFR 431.213.
 - (5) DMHF may shorten the period of advance notice to five days before the date of action if:
 - (a) DMHF has facts that indicate it must take action due to probable fraud by the recipient or provider; and
 - (b) the facts have been verified by affidavit.

R410-14-6. Request for Formal Hearing.

(1) DMHF shall conduct formal hearings for all issues except those specifically excluded by this rule. The [presiding]hearing officer may convert the proceeding to an informal hearing if a recipient or provider requests an informal hearing that meets the criteria set forth in Section 63G-4-202.

(2) Formal hearings must be requested within the following deadlines:

- (a) A medical assistance provider or recipient [may]must request a formal hearing within 30 calendar days from the date that DMHF sends written notice of its intended action.
- (b) A medical assistance recipient [may]must request an informal hearing with DWS regarding eligibility for medical assistance within 90 calendar days from the date that DMHF sends written notice of its intended action.
- (c) A medical assistance recipient must request a formal hearing with DMHF regarding eligibility for disability assistance within 90 calendar days from the date that DMHF sends written notice of its intended action.

([e]d) A medical assistance recipient must request a formal hearing regarding scope of service within 30 calendar days from the date that DMHF [issues]sends written notice of its intended action.

(3) Failure to submit a timely request for a formal hearing constitutes a waiver of an individual's due process rights. The request must explain why the recipient is seeking agency relief, and the recipient must submit the request on the "Request for Hearing/Agency Action" form. The recipient must then mail or fax the form to the address or fax number contained on the notice of agency action.

(4) DMHF considers a hearing request that a recipient sends via mail to be filed on the date of the postmark. If the postmark date is illegible, erroneous, or omitted, DMHF considers the request to be filed on the date that DMHF receives it, unless the sender can demonstrate through competent evidence that he mailed it before the date of receipt.

(5) DMHF shall schedule a pre-hearing, or begin negotiations in writing within 30 calendar days from the date it receives the request for a formal hearing or agency action.

(6) DMHF may deny or dismiss a request for a hearing if the aggrieved person:

- (a) withdraws the request in writing;
 - (b) verbally withdraws the hearing request at a prehearing conference;
 - (c) fails to appear or participate in a scheduled proceeding without good cause;
 - (d) prolongs the hearing process without good cause;
 - (e) cannot be located or agency mail is returned without a forwarding address; or
 - (f) does not respond to any correspondence from the [presiding]hearing officer or fails to provide medical records that the agency requests.
- (7) An aggrieved person must inform DMHF of his current address and telephone number.

R410-14-11. Intervention.

(1) Section 63G-4-207 permits a person to intervene in a formal adjudicative proceeding if:

- (a) the person petitions to intervene at least seven calendar days before the scheduled hearing, or as the [presiding]hearing officer permits;
- (b) the petition contains a clear and concise statement of the direct and substantial interest of the person seeking to intervene;
- (c) the person seeking affirmative relief states the basis for relief;
- (d) the [presiding]hearing officer has discretion to permit other parties an opportunity to support or oppose intervention; and
- (e) the [presiding]hearing officer has discretion to grant leave to intervene.

(2) The [presiding]hearing officer may dismiss an intervenor if the intervenor has no direct or substantial interest in the hearing.

R410-14-12. Conduct of Hearing.

(1) DMHF shall conduct hearings in accordance with Section 63G-4-206.

(2) DMHF shall appoint an impartial [presiding]hearing officer to conduct formal hearings. Previous involvement in the initial determination of the action precludes an officer from appointment.

(3) The [presiding]hearing officer may elect to hold a prehearing meeting to:

- (a) formulate or simplify the issues;
- (b) obtain admissions of fact and documents that will avoid unnecessary proof;
- (c) arrange for the exchange of proposed exhibits or prepared expert testimony;
- (d) outline procedures for the formal hearing; or
- (e) to agree to other matters that may expedite the orderly conduct of the hearing or settlement.

(4) DMHF shall record agreements that the parties reach during the prehearing or the parties may enter into a written stipulation.

(5) DMHF may conduct all formal hearings only after adequate written notice of the hearing has been served on all parties setting forth the date, time and place of the hearing.

(6) The [presiding]hearing officer shall take testimony under oath or affirmation.

- (7) Each party has the right to:
- (a) present evidence, argue, respond, conduct cross-examination, and submit rebuttal evidence;
 - (b) introduce exhibits;
 - (c) impeach any witness regardless of which party first called the witness to testify; and
 - (d) rebut the evidence against the party.

(8) DMHF shall follow the rules of evidence as applied in Utah civil actions. Each party may admit any relevant evidence and use hearsay evidence to supplement or explain other evidence. Hearsay, however, is not sufficient by itself to support a finding unless admissible over objection in civil actions. The [presiding]hearing officer shall give effect to the rules of privilege recognized by law and may exclude irrelevant, immaterial and unduly repetitious evidence.

(9) The [presiding]hearing officer may question any party or witness.

(10) The [presiding]hearing officer shall control the evidence to obtain full disclosure of the relevant facts and to safeguard the rights of the parties. The [presiding]hearing officer may determine the order in which he receives the evidence.

(11) The [presiding]hearing officer shall maintain order and may recess the hearing to regain order if a person engages in disrespectful, disorderly or disruptive conduct. The [presiding]hearing officer may remove any person, including a participant from the hearing, to maintain order. If a person shows persistent disregard for order and procedure, the [presiding]hearing officer may:

- (a) restrict the person's participation in the hearing;
- (b) strike pleadings or evidence; or
- (c) issue an order of default.

(12) If a party desires to employ a court reporter to make a record of the hearing, it must file an original transcript of the hearing with the [presiding]hearing officer at no cost to the agency.

(13) The party that initiates the hearing process through a request for agency action has the burden of proof as the moving party.

(14) When a party possesses but fails to introduce certain evidence, the [presiding]hearing officer may infer that the evidence does not support the party's position.

R410-14-13. Ex Parte Communications.

(1) Ex parte communications are prohibited.

(2) The [presiding]hearing officer may not listen to or accept any ex parte communication. If a party attempts ex parte communication, the [presiding]hearing officer shall inform the offeror that any communication that the [presiding]hearing officer receives off the record, will become part of the record and furnished to all parties.

(3) Ex parte communications do not apply to communications on the status of the hearing and uncontested procedural matters.

R410-14-14. Continuances or Further Hearings.

(1) The [presiding]hearing officer, on the officer's own motion or at the request of a party showing good cause, may:

- (a) continue the hearing to another time or place; or
- (b) order a further hearing.

(2) If the [presiding]hearing officer determines that additional evidence is necessary for the proper determination of the case, the officer may:

- (a) continue the hearing to a later date and order the party to produce additional evidence; or
- (b) close the hearing and hold the record open to receive additional documentary evidence.

(3) The [presiding]hearing officer shall provide to all parties any evidence that he receives and each party has the opportunity to rebut that evidence.

(4) The [presiding]hearing officer shall provide written notice of the time and place of a continued or further hearing, except when the officer orders a continuance during a hearing and all parties receive oral notice.

R410-14-15. Record.

(1) The [presiding]hearing officer shall make a complete record of all formal hearings. A hearing record is the sole property of DMHF and DMHF shall maintain the complete record in a secure area.

(2) If a party requests a copy of the recording of a formal hearing, that party may transcribe the recording.

(3) DMHF or its designated agent shall retain recordings of formal hearings for a period of one year.

(4) DMHF shall retain written records of formal hearings for a period of two years pending further litigation.

R410-14-16. Proposed Decision and Final Agency Review.

(1) At the conclusion of the formal hearing, the [presiding]hearing officer shall take the matter under advisement and submit a recommended decision to the DMHF Director or the director's designee. The recommended decision is based on the testimony and evidence entered at the hearing, Medicaid policy and procedure, and legal precedent.

(2) The recommended decision must contain findings of fact and conclusions of law.

- (3) The DMHF Director or the director's designee may:
- (a) adopt the recommended decision or any portion of the decision;
 - (b) reject the recommended decision or any portion of the decision, and make an independent determination based upon the record; or
 - (c) remand the matter to the [presiding]hearing officer to take additional evidence, and the [presiding]hearing officer thereafter shall submit to the DMHF director or the director's designee a new recommended decision.
 - (4) The director or designee's decision constitutes final administrative action and is subject to judicial review.
 - (5) DMHF shall send a copy of the final administrative action to each party or representative and notify them of their right to judicial review.
 - (6) The parties shall comply with a final decision from the director reversing the agency's decision within ten calendar days.
 - (7) The Executive Director shall review all recommended decisions to determine approval of medical assistance for an organ transplant. The Executive Director's decision constitutes final administrative action and is subject to judicial review.

R410-14-17. Amending Administrative Orders.

- (1) DMHF may amend an order if the [presiding]hearing officer determines that the agency made a clerical mistake.
- (2) DMHF shall notify the respondent and the petitioner of its intent to amend the order by serving a notice of agency action signed by the [presiding]hearing officer.
- (3) The DMHF Director shall review the amended order and he or his designee shall issue a final agency amended order.
- (4) DMHF shall provide a copy of the final amended order to the respondent and the petitioner.

R410-14-20. Discovery.

- (1) The Utah Rules of Civil Procedure do not apply to formal adjudicative proceedings and formal discovery is permitted only as set forth in this section. Each party shall diligently pursue discovery and full disclosure to prevent delay. A party that conducts discovery under this section shall maintain a mailing certificate.
- (2) The scope of discovery in formal adjudicative proceedings, unless otherwise limited by order of the [presiding]hearing officer, is as follows:
 - (a) DMHF may request copies of pertinent records in the possession of the recipient and the recipient's health care providers. In the event the recipient or provider fails to produce the records within a reasonable time, DMHF may review all pertinent records in the custody of the recipient or provider during regular working hours after three days of written notice.
 - (b) The recipient [shall]must submit medical records with the hearing request whenever possible. Necessary medical records include:
 - (i) the provision of each service and activity billed to the program;
 - (ii) the first and last name of the petitioner;
 - (iii) the reason for performing the service or activity that includes the petitioner's complaint or symptoms;
 - (iv) the recipient's medical history;

- (v) examination findings;
- (vi) diagnostic test results;
- (vii) the goal or need that the plan of care identifies; and
- (viii) the observer's assessment, clinical impression or diagnosis that includes the date of observation and identity of the observer.
- ([d]c) The medical records must demonstrate that the service is:
 - (i) medically necessary;
 - (ii) consistent with the diagnosis of the petitioner's condition; and
 - (iii) consistent with professionally recognized standards of care.
- (3) DMHF shall allow the aggrieved person or the person's representative to examine all DMHF documents and records upon written request to DMHF at least three days before the hearing.
- (4) An individual may request access to protected health information in accordance with Rule 380-250, which implements the privacy rule under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- (5) The [presiding]hearing officer may permit the filing of formal discovery or take depositions only upon a clear showing of necessity that takes into account the nature and scope of the dispute. If the [presiding]hearing officer allows formal discovery, he shall set appropriate time frames for response and assess sanctions for non-compliance.
- (6) The [presiding]hearing officer may order a medical assessment at the expense of DMHF to obtain information. This information is subject to HIPAA confidentiality requirements and is part of the hearing record.
- (7) Each party shall file a signed pretrial disclosure form at least ten calendar days before the scheduled hearing that identifies:
 - (a) fact witnesses;
 - (b) expert witnesses;
 - (c) exhibits and reports the parties intend to offer into evidence at the hearing;
 - (d) petitioner's specific benefit or relief claimed;
 - (e) respondent's specific defense;
 - (f) an estimate of the time necessary to present the party's case; and
 - (g) any other issues the parties intend to request the [presiding]hearing officer to adjudicate.
- (8) Each party shall supplement the pretrial disclosure form with information that becomes available after filing the original form. The pretrial disclosure form does not replace other discovery that is allowed under this section.

R410-14-21. Witnesses and Subpoenas.

- (1) A party shall arrange for a witness to be present at a hearing.
- (2) The [presiding]hearing officer may issue a subpoena to compel the attendance of a witness or the production of evidence upon written request by a party that demonstrates a sufficient need.
- (3) The [presiding]hearing officer may issue a subpoena on his own motion.

(4) A party may file an affidavit that requests the [presiding]hearing officer to subpoena a witness to produce books, papers, correspondence, memoranda, or other records. The affidavit must include:

(a) the name and address of the person or entity upon whom the subpoena is to be served;

(b) a description of the documents, papers, books, accounts, letters, photographs, objects, or other tangible items that the applicant seeks;

(c) material that is relevant to the issue of the hearing; and

(d) a statement by the applicant that to the best of his knowledge, the witness possesses or controls the requested material.

(5) A party shall arrange to serve any subpoena that the [presiding]hearing officer issues on its behalf, and shall serve a copy of the affidavit that it presents to the [presiding]hearing officer.

(6) Except for employees of DOH, DHS, DWS, or a managed care plan, a witness that the [presiding]hearing officer subpoenas to attend a hearing is entitled to appropriate fees and mileage. The witness shall file a written demand for fees with the [presiding]hearing officer within ten calendar days from the date that he appears at the hearing.

(7) The [presiding]hearing officer may issue an order of default against any party that fails to obey an order entered by the [presiding]hearing officer.

R410-14-23. Interpreters.

(1) If a party notifies DMHF that it needs an interpreter, DMHF shall arrange for an interpreter at no cost to the party.

(2) The party may arrange for an interpreter to be present at the hearing only if the [presiding]hearing officer can verify that the interpreter is at least 18 years of age, and fluent in English and the language of the person who testifies.

(3) The [presiding]hearing officer shall instruct the interpreter to interpret word for word, and not to summarize, add, change, or delete any of the testimony or questions.

(4) The interpreter must swear under oath to truthfully and accurately translate all statements, questions and answers.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [~~April 25, 2011~~2012

Notice of Continuation: October 29, 2007

Authorizing, and Implemented or Interpreted Law: 26-1-24; 26-1-5; 63G-4-102

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-1-2
Definitions**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35902

FILED: 02/29/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify that a provider is solely an individual or entity that provides medical, behavioral, or dental care services under the Medicaid program.

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies that a provider is solely an individual or entity that provides medical, behavioral, or dental care services under the Medicaid program.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Department does not anticipate any impact to the state budget because this change only clarifies the definition of a provider under the Medicaid program.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund the Medicaid program.

◆ **SMALL BUSINESSES:** The Department does not anticipate any impact to small businesses because this change only clarifies the definition of a provider under the Medicaid program.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate any impact to providers and recipients of Medicaid services because this change only clarifies the definition of a provider under the Medicaid program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not anticipate any impact to a single provider or recipient of Medicaid services because this change only clarifies the definition of a provider under the Medicaid program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact on business is predicted, as these amendments will clarify the current process while imposing no new costs on providers in the Medicaid program or recipients. Public comment will be carefully evaluated before any further action on the rule.

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 04/16/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/23/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

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

R414-1. Utah Medicaid Program.

R414-1-2. Definitions.

The following definitions are used throughout the rules of the Division:

- (1) "Act" means the federal Social Security Act.
- (2) "Applicant" means any person who requests assistance under the medical programs available through the Division.
- (3) "Categorically needy" means aged, blind or disabled individuals or families and children:
 - (a) who are otherwise eligible for Medicaid; and
 - (i) who meet the financial eligibility requirements for AFDC as in effect in the Utah State Plan on July 16, 1996; or
 - (ii) who meet the financial eligibility requirements for SSI or an optional State supplement, or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or
 - (iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or
 - (iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or
 - (v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or
 - (vi) who is least age six but not yet age 18, or is at least age six but not yet age 19 and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or
 - (vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or
 - (viii) who is a child for whom an adoption assistance agreement with the state is in effect.
- (b) whose categorical eligibility is protected by statute.

(4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.

(5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.

(6) "CMS" means The Centers for Medicare and Medicaid Services, a Federal agency within the U.S. Department of Health and Human Services. Programs for which CMS is responsible include Medicare, Medicaid, and the State Children's Health Insurance Program.

(7) "Department" means the Department of Health.

(8) "Director" means the director of the Division.

(9) "Division" means the Division of Health Care Financing within the Department.

(10) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:

(a) placing the patient's health in serious jeopardy;

(b) serious impairment to bodily functions;

(c) serious dysfunction of any bodily organ or part; or

(d) death.

(11) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of diagnosis.

(12) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

(13) "Executive Director" means the executive director of the Department.

(14) "InterQual" means the McKesson Criteria for Inpatient Reviews, a comprehensive, clinically based, patient focused medical review criteria and system developed by McKesson Corporation.

(15) "Medicaid agency" means the Department of Health.

(16) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18.

(17) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(18) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(19) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(20) "Medical standards," as applied in this rule, means that an individual may receive reasonable and necessary medical services up until the time a physician makes an official determination of death.

(21) "Prior authorization" means the required approval for provision of a service that the provider must obtain from the Department before providing the service. Details for obtaining prior authorization are found in Section I of the Utah Medicaid Provider Manual.

(22) "Provider" means any person, individual or corporation, institution or organization, ~~qualified to perform services available under the Medicaid program and who has entered into a written contract with the Medicaid program~~ that provides medical, behavioral or dental care services under the Medicaid program and who has entered into a written contract with the Medicaid program.

(23) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program, or has had a premium paid to a managed care entity.

(24) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

(25) "Utilization review" means the Department provides for review and evaluation of the utilization of inpatient Medicaid services provided in acute care general hospitals to patients entitled to benefits under the Medicaid plan.

(26) "Utilization Control" means the Department has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services, safeguards against excess payments, and assesses the quality of services available under the plan. The program meets the requirements of 42 CFR, Part 456.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~February 21,~~ **2012**

Notice of Continuation: April 16, 2007

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-34-2

**Human Resource Management,
Administration
R477-6-5
Incentive Awards**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35880

FILED: 02/16/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Department of Human Resource Management (DHRM) is amending this section in anticipation

of H.B. 251 (2012 General Session) becoming law. This bill passed both the House and Senate.

SUMMARY OF THE RULE OR CHANGE: Amendments craft language allowing state agencies to award incentive bonuses for market-based reasons and establish the parameters, including approval from DHRM. Language also clarifies limitations and exceptions for individual incentive awards.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 67-19-12(5)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These amendments are administrative and do not directly impact state budgets.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule does not directly impact costs or savings to state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government. Amendments refine and change current procedures. Expected impact for compliance is minimal.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by DHRM have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 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:

- ◆ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/16/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2012

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.

R477-6. Compensation.

R477-6-5. Incentive Awards.

(1) Only agencies with written and published incentive award and bonus policies may reward employees with incentive awards or bonuses. Incentive awards and bonuses are discretionary, not an entitlement, and are subject to the availability of funds in the agency.

(a) Policies shall be approved annually by DHRM and be consistent with standards established in these rules and the Department of Administrative Services, Division of Finance, rules and procedures.

(b) Individual awards may not exceed \$4,000 per ~~occurrence~~ pay period and \$8,000 in a fiscal year, except when approved by DHRM and the governor. ~~[In exceptional circumstances, an award may exceed these limits upon application to DHRM and approval by the Governor.]~~

(i) A request for a retirement incentive award shall be accompanied by documentation of the work units affected and any cost savings.

(ii) A single payment of up to \$8,000 may be granted as a retirement incentive.

(c) All cash and cash equivalent incentive awards and bonuses shall be subject to payroll taxes.

(2) Performance Based Incentive Awards.

(a) Cash Incentive Awards

(i) An agency may grant a cash incentive award to an employee or group of employees that demonstrates exceptional effort or accomplishment beyond what is normally expected on the job for a unique event or over a sustained period of time.

(ii) All cash awards shall be approved by the agency head or designee. They shall be documented and a copy shall be maintained by the agency.

(b) Noncash Incentive Awards

(i) An agency may recognize an employee or group of employees with noncash incentive awards.

(ii) Individual noncash incentive awards may not exceed a value of \$50 per occurrence and \$200 for each fiscal year.

(iii) Noncash incentive awards may include cash equivalents such as gift certificates or tickets for admission. Cash equivalent incentive awards shall be subject to payroll taxes and shall follow standards and procedures established by the Department of Administrative Services, Division of Finance.

(3) Cost Savings Bonus

(a) An agency may establish a bonus policy to increase productivity, generate savings within the agency, or reward an employee who submits a cost savings proposal.

(i) The agency shall document the cost savings involved.

(4) Market Based Bonuses

An agency may award a cash bonus ~~[to an employee]~~ as an incentive to acquire or retain an employee with job skills that are critical to the state and difficult to recruit in the market.

(a) All market based incentive awards shall be approved by DHRM.

(i) When requesting market based awards an agency shall submit documentation specifying how the agency will benefit by granting the incentive award based on:

(A) budget;

(B) recruitment difficulties;

(C) a mission critical need to attract or retain unique or hard to find skills in the market; or

(D) other market based reasons.

([a]b) Retention Bonus

An agency may award a bonus to an employee who has unusually high or unique qualifications that are essential for the agency to retain.

([b]c) Recruitment or Signing Bonus

An agency may award a bonus to a qualified job candidate to incentivize the candidate to work for the state.

([e]d) Scarce Skills Bonus

An agency may award a bonus to a qualified job candidate that has the scarce skills required for the job.

([d]e) Relocation Bonus

An agency may award a bonus to a current employee who must relocate to accept a position in a different commuting area.

([e]f) Referral Bonus

An agency may award a bonus to a current employee who refers a job applicant who is subsequently selected.

KEY: salaries, employee benefit plans, insurance, personnel management

Date of Enactment or Last Substantive Amendment: July 1, 2011~~12~~

Notice of Continuation: February 2, 2012

Authorizing, and Implemented or Interpreted Law: 63F-1-106; 67-19-6; 67-19-12; 67-19-12.5; 67-19-15.1(4)

Public Service Commission,
Administration

R746-100

Practice and Procedures Governing
Formal Hearings

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35900

FILED: 02/29/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The first amendment submitted 12/06/2011 needed a sentence added. Other substantive revisions were

made in the process. Several subsections of this rule have been updated to reflect most current information and technologies.

SUMMARY OF THE RULE OR CHANGE: Format in which pleadings need to be filed with the commission have been updated to reflect current technologies. Format in which confidential documents are filed has been changed from paper copy only to paper and electronic format. Some nonsubstantive, as well as grammatical changes were made in the amendment process.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-1-1 and Section 54-1-3 and Section 54-1-6 and Section 54-3-21 and Section 54-4-1.5 and Section 54-4-14 and Section 54-4-2 and Section 54-7-17 and Title 63G, Chapter 4

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** There are no costs or savings to the state budget. The rule was reviewed to update technological changes to be consistent with today's technology and other grammatical changes were made in the process.

◆ **LOCAL GOVERNMENTS:** There are no costs or savings to local government. The rule was reviewed to update technological changes to be consistent with today's technology and other grammatical changes were made in the process.

◆ **SMALL BUSINESSES:** There are no costs or savings to small businesses. The rule was reviewed to update technological changes to be consistent with today's technology and other grammatical changes were made in the process.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or savings to persons other than small businesses, businesses or local government entities. The rule was reviewed to update technological changes to be consistent with today's technology and other grammatical changes were made in the process.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The rule was reviewed to update technological changes to be consistent with today's technology and other grammatical changes were made in the process.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because this rule was reviewed to update technological changes to be consistent with today's technology and other grammatical changes, the rule will not have a fiscal impact. The Public Service Commission has carefully reviewed this rule and desires to update references to current usage of document retention technology. The changes update the way in which confidential or highly confidential documents should be handled.

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

PUBLIC SERVICE COMMISSION
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ David Clark by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at drexclark@utah.gov
- ◆ Melanie Reif, by FAX at 801-530-6511, or by Internet E-mail at mreif@utah.gov
- ◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/16/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/23/2012

AUTHORIZED BY: David Clark, Legal Counsel

R746. Public Service Commission, Administration.

R746-100. Practice and Procedures Governing Formal Hearings.

R746-100-1. General Provisions and Authorization.

A. Procedure Governed -- Sections 1 through 14 of this rule shall govern the formal hearing procedures before the Public Service Commission of Utah, Sections 15 and 16 shall govern rulemaking proceedings before the Commission.

B. Consumer Complaints -- Consumer complaints may be converted to informal proceedings, pursuant to Section 63G-4-202.

C. No Provision in Rules -- In situations for which there is no provision in these rules, the Utah Rules of Civil Procedure shall govern, unless the Commission considers them to be unworkable or inappropriate.

D. Words Denoting Number and Gender -- In interpreting these rules, unless the context indicates otherwise, the singular includes the plural, the plural includes the singular, the present or perfect tenses include future tenses, and the words of one gender include the other gender. Headings are for convenience only, and they shall not be used in construing any meaning.

E. Authorization -- This rule is authorized pursuant to Section 54-1-1 which requires the Commission to exercise its rulemaking powers and Subsection 54-1-2.5 which establishes the requirements for Commission procedure, including Hearings, Practice and Procedure, Chapter 7 of Title 54.

R746-100-2. Definitions.

A. "Applicant" is a party applying for a license, right, or authority or requesting agency action from the Commission.

B. "Commission" is the Public Service Commission of Utah. In appropriate context, it may include administrative law judges or presiding officers designated by the Commission.

C. "Complainant" is a person who complains to the Commission of an act or omission of a person in violation of law, the rules, or an order of the Commission.

D. "Consumer complaint" is a complaint of a retail customer against a public utility.

E. "Division" is the Division of Public Utilities, [~~Utah~~] State of Utah Department of Commerce.

F. "Ex Parte Communication" means an oral or written communication with a member of the Commission, administrative law judge, or Commission employee who is, or may be reasonably expected to be, involved in the decision-making process, relative to the merits of a matter under adjudication unless notice and an opportunity to be heard are given to each party. It shall not, however, include requests for status reports on a proceeding covered by these rules.

G. "Formal proceeding" is a proceeding before the Commission not designated informal by rule, pursuant to Section 63G-4-202.

H. "Informal proceeding" is a proceeding so designated by the Commission.

I. "Party" is a participant in a proceeding defined by Subsection 63G-4-103(1)(f).

J. "Interested person" is a person who may be affected by a proceeding before the Commission, but who does not seek intervention. An interested person may not participate in the proceedings except as a public witness, but shall receive copies of notices and orders in the proceeding.

K. "Intervenor" is a person permitted to intervene in a proceeding before the Commission.

L. "Office" is the Office of Consumer Services, State of Utah Department of Commerce.

M. "Person" means an individual, corporation, partnership, association, governmental subdivision, or governmental agency.

N. "Petitioner" is a person seeking relief other than the issuance of a license, right, or authority from the Commission.

O. "Presiding officer" is a person conducting an adjudicative hearing, pursuant to Subsection 63G-4-103(1)(h)(i), and may be the entire Commission, one or more commissioners acting on the Commission's behalf, or an administrative law judge, presiding officer, or hearing officer appointed by the Commission. It may also include the Secretary of the Commission when performing duties identified in Section 54-1-7.

P. "Proceeding" or "adjudicative proceeding" is an action before the Commission initiated by a notice of agency action, or request for agency action, pursuant to Section 63G-4-201. It is not an informal or preliminary inquiry or investigation undertaken by the Commission to determine whether a proceeding is warranted; nor is it a rulemaking action pursuant to Title 63G, Chapter 3, the Utah Administrative Rulemaking Act.

Q. "Public witness" is a person expressing interest in an issue before the Commission but not entitled or not wishing to participate as a party.

R. "Respondent" is a person against whom a notice of agency action or request for agency action is directed or responding to an application, petition or other request for agency action.

R746-100-3. Pleadings.

A. Pleadings Enumerated -- Applications, petitions, complaints, orders to show cause, and other traditional initiatory pleadings may be filed with the Commission. Traditional pleadings will be considered requests for agency action, pursuant to Section 63G-4-201, concerning adjudicative proceedings. Answers, protests, and other traditional responsive pleadings may be filed with the Commission and will be considered responses, subject to the requirements of Section 63G-4-204.

1. The following filings are not requests for agency action or responses, pursuant to Sections 63G-4-201 and 63G-4-204:

a. motions, oppositions, and similar filings in existing Commission proceedings;

b. informational filings which do not request or require affirmative action, such as Commission approval.

B. Docket Number and Title --

1. Docket number -- Upon the filing of an initiatory pleading, or upon initiation of a generic proceeding, the Commission shall assign a docket number to the proceeding which shall consist of the year in which the pleading was filed, a code identifying the public utility appearing as applicant, petitioner, or respondent, or generic code designation and another number showing its numerical position among the filings involving the utility or generic proceeding filed during the year.

2. Headings and titles -- Pleadings shall bear a heading substantially as follows:

TABLE		
Name of Attorney preparing or Signer of Pleading		
Address		
Telephone Number		
BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH		

In the Matter of the)	
Application, petition,)	Docket Number
etc.-- for complaints,)	
names of both complainant)	Type of pleading
and respondent should)	
appear)	

C. Form of Pleadings -- With the exception of consumer complaints, pleadings shall be double-spaced and in a font of at least 12 points. Pleadings shall be presented for filing on paper 8-1/2 x 11 inches, shall include the docket number, if known, and shall be dated and time stamped upon receipt by the Commission. Pleadings shall also be presented as an electronic word processing document, an exact copy of the paper version filed, and may be transmitted electronically to the e-mail address the Commission designates for such purposes or presented in [a-]electronic media (i.e., compact disc (CD)), using a Commission-approved format. PDF documents are not acceptable. Pleadings over five pages shall be double sided and three-hole punched. A filing is not complete until [aH-]the original and all required copies -- both paper[original] and electronic -- are provided to the Commission in the form described.

D. Certificate of Service -- a Certificate of Service must be attached to all pleadings filed with the Commission, certifying

that a true and correct copy of the pleading was served upon each of the parties in the manner and on the date specified. A filing is not complete without this certificate of service.

E. Pleadings Containing Confidential and Highly Confidential Information --

1. Pleadings, including all accompanying documents, containing information claimed to be confidential or highly confidential, as described in R746-100-16, shall be filed in accordance with R746-100-3(C) and shall conform to the following additional requirements:

a. The paper version of a pleading containing confidential information shall be filed on yellow paper with the confidential portion of the pleading denoted by shading, highlighting, or other readily identifiable means. Both the paper and the electronic versions presented for filing shall be designated confidential in accordance with R746-100-16(A)(1)(b).

b. The paper version of a pleading containing highly confidential information shall be filed on pink paper with the highly confidential portions of the pleadings denoted by shading, highlighting, or other readily identifiable means. Both the paper and electronic versions presented for filing shall be designated highly confidential in accordance with R746-100-16(A)(1)(g).

~~c. Both the paper and the electronic versions presented for filing shall be designated confidential in accordance with R746-100-16(A)(1)(b). All copies of this version shall be clearly labeled as "Non-Confidential - Redacted Version."~~

c. A non-confidential version shall also be filed, in both paper and electronic form, from which all confidential and highly confidential information must be redacted. All copies of this version shall be clearly labeled as "Non-Confidential - Redacted Version."

F. Amendments to Pleadings -- The Commission may allow pleadings to be amended or corrected at any time. Initiatory pleadings may be amended without leave of the Commission at any time before a responsive pleading has been filed or the time for filing the pleading has expired. Defects in pleadings which do not affect substantial rights of the parties shall be disregarded.

G. Signing of Pleadings -- Pleadings shall be signed by the party, or by the party's attorney or other authorized representative if the party is represented by an attorney or other authorized representative, and shall show the signer's address. The signature shall be considered a certification by the signer that he has read the pleading and that, to the best of his knowledge and belief, there is good ground to support it.

H. Consumer Complaints --

1. Alternative dispute resolution, mediation procedures -- Before a proceeding on a consumer complaint is initiated before the Commission, the Commission shall try to resolve the matter through referral first to the customer relations department, if any, of the public utility complained of and then to the Division for investigation and mediation. Only after these resolution efforts have failed will the Commission entertain a proceeding on the matter.

2. Request for agency action -- Persons requesting Commission action shall be required to file a complaint in writing, requesting agency action. The Commission shall not act on illegible or incomplete complaints and shall return those complaints to the complainant with instructions for correction or completion.

3. The Division of Public Utilities may participate in a consumer complaint proceeding as determined by the Division or as requested by the Commission.

I. Content of Pleadings --

1. Pleadings filed with the Commission shall include the following information as applicable:

a. if known, the reference numbers, docket numbers, or other identifying symbols of relevant tariffs, rates, schedules, contracts, applications, rules, or similar matter or material;

b. the name of each participant for whom the filing is made or, if the filing is made for a group of participants, the name of the group, if the name of each member of the group is set forth in a previously filed document which is identified in the filing being made;

c. if statute, rule, regulation, or other authority requires the Commission to act within a specific time period for a matter at issue, a specific section of the pleading, located after the heading or caption, entitled "Proceeding Time Period," ~~which~~ shall include: reference or citation to the statute, rule, regulation, or other authority; identification of the time period; and the expiration date of the time period identified by day, month, and year;

d. the specific authorization or relief sought;

e. copies of, or references to, tariff or rate sheets relevant to the pleading;

f. the name and address of each person against whom the complaint is directed;

g. the relevant facts, if not set forth in a previously filed document which is identified in the filing being made;

h. the position taken by the participant filing a pleading, to the extent known when the pleading is filed, and the basis in fact and law for the position;

i. the name, address, and telephone number of an individual who, with respect to a matter contained in the filing, represents the person for whom the filing is made;

j. additional information required to be included by Section 63G-4-201, concerning commencement of adjudicative proceedings, or other statute, rule, or order.

J. Motions -- Motions may be submitted for the Commission's decision on either written or oral argument, and the filing of affidavits in support or contravention of the motion is permitted. If oral argument is sought, the party seeking oral argument shall arrange a hearing date with the secretary of the Commission ~~and provide at least five days written notice to affected parties, unless the Commission determines a shorter time period is needed.~~

K. Responsive Pleadings --

1. Responsive pleadings to applications, petitions, or requests for agency action shall be filed in accordance with Section 63G-4-204.

2. Response and reply pleadings may be filed to pleadings other than applications, petitions or requests for agency action.

R746-100-4. Filing and Service.

A. Filing of Pleadings -- Pleadings shall be filed with the Commission in the format described in R746-100-3(C), and the number of original and paper ~~electronic~~ copies shall be as specified at <http://www.psc.utah.gov/filingrequirements.html>.

B. Notice -- Notice shall be given in conformance with Section 63G-4-201.

C. Required Public Notice -- When applying for original authority or rate increase, the party seeking authority or requesting Commission action shall publish notice of the filing or action requested, in the form and within the times as the Commission may order, in a newspaper of general circulation in the area of the state in which the parties most likely to be interested are located.

D. Times for Filing -- Responsive pleadings to requests for agency action shall be filed with the Commission and served upon opposing parties within 30 days after service of the request for agency action or notice of request for agency action, whichever ever was first received. Motions directed toward initiatory pleadings shall be filed before a responsive pleading is due; otherwise objections shall be raised in responsive pleadings. Motions directed toward responsive pleadings shall be filed within ten days of the service of the responsive pleading. Response or reply pleadings to other than applications, petitions or requests for agency action shall be filed within 15 calendar days and 10 calendar days, respectively, of the service date of the pleading or document to which the response or reply is addressed. Absent a response or reply, the Commission may presume that there is no opposition.

E. Computation of Time -- The time within which an act shall be done shall be computed by excluding the first day and including the last, unless the last day is Saturday, Sunday, or a state holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, nor a state holiday.

R746-100-16. Use of Information Claimed to Be Confidential or Highly Confidential in Commission Proceedings.

A. Information, documents and material submitted or requested in or relating to any Commission proceeding which is claimed to be confidential will be treated as follows:

1.a. Nature of Confidential Information. A person (Providing Party) required or requested to provide documents, data, information, studies, and other materials of a sensitive, proprietary or confidential nature (Confidential Information) to the Commission or to any party in connection with a Commission proceeding may request protection of such information in accordance with the terms of this rule. Confidential treatment shall be requested only to the extent a good faith reasonable basis exists for claiming that specific information constitutes a trade secret or is otherwise of such a highly-sensitive or proprietary nature that public disclosure would be inappropriate. Confidential treatment shall be requested narrowly as to only that specific information for which protection is reasonably required.

b. Identification of Confidential Information. All documents, data, information, studies and other materials filed in conjunction with a Commission proceeding, made available to proceeding participants, [~~furnished, or~~] whether made available pursuant to [~~any~~] interrogatories, [~~or~~] requests for information, subpoenas, depositions, or other modes of discovery or otherwise, that are claimed to be Confidential Information, shall be furnished pursuant to the terms of this rule or any superseding Protective Order, and shall be treated by all persons accorded access thereto pursuant to this rule or Protective Order, and shall neither be used nor disclosed by any recipient thereof except for the purpose of the proceeding in which it was obtained and solely in accordance with

this rule or superseding Protective Order. All material claimed to be Confidential Information shall be so marked by the person producing it by stamping or noting the same with a designation substantially as follows: "CONFIDENTIAL - - SUBJECT TO UTAH PUBLIC SERVICE COMMISSION RULE 746-100-16" or "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER" or "CONFIDENTIAL - - SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. XX-XXX-XX (reflecting the appropriate docket number)." All copies of documents so marked ~~shall~~^{will} be made on yellow paper.

c. Line Numbering in Redacted Documents. Parties shall ensure that line numbering in any redacted version of a document shall conform to and retain the general formatting and line numbering used in the unredacted version of the document. Individuals providing electronic documents to the Commission should file both a confidential and non-confidential version each clearly marked as such. For purposes hereof, notes made pertaining to or as the result of a review of Confidential Information shall be considered Confidential Information and subject to the terms of this rule.

d. Use of Confidential Information and Persons Entitled to Review. The Commission, Division of Public Utilities, and Office of Consumer Services shall be provided with Confidential Information and may use the Confidential Information as these agencies deem necessary to perform their statutory functions, provided they shall protect the confidentiality of the information as required by Utah law. Other than these state agencies, all Confidential Information made available pursuant to this rule shall be given solely to counsel for the participants (which may include counsels' paralegals, administrative assistants and clerical staff to the extent reasonably necessary for performance of work on the matter), and shall not be used nor disclosed except for the purpose of the proceeding in which they are provided and in accordance with this rule; provided, however, that access to any specific Confidential Information may be authorized by counsel, solely for the purpose of the proceeding, to those persons indicated by the participants as being their experts in the matter (including such experts' administrative assistants and clerical staff, and persons employed by the participants, to the extent reasonably necessary for performance of work on the matter). Persons designated as experts shall not include persons employed by the participants who could use the information in their normal job functions to the competitive disadvantage of the person providing the Confidential Information. The Commission, the Division of Public Utilities, and the Office of Consumer Services, and their respective counsel and staff, [~~under and~~] pursuant to the applicable provisions of Title 54, Utah Code Ann., the Rules of Civil Procedure and the Rules of the Commission, may have access to any Confidential Information made available pursuant to this rule or Protective Order and shall be bound by the terms of this rule, except as otherwise stated herein and except for the requirement of signing a nondisclosure agreement. Further, nothing herein shall prevent disclosure as required by law pursuant to interrogatories, administrative requests for information or documents, subpoena, civil investigative demand or similar process, provided, however, that the person being required to disclose Confidential Information shall promptly give prior notice by telephone and written notice of such requirement of disclosure by electronic mail facsimile and overnight mail to the person that provided such Confidential Information, addressed to

the providing person and attorneys of record for such person, so that the person that provided the Confidential Information may seek appropriate restrictions on disclosure or an appropriate protective order. The disclosing person will not oppose action by, and will cooperate with the person that provided the Confidential Information to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

e. Nondisclosure Agreement. Prior to giving or obtaining access to Confidential Information, as contemplated in (1)(b) above, counsel or any experts shall agree in writing to comply with and be bound by this rule and any Protective Order. Confidential Information shall not be disclosed to any person who has not signed a Nondisclosure Agreement in the form which is provided below or referenced in the Protective Order. The Nondisclosure Agreement shall require the person to whom disclosure is to be made to read a copy of this rule and any applicable Protective Order and to certify in writing that he or she has reviewed the same and has consented to be bound by the terms. The agreement shall contain the signatory's full name, permanent address and employer, and the name of the person with whom the signatory is associated. Such agreement shall be delivered to the providing person and counsel for the providing person prior to the expert gaining access to the Confidential Information.

The Nondisclosure Agreement may be in the following form:

"Nondisclosure Agreement. I have reviewed Public Service Commission of Utah Rule 746-100-16 and/or the Protective Order entered by the Public Service Commission of Utah in Docket No. XX-XXX-XX with respect to the review and use of confidential information and agree to comply with the terms and conditions of the rule and/or Protective Order." Thereafter there shall be lines upon which shall be placed the individual's signature, the typed or printed name of the individual, identification or name of the individual's employer or firm employing the individual (if any), the business address for the individual, identification or name of the party in the proceeding with which the individual is associated, and the date the nondisclosure agreement is executed by the individual.

f. Additional protective measures. To the extent a Providing Party reasonably claims that additional protective measures, beyond those required under this rule for Confidential Information, are warranted for certain highly proprietary, highly sensitive or highly confidential material (Highly Confidential Information), the Providing Party shall promptly inform the requester (Requesting Party) of the claimed highly sensitive nature of identified material and the additional protective measures requested by the Requesting Party. If the Providing Party and Requesting Party are unable to promptly reach agreement on the treatment of Highly Confidential Information, the Providing Party shall petition the Commission for an order granting additional protective measures. The Providing Party shall set forth the particular basis for: the claim, the need for the specific, additional protective measures, and the reasonableness of the requested, additional protection. A Requesting Party and any other party may respond to the petition and oppose or propose alternative protective measures to those requested by the Providing Party. Disputes between the parties shall be resolved by the Commission.

g. Identification of Highly Confidential Information. All documents, data, information, studies and other materials filed in conjunction with a Commission proceeding, made available to proceeding participants, [~~furnished, or~~] whether made available pursuant to [~~any~~] interrogatories, [~~or~~] requests for information, subpoenas, depositions, or other modes of discovery or otherwise, that are claimed to be Highly Confidential, shall be furnished pursuant to the terms of this rule or any superceding Protective Order, and shall be treated by all persons accorded access thereto pursuant to this rule or Protective Order, and shall neither be used nor disclosed by any recipient thereof except for the purpose of the proceeding in which it was obtained and solely in accordance with this rule or superceding Protective Order. All material claimed to be Highly Confidential shall be so marked by the person producing it by stamping or noting the same with a designation substantially as follows: "HIGHLY CONFIDENTIAL--SUBJECT OF UTAH PUBLIC SERVICE COMMISSION RULE 746-100-16," "HIGHLY CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER," or "HIGHLY CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. XX-XXX-XX (reflecting the appropriate docket number)." All copies of documents so marked shall[~~will~~] be made on pink paper.

2.a. Challenge to Confidentiality or Proposed Additional Protective Measures. This rule establishes a procedure for the expeditious handling of Confidential Information; it shall not be construed as an agreement, or ruling on the confidentiality of any document.

b. In the event that persons are unable to agree that certain documents, data, information, studies, or other matters constitute Confidential Information[;] or Highly Confidential Information referred to in (A)(1)(e) above, or in the event that persons are unable to agree on the appropriate treatment of Highly Confidential Information, the person objecting to the classification as Confidential Information or the person claiming Highly Confidential Information and the need for additional protective measures shall forthwith submit the disputes to the Commission for resolution.

c. Any person at any time upon at least ten (10) days prior notice, when practicable, may seek by appropriate pleading, to have documents that have been designated as Confidential Information or Highly Confidential Information, or which were accepted into the sealed record in accordance with this rule or a Protective Order, removed from the protective requirements of this rule or the Protective Order, or from the sealed record and placed in the public record. If the confidential, or proprietary nature of this information is challenged, resolution of the issue shall be made by the Commission after proceedings in camera which shall be conducted under circumstances such that only those persons duly authorized to have access to such confidential matter shall be present. The record of such in camera hearings shall be marked substantially as follows "CONFIDENTIAL--SUBJECT TO RULE 746-100-16" "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER," or "CONFIDENTIAL -- SUBJECT TO PROTECTIVE[PROCTIVE] ORDER IN DOCKET NO. XX-XXX-XX (reflecting the appropriate docket number)" unless the Commission determines, and so provides by order, that such marking need not occur. It shall be transcribed only upon agreement by the parties, or order of the Commission, and in that event shall be separately bound,

segregated, sealed, and withheld from inspection by any person not bound by the terms of this rule or Protective Order, unless and until released from the restrictions of this rule or Protective Order, either through agreement of the parties, or after notice to the parties and hearing, pursuant to an order of the Commission. In the event the Commission should rule in response to such a pleading that any information should be removed from the protective requirements of this rule or Protective Order, or from the protection of the sealed record, such order of the Commission shall not be effective for a period of ten (10) days after entry of the order.

3.a. Receipt into Evidence. At least ten (10) days prior to the use of or substantive reference to any Confidential Information as evidence, if practicable, the person intending to use such Confidential Information shall make that intention known to the providing person. The requesting person and the providing person shall make a good faith effort to reach an agreement so that the Confidential Information can be used in a manner which will not reveal its trade secret, confidential or proprietary nature. If such efforts fail, the providing person shall separately identify, within five (5) business days, which portions, if any, of the documents to be offered or referenced on the record containing Confidential Information shall be placed in the sealed record. Only one (1) copy of documents designated by the providing person to be placed in a sealed record shall be made and only for that purpose. Otherwise, persons shall make only general references to Confidential Information in any proceedings.

b. Seal. While in the custody of the Commission, Confidential Information provided pursuant to this rule or a Protective Order shall be marked substantially as follows: "CONFIDENTIAL--SUBJECT TO PUBLIC SERVICE COMMISSION OF UTAH RULE 746-100-16," "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER," or "CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER IN DOCKET NO. XX-XXX-XX (reflecting the appropriate docket number)."

c. In Camera Hearing. Any Confidential Information that must be orally disclosed to be placed in a sealed record of a proceeding shall be offered in an in camera hearing, attended only by persons authorized to have access to the Confidential Information under this rule or Protective Order. Similarly, cross-examination on or substantive reference to Confidential Information, as well as that portion of the record containing references thereto, shall be similarly marked and treated.

d. Appeal. Sealed portions of the record in any proceeding may be forwarded to any court of competent jurisdiction on appeal in accordance with applicable rules and regulations, but under seal as designated herein, for the information and use of the court.

e. Return. Unless otherwise ordered, Confidential Information, including transcripts of any depositions to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this rule or Protective Order, and shall be returned to the providing person or counsel for the providing person within 30 days after final order, settlement, or other conclusion of the matters in which they were used, including administrative or judicial review thereof. Alternatively, a person receiving Confidential Information pursuant to the terms of this rule or Protective Order may certify, within 30 days after final order, settlement, or other conclusion of the matter

including administrative or judicial review thereof, that the Confidential Information has been destroyed. Counsel who are provided access to Confidential Information pursuant to the terms of this rule or Protective Order may retain the Confidential Information, their notes, work papers or other documents as their attorneys' work product created with respect to their use and access to Confidential Information in the matter. An expert witness, accorded access to Confidential Information pursuant to this rule or Protective Order, shall provide to counsel for the person on whose behalf the expert was retained or employed, the expert's notes, work papers or other documents pertaining or relating to any Confidential Information. Counsel shall retain these experts' documents with counsel's documents. In order to facilitate their ongoing responsibility, this provision shall not apply to the Commission, the Division of Public Utilities or the Office of Consumer Services, which may retain Confidential Information obtained under this rule or Protective Order subject to the other terms of this rule or Protective Order. Any party that intends to use or disclose Confidential Information obtained pursuant to this rule or a Protective Order in any subsequent Commission dockets or proceedings, shall do so in accordance with the terms of this rule or any applicable protective orders issued in such other subsequent Commission dockets or proceedings and only after providing notice of such intent to the providing person along with an identification of the original source of the Confidential Information.

4. Use in Proceedings. Where reference to Confidential Information is required in pleadings, cross-examinations, briefs, arguments, or motions, it shall be by citation of title, or exhibit number, or by some other nonconfidential description. Any further use of, or substantive references to Confidential Information shall be placed in a separate section of the pleading, brief, or document and submitted under seal. This sealed section shall be served only on counsel of record (one copy each), who have signed a Nondisclosure Agreement and counsel for the Division of Public Utilities and Office of Consumer Services. All the protections afforded in this rule apply to materials prepared and distributed under this paragraph.

5. Use in Decisions and Orders. The Commission will attempt to refer to Confidential Information in only a general, or conclusory form and will avoid reproduction in any decision of Confidential Information to the greatest possible extent. If it is necessary for a determination in a proceeding to discuss Confidential Information other than in a general, or conclusory form, it shall be placed in a separate section of an Order, or Decision, under seal. This sealed section shall be served only on counsel of record (one copy each) who have signed a Nondisclosure Agreement and counsel for the Division of Public Utilities and Office of Consumer Services. Counsel for other parties shall receive the cover sheet to the sealed portion and may review the sealed portion on file with the Commission once they have signed a Nondisclosure Agreement.

6. Segregation of Files. Those parts of any writing, depositions reduced to writing, written examination, interrogatories and answers thereto, or other written references to Confidential Information in the course of discovery, if filed with the Commission, will be sealed by the Commission, segregated in the files of the Commission, and withheld from inspection by any person not bound by the terms of this rule or Protective Order, unless such Confidential Information is released from the

restrictions of this rule or Protective Order, either through agreement of the parties, or after notice to the parties and hearing, pursuant to an order of the Commission and/or final order of a court having jurisdiction.

7. Preservation of Confidentiality. All persons who may be entitled to receive, or who are afforded access to any Confidential Information by reason of this rule or Protective Order shall neither use, nor disclose the Confidential Information for purposes of business or competition, or any other purpose other than the purposes of preparation for and conduct of Commission proceedings, and then solely as contemplated herein, and shall take reasonable precautions to keep the Confidential Information secure in accordance with the purposes and intent of this rule or a Protective Order.

8. Reservation of Rights. Persons affected by the terms of this rule or a Protective Order retain the right to question, challenge, and object to the admissibility of any and all data, information, studies and other matters furnished under the terms of this rule or a Protective Order in response to interrogatories, requests for information, other modes of discovery, or cross-examination on the grounds of relevancy or materiality. This rule or a Protective Order shall in no way constitute any waiver of the rights of any person to contest any assertion by another person or finding by the Commission that any information is a trade secret, confidential, or privileged, and to appeal any assertion or finding.

KEY: government hearings, public utilities, rules and procedures, confidential information

Date of Enactment or Last Substantive Amendment: [February 7], 2012

Notice of Continuation: December 3, 2007

Authorizing, and Implemented or Interpreted Law: 54-1-1; 54-1-3; 54-1-6; 54-3-21; 54-4-1; 54-4-1.5; 54-4-2; 54-7-17; 63G-4

**Public Service Commission,
Administration
R746-405-2
Format and Construction of Tariffs**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 35896

FILED: 02/27/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to update the amount of copies of tariff sheets that need to be filed with the Public Service Commission (PSC).

SUMMARY OF THE RULE OR CHANGE: This amendment changes the amount of copies to be filed as indicated on the psc.utah.gov website.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 54-3-2 and Section 54-3-3 and Section 54-3-4 and Section 54-4-1 and Section 54-4-4 and Section 54-7-12

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No effect to state budget, only a change regarding number of copies to be filed with the PSC.
- ◆ **LOCAL GOVERNMENTS:** No effect to local government, only a change regarding number of copies to be filed with the PSC.
- ◆ **SMALL BUSINESSES:** No effect to small businesses, only a change regarding number of copies to be filed with the PSC.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No effect to persons other than small businesses or local government entities, only a change regarding number of copies to be filed with the PSC.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs for affected persons, only a change regarding number of copies to be filed with the PSC.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In an effort to update some of the PSC's rules it was found that not as many copies of tariff submitted were needed as the rule now requires. The PSC changed the rule to reflect the number of copies to be filed as indicated on the psc.utah.gov website. The PSC number of copies changed from 10 required copies to 5 required copies plus original to be filed.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ David Clark by phone at 801-530-6709, by FAX at 801-530-6796, or by Internet E-mail at drexclark@utah.gov
- ◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 04/16/2012

THIS RULE MAY BECOME EFFECTIVE ON: 04/23/2012

AUTHORIZED BY: David Clark, Legal Counsel

R746. Public Service Commission, Administration.**R746-405. Filing of Tariffs for Gas, Electric, Telephone, and Water Utilities.****R746-405-2. Format and Construction of Tariffs.**

A. Format--Tariffs shall be in loose-leaf form for binding in a stiff-backed book or books as required and consist of parts or subdivisions arranged in order set forth as follows:

1. Title:
"TARIFF"
- Applicable to
Kind of
SERVICE
NAME OF UTILITY

2. Table of Contents: a complete index of numbers and titles of effective sheets listed in the order in which the tariff sheets are arranged in the tariff book. Table of contents sheets shall bear sheet numbers and be in the form set forth in Subsection R746-405-2(C).

3. Preliminary statement: a brief description of the territory served, types and classes or service rendered and general conditions under which the service is rendered. Preliminary sheets shall bear sheet numbers and be in the form set forth in Subsection R746-405-2(C). The preliminary statement shall clearly define the symbols used in the tariffs. For example:

- a. "C" to signify changed listing, rule or condition which may affect rates or charges;
- b. "D" to signify discontinued material, including listing, rate, rule or condition;
- c. "I" to signify increase;
- d. "L" to signify material relocated from or to another part of the tariff schedules with no change in text, rate, rule or condition;
- e. "N" to signify new material including listing, rate, rule or condition;
- f. "R" to signify reduction;
- g. "T" to signify change in wording of text but no change in rate, rule or condition.

4. Service area maps: maps for telecommunication utilities shall clearly indicate the boundaries of the service area, the principal streets, other main identifying features therein, the general location of the service area in relation to nearby cities, major highways or other well-known reference points and the relation between service area boundaries and map references. Service area maps shall be approximately 8-1/2 x 11 inches in size, or folded to that size in order to fit within the borders of the space provided on tariff sheets. Maps for gas, water and electric utilities shall clearly indicate the boundaries of the service area.

B. Tariff Books--

1. Utilities shall constantly maintain their presently effective tariff at each business office open to the public.

2. Utilities shall remove canceled tariff sheets from their currently effective tariffs. Utilities shall permanently retain a file of canceled tariff sheets.

C. Construction of Tariffs for Filing--

1. The loose-leaf sheets used in tariffs shall be of paper stock not less than 16 lb. bond or of equal durability and 8-1/2 x 11 inches in size. Tariffs may be printed, typewritten or mimeographed or other similar process. Tariffs may not be hand-written. One side

of a sheet only may be used and a binding margin of at least 1-1/8 inches at the left of the sheet.

a. The tariff sheets of each utility shall provide the following information:

- i. the name of the utility;
- ii. the sheet, or page number, along with information to designate whether it is the first version of the sheet or whether the sheet has been revised since it was originally issued. Sheets shall be numbered consecutively;
- iii. the number of the advice letter with which the sheet is submitted to the Commission or the docket number if the sheet is filed in accordance with a report and order of the Commission;
- iv. information to indicate the date the sheet was filed with the Commission and the date the sheet became effective.

2. Tariffs shall include the following information and as nearly as possible in the following order:

- a. schedule number or other designation;
- b. class of service, such as business or residential;
- c. character of applicability, such as heating, lighting or power, or individual and party-line service;
- d. territory to which the tariff applies;
- e. rates, in tabular form if practicable;
- f. special conditions, limitations, qualifications and restrictions. The conditions shall be brief and clearly worded to cover all special conditions of the rate. Amounts subject to refund shall be specified.

3. If a rate schedule or a rule is carried forward from one sheet to another, the word "Continued" shall be shown.

D. Submission of Tariff Sheets and Advice Letters--

1. Tariff sheets shall be transmitted by an advice letter or in response to a Commission order. A revised table of contents sheet shall be transmitted with each proposed tariff change, if the change requires alteration of the table of contents.

2. An[One] original of each advice letter and tariff sheet shall be filed with the commission, along with the number of paper copies specified at <http://www.psc.utah.gov/filingrequirements.html>. [and two copies of each submission of advice letter and tariff sheets shall be filed with the Commission.] In addition, each advice letter and tariff filing shall be presented as an electronic word processing or spreadsheet document and shall be an exact copy of the paper filed.

3. Advice letters shall include the following:

- a. sheet numbers and titles of the tariff sheets being filed, together with the sheet numbers of the sheets being canceled;
- b. essential information as to the reasons for the filing;
- c. dates on which the tariff sheets are proposed to become effective;
- d. increases or decreases, more or less restrictive conditions, or withdrawals;
- e. in the case of an increase authorized by the Commission, reference to the report and order authorizing the increase and docket number;
- f. if the filing covers a new service not previously offered or rendered, an explanation of the general effect of the filing, including a statement as to whether present rates or charges will be affected, or service withdrawn from a previous user and advice whether the proposed rates are cost-based;

g. a statement that the tariff sheets proposed do not constitute a violation of state law or Commission rule. The filing of proposed tariff sheets shall of itself constitute the representation of the filing utility that it, in good faith, believes the proposed sheets or revised sheets to be consistent with applicable statutes, rules and orders. The Commission may, after hearing, impose sanctions for a violation hereof.

4. If authorized to file a notice that the effective tariff of a previous owner for the same service area is being adopted, the notice of adoption shall be submitted in the form of an advice letter.

5. Advice letters shall be numbered annually and chronologically. The first two digits represent the year followed by a hyphen and two or more digits, beginning with 01, as submitted by a utility for class of utility service rendered.

6. If a change is proposed on a tariff sheet, attention shall be directed to the change by an appropriate character along the right-hand margin of the tariff sheet using the symbols set forth in the preliminary statement.

7. At the time of making a tariff filing with the Commission, the utility shall furnish a copy of the advice letter and a copy of each related tariff sheet to interested parties having requested notification.

8. If the suspension is lifted by order of the Commission, the filing shall be resubmitted under a new advice letter number. If the suspension is made permanent by the Commission, the advice letter number shall not be used again.

E. Approval of Filed Tariff Sheets--

1. Utility tariffs may not increase rates, charges or conditions, change classifications which result in increases in rates and charges or make changes which result in lesser service or more restrictive conditions at the same rate or charge, unless a showing has been made before and a finding has been made by the Commission that the increases or changes are justified. This requirement does not apply to electrical or telephone cooperatives in compliance with Section 54-7-12(6), or by telecommunications utilities with less than 5,000 subscribers access lines in compliance with Section 54-7-12(7).

2. New tariff sheets covering a service or commodity not previously furnished or supplied, or revised tariff sheets, not increasing, or increasing pursuant to Commission order, a rate, toll, rental or charge, may be filed by the advice letter. Tariff sheets, unless otherwise authorized by the Commission either on complaint

or on its own motion, shall become effective after not less than 30 calendar days after the filed date.

3. Upon application in the advice letter and for good cause shown, the Commission may authorize tariff sheets to become effective on a day before the end of the 30 day notice period.

4. The Commission may reject or suspend the effectiveness of tariff sheets that do not conform to these rules, which have alterations on the face thereof or contain errors, or for other reasons as the Commission determines. The Commission shall notify the utility, of its action by a letter stating the reasons therefore. Rejected tariff sheets shall be retained in the utility's file of canceled and superseded sheets. Advice letter numbers of rejected filings shall not be reused.

F. Public Inspection of Tariffs--

1. Utilities shall maintain, open for public inspection at their main office, a copy of the complete tariff and advice letters filed with the Commission. Utilities shall maintain, open for public inspection, copies of their effective tariffs applicable within the territories served by the offices.

2. Utilities shall post in a conspicuous place in their major manned business office, a notice to the effect that copies of the schedule of applicable rates in the territory are on file and may be inspected by anyone desiring to do so.

G. Contracts Authorized by Tariff--Tariff sheets expressly providing that a written contract shall be executed by a customer as a condition to the receipt of service, relating either to the quantity or duration of service or the installation of equipment, the contract need not be filed with the Commission. A copy of the general form of contract to be used in each case shall be filed with the tariff as provided in these rules.

This contract shall be subject to changes or modifications by the Commission.

KEY: rules and procedures, public utilities, tariffs, utility regulations

Date of Enactment or Last Substantive Amendment: [February 7], 2012

Notice of Continuation: April 1, 2008

Authorizing, and Implemented or Interpreted Law: 54-3-2; 54-3-3; 54-3-4; 54-4-1; 54-4-4; 54-7-12

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, Administration **R151-3**

Americans With Disabilities Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35897
FILED: 02/28/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The Americans with Disabilities Act (ADA), 42 USC 12201, provides that no qualified individual with a disability may be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination. This rule provides procedures for the prompt and equitable resolution of ADA complaints filed with the agency and is adopted pursuant to 42 USC 12201, and Section 13-1-6 and Subsection 63G-3-301(2).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule should be continued because it is required by federal law and regulations, and it provides necessary procedures for the resolution of ADA complaints.

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

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

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

AUTHORIZED BY: Francine Giani, Executive Director

EFFECTIVE: 02/28/2012

Commerce, Occupational and Professional Licensing **R156-16a** Optometry Practice Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35893
FILED: 02/21/2012

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 16a, provides for the licensure of optometrists. Subsection 58-1-106(1)(a)

provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-16a-201(3) provides that the Optometrist 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 16a, with respect to optometrists.

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 April 2007, it has been amended one time. The Division received the following written comments: a 07/15/2009 email from Clive Watson, Executive Director, Utah Optometric Association, in which he requested clarification of adding the Division of Occupational and Professional Licensing (DOPL) as a continuing education provider for licensed optometrists; a 07/16/2009 email from Russ Purdy in which he expressed concerns regarding adding DOPL as a continuing education provider for licensed optometrists without going through national continuing education provider accrediting agencies; and a 07/15/2009 email from Michael M. Judkins, OD in which he suggested further clarifying the type of continuing education training which would be provided by DOPL and also expressed concerns regarding adding DOPL as a continuing education provider for licensed optometrists without going through national continuing education provider accrediting agencies. As a result of further review by the Division and the Optometrist Licensing Board, comments received during a 07/21/2009 rule hearing and written comments received by the Division, the Division filed a change in proposed rule filing on 08/31/2009 which further clarified that continuing education training conducted by DOPL for licensed optometrists would only be related to the use of the Utah Controlled Substance Database. The initial proposed rule amendments and the change in proposed rule amendment were ultimately made effective on 10/22/2009.

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 16a, with respect to optometrists. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession.

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

COMMERCE
OCCUPATIONAL AND PROFESSIONAL
LICENSING
HEBER M WELLS BLDG

160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Clyde Ormond by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@utah.gov

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 02/21/2012

Commerce, Occupational and Professional Licensing **R156-37**

Utah Controlled Substances Act Rule

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 35892
FILED: 02/21/2012

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 37, provides for the regulation of controlled substances and Title 58, Chapter 37f, provides statutory authority with respect to the Controlled Substance Database which is housed in the Division of Occupational and Professional Licensing. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-37-6(1) provides the Division may adopt rules relating to the licensing and control of the manufacture, distribution, production, prescription, administration, dispensing, conducting of research with, and performing of laboratory analysis upon controlled substances within this state. Subsection 58-37f-203(3)(a) provides the Division shall make rules with respect to the Controlled Substance Database. This rule was enacted to clarify the provisions of Title 58, Chapter 37, with respect to controlled substances and Title 58, Chapter 37f, with respect to the Controlled Substance Database.

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 March 2007, it has been amended three times. The Division has received two written comments with respect to this rule. A 12/28/2007 written request was received from James V. Olsen, President of the Utah Food Industry Association, in which he requested the Division to conduct a public rule hearing on proposed amendments to the rule which had been

filed by the Division in December 2007. The Division thus filed notice of a 01/22/2008 rule hearing with the Division of Administrative Rules and said notice was thus published in the 01/15/2008 edition of the Utah State Bulletin. Notice of the scheduled 01/22/2008 public rule hearing was also provided to Mr. Olsen. The Division also received a 06/23/2008 letter from David M. Davis representing the Utah Food Industry Association and Utah Retail Merchants Association. Mr. Davis' written comments addressed concerns with current proposed rule amendments with respect to real time reporting requirements to the Controlled Substance Database as proposed in Subsection R156-37-609a(2). Mr. Davis indicated that the proposed amendment would place an undue burden on pharmacy operations without providing a significant enhancement to the Controlled Substance Database. Mr. Davis suggested an additional change which would require pharmacies to report to the Controlled Substance Database on a daily basis rather than when data become available at the pharmacy. After further review of Mr. Davis' comments, the Division determined no additional change would be made beyond the change in proposed rule filing which delayed weekly reporting to the Controlled Substance Database to 10/01/2008. However, it should be noted that future amendments to Subsection R156-37-609a(2) were made in 2009 which addressed Mr. Davis' concerns in his June 2008 letter.

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 and licensees of the rules relating to controlled substances, as allowed under statutory authority provided in Title 58, Chapter 37. This rule is applicable to occupations and professions involved with controlled substances which are regulated by the Division. The rule should also be continued as it provides information to ensure applicants for licensure are knowledgeable about controlled substance requirements of the Division with respect to items that are not covered separately in each occupational/professional rule. This rule should also be continued as it provides information to affected and interested persons with respect to the Controlled Substance Database as required in Title 58, Chapter 37.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 02/21/2012

**Commerce, Occupational and
Professional Licensing
R156-76
Professional Geologist Licensing Act
Rule**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 35894

FILED: 02/21/2012

**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 76, provides for the licensure of professional geologists. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-76a-201(3) provides that the Professional Geologist 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 76, with respect to professional geologists.

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 May 2007, it has been amended one time. The Division received a 12/04/2007 email from Robert Q. Oaks, Jr., a licensed professional geologist, in which he suggested wording changes to proposed amendments in Subsection R156-76-501(2). The Division replied back to Mr. Oaks in a 12/11/2007 email that the Division would not be making further changes to the proposed amendments that he suggested because the wording identified in Subsection R156-76-501(2) is actually referring to the unlawful conduct in Subsection 58-76-501(2) which is in the governing statute affecting licensed professional geologists. The Division further replied that the Division does not have authority to change the statutory unlawful conduct language via a proposed rule change. The proposed amendments which had been filed were made effective on 01/08/2008.

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 76, with respect to professional geologists. 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: 02/21/2012

**Human Services, Child and Family
Services
R512-1
Description of Division Services,
Eligibility, and Service Access**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 35895
FILED: 02/23/2012

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 62A-4a-103 and 62A-4a-105 authorize the Division of Child and Family Services to provide programs and services that support the strengthening of family values, including services which preserve and enhance family life and relationships; protect children, youth, and families; and advocate and defend family values established by public policy and advocacy and education.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of this rule is necessary in order for the Division of Child and Family Services to continue to provide prevention and intervention services, administer In-Home and Out-of-Home Services, and provide for collection of fees and civil rights and due process for clients.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Carol Miller by phone at 801-557-1772, by FAX at 801-538-3993, or by Internet E-mail at carolmiller@utah.gov
♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

AUTHORIZED BY: Brent Platt, Director

EFFECTIVE: 02/23/2012

**Regents (Board of), University of Utah,
Commuter Services
R810-2
Parking Meters**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 35888
FILED: 02/17/2012

**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 53B-3-103 permits institutions of higher education to enact rules governing traffic, parking, and related issues.

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 documented the previous five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should continue because the underlying statute continues to permit it.

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

REGENTS (BOARD OF)
UNIVERSITY OF UTAH,
COMMUTER SERVICES
ROOM 101
1910 E SOUTH CAMPUS DR
SALT LAKE CITY, UT 84112-9350
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Collin Simmons by phone at 801-587-9394, by FAX at 801-587-9667, or by Internet E-mail at collin.simmons@utah.edu

AUTHORIZED BY: Alma Allred, Director

EFFECTIVE: 02/17/2012

Regents (Board of), University of Utah, Commuter Services

R810-5

Permit Types, Eligibility and Designated Parking Areas

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35889
FILED: 02/17/2012

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 53B-3-103 permits institutions of higher education to enact rules governing traffic, parking, and related issues.

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 documented in the previous five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should continue because the underlying statute continues to permit it.

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

REGENTS (BOARD OF)
UNIVERSITY OF UTAH,
COMMUTER SERVICES
ROOM 101
1910 E SOUTH CAMPUS DR
SALT LAKE CITY, UT 84112-9350
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Collin Simmons by phone at 801-587-9394, by FAX at 801-587-9667, or by Internet E-mail at collin.simmons@utah.edu

AUTHORIZED BY: Alma Allred, Director

EFFECTIVE: 02/17/2012

Regents (Board of), University of Utah, Commuter Services

R810-6

Permit Prices and Refunds

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 35882
FILED: 02/16/2012

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 53B-3-103 permits institutions of higher education to enact rules governing traffic, parking, and related issues.

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 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 should continue because the underlying statute continues to permit it.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
REGENTS (BOARD OF)
UNIVERSITY OF UTAH,
COMMUTER SERVICES
ROOM 101
1910 E SOUTH CAMPUS DR
SALT LAKE CITY, UT 84112-9350
or at the Division of Administrative Rules.

1910 E SOUTH CAMPUS DR
SALT LAKE CITY, UT 84112-9350
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Collin Simmons by phone at 801-587-9394, by FAX at 801-587-9667, or by Internet E-mail at collin.simmons@utah.edu

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Collin Simmons by phone at 801-587-9394, by FAX at 801-587-9667, or by Internet E-mail at collin.simmons@utah.edu

AUTHORIZED BY: Alma Allred, Director

AUTHORIZED BY: Alma Allred, Director

EFFECTIVE: 02/16/2012

EFFECTIVE: 02/17/2012

**Regents (Board of), University of Utah,
Commuter Services
R810-9
Contractors and Their Employees**

**Regents (Board of), University of Utah,
Commuter Services
R810-10
Enforcement System**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 35883
FILED: 02/17/2012

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 35884
FILED: 02/17/2012

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53B-3-103 permits institutions of higher education to enact rules governing traffic, parking, and related issues.

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 53B-3-103 permits institutions of higher education to enact rules governing traffic, parking, and related issues.

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 documented in the previous five years.

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 documented in the previous five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should continue because the underlying statute continues to permit it.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should continue because the underlying statute continues to permit it.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
REGENTS (BOARD OF)
UNIVERSITY OF UTAH,
COMMUTER SERVICES
ROOM 101

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
REGENTS (BOARD OF)
UNIVERSITY OF UTAH,
COMMUTER SERVICES
ROOM 101
1910 E SOUTH CAMPUS DR
SALT LAKE CITY, UT 84112-9350
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Collin Simmons by phone at 801-587-9394, by FAX at 801-587-9667, or by Internet E-mail at collin.simmons@utah.edu

AUTHORIZED BY: Alma Allred, Director

EFFECTIVE: 02/17/2012

**Regents (Board of), University of Utah,
Commuter Services
R810-11
Appeals System**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 35890
FILED: 02/17/2012

**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 53B-3-103 permits institutions of higher education to enact rules governing traffic, parking, and related issues.

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 documented comments from the previous five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should continue because the underlying statute continues to permit it.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
REGENTS (BOARD OF)
UNIVERSITY OF UTAH,
COMMUTER SERVICES
ROOM 101
1910 E SOUTH CAMPUS DR
SALT LAKE CITY, UT 84112-9350
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Collin Simmons by phone at 801-587-9394, by FAX at 801-587-9667, or by Internet E-mail at collin.simmons@utah.edu

AUTHORIZED BY: Alma Allred, Director

EFFECTIVE: 02/17/2012

End of the Five-Year Notices of Review and Statements of Continuation Section

**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).

Capitol Preservation Board (State),
Administration
R131-3
Use of Magnetometers on Capitol
Grounds

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 35899

FILED: 02/29/2012

EXTENSION REASON AND NEW DEADLINE: The Capitol Preservation Board needs more time to schedule a meeting in order to discuss this rule which is up for a five-year review on 05/16/2012. The new deadline is 09/13/2012.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov
- ◆ Allyson Gamble by phone at 801-537-9156, by FAX at 801-538-3221, or by Internet E-mail at agamble@utah.gov
- ◆ Chiarina Gleed by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov

AUTHORIZED BY: Allyson Gamble, Executive Director

EFFECTIVE: 02/29/2012

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

Alcoholic Beverage Control

Administration

No. 35588 (AMD): R81-1-6. Violation Schedule

Published: 01/15/2012

Effective: 03/01/2012

Capitol Preservation Board (State)

Administration

No. 35610 (AMD): R131-13. Health Reform - Health

Insurance Coverage in State Contracts - Implementation

Published: 01/15/2012

Effective: 02/21/2012

Career Service Review Office

Administration

No. 35559 (AMD): R137-1-21. The Evidentiary/Step 4

Adjudicatory Procedures

Published: 01/15/2012

Effective: 02/21/2012

Commerce

Occupational and Professional Licensing

No. 35585 (AMD): R156-83-502. Unprofessional Conduct

Published: 01/15/2012

Effective: 02/21/2012

Securities

No. 35558 (NEW): R164-101. Securities Fraud Reporting

Program Act

Published: 01/15/2012

Effective: 02/21/2012

Health

Health Care Financing, Coverage and Reimbursement Policy

No. 35584 (AMD): R414-1-5. Incorporations by Reference

Published: 01/15/2012

Effective: 02/21/2012

No. 35583 (AMD): R414-401-5. Penalties and Interest

Published: 01/15/2012

Effective: 02/21/2012

Human Services

Substance Abuse and Mental Health, State Hospital

No. 35589 (AMD): R525-2. Patient Rights

Published: 01/15/2012

Effective: 02/21/2012

No. 35590 (AMD): R525-3. Medication Treatment of Patients

Published: 01/15/2012

Effective: 02/21/2012

No. 35591 (AMD): R525-5. Background Checks

Published: 01/15/2012

Effective: 02/21/2012

No. 35593 (AMD): R525-6. Prohibited Items and Devices

Published: 01/15/2012

Effective: 02/21/2012

No. 35594 (AMD): R525-7.

Complaints/Suggestions/Concerns

Published: 01/15/2012

Effective: 02/21/2012

No. 35596 (AMD): R525-8. Forensic Mental Health Facility

Published: 01/15/2012

Effective: 02/21/2012

Workforce Services

Employment Development

No. 35586 (AMD): R986-700-713. Amount of CC Payment

Published: 01/15/2012

Effective: 04/01/2012

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, 2012 through March 01, 2012. 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 (5110 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>Archives</u>					
R17-9	Electronic Participation at Meetings	35304	NEW	01/30/2012	2011-20/6
<u>Child Welfare Parental Defense (Office of)</u>					
R19-1-6	Child Welfare Parental Defense Oversight Committee	35205	AMD	01/12/2012	2011-18/6
R19-1-7	Electronic Meetings	35206	AMD	01/12/2012	2011-18/7
<u>Finance</u>					
R25-14	Payment of Attorneys Fees in Death Penalty Cases	35663	5YR	01/12/2012	2012-3/105
<u>Fleet Operations</u>					
R27-4	Vehicle Replacement and Expansion of State Fleet	35622	5YR	01/05/2012	2012-3/105
R27-5	Fleet Tracking	35617	5YR	01/05/2012	2012-3/106
R27-5	Fleet Tracking	35623	NSC	01/31/2012	Not Printed
R27-6	Fuel Dispensing Program	35620	5YR	01/05/2012	2012-3/106
R27-8	State Vehicle Maintenance Program	35621	5YR	01/05/2012	2012-3/107
AGRICULTURE AND FOOD					
<u>Administration</u>					
R51-2	Administrative Procedures for Informal Proceedings Before the Utah Department of Agriculture and Food	35614	5YR	01/04/2012	2012-3/107
<u>Animal Industry</u>					
R58-1	Admission and Inspection of Livestock, Poultry, and Other Animals	35691	5YR	01/18/2012	2012-4/59
R58-6	Poultry	35692	5YR	01/18/2012	2012-4/59
R58-18	Elk Farming	35695	5YR	01/18/2012	2012-4/60
R58-19	Compliance Procedures	35696	5YR	01/18/2012	2012-4/60
R58-22	Equine Infectious Anemia (EIA)	35694	5YR	01/18/2012	2012-4/61
R58-23	Equine Viral Arteritis (EVA)	35693	5YR	01/18/2012	2012-4/61
<u>Plant Industry</u>					
R68-19	Compliance Procedures	35697	5YR	01/18/2012	2012-4/62
<u>Regulatory Services</u>					
R70-201	Compliance Procedures	35660	5YR	01/12/2012	2012-3/108
R70-320	Minimum Standards for Milk for Manufacturing Purposes, its Production and Processing	35661	5YR	01/12/2012	2012-3/109
R70-350	Ice Cream and Frozen Dairy Food Standards	35658	5YR	01/12/2012	2012-3/109
R70-360	Procedure for Obtaining a License to Test Milk for Payment	35657	5YR	01/12/2012	2012-3/110
R70-550	Utah Inland Shellfish Safety Program	35659	5YR	01/12/2012	2012-3/110

R70-560	Inspection and Regulation of Cottage Food Production Operations	35662	5YR	01/12/2012	2012-3/111
ALCOHOLIC BEVERAGE CONTROL					
<u>Administration</u>					
R81-1-6	Violation Schedule	35588	AMD	03/01/2012	2012-2/20
CAPITOL PRESERVATION BOARD (STATE)					
<u>Administration</u>					
R131-3	Use of Magnetometers on Capitol Grounds	35899	EXT	02/29/2012	Not Printed
R131-10	Commercial Solicitations	35687	5YR	01/17/2012	2012-3/111
R131-11	Preservation of Free Speech Activities	35688	5YR	01/17/2012	2012-3/112
R131-13	Health Reform - Health Insurance Coverage in State Contracts - Implementation	35611	EMR	01/03/2012	2012-2/105
R131-13	Health Reform - Health Insurance Coverage in State Contracts - Implementation	35610	AMD	02/21/2012	2012-2/24
CAREER SERVICE REVIEW OFFICE					
<u>Administration</u>					
R137-1-21	The Evidentiary/Step 4 Adjudicatory Procedures	35559	AMD	02/21/2012	2012-2/26
COMMERCE					
<u>Administration</u>					
R151-3	Americans With Disabilities Act Rule	35897	5YR	02/28/2012	Not Printed
<u>Occupational and Professional Licensing</u>					
R156-1	General Rule of the Division of Occupational and Professional Licensing	35624	5YR	01/05/2012	2012-3/112
R156-11a	Barber, Cosmetologist/Barber, Esthetician, Electrologist and Nail Technician Licensing Act Rule	35853	5YR	02/06/2012	2012-5/101
R156-16a	Optometry Practice Act Rule	35893	5YR	02/21/2012	Not Printed
R156-20a	Environmental Health Scientist Act Rule	35430	AMD	01/10/2012	2011-23/10
R156-37	Utah Controlled Substances Act Rule	35892	5YR	02/21/2012	Not Printed
R156-47b-102	Definitions	35498	AMD	01/26/2012	2011-24/6
R156-55d	Burglar Alarm Licensing Rule	35860	5YR	02/07/2012	2012-5/102
R156-56	Building Inspector and Factory Built Housing Licensing Act Rule	35735	5YR	01/31/2012	2012-4/62
R156-64	Deception Detection Examiners Licensing Act Rule	35736	5YR	01/31/2012	2012-4/64
R156-76	Professional Geologist Licensing Act Rule	35894	5YR	02/21/2012	Not Printed
R156-78B	Prelitigation Panel Review Rule	35820	5YR	02/02/2012	2012-5/102
R156-83-502	Unprofessional Conduct	35585	AMD	02/21/2012	2012-2/28
<u>Securities</u>					
R164-101	Securities Fraud Reporting Program Act	35558	NEW	02/21/2012	2012-2/29
COMMUNITY AND CULTURE					
<u>Arts and Museums</u>					
R207-1	Utah Arts Council General Program Rules	35723	5YR	01/24/2012	2012-4/64
R207-2	Policy for Commissions, Purchases, and Donations to, and Loans from, the Utah State Art Collection	35724	5YR	01/24/2012	2012-4/65
CORRECTIONS					
<u>Administration</u>					
R251-106	Media Relations	35760	EXD	01/18/2012	2012-4/123
R251-106	Media Relations	35767	EMR	02/01/2012	2012-4/45
R251-107	Executions	35761	EXD	01/18/2012	2012-4/123
R251-107	Executions	35768	EMR	02/01/2012	2012-4/47

RULES INDEX

R251-108	Adjudicative Proceedings	35762	EXD	01/18/2012	2012-4/123
R251-108	Adjudicative Proceedings	35769	EMR	02/01/2012	2012-4/49
R251-305	Visiting at Community Correctional Centers	35754	EXT	01/31/2012	2012-4/121
R251-306	Sponsors in Community Correctional Centers	35755	EXT	01/31/2012	2012-4/121
R251-703	Vehicle Direction Station	35763	EXD	01/18/2012	2012-4/124
R251-703	Vehicle Direction Station	35770	EMR	02/01/2012	2012-4/51
R251-704	North Gate	35764	EXD	01/18/2012	2012-4/124
R251-704	North Gate	35771	EMR	02/01/2012	2012-4/52
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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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	35795	R643-875	5YR	02/01/2012	2012-4/102	
	35796	R643-877	5YR	02/01/2012	2012-4/103	
	35797	R643-879	5YR	02/01/2012	2012-4/104	
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