

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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TABLE OF CONTENTS

SPECIAL NOTICES	1
Health	
Health Care Financing, Coverage and Reimbursement Policy	
Notice for August 2012 Medicaid Rate Changes.....	1
NOTICES OF PROPOSED RULES	3
Administration	
No. 36416 (Amendment): R151-4-306 Motion to Recuse or Disqualify a Board or	
Commission Member.....	4
Real Estate	
No. 36390 (Amendment): R162-2f Real Estate Licensing and Practices Rules.....	5
Health	
Administration	
No. 36432 (New Rule): R380-41 Governance Committee Electronic Meetings.....	14
Children's Health Insurance Program	
No. 36429 (New Rule): R382-2 Electronic Personal Medical Records for the Children's	
Health Insurance Program.....	15
Disease Control and Prevention, Environmental Services	
No. 36404 (Amendment): R392-100 Food Service Sanitation.....	16
Health Care Financing, Coverage and Reimbursement Policy	
No. 36431 (New Rule): R414-8 Electronic Personal Medical Records for the Medicaid	
Program.....	19
No. 36444 (Amendment): R414-303 Coverage Groups.....	21
No. 36443 (Amendment): R414-307 Eligibility for Home and Community-Based Services	
Waivers.....	26
No. 36427 (New Rule): R414-509 Medicaid Autism Waiver Open Enrollment Process.....	31
Insurance	
Administration	
No. 36418 (Amendment): R590-262 Health Data Authority Health Insurance Claims Reporting.....	33
Natural Resources	
Wildlife Resources	
No. 36394 (Amendment): R657-16 Aquaculture and Fish Stocking.....	36
No. 36393 (Amendment): R657-41 Conservation and Sportsman Permits.....	37
No. 36397 (Amendment): R657-57 Division Variance Rule.....	40
No. 36396 (Amendment): R657-59 Private Fish Ponds.....	45
NOTICES OF CHANGES IN PROPOSED RULES	47
Commerce	
Real Estate	
No. 36078: R162-57a Timeshare and Camp Resort Rules.....	48
NOTICES 120-DAY (EMERGENCY) RULES	53
Public Safety	
Driver License	
No. 36419: R708-48 Ignition Interlock System Program.....	53
FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION	59
Administrative Services	
Debt Collection	
No. 36420: R21-1 Transfer of Collection Responsibility of State Agencies.....	59
No. 36421: R21-2 Office of State Debt Collection Administrative Procedures.....	60
No. 36422: R21-3 Debt Collection Through Administrative Offset.....	60
Purchasing and General Services	
No. 36423: R33-1 Utah State Procurement Rules Definitions.....	61
No. 36424: R33-2 Procurement Organization.....	61

TABLE OF CONTENTS

No. 36425: R33-3 Source Selection and Contract Formation.....	62
No. 36426: R33-4 Specifications.....	62
No. 36428: R33-5 Construction and Architect-Engineer Selection.....	63
No. 36430: R33-8 Property Management.....	63
Commerce	
Occupational and Professional Licensing	
No. 36405: R156-22 Professional Engineers and Professional Land Surveyors Licensing Act Rule.....	64
Environmental Quality	
Water Quality	
No. 36388: R317-5 Large Underground Wastewater Disposal Systems.....	65
No. 36389: R317-550 Rules for Waste Disposal By Liquid Scavenger Operations.....	65
No. 36387: R317-560 Rules for the Design, Construction, and Maintenance of Vault Privies and Earthen Pit Privies.....	66
Health	
Health Care Financing, Coverage and Reimbursement Policy	
No. 36406: R414-60A Drug Utilization Review Board.....	66
Human Services	
Substance Abuse and Mental Health	
No. 36383: R523-22 Utah Standards for Approval of Alcohol and Drug Educational Programs for Court-Referred DUI Offenders.....	67
No. 36384: R523-23 On-Premise Alcohol Training and Education Seminar Rules of Administration.....	67
Insurance	
Administration	
No. 36385: R590-122 Permissible Arbitration Provisions.....	68
No. 36386: R590-149 Americans with Disabilities Act (ADA) Grievance Procedures.....	69
No. 36417: R590-173 Credit for Reinsurance.....	69
Labor Commission	
Administration	
No. 36401: R600-2 Operations.....	70
Adjudication	
No. 36399: R602-1 General Provisions.....	70
No. 36400: R602-2 Adjudication of Workers' Compensation and Occupational Disease Claims.....	71
Industrial Accidents	
No. 36402: R612-1 Workers' Compensation Rules - Procedures.....	71
Natural Resources	
Wildlife Resources	
No. 36392: R657-44 Big Game Depredation.....	72
Public Safety	
Highway Patrol	
No. 36440: R714-110 Permit to Operate a Motor Vehicle in Violation of Equipment Laws.....	72
No. 36442: R714-158 Vehicle Safety Inspection Program Requirements.....	73
No. 36439: R714-159 Vehicle Safety Inspection Apprenticeship Program Guidelines.....	73
No. 36433: R714-200 Standards for Vehicle Lights and Illuminating Devices.....	74
No. 36441: R714-210 Standards for Motor Vehicle Air Conditioning Equipment.....	74
No. 36434: R714-220 Standards for Protective Headgear.....	75
No. 36435: R714-230 Standards and Specifications for Vehicle Seat Belts and Safety Harnesses.....	75
No. 36437: R714-240 Standards and Specifications for Child Restraint Devices and Safety Belts.....	76
No. 36438: R714-300 Standards for Motor Vehicle Braking Systems.....	76
No. 36436: R714-550 Rule for Spending Fees Provided under Section 53-1-117.....	77
School and Institutional Trust Lands	
Administration	
No. 36408: R850-4 Application Fees and Assessments.....	77
No. 36409: R850-5 Payments, Royalties, Audits, and Reinstatements.....	78

No. 36410: R850-6 Government Records Access and Management.....	78
No. 36411: R850-30 Special Use Leases.....	79
No. 36412: R850-40 Easements.....	79
No. 36413: R850-50 Range Management.....	80
No. 36414: R850-60 Cultural Resources.....	80
No. 36415: R850-80 Sale of Trust Lands.....	81
NOTICES FIVE-YEAR REVIEW EXTENSION.....	83
Regents (Board of)	
College of Eastern Utah	
No. 36391: R767-1 Government Records Access and Management Act.....	83
NOTICES OF RULE EFFECTIVE DATES.....	85
RULES INDEX	
BY AGENCY (CODE NUMBER)	
AND	
BY KEYWORD (SUBJECT).....	87

SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for August 2012 Medicaid Rate Changes

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

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between June 16, 2012, 12:00 a.m., and July 02, 2012, 11:59 p.m. are included in this, the July 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 August 14, 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 November 12, 2012, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses and the agency must start the process over.

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

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

The Proposed Rules Begin on the Following Page

Commerce, Administration
R151-4-306
 Motion to Recuse or Disqualify a Board
 or Commission Member

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 36416
 FILED: 06/27/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This filing sets forth with more clarity the original intent of motions to recuse or disqualify a board or commission member; the amendments are not intended to make any substantive changes.

SUMMARY OF THE RULE OR CHANGE: In particular, this amendment clarifies that a motion to recuse or disqualify a board or commission member may be accompanied by an affidavit, that a decision on such a motion is not subject to interlocutory appeal, and that a board or commission member may recuse himself or herself at any time without a motion by a party.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-1-6

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This rule filing clarifies the procedures for filing a motion to disqualify a board or commission member from a proceeding. No costs to the state budget are anticipated from these clarifications.
- ◆ **LOCAL GOVERNMENTS:** Local governments are generally not affected by adjudicative proceedings in this agency. Even if they were, this rule filing simply clarifies the procedure for challenges to board or commission member participation in proceedings and should result in no costs.
- ◆ **SMALL BUSINESSES:** In the event that small businesses are involved in any adjudicative proceedings, this filing is just a clarification of the applicable procedure for challenges to board or commission member participation in proceedings and should result in no costs.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule filing clarifies the procedures for filing a motion to disqualify a board or commission member from a proceeding and should result in no costs to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule filing clarifies the procedures for filing a motion to disqualify a board or commission member from a proceeding and should result in no costs to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this filing which clarifies the procedures for challenges to board or commission member participation in proceedings.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Masuda Medcalf by phone at 801-530-7663, by FAX at 801-530-6446, or by Internet E-mail at mmedcalf@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2012

AUTHORIZED BY: Francine Giani, Executive Director

R151. Commerce, Administration.

R151-4. Department of Commerce Administrative Procedures Act Rule.

R151-4-306. Motion to Recuse or Disqualify a Board or Commission Member.

(1)(a) A motion to recuse or disqualify a Board or Commission member must be filed no later than 14 days prior to the scheduled hearing before the Board or Commission and may include affidavits supporting the basis for the motion. Service of such motion to the opposing party shall be by electronic mail, facsimile or overnight mail.

(b) A response to a motion to recuse or disqualify a Board or Commission member is permitted but not mandatory. Any response shall be filed no later than seven days before the scheduled hearing. Service of a response to the opposing party shall be by electronic mail, facsimile or overnight mail.

(c) No reply is permitted.

(2)(a) The decision on a motion to recuse or disqualify a Board or Commission member shall be made by the Board or Commission member the motion seeks to recuse or disqualify. A written decision is not necessary.

(b) At the beginning of the scheduled hearing, the Board or Commission member shall state on the record his or her decision. The Board or Commission member may choose to notify the presiding officer of his or her decision prior to the hearing, and the presiding officer shall then state the decision on the record.

(c) The Board or Commission member may ask the advice of the other members at the beginning of a scheduled hearing, but the Board or Commission member shall not be bound by any such advice.

(d) The Division, presiding officer, or filing party may not subject the Board or Commission member to questioning or examination on the motion.

(e) The Division or presiding officer may not reverse a recusal or disqualification decision made by a Board or Commission member.

(f) Like all interlocutory matters, a decision on a motion to recuse or disqualify a Board or Commission member is not subject to an interlocutory appeal or agency review.

(3) This rule does not apply to any adjudicative proceedings under the New Automobile Franchise Act, Utah Code Ann. Sections 13-14-101 et seq., or the Powersport Vehicle Franchise Act, Utah Code Ann. Sections 13-35-101 et seq.

(4) A Board or Commission member may recuse him or herself at any time regardless of whether a party has filed a motion to recuse or disqualify the Board or Commission member.

KEY: administrative procedures, adjudicative proceedings, government hearings

Date of Enactment or Last Substantive Amendment: [June 21], 2012

Authorizing, and Implemented or Interpreted Law: 13-1-6; 63G-4-102(6)

Commerce, Real Estate R162-2f Real Estate Licensing and Practices Rules

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 36390
FILED: 06/18/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add specificity in existing rules governing management of real estate and property management trust accounts, qualifications required for licensure, record keeping, and professional conduct.

SUMMARY OF THE RULE OR CHANGE: In Section R162-2f-102, the definition of "brokerage records" is amended to specify that trust account records include records of deposits and conveyances. In Section R162-2f-201, new language is proposed to require an applicant with criminal history involving violence or physical coercion to provide records from which the Commission may assess whether the applicant might pose an ongoing threat to the public. In Section R162-2f-202b, existing language is clarified to state that a trust account name must contain the term "real estate trust account" or "property management trust account" as applicable, and that trust accounts must be separate from

operating accounts. Additionally, new language in this subsection states that a principal broker license may not be awarded to an applicant whose sales agent license is on suspension or probation at the time of application. In several subsections, existing provisions are modified to specify that a principal broker is required to inform the Division of where trust accounts and brokerage records are maintained, and to clarify that both trust and operating accounts must be in a bank or credit union that is located in Utah. Section R162-2f-207 is amended to clarify that a brokerage must obtain a new registration whenever a corporate change results in a new business license or a new registration with the Division of Corporations and Commercial Code. Other changes in corporate structure or ownership require notification to the Division, but do not nullify an existing entity registration. In Section R162-2f-401b, licensees are prohibited from making a misrepresentation to the Division in an investigation. They are also prohibited from having a seller sign a document allowing the licensee to lien the seller's property in a short sale transaction. Throughout, nonsubstantive changes are made to correct numbering and internal references as needed due to these proposed amendments as well as changes made to the real estate statute (Title 61, Chapter 2f) in the 2012 General Session (H.B. 191). In addition, the appendices currently located at the end of Section R162-2f-407 are placed in a new, separate section, R162-2f-501.

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

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These proposed amendments modify existing provisions. The division already has budget and staff in place to administer and enforce these provisions, and it is not anticipated that the proposed amendments will have any effect on those resources.

◆ **LOCAL GOVERNMENTS:** Local governments are not required to comply with or enforce the real estate rules. Therefore, no fiscal impact to local government is anticipated.

◆ **SMALL BUSINESSES:** Under the current rules, small businesses are required to maintain brokerage and trust account records and to notify the Division when certain changes occur. These amendments further clarify these requirements by adding specificity about which records must be maintained and when a notification to the Division is required. Where the amendments do not create uniquely new obligations or impose new fees, no financial impact to small businesses is anticipated.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Under the current rules, affected persons are required to maintain brokerage and trust account records and to notify the Division of changes. These amendments further clarify these requirements by adding specificity about which records must be maintained and when a notification to the Division is required. Where the amendments do not create uniquely new obligations or impose new fees, no financial impact to affected persons is anticipated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: To comply, affected persons must conduct themselves differently if they do not properly maintain records, reconcile trust account records, or communicate with the Division. It is not anticipated that an affected person would incur any monetary costs in order to make changes in brokerage operations that might be necessary.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule filing, which clarifies existing standards, providing more specificity as to the maintenance of trust accounts and client records, Division notification requirements, and professional conduct standards.

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

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

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2012

AUTHORIZED BY: Jonathan Stewart, Director

R162. Commerce, Real Estate.

R162-2f. Real Estate Licensing and Practices Rules.

R162-2f-102. Definitions.

(1) "Active license" means a license granted to an applicant who:

(a) qualifies for licensure under Section 61-2f-203 and these rules;

(b) pays all applicable nonrefundable license fees; and

(c) affiliates with a principal brokerage.

(2) "Advertising" means solicitation through:

(a) newspaper;

(b) magazine;

(c) Internet;

(d) e-mail;

(e) radio;

(f) television;

(g) direct mail promotions;

(h) business cards;

(i) door hangers;

(j) signs; or

(k) any other medium.

(3) "Affiliate":

(a) when used in reference to licensure, means to form, for the purpose of providing a real estate service, an employment or non-employment association with another individual or entity licensed or registered under Title 61, Chapter 2f et seq. and these rules; and

(b) when used in reference to an undivided fractionalize long-term estate, means an individual or entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified individual or entity.

(4) "Branch broker" means an associate broker who manages a branch office under the supervision of the principal broker.

(5) "Branch office" means a principal broker's real estate brokerage office other than the principal broker's main office.

(6) "Brokerage" means a real estate sales or a property management company.

(7) "Brokerage record" means any record related to the business of a principal broker, including:

(a) record of an offer to purchase real estate;

(b) record of a real estate transaction, regardless of whether the transaction closed;

(c) licensing records;

(d) banking and other financial records;

(e) independent contractor agreements;

(f) trust account records, including:

(i) deposit records in the form of a duplicate deposit slip, deposit advice, or equivalent document; and

(ii) conveyance records in the form of a check image, wire transfer verification, or equivalent document; and

(g) records of the brokerage's contractual obligations.

(8) "Business day" is defined in Subsection 61-2f-102(3).

(9) "Certification" means authorization from the division

to:

(a) establish and operate a school that provides courses approved for prelicensing education or continuing education; or

(b) function as an instructor for courses approved for prelicensing education or continuing education.

(10) "Commission" means the Utah Real Estate Commission.

(11) "Continuing education" means professional education required as a condition of renewal in accordance with Section R162-2f-204 and may be either:

(a) core: topics identified in Subsection R162-2f-206c(5)

(c); or

(b) elective: topics identified in Subsection R162-2f-206c(5)(e).

(12) "Day" means calendar day unless specified as "business day."

(13) "Distance education" means education in which the instruction does not take place in a traditional classroom setting, but occurs through other interactive instructional methods where teacher and student are separated by distance and sometimes by time, including:

(a) computer conferencing;

(b) satellite teleconferencing;

(c) interactive audio;

(d) interactive computer software;

- (e) Internet-based instruction; and
 (f) other interactive online courses.
- (14) "Division" means the Utah Division of Real Estate.
- (15) "Double contract" means executing two or more purchase agreements, one of which is not made known to the prospective lender or loan funding entity.
- (16) "Expired license" means a license that is not renewed pursuant to Section 61-2f-204 and Section R162-2f-204 by:
- (a) the close of business on the expiration date, if the expiration date falls on a day when the division is open for business; or
- (b) the next business day following the expiration date, if the expiration date falls on a day when the division is closed.
- (17) "Guaranteed sales plan" means:
- (a) a plan in which a seller's real estate is guaranteed to be sold; or
- (b) a plan whereby a licensee or anyone affiliated with a licensee agrees to purchase a seller's real estate if it is not purchased by a third party:
- (i) in the specified period of a listing; or
- (ii) within some other specified period of time.
- (18) "Inactive license" means a license that has been issued pursuant to Sections R162-2f-202a through 202c or renewed pursuant to Section R162-2f-204, but that may not be used to conduct the business of real estate because the license holder is not affiliated with a principal broker. Pursuant to Section R162-2f-203, a license may be inactivated:
- (a) voluntarily, with the assent of the license holder; or
- (b) involuntarily, without the assent of the license holder.
- (19) "Informed consent" means written authorization, obtained from both principals to a single transaction, to allow a licensee to act as a limited agent.
- (20) "Limited agency" means the representation of all principals in the same transaction to negotiate a mutually acceptable agreement:
- (a) subject to the terms of a limited agency agreement; and
- (b) with the informed consent of all principals to the transaction.
- (21) "Net listing" means a listing agreement under which the real estate commission is the difference between the actual selling price of the property and a minimum selling price as set by the seller.
- (22) "Nonresident applicant" means a person:
- (a) whose primary residence is not in Utah; and
- (b) who qualifies under Title 61, Chapter 2f et seq. and these rules for licensure as a principal broker, associate broker, or sales agent.
- (23) "Principal brokerage" means the main real estate or property management office of a principal broker.
- (24) "Principal" in a transaction means an individual who is represented by a licensee and may be:
- (a) the buyer or lessee;
- (b) an individual having an ownership interest in the property;
- (c) an individual having an ownership interest in the entity that is the buyer, seller, lessor, or lessee; or
- (d) an individual who is an officer, director, partner, member, or employee of the entity that is the buyer, seller, lessor, or lessee.
- (25) "Property management" is defined in Subsection 61-2f-102(19).
- (26) "Registration" means authorization from the division to engage in the business of real estate as:
- (a) a corporation;
- (b) a partnership;
- (c) a limited liability company;
- (d) an association;
- (e) a dba;
- (f) a professional corporation;
- (g) a sole proprietorship; or
- (h) another legal entity of a real estate brokerage.
- (27) "Reinstatement" is defined in Subsection 61-2f-102(22).
- (28) "Reissuance" is defined in Subsection 61-2f-102(23).
- (29) The acronym RELMS means "real estate licensing and management system," which is the online database through which licensees can submit certain licensing information to the division.
- (30) "Renewal" is defined in Subsection 61-2f-102(24).
- (31) "Residential property" means real property consisting of, or improved by, a single-family one- to four-unit dwelling.
- (32) "School" means:
- (a) any college or university accredited by a regional accrediting agency that is recognized by the United States Department of Education;
- (b) any community college or vocational-technical school;
- (c) any local real estate organization that has been approved by the commission as a school; or
- (d) any proprietary real estate school.
- (33) "Sponsor" means the party that is the seller of an undivided fractionalized long-term estate.
- (34) "Third party service provider" means an individual or entity that provides a service necessary to the closing of a specific transaction and includes:
- (a) mortgage brokers;
- (b) mortgage lenders;
- (c) loan originators;
- (d) title service providers;
- (e) attorneys;
- (f) appraisers;
- (g) providers of document preparation services;
- (h) providers of credit reports;
- (i) property condition inspectors;
- (j) settlement agents;
- (k) real estate brokers;
- (l) marketing agents;
- (m) insurance providers; and
- (n) providers of any other services for which a principal or investor will be charged.
- (35) "Traditional education" means education in which instruction takes place between an instructor and students where all are physically present in the same classroom.

(36) "Undivided fractionalized long-term estate" is defined in Subsection 61-2f-102(26).

R162-2f-201. Qualification for Licensure.

(1) Character. Pursuant to Subsection 61-2f-203(1)(~~b~~) (c), an applicant for licensure as a sales agent, associate broker, or principal broker shall evidence honesty, integrity, truthfulness, and reputation.

(a) An applicant shall be denied a license for:

(i) a felony that resulted in:

(A) a conviction occurring within the five years preceding the date of application;

(B) a plea agreement occurring within the five years preceding the date of application; or

(C) a jail or prison term with a release date falling within the five years preceding the date of application; or

(ii) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in:

(A) a conviction occurring within the three years preceding the date of application; or

(B) a jail or prison term with a release date falling within the three years preceding the date of application.

(b) An applicant may be denied a license or issued a restricted license for incidents in the applicant's past that reflect negatively on the applicant's honesty, integrity, truthfulness, and reputation. In evaluating an applicant for these qualities, the division and commission may consider:

(i) criminal convictions or plea agreements other than those specified in this Subsection (1)(a);

(ii) past acts related to honesty or truthfulness, with particular consideration given to any such acts involving the business of real estate, that would be grounds under Utah law for sanctioning an existing license;

(iii) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;

(iv) court findings of fraudulent or deceitful activity;

(v) evidence of non-compliance with court orders or conditions of sentencing; and

(vi) evidence of non-compliance with:

(A) terms of a diversion agreement not yet closed and dismissed;

(B) a probation agreement; or

(C) a plea in abeyance.

(c)(i) An applicant who, as of the date of application, is serving probation or parole for a crime that contains an element of violence or physical coercion shall, in order to submit a complete application, provide for the commission's review current documentation from two licensed therapists, approved by the division, stating that the applicant does not pose an ongoing threat to the public.

(ii) For purposes of applying this rule, crimes that contain an element of violence or physical coercion include, but are not limited to, the following:

(A) assault, including domestic violence;

(B) rape;

(C) sex abuse of a child;

(D) sodomy on a child;

(E) battery;

(F) interruption of a communication device;

(G) vandalism;

(H) robbery;

(I) criminal trespass;

(J) breaking and entering;

(K) kidnapping;

(L) sexual solicitation or enticement;

(M) manslaughter; and

(N) homicide.

(iii) Information and documents submitted in compliance with this Subsection (1)(c) shall be reviewed by the commission, which may exercise discretion in determining whether the applicant qualifies for licensure.

(2) Competency. In evaluating an applicant for competency, the division and commission may consider evidence including:

(a) civil judgments, with particular consideration given to any such judgments involving the business of real estate;

(b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;

(c) suspension or revocation of a professional license;

(d) sanctions placed on a professional license; and

(e) investigations conducted by regulatory agencies relative to a professional license.

(3) Age. An applicant shall be at least 18 years of age.

(4) Minimum education. An applicant shall have:

(a) a high school diploma;

(b) a GED; or

(c) equivalent education as approved by the commission.

R162-2f-202b. Principal Broker Licensing Fees and Procedures.

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

(a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);

(b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);

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

(A) 45 hours of broker principles;

(B) 45 hours of broker practices; and

(C) 30 hours of Utah law and testing; or

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

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

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

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

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

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

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

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

(B) up to one year full-time professional experience related to real estate, as outlined in Appendix 3; and

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

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

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

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

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

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

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

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

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

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

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

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

(k) establish [a]real estate and property management trust [account]accounts, as applicable pursuant to Section R162-2f-403, that:

(i) contain the term "real estate trust account" or "property management trust account", as applicable, in the account name; and

(ii) are separate from any operating account(s) of the registered entity for which the individual will serve as a broker; and

(l) identify the location(s) where brokerage records will be kept.

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

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

(3) Deadlines.

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

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

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

(b) An application for licensure shall be submitted:

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

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

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

(4) Restriction. A principal broker license may not be granted to an applicant whose sales agent license is on suspension or probation at the time of application.

R162-2f-205. Registration of Entity.

(1) A principal broker shall not conduct business through an entity, including a branch office, dba, or separate property management company, without first registering the entity with the division.

(2) Exemptions. The following locations may be used to conduct real estate business without being registered as branch offices:

(a) a model home;

(b) a project sales office; and

(c) a facility established for twelve months or less as a temporary site for marketing activity, such as an exhibit booth.

(3) To register an entity with the division, a principal broker shall:

(a) evidence that the name of the entity is registered with the Division of Corporations;

(b) certify that the entity is affiliated with a principal broker who:

(i) is authorized to use the entity name; and

(ii) will actively supervise the activities of all sales agents, associate brokers, branch brokers, and unlicensed staff;

(c) if registering a branch office, identify the branch broker who will actively supervise all licensees and unlicensed staff working from the branch office;

(d) submit an application that includes:

(i) the physical address of the entity;

(ii) if the entity is a branch office, the name and license number of the branch broker;

(iii) the names of associate brokers and sales agents assigned to the entity; and

(iv) the location and account number of any real estate and property management trust [account]account(s) in which funds received at the registered location will be deposited; ~~and~~

(e) inform the division of:

(i) the location and account number of any operating account(s) used by the registered entity; and

(ii) the location where brokerage records will be kept; and

[(e)](f) pay a nonrefundable application fee.

(4) Restrictions.

(a)(i) The division shall not register an entity proposing to use a business name that:

(A) is likely to mislead the public into thinking that the entity is not a real estate brokerage or property management company;

(B) closely resembles the name of another registered entity; or

(C) the division determines might otherwise be confusing or misleading to the public.

(ii) Approval by the division of an entity's business name does not ensure or grant to the entity a legal right to use or operate under that name.

(b) A branch office shall operate under the same business name as the principal brokerage.

(c) An entity may not designate a post office box as its business address, but may designate a post office box as a mailing address.

(d) All trust accounts and operating accounts used by a registered entity shall be maintained in a bank or credit union located in the state of Utah.

(5) Registration not transferable.

(a) A registered entity shall not transfer the registration to any other person.

(b) A registered entity shall not allow an unlicensed person to use the entity's registration to perform work for which licensure is required.

(c) If a change in corporate structure of a registered entity creates a separate and unique legal entity, that entity shall obtain a unique registration, and shall not operate under an existing registration.

(d) The dissolution of a corporation, partnership, limited liability company, association, or other entity registered with the division terminates the registration.

R162-2f-206b. Certification Prelicensing Course.

(1) To certify a prelicensing course for traditional education, a person shall, no later than 30 days prior to the date on which the course is proposed to begin, provide the following to the division:

(a) comprehensive course outline including:

(i) description of the course;

(ii) number of class periods spent on each subject area;

(iii) minimum of three to five learning objectives for every three hours of class time; and

(iv) reference to the course outline approved by the commission for each topic;

(b) number of quizzes and examinations;

(c) grading system, including methods of testing and standards of grading;

(d)(i) a copy of at least two final examinations to be used in the course;

(ii) the answer key(s) used to determine if a student has passed the exam; and

(iii) an explanation of procedure if the student fails the final examination and thereby fails the course; and

(e) a list of the titles, authors and publishers of all required textbooks.

(2) To certify a prelicensing course for distance education, a person shall, no later than 60 days prior to the date on which the course is proposed to begin, provide the following to the division:

(a) all items listed in this Subsection (1);

(b) description of each method of course delivery;

(c) description of any media to be used;

(d) course access for the division using the same delivery methods and media that will be provided to the students;

(e) description of specific and regularly scheduled interactive events included in the course and appropriate to the

delivery method that will contribute to the students' achievement of the stated learning objectives;

(f) description of how the students' achievement of the stated learning objectives will be measured at regular intervals;

(g) description of how and when certified prelicensing instructors will be available to answer student questions; and

(h) attestation from the school director of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.

(3) Minimum standards. A prelicensing course shall:

(a) address each topic required by the course outline as approved by the commission;

(b) meet the minimum hourly requirement as established by Subsection 61-2f-203(1)~~(e)~~(d)(i) and these rules;

(c) limit the credit that students may earn to no more than eight credit hours per day;

(d) be taught in an appropriate classroom facility unless approved for distance education;

(e) allow a maximum of 10% of the required class time for testing, including:

(i) practice tests; and

(ii) a final examination; and

(f) use only texts, workbooks, and supplemental materials that are appropriate and current in their application to the required course outline.

(4) A prelicensing course certification expires at the same time as the school certification and is renewed automatically when the school certification is renewed.

R162-2f-207. Reporting a Change of Information.

(1) Individual notification requirements.

(a) An individual licensed as a sales agent, associate broker, or principal broker shall report the following to the division:

(i) change in licensee's name; and

(ii) change in licensee's business, home, e-mail, or mailing address.

(b) In addition to complying with this Subsection (1)(a):

(i) an individual licensed as a sales agent or associate broker shall report to the division a change in affiliation with a principal broker; and

(ii) an individual licensed as a principal broker shall report to the division:

(A) termination of a sales agent, associate broker, or branch broker, if the change is not reported pursuant to this Subsection (1)(b)(i);

(B) change in assignment of branch broker; and

(C) termination of the principal broker's affiliation with an entity.

(2) Entity notification requirements. A registered entity shall report the following to the division:

(a) change in entity's name;

(b) change in entity's affiliation with a principal broker;

(c) change in corporate structure;~~and~~

(d) dissolution of corporation; and

(e) change of location where brokerage records are kept .

(3) Notification procedures.

(a) Name. To report a change in name, a person shall submit to the division a paper change form and:

(i) if the person is an individual, attach to it official documentation such as a:

- (A) marriage certificate;
 - (B) divorce decree;
 - (C) court order; or
 - (D) driver license; and
- (ii) if the person is an entity:

(A) obtain prior approval from the division of the new entity name; and

(B) attach to the change form proof that the new name as approved by the division pursuant to this Subsection (3)(a)(ii)(A) is registered with, and approved by, the Division of Corporations.

(b) Address. To report a change in address, a person shall enter the change into RELMS.

(c) Affiliation.

(i) To terminate an affiliation between an individual and a principal broker, a person shall submit a change form through RELMS to inactivate or transfer the individual's license; and

(A)(I) obtain the electronic affirmation of the other party to the terminated affiliation; or

(II) comply with this Subsection (4); and

(B) if a sales agent, associate broker, or branch broker simultaneously establishes an affiliation with a new principal broker, obtain the electronic affirmation of the new principal broker on a change form.

(ii) To terminate an affiliation between a principal broker and an entity:

(A) the principal broker shall submit a paper change form to the division to inactivate or transfer the principal broker's license; and

(B) if the entity does not simultaneously affiliate with a new principal broker, the entity shall:

(I) cease operations;

(II) submit to the division a paper company/branch change form to inactivate the entity registration;

(III) submit change forms through RELMS to inactivate the license of any licensee affiliated with the entity;

(IV) advise the division as to the location where records will be stored;

(V) notify each listing and management client that the entity is no longer in business and that the client may enter into a new listing or management agreement with a different brokerage;

(VI) notify each party and cooperating broker to any existing contracts; and

(VII) retain money held in trust under the control of a signer on the trust account, or an administrator or executor, until all parties to each transaction agree in writing to the disposition or until a court of competent jurisdiction issues an order relative to the disposition.

(iii) Branch broker. To change an assignment of branch broker, a principal broker shall submit a paper change form to the division.

~~(iv)~~(d) Corporate structure.

(i) To report a change in corporate structure of a registered entity, the affiliated principal broker shall:

(A) if the change does not involve a ~~[change in ownership]~~new business license, or a new registration with the Utah Division of Corporations and Commercial Code, submit a letter to the division, fully explaining the change; and

(B) if the change involves a ~~[change in ownership]~~new business license or a new registration with the Utah Division of Corporations and Commercial Code for a purpose other than a company name change, obtain a new registration.

~~(v)~~(ii) To report the dissolution of an entity registered with the division, a person shall comply with this Subsection (3)(c)(ii)(B).

(e) Brokerage records. To report a change in the location where brokerage records are kept, the principal broker of the registered entity shall submit to the division a letter on brokerage letterhead.

(4) Unavailability of individual. If an individual is unavailable to sign or electronically affirm a change form, the person responsible to report the change may do so by:

(a) sending a letter by certified mail to the last known address of the individual to notify that individual of the change; and

(b) as applicable:

(i) entering the certified mail reference number into the appropriate field on the electronic change form; or

(ii) providing to the division a copy of the certified mail receipt.

(5) Fees. The division may require a notification submitted pursuant to this subsection to be accompanied by a nonrefundable change fee.

(6) Deadlines.

(a) A change in affiliation shall be reported to the division before the change is made.

(b) A change in branch manager shall be reported to the division at the time the change is made.

(c) Any other change shall be reported to the division within ten business days of the change taking effect.

(d) As to a change that requires submission of a paper form or document, if the deadline specified in this Section R162-2f-207 falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

(7) Effective date. A change reported in compliance with this Section R162-2f-207 becomes effective with the division the day on which the properly executed change form is received by the division.

R162-2f-401b. Prohibited Conduct As Applicable to All Licensed Individuals.

An individual licensee may not:

(1) engage in any of the practices described in Section 61-2f-401 et seq., whether acting as agent or on the licensee's own account, in a manner that:

(a) fails to conform with accepted standards of the real estate sales, leasing, or management industries;

(b) could jeopardize the public health, safety, or welfare;

or

(c) violates any provision of Title 61, Chapter 2f et seq. or the rules of this chapter;

(2) require parties to acknowledge receipt of a final copy of any document prepared by the licensee prior to all parties signing a contract evidencing agreement to the terms thereof;

(3) make a misrepresentation to the division;

(a) in an application for license renewal~~[with the division]; or~~

(b) in an investigation.

(4)(a) propose, prepare, or cause to be prepared a document, agreement, settlement statement, or other device that the licensee knows or should know does not reflect the true terms of the transaction; or

(b) knowingly participate in a transaction in which such a false device is used;

(5) participate in a transaction in which a buyer enters into an agreement that:

(a) is not disclosed to the lender; and

(b) if disclosed, might have a material effect on the terms or the granting of the loan;

(6) use or propose the use of a double contract;

(7) place a sign on real property without the written consent of the property owner;

(8) take a net listing;

(9) sell listed properties other than through the listing broker;

(10) subject a principal to paying a double commission without the principal's informed consent;

(11) enter or attempt to enter into a concurrent agency representation when the licensee knows or should know that the principal has an existing agency representation agreement with another licensee;

(12) pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect in a real estate transaction, except that a licensee may give a gift valued at \$150 or less to an individual in appreciation for an unsolicited referral of a prospect that results in a real estate transaction;

(13) accept a referral fee from:

(a) a lender; or

(b) a mortgage broker;

(14) act as a real estate agent or broker in the same transaction in which the licensee also acts as a:

(a) mortgage loan originator, associate lending manager, or principal lending manager;

(b) appraiser or appraiser trainee;

(c) escrow agent; or

(d) provider of title services;

(15) act or attempt to act as a limited agent in any transaction in which:

(a) the licensee is a principal in the transaction; or

(b) any entity in which the licensee is an officer, director, partner, member, employee, or stockholder is a principal in the transaction;

(16) make a counteroffer by striking out, whiting out, substituting new language, or otherwise altering:

(a) the boilerplate provisions of the Real Estate Purchase Contract; or

(b) language that has been inserted to complete the blanks of the Real Estate Purchase Contract;

(17) advertise or offer to sell or lease property without the written consent of:

(a) the owner of the property; and

(b) if the property is currently listed, the listing broker;

(18) advertise or offer to sell or lease property at a lower price than that listed without the written consent of the seller or lessor;

(19) represent on any form or contract that the individual is holding client funds without actually receiving funds and securing them pursuant to Subsection R162-2f-401a(23);

(20) when acting as a limited agent, disclose any information given to the agent by either principal that would likely weaken that party's bargaining position if it were known, unless the licensee has permission from the principal to disclose the information; ~~or~~

(21) disclose, or make any use of, a short sale demand letter outside of the purchase transaction for which it is issued; or

(22) in a short sale, have the seller sign a document allowing the licensee to lien the property .

R162-2f-407. Administrative Proceedings.

(1) Formal adjudicative proceedings. An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted as a formal adjudicative proceeding.

(2) Informal adjudicative proceedings.

(a) An adjudicative proceeding as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as an informal adjudicative proceeding.

(b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Real Estate Licensing and Practices Act or by these rules.

(3) Hearings required. A hearing before the commission shall be held in a proceeding:

(a) commenced by the division for disciplinary action pursuant to Section 61-2f-401 and Subsection 63G-4-201(2); and

(b) to adjudicate an appeal from an automatic revocation under Subsection 61-2f-204(1)(e), if the appellant requests a hearing.

(4) Procedures for hearings in informal adjudicative proceedings.

(a) The division director shall be the presiding officer for any informal adjudicative proceeding unless the matter has been delegated to a member of the commission or an administrative law judge.

(b) All informal adjudicative proceedings shall adhere to procedures as outlined in:

(i) Utah Administrative Procedures Act Title 63G, Chapter 4;

(ii) Utah Administrative Code Rule R151-4 et seq.; and

(iii) the rules promulgated by the division.

(c) Except as provided in this Subsection (5)(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.

(d) In any proceeding under this Subsection 407, the commission and the division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the commission and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.

(e) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first class postage-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing:

- (i) to the respondent at the address last provided to the division pursuant to Section 61-2f-207; and
- (ii) if the respondent is an actively licensed sales agent or associate broker, to the principal broker with whom the respondent is affiliated.
 - (f) Formal discovery is prohibited.
 - (g) The division may issue subpoenas or other orders to compel production of necessary and relevant evidence:
 - (i) on its own behalf; or
 - (ii) on behalf of a party where the party:
 - (A) makes a written request;
 - (B) assumes responsibility for effecting service of the subpoena; and
 - (C) bears the costs of the service, any witness fee, and any mileage to be paid to a witness.
 - (h) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.
 - (i) The division shall adhere to Title 63G, Chapter 2, Government Records Access and Management Act in addressing a request for information obtained by the division through an investigation.
 - (j) The division may decline to provide a party with information that it has previously provided to that party.
 - (k) Intervention is prohibited.
 - (l) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:
 - (i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or
 - (ii) Title 52, Chapter 4, the Open and Public Meetings Act.
 - (m) Upon filing a proper entry of appearance with the division pursuant to Utah Administrative Code Section R151-4-110(1)(a), an attorney may represent a party.
- (5) Additional procedures for disciplinary proceedings.
 - (a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:
 - (i) a notice of agency action;
 - (ii) a petition setting forth the allegations made by the division;
 - (iii) a witness list, if applicable; and
 - (iv) an exhibit list, if applicable.
 - (b) Answer.
 - (i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.
 - (ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.
 - (iii) Any answer shall be filed with the division within thirty days after the mailing date of the notice of agency action and petition.
 - (c) Witness and exhibit lists.
 - (i) Where applicable, the division shall provide its witness and exhibit lists to the respondent at the time it mails its notice of hearing.
 - (ii) The respondent shall provide its witness and exhibit lists to the division no later than thirty days after the mailing date of the division's notice of agency action and petition.

- (iii) Any witness list shall contain:
 - (A) the name, address, and telephone number of each witness; and
 - (B) a summary of the testimony expected from the witness.
- (iv) Any exhibit list:
 - (A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and
 - (B) shall be accompanied by copies of the exhibits.
- (d) Pre-hearing motions.
 - (i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.
 - (ii) The division director shall receive and rule upon any pre-hearing motions.

R162-2f-501. Appendices.

TABLE 1
APPENDIX 1 - REAL ESTATE TRANSACTIONS EXPERIENCE TABLE

RESIDENTIAL - points can be accumulated from either the selling or the listing side of a real estate closing:	
(a) One unit dwelling	2.5 points
(b) Two- to four-unit dwellings	5 points
(c) Apartments, 5 units or over	10 points
(d) Improved lot	2 points
(e) Vacant land/subdivision	10 points
COMMERCIAL	
(f) Hotel or motel	10 points
(g) Industrial or warehouse	10 points
(h) Office building	10 points
(i) Retail building	10 points
(j) Leasing of commercial space	5 points

TABLE 2
APPENDIX 2 - PROPERTY MANAGEMENT EXPERIENCE TABLE

RESIDENTIAL	
(a) Each unit managed	0.25 pt/month
COMMERCIAL - hotel/motel, industrial/warehouse, office, or retail building	
(b) Each contract OR each separate property address or location for which licensee has direct responsibility	1 pt/month

TABLE 3
APPENDIX 3 - OPTIONAL EXPERIENCE TABLE

Real Estate Attorney	1 pt/month
CPA-Certified Public Accountant	1 pt/month
Mortgage Loan Officer	1 pt/month
Licensed Escrow Officer	1 pt/month
Licensed Title Agent	1 pt/month
Designated Appraiser	1 pt/month
Licensed General Contractor	1 pt/month
Bank Officer in Real Estate Loans	1 pt/month
Certified Real Estate Prelicensing Instructor	.5 pt/month

KEY: real estate business, ~~licensing, enforcement~~operational requirements, trust account records, notification requirements

Date of Enactment or Last Substantive Amendment:
~~[November 21, 2011]~~2012
 Authorizing, and Implemented or Interpreted Law: 61-2f-103(1); 61-2f-105; 61-2f-307

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

Health, Administration
R380-41
 Governance Committee Electronic
 Meetings

NOTICE OF PROPOSED RULE
 (New Rule)
 DAR FILE NO.: 36432
 FILED: 07/02/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to authorize use of electronic meetings.

SUMMARY OF THE RULE OR CHANGE: This rule establishes procedures for conducting electronic meetings.

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

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: Using electronic meetings should be budget neutral or generate small savings for state participants.
- ◆ LOCAL GOVERNMENTS: Using electronic meetings should be budget neutral or generate small savings for local government participants.
- ◆ SMALL BUSINESSES: Using electronic meetings has the potential to make it easier and less expensive for the public to participate in these meetings.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Using electronic meetings has the potential to make it easier and less expensive for the public to participate in these meetings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Using electronic meetings has the potential to make it easier and less expensive for the public to participate in these meetings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Using electronic meetings has the potential to make it easier and less expensive for the public to participate in these meetings.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Robert Rolfs by phone at 801-538-6111, by FAX at 801-538-6306, or by Internet E-mail at rrolfs@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R380. Health, Administration.

R380-41. Governance Committee Electronic Meetings.

R380-41-1. Authority and Purpose.

(1) Utah Code Section 52-4-207 requires a state public body that holds electronic meeting to have a rule governing the use of electronic meetings. This rule establishes procedures for conducting electronic meetings by the Governance Committee.

(2) This rule is authorized by Sections 52-4-207, 63G-3-201 and 26-1-5.

R380-41-2. Definitions.

The definitions found in Section 52-4-103 apply to this rule. In addition, the following definitions apply:

(1) "Committee meeting" means a meeting of the Governance Committee that is required to be public by the provisions of the Open and Public Meetings Act, Utah Code Title 52, Chapter 4.

(2) "Electronic meeting" includes any meeting where at least one member of the Governance Committee participates in the public meeting by telephonic or other electronic means.

(3) "Governance Committee" means the committee established in Section 26-1-4(2).

R380-41-3. Designation of Electronic Meetings.

The person scheduled to preside at the Governance Committee meeting shall schedule any committee meeting as an electronic meeting upon request of any member of the committee.

(1) A member of the Governance Committee may request that the member's participation in the meeting be allowed electronically up to 24 hours prior to the commencement of the meeting.

(2) No vote of the Governance Committee is necessary to include other members of the committee to join the meeting through an electronic connection.

R380-41-4. Anchor Location.

(1) Unless otherwise designated in the posted public notice of the Governance Committee meeting, the anchor location for an electronic meeting held by the Governance Committee is the

Cannon Health Building located at 288 North 1460 West, Salt Lake City, Utah.

(2) The person presiding at the meeting may restrict the number of separate connections for members of the committee that are allowed for an electronic meeting based on available equipment capability.

R380-41-5. Quorum, Member Participation.

(1) A quorum is not required to be present at the anchor location.

(2) A member of the committee who participates in the meeting via electronic means shall be counted as present at the meeting for quorum, participation, and voting requirements.

R380-41-6. Public Participation.

(1) Interested persons and the public may attend and monitor the open portions of the meeting at the anchor location.

(2) At the discretion of the person presiding at the committee meeting, interested persons and the public may be allowed to observe the meeting via electronic means. As in any public meeting, the person presiding at the meeting may determine whether comments from the public will be accepted during the electronic meeting.

KEY: electronic meetings

Date of Enactment or Last Substantive Amendment: 2012

Authorizing and Implemented or Interpreted Law: 52-4-207

Health, Children's Health Insurance
Program
R382-2
Electronic Personal Medical Records
for the Children's Health Insurance
Program

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 36429

FILED: 07/02/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 46, 2012 General Session, requires the Department to implement by rule a program to enroll individuals who receive services under the Children's Health Insurance Program (CHIP) in the Clinical Health Information Exchange (cHIE). The bill also requires the Department to notify these individuals of their right to opt out of cHIE. This rule describes the process the Department will use to enroll individuals in cHIE.

SUMMARY OF THE RULE OR CHANGE: The rule states that the Department will provide notice to all individuals who

receive CHIP services before they enroll in cHIE. The rule also specifies when cHIE enrollment will occur and describes how cHIE will address cases for when an individual already declares his status with cHIE before enrolling in CHIP.

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 estimates about \$20,000 in one-time costs for programming changes to existing systems and for mailing notification letters to all current CHIP clients. Costs are covered by a federal grant and by a reduction in the Department's payments to the Utah Health Information Network (UHIN) for cHIE.

♦ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund or provide CHIP services to CHIP clients.

♦ SMALL BUSINESSES: The Department does not anticipate any costs or savings because this rule does not impose new requirements or administrative expenses on small businesses.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department does not anticipate any costs or savings because this rule does not impose new requirements or administrative expenses on CHIP providers. There are also no administrative costs to CHIP clients who choose to submit a form if they opt out of cHIE.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not anticipate any costs to a single CHIP provider or to a single UHIN insurer because this rule does not impose new requirements or administrative expenses on these persons or entities. There are also no administrative costs to a single CHIP client who chooses to submit a form through a provider if the client opts out of cHIE.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: H.B. 46, 2012 General Session, requires the Department to implement by rule a program to enroll individuals who receive services under the Children's Health Insurance Program (CHIP) and the Medicaid Program in the Clinical Health Information Exchange (cHIE). This should have a positive fiscal impact on providers serving these persons by making treatment records available.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/01/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R382. Health, Health Care Financing, Coverage and Reimbursement Policy.

R382-2. Electronic Personal Medical Records for the Children's Health Insurance Program.

R382-2-1. Introduction and Authority.

This rule is promulgated under authority granted in Section 26-40-103, as last amended by Laws of Utah 2012, Chapters 28 and 369.

R382-2-2. Purpose.

This rule establishes requirements for enrolling Children's Health Insurance Program (CHIP) beneficiaries in the electronic exchange of clinical health information unless the beneficiary or the beneficiary's parent or legal guardian opts the beneficiary out.

R382-2-3. Definitions.

These definitions apply to Rule R382-2:

(1) "Technical Specifications" means the technical specifications document published by the Utah Health Information Network (UHIN) that describes the variables and formats of the data to be submitted as well as submission directions and guidelines.

(2) "Program Website" means the Department of Health, Department of Workforce Services, Division of Medicaid and Health Financing, and the CHIP websites.

R382-2-4. Enrollment Notification.

(1) Prior to the enrollment process in the Clinical Health Information Exchange (cHIE), the Department will provide Notice of Intent to enroll CHIP beneficiaries in cHIE and the right of beneficiaries to opt out.

(2) The Department will provide additional education regarding the beneficiary's right to opt out on the program websites.

R382-2-5. Enrollment Process.

(1) The Department will provide cHIE an enrollment file of all CHIP beneficiaries.

(2) The enrollment file will contain the succeeding month's CHIP enrollment.

(3) cHIE will enroll CHIP beneficiaries on the first day of the succeeding month.

(4) Submission procedures and guidelines, including required data elements, will be described in detail in the technical specifications published by UHIN and will be included in the Department's Operating Agreement with cHIE.

(5) The Department will use a secure format to transfer any enrollment files to cHIE.

R382-2-6. Exemptions.

(1) An individual's previous consent status in cHIE will be honored by cHIE and will not be overridden by the CHIP enrollment file.

KEY: CHIP, cHIE

Date of Enactment or Last Substantive Amendment: 2012

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-40-103

Health, Disease Control and
Prevention, Environmental Services
R392-100
Food Service Sanitation

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36404

FILED: 06/21/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule change is in response to minor errors (duplication, section placement, punctuation, and extraneous word) noted in the previous amended rule. Also, it deletes the phone call requirement for local health departments.

SUMMARY OF THE RULE OR CHANGE: Subsection R392-100-2(1): 8-302.14(1) text had been moved up to a previous subsection, but was not deleted in the original subsection. The division is now deleting this to avoid duplication. This does not modify any requirements. In Subsections R392-100-2(d) and (e), inserts food manager requirement under correct section, and deletes the same statement from incorrect section. Also modifies food handler "permit" to food handler "card". No requirement changes. In Subsection R392-100-2(2)(m), corrects a subsection numbering error. In Subsection R392-100-2(2)(q), removes a requirement for local health departments to contact lowest risk food establishments every six months by phone in favor of a uniform risk-based schedule. There are additional subsection renumbering corrections, and punctuation corrections, and deletion of extraneous meaningless words inadvertently left in text. In Subsection R392-100-2(2)(ao), for clarity, the division is ensuring that two subsections B(1) and (2) are deleted which were intended to be deleted in the previous amendment by deleting section "B" (delete subsections B(1) and (2)). There may be some confusion that subsections 1 and 2 were not deleted.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-15-2

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds FDA 2009 Model Food Code, published by United States Public Health Service Food and Drug Administration, 09/19/2000

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The adoption of these minor modifications to the rule will not cause additional work to the state, and will not impose additional costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** The proposed changes will not result in a cost savings or increase as workload requirements are not modified.
- ◆ **SMALL BUSINESSES:** There will be no cost savings or additional costs as the proposed changes do not modify requirements for businesses, large or small.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no cost savings or additional costs as the proposed changes do not modify requirements for businesses, large or small.

COMPLIANCE COSTS FOR AFFECTED PERSONS:
Because there are no aggregate costs or savings incurred, there are no expected additional costs or savings for an individual person or any individual entities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
Minor, technical changes to rule that are not expected to impose any regulatory burden or fiscal impact on business.

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

HEALTH
DISEASE CONTROL AND PREVENTION,
ENVIRONMENTAL SERVICES
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:

- ◆ Ronald Marsden by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R392. Health, Disease Control and Prevention, Environmental Services.**R392-100. Food Service Sanitation.****R392-100-1. Authority and Purpose.**

(1) This rule is authorized by Subsections 26-1-30(2), and 26-15-2.

(2) This rule establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, permit issuance, inspection, employee restriction, and permit suspension to safeguard public health and provide consumers food that is safe, unadulterated, and honestly presented.

R392-100-2. Incorporation by Reference.

(1) The requirements as found in the U.S. Public Health Service, Food and Drug Administration, Food Code 2009, Chapters 1 through 8, Annex 1, and Annex 2, Federal Food, Drug, and Cosmetic Act, 21, U.S.S. 342, Sec. 402 are adopted and incorporated by reference, with the exclusion of Sections 8-302.14(C)(1) and (2), (D) and (E), 8-905.40, and 8-909.20; and

(2) with the following additions or amendments:

(a) In section 1-201.10, insert a new paragraph after paragraph (2) under Core Item to read: "(3) 'Core Item' will also be referred to as 'non-critical' in the state rule."

(b) In section 1-201.10 under Priority Item, replace the semicolon and the word "and" at the end of paragraph (2) with a period; replace the period at the end of paragraph (3) with "; and"; and insert a new paragraph after paragraph (3) to read: "(4) 'Priority Item' will also be referred to as 'critical 1' in the state rule."

(c) In section 1-201.10 under Priority Foundation Item, replace the semicolon and the word "and" at the end of paragraph (2) with a period; replace the period at the end of paragraph (3) with "; and"; and add a new paragraph after paragraph (3) to read: "(4) 'Priority foundation item' will also be referred to as 'critical 2' in the state rule."

(d) After section 2-102.11 paragraph (17), add a new section to read: "2-102-12 Food Employee Training. Food managers shall be trained and certified as required under 26-15a and R392-101.

Food employees shall be trained in food safety as required under 26-15-5 and shall hold a valid food handler's ~~permit~~ card issued by a local health department."

(e) After section 4-204-123 paragraph (B), add a section to read: "4-204.124 Restraint of Pressurized Containers.

Carbon dioxide, helium or other similar pressurized containers must be restrained or secured to prevent the tanks from falling over. [~~Food managers shall be trained and certified as required under 26-15a and R392-101.~~]"

(f) At the end of section 5-101.12, add: "The process shall be in accordance with the American Water Works Association (AWWA) C651-2005 for disinfection and testing."

(g) At the end of section 5-202.13, add: "Where the distance to the adjacent wall is closer than three pipe diameters, the air gap shall not be less than 1-1/2 inch."

(h) After the the reference to the section number "5-202.13" in section 5-203.15 paragraph (A), delete the article "a" and insert: "an American Society of Safety Engineers (ASSE) 1022".

(i) After the reference to paragraph (B) in section 5-402.11 paragraph (A), delete the coma; insert the word "and"; and delete the text, ", and (D)" that follows the reference to paragraph (C).

(j) Delete paragraph (D) from section 5-402.11.

(k) Amend section 8-103.10 to read:

"8-103.10 Modifications and Waivers.

(A) The regulatory authority may grant a variance by modifying or waiving the requirements of this Code if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under section 8-103.11 in its records for the food establishment.

(B) A variance or waiver issued by the regulatory authority and the documentation required in section 8-103.11 must be copied to the Utah Department of Health, Office of Epidemiology, Environmental Sanitation Program within 5 working days of issuance.

(C) A variance or waiver intended for a food establishment which is of a chain with stores in more than one local health jurisdiction in the State must be approved by the Utah Department of Health prior to issuance."

(l) Amend section 8-103.11 to add:

"(D) In addition, a variance from section 3-301.11 may be issued only when:

(1) the variance is limited to a specific task or work station;

(2) the applicant has demonstrated good cause why section 3-301.11 cannot be met;

(3) suitable utensils are used to the fullest extent possible with ready-to-eat foods in the rest of the establishment; and

(4) the applicant can demonstrate active management control of this risk factor at all times."

(m) Amend Section 8-302.14 (C) to read:

"A statement specifying whether the food establishment is mobile or stationary and temporary or permanent."

(n) Amend section 8-302.14 to renumber (F) to (D), (G) to (E), and (H) to (F).

([n]o) Amend section 8-304.10 paragraph (A) to read:

"(A) Upon request, the regulatory authority shall provide a copy of the food service sanitation rule according to the policy of the local regulatory agency."

([o]p) Amend section 8-401.10 paragraph(A) to read:

"(A) Except as specified in paragraphs (B) and (C) of this section, the regulatory authority shall inspect a food establishment at least once every 6 months and twice in a season for seasonal operations."

(q) Amend section 8-401.10 paragraph (B) subparagraph (2) to read:

"The food establishment is assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction; or"

([p]r) Amend section 8-501.10 paragraph (B) to read:

"(B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee; and"

([q]s) Add a paragraph after 8-501.10 paragraph (B) to read:

"(C) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703."

([r]t) Amend section 8-601.10 to read:

"Due process and equal protection shall be afforded as required by law in all enforcement and regulatory actions."

([s]u) Amend section 8-801.30 to read:

"Service is effective at the time the notice is served or when service is made as specified in section 8-801-20 paragraph (B)."

([t]v) Amend section 8-903.10 to read:

"8-903.10 Impoundment of Adulterated Food Products Authorized.

(A) The impoundment of adulterated food is authorized under Section 26-15-9, UCA.

(B) The regulatory authority may impound, by use of a hold order, any food product found in places where food or drink is handled, sold, or served to the public, but is found or is suspected of being adulterated and unfit for human consumption[;].

(C) Upon five days notice and a reasonable opportunity for a hearing to the interested parties, to condemn and destroy the same if deemed necessary for the protection of the public health[~~and~~].

(D) If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the regulatory authority may remove the food that is subject to the hold order to a place of safekeeping."

([w]y) Amend section 8-903.60 to read:

"The regulatory authority may examine, sample, and test food in order to determine its compliance with this Code in section 8-402.11."

([x]z) Amend section 8-903.90 to read:

"The regulatory authority shall issue a notice of release from a hold order and shall physically remove the hold tags, labels, or other identification from the food if the hold order is vacated."

([w]y) Amend section 8-904.30 number/catchline to read:

"8-904.30 Contents of the Summary Suspension Notice."

([x]z) Amend section 8-905.10 paragraph (A) to read:

"(A) A person who receives a notice of hearing shall file a response within 10 calendar days from the date of service. Failure to respond may result in license suspension, license revocation, or other administrative penalties."

([y]aa) Amend section 8-905.20 to read:

"A response to a hearing notice or a request for a hearing as specified in section 8-905.10 shall be in written form and contain the following:

(A) Response to a notice of hearing must include:

(1) An admission or denial of each allegation of fact;

(2) A statement as to whether the respondent waives the right to a hearing;

(3) A statement of defense, mitigation, or explanation concerning all claims; and

(4) A statement as to whether the respondent wishes to settle some or all of the claims made by the regulatory authority.

(B) A request for hearing must include:

(1) A statement of the issues of fact specified in section 8-905.30 paragraph (B) for which a hearing is requested; and

(2) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.

(C) Witnesses - In addition to the above requirements, if witnesses are requested, the response to a notice of hearing and a request for hearing must include the name, address, telephone number, and a brief statement of the expected testimony for each witness.

(D) Legal Representation - Legal counsel is allowed, but not required. All documents filed by the respondent must include the name, address, and telephone number of the respondent's legal counsel, if any."

([z]ab) Amend section 8-905.50 paragraph (A)(1) to read:

"(1) Except as provided in paragraph (B) of this section, within 5 calendar days after receiving a written request for an appeal hearing from:

([aa]ac) Adopt subsections 8-905.50 paragraphs(A)(1)(a) through (c) without changes.

([ab]ad) Amend subsection 8-905.50 paragraph(A)(2) to read:

"(2) Within 30 calendar days after the service of a hearing notice to consider administrative remedies for other matters as specified in section 8-905.10(C) or for matters as determined necessary by the regulatory authority."

([ae]ae) Amend section 8-905.60 number/catchline to read:

"8-905.60 Notice of Hearing Contents."

([af]af) Amend section 8-905.80 number/catchline to read:

"8-905.80 Expedient and Impartial Hearing."

([ag]ag) Amend section 8-905.90 number/catchline to read:

"8-905.90 Confidentiality of Hearing and Proceedings."

([ah]ah) Amend section 8-905.90 paragraph (A) to read:
 "(A) Hearings will be open to the public unless compelling circumstances, such as the need to discuss a person's medical or mental health condition, a food establishment's trade secrets, or any other matter private or protected under federal or state law."

([aj]aj) Delete section 8-905.90 subparagraphs (A)(1) and (2).

([ah]ai) Amend section 8-906.30 paragraph (B) to read:

"(B) Unless a party appeals to the head of the regulatory authority within 10 calendar days of the hearing or a lesser number of days specified by the hearing officer:"

([ai]ak) Adopt subsection 8-906.30 paragraphs (B)(1) through (2) without changes.

([aj]al) Amend section 8-907.60 to read:

"Documentary evidence may be received in the form of a copy or excerpt if provided to the hearing officer and opposing party prior to the hearing as ordered by the hearing officer."

([ak]am) Amend section 8-908.20 to read:

"Respondents accepting a consent agreement waive their rights to a hearing on the matter, including judicial review."

([al]an) Amend section 8-911.10 paragraph (B) to read:

"(B) Any person who violates any provision of this rule may be assessed a civil penalty as provided in section 26-23-6."

(ao) Delete subparagraphs (B)(1) and (2) of section 8-911.10.

([am]ap) Amend section 8-913.10 number/catchline to read:

"8-913.10 Petitions, Penalties, Contempt, and Continuing Violations."

([am]aq) Amend section 8-913.10 paragraph (B) to replace the phrase "(designate amount)" with the phrase, "\$5,000".

([ao]ar) Add paragraph 8-913.10(D) to read:

"(D) The adjudicative body, upon proper findings, shall assess violators a fee for each day the violation remains in contempt of its order."

(3) All parts of the food establishment shall be designed, constructed, maintained, and operated to meet the standards of the state construction code adopted by the Utah Legislature[~~under~~]. A copy of the construction code is available at the office of the local building inspector.

KEY: public health, food services, sanitation

Date of Enactment or Last Substantive Amendment: [January 26,] 2012

Notice of Continuation: January 20, 2012

Authorizing, and Implemented or Interpreted Law: 26-1-30(2); 26-15-2

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-8** Electronic Personal Medical Records for the Medicaid Program

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 36431

FILED: 07/02/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 46, 2012 General Session, requires the Department to implement by rule a program to enroll individuals who receive Medicaid services in the Clinical Health Information Exchange (cHIE). The bill also requires the Department to notify these individuals of their right to opt out of cHIE. This rule describes the process the Department will use to enroll individuals in cHIE.

SUMMARY OF THE RULE OR CHANGE: The rule states that all individuals who receive Medicaid services are subject to this rule. The rule also states that the Department will provide notice to individuals before they enroll in cHIE. The rule further specifies when cHIE enrollment will occur and describes how cHIE will address cases for when an individual

already declares his status with cHIE before enrolling in Medicaid.

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 estimates about \$160,000 in one-time costs for programming changes to existing systems and for mailing notification letters to all current Medicaid clients. Costs are covered by a federal grant and by a reduction in the Department's payments to the Utah Health Information Network (UHIN) for cHIE.

◆ LOCAL GOVERNMENTS: There is no impact to local governments because they do not fund or provide Medicaid services to Medicaid clients.

◆ SMALL BUSINESSES: The Department does not anticipate any costs or savings because this rule does not impose new requirements or administrative expenses on small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The Department does not anticipate any costs or savings because this rule does not impose new requirements or administrative expenses on Medicaid providers. There are also no administrative costs to Medicaid clients who choose to submit a form if they opt out of cHIE.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not anticipate any costs to a single Medicaid provider or to a single UHIN insurer because this rule does not impose new requirements or administrative expenses on these persons or entities. There are also no administrative costs to a single Medicaid client who chooses to submit a form through a provider if the client opts out of cHIE.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: H.B. 46, 2012 General Session, requires the Department to implement by rule a program to enroll individuals who receive services under the Children's Health Insurance Program (CHIP) and the Medicaid Program in the Clinical Health Information Exchange (cHIE). This should have a positive fiscal impact on providers serving these persons by making treatment records available.

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 08/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/01/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

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

R414-8. Electronic Personal Medical Records for the Medicaid Program.

R414-8-1. Introduction and Authority.

This rule is promulgated under authority granted in Section 26-18-3, as last amended by Laws of Utah 2012, Chapters 28 and 242.

R414-8-2. Purpose.

This rule establishes requirements for enrolling Medicaid beneficiaries in the electronic exchange of clinical health information unless the individual opts out.

R414-8-3. Definitions.

These definitions apply to Rule R414-8:

(1) "Medicaid beneficiaries" mean individuals who receive assistance through the following programs:

(a) Medicaid;

(b) Primary Care Network;

(c) Utah's Premium Partnership for Health Insurance;

(d) Baby Your Baby;

(e) Cost sharing programs that include Qualified Medicare Beneficiary (QMB), Specified Low-Income Medicare Beneficiary (SLMB), and Qualified Individual (QI).

(2) "Technical Specifications" means the technical specifications document published by the Utah Health Information Network (UHIN) that describes the variables and formats of the data to be submitted as well as submission directions and guidelines.

(3) "Program Website" means the Department of Health, Department of Workforce Services, Division of Medicaid and Health Financing, Utah's Premium Partnership for Health Insurance, and Primary Care Network websites.

R414-8-4. Enrollment Notification.

(1) Prior to the enrollment process in the Clinical Health Information Exchange (cHIE), the Department will provide Notice of Intent to Medicaid beneficiaries in cHIE and the right of individuals to opt out.

(2) The Department will provide additional education regarding the individual's right to opt out on the program websites.

R414-8-5. Enrollment Process.

(1) The Department will provide cHIE an enrollment file of all Medicaid beneficiaries.

(2) The enrollment file will contain the succeeding month's Medicaid enrollment.

(3) cHIE will enroll Medicaid beneficiaries on the first day of the succeeding month.

(4) Submission procedures and guidelines, including required data elements, will be described in detail in the technical specifications published by UHIN and will be included in the Department's Operating Agreement with cHIE.

(5) The Department will use a secure format to transfer any enrollment files to cHIE.

R414-8-6. Exemptions.

(1) An individual's previous consent status in cHIE will be honored by cHIE and will not be overridden by the Medicaid enrollment file.

KEY: Medicaid, cHIE

Date of Enactment or Last Substantive Amendment: 2012

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

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-303
Coverage Groups**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 36444
FILED: 07/02/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to remove definitions that already appear in other rules, and to remove and place eligibility criteria for all home and community-based services (HCBS) waivers in Rule R414-307.

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies titles for sections in the text, defines the age limit for Aged Medicaid, and updates certain federal citations. It also removes criteria for HCBS waivers to be placed in Rule R414-307.

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

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Removes Title XIX of the Social Security Act, Section 1915(c), published by Social Security Administration, 01/01/2005
- ◆ Updates Title XIX of the Social Security Act, Sections 1902(e)(1), (4), (5), (6), (7), and 1931(a), (b), and (g), published by Social Security Administration, 04/04/2012

- ◆ Removes 42 CFR 435.726, 435.832 and 435.217, published by Government Printing Office, 10/01/2006
- ◆ Removes Appendix C-4 of the Home and Community Based Waiver for Technology Dependent/Medically Fragile Children implementation plan, published by Division of Medicaid and Health Financing, 01/01/1995
- ◆ Removes 42 CFR 435.217 and 435.726, published by Government Printing Office, 10/01/2001
- ◆ Updates 42 CFR 435.541, published by Government Printing Office, 10/01/2011
- ◆ Updates 42 CFR 435.110, 435.113 through 435.117, 435.119, 435.210 for groups defined under 201(a)(5) and (6), 435.211, 435.217, 435.223, and 435.300 through 435.310, published by Government Printing Office, 10/01/2011
- ◆ Updates Title XIX of the Social Security Act, Section 1902(a)(10)(A)(ii)(XIII), published by Social Security Administration, 04/02/2012
- ◆ Updates 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.232, 435.236, 435.301, 435.320, 435.322, 435.324, 435.340, and 435.350, published by Government Printing Office, 10/01/2011
- ◆ Updates Title XIX of the Social Security Act, Section 1902(a)(10)(A)(ii)(XVIII), published by Social Security Administration, 04/04/2012
- ◆ Updates Title XIX of the Social Security Act, Section 1634(b), (c) and (d), Section 1902(a)(10)(A)(i)(II), Section 1902(a)(10)(A)(ii)(X), and Section 1902(a)(10)(E)(i) through (iv), published by Social Security Administration, 04/02/2012
- ◆ Removes Title XIX of the Social Security Act, Section 1915(c), published by Social Security Administration, 01/01/2001
- ◆ Updates 20 CFR 416.901 through 416.998, published by Government Printing Office, 10/01/2011

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** There is no impact to the state budget because these changes are technical in nature and only clarify certain programs.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not determine Medicaid eligibility or fund Medicaid services.
- ◆ **SMALL BUSINESSES:** There is no impact to small businesses because these changes are technical in nature and only clarify certain programs.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to Medicaid providers and to Medicaid recipients because these changes are technical in nature and only clarify certain programs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single Medicaid provider or to a Medicaid

recipient because these changes are technical in nature and only clarify certain programs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Consolidating definitions and standards for Home and Community Based Waiver services will have no negative fiscal impact on business and may simplify compliance.

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 08/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/01/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

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

R414-303. Coverage Groups.

R414-303-1. Authority and Purpose.

This rule is authorized by ~~[Utah Code]~~ Sections 26-1-5 and 26-18-3 and establishes ~~[Medicaid]~~ eligibility requirements for ~~Medicaid and the Medicare Cost Sharing programs.~~ ~~the following coverage groups:~~

- ~~(1) Aged;~~
- ~~(2) Blind;~~
- ~~(3) Disabled;~~
- ~~(4) Family;~~
- ~~(5) Institutional;~~
- ~~(6) Transitional;~~
- ~~(7) Child;~~
- ~~(8) Refugee;~~
- ~~(9) Prenatal and Newborn;~~
- ~~(10) Pregnant Women;~~
- ~~(11) Community Supports Waiver for Home and Community Based Services;~~
- ~~(12) Aging Home and Community Based Services Waiver;~~
- ~~(13) Technologically Dependent Child Waiver/Travis C. Waiver;~~
- ~~(14) Brain Injury Home and Community Based Services Waiver;~~

- ~~(15) Physical Disabilities Waiver; and~~
- ~~(16) Cancer Program.]~~

R414-303-2. Definitions.

The definitions in Rules R414-1 and R414-301 apply to this rule. ~~[In addition:~~

- ~~(1) "Medicaid agency" means any one of the state departments that determine eligibility for one or more of the following medical assistance programs: Medicaid, the Primary Care Network, or the Covered at Work program.~~
- ~~(2) "Federal poverty guideline" means the U.S. federal poverty measure issued annually by the Department of Health and Human Services that is used to determine financial eligibility for certain means tested federal programs. Any usage in this rule of the term poverty means the federal poverty guideline.]~~

R414-303-3. [A, B and D Medicaid and A, B and D Institutional] Medicaid for Individuals Who Are Aged, Blind or Disabled for Community and Institutional Coverage Groups.

(1) The Department provides Medicaid coverage to individuals as described in 42 CFR 435.120, 435.122, 435.130 through 435.135, 435.137, 435.138, 435.139, 435.211, 435.232, 435.236, 435.301, 435.320, 435.322, 435.324, 435.340, and 435.350, ~~[2009]~~2011 ed., which are incorporated by reference. The Department provides coverage to individuals as required by 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(A)(ii)(X), and 1902(a)(10)(E)(i) through (iv) of Title XIX of the Social Security Act in effect ~~[January 1, 2009]~~April 2, 2012, which are incorporated by reference. The Department provides coverage to individuals described in Section 1902(a)(10)(A)(ii)(XIII) of Title XIX of the Social Security Act in effect ~~[January 1, 2009]~~April 2, 2012, which is incorporated by reference. Coverage under Section 1902(a)(10)(A)(ii)(XIII) is known as the Medicaid Work Incentive Program.

(2) Proof of disability includes a certification of disability from the State Medicaid Disability Office, Supplemental Security Income (SSI) status, or proof that a disabled client is recognized as disabled by the Social Security Administration (SSA).

(3) An individual can request a disability determination from the State Medicaid Disability Office. The Department adopts the disability determination requirements described in 42 CFR 435.541, ~~[2009]~~2011 ed., and Social Security's disability requirements for the Supplemental Security Income program as described in 20 CFR 416.901 through 416.998, ~~[416.1015(a) through (e), and 416.1016, 2009]~~2011 ed., which are incorporated by reference, to decide if an individual is disabled. The Department notifies the ~~[Medicaid]~~eligibility agency of its disability decision, who then sends a disability decision notice to the client.

(a) If an individual has earned income, the State Medicaid Disability Office shall review medical information to determine if the client is disabled without regard to whether the earned income exceeds the Substantial Gainful Activity level defined by the Social Security Administration.

(b) If, within the prior 12 months, SSA has determined that the individual is not disabled, the ~~[Medicaid]~~eligibility agency must follow SSA's decision. If the individual is appealing SSA's denial of disability, the State Medicaid Disability Office must follow SSA's decision throughout the appeal process, including the final SSA decision.

(c) If, within the prior 12 months, SSA has determined an individual is not disabled but the individual claims to have become disabled since the SSA decision, the State Medicaid Disability Office shall review current medical information to determine if the client is disabled.

(d) Clients must provide the required medical evidence and cooperate in obtaining any necessary evaluations to establish disability.

(e) Recipients must cooperate in completing continuing disability reviews as required by the State Medicaid Disability Office unless they have a current approval of disability from SSA. Medicaid eligibility as a disabled individual will end if the individual fails to cooperate in a continuing disability review.

(4) If an individual denied disability status by the Medicaid Disability Review Office requests a fair hearing, the Disability Review Office may reconsider its determination as part of fair hearing process. The individual must request the hearing within the time limit defined in Section R414-301-6.

(a) The individual may provide the ~~Medicaid~~ eligibility agency additional medical evidence for the reconsideration.

(b) The reconsideration may take place before the date the fair hearing is scheduled to take place.

(c) The ~~Medicaid~~ eligibility agency notifies the individual of the reconsideration decision. Thereafter, the individual may choose to pursue or abandon the fair hearing.

(5) If the ~~Medicaid~~ eligibility agency denies an individual's Medicaid application because the Medicaid Disability Review Office or SSA has determined that the individual is not disabled and that determination is later reversed on appeal, the ~~Medicaid~~ eligibility agency determines the individual's eligibility back to the application that gave rise to the appeal. The individual must meet all other eligibility criteria for such past months.

(a) Eligibility cannot begin any earlier than the month of disability onset or three months before the month of application subject to the requirements defined in Section R414-306-4, whichever is later.

(b) If the individual is not receiving medical assistance at the time a successful appeal decision is made, the individual must contact the ~~Medicaid~~ eligibility agency to request the Disability Medicaid coverage.

(c) The individual must provide any verifications the ~~Medicaid~~ eligibility agency needs to determine eligibility for past and current months for which the individual is requesting medical assistance.

(d) If an individual is determined eligible for past or current months, but must pay a spenddown or Medicaid Work Incentive (MWI) premium for one or more months to receive coverage, the spenddown or MWI premium must be met before Medicaid coverage may be provided for those months.

(6) The age requirement for Aged Medicaid is 65 years of age.

(7) For children described in Section 1902(a)(10)(A)(i)(II) of the Social Security Act in effect ~~January 1, 2009~~ April 4, 2012, the Department shall conduct periodic redeterminations to assure that the child continues to meet the SSI eligibility criteria as required by such section.

(8) Coverage for qualifying individuals described in Section 1902(a)(10)(E)(iv) of Title XIX of the Social Security Act in effect ~~January 1, 2009~~ April 4, 2012, is limited to the amount of

funds allocated under Section 1933 of Title XIX of the Social Security Act in effect ~~January 1, 2009~~ April 4, 2012, for a given year, or as subsequently authorized by Congress. The ~~Medicaid~~ eligibility agency will deny coverage to applicants when the uncommitted allocated funds are insufficient to provide such coverage.

(9) To determine eligibility under Section 1902(a)(10)(A)(ii)(XIII), if the countable income of the individual and the individual's family does not exceed 250% of the federal poverty guideline for the applicable family size, the Department shall disregard an amount of earned and unearned income of the individual, the individual's spouse, and a minor individual's parents that equals the difference between the total income and the Supplemental Security Income maximum benefit rate payable.

(10) The Department shall require individuals eligible under Section 1902(a)(10)(A)(ii)(XIII) to apply for cost-effective health insurance that is available to them.

R414-303-4. ~~Family Medicaid and Family Institutional Medicaid for Low-Income Families and Children for Community and Institutional Coverage Groups.~~

~~(1) [This section provides the eligibility criteria for Family Medicaid and Family Institutional Medicaid Coverage groups.~~

~~(2)~~ The Department provides Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.113 through 435.117, 435.119, 435.210 for groups defined under 201(a)(5) and (6), 435.211, 435.217, 435.223, and 435.300 through 435.310, ~~2003~~ 2011 ed. and Title XIX of the Social Security Act Sections 1902(e)(1), (4), (5), (6), (7), and 1931(a), (b), and (g) ~~(1931-FM)~~ in effect ~~January 1, 2003~~ April 4, 2012, which are incorporated by reference.

~~(3)~~ For unemployed two-parent households, the ~~Department~~ eligibility agency does not require the primary wage earner to have an employment history.

~~(4)~~ A specified relative, as that term is used in the provisions incorporated into this section, other than the child's parents, may apply for assistance for a child. In addition to other ~~Family Medicaid~~ requirements for Low-Income Family and Child Medicaid (LIFC), all the following applies to an ~~Family Medicaid~~ application by a specified relative:

(a) The child must be currently deprived of support because both parents are absent from the home where the child lives.

(b) The child must be currently living with, not just visiting, the specified relative.

(c) The income and resources of the specified relative are not counted unless the specified relative is also included in the Medicaid coverage group.

(d) If the specified relative is currently included in an ~~1931 Family Medicaid~~ LIFC household, the child must be included in the ~~1931-FM~~ LIFC eligibility determination for the specified relative.

(e) The specified relative may choose to be excluded from the Medicaid coverage group. If the specified relative chooses to be excluded from the Medicaid coverage group, the ineligible children of the specified relative must be excluded and the specified relative is not included in the income standard calculation.

(f) The specified relative may choose to exclude any child from the Medicaid coverage group. If a child is excluded from coverage, that child's income and resources are not used to determine eligibility or spenddown.

(g) If the specified relative is not the parent of a dependent child who meets deprivation of support criteria and elects to be included in the Medicaid coverage group, the following income provisions apply:

(i) The monthly gross earned income of the specified relative and spouse is counted.

(ii) \$90 will be deducted from the monthly gross earned income for each employed person.

(iii) The \$30 and 1/3 disregard is allowed from earned income for each employed person, as described in R414-304-6(4).

(iv) Child care expenses and the cost of providing care for an incapacitated spouse necessary for employment are deducted for only the specified relative's children, spouse, or both. The maximum allowable deduction will be \$200.00 per child under age two, and \$175.00 per child age two and older or incapacitated spouse each month for full-time employment. For part-time employment, the maximum deduction is \$160.00 per child under age two, and \$140.00 per child age two and older or incapacitated spouse each month.

(v) Unearned income of the specified relative and the excluded spouse that is not excluded income is counted.

(vi) Total countable earned and unearned income is divided by the number of family members living in the specified relative's household.

([5]4) An American Indian child in a boarding school and a child in a school for the deaf and blind are considered temporarily absent from the household.

([6]5) Temporary absence from the home for purposes of schooling, vacation, medical treatment, military service, or other temporary purpose shall not constitute non-resident status. The following situations do not meet the definition of absence for purposes of determining deprivation of support:

(a) parental absences caused solely by reason of employment, schooling, military service, or training;

(b) an absent parent who will return home to live within 30 days from the date of application;

(c) an absent parent is the primary child care provider for the children, and the child care is frequent enough that the children are not deprived of parental support, care, or guidance.

([7]6) Joint custody situations are evaluated based on the actual circumstances that exist for a dependent child. The same policy is applied in joint custody cases as is applied in other absent parent cases.

([8]7) The ~~Department~~ eligibility agency imposes no suitable home requirement.

([9]8) Medicaid assistance is not continued for a temporary period if deprivation of support no longer exists. If deprivation of support ends due to increased hours of employment of the primary wage earner, the household may qualify for Transitional Medicaid described in R414-303-5.

([10]9) Full-time employment nullifies a person's claim to incapacity. To claim an incapacity, a parent must meet one of the following criteria:

(a) receive SSI;

(b) be recognized as 100% disabled by the Veteran's Administration, or be determined disabled by the Medicaid Disability Review Office or the Social Security Administration;

(c) provide, either on a Department-approved form or in another written document, completed by one of the following licensed medical professionals: medical doctor; doctor of Osteopathy; Advanced Practice Registered Nurse; Physician's Assistant; or a mental health therapist, which includes a psychologist, Licensed Clinical Social Worker, Certified Social Worker, Marriage and Family Therapist, Professional Counselor, or MD, DO or APRN engaged in the practice of mental health therapy, that states the incapacity is expected to last at least 30 days. The medical report must also state that the incapacity will substantially reduce the parent's ability to work or care for the child.

~~R414-303-13. DD/MR Home and Community Based Services Waiver.~~

~~(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 2001, which is incorporated by reference.~~

~~(2) Medicaid Eligibility for Developmentally Disabled Mentally Retarded (DD/MR) Home and Community Based Services is limited to mentally retarded and developmentally disabled individuals. Eligibility is limited to those referred by the Division of Services to People with Disabilities (DSPD) or any DD/MR worker.~~

~~(3) Medicaid eligibility for DD/MR Home and Community Based Services is limited to individuals who qualify for a regular Medicaid coverage group, except for individuals who only qualify for the Primary Care Network.~~

~~(4) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.~~

~~(5) All of the client's income is countable unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally funded, needs-based medical assistance.~~

~~(6) To determine countable earned income, the Department will deduct from the individual's earned income an amount equal to the substantial gainful activity level of earnings defined in Section 223(d)(4) of the Compilation of the Social Security Laws in effect January 1, 2001.~~

~~(7) The Department shall allow deductions for any health insurance or medical expenses for the waiver-eligible client that are paid by the waiver client.~~

~~(8) The spousal impoverishment provisions for Institutional Medicaid income apply.~~

~~(9) The client obligation for the contribution to care, which may be referred to as a spenddown, will be the amount of income that exceeds the personal needs allowance after allowable deductions. The contribution to care must be paid to the Department.~~

~~(10) The Department shall count parental and spousal income only if the client is given a cash contribution from a parent or spouse.~~

(11) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

R414-303-14. Aging Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(e) in effect January 1, 2001, which is incorporated by reference.

(2) Medicaid eligibility for Aging Home and Community Based Services is limited to individuals eligible for Aged Medicaid who could qualify for skilled nursing home care except that the spousal impoverishment resource limits apply. Eligibility is limited to those referred by the Division of Aging or a county aging worker.

(3) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(4) All income is counted, unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. The client's contribution to care, which may be referred to as a spenddown, is determined counting only the client's income less allowable deductions.

(5) The spousal impoverishment provisions for Institutional Medicaid income apply. Income deductions include health insurance premiums, medical expenses, a percentage of shelter costs and an aging waiver personal needs deduction.

(6) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

(7) The Department shall count a spouse's income only if the client is given a cash contribution from a spouse.

R414-303-15. Technologically Dependent Child Waiver/Travis C. Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(e) in effect January 1, 2001, which is incorporated by reference.

(2) The Department will operate this program statewide with a limited number of available slots.

(3) Eligibility for services under this waiver require that the individual meets the medical criteria established by the Department and the Division in Section Appendix C-4 of the Home and Community Based Waiver for Technology Dependent/Medically Fragile Children implementation plan effective on January 1, 1995 and renewed effective July 1, 2003 through June 30, 2008, which is incorporated by reference.

(4) To be eligible for admission to this waiver, the individual must be under age 21 at the time of admission to the waiver. An individual is considered to be under age 21 until the month after the month in which the twenty first birthday falls.

(5) Once admitted to the waiver, the individual can continue to receive waiver benefits and services as long as the individual continues to meet the medical criteria defined by the Department in R414-303-15(3), non-financial Medicaid eligibility criteria in R414-302, a Medicaid category of coverage defined in R414-303, and the income and resource criteria defined in R414-303-13, except that the earned income deduction is limited to \$125.

(6) Income and resource eligibility requirements follow the rules for the DD/MR Home and Community Based Services Waiver found in R414-303-13, except that the earned income deduction is limited to \$125.

R414-303-16. Persons with Brain Injury Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, 2001 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(e) in effect January 1, 2001, which is incorporated by reference.

(2) The Department will operate this program statewide with a limited number of available slots.

(3) Eligibility for services under this waiver requires that the individual has medical needs resulting from a brain injury. This means that the individual must be in need of skilled nursing or rehabilitation services as a result of the damage sustained because of the brain injury. A medical need determination will be established through the Department of Human Services, Division of Services for People with Disabilities.

(4) To qualify for services under this waiver, the individual must be 18 years old or older. The person is considered to be 18 in the month in which the 18th birthday falls.

(5) All other eligibility requirements follow the rules for the Aging Home and Community Based Services Waiver found in R414-303-14.

(6) The spousal impoverishment provisions for Institutional Medicaid income apply, with one exception: An individual who has a dependent family member living in the home is allowed a deduction for a dependent family member even if the individual is not married or is not living with the spouse.

R414-303-17. Physical Disabilities Waiver.

(1) The Department adopts 42 CFR 435.726, 435.832 and 435.217, 2006 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(e) in effect January 1, 2005, which is incorporated by reference.

(2) The Department operates this program statewide with a limited number of slots, and eligibility for this waiver is limited to individuals 18 years of age and over.

(3) The individual must meet non-financial criteria for Aged, Blind, or Disabled Medicaid.

(4) A client must qualify for a nursing home level of care. Eligibility is limited to those referred by the Division of Services to People with Disabilities and determined medically eligible by the Bureau of Medicare/Medicaid Program Certification and Resident Assessment.

(5) A client's resources must be equal to or less than \$2000. The spousal impoverishment resource provisions for married, institutionalized clients in R414-305-3 apply to this rule.

~~(6) Countable income is determined using income rules of Aged, Blind, or Disabled Institutional Medicaid. All income is counted, unless excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. After determining countable income, eligibility is determined counting only the gross income of the client.~~

~~(7) The client's income can not exceed three times the SSI benefit amount payable under Section 1611(b)(1) of the Social Security Act, except that individuals with income over this amount can spenddown to become eligible. To determine the spenddown amount, the income rules for non-institutionalized aged, blind or disabled individuals in R414-304 apply except that income is not deemed from the client's spouse.~~

~~(8) Transfer of resource provisions described in R414-305-6 apply to this rule.~~

~~(9) The Department does not pay for waiver services when an individual has home equity that exceeds the limit set forth by the Deficit Reduction Act of 2005, Pub. L. 109-171.~~

~~(a) That limit is the minimum level allowed under the Deficit Reduction Act of 2005, Pub. L. 109-171.~~

~~(b) An individual who has excess home equity and meets eligibility criteria under a community Medicaid eligibility group is not disqualified from receiving Medicaid for services other than home and community-based waiver or nursing home services.~~

[R414-303-1][8]3. Medicaid Cancer Program.

(1) The Department shall provide coverage to individuals described in 1902(a)(10)(A)(ii)(XVIII) of the Social Security Act in effect ~~April 4, 2012~~[January 1, 2001, as amended by Pub. L. No. 106-354 effective October 24, 2000], which is incorporated by reference. This coverage shall be referred to as the Medicaid Cancer Program.

(2) Medicaid eligibility for services under this program will be provided to women who have been screened for breast or cervical cancer under the Centers for Disease Control and prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and are in need of treatment.

(3) A woman who is covered for treatment of breast or cervical cancer under a group health plan or other health insurance coverage defined by the Health Information Portability and Accountability Act (HIPAA) of Section 2701 (c) of the Public Health Service Act, is not eligible for coverage under the program. If the woman has insurance coverage but is subject to a pre-existing condition period that prevents her from receiving treatment for her breast or cervical cancer or precancerous condition, she is considered to not have other health insurance coverage until the pre-existing condition period ends at which time her eligibility for the program ends.

(4) A woman who is eligible for Medicaid under any mandatory categorically needy eligibility group, or any optional categorically needy or medically needy program that does not require a spenddown or a premium, is not eligible for coverage under the program.

(5) A woman must be under 65 years of age to enroll in the program.

(6) Coverage for the treatment of precancerous conditions is limited to two calendar months after the month benefits are made effective.

(7) Coverage for a woman with breast or cervical cancer under 1902(a)(10)(A)(ii)(XVIII) ends when she is no longer in need of treatment for breast or cervical cancer. At each eligibility review, eligibility workers determine whether an eligible woman is still in need of treatment based on the woman's doctor's statement or report.

KEY: income, coverage groups, independent foster care adolescent

Date of Enactment or Last Substantive Amendment: ~~[April 4, 2012]~~

Notice of Continuation: January 25, 2008

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

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-307** Eligibility for Home and Community- Based Services Waivers

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36443

FILED: 07/02/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to incorporate eligibility criteria for all home and community-based services (HCBS) waivers and to implement eligibility provisions for the new Medicaid Autism Waiver program in accordance with H.B. 272, 2012 General Session.

SUMMARY OF THE RULE OR CHANGE: This change implements eligibility for the new Medicaid Autism HCBS Waiver, incorporates eligibility criteria for other HCBS waivers, changes the age limit for eligibility under the New Choices Waiver, and makes corrections to match other waiver implementation plans.

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

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds 42 CFR 435.217 and 435.726, published by Government Printing Office, 10/01/2011
- ◆ Adds Title XIX of the Social Security Act, Section 1915(c), published by Social Security Administration, 04/13/2012

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The Legislature appropriated \$4,500,000 for this new waiver program. Other changes to this rule, however, do not create additional costs because the Department limits program enrollment to available funding.
- ◆ LOCAL GOVERNMENTS: There is no impact to local governments because they do not determine Medicaid eligibility or fund Medicaid services.
- ◆ SMALL BUSINESSES: Small businesses may share in the revenue created through this appropriation. At this time, however, the Department cannot estimate a revenue amount because there is no data on the number of individuals who will receive these new waiver services.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Medicaid providers may share in the revenue created through this appropriation. At this time, however, the Department cannot estimate a revenue amount because there is no data on the number of individuals who will receive these new waiver services. Medicaid recipients who are eligible under the waiver will save on out-of-pocket expenses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A single Medicaid provider may share in the revenue created through this appropriation. At this time, however, the Department cannot estimate a revenue amount because there is no data on the number of individuals who will receive these new waiver services. A single Medicaid recipient who is eligible under the waiver will save on out-of-pocket expenses.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Consolidating definitions and standards for Home and Community Based Waiver services will have no negative fiscal impact on business and may simplify compliance.

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 08/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/01/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

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

R414-307. Eligibility for Home and Community-Based Services Waivers.

R414-307-1. Introduction and Authority.

(1) Section 26-18-3 authorizes this rule. It establishes ~~[general]~~ eligibility requirements for Medicaid coverage for home and community-based service waivers. ~~[It also specifies eligibility criteria that applies to the New Choices Home and the Community-Based Services Waiver.]~~

(2) The Department adopts 42 CFR 435.217 and 435.726, 2011 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect April 13, 2012, which is incorporated by reference.

R414-307-2. Definitions.

The definitions found in Rules R 414-1 and R414-301 apply to this rule.

R414-307-3. General Requirements for Home and Community-Based Services Waivers.

The following provisions apply to all applicants and recipients of home and community-based services waivers:

(1) To qualify under a home and community based services waiver, an individual must meet:

(a) the medical eligibility criteria defined in the waiver implementation plan adopted in R414-61 applicable to the specific waiver under which the individual is seeking services, as verified by the referring agency case manager;

(b) the eligibility criteria for one of the Medicaid coverage groups selected for coverage in the specific waiver implementation plan under which the individual is seeking services; and

(c) the non-financial Medicaid criteria defined in R414-302; and

(d) the requirements in this rule applicable to all waiver applicants and recipients, as well as requirements specific to the waiver for which the individual is seeking eligibility.

(2) ~~[An individual must apply for and provide required verifications pursuant to R414-308 relating to the application and verification process.]~~ The provisions found in Rule R414-301 apply to applicants and recipients of home and community-based services waivers.

(3) For individuals claiming a disability, the disability provisions of Rule R414-303 apply.

(4) Except where otherwise stated in this rule, the income provisions of Rule R414-304 apply to waiver applicants and recipients.

(5) Except where otherwise stated in this rule, the resource provisions of Rule R414-305 apply to waiver applicants and recipients.

(6) The benefit provisions of Rule R414-306 apply to waiver applicants and recipients.

(7) The provisions found in Rule R414-308 that apply to eligibility determinations, redeterminations, change reporting, verification and improper medical assistance also apply to waiver applicants and recipients.

(8) The Department shall limit the number of individuals covered by a home and community based-services waiver as provided in the adopted waiver implementation plan.

(9) The Department shall not pay for waiver services when an individual has home equity that exceeds the limit set forth by Pub. L. No. 109 171.

(a) The Department sets that limit at the minimum level allowed under Pub. L. No. 109 171.

(b) An individual who has excess home equity and meets eligibility criteria under a community Medicaid eligibility group defined in the Utah Medicaid State Plan may receive Medicaid for services other than home and community-based waiver services.

(c) An individual who has excess home equity and does not qualify for a community Medicaid eligibility group, is ineligible for Medicaid under both the special income group and the medically needy waiver group.

R414-307-4. Special Income Group.

The following requirements apply to individuals who qualify for a Medicaid home and community-based services waiver under the special income group defined in 42 CFR 435.217 because they do not meet community Medicaid rules but would be eligible for Medicaid if they were living in a medical institution:

(1) If the individual's spouse meets the definition of a community spouse, the [Department]eligibility agency shall apply[ies] the income and resource provisions defined in Section 1924 of the Social Security Act and Section R414-305-3.

(2) If the individual does not have a spouse, or the individual's spouse does not meet the definition of a community spouse, the [Department]eligibility agency may only count[s-only] the individual's resources to determine eligibility. If both members of a married couple who live together apply for waiver services and meet the criteria for the special income group, the [Department]eligibility agency shall count[s] one-half of jointly-held assets as available to each spouse. Each spouse must pass the medically needy resource test for one person.

(3) The [Department]eligibility agency may only count[s-only] income determined under the most closely associated cash assistance program to decide if the individual passes the income eligibility test for the special income group. The [Department]eligibility agency may [does-]not count income of the individual's spouse except for actual contributions from the spouse.

(4) If the individual is a minor child, the [Department]eligibility agency may [does-]not count income and resources of the child's parents to decide if the child passes the income and resource tests for the special income group. The [Department]eligibility agency shall count[s] actual contributions from a parent, including court-ordered support payments as income of the child.

(5) The individual's income cannot exceed three times the payment that would be made to an individual with no income under Section 1611(b)(1) of the Social Security Act.

(6) The [Department]eligibility agency shall apply[ies] the transfer of asset provisions of Section 1917 of the Social Security Act, as amended by Pub. L. No. 109[-],171.

(7) The individual's cost-of-care contribution is the income amount remaining after post-eligibility deductions for the applicable waiver. The individual must pay the cost-of-care contribution to the [department]eligibility agency each month for Medicaid waiver eligibility.

(8) The [Department]eligibility agency shall deduct[s] medical expenses incurred by the individual in accordance with Section R414-304-9.

(9) The [Department]eligibility agency shall determine[s] special income group eligibility for an individual starting the month that waiver services begin. The [Department]eligibility agency shall determine[s] eligibility for prior months using the community Medicaid or institutional Medicaid rules applicable to the individual's situation.

R414-307-5. Medically Needy Waiver Group.

The following requirements apply to individuals applying for or determined eligible for the New Choices Waiver or the Individuals with Physical Disabilities Waiver who meet the eligibility criteria for a medically needy coverage group defined in 42 CFR 435.301 that the Department has selected for coverage under the implementation plan for the specific waiver:

(1) If an individual's spouse meets the definition of a community spouse, the [Department]eligibility agency shall apply[ies] the [income and-]resource provisions defined in Section 1924 of the Social Security Act and Section R414-305-3.

(2) If the individual does not have a spouse or the individual's spouse does not meet the definition of a community spouse, the [Department]eligibility agency may only count[s-only] the individual's resources to determine eligibility. When both members of a married couple who live together apply for waiver services and meet the criteria for the medically needy waiver group, the [Department]eligibility agency shall count[s] one-half of jointly-held assets available to each spouse. Each spouse must pass the medically needy resource test for one person.

(3) The [Department]eligibility agency may only count[s-only] income of the individual determined under the most closely associated cash assistance program to decide [if the individual passes the income-]eligibility [test-]for the [special-income]medically needy waiver group. The [Department-]eligibility agency may not count income of the individual's spouse except for actual contributions from the spouse.

(4) If the individual is a minor child, the [Department]eligibility agency may only count income and resources of the child and may not count income and resources of the child's parents to decide if the child passes the income and resource tests for the medically needy waiver group. The [Department]eligibility agency shall count[s] actual contributions from a parent, including court-ordered support payments as income of the child.

(5) The individual's income must exceed three times the payment that would be made to an individual with no income under Section 1611(b)(1) of the Social Security Act.

(6) The [Department]eligibility agency shall apply[ies] the income deductions allowed by the [non-institutional]community Medicaid category under which the individual qualifies. The [Department]eligibility agency shall compare[s] countable income to the applicable medically needy income limit for a one-person household to determine the individual's spenddown. The individual

must pay the spenddown to the ~~[Department]~~eligibility agency for Medicaid waiver eligibility.

(7) The ~~[Department]~~eligibility agency shall deduct[s] medical expenses incurred by the individual in accordance with Section R414-304-9.

(8) The ~~[Department]~~eligibility agency shall determine[s] an individual's eligibility for the medically needy waiver group ~~[eligibility for an individual]~~starting the month that waiver services begin. The ~~[Department]~~eligibility agency shall determine[s] eligibility for prior months using the community Medicaid or institutional Medicaid rules applicable to the individual's situation.

R414-307-6. New Choices Waiver Eligibility Criteria.

The following eligibility requirements apply to the New Choices Waiver:

(1) An individual must be age 65 or older, or age ~~[24]~~18 through age 64 and disabled as defined in Section 1614(a)(3) of the Social Security Act. For the purpose of this waiver, an individual is ~~[24]~~18 years of age beginning the first month after the month of the individual's ~~[24st]~~18th birthday.

(2) An individual eligible under the special income group may be required to pay a contribution toward the cost of care to receive home and community based services. The eligibility agency shall determine a client's cost-of-care contribution as follows:

(a) The eligibility agency shall count all of the client's income unless such income is excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance.

~~[(2) Under post-eligibility income rules defined in Section 1924 of the Social Security Act for individuals with a community spouse, and in 42 CFR 435.726 for individuals without a community spouse, the Department deducts the following amounts from the income of an individual who meets the eligibility criteria for the special income group:~~

~~]~~ (a) The eligibility agency shall deduct the following amounts from the individual's income.

(i) A personal needs allowance equal to 100% of the federal poverty guideline for a household of one.

(b) For individuals with earned income, up to \$125 of gross-earned income.

(c) Actual monthly shelter costs not to exceed \$300. This deduction includes mortgage, insurance, property taxes, rent, and other shelter expenses.

(d) A deduction for monthly utility costs equal to the standard utility allowance Utah uses under Section 5(e) of the Food Stamp Act of 1977. If the waiver client shares utility expenses with others, the allowance is prorated accordingly.

(e) An allowance for a community spouse and dependent family members living with the community spouse, in accordance with the provisions of Section 1924 of the Social Security Act.

(f) In the case of an individual who does not have a community spouse or whose spouse is also eligible for institutional or waiver services, an allowance for a dependent family member[s] that is equal to one-third of the difference between the minimum monthly spousal needs allowance defined in Section 1924 of the Social Security Act and the family member's monthly income. If more than one individual who qualifies for a Medicaid home and community based waiver or institutional Medicaid coverage

contributes income to the dependent family member, the combined income deductions of such individuals cannot exceed one-third of the difference between the minimum monthly spousal needs allowance and the family member's monthly income.

(g) Medical and remedial care expenses incurred by the individual in accordance with Section R414-304-9.

(c) The income deduction to provide an allowance to a spouse or a dependent family member cannot exceed the amount the individual actually gives to such spouse or dependent family member.

(d) The remaining amount of income after such deductions is the individual's cost of care contribution.

(3) The individual must pay the contribution to cost-of-care to the eligibility agency each month to receive home and community based services.

(4) The eligibility agency shall count parental and spousal income only if the client receives a cash contribution from a parent or spouse.

R414-307-7. Community Supports Home and Community Based Services Waiver for Individuals with Intellectual Disabilities and Other Related Conditions.

(1) Medicaid eligibility for the Community Supports Home and Community-Based Services waiver is limited to individuals with intellectual disabilities and other related conditions.

(2) An individual's resources must be equal to or less than the Medicaid resource limit applicable to an institutionalized person. The spousal impoverishment resource provisions for married, institutionalized individuals in Section R414-305-3 apply to a married individual.

(3) An eligible individual may be required to pay a contribution toward the cost of care to receive home and community based services. The eligibility agency shall determine an individual's cost-of-care contribution as follows:

(a) The eligibility agency shall count all of the individual's income unless such income is excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance.

(b) The eligibility agency shall deduct the following amounts from the individual's income:

(i) For an individual with earned income, earned income up to the substantial gainful activity level of earnings defined in Section 223(d)(4) of the Compilation of the Social Security Laws in effect April 4, 2012, to determine countable earned income.

(ii) A personal needs allowance for the individual equal to 100% of the federal poverty level for one person.

(iii) A deduction for a community spouse and dependent family members living with the community spouse in accordance with the provisions of Section 1924 of the Social Security Act.

(iv) In the case of an individual who does not have a community spouse or whose spouse is also eligible for institutional or waiver services, an allowance for a dependent family member that is equal to one-third of the difference between the minimum monthly spousal needs allowance defined in Section 1924 of the Social Security Act and the family member's monthly income. If more than one individual who qualifies for a Medicaid home and community based waiver or institutional Medicaid coverage contributes income to the dependent family member, the combined

income deductions of such individuals cannot exceed one-third of the difference between the minimum monthly spousal needs allowance and the family member's monthly income.

(v) Health insurance premiums for the waiver-eligible recipient paid by the recipient, or medical expenses incurred by the recipient in accordance with Section R414-304-9.

(c) The income deduction to provide an allowance to a spouse or a dependent family member cannot exceed the amount the individual actually gives to such spouse or dependent family member.

(d) The remaining amount of income after such deductions is the individual's cost of care contribution.

(4) The individual must pay the contribution to cost-of-care to the eligibility agency each month to receive home and community based services.

(5) The eligibility agency shall count parental and spousal income only if the individual receives a cash contribution from a parent or spouse.

(6) The provisions of Section R414-305-8 concerning transfers of assets apply to individuals seeking eligibility or receiving benefits under this home and community based services waiver.

R414-307-8. Home and Community Based Services Waiver for Individuals Age 65 and Older.

(1) Medicaid eligibility for Home and Community-Based Services for individuals age 65 and older is limited to individuals eligible for Aged Medicaid who could qualify for skilled nursing home care.

(2) A client's resources must be equal to or less than the Medicaid resource limit applicable to an institutionalized person. The spousal impoverishment resource provisions for married, institutionalized individuals in Section R414-305-3 apply to a married individual.

(3) An eligible client may be required to pay a contribution toward the cost of care to receive home and community based services. The eligibility agency shall determine a client's cost-of-care contribution as follows:

(a) The eligibility agency shall count all income unless such income is excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. The eligibility agency shall count a spouse's income only if the client receives a cash contribution from a spouse.

(b) The eligibility agency shall deduct the following amounts from the individual's income:

(i) A personal needs allowance for the individual equal to 100% of the federal poverty level for one person.

(ii) For individuals with earned income, up to \$125 of gross-earned income.

(iii) An allowance for shelter expenses as defined in the waiver implementation plan.

(iv) A deduction for a community spouse and dependent family members under the spousal impoverishment provisions for Institutional Medicaid defined in Section R414-304-10.

(v) In the case of an individual who does not have a community spouse or whose spouse is also eligible for institutional or waiver services, an allowance for a dependent family member that is equal to one-third of the difference between the minimum

monthly spousal needs allowance defined in Section 1924 of the Social Security Act and the family member's monthly income. If more than one individual who qualifies for a Medicaid home and community based waiver or institutional Medicaid coverage contributes income to the dependent family member, the combined income deductions of such individuals cannot exceed one-third of the difference between the minimum monthly spousal needs allowance and the family member's monthly income.

(vi) Health insurance premiums for the waiver-eligible recipient paid by the recipient, or medical expenses incurred by the recipient in accordance with Section R414-304-9.

(c) The income deduction to provide an allowance to a spouse or a dependent family member cannot exceed the amount the individual actually gives to such spouse or dependent family member.

(d) The remaining amount of income after such deductions is the individual's cost of care contribution.

(4) The individual must pay the contribution to cost-of-care to the eligibility agency each month to receive home and community based services.

(5) The provisions of Section R414-305-8 concerning transfers of assets apply to individuals seeking eligibility or receiving benefits under this home and community based services waiver.

R414-307-9. Home and Community Based Services Waiver for Technology Dependent/Medically Fragile Individuals.

(1) To be eligible for admission to this waiver, the individual must be under age 21 at the time of admission to the waiver. An individual is considered to be under age 21 until the month after the month in which the 21st birthday falls.

(2) Once admitted to the waiver, the individual can continue to receive waiver benefits and services as long as the individual continues to meet the medical criteria defined by the Department in the Technology Dependent waiver implementation plan, non-financial Medicaid eligibility criteria in Rule R414-302, and a Medicaid category of coverage defined in the waiver implementation plan.

(3) All other eligibility requirements follow the rules for the Community Supports Home and Community-Based Services Waiver found in Section R414-307-7, except for Subsection R414-307-7(1).

R414-307-10. Home and Community-Based Services Waiver for Individuals with Acquired Brain Injury.

(1) To qualify for services under this waiver, the individual must be at least 18 years of age. The person is considered to be 18 years of age in the month in which the 18th birthday falls.

(2) All other eligibility requirements follow the rules for the Home and Community-Based Services Waiver for Aged Individuals found in Section R414-307-8.

R414-307-11. Home and Community-Based Services Waiver for Individuals with Physical Disabilities.

(1) To qualify for the waiver for individuals with physical disabilities the individual must meet non-financial criteria for Aged, Blind, or Disabled Medicaid.

(2) A client's resources must be equal to or less than \$2000. The spousal impoverishment resource provisions for

married, institutionalized clients in Section R414-305-3 apply to this rule.

(3) Countable income is determined using income rules of Aged, Blind, or Disabled Institutional Medicaid. The eligibility agency shall count all income unless such income is excluded under other federal laws that exclude certain income from being counted to determine eligibility for federally-funded, needs-based medical assistance. Eligibility is determined counting only the gross income of the client.

(4) The eligibility agency shall count a spouse's income only if the client receives a cash contribution from a spouse.

(5) The client's income cannot exceed three times the SSI benefit amount payable under Section 1611(b)(1) of the Social Security Act, except that individuals with income over this amount can pay a spenddown to become eligible. To determine the spenddown amount, the income rules and medically needy income standard for non-institutionalized aged, blind or disabled individuals in Rule R414-304 apply except that income is not deemed from the client's spouse.

(6) The eligibility agency may not assess a cost-of-care contribution for an individual with income that does not exceed three times the SSI benefit amount.

(7) The provisions of Section R414-305-8 concerning transfers of assets apply to individuals seeking eligibility or receiving benefits under this home and community-based services waiver.

R414-307-12. Home and Community-Based Services Waiver for Individuals with Autism.

(1) To qualify for the waiver for individuals with autism, the child must be at least two years of age and under six years of age. The last month a child can be eligible for this waiver is the month in which the child turns six years of age.

(2) All other eligibility requirements follow the rules of the Community Supports Home and Community-Based Services Waiver found in Section R414-307-7 except for Subsection R414-307-7(1).

[R414-307-7. Other Provisions:

The following provisions apply to all applicants and recipients of home and community based services waivers:

(1) Applicants and recipients of home and community-based services waivers receive the same rights and have the same responsibilities as all other medical assistance applicants and recipients.

(2) For individuals claiming a disability, the disability provisions of R414-303 apply.

(3) Except where otherwise stated in this rule, the income provisions of R414-304 apply to waiver applicants and recipients.

(4) Except where otherwise stated in this rule, the resource provisions of R414-305 apply to waiver applicants and recipients.

(5) The benefit provisions of R414-306 apply to waiver applicants and recipients.

(6) The provisions found in R414-308 that apply to eligibility determinations, redeterminations, change reporting, and improper medical assistance also apply to waiver applicants and recipients.

~~(7) The Department limits the number of individuals covered by a home and community based services waiver as provided in the adopted waiver implementation plan.~~

~~(8) The Department does not pay for waiver services when an individual has home equity that exceeds the limit set forth by Pub. L. 109-171.~~

~~(a) The state sets that limit at the minimum level allowed under Pub. L. 109-171.~~

~~(b) An individual who has excess home equity and meets eligibility criteria under a community Medicaid eligibility group is not disqualified from receiving Medicaid for services other than home and community-based waiver services.~~

~~(c) An individual who has excess home equity and does not qualify for a community Medicaid eligibility group, is ineligible for Medicaid under both the special income group and the medically needy waiver group. This is in accordance with institutional deeming rules found in Section 1924 of the Social Security Act.~~

**]KEY: eligibility, waivers, special income group
Date of Enactment or Last Substantive Amendment: ~~[May 15, 2007]~~2012**

Notice of Continuation: April 17, 2012

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

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-509
Medicaid Autism Waiver Open
Enrollment Process**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 36427

FILED: 07/02/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to set forth the open enrollment process for the Medicaid autism waiver program, which was created in accordance with H.B. 272 in the 2012 General Session.

SUMMARY OF THE RULE OR CHANGE: This new rule sets forth eligibility requirements for open enrollment in the Medicaid autism waiver program. It also clarifies conditions for open enrollment and specifies open enrollment procedures.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3 and Section 26-18-407

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Department does not anticipate any impact to the state budget because this rule only specifies open enrollment procedures for the autism waiver program. It neither affects waiver services for program recipients nor reimbursement for Medicaid providers.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they neither fund nor provide autism waiver services for Medicaid recipients.
- ◆ **SMALL BUSINESSES:** The Department does not anticipate any impact to small businesses because this rule only specifies open enrollment procedures for the autism waiver program. It neither affects waiver services for program recipients nor reimbursement for Medicaid providers.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate any impact to program recipients and to Medicaid providers because this rule only specifies open enrollment procedures. It neither affects waiver services for recipients nor provider reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not anticipate any cost to a single program recipient or to a Medicaid provider because this rule only specifies open enrollment procedures. It neither affects waiver services nor provider reimbursement.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This program is limited to available appropriations. It will have a positive fiscal impact for businesses that serve children with autism that qualify.

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 08/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 09/01/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-509. Medicaid Autism Waiver Open Enrollment Process.****R414-509-1. Introduction and Authority.**

(1) This rule defines the open enrollment process to enroll individuals in the Medicaid Autism Waiver program.

(2) This rule is authorized by Section 26-18-407. Waiver services are optional and provided in accordance with 42 CFR 440.225.

R414-509-2. Definitions.

(1) "Attrition" means the act of a waiver recipient leaving the waiver for any reason. Examples include the recipient moving out of state or the recipient turning six years of age.

(2) "Geographical Region" means a county or counties that are identified as belonging to one of the twelve Utah local health department districts.

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

(4) "Open enrollment" means the period during which the Department accepts waiver applications.

(5) "Opening" means the availability for an individual to participate in the Medicaid Autism Waiver program.

(6) "Waiver Operating Agency" means the Department of Human Services, which contracts with the Department of Health to implement defined waiver operations.

R414-509-3. Open Enrollment Eligibility Requirements.

To participate in the open enrollment process, the individual must meet the following eligibility requirements:

(1) The individual must have a diagnosis of an autism spectrum disorder from a licensed clinician. Diagnosis must be rendered by a clinician who is authorized under the scope of their licensure;

(2) On the final day of the open enrollment period, the individual must:

(a) have had his or her second birthday; and

(b) be no older than five years and six months of age; and

(3) The individual must meet the financial eligibility requirement defined in the Medicaid Autism Waiver program.

R414-509-4. Open Enrollment Periods.

The Department will determine when open enrollment periods are held and for what duration based on the availability of funds for the Medicaid Autism Waiver program.

R414-509-5. Open Enrollment Procedures.

(1) The Department accepts the following means of application during open enrollment periods:

(a) Online application, with a time and date stamp confirming that the application was received within the open enrollment period;

(b) Facsimile, with a time and date stamp confirming that the application was received within the open enrollment period; and

(c) Mail, with the postmark on applications dated no sooner than the first day of the open enrollment period and no later than the last day of the open enrollment period.

(2) The number of individuals who may enroll in the waiver program during an open enrollment period is based on the availability of funds.

(3) The Department enrolls all individuals who meet the requirements of Section R414-509-3 if the number of applications does not exceed the number of available openings when the open enrollment period ends.

(4) If the number of applications exceeds the number of available waiver openings, then the Department shall:

(a) Compile all applications that it receives during the open enrollment period;

(b) Assign each application a random number;

(c) Create lists of randomly numbered applications by assigned geographical region;

(d) Assure that rural and underserved regions of the state are represented. The Department assigns waiver openings by geographic regions as follows:

(i) The Department allocates openings to each geographical region based on the percentage of population of the State's population that resides within the geographical region. The Department obtains population information from the most recent United States Census Report;

(ii) if insufficient applications are present in a geographic region to fill all existing openings, the Department distributes the remaining waiver openings to an adjacent geographical region;

(e) Begin at the top of the randomized list and match the number of available geographical openings with the same number of applications;

(i) If a selected applicant does not meet the eligibility criteria described in Section R414-509-3, the Department selects the next application on the randomized list;

(f) Enroll the selected individuals into waiver services.

R414-509-6. Procedures for Filling Openings Created by Attrition.

Attrition is ongoing in the Medicaid Autism Waiver program because the waiver serves a child only through the end of the month in which the child turns six years of age.

(1) To fill waiver openings due to attrition outside of open enrollment periods, the Department develops an applicant pool.

(a) The Department determines the number of applicants available in the applicant pool for each geographical region by using the process described in Subsection R414-509-5(4)(d)(i) to determine the number of waiver openings and factoring that number by four;

(b) The Department requires the Waiver Operating Agency to inform the Department of all waiver openings within ten business days;

(c) The Department identifies the geographical region where each opening occurs;

(d) The Department identifies the next randomly numbered application available within that geographical region;

(e) The Department matches the randomly numbered application to the applicant name, and based on the applicant's age, evaluates whether the applicant continues to be eligible for the waiver.

(i) To be eligible for waiver enrollment on the date of identification, the applicant may not exceed five years and six months of age;

(ii) If the applicant is not eligible for waiver enrollment based on Subsection R414-509-6(1)(e)(i), the Department identifies the next randomly numbered application available within the geographical region until the Department can identify an eligible applicant.

(2) When the Department determines an open enrollment period is going to occur, it may suspend filling openings that arise through attrition.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: 2012

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

Insurance, Administration
R590-262
Health Data Authority Health Insurance
Claims Reporting

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36418

FILED: 06/27/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes to this rule are to clarify and clean-up unnecessary wording and definitions.

SUMMARY OF THE RULE OR CHANGE: The changes made are to clarify that long-term care insurance and income replacement policies are exempt from the rule; to remove redundant definitions; require insurers to permit the Health Department to re-disclose specified information; and to clarify a date when submissions are due.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-37 and Section 31A-22-614.5

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The changes are cleanup in nature and for clarification purposes. They will have no fiscal impact on the department or the state's budget. No additional filings or other work will be required of the department and no changes will result in department expenses or revenues.

◆ **LOCAL GOVERNMENTS:** This rule has no fiscal impact on local governments. It deals solely with the relationship between the department, its licensees and the State Health Department.

◆ **SMALL BUSINESSES:** This rule impacts large businesses: insurers and employers of 2,500 or more individuals.
 ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The changes to this rule are for clarification purposes only and will have no fiscal impact on insurers or their insureds.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to this rule are for clarification purposes only and will have no fiscal impact on those regulated by it.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on Utah businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 INSURANCE
 ADMINISTRATION
 ROOM 3110 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2012

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-262. Health Data Authority Health Insurance Claims Reporting.

R590-262-1. Authority.

This rule is promulgated pursuant to Subsection 31A-22-614.5(3)(a) to coordinate with the provision of Subsection 26-1-37(2)(b) and Utah Department of Health rules R428-1 and R428-15.

R590-262-2. Purpose and Scope.

(1) This rule establishes requirements for certain entities that pay for health care to submit data to the Utah Department of Health.

(2) This rule allows the data to be shared with the state's designated secure health information master index person index, Clinical Health Information Exchange (cHIE), to be used:

(a) in compliance with data security standards established by:

(i) the federal Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936; and

(ii) the electronic commerce agreements established in a business associate agreement;~~and~~

(b) for the purpose of coordination of health benefit plans~~;~~ and~~;~~

(c) for the enrollment data elements identified in Utah Administrative Rule R428-15, Health Data Authority Health Insurance Claims Reporting.

(3)(a) This rule applies to an insurer offering a health benefit plan.

~~(b) This rule does not apply to:~~

~~(i) [An]an insurer that covers fewer than 2500 individual Utah residents[is exempt from all requirements of this rule.];~~

~~(ii) a long-term care insurance policy; or~~

~~(iii) an income replacement policy.~~

R590-262-3. Definitions.

In addition to the definitions in Section 31A-1-301, the following definitions shall apply for the purpose of this rule:

(1) "Claim" means a request or demand on an insurer for payment of a benefit.

(2) "Health care claims data" means information consisting of, or derived directly from, member enrollment, medical claims, and pharmacy claims that this rule requires an insurer to report.

~~(3) ["Health Insurance" has the same meaning as found in Subsection 31A-1-301(76).~~

~~(4) "Insurer" means:~~

~~(a) [a commercial insurance company]a person engaged in the business of offering a health benefit plan[care insurance in the state of Utah, as defined in Subsection 31A-1-301(92)], including a business under an administrative services organization or administrative services contract arrangement;~~

~~(b) a third party administrator[as defined in Subsection 31A-1-301(161), licensed by the Utah Insurance Department, and] that collects premiums or settles claims[of residents of the state,] for health care insurance policies[or health benefit plans, as defined in Subsection 31A-1-301(74);]~~

~~(c) a governmental plan as defined in Section 414(d), Internal Revenue Code;~~

~~(d) a non-electing church plan as described in Section 410(d), Internal Revenue Code; or~~

~~(e) a licensed professional employer organization that is acting as an administrator of a health care insurance policy [under Title 31A, Chapter 40]or a health benefit plan funded by a self-insurance arrangement.~~

(5) "Office" means the Office of Health Care Statistics within the Utah Department of Health, which serves as staff to the Utah Health Data Committee.

(6) "Technical specifications" means the technical specifications document published by the Health Data Committee describing the variables and formats of the data that are to be submitted as well as submission directions and guidelines.

R590-262-4. Reporting Requirements.

(1) Each insurer shall submit enrollment, medical claims, and pharmacy data described in R428-15-5 and R590-262-5, where Utah is the patient's primary residence, for services provided in or out of the state of Utah.

(2) Each insurer shall permit the Utah Department of Health to redisclose the enrollment and eligibility information with

the state designated entity for the purpose of coordination of benefits.

(3) Each insurer shall submit monthly health care claims data. Each monthly submission is due no later than the last day of the following month.

R590-262-[4]5. Reporting Process.

(1) Submission procedures and guidelines are described in detail in the technical specifications published by the Health Data Committee. The health care claims data shall be either X12 format, or flat text files formatted according to the technical specifications.

(2) All medical claims shall be submitted to the Office through the Utah Health Information Network (UHIN) in X12 format.

(3) All enrollment and pharmacy data files shall be submitted to the Office in flat text files using either UHIN or FTP Secure.

~~[(4) An insurer shall submit the information in Subsections (2) and (3) for all Utah residents.]~~

R590-262-[5]6. Required Data Elements.

(1) The enrollment, medical claims, and pharmacy data elements are described in detail in the technical specifications published by the Health Data Committee. Each insurer shall submit data for all fields contained in the submission specifications if the data are available to the insurer.

(a) Each insurer must submit enrollment files as a flat file.

(b) Each insurer must submit medical claims as X12 messages as modified by this rule. All X12 format messages must contain all the necessary segments for processing through UHIN. This includes ISA/IEA segments, GS and GE segments, Segment Qualifier codes, etc., as specified in the X12 implementation guides. If a segment or qualifier is required for X12 format, it is required for all submissions under this rule. If a segment or qualifier is not required for X12 format, but is required by this rule, it must be submitted as required by this rule. Submitted files must be in the ASC X12 4010A1 x098 for a Professional Claim and in the ASC X12 4010A1 x096 for an Institutional Claim.

(c) Each insurer must submit pharmacy claims as a flat file.

(2) Each insurer must submit the enrollment files, professional medical claims, institutional medical claims, and pharmacy claims data elements as required in R428-15.

R590-262-[6]7. Third-party Contractors.

The Office may contract with a third party to collect and process the health care claims data and will prohibit it from using the data in any way but those specifically designated in the scope of work.

R590-262-[7]8. Insurer Registration.

Each insurer shall register with the Office by completing the registration online at <http://health.utah.gov/hda/apd/> no later than ~~February 1, 2012;~~ 30 days after becoming subject to this rule and annually thereafter by no later than September 1.

R590-262-[8]9. Testing of Files.

Insurers that become subject to this rule shall submit to the Office a dataset for determining compliance with the standards for data submission no later than 90 days after the first date of becoming subject to the rule.

R489-262-[9]10. Rejection of Files.

The Office or its designee may reject and return any data submission that fails to conform to the submission requirements. Paramount among submission requirements are: First Name, Last Name, Member ID, Relationship to Subscriber, Date of Birth, Address, City, State, Zip Code, Sex, which are key data fields that the insurer must submit for each enrolled member and claim. An insurer whose submission is rejected shall resubmit the data in the appropriate, corrected format to the Office, or its designee within ten state business days of notice that the data does not meet the submission requirements.

R590-262-[10]11. Replacement of Data Files.

An insurer may replace a complete dataset submission if no more than one year has passed since the end of the month in which the file was submitted. However, the Office may allow a later submission if the insurer can establish exceptional circumstances for the replacement.

R590-262-[11]12. Provider Notification.

(1) The following notification must be provided to a person that receives shared data, "This shared data is provided for informational purposes only. Contact the insurer for current, specific eligibility, or benefits coverage determination."

(2) The notification in this section shall be provided in coordination with provider participation in the master index patient index and the cHIE programs.

R590-262-[12]13. Limitation of Liability.

A person furnishing information of the kind described in this rule is immune from liability and civil action if the information is furnished to or received from:

(a) the commissioner of ~~insurance or~~ the Insurance Department, the executive director of the Department of Health, or their employees or representatives;

(b) federal, state, or local law enforcement or regulatory officials or their employees or representatives; or

(c) the insurer that issued the policy connected with the data set.

R590-262-[13]14. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided in Section 31A-2-308.

R590-262-[14]15. Enforcement Date.

The commissioner will begin enforcing this rule upon the rule's effective date.

R590-262-[15]16. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not

affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: health insurance claims reporting

Date of Enactment or Last Substantive Amendment: [~~March 7,~~ 2012

Authorizing, and Implemented or Interpreted Law: 31A-22-614.5(3)(a)

Natural Resources, Wildlife Resources R657-16 Aquaculture and Fish Stocking

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36394

FILED: 06/19/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted for taking public input and reviewing the division's program by which live aquatic wildlife may be possessed or transported.

SUMMARY OF THE RULE OR CHANGE: The amendment to this rule removes the definition of "ornamental fish" and replaces it with the definition of "ornamental aquatic animal species".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-15-10 and Section 23-15-9

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment only clarifies a definition. The Division of Wildlife (DWR) has determined that this amendment does not create a cost or savings impact to the division's budget or the state budget.

◆ **LOCAL GOVERNMENTS:** None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the amendment. Nor are local governments indirectly impacted because the amendment does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment only clarifies a definition. The division determines that the amendment does not impose any additional requirements on other persons, nor generate a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment only clarifies a definition. The division determines that the amendment does not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment clarifies the definition of "ornamental aquatic animal species". There are not any additional compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2012

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-16. Aquaculture and Fish Stocking.

R657-16-1. Purpose and Authority.

(1) Under the authority of Sections 23-15-9 and 23-15-10 of the Utah Code, this rule provides the standards and procedures for:

- (a) institutional aquaculture;
- (b) short-term fishing events;
- (c) private fish stocking; and
- (d) displaying aquaculture products or aquatic wildlife in aquaria.

(2) This rule does not cover private fish ponds as provided in R657-59, or fee fishing and commercial aquaculture as provided in Title 4, Chapter 37, Parts 2 and 3; and the Department of Agriculture Rule R58-17.

(3) A person engaging in any activity provided in Subsection (1) must also comply with the provisions set forth in Rule R657-3 and the Department of Agriculture Rule R58-17.

(4) Any violation of, or failure to comply with, any provision of this rule or any specific requirement contained in a certificate of registration issued pursuant to this rule may be grounds for revocation or suspension of the certificate of registration or denial of future certificates of registration, as determined by a division hearing officer.

R657-16-2. Definitions.

- (1) Terms used in this rule are defined in Section 23-13-2.
- (2) In addition:

(a) "Aquaculture" means the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions.

(b) "Aquaculture facility" means any facility used for propagating, rearing, or producing aquatic wildlife or aquaculture products. Facilities that are separated by more than 1/2 mile, or facilities that drain to, or are modified to drain to, different drainages are considered to be separate aquaculture facilities, regardless of ownership.

(c)(i) "Aquaculture product" means privately purchased aquatic wildlife or their gametes.

(ii) "Aquaculture product" does not include aquatic wildlife obtained from the wild.

(d) "Aquarium" means any container located in an indoor facility that is used to hold fish from which no water is discharged, except during periodic cleaning, and which discharged water is passed through a filtering system capable of removing all fish and fish eggs and is disposed of only in a septic tank approved by the county or in a municipal wastewater treatment system approved by either the state or local health department.

(e) "Display" means to hold live aquaculture products or aquatic wildlife in an aquarium for the purpose of viewing for commercial or noncommercial purposes.

(f) "FEMA" means Federal Emergency Management Administration.

(g) "Institutional aquaculture" means aquaculture engaged in by any institution of higher learning, school, or other educational program, or public agency.

(h) ~~["(a)"Ornamental [fish]aquatic animal species" means any species of fish[that are raised or held for their beauty rather than use, or that arouse interest for their uncommon or exotic characteristics, including tropical fish, goldfish, and koi, but not including those], molluck, or crustacean that is commonly cultured and sold in the United States' aquarium industry for display.~~

~~(b) "Ornamental aquatic animal species" does not include:~~

~~(i) fresh water;~~

~~(A) sport fish - aquatic animal species commonly angled or harvested for recreation or sport;~~

~~(B) baitfish - aquatic animal species authorized for us as bait in R657-13-12, and any other species commonly used by anglers as bait in sport fishing;~~

~~(C) food fish - aquatic animal species commonly cultured or harvested from the wild for human consumption; or~~

~~(D) native species; or~~

~~(ii) aquatic animal species prohibited for importation or possession by any state, federal, or local law; or~~

~~(iii) aquatic animal species listed as prohibited or controlled in [Rule]Sections R657-3-[34-]22 and R657-3-23. (i) "Private fish pond" means a pond, reservoir, or other body of water, or any fish culture system which is contained on privately owned land and used for holding or rearing fish for a private, noncommercial purpose.~~

(j) "Private stocking" means noncommercial stocking of live aquaculture products in waters of the state not eligible as a private fish pond under R657-59 or other private fish facility.

(k) "Purchase" means to buy, or otherwise acquire or obtain through barter, exchange, or trade for pecuniary consideration or advantage.

(l) "Short-term fishing event" means any event where privately acquired fish are held or confined for a period not to exceed seven days for the purpose of providing fishing or recreational opportunity and where no fee is charged as a requirement to fish.

KEY: wildlife, aquaculture, fish

Date of Enactment or Last Substantive Amendment: [~~August 21, 2008~~2012

Notice of Continuation: October 9, 2007

Authorizing, and Implemented or Interpreted Law: 23-15-9; 23-15-10

Natural Resources, Wildlife Resources R657-41 Conservation and Sportsman Permits

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36393

FILED: 06/19/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife's rule pursuant to conservation and sportsman permits.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to the above listed rule: 1) establish criteria for determining the number of area conservation permits to be issued each year; 2) add additional clarification concerning the payment of approved projects; and 3) clarify the definition of "area conservation permit".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment clarifies the process for determining the number of area conservation permits to be issued each year and adds clarification concerning the payment of approved projects. The Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** This amendment clarifies the process for determining the number of area conservation permits to be issued each year and clarifies the use of funds on approved projects. This should have little to no effect on the local government. This filing does not create any direct

cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

♦ **SMALL BUSINESSES:** This amendment clarifies the process for determining the number of area conservation permits to be issued each year and adds clarification concerning the payment of approved projects. Therefore, the amendments do not have the potential to generate a cost or savings impact to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment clarifies the process for determining the number of area conservation permits to be issued each year and adds clarification concerning the payment of approved projects. Therefore, the amendments do not have the potential to generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments will not create additional costs for residents and nonresidents wishing to hunt in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2012

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-41. Conservation and Sportsman Permits.

R657-41-1. Purpose and Authority.

(1) Under the authority of Section 23-14-18 and 23-14-19, this rule provides the standards and procedures for issuing:

(a) conservation permits to conservation organizations for sale at an auction, or for use as an aid to wildlife related fund raising activities; and

(b) sportsman permits.

(2) The division and conservation organizations shall use all revenue derived from conservation permits under Subsections R657-41-9(4) and R657-41-9(5)(b) for the benefit of the species for which the permit is issued, unless the division and conservation organization mutually agree in writing that there is a higher priority use for other species of protected wildlife.

R657-41-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Area Conservation Permit" means a permit issued for a specific unit or hunt area for a conservation permit species, and may include an extended season, or legal weapon choice, or both, beyond the season except area turkey permits are valid during any season option and are valid in any open area during general season hunt.

(i) Area Conservation permits issued for limited entry units are not valid on cooperative wildlife management units.

(b) "Conservation Organization" means a nonprofit chartered institution, foundation, or association founded for the purpose of promoting wildlife conservation and has established tax exempt status under Internal Revenue Code, Section 501C-3 as amended.

(c) "Conservation Permit" means any harvest permit authorized by the Wildlife Board and issued by the division for purposes identified in Section R657-41-1.

(d) "Conservation Permit Species" means the species for which conservation permits may be issued and includes deer, elk, pronghorn, moose, bison, Rocky Mountain goat, Rocky Mountain bighorn sheep, desert bighorn sheep, wild turkey, cougar, and black bear.

(e) "Multi-Year Conservation Permit" means a conservation permit awarded to an eligible conservation organization pursuant to R657-41-7 for three consecutive years to sell, market or otherwise use as an aid in wildlife related fund raising activities.

(f) "Retained Revenue" means 60% of the revenue raised by a conservation organizations from the sale of conservation permits that the organization retains for eligible projects, excluding interest earned thereon.

(g) "Special Antelope Island State Park Conservation Permit" means a permit authorized by the Wildlife Board to hunt bighorn sheep or mule deer on Antelope Island State Park.

(h) "Sportsman Permit" means a permit which allows a permittee to hunt during the applicable season dates specified in Subsection (j), and which is authorized by the Wildlife Board and issued by the division in a general drawing, requiring all applicants to pay an application fee and the successful applicant the cost of the permit.

(i) "Single Year Conservation Permit" means a conservation permit awarded to an eligible conservation organization pursuant to R657-41-6 for one year to sell, market or otherwise use as an aid in wildlife related fund raising activities.

(j) "Statewide Conservation Permit" means a permit issued for a conservation permit species that allows a permittee to hunt:

(i) big game species on any open unit with archery equipment during the general archery season published in the big game proclamation for the unit beginning before September 1, and

with any weapon from September 1 through December 31, except pronghorn and moose from September 1 through November 15 and deer and elk from September 1 through January 15;

(ii) two turkeys on any open unit from April 1 through May 31;

(iii) bear on any open unit during the season authorized by the Wildlife Board for that unit;

(iv) cougar on any open unit during the season authorized by the Wildlife Board for that unit and during the season dates authorized by the Wildlife Board on any harvest objective unit that has been closed by meeting its objective; and

(v) Antelope Island is not an open unit for hunting any species of wildlife authorized by a conservation or sportsman permit, except for the Special Antelope Island State Park Conservation Permit.

R657-41-3. Determining the Number of Conservation and Sportsman Permits.

(1) The number of conservation permits authorized by the Wildlife Board shall be based on:

(a) the species population trend, size, and distribution to protect the long-term health of the population;

(b) the hunting and viewing opportunity for the general public, both short and long term; and

(c) the potential revenue that will support protection and enhancement of the species.

(2) One statewide conservation permit may be authorized for each conservation permit species.

(3) A limited number of area conservation permits may be authorized as follows:

(a) ~~[a maximum of 10% of the total permits, assigned to a hunt area or combination of hunt areas,]the potential number of multi-year and single year permits available for Rocky Mountain bighorn sheep and desert bighorn sheep[-] will be calculated based on the number permits issued the year prior to the permits being awarded using the following rule:~~

~~(i) 5-14 public permits = 1 conservation permit, 15-24 public permits = 2 conservation permits, 25-34 public permits = 3 conservation permits, 35-44 permits = 4 conservation permits, 45-54 public permits = 5 conservation permits, 55-64 = 6 conservation permits, 65-74 public permits = 7 conservation permits and >75 public permits = 8 conservation permits.~~

~~(b) [a maximum of 5% of the permits or eight permits, whichever is less, for any unit or hunt area]the potential number of multi-year and single year permits available for the remaining conservation permit species[-] will be calculated based on the number permits issued the year prior to the permits being awarded using the following rule:~~

~~([4]i) 11-30 public permits = 1 conservation permit, 31-50 public permits = 2 conservation permits, 51-70 public permits = 3 conservation permits, 71-90 permits = 4 conservation permits, 91-110 public permits = 5 conservation permits, 111-130 = 6 conservation permits, 131-150 public permits = 7 conservation permits and >150 public permits = 8 conservation permits.~~

~~(4) The number of conservation permits may be reduced if the number of public permits declines during the time period or which multi-year permits were awarded.~~

~~(5) The actual number of conservation and sportsman permits available for use will be determined by the Wildlife Board.~~

~~([5]6) Area conservation permits shall be deducted from the number of public drawing permits.~~

~~([6]7) One sportsman permit shall be authorized for each statewide conservation permit authorized.~~

~~([7]8) All area conservation permits are eligible as multi-year permits except that the division may designate some area conservation permits as single year permits based on the applications received for single year permits.~~

~~([8]9) All statewide permits will be multi-year permits except for a second statewide permit issued for a special event.~~

R657-41-9. Conservation Permit Funds and Reporting.

(1) All permits must be marketed by September 1, annually.

(2) Within 30 days of the last event, but no later than September 1 annually, the conservation organization must submit to the division:

(a) a final report on the distribution of permits;

(b) the total funds raised on each permit;

(c) the funds due to the division; and

(d) a report on the status of each project funded in whole or in part with retained conservation permit revenue.

(3)(a) Permits shall not be issued until the permit fees are paid to the division.

(b) If the conservation organization is paying the permit fees for the permit recipient, the fees must be paid from the 10% retained by the conservation organization as provided in Subsection (5)(a).

(4)(a) Conservation organizations shall remit to the division by September 1 of each year 30% of the total revenue generated by conservation permit sales in that year.

(b) The permit revenue payable to the division under Subsection (4)(a), excluding accrued interest, is the property of the division and may not be used by conservation organizations for projects or any other purpose.

(c) The permit revenue must be placed in a federally insured account promptly upon receipt and remain in the account until remitted to the division on or before September 1 of each year.

(d) The permit revenue payable to the division under this subsection shall not be used by the conservation organization as collateral or commingled in the same account with the organization's operation and administration funds, so that the separate identity of the permit revenue is not lost.

(e) Failure to remit 30% of the total permit revenue to the Division by the September 1 deadline may result in criminal prosecution under Title 76, Chapter 6, Part 4 of the Utah Code, and may further disqualify the conservation organization from obtaining any future conservation permits.

(5) A conservation organization may retain 70% of the revenue generated from the sale of conservation permits as follows:

(a) 10% of the revenue may be withheld and used by the conservation organization for administrative expenses.

(b) 60% of the revenue may be retained and used by the conservation organization only for eligible projects as provided in subsections (i) through (ix).

(i) eligible projects include habitat improvement, habitat acquisition, transplants, targeted education efforts and other projects providing a substantial benefit to species of wildlife for which conservation permits are issued.

(ii) retained revenue shall not be committed to or expended on any eligible project without first obtaining the division director's written concurrence.

(iii) retained revenue shall not be used on any project that does not provide a substantial and direct benefit to conservation permit species located in Utah.

(iv) cash donations to the Wildlife Habitat Account created under Section 23-19-43, Division Species Enhancement Funds, or the Conservation Permit Fund shall be considered an eligible project and do not require the division director's approval, provided the donation is made with instructions that it be used for species of wildlife for which conservation permits are issued.

~~(v)~~(v) funds committed to approved projects will be transferred to the division within 90 days of being committed

(A) if the project to which funds are committed is completed under the projected budget or is canceled, funds committed to the project that are not used will be kept by the division and credited back to the conservation organization and will be made available for the group to use on other approved projects during the current or subsequent year.

(vi) retained revenue shall not be used on any project that is inconsistent with division policy, including feeding programs, depredation management, or predator control.

~~(vii)~~(vii) retained revenue under this subsection must be placed in a federally insured account. All interest revenue earned thereon may be retained and used by the conservation organization for administrative expenses.

~~(viii)~~(viii) retained revenue shall not be used by the conservation organization as collateral or commingled in the same account with the organization's operation and administration funds, so that the separate identity of the retained revenue is not lost.

~~(ix)~~(ix) retained revenue must be completely expended on or committed to approved eligible projects by September 1, two years following the year in which the relevant conservation permits are awarded to the conservation organization by the Wildlife Board. Failure to commit or expend the retained revenue by the September 1 deadline will disqualify the conservation organization from obtaining any future conservation permits until the unspent retained revenue is committed to an approved eligible project.

~~(x)~~(x) all records and receipts for projects under this subsection must be retained by the conservation organization for a period not less than five years, and shall be produced to the division for inspection upon request.

(6)(a) Conservation organizations accepting permits shall be subject to annual audits on project expenditures and conservation permit accounts.

(b) The division shall perform annual audits on project expenditures and conservation permit accounts.

R657-41-11. Using a Conservation or Sportsman Permit.

(1)(a) A conservation or sportsman permit allows the recipient to take only one individual of the species for which the permit is issued, except a statewide turkey conservation or sportsman permit allows the holder to take two turkeys.

(b) The species that may be taken shall be printed on the permit.

(c) The species may be taken in the area and during the season specified on the permit.

(d) The species may be taken only with the weapon specified on the permit.

(2) The recipient of a conservation or sportsman permit is subject to all of the provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife.

(3) Bonus points shall not be awarded or utilized:

(a) when applying for conservation or sportsman permits; or

(b) in obtaining conservation or sportsman permits.

(4) Any person who has obtained a conservation or sportsman permit is subject to all waiting periods as provided in Rules R657-~~5, R657-6, R657-10 and R657-33.~~62.

KEY: wildlife, wildlife permits, sportsmen, conservation permits

Date of enactment or last Substantive Change: ~~[August 9, 2010]~~2012

Notice of Continuation: November 1, 2010

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19

Natural Resources, Wildlife Resources R657-57

Division Variance Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36397

FILED: 06/19/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is established to provide authority, standards and procedures for granting remedial relief to persons precluded from obtaining or using a wildlife document because of an event or condition beyond their control.

SUMMARY OF THE RULE OR CHANGE: The amendments to this rule: 1) include the definitions for "Harvesting", "Hunt day", "limited entry hunt", "Once-in-a-lifetime hunt", and "substantially precluded"; 2) set the Division authority in granting a variance; 3) allow for group applications to be treated the same; 4) set the timeline for filing for a variance; and 5) set the Wildlife Board's authority for granting a variance request.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-14-18 and Section 23-14-19

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These rule amendments will set the criteria for granting remedial relief to persons precluded from obtaining or using a wildlife document because of an event or

condition beyond their control. The Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ LOCAL GOVERNMENTS: This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ SMALL BUSINESSES: This rule outlines criteria and scope of authority used to grant remedial relief to persons precluded from obtaining or using a wildlife document because of an event or condition beyond their control. Therefore, the amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to small businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule outlines criteria and scope of authority used to grant remedial relief to persons precluded from obtaining or using a wildlife document because of an event or condition beyond their control. Therefore, the amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments do not create a cost or savings impact to individuals who participate in wildlife-related activities.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES
 WILDLIFE RESOURCES
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2012

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-57. Division Variance Rule.

R657-57-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 this rule is established to provide authority, standards and procedures for granting remedial relief to persons precluded from obtaining or using a wildlife document because of an event or condition beyond their control.

R657-57-2. Definitions.

(1) The terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "CWMU" means cooperative wildlife management unit, as defined in Section 23-23-2;

(b) "Event or condition" means a circumstance in a person's life beyond their control that precludes or substantially limits their ability to obtain or use a wildlife document;

(c) "Harvesting" means, for purposes of this rule, killing an animal;

(d) "Hunt day" means spending any time in the field hunting the permitted animal species in a single day, during lawful hunting hours, and within the prescribed season;

(e) "Immediate family member" means a person's spouse, child, stepchild, grandchild, brother, sister, parent, stepparent, grandparent, mother-in-law, or father-in-law;

(f)(i) "Limited entry hunt" means any hunt identified in the proclamations and guidebooks of the Wildlife Board as:

(A) a premium limited entry or limited entry hunt; and

(B) that awards a bonus point to unsuccessful permit applicants pursuant to R657-62-8.

(ii) "Limited entry hunt" further includes antlerless moose hunts and CWMU hunts available to the public through a Division administered drawing.

(g) "Once-in-a-lifetime hunt" means any hunt for which a wildlife document is issued to take a bull moose, bighorn sheep, bison, or mountain goat.

(h) "Substantially precluded" means participating in no more than one hunt day during the prescribed hunting season because of a qualifying event or condition set forth in R657-57-6.

(i) "Variance" means remedial relief granted by the Division or Wildlife Board to restore a person's opportunity to obtain or use a wildlife document which is completely lost or substantially impaired because of an intervening event or condition; and

(j) "Wildlife document" means any license, permit, tag, certificate of registration, or wildlife permit voucher issued by the Division.

R657-57-3. Division Variance Authority.

(1) The Division may issue variances to qualified individuals, subject to the standards, limitations, requirements, and procedures in this rule.

R657-57-4. Division Variance Authority Scope.

(1)(a) The Division may grant a season extension variance extending the hunting season on an applicant's wildlife

document to the same or substantially similar hunt in the following year, provided:

(i) the variance request involves a wildlife document ~~[authorized in R657-57-5;]for a:~~

~~(A) once-in-a-lifetime hunt under R657-5;~~

~~(B) conservation permit hunt under R657-41;~~

~~(C) limited entry landowner permit hunt under R657-43;~~

~~(D) poaching-reported reward permit hunt under R657-5;~~
or

~~(E) CWMU hunt obtained through the operator or landowner under R657-37-9.~~

~~(ii) the applicant was [completely]substantially precluded during the prescribed hunting season from using a wildlife document because of a qualifying event or condition set forth in R657-57-6; and~~

~~(A) the qualifying event or condition was not the result of the applicant's willful misconduct or gross negligent acts or omissions; and~~

~~(B) the applicant was unsuccessful in harvesting an animal for which the wildlife document was issued; and~~

~~(iii) the season extension occurs the following year and is restricted to the same species, gender, unit, weapon type, and season as the original wildlife document;~~

~~(iv) any changes in unit descriptions and season dates in the extension year are applied; and~~

~~(v) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.~~

~~(b) Any waiting period associated with a wildlife document for which a season extension variance is granted begins on the date the original wildlife document is obtained.~~

~~(2)(a) The Division may grant a variance by restoring forfeited bonus points and waiving an incurred waiting period, provided:~~

~~(i) the variance request involves a wildlife document for a:~~

~~(A) limited entry hunt or once-in-a-lifetime hunt; or~~

~~(B) any other hunt that triggers a waiting period to participate in a Division administered drawing;~~

~~(ii) the applicant was substantially precluded during the prescribed hunting season from using a wildlife document because of a qualifying event or condition set forth in R657-57-6; and~~

~~(A) the qualifying event or condition was not the result of the applicant's willful misconduct or gross negligent acts or omissions; and~~

~~(B) the applicant was unsuccessful in harvesting an animal for which the wildlife document was issued; and~~

~~(iii) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.~~

~~(b) The Division may not restore a bonus point on a wildlife document that did not cause a bonus point forfeiture.~~

~~(3)(a) The Division may grant a variance by restoring forfeited preference points, provided:~~

~~(i) the variance request involves a wildlife document obtained through a Division administered drawing and for which preference points are awarded to unsuccessful applicants and forfeited by successful applicants;~~

~~(ii) the applicant was substantially precluded during the prescribed hunting season from using a wildlife document because of a qualifying event or condition set forth in R657-57-6; and~~

~~(A) the qualifying event or condition was not the result of the applicant's willful misconduct or gross negligent acts or omissions; and~~

~~(B) the applicant was unsuccessful in harvesting an animal for which the wildlife document was issued; and~~

~~(iii) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.~~

~~(4)(a) The Division may grant a variance by awarding a bonus or preference point to a person who filed an untimely wildlife document application in a Division administered drawing, provided:~~

~~(i) the variance request involves a wildlife document [authorized in R657-57-5]for any hunt identified in Subsections (2)(a)(i) or (3)(a)(i);~~

~~(ii) the applicant was [precluded or substantially]significantly impaired from filing a timely application in a Division administered drawing because of a qualifying event or condition set forth in R657-57-6;~~

~~(iii) the untimely application was rejected and a bonus or preference point was not awarded for the selected species;~~

~~(iv) the applicant would have been eligible to receive the bonus or preference point had the application been timely filed; and~~

~~(v) the variance is otherwise requested and issued in compliance with the standards, requirements and procedures set forth in this rule.~~

~~([3]5) A Division administered drawing for purposes of subsection (2) does not include a drawing conducted at a wildlife convention pursuant to R657-55.~~

~~(6) The Division may not refund wildlife document fees, except as authorized in Sections 23-19-38, 23-19-38.2 and R657-42-5.~~

R657-57-5. [Eligible Wildlife Documents]Group Applications.

~~(1) [The Division's authority to grant a variance consistent with the requirements of this rule extends to all resident and nonresident wildlife documents, excluding the following.]Except as provided in Subsection (2), all members of a group successful in obtaining a wildlife document pursuant to R657-62-7 are eligible to receive the same variance relief granted by the Division to any single member of the group under R657-57-4(2) or (3).~~

~~[(a) hunting licenses;~~

~~(b) fishing licenses;~~

~~(c) combination licenses;~~

~~(d) waterfowl permits;~~

~~(e) sandhill crane permits;~~

~~(f) upland game permits;~~

~~(g) furbearer licenses;~~

~~(h) bobcat and marten permits;~~

~~(i) cougar harvest objective permits;~~

~~(j) cougar and bear pursuit permits; and~~

~~(k) certificates of registration.~~

~~(2) [A season extension variance for a CWMU permit may not be granted without the concurrence of the CWMU operator.]Group members are not eligible to receive a refund of the~~

wildlife document fee unless otherwise authorized by Sections 23-19-38, 23-19-38.2, and R657-42-5.

R657-57-6. Qualifying Events and Conditions.

(1) The Division's authority to grant a variance consistent with the requirements of this rule is limited to persons that are completely or substantially precluded during the prescribed season from participating in the hunting activity authorized by an eligible wildlife document, or precluded or substantially impaired from filing a timely wildlife document application in a Division administered drawing because of:

- (a) personal illness or injury;
- (b) the death, or significant injury or illness of an immediate family member; or
- (c) mobilization or deployment under orders of the United States Armed forces, a public health organization, or public safety organization in the interest of national defense or a national emergency.

R657-57-7. Variance Application.

(1) A person may request a variance pursuant to the requirements of this rule by filing an application with the Division within ~~200~~120 days of the:

- (a) last day of the hunting season for which a season extension variance is requested; or
- (b) drawing application deadline for which a bonus or preference point variance is sought.

(2) The Division may not grant a variance under this rule when the application is received beyond the 120 days limitation period set forth in Subsection (1).

~~_____~~([2]3) An application for a season extension variance under R657-57-4(1), a bonus point restoration and waiting period waiver variance under R657-57-4(2), or a preference point restoration variance under R657-57-4(3) shall contain the following information and documentation:

- (a) name, address and telephone number of the applicant;
- (b) a brief statement of the variance relief sought;
- ~~(c) a description of the wildlife document for which a season extension variance is sought, including the permit number, species and sex, season dates, and weapon type;~~
- ~~_____~~(d) the original wildlife document for which a season extension variance is sought with an undetached and unnotched tag;
- ~~(e)~~d) a statement verifying the applicant was ~~completely~~substantially precluded from participating in a qualified hunt because of:

- (i) personal illness or injury;
- (ii) the death, or significant injury or illness of an immediate family member; or
- (iii) mobilization or deployment under orders of the United States Armed Forces, or a public health or public safety organization in the interest of national defense or a national emergency.

~~(f)~~e) corroborating documentation of the qualifying event or condition listed in Subsection (2)(~~e~~)d), in the form of:

- (i) a physician's written statement describing and confirming the qualifying injury or illness of the applicant or an immediate family member;
- (ii) a photocopy of the deceased immediate family member's certified death certificate; or

(iii) a photocopy of the military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:

(A) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which the applicant is deployed or mobilized; and

(B) the nature and length of duty while deployed or mobilized.

~~([3]4)~~ An application for a bonus or preference point variance under R657-57-4(4) shall contain the following information and documentation:

- (a) name, address and telephone number of the applicant;
- (b) a brief statement of the variance relief sought;
- (c) a description of the wildlife document application and permit type for which a bonus or preference point variance is sought, including the wildlife species and sex, season dates, and weapon type;

(d) a statement verifying the applicant was precluded or substantially impaired from submitting a wildlife document application because of :

- (i) personal illness or injury;
- (ii) the death, or significant injury or illness of an immediate family member; or
- (iii) mobilization or deployment under orders of the United States Armed Forces, or a public health or public safety organization in the interest of national defense or a national emergency.

(e) corroborating documentation of the qualifying event or condition listed in Subsection (3)(d), in the form of:

(i) a physician's written statement describing and confirming the qualifying injury or illness of the applicant or an immediate family member;

(ii) a photocopy of the deceased immediate family member's certified death certificate; or

(iii) a photocopy of the military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:

(A) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which the applicant is deployed or mobilized; and

(B) the nature and length of their duty while deployed or mobilized.

~~([4]5)~~ The Division may reject an application that is incomplete or that contains false or misleading information.

~~([5]6)~~ The Division may require the applicant to provide additional information, documentation, or clarification in conjunction with an application to determine eligibility for a variance.

~~([6]7)~~ The Division ~~shall~~should make its written decision within 30 days of receiving an application for variance and mail a copy of the decision to the applicant.

R657-57-10. Wildlife Board Appeals.

(1) A person may appeal the Division's decision on a variance application to the Wildlife Board pursuant to the requirements of this rule. The appeal request must be in writing and received by the ~~Wildlife Board~~Division within 30 calendar days of the issuance date on the Division's decision.

(2) The appeal shall contain the following information and documentation:

- (a) name, address and telephone number of the petitioner;
- (b) a statement of the variance relief sought and justification for the relief;
- (c) a description of the wildlife document application for which the variance is sought, including the document number, species and sex, season dates, and weapon type;
- (d) the original wildlife document for which the variance is sought;
- (e) a statement describing the degree of lost opportunity because of an event or condition; and
- (f) corroborating documentation of the event or condition listed in R657-57-7(~~2~~3)(~~e~~d) and (~~3~~4)(d), which may include:
 - (i) a physician's written statement;
 - (ii) a certified death certificate photocopy;
 - (iii) a photocopy of the military orders;
 - (iv) a letter from an employment supervisor on official letterhead; or
 - (v) court documentation.

(3) The Wildlife Board may reject a variance appeal that is incomplete or that contains false or misleading information.

(4) The Wildlife Board may require the petitioner to provide additional information, documentation, or clarification in conjunction with the variance appeal.

(5) The Wildlife Board may set a time and date for a hearing on the variance appeal where the petitioner ~~will~~may be given an opportunity to address the Wildlife Board concerning the appeal.

(a) The Wildlife Board will provide the petitioner notice of the date, time, and location of the hearing ~~and the petitioner or a representative shall be present at the hearing, in person or telephonically, to advance the merits of the variance appeal.~~

(b) Failure to participate in the hearing may result in dismissal of the variance appeal.

(6) The Wildlife Board may sustain, overturn, or modify the Division's order which is the subject of the variance appeal, provided the relief granted is consistent with the standards, limitations, requirements, and procedures in R657-57-11 through R657-57-13.

(7) The Wildlife Board will prepare a written decision on the variance appeal and mail a copy to the petitioner.

R657-57-11. Wildlife Board Variance Authority.

(1) ~~The~~Except as provided otherwise in this rule, the Wildlife Board may grant a variance to any regulation promulgated in Title R657 of the Administrative Code or in proclamation concerning the acquisition or use of a wildlife document, provided the event or condition justifying the variance:

(a) is not the result of the applicant's willful misconduct or gross negligent acts or omissions;

(b) substantially precludes the applicant from participating in~~:~~

~~(i)] the activity authorized by the wildlife document [during a substantial portion of the authorized season]; or~~

~~(ii) the~~(c) completely or significantly impairs the applicant from filing a timely application [or] in a Division administered drawing [procedures for receiving a wildlife document]; and

~~(e)]d~~ is of a nature that it deprives opportunity from the applicant in a substantially more severe manner than other similarly situated individuals.

(2) The Wildlife Board is limited to considering only those variance applications on which the Division has issued a letter indicating the variance relief sought is beyond its legal authority to grant.

(3) The Wildlife Board shall consider the Division's recommendation on a variance request.

~~(4)~~ The Wildlife Board may grant a variance that extends a wildlife document season no more than ~~[five years]~~one year into the future.

~~(4)5~~ The Wildlife Board may award a bonus or preference point pursuant to a variance request only when the applicant would have received such a point had the event or condition not intervened.

~~(5)6~~ The Wildlife Board may not grant a variance:

~~(a) where the request is filed with the Division beyond the 120 day deadline established in R657-57-7(1);~~

~~(b) where the applicant is not substantially precluded from participating in the prescribed wildlife activity;~~

~~(c) for a season extension on any hunt not identified in R657-57-4(1)(a)(i) as eligible for a season extension;~~

~~(d) where the applicant was successful in harvesting an animal for which the wildlife document was issued; or~~

~~(e) in direct conflict with any provision of the Wildlife Code or elsewhere in statute.~~

~~(6)7~~ The Wildlife Board may not refund wildlife document fees, except as authorized in Sections 23-19-38 and 23-19-38.2.

R657-57-12. Variance Guidelines.

(1) The Wildlife Board may use the following guidelines in considering and deciding variance appeals and requests submitted pursuant to this rule:

(a) monetary cost of the wildlife document;

(b) degree of difficulty in obtaining the original wildlife document;

(c) future opportunity to obtain the same or similar wildlife document;

(d) extent of lost opportunity;

(e) time actually engaged in the activity authorized by the wildlife document relative to the overall season length;

(f) time available to engage in the activity authorized by the wildlife document prior to the event or condition precluding further activity;

(g) impact on wildlife management objectives;

(h) degree of difficulty in tracking and monitoring season extensions into the future;

(i) applicant's fault or contribution in failing to mitigate the degree of lost opportunity;

(j) nature of the event or condition contrasted against the advisability of attempting to insure optimal opportunity;

(k) objective of a variance is to restore lost opportunity, not provide increased opportunity; and

(l) consistency with previous variance request decisions.

(2) Nothing herein shall be construed as limiting or prohibiting the Wildlife Board from considering additional factors

in its discussions and deliberations concerning variance appeals and requests.

KEY: wildlife, permits

Date of Enactment or Last Substantive Amendment: [~~August 21, 2008~~2012]

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19

Natural Resources, Wildlife Resources R657-59 Private Fish Ponds

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 36396
FILED: 06/19/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule provides the standards and procedures for private fish ponds.

SUMMARY OF THE RULE OR CHANGE: The amendment to this rule removes the definition of "ornamental fish" and replaces it with the definition of "ornamental aquatic animal species".

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-15-10 and Section 23-15-9

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This amendment only clarifies a definition. The Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the amendment. Nor are local governments indirectly impacted because the amendment does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amendment only clarifies a definition. The division determines that the amendment does not impose any additional requirements on other persons, nor generate a cost or savings impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment only clarifies a definition. The division determines that the amendment does not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment clarifies the definition of "ornamental aquatic animal species". There are not any additional compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 08/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2012

AUTHORIZED BY: James Karpowitz, Director

R657. Natural Resources, Wildlife Resources.

R657-59. Private Fish Ponds.

R657-59-1. Purpose and Authority.

(1) Under the authority of Sections 23-15-9 and 23-15-10 of the Utah Code, this rule provides the standards and procedures for private fish ponds.

(2) This rule does not regulate fee fishing or private aquaculture as provided in Title 4, Chapter 37 of the Utah Code, and Department of Agriculture Rule R58-17.

(3) Any violation of, or failure to comply with, any provision of Title 23 of the Utah Code, this rule, or any specific requirement contained in a certificate of registration or exemption certificate issued pursuant to this rule may be grounds for suspension of the certificate or denial of future certificates, as determined by the division.

R657-59-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aquaculture" means the husbandry, production, harvest, and use of aquatic organisms under controlled, artificial conditions.

(b) "Aquaculture facility" means any facility used for propagating, rearing, or producing aquatic wildlife or aquaculture products. Facilities that are separated by more than 1/2 mile, or facilities that drain to, or are modified to drain to, different drainages are considered to be separate aquaculture facilities, regardless of ownership.

(c)(i) "Aquaculture product" means privately purchased aquatic wildlife, or their eggs or gametes.

(ii) "Aquaculture product" does not include aquatic wildlife obtained from the wild.

(d) "Certified sterile salmonid" means any salmonid fish or gamete that originates from a health certified source and is incapable of reproduction due to triploidy or hybridization.

(i) Triploid salmonids accepted as sterile under this subsection shall originate from a source that is certified as incapable of reproduction using the following protocols:

(A) fish samples shall be collected, prepared, and submitted to a certified laboratory by an independent veterinarian, certified fish health professional, or other professional approved by the division;

(B) certified laboratories shall be limited to independent, professional laboratories capable of reliably testing fish sterility and approved by the division; and

(C) sterility shall be determined by sampling and testing 60 fish from each egg lot with procedures generally accepted in the scientific community as reliable for verifying triploidy with a 95% or greater success rate.

(ii) An aquaculture facility that receives certified sterile salmonid aquaculture product is not required to conduct additional sterility testing prior to stocking the aquaculture product in a private fish pond, provided the sterile salmonids are kept segregated from other fertile salmonids.

(iii) Hybrid salmonid fish species accepted as sterile under this subsection are limited to splake trout (lake trout/brook trout cross) and tiger trout (brown trout/brook trout cross).

(e) "Exemption certificate" means a document issued by the division pursuant to R657-59-7 that exempts a designated private fish pond from the requirement of obtaining a certificate of registration to stock aquaculture product in the pond.

(f)(i) "HUC" or "Hydrologic Unit Code" means a cataloging system developed by the US Geological Survey and the Natural Resource Conservation Service to identify watersheds in the United States. HUCs are typically reported at the large river basin (6-digit HUC) or smaller watershed (11-digit and 14-digit HUC) scale.

(ii) HUC maps and other associated information are available at <http://water.usgs.gov/wsc/sub/1602.html>.

(g) [~~"Ornamental fish" means fish that are raised or held for their beauty rather than use, or that arouse interest for their~~

~~uncommon or exotic characteristics, including tropical fish, goldfish, and koi, but not including those species listed as prohibited or controlled in Rule R657-3-23.](a) "Ornamental aquatic animal species" means any species of fish, mollusk, or crustacean that is commonly cultured and sold in the United States' aquarium industry for display.~~

~~(b) "Ornamental aquatic animal species" does not include:~~

~~(i) fresh water;~~

~~(A) sport fish - aquatic animal species commonly angled or harvested for recreation or sport;~~

~~(B) baitfish - aquatic animal species authorized for use as bait in R657-13-12, and any other species commonly used by anglers as bait in sport fishing;~~

~~(C) food fish - aquatic animal species commonly cultured or harvested from the wild for human consumption; or~~

~~(D) native species; or~~

~~(ii) aquatic animal species prohibited for importation or possession by any state, federal, or local law; or~~

~~(iii) aquatic animal species listed as prohibited or controlled in Sections R657-3-22 and R657-3-23. (i) "Private fish pond" means a pond, reservoir, or other body of water, or any fish culture system which is contained on privately owned land and used for holding or rearing fish for a private, noncommercial purpose.~~

~~(h) "Private fish pond" means a pond, reservoir, or other body of water, or any fish culture system which is contained on privately owned land and used for holding or rearing fish for a private, noncommercial purpose.~~

~~(i) "Purchase" means to buy, or otherwise acquire or obtain through barter, exchange, or trade for pecuniary consideration or advantage.~~

~~(j) "Salmonid" means any fish belonging to the trout/salmon family.~~

KEY: wildlife, aquaculture, fish

Date of Enactment or Last Substantive Amendment: [January 10,] 2012

Authorizing, and Implemented or Interpreted Law: 23-15-9; 23-15-10

End of the Notices of Proposed Rules Section

NOTICES OF CHANGES IN PROPOSED RULES

After an agency has published a **PROPOSED RULE** in the *Utah State Bulletin*, it may receive public comment that requires the **PROPOSED RULE** to be altered before it goes into effect. A **CHANGE IN PROPOSED RULE** allows an agency to respond to comments it receives.

As with a **PROPOSED RULE**, a **CHANGE IN PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **CHANGE IN PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

While the law does not designate a comment period for a **CHANGE IN PROPOSED RULE**, it does provide for a 30-day waiting period. An agency may accept additional comments during this period, and, at its option, may designate a comment period or may hold a public hearing. The 30-day waiting period for **CHANGES IN PROPOSED RULES** published in this issue of the *Utah State Bulletin* ends August 14, 2012.

Following the **RULE ANALYSIS**, the text of the **CHANGE IN PROPOSED RULE** is usually printed. The text shows only those changes made since the **PROPOSED RULE** was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [~~example~~]). A row of dots in the text between paragraphs (.) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a **CHANGE IN PROPOSED RULE** is too long to print, the Division of Administrative Rules will include only the **RULE ANALYSIS**. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

From the end of the 30-day waiting period through November 12, 2012, an agency may notify the Division of Administrative Rules that it wants to make the **CHANGE IN PROPOSED RULE** effective. When an agency submits a **NOTICE OF EFFECTIVE DATE** for a **CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** as amended by the **CHANGE IN PROPOSED RULE** becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of the **CHANGE IN PROPOSED RULE**. If the agency designates a public comment period, the effective date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date. Alternatively, the agency may file another **CHANGE IN PROPOSED RULE** in response to additional comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE** or another **CHANGE IN PROPOSED RULE** by the end of the 120-day period after publication, the **CHANGE IN PROPOSED RULE** filing, along with its associated **PROPOSED RULE**, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303; Rule R15-2; and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page

Commerce, Real Estate
R162-57a
Timeshare and Camp Resort Rules

NOTICE OF CHANGE IN PROPOSED RULE
 DAR FILE NO.: 36078
 FILED: 06/27/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to respond to comments submitted by the American Resort Development Association during the public comment period for the amendment.

SUMMARY OF THE RULE OR CHANGE: In Subsection R162-57a-5(10)(c), language is clarified to alleviate concern that the filing of an amendment so as to disclose the certification of a class in a class-action lawsuit would automatically constitute a finding by the division that the project had suffered a material adverse effect. In Subsection R162-57a-11(2)(b)(i), language modified to state that a developer "obtains" a purchaser's signature on a contract. In Subsection R162-57a-11(2)(b)(2), language added to clarify that the right to cancel must be provided in connection with an offer to sell an interest; therefore, it would not necessarily be required to accompany all advertising. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the May 1, 2012, issue of the Utah State Bulletin, on page 27. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 57-19-3 and Sections 57-19-5 through 57-19-26

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** No fiscal impact to the state budget was identified under the original filing. Where the changes proposed here are for clarification only, they do not create a fiscal impact.
- ◆ **LOCAL GOVERNMENTS:** No fiscal impact to the local government was identified under the original filing. Where the changes proposed here are for clarification only, they do not create a fiscal impact.
- ◆ **SMALL BUSINESSES:** In the original filing, it was anticipated that small businesses would realize a savings due to clarification of the circumstances under which they would be required to reproduce and disseminate certain disclosures. Further clarifying the requirement to reproduce and

disseminate the disclosure of the right to rescission makes these savings more likely.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No fiscal impact to persons other than small businesses, businesses, or local government entities was identified under the original filing. Where the changes proposed here are for clarification only, they do not create a fiscal impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As discussed above under "small businesses", these changes are intended to make compliance with existing provisions less costly. Therefore, it is anticipated that developers may realize a cost savings. No new costs or compliance burdens are being imposed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change in proposed rule is clarifying in nature and is not expected to result in any fiscal impact to businesses.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jennie Jonsson by phone at 801-530-6706, by FAX at 801-526-4387, or by Internet E-mail at jjonsson@utah.gov

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

THIS RULE MAY BECOME EFFECTIVE ON: 08/21/2012

AUTHORIZED BY: Jonathan Stewart, Director

R162. Commerce, Real Estate.

R162-57a. Timeshare and Camp Resort Rules.

R162-57a-5. Project Registration.

- (1) Registration required.
 - (a) A person may not engage in the marketing of interests unless:
 - (i) the project is properly registered with the division pursuant to Section 57-19 et seq. and these rules; and
 - (ii) each individual who will engage in marketing is registered as salesperson pursuant to Section 57-19 et seq. and these rules.
 - (b)(i) A project is not considered registered until the developer seeking registration obtains from the division:
 - (A) a complete property report, approved by the division; and

- (B) an order of registration.
- (ii) A salesperson is not considered registered until the individual receives a registration from the division.
- (c) Absent the issuance of a property report or registration, acceptance by the division of a registration fee does not authorize a person to engage in the marketing of interests.
- (2) Registration procedure. A developer shall submit all information required under Subsection (3) to the division:
 - (a) through the ATR; or
 - (b) if the developer obtains advance permission from the division, directly to the division.
- (3) Required Information. A developer shall submit to the division:
 - (a) property report pursuant to Section 57-19-11 and Subsection R162-57a-11;
 - (b) as to each officer, partner, director, and owner of the developer:
 - (i) as applicable, documentation of any disciplinary or adverse licensing action taken against a professional license held by the individual in any jurisdiction;
 - (ii)(A) a statement of the type and extent of any financial interest the individual has in the project; and
 - (B) an explanation of any options the individual may exercise to acquire additional financial interest in the project;
 - (iii) as applicable, court records from any criminal proceeding taken against the individual in any jurisdiction, regardless of whether the proceeding was resolved by:
 - (A) conviction;
 - (B) plea in abeyance;
 - (C) diversion agreement;
 - (D) sentence of confinement; or
 - (E) dismissal; and
 - (c) as applicable, documentation of any bankruptcy filing by:
 - (A) the individual; or
 - (B) an entity in which the individual has held:
 - (I) an ownership interest; or
 - (II) a position as a manager, officer, or director;
 - (c) evidence that the developer is registered in good standing with the Utah Division of Corporations;
 - (d) corporate resolution naming a resident agent to act on behalf of the developer;
 - (e) copy of the current articles of incorporation or other instrument creating the developer entity;
 - (f) copy of the current bylaws of the developer entity;
 - (g)(i) states or jurisdictions in which the developer has filed an application for registration or similar document;
 - (ii) copy of the property report or other disclosure document required to be given to purchasers by any jurisdiction in which the project is registered or the developer is otherwise authorized to market interests;
 - (iii) full documentation of any adverse order, judgment, or decree entered in connection with the project by any regulatory authority in any jurisdiction;
 - (h) name of any salesperson who will market the project;
 - (i) name of the individual who will be responsible for directly supervising the salesperson(s) marketing the project;
 - (j) legal description of the property upon which the project is located;

- (k) statement, generated or updated within the 30-day period preceding the date of application, of the condition of the title to the property upon which the project is located, including encumbrances;
 - (l)(i) copy of any instrument by which the developer acquired interest in the project; or
 - (ii) if the developer does not hold fee title to the property, evidence that the developer is legally entitled to use the property, as follows:
 - (A) if the property is situated within Utah:
 - (I) a title opinion from a title insurer licensed in Utah; or
 - (II) an opinion letter from an independent, third party attorney actively licensed in Utah;
 - (B) if the property is situated outside of Utah, an opinion letter from an independent, third party attorney who is actively licensed to practice in the jurisdiction where the property is situated; and
 - (C) if the property is located in a jurisdiction such as a foreign country where property title opinions are issued by parties other than title companies and attorneys, other evidence of title as specified and approved by the director;
 - (m) copy of any instrument creating a lien, easement, restriction, or other encumbrance affecting the project, including any recording data, but redacted as to the consideration paid upon acquisition of the project;
 - (n) statement of the zoning and other governmental regulations affecting the use of the project;
 - (o) existing and proposed taxes or special assessments that affect the project;
 - (p)(i) copies of the instruments that will be delivered to a purchaser to evidence the purchaser's interest in the project; and
 - (ii) copies of the contracts and other agreements that a purchaser will be required to agree to or sign;
 - (q) topographic map and accompanying statement describing the general topography and physical characteristics of the project, including:
 - (i) terrain;
 - (ii) soil conditions;
 - (iii) flood control; and
 - (iv) climate;
 - (r) copy of any:
 - (i) recorded declaration of condominium;
 - (ii) recorded covenants, conditions, and restrictions (CCRs); and
 - (iii) instrument governing the project and incorporating all covenants of the grantor or lessor;
 - (s) copy of any plan to create an association for project owners;
 - (t) narrative description of the promotional plan for the disposition of the project;
 - (u) statement disclosing any inducement that will be offered in connection with the marketing of the project;
 - (v) map showing:
 - (i) the location of the interests and other improvements on the property;
 - (ii) the relation of the project to existing streets, roads, and other off-site improvements; and
 - (iii) the relation of the project to factors that might negatively impact the quiet enjoyment of an interest;

(w)(i) statement of improvements and amenities to be installed that have not been completed;

(ii) schedule for completion;

(iii) evidence that the developer has obtained all necessary permits; and

(iv) if the city or county in which the property is located does not require means of assurance that all improvements and amenities referred to in the application will be completed, copies of:

(A) escrow or trust agreements;

(B) performance bonds; or

(C) other documentation to evidence that adequate financing is available and arrangements have been made for the installation of all streets, sewers, electricity, gas, water, telephone, drainage, and other improvements;

(x)(i) provisions for maintenance to both existing and planned improvements and amenities; and

(ii) estimated cost of such maintenance to purchasers;

(y) description of any corrective work that must be performed on or relating to the project before particular interests are suitable for use;

(z) completed application as required by the division; and

(aa) a nonrefundable registration fee.

(4) The director may waive production of an item required pursuant to Subsection (3) if the developer shows that the item is not necessary to fulfill the purposes of Section 56-19 et seq.

(5) Consolidation.

(a) An application for consolidation shall be prepared and submitted in the same format as an application for initial registration.

(b) Where there is no change in the information submitted by the developer for the initial registration, the documents required by Subsection (3) may be incorporated by reference to documents on file with the division.

(c) An incomplete application for consolidation shall be treated as provided in Subsection (6).

(d) New inventory added to a project through consolidation is subject to inspection by the division.

(6) Notice of defect.

(a) If an application is incomplete, or otherwise fails to comply with Section 57-19 et seq. or these rules, the director shall send a notice of defect to the developer or the developer's legal representative specifying:

(i) what additional information is required to cure the defect; and

(ii) the deadline by which the division must receive the additional information.

(b) After receipt of a notice of defect, the developer may not offer units to the public:

(i) until the defect is cured and a registration obtained; or

(ii) without obtaining a temporary permit pursuant to Section 57-19-6(3) and Subsection (8).

(c)(i) If the additional information is not received by the division by the deadline specified in the notice of defect, the director may deny the registration.

(ii) An order of denial may be appealed pursuant to Section 57-19-17.

(7) Standards for approval.

(a) The director may not approve an application for registration of a project unless:

(i) the documents submitted pursuant to Subsection (3) meet the requirements of Section 57-19 et seq. and these rules; and

(ii) the developer demonstrates the ability to convey or cause to be conveyed the interests offered for disposition.

(b) The division may not issue a project registration to a developer that has an officer, partner, director, or owner who has:

(i) been prosecuted for a felony that resulted in a:

(A) conviction within the five-year period preceding the date of application;

(B) plea agreement within the five-year period preceding the date of application; or

(C) jail or prison release date falling within the five-year period preceding the date of application; or

(ii) been prosecuted for a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in a:

(A) conviction within the three-year period preceding the date of application; or

(B) jail or prison release date falling within the three-year period preceding the date of application.

(c) If the director determines that a registration application and supporting documentation meet the criteria for registration, the division shall issue:

(i) an order of registration designating the form of the property report that the developer is required to provide to a prospective purchaser pursuant to Section 57-19-11;

(ii) a property report cover sheet, which the developer shall attach to the property report as its first page; and

(iii) a receipt for property report, which the developer shall attach to the property report as its last page.

(8) Temporary permit.

(a) To apply for a temporary permit, a person shall:

(i) make application by submitting a written request to the director;

(ii) comply with Section 57-19-6(3); and

(iii) pay all fees required for registration.

(b) A temporary permit issued by the director is valid for a period of 30 days from the date of issue.

(c) A temporary permit may not be renewed.

(9) Notification of changes.

(a) A developer whose project is registered under Section 57-19 et seq. shall report to the division within 10 business days any change in:

(i) the developer's contact information;

(ii) the disclosures required under Section 57-19-11;

(iii) the information provided under this Subsection (3), including changes in salespersons employed or contracted to market interests in the project;

(iv)(A) the bankruptcy of an entity controlled or owned by the developer that engages in the marketing of interests; and

(B) if the developer is an individual, the filing of a personal bankruptcy;

(v) the suspension, revocation, surrender, cancellation, or denial of a professional license or professional registration issued to the developer, whether the license or registration is issued by this state or another jurisdiction;

(vi) the entry of a cease and desist order, a temporary or permanent injunction, or a regulatory action;

(A) against the developer by a court or a government agency; and

(B) based on:
 (I) conduct or a practice involving the marketing of interests; or
 (II) conduct involving fraud, misrepresentation, or deceit; and
 (vii) a finding of fraud, misrepresentation, or deceit entered against the developer in a judicial or administrative proceeding instituted by a purchaser and arising out of or relating to:
 (A) the advertising or sale of an interest;
 (B) disclosures required under Section 57-19-11; or
 (C) rescission rights.
 (b) If a deadline for notification falls on a day when the division is closed for business, the deadline shall be extended to the next business day.
 (10) Amendment and supplement to initial registration.
 (a) To submit an amendment to a registration, a developer shall:
 (i) complete an amendment filing through the ATR; or
 (ii) obtain prior permission from the division to submit the information by mail.
 (b) To submit a supplement to a registration, a developer shall:
 (i) complete a courtesy filing through the ATR; or
 (ii) obtain prior permission from the division to submit the information by mail.
 (c) Pursuant to Section 57-19-8(4), the certification of a class in a class-action lawsuit against a developer on the basis of the developer's advertising, selling, or managing a project or interest ~~is considered to have a material adverse effect on a project and, therefore, must be disclosed through~~ requires the filing of an amendment.

R162-57a-11. Disclosure Required.

(1) The disclosures required by Section 57-19-11 and submitted to the division as part of the application for project registration shall be:
 (a)(i) reproduced on good quality white paper 8-1/2 by 11 inches in size;
 (ii) typed in a font no smaller than 10-point type, except that financial statements or other statistical or tabular matter may be set in type as small as 8-point type; and
 (iii) organized into reasonably short paragraphs or sections with appropriate captions or headings to identify each paragraph or section; or
 (b) if acceptable to the director, approved by another state.
 (2)(a) Upon approving the developer's disclosures, the division shall supply to the developer:
 (i) a cover sheet, which the developer shall use as the first page of the property report; and
 (ii) a receipt for property report, which the developer shall use as the last page of property report.

(b)(i) The developer shall provide a copy of the complete property report, reproduced in a manner that allows all text to remain visible and legible, not obscured by shading or watermarks, to each prospective purchaser prior to ~~requiring~~ obtaining the prospective ~~[purchaser to sign]~~ purchaser's signature on a contract for purchase of an interest.

(ii) The developer shall, in connection with an offer to sell an interest, provide a notice of the purchaser's right to cancel described in Section 57-19-12, reproduced in a manner that allows all text to remain visible and legible, not obscured by shading or watermarks, to each prospective purchaser:

- (A) at the beginning of a direct sales presentation; or
- (B) if the prospective purchaser does not attend a direct sales presentation, at the same time the developer obtains the prospective purchaser's personal information.

R162-57a-13. Unprofessional Conduct.

(1) Developer.
 (a) Affirmative duties. A developer or an individual designated by the developer shall:
 (i) actively supervise project salesperson(s) to ensure compliance with Section 57-19 et seq. and these rules;
 (ii) provide the complete property report to each prospective purchaser;
 (iii) obtain a signed receipt for property report from a prospective purchaser prior to:
 (A) executing a purchase agreement; or
 (B) receiving any item of value toward the purchase of an interest; and
 (iv)(A) clearly inform a purchaser of the purchaser's right to rescind the agreement if, during the rescission period mandated by Section 57-19-12, the purchaser expresses a desire to terminate a contract or agreement entered into by the purchaser; and
 (B) ensure compliance with this Subsection (iv)(A) by:
 (I) all subsidiaries of the developer;
 (II) all persons affiliated with the developer; and
 (III) all persons affiliated with a subsidiary of the developer.
 (b) Prohibited conduct. A developer is subject to discipline if the developer or an affiliated person:
 (i) makes a misrepresentation or material omission in a document submitted to the division; or
 (ii) fails to comply with an order of the division.
 (2) Salesperson. A salesperson shall comply with:
 (a) Section 57-19 et seq.;
 (b) these rules; and
 (c) this Subsection (1)(a)(ii)-(iv).

KEY: timeshare, camp resort, registration, professional conduct

Date of Enactment or Last Substantive Amendment: 2012
Authorizing, and Implemented or Interpreted Law: 57-19-3; 57-19-5 through 57-19-26

End of the Notices of Changes in Proposed Rules Section

NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a **120-DAY (EMERGENCY) RULE** when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (.) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule.

Because **120-DAY RULES** are effective immediately, the law does not require a public comment period. However, when an agency files a **120-DAY RULE**, it usually files a **PROPOSED RULE** at the same time, to make the requirements permanent. Comments may be made on the **PROPOSED RULE**. Emergency or **120-DAY RULES** are governed by Section 63G-3-304; and Section R15-4-8.

Public Safety, Driver License **R708-48** Ignition Interlock System Program

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 36419
FILED: 06/27/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This is a new rule that puts the Utah Driver License Division into compliance with Sections 53-3-1001 through 53-3-1007 for the licensing and regulation of the Utah Ignition Interlock System providers.

SUMMARY OF THE RULE OR CHANGE: The rule established minimum standards for persons to be licensed to install ignition interlock systems into vehicles of restricted drivers as required by Utah law. Installers and providers will be required to have sufficient training and pass a criminal background check to ensure devices are installed correctly by licensed installers who have the knowledge in current industry standards. This rule will assist in limiting potential fraud by outlining what a provider and installer must do when installing or removing an ignition interlock system into vehicles therefore promoting public safety. System providers and installers will be granted access to a web based application that allows for reporting of installations and removals of an ignition interlock system. This will allow the Utah Driver License Division to send timely notices to drivers that are not compliant and would affect their driving privilege.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-3-1004 and Section 53-3-1007

EMERGENCY RULE REASON AND JUSTIFICATION:
REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.
JUSTIFICATION: In order to be in compliance with state law, this emergency rule is being submitted. It will be followed up with the regular rulemaking procedures. The statute became effective 07/01/2012.

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The state will see an increase associated with the different requirements. Public Safety will be receiving the current rate of \$20 for every background check. The Utah Driver License Division will be receiving licensing fees from the providers and installers.
- ◆ **LOCAL GOVERNMENTS:** Local government will see an increase in spending due to the various fees associated with the licensing procedures if they choose to pay the costs for an individual.
- ◆ **SMALL BUSINESSES:** Small business will see an increase in spending due to the various fees associated with the licensing procedures.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Possible costs could be incurred by the individual if the licensing fees are not covered by the small business entity.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs are currently as follows: criminal background fee - \$20; installer's license - \$30; provider license - \$100; branch inspection fee - \$30; and annual renewal fee for installers - \$20.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be a fiscal impact on business in order to be compliant with the required background check and licensing fees.

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

PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY, UT 84119-5595
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Marge Dalton by phone at 801-965-4456, by FAX at 801-957-8502, or by Internet E-mail at modalton@utah.gov

EFFECTIVE: 07/01/2012

AUTHORIZED BY: Lance Davenport, Commissioner

R708. Public Safety, Driver License.

R708-48. Ignition Interlock System Program.

R708-48-1. Authority.

This rule is authorized by Sections 53-3-1004 and 53-3-1007.

R708-48-2. Purpose.

The purpose of this rule is to set standards governing the administration and enforcement of the Ignition Interlock System Program in accordance with Title 53, Chapter 3, Part 10.

R708-48-3. Definitions.

(1) Terms used in this rule are defined in Section 53-3-1002.

(2) In addition:

(a) "act of moral turpitude" means conduct which:

(i) is done knowingly contrary to justice, honesty or good morals;

(ii) has an element of falsification or fraud; or

(iii) contains an element of harm or injury directed to another person or another property;

(b) "business" means an ignition interlock system business established to install, remove and maintain ignition interlock systems as specified in R708-31 Ignition Interlock Systems and includes both the business' primary location and any branch offices;

(c) "department" means the Department of Public Safety created in Section 53-1-103;

(d) "division" means the Driver License Division created in Section 53-3-103;

(e) "install" means any service provided by an ignition interlock installer including the installation or removal an ignition interlock system and the performance of any type of maintenance or service on an ignition interlock system; and

(f) "felony" means a crime under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States for which the penalty is a term of imprisonment in excess of one year.

R708-48-4. Requirements for Licensure of Providers.

(1) A provider shall:

(a) be responsible for the oversight of all installers employed by the business;

(b) maintaining all records of the business, including client records and personnel files for all installers employed by the business;

(c) insure the security of all client records and personal data on any forms, receipts or contracts used by the business;

(d) allow the division to conduct inspections and audits of the business and its records;

(e) furnish any records of the business to the division upon request;

(f) train any installers who will be working at the business on how to properly install an ignition interlock system and provide the installers with a certificate of completion;

(g) complete and require all installers who will be working at the business to complete any training administered by the division;

(h) not be convicted of or have been found by the division to have engaged in conduct which constitutes a felony or crime of moral turpitude;

(i) not knowingly employ an installer who has been convicted of or who has been found by the division to have engaged in conduct which constitutes a felony or crime of moral turpitude;

(j) post signs on the business to identify the business by the name listed on the provider's license application;

(k) conspicuously display at the business a copy of the provider's license and business license;

(l) not be employed by more than one business at a time;

(m) insure that the business does not operate from the same facility or location as another business;

(n) notify the division when the provider is no longer working at a business;

(o) surrender the provider's license to the division within five days if the provider is no longer working at the business or the provider's license is denied, cancelled or revoked;

(p) obtain and maintain a \$50,000 surety bond for the business that shall:

(i) protect against liability to third persons;

(ii) be continuous in form and run concurrently with the license period; and

(iii) provide for notice to the division in the event of cancellation of the surety bond.

(q) ensure that a business, located in a municipality having a population of 50,000 or more, is not located within 1500 feet of a facility in which vehicle registrations or driver licenses are issued to the public, unless the business was established in that location prior to the establishment of the facility in which vehicle registrations or driver licenses are issued to the public;

(r) not solicit business directly or indirectly or display or distribute any advertising material within 1500 feet of a building in which vehicle registrations or driver licenses are issued to the public;

(s) seek approval from the division before moving the business;

(t) insure that the business' facilities and buildings comply with federal, state, and local building, fire, safety and health codes;

(u) not use any logos, letterhead, documents, driver license or vehicle plate license recreations of the department, the division or the Utah State Tax Commission, Division of Motor Vehicles, in their advertising, however a business may display on its premises a sign reading, "This Ignition Interlock System Provider is licensed by the State of Utah."

(v) notify the division in writing of any changes to residential or mailing address of anyone who works at the business; and

(w) notify the division in writing if any employee is no longer employed by the business.

R708-48-5. Procedure to Obtain and Renew a Provider License.

(1) To apply for or renew a provider license, an applicant shall submit a completed provider application packet to the division at 4501 South 2700 West, Salt Lake City, Utah.

(2) The packet shall include:

(a) a completed provider application form provided by the division, which has been signed and notarized by the applicant and all other required parties;

(b) an application or renewal fee, along with any branch office fees, which shall be made payable to the department;

(c) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints and a check or money order made payable to the Utah Bureau of Criminal Identification to cover the fee associated with a criminal history background check;

(d) samples of all forms, receipts, and contracts used in the course of operation of the business;

(e) a schedule of fees to be charged by the business for each service performed by the business;

(f) a description of how the business shall be operated, which shall include:

(i) a description of how the provider will meet the requirements of Title 53, Chapter 3, Part 10 and R708-48;

(ii) a detailed installer training plan; and

(iii) copies of all training materials that will be used;

(g) evidence of a \$50,000 surety bond for the business that shall:

(i) protect against liability to third persons;

(ii) be continuous in form and run concurrently with the license period; and

(iii) provide for notice to the division in the event of cancellation of the surety bond.

(h) a copy of the business license for the business as required by the municipality or county in which the business is located; and

(i) evidence of two years prior experience in operating a business.

(3) When seeking to renew a provider license, the provider shall:

(a) submit all of the items listed in R708-48-5(2)(a) through (c).

(b) submit an updated copy of the items listed in R708-48-5(2)(d) through (f) if the business has made any changes to these items since the provider applied for or renewed the provider license; and

(c) not be required to submit the items listed in R708-48-5(2)(g) through (i).

(4) Upon receipt of a completed provider application packet, the division shall review all of the materials submitted by the applicant to determine if the applicant meets the requirements in Title 53, Chapter 3, Part 10 and R708-48.

(5) If the division determines that the application packet contains all of the necessary information, the division shall conduct a site inspection of the business before a license may be granted.

(6)(a) If the business passes the division's inspection and meets all of the requirements for licensure found in Title 53, Chapter 3, Part 10 and R708-48, the applicant shall be granted a provider license.

(b) A provider license is not transferable.

(c) If a provider license is lost or destroyed, the provider may obtain a duplicate of the license by submitting the following to the division:

(i) a notarized affidavit which describes the date the license was lost or destroyed and the surrounding circumstances; and

(ii) a duplicate license fee.

(7) If the applicant does not meet the requirements for licensure found in Title 53, Chapter 3, Part 10 and R708-48, the application shall be denied and the applicant shall be issued a notice of denial with information regarding the reason for denial and process by which the applicant may appeal the division's decision.

R708-48-6. Requirements for an Installer.

(1) A licensed installer shall:

(a) possess a valid installer license when working as an installer;

(b) only be allowed to work under the supervision of the specific provider listed on the installer's license application;

(c) complete training for ignition interlock systems offered by the provider of the business for which they will be employed;

(d) complete any training administered by the division; and

(e) not be convicted of or have been found by the division to have engaged in conduct which constitutes a felony or a crime of moral turpitude.

R708-48-7. Procedure to Obtain and Renew an Installer License.

(1) To apply for or renew an installer license, an applicant shall submit a completed installer application packet to the division at 4501 South 2700 West, Salt Lake City, Utah.

(2) The packet shall include:

(a) a completed installer application form provided by the division, which has been signed and notarized by the applicant and all other required parties;

(b) an application or renewal fee, which shall be made payable to the department;

(c) one completed FBI applicant fingerprint card (Form FD-258) with the applicant's legible fingerprints and a check or money order made payable to the Utah Bureau of Criminal Identification to cover the fee associated with a criminal history background check; and

(d) a signed agreement verifying that the applicant has read and understands all of the laws and rules that are applicable to the ignition interlock system program.

(3) Upon receipt of a completed installer application packet, the division shall review all of the materials submitted by the applicant to determine if the applicant meets the requirements in Title 53, Chapter 3, Part 10 and R708-48.

(4)(a) If the applicant meets all of the requirements for licensure found in Title 53, Chapter 3, Part 10 and R708-48, the applicant shall be granted an installer license.

(b) Installer licenses are not transferable.

(c) If an installer license is lost or destroyed, the provider may obtain a duplicate of the license by submitting the following to the division:

(i) a notarized affidavit which describes the date the license was lost or destroyed and the surrounding circumstances; and

(ii) the duplicate license fee.

(5) If the applicant does not meet the requirements for licensure found in Title 53, Chapter 3, Part 10 and R708-48, the application shall be denied and the applicant shall be issued a notice of denial with information regarding the reason for denial and process by which the applicant may appeal the division's decision.

R708-48-8. Business Inspection and Audit Procedures.

(1) The division shall conduct inspections and audits of a business and its records to verify compliance with Title 53, Chapter 3, Part 10 and R708-48.

(2)(a) The premises and records of the business shall be available to the division immediately upon request for the purpose of an inspection or audit.

(b) If it becomes necessary to remove records from the business for audit purposes, the division shall provide a receipt to the business which will include:

(i) the name and location of the provider;

(ii) the location of the business;

(iii) the date that records are removed;

(iv) a description of what records are removed;

(v) the signature of an authorized representative of the business; and

(vi) the signature of a division representative.

(c) Upon return of the records, the receipt shall be updated with:

(i) the date the records were returned;

(ii) the signature of an authorized representative of the business who is receiving the records; and

(iii) the signature of the division representative returning the records.

(d) The division shall hold the records for the minimum amount of time necessary so an audit may occur without creating an unnecessary hardship or inconvenience to the business.

(3)(a) A division representative shall prepare a written report of all inspections and audits.

(b) A copy of these reports shall be maintained by the division for ten years.

(c) Following a business inspection or audit, the division shall notify the business of the division's findings by sending a:

(i) letter to the business indicating any problems, concerns or violations found during the inspection or audit along with an action plan detailing expectations regarding correction of the items identified; or

(ii) notice of agency action.

R708-48-9. Contracts.

(1)(a) A written contract approved by the division shall be executed by both the client and an authorized representative of the business before the business may render any services to a client.

(b) If a client is under 18 years of age, the contract shall also be signed by a parent or legal guardian prior to any service.

(c) A copy of the contract shall be given to the client and the original retained by the business.

(d) The contract shall contain:

(i) the client's:

(A) full legal name;

(B) date of birth;

(C) driver license number;

(D) license plate number;

(E) full residential address; and

(F) full mailing address;

(ii) a description of the services to be provided by the business;

(iii) a break-down of the costs associated with all services provided; and

(iv) any requests made by the client.

(2) The client shall be given a receipt upon payment of any fees.

R708-48-10. Records.

(1) All of the business' records shall be kept accurately and completely.

(2) The business shall maintain the following client records for a period of four years after the contractual obligation with the client has concluded:

(a) documentation of any service provided to a client which include:

(i) the client's:

(A) name;

(B) date of birth;

(C) driver license number;

(iii) license plate number;

(iii) type of service provided;

(iv) exact date the service was performed;

(v) name of the installer and installer ID number; and

(vi) ignition interlock device serial number and name of manufacturer;

(b) original copies of client contracts;

(c) original copies of receipts; and

(3) The business' administrative records shall be maintained for the life of the business, including:

(a) business plans;

(b) licenses;

- (c) training records;
- (d) personnel records; and
- (e) surety bond information.
- (4) Records of the business shall be updated within 24 hours of service.
- (5) All ignition interlock system installations and removals must be reported electronically to the division in a manner specified by the division within 24 hours, and shall include the following:
 - (a) the client's:
 - (i) name;
 - (ii) date of birth
 - (iii) driver license number;
 - (b) license plate number;
 - (c) ignition interlock device serial number and name of manufacturer; and
 - (d) date of installation or removal.
- (6) Each provider shall review the records of the business at least annually for completeness and accuracy.
- (7) If any records that the business is required to maintain are lost or destroyed, the provider shall be immediately file an affidavit with the division which states:
 - (a) the date the record was lost or destroyed; and
 - (b) the circumstances surrounding the loss or destruction.

R708-48-11. Grounds for the Denial, Cancellation or Revocation of a Provider or Installer License.

- (1) A provider or installer may be denied, cancelled or revoked for any of the following:
 - (a) failure to comply with any of the provisions of Title 53, Chapter 3, Part 10, 41-6a-518, or R708-48; or
 - (b) falsification of any records or other required information relating to the Ignition Interlock System program.
- (2)(a) In determining whether denial, cancellation or revocation is appropriate, the division shall consider the provider's or installer's involvement and the severity of the violation.
 - (b) In lieu of cancelling or revoking a license, the division may elect to place the provider or installer on probation if warranted by the nature of the violation.

R708-48-12. Adjudicative Proceedings.

- (1) All adjudicative proceedings set forth in this section shall be conducted informally as provided in Section 63G-4-202.
- (2) The division shall initiate agency action against an provider or installer with a notice of agency action in accordance with Section 63G-4-201.
- (3)(a) An ignition interlock system provider or ignition interlock system installer who receives a notice of agency action indicating that the division intends to deny, cancel or revoke a license may request a hearing by filing a written request for hearing with the division within 10 calendar days from the date the notice of agency action is issued.
 - (b) If a timely request for hearing is filed, the agency action shall be stayed until the division's hearing officer issues a written decision.
 - (c) A hearing shall be held before the division's hearing officer within 30 calendar days from the day that the division receives the written request for hearing, unless agreed to by the parties.
 - (d) At the hearing, the provider or installer shall have an opportunity to demonstrate why the division should not take agency action.
 - (e) The hearing officer shall issue a written decision within 10 business days after the hearing in accordance with Section 63G-4-203.
 - (f) The written decision of the hearing officer shall constitute final agency action and is subject to judicial review in accordance with Section 63G-4-402.

KEY: Ignition Interlock System Program

Date of Enactment or Last Substantive Amendment: July 1, 2012
Authorizing, Implemented, or Interpreted Law: Title 53, Chapter 3, Part 10

End of the Notices of 120-Day (Emergency) 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.

Administrative Services, Debt Collection **R21-1**

Transfer of Collection Responsibility of State Agencies

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36420
FILED: 06/28/2012

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: This rule is established pursuant to Subsections 63A-3-502(3)(m), 63A-3-502(7)(f), 63A-3-502(4)(g), 63A-3-502(6)(b), and Section 15-1-4, and the office intent language and fees authorized by the Legislature in applicable laws. Subsection 63A-3-502(3)(m) authorizes the office to establish procedures for writing off accounts receivable for accounting and collection purposes. Subsection 63A-3-502(7)(f) authorizes the office to require state agencies to bill and make initial collection efforts of its receivables up to the time the accounts must be transferred. Subsection 63A-3-502(7)(a) authorizes the office to require state agencies to transfer collection responsibility to the office or its designee according to time limits specified by the office. Subsection 63A-3-502(4)(g) authorizes the office to establish: 1) a fee to cover administrative costs of collection; 2) a late penalty fee; 3) an interest charge; and 4) fees to collect accounts receivable for higher education by following the procedures and requirements of Section 63J-1-504. Subsection 63A-3-502(6)(b) prohibits the office from assessing the interest charge established by the office under Subsection 63A-3-502(4)(g) on an account receivable subject

to the postjudgment interest rate established by Section 15-1-4. Section 15-1-4 requires civil and criminal judgments of the district court and justice court to bear interest at the federal postjudgment interest rate and sets forth the procedures to be followed. The annual appropriation act authorizes the fees charged by the office to collect accounts and provides legislative intent language allowing the costs of collection to be collected from the debtor.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is to establish the procedures by which agencies shall bill and make initial collection efforts according to a coordinated schedule, the method to be used by agencies to transfer their delinquent accounts receivable to the Office of State Debt Collection or its designee for additional collection action, write-off of receivables, and the procedures and allocation of costs of collection established pursuant to Subsections 63A-3-502(4)(g), 63A-3-502(6)(b), and Section 15-1-4, and by the Legislature in applicable laws. Therefore, this rule should be continued.

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

ADMINISTRATIVE SERVICES
DEBT COLLECTION
ROOM 5100 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Richard Beckstead by phone at 801-538-3100, by FAX at 801-538-3562, or by Internet E-mail at rbeckstead@utah.gov

AUTHORIZED BY: John Reidhead, Director

AUTHORIZED BY: John Reidhead, Director

EFFECTIVE: 06/28/2012

EFFECTIVE: 06/28/2012

**Administrative Services, Debt
Collection
R21-2
Office of State Debt Collection
Administrative Procedures**

**Administrative Services, Debt
Collection
R21-3
Debt Collection Through Administrative
Offset**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 36421
FILED: 06/28/2012

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 36422
FILED: 06/28/2012

**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: This rule establishes procedures for informal adjudicative proceedings as required by Sections 63G-4-202 and 63G-4-203 of the Utah Administrative Procedures Act.

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is established pursuant to Subsection 63A-3-504(2)(f), which authorizes the Office of State Debt Collection to establish by rule an implementation of the debt collection technique of administrative offset.

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.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of this rule is to establish the form of adjudicative proceedings, provide procedures and standards for the conduct of informal hearings, and provide procedures and standards for orders resulting from the administrative process. Therefore, this rule should be continued.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is to establish procedures to be followed by agencies to reduce or eliminate accounts receivable through administrative offset of tax overpayments or state payments due to entities. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
DEBT COLLECTION
ROOM 2110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
DEBT COLLECTION
ROOM 2110 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Richard Beckstead by phone at 801-538-3100, by FAX at 801-538-3562, or by Internet E-mail at rbeckstead@utah.gov

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Richard Beckstead by phone at 801-538-3100, by FAX at 801-538-3562, or by Internet E-mail at rbeckstead@utah.gov

AUTHORIZED BY: John Reidhead, Director

EFFECTIVE: 06/28/2012

ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

**Administrative Services, Purchasing
and General Services
R33-1
Utah State Procurement Rules
Definitions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 36423
FILED: 07/02/2012

**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: Subsection 63G-6-202(1): Except as otherwise provided in Section 63G-6-104 and Subsection 63G-6-208(1)(b), the policy board shall: (a) make rules, consistent with this chapter, governing the procurement, management, and control of any and all supplies, services, technology, and construction to be procured by the state. Subsection 63G-6-208(1)(a): Except as provided in Subsection (2), the policy board shall make rules governing state procurement by complying with the procedures and requirements of 63G, Chapter 3, the Utah Administrative Rulemaking Act. The definitions contained in this rule are in addition to the definitions in the Utah Procurement Code at Section 63G-6-103.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Procurement Code was re-codified during the 2011 General Session and significant changes were made in S.B. 153. These changes will require a re-write of this administrative rule with and effective date of 05/2013. Purchasing has reviewed this rule and believes it needs to remain effective until a new rule can be adopted. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED,
DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

AUTHORIZED BY: Kent Beers, Director

EFFECTIVE: 07/02/2012

**Administrative Services, Purchasing
and General Services
R33-2
Procurement Organization**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 36424
FILED: 07/02/2012

**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: Subsection 63G-6-202(1): Except as otherwise provided in Section 63G-6-104 and Subsection 63G-6-208(1)(b), the policy board shall: (a) make rules, consistent with this chapter, governing the procurement, management, and control of any and all supplies, services, technology, and construction to be procured by the state. Subsection 63G-6-208(1)(a): Except as provided in Subsection (2), the policy board shall make rules governing state procurement by complying with the procedures and requirements of 63G, Chapter 3, the Utah Administrative Rulemaking Act.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Procurement Code was re-codified during the 2011 General Session and significant changes were made in S.B. 153. These changes will require a re-write of this administrative rule with and effective date of 05/2013. Purchasing has reviewed this rule and believes it needs to

remain effective until a new rule can be adopted. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 PURCHASING AND GENERAL SERVICES
 ROOM 3150 STATE OFFICE BLDG
 450 N STATE ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

AUTHORIZED BY: Kent Beers, Director

EFFECTIVE: 07/02/2012

**Administrative Services, Purchasing
 and General Services
 R33-3
 Source Selection and Contract
 Formation**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 36425
 FILED: 07/02/2012

**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: Subsection 63G-6-202(1): Except as otherwise provided in Section 63G-6-104 and Subsection 63G-6-208(1)(b), the policy board shall: (a) make rules, consistent with this chapter, governing the procurement, management, and control of any and all supplies, services, technology, and construction to be procured by the state. Subsection 63G-6-208(1)(a) Except as provided in Subsection (2), the policy board shall make rules governing state procurement by complying with the procedures and requirements of 63G, Chapter 3, the Utah Administrative Rulemaking Act. Numerous subsections within the Utah Procurement Code require compliance with the administrative rules adopted by the policy board for source selection and contract formation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR

OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Procurement Code was re-codified during the 2011 General Session and significant changes were made in S.B. 153. These changes will require a re-write of this administrative rule with an effective date of 05/2013. Purchasing has reviewed this rule and believes it needs to remain effective until a new rule can be adopted. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ADMINISTRATIVE SERVICES
 PURCHASING AND GENERAL SERVICES
 ROOM 3150 STATE OFFICE BLDG
 450 N STATE ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

AUTHORIZED BY: Kent Beers, Director

EFFECTIVE: 07/02/2012

**Administrative Services, Purchasing
 and General Services
 R33-4
 Specifications**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 36426
 FILED: 07/02/2012

**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: Subsection 63G-6-301(1): Administrative rules shall be issued to govern the preparation, maintenance, and content of specifications for supplies, services, construction, and technology required by the state. (2) The administrative rules described in Subsection (1) shall determine the extent to which a nonemployee who has prepared specifications for use by the state may participate in any state procurement using such specifications.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Procurement Code was re-codified during the 2011 General Session and significant changes were made in S.B. 153. These changes will require a re-write of this administrative rule with an effective date of 05/2013. Purchasing has reviewed this rule and believes it needs to remain effective until a new rule can be adopted. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

AUTHORIZED BY: Kent Beers, Director

EFFECTIVE: 07/02/2012

Administrative Services, Purchasing and General Services

R33-5

Construction and Architect-Engineer Selection

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36428
FILED: 07/02/2012

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: As required by the Utah Procurement Code, specifically Section 63G-6-501, Subsection 63G-6-504(2), Section 63G-6-506, and Section 63G-6-601, rules are to be adopted that contain provisions applicable to selecting the appropriate method for

management of construction contracts, establishing appropriate bid, performance and payment bond criteria, and governing contract provisions.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Procurement Code was re-codified during the 2011 General Session and significant changes were made in S.B. 153. These changes will require a re-write of this administrative rule with an effective date of 05/2013. Purchasing has reviewed this rule and believes it needs to remain effective until a new rule can be adopted. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

AUTHORIZED BY: Kent Beers, Director

EFFECTIVE: 07/02/2012

Administrative Services, Purchasing and General Services

R33-8

Property Management

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36430
FILED: 07/02/2012

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 Utah Procurement Code Section 63G-6-205 permits the chief procurement officer to

delegate authority to designees or to any department, agency, or official subject to rules. This rule governs the delegation of responsibility for inspection and testing to using agencies. This rule also delegates the authority to exercise supervision of any receiving, storage, and distribution facilities and services within the purview of purchasing agencies. Lastly, purchasing agencies are delegated the authority to exercise supervision of all inventories of tangible personal property belonging to them.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Utah Procurement Code was re-codified during the 2011 General Session and significant changes were made in S.B. 153. These changes will require a re-write of this administrative rule with an effective date of 05/2013. Purchasing has reviewed this rule and believes it needs to remain effective until a new rule can be adopted. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ADMINISTRATIVE SERVICES
PURCHASING AND GENERAL SERVICES
ROOM 3150 STATE OFFICE BLDG
450 N STATE ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Paul Mash by phone at 801-538-3138, by FAX at 801-538-3882, or by Internet E-mail at pmash@utah.gov

AUTHORIZED BY: Kent Beers, Director

EFFECTIVE: 07/02/2012

**Commerce, Occupational and
Professional Licensing
R156-22
Professional Engineers and
Professional Land Surveyors Licensing
Act Rule**

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

DAR FILE NO.: 36405
FILED: 06/25/2012

**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 22, provides for the licensure of professional engineers, professional land surveyors, and professional structural engineers. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-22-201(3) provides that the Professional Engineers and Professional Land Surveyors 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 22, with respect to professional engineers, professional land surveyors, and professional structural engineers.

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 November 2007, it has been amended several times. The only written comments the Division received were two emails: a 07/28/2011 email from Steven Judd in which he was clarifying who the proposed amendments affected; and an 08/05/2011 email from Joe Stuart in which he wanted additional clarification on why the proposed rule amendments were needed. The Division replied to both persons and provided the information they requested.

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 22, with respect to professional engineers, professional land surveyors, and professional structural engineers. 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: 06/25/2012

Environmental Quality, Water Quality **R317-5**

Large Underground Wastewater Disposal Systems

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36388
FILED: 06/18/2012

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: Subsection 19-5-104(1)(a)(iv) authorizes the Water Quality Board to make rules which implement or effectuate the powers and duties of the Board. Subsection 19-5-104(1)(a)(v) stipulates that the rules are made to protect the public health for the design, construction, operation, and maintenance of underground wastewater disposal systems, liquid scavenger operations, and vault and earthen pit privies.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets design requirements for construction of large underground wastewater treatment and disposal systems as defined in the rule. The Water Quality Board is charged with making the rules that provide the guidelines for review and approval of these systems. The rule is required to meet this charge and should be continued.

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:
♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

AUTHORIZED BY: Walter Baker, Director

EFFECTIVE: 06/18/2012

Environmental Quality, Water Quality **R317-550**

Rules for Waste Disposal By Liquid Scavenger Operations

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36389
FILED: 06/18/2012

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: Subsection 19-5-104(1)(a)(iv) authorizes the Utah Water Quality Board to make rules to implement or effectuate the powers and duties of the board. Subsection 19-5-104(1)(a)(v) specifies that the board is to protect the public health for the design, construction, operation, and maintenance of underground wastewater disposal systems, liquid scavenger operations, and vault and earthen pit privies.

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 during the time since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is required to regulate Liquid Scavenger Operations in order to protect public health and the environment, and should be continued.

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:
 ♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

AUTHORIZED BY: Walter Baker, Director

EFFECTIVE: 06/18/2012

**Environmental Quality, Water Quality
 R317-560**

**Rules for the Design, Construction, and
 Maintenance of Vault Privies and
 Earthen Pit Privies**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 36387
 FILED: 06/18/2012

**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: Subsection 19-5-104(1)(a)(iv) authorizes the Board to make rules which implement or effectuate the powers and duties of the Board. Subsection 19-5-104(1)(a)(v) authorizes the Utah Water Quality Board to adopt rules to protect the public health for the design, construction, operation, and maintenance of individual wastewater disposal systems, liquid scavenger operations, and vault and earthen pit privies. This rule is to provide detailed guidelines for the vault and earthen pit privies.

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 for this rule since the last five-year review.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule regulates the design, construction, operation, and maintenance of vault and earthen pit privies to

protect public health and the environment and should be continued.

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:
 ♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

AUTHORIZED BY: Walter Baker, Director

EFFECTIVE: 06/18/2012

**Health, Health Care Financing,
 Coverage and Reimbursement Policy
 R414-60A**

Drug Utilization Review Board

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 36406
 FILED: 06/25/2012

**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: This rule is authorized under Section 26-18-102, which sets forth the policies, procedures, and organization of the Drug Utilization Review (DUR) Board. In addition, 42 CFR 456.716 requires the Department to establish and organize a DUR Board to include health care professionals with recognized knowledge and expertise.

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 received a comment as to why it filed this new rule when the DUR Board already existed at the time of the rule filing. The Department responded that it filed this new rule to distinguish between the Pharmacy and Therapeutics Committee that it established to oversee the Preferred Drug List during that same time period, and to clarify DUR committee meeting times, procedures, and member appointments.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because it implements the composition and membership requirements of the DUR Board to provide medically necessary and cost effective services for Medicaid recipients. This rule also spells out the functions of board members to carry out their responsibilities for the Medicaid drug program. Therefore, this rule should be continued.

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

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 06/25/2012

public comment on this rule since the last five-year review of this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule in order to administer the requirements of Section 62A-15-501. The division acknowledges that there are several statutory citations within this rule that need to be updated. This updating will be accomplished as soon as possible.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov
♦ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at raywinger@utah.gov

AUTHORIZED BY: Lana Stohl, Director

EFFECTIVE: 06/18/2012

Human Services, Substance Abuse and Mental Health

R523-22

Utah Standards for Approval of Alcohol and Drug Educational Programs for Court-Referred DUI Offenders

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36383
FILED: 06/18/2012

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 62A-15-501 gives requirements for the education programs for DUI offenders.

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 division has not received any

Human Services, Substance Abuse and Mental Health

R523-23

On-Premise Alcohol Training and Education Seminar Rules of Administration

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36384
FILED: 06/18/2012

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 62A-15-401 authorizes the Division of Substance Abuse and Mental Health to administer the Alcohol Training and Education Seminar Program.

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 Division received comment in four categories: 1) date of training requirement be added to the rule; 2) suggested changing the wording for the expiration date; 3) requesting a specification for the three-hour training description; and 4) state should maintain the database of those servers who take the training.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is required to provide guidance to persons who provide Alcohol Training and Education Seminar Programs. Therefore, this rule should be continued. Responses to comments are as follows: 1) The Division added the "date the person completed the training" because the system already requires it and it is necessary to determine when a person will need to recertify. It may also be needed to prove that an employee was trained within 30 days of hire as required by rule; 2) It was suggested that the division ask for the expiration date instead of the date the training was completed. The primary reason for not implementing this suggestion is that a person's certification is shortened if he/she sells to a minor and is adjudicated for that crime. So, the expiration on a certificate could be different than information shown on the Division's website due to a sale to a minor, however, the date of completion would remain the same. Entering the date of completion would save money and confusion vs. the expiration date; 3) It was suggested that the rule require three hours of instruction vs. three hours of class time. The division staff discussed this with the commenting provider and another provider and it was decided to leave the requirement at three hours of class time. The reasons are as follows: 1) people learn (and read) at different speeds and the Division has to fit the "average" of those speeds and the three hours of class time allows for some flexibility; 2) exams and questions should be added into the 3 hours because they are also part of the learning experience and this should be the same for in person classes; and 3) three hours of class time is reasonable to cover the information and allow for the final exam; and 4) The Division has always, and plans to always maintain a database of trainers and server/sellers and make it available to the public online. It appears that this language was unintentionally removed from the rule. The division has not actually changed the maintaining of the database.

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

♦ L Ray Winger by phone at 801-538-4319, by FAX at 801-538-9892, or by Internet E-mail at raywinger@utah.gov

AUTHORIZED BY: Lana Stohl, Director

EFFECTIVE: 06/18/2012

Insurance, Administration **R590-122** Permissible Arbitration Provisions

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36385

FILED: 06/18/2012

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: Subsection 31A-2-201(3) authorizes the commissioner to make rules to implement the provisions of Title 31A. As a result of this authority this rule defines the term, "permissible arbitration" as set forth in Subsections 31A-21-313(3)(c) and 31A-21-314(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 written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is important that this rule be continued in force to provide guidance to insurance companies about the type of arbitration provisions they may put into their policies. These provisions provide steps to be taken by insureds who disagree with the settlement of their claims and would like to involve a third party in the settlement of their claims. The rule gives the department the authority to make sure these provisions are fair and nondiscriminatory.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 06/18/2012

**Insurance, Administration
 R590-149**

**Americans with Disabilities Act (ADA)
 Grievance Procedures**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 36386
 FILED: 06/18/2012

**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 purpose of this rule is to implement the provisions of 28 CFR 35, and Title II of the Americans with Disabilities Act which provide that no individual shall be excluded from participation in or be denied the benefits of the services, programs, or activities of the Insurance Department, or be subjected to discrimination by the department because of a disability. Subsection 63G-3-201(3) requires rulemaking when the department issues a written interpretation of a state or federal legal mandate. Subsection 31A-2-201(3)(a) authorizes the commissioner to write rules to implement the provisions of the insurance code, Title 31A.

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 made in the past five years. Changes have been made in the rule in that time but they have been made in an effort to correct code references and to comply with changes in the federal law. None of the changes were made at the request of a specific individual or organization.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is important that this rule be continued in effect to provide that no qualified individual with a disability, by reason of such disability, be excluded from participation in, or the benefits of, the services, programs and activities of the Insurance Department. The rule needs to remain in force so

that the department will be in compliance with the federal Americans With Disabilities Act.

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

INSURANCE
 ADMINISTRATION
 ROOM 3110 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 06/18/2012

**Insurance, Administration
 R590-173**

Credit for Reinsurance

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 36417
 FILED: 06/27/2012

**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 31A-2-201 provides the commissioner with the authority to write rules to implement the provisions of the Insurance Code, Title 31A. In this case, the rule sets forth requirements the commissioner feels are necessary to carry on the provisions of Section 31A-17-404, "Credit against reserves for reinsurance."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Credit for reinsurance has relevance for many Utah insurance companies, and may be a significant factor in establishing their solvency position. The rule lays out the detailed requirements in this important area. It provides protection to the ceding insurers within the State of

Utah and to the individuals insured. Therefore, this rule should be continued.

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

INSURANCE
ADMINISTRATION
ROOM 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 06/27/2012

including rules for hours of business and filing of business documents. This rule should be continued for those purposes.

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

LABOR 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:
♦ Alan Hennebold by phone at 801-530-6937, by FAX at 801-530-6390, or by Internet E-mail at ahennebold@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

EFFECTIVE: 06/19/2012

**Labor Commission, Administration
R600-2
Operations**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 36401
FILED: 06/19/2012

**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 34A-1-104 authorizes the Labor Commission to adopt rules necessary to administer the Workers' Compensation Act, the Occupational Disease Act, The Antidiscrimination Act, and the Occupational Safety and Health Act. Pursuant to that authority, and in order to provide for the orderly conduct of Commission business, the Commission has adopted Rule R600-2, which establishes the Commission's regular business hours.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: During the last five-year period, the Commission has received no written comments supporting or opposing the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: As part of its duty to administer the various statutes identified above, the Commission is required to establish standards for conduct of Commission business,

**Labor Commission, Adjudication
R602-1
General Provisions**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 36399
FILED: 06/19/2012

**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 34A-1-104 authorizes the Labor Commission to adopt rules and conduct adjudicative proceedings. In order to administer an orderly system of adjudication, it is necessary for the Commission to set standards for computing filing deadlines and other time limits involved in the adjudicative process, and to set witness fees.

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 during the last five-year review period.

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 remains necessary to establishes standards for computing time limits and setting witness fees in the Commission's adjudicative process. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Alan Hennebold by phone at 801-530-6937, by FAX at 801-530-6390, or by Internet E-mail at ahennebold@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

EFFECTIVE: 06/19/2012

Labor Commission, Adjudication

R602-2

Adjudication of Workers' Compensation and Occupational Disease Claims

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36400

FILED: 06/19/2012

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 34A-1-104 authorizes the Labor Commission to conduct adjudicative proceedings to resolve workers' compensation and occupational disease claims. Sections 34A-1-104 and 34A-2-802 also authorize the Commission to adopt rules to carry out those adjudicative functions.

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 during the last five-year review period.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: As part of the Commission's continuing responsibility to administer a system for adjudication of workers' compensation and occupational disease claims, it is necessary for the Commission to establish procedures for pleadings and discovery, standards for use and compensation of medical panels, as well as standards for awarding

attorney's fees and evaluating settlement agreements. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Alan Hennebold by phone at 801-530-6937, by FAX at 801-530-6390, or by Internet E-mail at ahennebold@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

EFFECTIVE: 06/19/2012

Labor Commission, Industrial Accidents

R612-1

Workers' Compensation Rules - Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36402

FILED: 06/19/2012

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 34A-1-104 gives the Labor Commission authority to establish rules to administer the Workers' Compensation Act and the Occupational Disease Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during the last five-year review period.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In light of the Commission's continuing responsibility to administer Utah's workers' compensation system, it remains necessary for the Commission to address a wide variety of administrative issues, such as definition of terms, designation of official forms, payment standards, and

processing of claims. It is also necessary for the Commission to address methods for proof of claims and to establish the amount of certain benefits, such as burial expenses. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Ron Dressler by phone at 801-530-6841, by FAX at 801-530-6804, or by Internet E-mail at rdressler@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

EFFECTIVE: 06/19/2012

Natural Resources, Wildlife Resources
R657-44
Big Game Depredation

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 36392
 FILED: 06/19/2012

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: Under Sections 23-16-2, 23-16-3, 23-16-3.5, and 23-16-4, the Wildlife Board is authorized and required to regulate and prescribe the means for assessing big game depredation, and provide mitigation procedures for big game depredation.

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 supporting or opposing Rule R657-44 have been received since 06/20/2007 when the rule was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-44 provides the procedures, standards, requirements, and limits for assessing big game depredation and mitigation procedures for big game depredation. The procedures adopted in this rule have

provided an effective and efficient process. Continuation of this rule is necessary for continued success of the big game depredation program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 NATURAL RESOURCES
 WILDLIFE RESOURCES
 1594 W NORTH TEMPLE
 SALT LAKE CITY, UT 84116-3154
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: James Karpowitz, Director

EFFECTIVE: 06/19/2012

Public Safety, Highway Patrol
R714-110
Permit to Operate a Motor Vehicle in Violation of Equipment Laws

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 36440
 FILED: 07/02/2012

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: This rule is authorized by Section 41-6a-1602 which authorizes the department to establish guidelines to issue a permit which allows temporary operation of a vehicle in violation of the provisions of this chapter or in violation of rules made by the department. Subsection 41-6a-1601(2) states that the department shall make rules setting minimum standards covering the design, construction, condition, and operation of vehicle equipment for safely operating a motor vehicle on the highway.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The department is directed to provide an

equipment waiver under certain circumstances in Section 41-6a-1602 to allow a vehicle to pass a safety inspection. This is allowed on a temporary basis as outlined in the rule. Therefore, this rule should be continued.

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

PUBLIC SAFETY
HIGHWAY PATROL
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5994
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Glen Porter by phone at 801-965-4889, by FAX at 801-322-1817, or by Internet E-mail at gporter@utah.gov

AUTHORIZED BY: Lance Davenport, Commissioner

EFFECTIVE: 07/02/2012

Public Safety, Highway Patrol
R714-158
Vehicle Safety Inspection Program
Requirements

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

DAR FILE NO.: 36442
FILED: 07/02/2012

**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: This rule is authorized by Sections 53-8-204 and 53-8-205, which authorize the department to set procedures for the safety inspection program. Section 41-6a-1601(2) authorizes the department to make rules setting minimum standards covering the design, construction, condition, and operation of vehicle equipment for safely operating a motor vehicle on the highway.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE

RULE, IF ANY: The safety inspection program requires specific procedures to operate the program. This rule lists those requirements. Therefore, this rule should be continued.

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

PUBLIC SAFETY
HIGHWAY PATROL
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5994
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Glen Porter by phone at 801-965-4889, by FAX at 801-322-1817, or by Internet E-mail at gporter@utah.gov

AUTHORIZED BY: Lance Davenport, Commissioner

EFFECTIVE: 07/02/2012

Public Safety, Highway Patrol
R714-159
Vehicle Safety Inspection
Apprenticeship Program Guidelines

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

DAR FILE NO.: 36439
FILED: 07/02/2012

**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: This rule is authorized by Section 53-8-204, which authorizes the department to establish program guidelines for a school district that elects to implement a safety inspection apprenticeship program for high school students. Subsection 41-6a-1601(2) states that the department shall make rules setting setting minimum standards covering the design, construction, condition, and operation of vehicle equipment for safely operating a motor vehicle on the highway.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE

RULE, IF ANY: The program guidelines outline the requirements necessary to enter into an apprenticeship for vehicle safety inspections as directed in Section 53-8-204. Therefore, this rule should be continued.

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

PUBLIC SAFETY
HIGHWAY PATROL
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5994
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Glen Porter by phone at 801-965-4889, by FAX at 801-322-1817, or by Internet E-mail at gporter@utah.gov

AUTHORIZED BY: Lance Davenport, Commissioner

EFFECTIVE: 07/02/2012

**Public Safety, Highway Patrol
R714-200
Standards for Vehicle Lights and
Illuminating Devices**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 36433
FILED: 07/02/2012

**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: This rule is authorized by Section 41-1a-1620 and Subsection 41-6a-1601(2), which state that the department shall make rules setting minimum equipment standards of lighting equipment and approve or disapprove of any lighting device for motor vehicles.

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: There are many after-market lighting devices that are sold which do not meet the Federal Motor Vehicle Standards. Also included in this rule are the lighting

equipment restrictions. Therefore, this rule should be continued.

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

PUBLIC SAFETY
HIGHWAY PATROL
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5994
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Glen Porter by phone at 801-965-4889, by FAX at 801-322-1817, or by Internet E-mail at gporter@utah.gov

AUTHORIZED BY: Lance Davenport, Commissioner

EFFECTIVE: 07/02/2012

**Public Safety, Highway Patrol
R714-210
Standards for Motor Vehicle Air
Conditioning Equipment**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 36441
FILED: 07/02/2012

**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: This rule is authorized by Section 41-6a-1640. Subsection 41-6a-1601(2) states that the department shall make rules setting setting minimum standards covering the design, construction, condition, and operation of vehicle equipment for safely operating a motor vehicle on the highway.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The department outlines the adoption of federal air conditioning standards to help protect the occupants of the vehicle and public. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
HIGHWAY PATROL
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5994
or at the Division of Administrative Rules.

CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5994
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Glen Porter by phone at 801-965-4889, by FAX at 801-322-1817, or by Internet E-mail at gporter@utah.gov

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Glen Porter by phone at 801-965-4889, by FAX at 801-322-1817, or by Internet E-mail at gporter@utah.gov

AUTHORIZED BY: Lance Davenport, Commissioner

AUTHORIZED BY: Lance Davenport, Commissioner

EFFECTIVE: 07/02/2012

EFFECTIVE: 07/02/2012

**Public Safety, Highway Patrol
R714-220
Standards for Protective Headgear**

**Public Safety, Highway Patrol
R714-230
Standards and Specifications for
Vehicle Seat Belts and Safety
Harnesses**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 36434
FILED: 07/02/2012

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 36435
FILED: 07/02/2012

**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: This rule is authorized by Section 41-1a-1505 and Subsection 41-6a-1601(2) which state that the department shall make rules setting setting minimum standards covering the design, construction, condition, and operation of vehicle equipment for safely operating a motor vehicle on the highway.

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Section 41-1a-1628 and Subsection 41-6a-1601(2) which state that the department shall make rules setting setting minimum standards covering the design, construction, condition, and operation of vehicle equipment for safely operating a motor vehicle on the highway.

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

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is needed to ensure protective headgear standards meet federal requirements for those who operate a motorcycle or motor-driven cycle. Therefore, the rule should be continued.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: There is a need to standardize specifications for vehicle seat belts and safety harnesses that are used in vehicles. Therefore, this rule should be continued.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
HIGHWAY PATROL
CALVIN L RAMPTON COMPLEX
4501 S 2700 W

SALT LAKE CITY, UT 84119-5994
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Glen Porter by phone at 801-965-4889, by FAX at 801-322-1817, or by Internet E-mail at gporter@utah.gov

AUTHORIZED BY: Lance Davenport, Commissioner

EFFECTIVE: 07/02/2012

**Public Safety, Highway Patrol
R714-240**

**Standards and Specifications for Child
Restraint Devices and Safety Belts**

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

DAR FILE NO.: 36437
FILED: 07/02/2012

**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: This rule is authorized by Subsection 41-6a-1601(2) which states that the department shall make rules setting setting minimum standards covering the design, construction, condition, and operation of vehicle equipment for safely operating a motor vehicle on the highway.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The department outlines the adoption of federal child restraint devices and safety belts standards. Therefore, this rule should be continued.

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

PUBLIC SAFETY
HIGHWAY PATROL
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5994
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Glen Porter by phone at 801-965-4889, by FAX at 801-322-1817, or by Internet E-mail at gporter@utah.gov

AUTHORIZED BY: Lance Davenport, Commissioner

EFFECTIVE: 07/02/2012

**Public Safety, Highway Patrol
R714-300
Standards for Motor Vehicle Braking
Systems**

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

DAR FILE NO.: 36438
FILED: 07/02/2012

**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: This rule is authorized by Subsection 41-6a-1601(2) which states that the department shall make rules setting setting minimum standards covering the design, construction, condition, and operation of vehicle equipment for safely operating a motor vehicle on the highway.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The department outlines the adoption of federal motor vehicle braking system standards. Therefore, this rule should be continued.

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

PUBLIC SAFETY
HIGHWAY PATROL
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5994
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Glen Porter by phone at 801-965-4889, by FAX at 801-322-1817, or by Internet E-mail at gporter@utah.gov

AUTHORIZED BY: Lance Davenport, Commissioner

EFFECTIVE: 07/02/2012

**Public Safety, Highway Patrol
R714-550**

**Rule for Spending Fees Provided under
Section 53-1-117**

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

DAR FILE NO.: 36436

FILED: 07/02/2012

**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: Pursuant to Section 53-1-117, this rule establishes criteria and procedures for the Utah Department of Public Safety to administer revenues from the "Public Safety Restricted Account" established by Section 53-3-106(1) which accrue from fee income pursuant to Section 41-6-44.30, and Subsections 53-3-105(29) and 53-3-106(5). Accordingly, these funds shall be used to: (a) purchase equipment for law enforcement agencies of the state and its political subdivisions to assist them in enforcing alcohol or drug related driving laws; (b) train peace officers; (c) provide peace officer overtime; and (d) fund the managing of DUI related motor vehicles.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary because Section 53-1-117 authorizes this rule for a seven member committee that oversees the spending of this money on DUI overtime shifts, DUI equipment for agencies statewide based on their DUI enforcement and support of the Breath Alcohol Testing program. Therefore, this rule should be continued.

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

PUBLIC SAFETY
HIGHWAY PATROL
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY, UT 84119-5994
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Glen Porter by phone at 801-965-4889, by FAX at 801-322-1817, or by Internet E-mail at gporter@utah.gov

AUTHORIZED BY: Lance Davenport, Commissioner

EFFECTIVE: 07/02/2012

**School and Institutional Trust Lands,
Administration**

R850-4

Application Fees and Assessments

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

DAR FILE NO.: 36408

FILED: 06/27/2012

**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: Subsection 53C-1-302(1)(a)(ii) authorizes the Director of the School and Institutional Trust Lands Administration to adopt rules necessary to fulfill the purposes of Title 53C.

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 by the agency regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule allows the agency to establish a list of fees that may be charged in order to recoup some of the costs of doing business. The assessment of these fees is established pursuant to policy set by the Board of Trustees and assists the agency in fulfilling its fiduciary responsibility in behalf of the various trusts. Therefore, this rule should be continued.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
ROOM 500
675 E 500 S
SALT LAKE CITY, UT 84102-2818
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ John Andrews by phone at 801-538-5180, by FAX at 801-538-5118, or by Internet E-mail at jandrews@utah.gov

AUTHORIZED BY: Kevin Carter, Director

EFFECTIVE: 06/27/2012

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Ron Carlson by phone at 801-538-5131, by FAX at 801-538-5118, or by Internet E-mail at rcarlson@utah.gov

AUTHORIZED BY: Kevin Carter, Director

EFFECTIVE: 06/27/2012

School and Institutional Trust Lands,
 Administration
R850-5
 Payments, Royalties, Audits, and
 Reinstatements

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 36409
 FILED: 06/27/2012

**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: Subsections 53C-1-302(1)(a)(ii) and 53C-1-303(1)(b) authorize the Director of the School and Institutional Trust Lands Administration to establish fees, procedures, and rules for the management of the trust lands.

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 by the Agency concerning this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets forth the guidelines and procedures necessary for protecting the assets of the various beneficiaries in the course of leasing and selling trust assets. Guidelines for the audit of leases ensures that the trust assets are being protected and the trust beneficiaries are receiving full value for their lands. It is important that this rule remain in full force and effect. Therefore, this rule should be continued.

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

School and Institutional Trust Lands,
 Administration
R850-6
 Government Records Access and
 Management

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
 OF CONTINUATION**
 DAR FILE NO.: 36410
 FILED: 06/27/2012

**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 63G-2-204, 63G-2-603, 53C-2-102, and Subsection 53C-1-201(3)(a)(i)(A) direct and authorize the Director of the School and Institutional Trust Lands Administration to adopt rules that provide guidelines for public access to agency records and protect confidential information provided to the agency.

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 by the agency regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is required by statute in order to establish guidelines for public access to agency records, as well as the protection of confidential information provided to the agency in the course of managing the interests of the various trust beneficiaries. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ John Andrews by phone at 801-538-5180, by FAX at 801-538-5118, or by Internet E-mail at jandrews@utah.gov

AUTHORIZED BY: Kevin Carter, Director

EFFECTIVE: 06/27/2012

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kim Christy by phone at 801-538-5183, by FAX at 801-355-0922, or by Internet E-mail at kimchristy@utah.gov

AUTHORIZED BY: Kevin Carter, Director

EFFECTIVE: 06/27/2012

School and Institutional Trust Lands,
 Administration
R850-30
 Special Use Leases

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

DAR FILE NO.: 36411
 FILED: 06/27/2012

**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: Subsections 53C-1-302(1)(a)(ii) and 53C-4-101(1) authorize the Director of the School and Institutional Trust Lands Administration to prescribe standards and conditions for the leasing and development of surface resources on trust lands.

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 by the agency 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: Statute requires the agency to establish rules outlining procedures for the issuance of special use leases on trust lands. The agency manages a vast amount of surface estate for the benefit of the trust beneficiaries and these guidelines are crucial to the successful management of that estate. Therefore, this rule should be continued.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
 ADMINISTRATION
 ROOM 500
 675 E 500 S
 SALT LAKE CITY, UT 84102-2818
 or at the Division of Administrative Rules.

School and Institutional Trust Lands,
 Administration
R850-40
 Easements

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

DAR FILE NO.: 36412
 FILED: 06/27/2012

**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 53C-1-302 and 53C-4-203 authorize the Director of the School and Institutional Trust Lands Administration to establish rules for the issuance of easements on, through, and over trust lands and to establish price schedules for this use.

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 by the agency 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 agency manages a vast amount of surface estate for the benefit of the trust beneficiaries. Easements are one of the many uses for the surface estate and statute specifically requires the agency to provide rules for the issuance of easements and establish price schedules at fair market value. This rule provides the guidelines for these responsibilities. Therefore, this rule should be continued.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS
 ADMINISTRATION
 ROOM 500
 675 E 500 S
 SALT LAKE CITY, UT 84102-2818
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kim Christy by phone at 801-538-5183, by FAX at 801-355-0922, or by Internet E-mail at kimchristy@utah.gov

AUTHORIZED BY: Kevin Carter, Director

EFFECTIVE: 06/27/2012

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Kim Christy by phone at 801-538-5183, by FAX at 801-355-0922, or by Internet E-mail at kimchristy@utah.gov

AUTHORIZED BY: Kevin Carter, Director

EFFECTIVE: 06/27/2012

School and Institutional Trust Lands,
 Administration
R850-50
 Range Management

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 36413
 FILED: 06/27/2012

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: Subsection 53C-1-302(1)(a)(ii) and Section 53C-5-102 authorize the Director of the School and Institutional Trust Lands Administration to establish rules prescribing standards and conditions for the utilization of forage and related development of range resources on trust lands.

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 by the agency for 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: Statute requires that guidelines for the grazing of livestock on trust lands be established. Range management provides a resource for local ranchers to utilize in their agricultural operations as well as an additional source of revenue for the trust beneficiaries. Therefore, this rule should be continued.

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

School and Institutional Trust Lands,
 Administration
R850-60
 Cultural Resources

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 36414
 FILED: 06/27/2012

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 9-8-305 and 9-8-404 mandate the preservation and protection of all antiquities, historic and prehistoric ruins, historic sites, buildings, and objects. Subsections 53C-1-302(1)(a)(ii) and 53C-2-201(1)(a) authorize the Director of the School and Institutional Trust Lands Administration to prescribe the management of those cultural resources on trust lands.

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 by the agency 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: As required by statute, this rule provides the guidelines whereby the School and Institutional Trust Lands Administration manages the cultural resources on trust lands in compliance with Subsection 9-8-305(2) and Section 9-8-404. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kim Christy by phone at 801-538-5183, by FAX at 801-355-0922, or by Internet E-mail at kimchristy@utah.gov

AUTHORIZED BY: Kevin Carter, Director

EFFECTIVE: 06/27/2012

**School and Institutional Trust Lands,
Administration
R850-80
Sale of Trust Lands**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 36415
FILED: 06/27/2012

**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: Subsections 53C-1-302(1)(a)(ii) and 53C-4-101(1) authorize the Director of the School and Institutional Trust Lands Administration to prescribe the terms and conditions for the sale of trust land.

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 by the agency regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets forth the procedures and guidelines for determining if and when it is in the best interests of the trust beneficiaries to sell portions of the surface estate and for establishing and receiving fair market value for those lands. Therefore, this rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Kim Christy by phone at 801-538-5183, by FAX at 801-355-0922, or by Internet E-mail at kimchristy@utah.gov

AUTHORIZED BY: Kevin Carter, Director

EFFECTIVE: 06/27/2012

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).

Regents (Board of), College of Eastern
Utah

R767-1

Government Records Access and
Management Act

FIVE-YEAR REVIEW EXTENSION

DAR FILE NO.: 36391

FILED: 06/18/2012

EXTENSION REASON AND NEW DEADLINE: The College of Eastern Utah has merged with Utah State University and the logistics are still being worked out. The new deadline is 10/17/2012.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jan Young by phone at 435-613-5205, by FAX at 435-613-5814, or by Internet E-mail at jan.young@ceu.edu

AUTHORIZED BY: Jan Young, Director of Academic Records/Registrar

EFFECTIVE: 06/18/2012

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

Administrative Services

Finance

No. 36112 (AMD): R25-7. Travel-Related Reimbursements for State Employees

Published: 05/15/2012

Effective: 07/01/2012

Fleet Operations

No. 36024 (AMD): R27-7. Safety and Loss Prevention of State Vehicles

Published: 05/01/2012

Effective: 06/28/2012

Alcoholic Beverage Control

Administration

No. 36113 (AMD): R81-4F-7. Sale and Purchase of Alcoholic Beverages

Published: 05/15/2012

Effective: 07/01/2012

No. 36115 (AMD): R81-4F-13. Agreement for Alcoholic Beverage Service

Published: 05/15/2012

Effective: 07/01/2012

No. 36114 (AMD): R81-7. Single Event Permits

Published: 05/15/2012

Effective: 07/01/2012

No. 36116 (AMD): R81-10B. Temporary Special Event Beer Permits

Published: 05/15/2012

Effective: 07/01/2012

Commerce

Administration

No. 36104 (AMD): R151-4-306. Motion to Recuse or Disqualify a Board or Commission Member

Published: 05/15/2012

Effective: 06/21/2012

Occupational and Professional Licensing

No. 36117 (AMD): R156-9. Funeral Service Licensing Act Rule

Published: 05/15/2012

Effective: 06/21/2012

No. 36090 (AMD): R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rule

Published: 05/15/2012

Effective: 06/21/2012

No. 36089 (AMD): R156-40a. Athletic Trainer Licensing Act Rule

Published: 05/15/2012

Effective: 06/28/2012

Environmental Quality

Water Quality

No. 36135 (AMD): R317-11. Certification Required to Design, Inspect and Maintain Underground Wastewater Disposal Systems, or Conduct Percolation and Soil Tests for Underground Wastewater Disposal Systems

Published: 05/15/2012

Effective: 06/27/2012

No. 35903 (NEW): R317-801. Utah Sewer Management Program (USMP)

Published: 03/15/2012

Effective: 06/21/2012

Governor

Criminal and Juvenile Justice (State Commission on)

No. 36141 (AMD): R356-1. Procedures for the Calculation and Distribution of Funds to Reimburse County Correctional Facilities Housing State Probationary Inmates or State Parole Inmates

Published: 05/15/2012

Effective: 07/01/2012

Economic Development, Pete Suazo Utah Athletic Commission

No. 36130 (AMD): R359-1-506. Drug Tests
 Published: 05/15/2012
 Effective: 06/30/2012

Health

Health Care Financing, Coverage and Reimbursement Policy
 No. 36102 (AMD): R414-1-29. Provider-Preventable Conditions
 Published: 05/15/2012
 Effective: 07/01/2012

No. 36107 (AMD): R414-2A. Inpatient Hospital Services
 Published: 05/15/2012
 Effective: 07/01/2012

No. 36106 (AMD): R414-9-5. Alternative Payment Method
 Published: 05/15/2012
 Effective: 07/01/2012

No. 36105 (AMD): R414-49-3. Client Eligibility Requirements
 Published: 05/15/2012
 Effective: 07/01/2012

No. 36103 (AMD): R414-50. Dental, Oral and Maxillofacial Surgeons
 Published: 05/15/2012
 Effective: 07/01/2012

No. 36108 (AMD): R414-401-3. Assessment
 Published: 05/15/2012
 Effective: 07/01/2012

No. 36101 (AMD): R414-506. Hospital Provider Assessments
 Published: 05/15/2012
 Effective: 07/01/2012

Center for Health Data, Health Care Statistics
 No. 35869 (AMD): R428-5. Appeal and Adjudicative Proceedings
 Published: 03/01/2012
 Effective: 06/28/2012

No. 36110 (AMD): R428-12. Health Data Authority Survey of Enrollees in Health Maintenance Organizations
 Published: 05/15/2012
 Effective: 07/02/2012

No. 36111 (AMD): R428-13. Health Data Authority: Audit and Reporting of HMO Performance Measures
 Published: 05/15/2012
 Effective: 07/02/2012

Human Resource Management Administration

No. 36118 (AMD): R477-1. Definitions
 Published: 05/15/2012
 Effective: 07/02/2012

No. 36119 (AMD): R477-2. Administration
 Published: 05/15/2012
 Effective: 07/02/2012

No. 36120 (AMD): R477-3. Classification
 Published: 05/15/2012
 Effective: 07/02/2012

No. 36121 (AMD): R477-4. Filling Positions
 Published: 05/15/2012
 Effective: 07/02/2012

No. 36123 (AMD): R477-7. Leave
 Published: 05/15/2012
 Effective: 07/02/2012

No. 36124 (AMD): R477-8. Working Conditions
 Published: 05/15/2012
 Effective: 07/02/2012

No. 36125 (AMD): R477-9. Employee Conduct
 Published: 05/15/2012
 Effective: 07/02/2012

No. 36126 (AMD): R477-11. Discipline
 Published: 05/15/2012
 Effective: 07/02/2012

No. 36127 (AMD): R477-13. Volunteer Programs
 Published: 05/15/2012
 Effective: 07/02/2012

Public Service Commission

Administration
 No. 36029 (AMD): R746-343-4. Approval of an Application
 Published: 05/01/2012
 Effective: 06/20/2012

Workforce Services

Employment Development
 No. 35993 (AMD): R986-900-902. Options and Waivers
 Published: 04/15/2012
 Effective: 07/01/2012

Unemployment Insurance

No. 36134 (AMD): R994-405-104. Quit to Accompany, Follow or Join a Spouse
 Published: 05/15/2012
 Effective: 07/01/2012

**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 July 02, 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>Debt Collection</u>					
R21-1	Transfer of Collection Responsibility of State Agencies	36420	5YR	06/28/2012	Not Printed
R21-2	Office of State Debt Collection Administrative Procedures	36421	5YR	06/28/2012	Not Printed
R21-3	Debt Collection Through Administrative Offset	36422	5YR	06/28/2012	Not Printed
<u>Facilities Construction and Management</u>					
R23-1	Procurement of Construction	36145	5YR	05/03/2012	2012-11/177
R23-19	Facility Use Rules	36146	5YR	05/03/2012	2012-11/177
R23-20	Free Speech Activities	36148	5YR	05/03/2012	2012-11/178
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	36112	AMD	07/01/2012	2012-10/4
R25-14	Payment of Attorneys Fees in Death Penalty Cases	35663	5YR	01/12/2012	2012-3/105
R25-20	Indigent Defense Funds Board, Procedures for Electronic Meetings	35975	NEW	05/22/2012	2012-8/5
<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
R27-7	Safety and Loss Prevention of State Vehicles	36024	AMD	06/28/2012	2012-9/4
R27-8	State Vehicle Maintenance Program	35621	5YR	01/05/2012	2012-3/107
R27-9	Dispensing Compressed Natural Gas to the Public	35727	NEW	03/26/2012	2012-4/6
<u>Purchasing and General Services</u>					
R33-1	Utah State Procurement Rules Definitions	35664	AMD	03/30/2012	2012-3/4
R33-1	Utah State Procurement Rules Definitions	36423	5YR	07/02/2012	Not Printed
R33-2	Procurement Organization	36424	5YR	07/02/2012	Not Printed
R33-3	Source Selection and Contract Formation	35613	AMD	03/30/2012	2012-2/6
R33-3	Source Selection and Contract Formation	36425	5YR	07/02/2012	Not Printed
R33-3-7	Types of Contracts	35667	AMD	03/30/2012	2012-3/6
R33-4	Specifications	35665	AMD	03/30/2012	2012-3/10

R33-4	Specifications	36426	5YR	07/02/2012	Not Printed
R33-5	Construction and Architect-Engineer Selection	36428	5YR	07/02/2012	Not Printed
R33-6-101	Revisions to Contract Clauses	35666	AMD	03/30/2012	2012-3/12
R33-8	Property Management	36430	5YR	07/02/2012	Not Printed

Risk Management

R37-1	Risk Management General Rules	36286	5YR	05/30/2012	2012-12/81
R37-2	Risk Management State Workers' Compensation Insurance Administration	36287	5YR	05/30/2012	2012-12/81
R37-3	Risk Management Adjudicative Proceedings	36288	5YR	05/30/2012	2012-12/82
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	36289	5YR	05/30/2012	2012-12/83
R37-4	Adjusted Utah Governmental Immunity Act Limitations on Judgments	35844	AMD	05/31/2012	2012-5/4

AGRICULTURE AND FOOD

Administration

R51-2	Administrative Procedures for Informal Proceedings Before the Utah Department of Agriculture and Food	35614	5YR	01/04/2012	2012-3/107
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Animal Industry

R58-1	Admission and Inspection of Livestock, Poultry, and Other Animals	35691	5YR	01/18/2012	2012-4/59
R58-3	Brucellosis Vaccination Requirements	36143	EMR	05/08/2012	2012-11/167
R58-6	Poultry	35692	5YR	01/18/2012	2012-4/59
R58-11	Slaughter of Livestock	35866	AMD	05/15/2012	2012-5/5
R58-11	Slaughter of Livestock and Poultry	36144	NSC	05/30/2012	Not Printed
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

Plant Industry

R68-19	Compliance Procedures	35697	5YR	01/18/2012	2012-4/62
R68-21	Standard of Identity for Honey	35566	REP	03/07/2012	2012-2/16

Regulatory Services

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
R70-530	Food Protection	35920	5YR	03/07/2012	2012-7/63
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

Administration

R81-1-6	Violation Schedule	35588	AMD	03/01/2012	2012-2/20
R81-4A-2	Application	35943	AMD	05/22/2012	2012-7/5
R81-4B-2	Application	35944	AMD	05/22/2012	2012-7/6
R81-4C-2	Application	35945	AMD	05/22/2012	2012-7/8
R81-4D-2	Application	35946	AMD	05/22/2012	2012-7/9
R81-4E-2	Application	35947	AMD	05/22/2012	2012-7/11
R81-4F-2	Application	35948	AMD	05/22/2012	2012-7/12
R81-4F-7	Sale and Purchase of Alcoholic Beverages	36113	AMD	07/01/2012	2012-10/9
R81-4F-13	Agreement for Alcoholic Beverage Service	36115	AMD	07/01/2012	2012-10/10
R81-5-2	Application	35949	AMD	05/22/2012	2012-7/13
R81-6-1	Application	35950	AMD	05/22/2012	2012-7/15
R81-7	Single Event Permits	36114	AMD	07/01/2012	2012-10/11
R81-8-1	Application	35951	AMD	05/22/2012	2012-7/16
R81-9-1	Application	35952	AMD	05/22/2012	2012-7/17

RULES INDEX

R81-10A-3	Application	35953	AMD	05/22/2012	2012-7/19
R81-10B	Temporary Special Event Beer Permits	36116	AMD	07/01/2012	2012-10/14
R81-10C-2	Application	35954	AMD	05/22/2012	2012-7/20
R81-10D-2	Application	35955	AMD	05/22/2012	2012-7/21
R81-11-1	Application	35956	AMD	05/22/2012	2012-7/23
R81-12-1	Application	35957	AMD	05/22/2012	2012-7/24

ATTORNEY GENERAL

Administration

R105-1	Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services	35904	NEW	04/24/2012	2012-6/6
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CAPITOL PRESERVATION BOARD (STATE)

Administration

R131-3	Use of Magnetometers on Capitol Grounds	35899	EXT	02/29/2012	2012-6/43
R131-3	Use of Magnetometers on Capitol Hill	36359	5YR	06/13/2012	2012-13/97
R131-9	State Capitol Preservation Board Art Program and Policy	35686	R&R	03/09/2012	2012-3/13
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

Administration

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	2012-6/35
R151-4-306	Motion to Recuse or Disqualify a Board or Commission Member	36104	AMD	06/21/2012	2012-10/16
R151-35	Powersport Vehicle Franchise Act Rule	36329	5YR	06/05/2012	2012-13/97
<u>Consumer Protection</u>					
R152-6	Utah Administrative Procedures Act Rules	35974	5YR	03/26/2012	2012-8/71
R152-15	Business Opportunity Disclosure Act Rules	35965	5YR	03/22/2012	2012-8/71
R152-20	New Motor Vehicle Warranties	35967	5YR	03/22/2012	2012-8/72
R152-22	Charitable Solicitations Act	35970	5YR	03/22/2012	2012-8/72
R152-23	Utah Health Spa Services	35971	5YR	03/22/2012	2012-8/73
R152-34	Postsecondary Proprietary School Act Rules	36360	5YR	06/14/2012	2012-13/98
R152-42	Uniform Debt-Management Services Act Rules	35972	5YR	03/22/2012	2012-8/73
<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
R156-1	General Rule of the Division of Occupational and Professional Licensing	36077	AMD	06/07/2012	2012-9/8
R156-9	Funeral Service Licensing Act Rule	36117	AMD	06/21/2012	2012-10/17
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	2012-6/35
R156-20a	Environmental Health Scientist Act Rule	35430	AMD	01/10/2012	2011-23/10
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rule	36090	AMD	06/21/2012	2012-10/19
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rule	36405	5YR	06/25/2012	Not Printed
R156-37	Utah Controlled Substances Act Rule	35892	5YR	02/21/2012	2012-6/36

RULES INDEX

R156-40a	Athletic Trainer Licensing Act Rule	36089	AMD	06/28/2012	2012-10/22
R156-47b	Massage Therapy Practice Act Rule	36132	5YR	05/01/2012	2012-10/87
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
R156-55d	Burglar Alarm Licensing Rule	36191	NSC	05/30/2012	Not Printed
R156-56	Building Inspector and Factory Built Housing Licensing Act Rule	35735	5YR	01/31/2012	2012-4/62
R156-63b-102	Definitions	36192	NSC	05/30/2012	Not Printed
R156-64	Deception Detection Examiners Licensing Act Rule	35736	5YR	01/31/2012	2012-4/64
R156-67-503	Administrative Penalties	35389	AMD	03/09/2012	2011-22/14
R156-67-503	Administrative Penalties	35389	CPR	03/09/2012	2012-3/86
R156-68-503	Administrative Penalties	35388	AMD	03/09/2012	2011-22/19
R156-68-503	Administrative Penalties	35388	CPR	03/09/2012	2012-3/90
R156-76	Professional Geologist Licensing Act Rule	35894	5YR	02/21/2012	2012-6/37
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>Real Estate</u>					
R162-2c	Utah Residential Mortgage Practices and Licensing Rules	36079	AMD	06/07/2012	2012-9/12
R162-2e-402	Administrative Proceedings	35915	AMD	05/23/2012	2012-7/25
<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
<u>History</u>					
R212-1	Adjudicative Proceedings	36299	5YR	05/31/2012	2012-12/83
R212-12	Computerized Record of Cemeteries, Burial Locations and Plots, and Granting Matching Funds	36301	5YR	05/31/2012	2012-12/84
R212-12	Computerized Record of Cemeteries, Burials Location and Plots, and Granting Matching Funds	36305	NSC	06/29/2012	Not Printed
<u>Home Energy Assistance Target (HEAT)</u>					
R195-1	Energy Assistance: General Provisions	35403	AMD	03/26/2012	2011-23/12
R195-2	Energy Assistance Programs Standards	36293	EXT	05/31/2012	2012-12/95
R195-3	Energy Assistance Income Standards, Income Eligibility, and Payment Determination	36294	EXT	05/31/2012	2012-12/95
R195-3-3	Unearned Income	35405	AMD	03/26/2012	2011-23/16
R195-4	Energy Assistance: Asset Standards	36295	EXT	05/31/2012	2012-12/95
R195-5	Energy Assistance: Program Benefits	35406	AMD	03/26/2012	2011-23/17
R195-5	Energy Assistance: Program Benefits	36296	EXT	05/31/2012	2012-12/96
R195-6	Energy Assistance: Eligibility Determination	35407	AMD	03/26/2012	2011-23/18
R195-6	Energy Assistance: Eligibility Determination	36297	EXT	05/31/2012	2012-12/96
R195-7	Energy Assistance: Records and Benefit Management	35408	AMD	03/26/2012	2011-23/19
R195-7	Energy Assistance: Records and Benefit Management	36298	EXT	05/31/2012	2012-12/96
R195-8	Energy Assistance: Special State Programs	35409	AMD	03/26/2012	2011-23/20
R195-8	Energy Assistance: Special State Programs	36302	EXT	05/31/2012	2012-12/96
<u>Library</u>					
R223-1	Adjudicative Procedures	36328	5YR	06/05/2012	2012-13/98

CORRECTIONS

Administration

R251-106	Media Relations	35760	EXD	01/18/2012	2012-4/123
R251-106	Media Relations	35767	EMR	02/01/2012	2012-4/45
R251-106	Media Relations	35805	NEW	04/09/2012	2012-5/11
R251-107	Executions	35761	EXD	01/18/2012	2012-4/123
R251-107	Executions	35768	EMR	02/01/2012	2012-4/47
R251-107	Executions	35806	NEW	04/09/2012	2012-5/13
R251-108	Adjudicative Proceedings	35762	EXD	01/18/2012	2012-4/123
R251-108	Adjudicative Proceedings	35769	EMR	02/01/2012	2012-4/49
R251-108	Adjudicative Proceedings	35807	NEW	04/09/2012	2012-5/15
R251-305	Visiting at Community Correctional Centers	35754	EXT	01/31/2012	2012-4/121
R251-305	Visiting at Community Correctional Centers	36039	5YR	04/06/2012	2012-9/77
R251-306	Sponsors in Community Correctional Centers	35755	EXT	01/31/2012	2012-4/121
R251-306	Sponsors in Community Correctional Centers	36040	5YR	04/06/2012	2012-9/77
R251-401	Supervision Fees	36312	5YR	06/05/2012	2012-13/99
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
R251-703	Vehicle Direction Station	35808	NEW	04/09/2012	2012-5/17
R251-704	North Gate	35764	EXD	01/18/2012	2012-4/124
R251-704	North Gate	35771	EMR	02/01/2012	2012-4/52

R251-704	North Gate	35809	NEW	04/09/2012	2012-5/18
R251-705	Inmate Mail Procedures	35765	EXD	01/18/2012	2012-4/124
R251-705	Inmate Mail Procedures	35772	EMR	02/01/2012	2012-4/53
R251-705	Inmate Mail Procedures	35810	NEW	04/09/2012	2012-5/19
R251-706	Inmate Visiting	35766	EXD	01/18/2012	2012-4/124
R251-706	Inmate Visiting	35773	EMR	02/01/2012	2012-4/56
R251-706	Inmate Visiting	35811	NEW	04/09/2012	2012-5/22
R251-707	Legal Access	35756	EXT	01/31/2012	2012-4/121
R251-707	Legal Access	36041	5YR	04/06/2012	2012-9/78
R251-710	Search	35757	EXT	01/31/2012	2012-4/121
R251-710	Search	36042	5YR	04/06/2012	2012-9/78

EDUCATION

Administration

R277-100	Rulemaking Policy	35449	AMD	01/10/2012	2011-23/21
R277-102	Adjudicative Proceedings	35534	R&R	02/07/2012	2012-1/8
R277-102	Adjudicative Proceedings	35856	NSC	02/29/2012	Not Printed
R277-104	USOE ADA Complaint Procedure	36067	R&R	06/07/2012	2012-9/31
R277-107	Educational Services Outside of Educator's Regular Employment	35674	AMD	03/12/2012	2012-3/19
R277-107-6	Public Education Employees	35932	AMD	05/08/2012	2012-7/27
R277-419-5	Student Membership	35905	AMD	05/08/2012	2012-7/28
R277-419-7	Student Identification and Tracking	36069	AMD	06/07/2012	2012-9/34
R277-420	Aiding Financially Distressed School Districts	36070	AMD	06/07/2012	2012-9/35
R277-425	Budgeting, Accounting, and Auditing for Utah School Districts	35535	AMD	02/07/2012	2012-1/11
R277-426	Definition of Private and Non-Profit Schools for Federal Program Services	35536	AMD	02/07/2012	2012-1/13
R277-454	Construction Management of School Building Projects	35933	AMD	05/08/2012	2012-7/30
R277-467	Distribution of Funds Appropriated for Library Books and Electronic Resources	36365	5YR	06/15/2012	2012-13/99
R277-470	Charter Schools	35451	AMD	01/10/2012	2011-23/28
R277-476	Incentives for Elementary Reading Program	35675	REP	03/12/2012	2012-3/22
R277-479	Charter School Special Education Student Funding Formula	35935	NEW	05/08/2012	2012-7/31
R277-479-1	Definitions	36160	NSC	05/30/2012	Not Printed
R277-480-1	Definitions	35582	NSC	01/31/2012	Not Printed
R277-480-1	Definitions	35817	NSC	02/29/2012	Not Printed
R277-481	Charter School Oversight, Monitoring and Appeals	35452	NEW	01/10/2012	2011-23/34
R277-482	Charter School Timelines and Approval Processes	35453	NEW	01/10/2012	2011-23/38

RULES INDEX

R277-483-4	Identification of Persistently Dangerous Schools	36071	AMD	06/07/2012	2012-9/36
R277-484-3	Deadlines for Data Submission	35676	AMD	03/12/2012	2012-3/23
R277-485	Loss of Enrollment	35936	AMD	05/08/2012	2012-7/33
R277-486	Professional Staff Cost Program	36072	AMD	06/07/2012	2012-9/37
R277-488	Critical Languages Program	36369	5YR	06/15/2012	2012-13/100
R277-489	Optional Extended-Day Kindergarten - Responsibilities, Timelines, and Funding	36372	5YR	06/15/2012	2012-13/100
R277-497	School Grading System	35875	NEW	04/10/2012	2012-5/24
R277-503	Licensing Routes	35677	AMD	03/12/2012	2012-3/24
R277-503	Licensing Routes	35939	5YR	03/15/2012	2012-7/63
R277-503	Licensing Routes	36073	AMD	06/07/2012	2012-9/39
R277-507	Driver Education Endorsement	35940	5YR	03/15/2012	2012-7/64
R277-511	Highly Qualified Teacher Grants	35671	5YR	01/17/2012	2012-3/113
R277-511	Highly Qualified Teacher Grants	35678	REP	03/12/2012	2012-3/28
R277-512	Online Licensure	35673	5YR	01/17/2012	2012-3/114
R277-513	Dual Certification	35679	REP	03/12/2012	2012-3/30
R277-519	Educator Inservice Procedures and Credit	35941	5YR	03/15/2012	2012-7/64
R277-520	Appropriate Licensing and Assignment of Teachers	35680	AMD	03/12/2012	2012-3/32
R277-520-6	Eminence	36074	AMD	06/07/2012	2012-9/43
R277-521	Professional Specialist Licensing	35876	REP	04/10/2012	2012-5/26
R277-600-7	Alternative Transportation	35877	AMD	04/10/2012	2012-5/28
R277-608	Prohibition of Corporal Punishment in Utah's Public Schools	35454	AMD	01/10/2012	2011-23/41
R277-612	Foreign Exchange Students	36153	5YR	05/07/2012	2012-11/179
R277-615	Standards and Procedures for Student Searches	35878	NEW	04/10/2012	2012-5/29
R277-700	The Elementary and Secondary School Core Curriculum	36075	AMD	06/07/2012	2012-9/45
R277-703	Centennial Scholarship for Early Graduation	35537	AMD	02/07/2012	2012-1/14
R277-705	Secondary School Completion and Diplomas	35818	5YR	02/02/2012	2012-5/103
R277-714	Dissemination of Information About Juvenile Offenders	35681	AMD	03/12/2012	2012-3/36
R277-718	Utah Career Teaching Scholarship Program	35682	REP	03/12/2012	2012-3/37
R277-720	Child Nutrition Programs	35937	AMD	05/08/2012	2012-7/34
R277-730	Alternative High School Curriculum	35538	REP	02/07/2012	2012-1/16
R277-733	Adult Education Programs	36076	AMD	06/07/2012	2012-9/49
R277-751	Special Education Extended School Year	35539	AMD	02/07/2012	2012-1/18
R277-915	Work-based Learning Programs for Interns	35819	5YR	02/02/2012	2012-5/104
R277-915	Work-based Learning Programs for Interns	35683	AMD	03/12/2012	2012-3/39
R277-916	Technology, Life, and Careers, and Work-Based Learning Programs	35938	AMD	05/08/2012	2012-7/35

Rehabilitation

R280-201	USOR ADA Complaint Procedure	36068	REP	06/07/2012	2012-9/56
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ENVIRONMENTAL QUALITY

Administration

R305-1	Records Access and Management	35928	5YR	03/13/2012	2012-7/65
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Air Quality

R307-101-3	Version of Code of Federal Regulations Incorporated by Reference	35615	AMD	04/05/2012	2012-3/40
R307-105	General Requirements: Emergency Controls	36333	5YR	06/06/2012	2012-13/101
R307-110	General Requirements: State Implementation Plan	35774	5YR	02/01/2012	2012-4/65
R307-120	General Requirements: Tax Exemption for Air Pollution Control Equipment	35775	5YR	02/01/2012	2012-4/81
R307-121	General Requirements: Clean Air and Efficient Vehicle Tax Credit	35716	5YR	01/23/2012	2012-4/81
R307-121-7	Proof of Purchase to Demonstrate Eligibility for Special Mobile Equipment Converted to Clean Fuels	35718	NSC	02/09/2012	Not Printed
R307-130	General Penalty Policy	35776	5YR	02/01/2012	2012-4/82

R307-135	Enforcement Response Policy for Asbestos Hazard Emergency Response Act	35777	5YR	02/01/2012	2012-4/82
R307-210-1	Standards of Performance for New Stationary Sources (NSPS)	35496	AMD	03/07/2012	2011-24/7
R307-214	National Emission Standards for Hazardous Air Pollutants	35922	AMD	06/07/2012	2012-7/42
R307-220-3	Section II, Hospital, Medical, Infectious Waste Incinerators	35531	AMD	03/07/2012	2012-1/21
R307-222	Emission Standards: Existing Incinerators for Hospital, Medical, Infectious Waste	35530	AMD	03/07/2012	2012-1/22
R307-222-1	Purpose and Applicability	36026	NSC	04/25/2012	Not Printed
R307-301	Utah and Weber Counties: Oxygenated Gasoline Program As a Contingency Measure	35778	5YR	02/01/2012	2012-4/83
R307-320	Ozone Maintenance Areas and Ogden City: Employer-Based Trip Reduction Program	35779	5YR	02/01/2012	2012-4/84
R307-325	Ozone Nonattainment and Maintenance Areas: General Requirements	35780	5YR	02/01/2012	2012-4/84
R307-326	Ozone Nonattainment and Maintenance Areas: Control of Hydrocarbon Emissions in Petroleum Refineries	35781	5YR	02/01/2012	2012-4/85
R307-327	Ozone Nonattainment and Maintenance Areas: Petroleum Liquid Storage	35782	5YR	02/01/2012	2012-4/86
R307-328	Gasoline Transfer and Storage	35783	5YR	02/01/2012	2012-4/86
R307-335	Ozone Nonattainment and Maintenance Areas: Degreasing and Solvent Cleaning Operations	35784	5YR	02/01/2012	2012-4/87
R307-340	Ozone Nonattainment and Maintenance Areas: Surface Coating Processes	35785	5YR	02/01/2012	2012-4/87
R307-341	Ozone Nonattainment and Maintenance Areas: Cutback Asphalt	35786	5YR	02/01/2012	2012-4/88
R307-343	Ozone Nonattainment and Maintenance Areas: Emissions Standards for Wood Furniture Manufacturing Operations	35787	5YR	02/01/2012	2012-4/89
R307-401	Permit: New and Modified Sources	36334	5YR	06/06/2012	2012-13/101
R307-401-11	Replacement-in-Kind Equipment	36154	NSC	05/30/2012	Not Printed
R307-403	Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas	36335	5YR	06/06/2012	2012-13/102
R307-405	Permits: Major Sources in Attainment or Unclassified Areas (PSD)	35413	AMD	02/02/2012	2011-23/42
R307-405-3	Definitions	35872	NSC	02/29/2012	Not Printed
R307-406	Visibility	36336	5YR	06/06/2012	2012-13/102
R307-410	Permits: Emissions Impact Analysis	36337	5YR	06/06/2012	2012-13/103
R307-414	Permits: Fees for Approval Orders	36338	5YR	06/06/2012	2012-13/104
R307-415	Permits: Operating Permit Requirements	36339	5YR	06/06/2012	2012-13/104
R307-415-2	Authority	35529	AMD	03/07/2012	2012-1/25
R307-417	Permits: Acid Rain Sources	36340	5YR	06/06/2012	2012-13/105
R307-420	Permits: Ozone Offset Requirements in Davis and Salt Lake Counties	36341	5YR	06/06/2012	2012-13/106
R307-421	Permits: PM10 Offset Requirements in Salt Lake County and Utah County	36342	5YR	06/06/2012	2012-13/106
R307-424	Permits: Mercury Requirements for Electric Generating Units	36033	5YR	04/05/2012	2012-9/79
R307-840	Lead-Based Paint Program Purpose, Applicability, and Definitions	35857	AMD	05/03/2012	2012-5/33
R307-840-1	Purpose and Applicability	36161	NSC	05/30/2012	Not Printed
R307-841	Residential Property and Child-Occupied Facility Renovation	35858	AMD	05/03/2012	2012-5/39
R307-841	Residential Property and Child-Occupied Facility Renovation	36162	NSC	05/30/2012	Not Printed
R307-842	Lead-Based Paint Activities	35859	AMD	05/03/2012	2012-5/47
R307-842	Lead-Based Paint Activities	36163	NSC	05/30/2012	Not Printed
<u>Environmental Response and Remediation</u>					
R311-200	Underground Storage Tanks: Definitions	35668	AMD	03/09/2012	2012-3/42
R311-200	Underground Storage Tanks: Definitions	36057	5YR	04/10/2012	2012-9/82
R311-201	Underground Storage Tanks: Certification Programs and UST Operator Training	35447	AMD	01/13/2012	2011-23/45

RULES INDEX

R311-201	Underground Storage Tanks: Certification Programs and UST Operator Training	36045	5YR	04/10/2012	2012-9/82
R311-202	Underground Storage Tank Technical Standards	36046	5YR	04/10/2012	2012-9/84
R311-203	Underground Storage Tanks: Technical Standards	36047	5YR	04/10/2012	2012-9/84
R311-204	Underground Storage Tanks: Closure and Remediation	36048	5YR	04/10/2012	2012-9/85
R311-205	Underground Storage Tanks: Site Assessment Protocol	36049	5YR	04/10/2012	2012-9/86
R311-206	Underground Storage Tanks: Financial Assurance Mechanisms	36050	5YR	04/10/2012	2012-9/86
R311-207	Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks	36051	5YR	04/10/2012	2012-9/87
R311-208	Underground Storage Tank Penalty Guidance	36052	5YR	04/10/2012	2012-9/88
R311-209	Petroleum Storage Tank Cleanup Fund and State Cleanup Appropriation	36053	5YR	04/10/2012	2012-9/89
R311-210	Administrative Procedures	36054	5YR	04/10/2012	2012-9/89
R311-211	Corrective Action Cleanup Standards Policy - UST and CERCLA Sites	36055	5YR	04/10/2012	2012-9/90
R311-212	Administration of the Petroleum Storage Tank Loan Fund	36056	5YR	04/10/2012	2012-9/90
R311-401	Utah Hazardous Substances Priority List	36030	5YR	04/04/2012	2012-9/91
<u>Radiation Control</u>					
R313-17	Administrative Procedures	35416	AMD	03/19/2012	2011-23/50
R313-22-75	Special Requirements for a Specific License to Manufacture, Assemble, Repair, or Distribute Commodities, Products, or Devices Which Contain Radioactive Material	35417	AMD	01/16/2012	2011-23/51
R313-24	Uranium Mills and Source Material Mill Tailings Disposal Facility Requirements	36277	5YR	05/24/2012	2012-12/84
R313-35	Requirements for X-Ray Equipment Used for Non-Medical Applications	35906	5YR	03/02/2012	2012-7/65
R313-36	Special Requirements for Industrial Radiographic Operations	35418	AMD	01/16/2012	2011-23/54
<u>Solid and Hazardous Waste</u>					
R315-1	Utah Hazardous Waste Definitions and References	35349	AMD	01/13/2012	2011-21/27
R315-2	General Requirements - Identification and Listing of Hazardous Waste	35350	AMD	01/13/2012	2011-21/30
R315-3	Application and Permit Procedures for Hazardous Waste Treatment, Storage, and Disposal Facilities	35351	AMD	01/13/2012	2011-21/38
R315-5	Hazardous Waste Generator Requirements	35352	AMD	01/13/2012	2011-21/53
R315-6	Hazardous Waste Transporter Requirements	35353	AMD	01/13/2012	2011-21/57
R315-7	Interim Status Requirements for Hazardous Waste Treatment, Storage, and Disposal Facilities	35354	AMD	01/13/2012	2011-21/60
R315-8	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	35355	AMD	01/13/2012	2011-21/67
R315-13	Land Disposal Restrictions	35356	AMD	01/13/2012	2011-21/75
R315-14-8	Military Munitions	35357	AMD	01/13/2012	2011-21/76
R315-15	Standards for the Management of Used Oil	36246	5YR	05/17/2012	2012-12/85
R315-16	Standards for Universal Waste Management	35867	AMD	04/17/2012	2012-5/62
R315-50-9	Basis for Listing Hazardous Wastes	35358	AMD	01/13/2012	2011-21/77
R315-304	Industrial Solid Waste Landfill Requirements	35988	5YR	03/29/2012	2012-8/74
R315-312-1	Recycling and Composting Facility Standards	35432	AMD	01/13/2012	2011-23/59
R315-315-5	Special Waste Requirements	35433	AMD	01/13/2012	2011-23/60
R315-320-2	Definitions	35434	AMD	01/13/2012	2011-23/61
<u>Water Quality</u>					
R317-2	Standards of Quality for Waters of the State	35359	AMD	04/01/2012	2011-21/78
R317-2	Standards of Quality for Waters of the State	35359	CPR	04/01/2012	2012-4/40

R317-3	Design Requirements for Wastewater Collection, Treatment and Disposal Systems	36190	5YR	05/15/2012	2012-11/179
R317-5	Large Underground Wastewater Disposal Systems	36388	5YR	06/18/2012	Not Printed
R317-8	Utah Pollutant Discharge Elimination System (UPDES)	35238	AMD	01/25/2012	2011-19/31
R317-11	Certification Required to Design, Inspect and Maintain Underground Wastewater Disposal Systems, or Conduct Percolation and Soil Tests for Underground Wastewater Disposal Systems	36135	AMD	06/27/2012	2012-10/23
R317-12	General Requirements: Tax Exemption for Water Pollution Control Equipment	35726	5YR	01/25/2012	2012-4/89
R317-550	Rules for Waste Disposal By Liquid Scavenger Operations	36389	5YR	06/18/2012	Not Printed
R317-560	Rules for the Design, Construction, and Maintenance of Vault Privies and Earthen Pit Privies	36387	5YR	06/18/2012	Not Printed
R317-801	Utah Sewer Management Program (USMP)	35903	NEW	06/21/2012	2012-6/12
EXAMINERS (BOARD OF)					
<u>Administration</u>					
R320-101	Procedures for Electronic Meetings	35497	NEW	02/10/2012	2011-24/10
FINANCIAL INSTITUTIONS					
<u>Administration</u>					
R331-7	Rule Governing Leasing Transactions by Depository Institutions Subject to the Jurisdiction of the Department of Financial Institutions	35684	AMD	03/09/2012	2012-3/46
R331-22	Rule Governing Reimbursement of Costs of Financial Institutions for Production of Records	36021	EXT	04/02/2012	2012-8/91
<u>Credit Unions</u>					
R337-10	Rule Designating Applicable Federal Law for Credit Unions Subject to the Jurisdiction of the Department of Financial Institutions	35700	5YR	01/20/2012	2012-4/90
<u>Nondepository Lenders</u>					
R343-1	Rule Governing Form of Disclosures For Title Lenders, Who Are Under the Jurisdiction of the Department of Financial Institutions	35628	5YR	01/06/2012	2012-3/114
GOVERNOR					
<u>Criminal and Juvenile Justice (State Commission on)</u>					
R356-1	Procedures for the Calculation and Distribution of Funds to Reimburse County Correctional Facilities Housing State Probationary Inmates or State Parole Inmates	36141	AMD	07/01/2012	2012-10/27
<u>Economic Development</u>					
R357-1	Rural Fast Track Program	36066	5YR	04/13/2012	2012-9/92
<u>Economic Development, Pete Suazo Utah Athletic Commission</u>					
R359-1	Pete Suazo Utah Athletic Commission Act Rule	36002	5YR	03/30/2012	2012-8/74
R359-1-506	Drug Tests	36130	AMD	06/30/2012	2012-10/29
<u>Planning and Budget, Inspector General of Medicaid Services (Office of)</u>					
R367-1	Office of Inspector General of Medicaid Services	35879	NEW	04/23/2012	2012-5/74
R367-1-7	Utilization Review and Medicaid Services Provided under the Utah Medicaid Program	35973	NSC	04/23/2012	Not Printed
R367-1-15	Administrative Hearings	35958	AMD	05/23/2012	2012-8/6

RULES INDEX

HEALTH

Administration

R380-1	Petitions for Department Declaratory Orders	36096	5YR	04/26/2012	2012-10/88
R380-5	Petitions for Declaratory Orders on Orders Issued by Committees	36097	5YR	04/26/2012	2012-10/89
R380-10	Informal Adjudicative Proceedings	36098	5YR	04/26/2012	2012-10/89
R380-20	Government Records Access and Management	36025	5YR	04/03/2012	2012-9/92
R380-60	Local Health Department Emergency Protocols	35571	NEW	03/07/2012	2012-2/31
R380-100	Americans with Disabilities Act Grievance Procedures	36099	5YR	04/26/2012	2012-10/90

Center for Health Data, Health Care Statistics

R428-2	Health Data Authority Standards for Health Data	35868	AMD	04/26/2012	2012-5/80
R428-5	Appeal and Adjudicative Proceedings	35869	AMD	06/28/2012	2012-5/83
R428-5	Appeal and Adjudicative Proceedings	36027	NSC	06/28/2012	Not Printed
R428-10	Health Data Authority Hospital Inpatient Reporting Rule	35870	AMD	05/31/2012	2012-5/85
R428-12	Health Data Authority Survey of Enrollees in Health Maintenance Organizations	36110	AMD	07/02/2012	2012-10/43
R428-13	Health Data Authority: Audit and Reporting of HMO Performance Measures	36111	AMD	07/02/2012	2012-10/44
R428-15	Health Data Authority Health Insurance Claims Reporting	35616	AMD	03/16/2012	2012-3/51
R428-20	Health Data Authority Request for Health Data Information	35492	REP	01/24/2012	2011-24/20

Children's Health Insurance Program

R382-10	Eligibility	35788	AMD	04/01/2012	2012-4/7
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Disease Control and Prevention, Environmental Services

R392-100	Food Service Sanitation	35715	5YR	01/20/2012	2012-4/91
R392-100	Food Service Sanitation	35445	AMD	01/26/2012	2011-23/62
R392-200	Design, Construction, Operation, Sanitation, and Safety of Schools	35710	5YR	01/20/2012	2012-4/91
R392-300	Recreation Camp Sanitation	35709	5YR	01/20/2012	2012-4/92
R392-301	Recreational Vehicle Park Sanitation	35708	5YR	01/20/2012	2012-4/93
R392-302	Design, Construction and Operation of Public Pools	35707	5YR	01/20/2012	2012-4/93
R392-400	Temporary Mass Gatherings Sanitation	35711	5YR	01/20/2012	2012-4/94
R392-401	Roadway Rest Stop Sanitation	35714	5YR	01/20/2012	2012-4/94
R392-402	Mobile Home Park Sanitation	35712	5YR	01/20/2012	2012-4/95
R392-501	Labor Camp Sanitation	35713	5YR	01/20/2012	2012-4/96
R392-502	Hotel, Motel and Resort Sanitation	36017	5YR	04/02/2012	2012-8/75
R392-510	Utah Indoor Clean Air Act	36019	5YR	04/02/2012	2012-8/75

Disease Control and Prevention, Laboratory Improvement

R444-11	Rules for Approval to Perform Blood Alcohol Examinations	35701	5YR	01/20/2012	2012-4/99
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Disease Control and Prevention, Laboratory Services

R438-12	Rule for Law Enforcement Blood Draws	35706	5YR	01/20/2012	2012-4/98
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Family Health and Preparedness, Child Care Licensing

R430-1	General Licensing, Certificate, and Enforcement Provisions, Child Care Facilities	35581	NEW	05/01/2012	2012-2/37
R430-2	General Licensing Provisions, Child Care Facilities	35579	REP	05/01/2012	2012-2/40
R430-3	General Child Care Facility Rules Inspection and Enforcement	35580	REP	05/01/2012	2012-2/42
R430-4	General Certificate Provisions	35653	REP	05/01/2012	2012-3/57
R430-6	Background Screening	35573	AMD	05/01/2012	2012-2/46
R430-30	Adjudicative Procedure	35654	REP	05/01/2012	2012-3/61
R430-50	Residential Certificate Child Care	35574	AMD	05/01/2012	2012-2/47
R430-60	Hourly Child Care Center	35575	R&R	05/01/2012	2012-2/55
R430-70	Out of School Time Child Care Programs	35576	AMD	05/01/2012	2012-2/70

R430-90	Licensed Family Child Care	35577	AMD	05/01/2012	2012-2/77
R430-100	Child Care Centers	35578	AMD	05/01/2012	2012-2/82
<u>Family Health and Preparedness, Emergency Medical Services</u>					
R426-5	Statewide Trauma System Standards	36100	5YR	04/26/2012	2012-10/92
<u>Family Health and Preparedness, Licensing</u>					
R432-4	General Construction	35459	AMD	02/21/2012	2011-24/21
R432-4-8	Standards Compliance	35649	NSC	02/21/2012	Not Printed
R432-5	Nursing Facility Construction	35460	AMD	02/21/2012	2011-24/28
R432-6	Assisted Living Facility General Construction	35461	AMD	02/21/2012	2011-24/33
R432-7	Specialty Hospital -- Psychiatric Hospital Construction	35462	AMD	02/21/2012	2011-24/38
R432-8	Specialty Hospital - Chemical Dependency/Substance Abuse Construction	35463	AMD	02/21/2012	2011-24/40
R432-9	Specialty Hospital - Rehabilitation Construction Rule	35464	AMD	02/21/2012	2011-24/43
R432-10	Specialty Hospital -- Long-Term Acute Care Construction Rule	35465	AMD	02/21/2012	2011-24/46
R432-11	Orthopedic Hospital Construction	35466	AMD	02/21/2012	2011-24/50
R432-12	Small Health Care Facility (Four to Sixteen Beds) Construction Rule	35467	AMD	02/21/2012	2011-24/53
R432-13	Freestanding Ambulatory Surgical Center Construction Rule	35468	AMD	02/21/2012	2011-24/57
R432-14	Birthing Center Construction Rule	35469	AMD	02/21/2012	2011-24/59
R432-16	Hospice Inpatient Facility Construction	35470	AMD	02/21/2012	2011-24/61
R432-31	Life with Dignity Order	35976	5YR	03/28/2012	2012-8/76
R432-40	Long-Term Care Facility Immunizations	35977	5YR	03/28/2012	2012-8/77
R432-100	General Hospital Standards	35500	AMD	02/08/2012	2011-24/67
R432-100	General Hospital Standards	35471	AMD	02/21/2012	2011-24/65
R432-150	Nursing Care Facility	35978	5YR	03/28/2012	2012-8/77
R432-151	Mental Disease Facility	35979	5YR	03/28/2012	2012-8/78
R432-152	Mental Retardation Facility	35980	5YR	03/28/2012	2012-8/78
R432-200	Small Health Care Facility (Four to Sixteen Beds)	35981	5YR	03/28/2012	2012-8/79
R432-201	Mental Retardation Facility: Supplement "A" to the Small Health Care Facility Rule	35982	5YR	03/28/2012	2012-8/79
R432-270-6	Administrator Qualifications	35499	AMD	02/08/2012	2011-24/73
R432-300	Small Health Care Facility - Type N	35983	5YR	03/28/2012	2012-8/80
R432-650	End Stage Renal Disease Facility Rules	35472	AMD	02/21/2012	2011-24/74
R432-650	End Stage Renal Disease Facility Rules	35652	AMD	03/28/2012	2012-3/63
R432-650	End Stage Renal Disease Facility Rules	35984	5YR	03/28/2012	2012-8/80
R432-700	Home Health Agency Rule	35985	5YR	03/28/2012	2012-8/81
R432-750	Hospice Rule	35986	5YR	03/28/2012	2012-8/81
R432-950	Mammography Quality Assurance	35987	5YR	03/28/2012	2012-8/82
<u>Family Health and Preparedness, WIC Services</u>					
R406-100	Special Supplemental Nutrition Program for Women, Infants and Children	35812	5YR	02/02/2012	2012-5/104
R406-200	Program Overview	35813	5YR	02/02/2012	2012-5/105
R406-201	Outreach Program	35814	5YR	02/02/2012	2012-5/105
R406-202	Eligibility	35815	5YR	02/02/2012	2012-5/106
R406-301	Clinic Guidelines	35816	5YR	02/02/2012	2012-5/106
<u>Health Care Financing</u>					
R410-14	Administrative Hearing Procedures	35901	AMD	04/27/2012	2012-6/16
<u>Health Care Financing, Coverage and Reimbursement Policy</u>					
R414-1	Utah Medicaid Program	35907	5YR	03/02/2012	2012-7/66
R414-1-2	Definitions	35902	AMD	04/27/2012	2012-6/21
R414-1-5	Incorporations by Reference	35584	AMD	02/21/2012	2012-2/33
R414-1-5	Incorporations by Reference	35994	AMD	05/24/2012	2012-8/9
R414-1-29	Provider-Preventable Conditions	36102	AMD	07/01/2012	2012-10/33
R414-1A	Medicaid Policy for Experimental, Investigational or Unproven Medical Practices	36128	5YR	04/30/2012	2012-10/90
R414-2A	Inpatient Hospital Services	35390	AMD	01/11/2012	2011-22/30
R414-2A	Inpatient Hospital Services	36107	AMD	07/01/2012	2012-10/35

RULES INDEX

R414-7C	Alternative Remedies for Nursing Facilities	35719	5YR	01/24/2012	2012-4/96
R414-9-5	Alternative Payment Method	36106	AMD	07/01/2012	2012-10/37
R414-10	Physician Services	35720	5YR	01/24/2012	2012-4/97
R414-10A	Transplant Services Standards	35722	5YR	01/24/2012	2012-4/97
R414-14A	Hospice Care	35503	AMD	02/01/2012	2011-24/11
R414-21	Physical and Occupational Therapy	35908	5YR	03/02/2012	2012-7/66
R414-38	Personal Care Service	35921	5YR	03/07/2012	2012-7/67
R414-45	Personal Supervision by a Physician	35721	5YR	01/24/2012	2012-4/98
R414-49-3	Client Eligibility Requirements	36105	AMD	07/01/2012	2012-10/38
R414-50	Dental, Oral and Maxillofacial Surgeons	36103	AMD	07/01/2012	2012-10/39
R414-60	Medicaid Policy for Pharmacy Program	36129	5YR	04/30/2012	2012-10/91
R414-60A	Drug Utilization Review Board	36406	5YR	06/25/2012	Not Printed
R414-61-2	Incorporation by Reference	35504	AMD	01/24/2012	2011-24/18
R414-100	Medicaid Primary Care Network Services	36184	5YR	05/14/2012	2012-11/180
R414-200	Non-Traditional Medicaid Health Plan Services	36185	5YR	05/14/2012	2012-11/180
R414-303	Coverage Groups	35789	AMD	04/01/2012	2012-4/12
R414-305	Resources	35437	AMD	02/06/2012	2011-23/65
R414-307	Eligibility for Home and Community-Based Services Waivers	36085	5YR	04/17/2012	2012-10/91
R414-308	Application, Eligibility Determinations and Improper Medical Assistance	35441	AMD	02/06/2012	2011-23/70
R414-308	Application, Eligibility Determinations and Improper Medical Assistance	35790	AMD	04/01/2012	2012-4/14
R414-310	Medicaid Primary Care Network Demonstration Waiver	36309	5YR	06/04/2012	2012-13/107
R414-401-3	Assessment	36108	AMD	07/01/2012	2012-10/40
R414-401-5	Penalties and Interest	35583	AMD	02/21/2012	2012-2/36
R414-506	Hospital Provider Assessments	36101	AMD	07/01/2012	2012-10/41
R414-510	Intermediate Care Facility for Individuals with Mental Retardation Transition Program	35639	5YR	01/09/2012	2012-3/115

HUMAN RESOURCE MANAGEMENT

Administration

R477-1	Definitions	35821	5YR	02/02/2012	2012-5/107
R477-1	Definitions	36118	AMD	07/02/2012	2012-10/47
R477-2	Administration	35822	5YR	02/02/2012	2012-5/108
R477-2	Administration	36119	AMD	07/02/2012	2012-10/51
R477-3	Classification	35823	5YR	02/02/2012	2012-5/108
R477-3	Classification	36120	AMD	07/02/2012	2012-10/54
R477-4	Filling Positions	35824	5YR	02/02/2012	2012-5/109
R477-4	Filling Positions	36121	AMD	07/02/2012	2012-10/55
R477-5	Employee Status and Probation	35825	5YR	02/02/2012	2012-5/109
R477-6	Compensation	35826	5YR	02/02/2012	2012-5/110
R477-7	Leave	35827	5YR	02/02/2012	2012-5/111
R477-7	Leave	36123	AMD	07/02/2012	2012-10/63
R477-8	Working Conditions	35828	5YR	02/02/2012	2012-5/112
R477-8	Working Conditions	36124	AMD	07/02/2012	2012-10/71
R477-9	Employee Conduct	35829	5YR	02/02/2012	2012-5/112
R477-9	Employee Conduct	36125	AMD	07/02/2012	2012-10/76
R477-10	Employee Development	35830	5YR	02/03/2012	2012-5/113
R477-11	Discipline	35831	5YR	02/03/2012	2012-5/114
R477-11	Discipline	36126	AMD	07/02/2012	2012-10/79
R477-12	Separations	35832	5YR	02/03/2012	2012-5/114
R477-13	Volunteer Programs	35834	5YR	02/03/2012	2012-5/115
R477-13	Volunteer Programs	36127	AMD	07/02/2012	2012-10/81
R477-15	Workplace Harassment Prevention Policy and Procedure	35835	5YR	02/03/2012	2012-5/115

HUMAN SERVICES

Administration

R495-810	Government Records Access and Management Act	35689	5YR	01/17/2012	2012-3/115
R495-878	Americans with Disabilities Act Grievance Procedures	35717	5YR	01/23/2012	2012-4/99

Child and Family Services

R512-1	Description of Division Services, Eligibility, and Service Access	35895	5YR	02/23/2012	2012-6/38
R512-2	Title IV-B Child Welfare/Family Preservation and Support Services and Title IV-E Foster Care, Adoption, and Independent Living	35910	5YR	03/05/2012	2012-7/68
R512-31	Foster Parent Due Process	35911	5YR	03/05/2012	2012-7/68
R512-32	Children with Reportable Communicable Diseases	35912	5YR	03/05/2012	2012-7/69
R512-40	Adoptive Home Studies, Recruitment, Approval	35913	5YR	03/05/2012	2012-7/69
R512-42	Adoption by Relatives	35914	5YR	03/05/2012	2012-7/70
R512-51	Fee Collection for Criminal Background Screening for Prospective Foster and Adoptive Parents and for Employees of Other Department of Human Services Licensed Programs	36044	5YR	04/09/2012	2012-9/93
R512-60	Children's Trust Account	35931	AMD	06/07/2012	2012-7/47
R512-80	Definitions of Abuse, Neglect, and Dependency	35630	NEW	03/15/2012	2012-3/64

Juvenile Justice Services

R547-1	Residential and Non-Residential, Nonsecure Community Program Standards	36136	5YR	05/01/2012	2012-10/92
R547-3	Juvenile Jail Standards	36137	5YR	05/01/2012	2012-10/93
R547-6	Youth Parole Authority Policies and Procedures	36226	5YR	05/16/2012	2012-12/85
R547-7	Juvenile Holding Room Standards	36140	5YR	05/01/2012	2012-10/93
R547-10	Ex-Offender Policy	36227	5YR	05/16/2012	2012-12/86
R547-12	Division of Juvenile Justice Services Classification of Records	36138	5YR	05/01/2012	2012-10/94
R547-13	Guidelines for Admission to Secure Youth Detention Facilities	36139	5YR	05/01/2012	2012-10/94
R547-14	Possession of Prohibited Items in Juvenile Detention Facilities	36043	5YR	04/09/2012	2012-9/93

Public Guardian (Office of)

R549-1	Eligibility and Services Priority	35759	5YR	02/01/2012	2012-4/100
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Recovery Services

R527-3	Definitions	36346	5YR	06/12/2012	2012-13/108
R527-5	Release of Information	35631	5YR	01/06/2012	2012-3/116
R527-34	Non IV-A Services	35728	AMD	03/27/2012	2012-4/19
R527-35	Non IV-A Fee Schedule	35729	AMD	03/27/2012	2012-4/20
R527-37	Closure Criteria for Support Cases	36347	5YR	06/12/2012	2012-13/108
R527-201	Medical Support Services	35619	AMD	03/27/2012	2012-3/70
R527-253	Collection of Child Support Judgments	36348	5YR	06/12/2012	2012-13/109
R527-255	Substantial Change in Circumstances	36349	5YR	06/12/2012	2012-13/109
R527-258	Enforcing Child Support When the Obligor is an Ex-Prisoner or in a Treatment Program	36350	5YR	06/12/2012	2012-13/110
R527-330	Posting Priority of Payments Received	36351	5YR	06/12/2012	2012-13/111

Substance Abuse and Mental Health

R523-20	Division Rules of Administration	36310	5YR	06/05/2012	2012-13/107
R523-22	Utah Standards for Approval of Alcohol and Drug Educational Programs for Court-Referred DUI Offenders	36383	5YR	06/18/2012	Not Printed
R523-23	On-Premise Alcohol Training and Education Seminar Rules of Administration	36384	5YR	06/18/2012	Not Printed
R523-23-4	Provider Responsibilities	35626	AMD	03/09/2012	2012-3/66
R523-24	Off Premise Retailer (Clerk, Licensee and Manager) Alcohol Training and Education Seminar Rules of Administration	35625	AMD	03/09/2012	2012-3/67

Substance Abuse and Mental Health, State Hospital

R525-2	Patient Rights	35589	AMD	02/21/2012	2012-2/95
R525-3	Medication Treatment of Patients	35590	AMD	02/21/2012	2012-2/96
R525-5	Background Checks	35591	AMD	02/21/2012	2012-2/97
R525-6	Prohibited Items and Devices	35593	AMD	02/21/2012	2012-2/98
R525-7	Complaints/Suggestions/Concerns	35594	AMD	02/21/2012	2012-2/99

RULES INDEX

R525-7	Complaints/Suggestions/Concerns	35855	NSC	02/29/2012	Not Printed
R525-8	Forensic Mental Health Facility	35596	AMD	02/21/2012	2012-2/100

INSURANCE

Administration

R590-68	Insider Trading of Equity Securities of Domestic Stock Insurance Companies	36037	5YR	04/05/2012	2012-9/94
R590-70	Insurance Holding Companies	35643	5YR	01/10/2012	2012-3/116
R590-85	Individual Accident and Health Insurance and Individual and Group Medicare Supplement Rates	36034	5YR	04/05/2012	2012-9/94
R590-95	Rule to Permit the Same Minimum Nonforfeiture Standards for Men and Women Insureds Under the 1980 CSO and 1980 CET Mortality Tables	35641	5YR	01/10/2012	2012-3/117
R590-102-1	Authority	35725	NSC	02/09/2012	Not Printed
R590-108	Interest Rate During Grace Period or Upon Reinstatement of Policy	36032	5YR	04/04/2012	2012-9/95
R590-114	Letters of Credit	35644	5YR	01/10/2012	2012-3/117
R590-116	Valuation of Assets	35850	5YR	02/06/2012	2012-5/116
R590-117	Valuation of Liabilities	35851	5YR	02/06/2012	2012-5/116
R590-120	Surety Bond Forms	36059	5YR	04/11/2012	2012-9/95
R590-122	Permissible Arbitration Provisions	36385	5YR	06/18/2012	Not Printed
R590-142	Continuing Education Rule	35642	5YR	01/10/2012	2012-3/118
R590-142	Continuing Education Rule	35543	AMD	02/08/2012	2012-1/26
R590-143	Life and Health Reinsurance Agreements	35646	5YR	01/10/2012	2012-3/118
R590-146	Medicare Supplement Insurance Standards	36036	5YR	04/05/2012	2012-9/96
R590-147	Annual and Quarterly Statement Filing Instructions	35647	5YR	01/10/2012	2012-3/119
R590-149	Americans with Disabilities Act (ADA)Grievance Procedures	36386	5YR	06/18/2012	Not Printed
R590-150	Commissioner's Acceptance of Examination Reports	35645	5YR	01/10/2012	2012-3/120
R590-173	Credit for Reinsurance	36417	5YR	06/27/2012	Not Printed
R590-203	Health Grievance Review Process	36035	5YR	04/05/2012	2012-9/96
R590-230	Suitability in Annuity Transactions	35699	AMD	03/26/2012	2012-4/21
R590-238	Captive Insurance Companies	36142	5YR	05/02/2012	2012-11/181
R590-239	Exemption of Student Health Centers From Insurance Code	36031	5YR	04/04/2012	2012-9/97
R590-240	Procedure to Obtain Exemption of Student Health Programs From Insurance Code	36344	5YR	06/07/2012	2012-13/111
R590-261-11	Expedited Independent Review	35918	NSC	03/22/2012	Not Printed
R590-262	Health Data Authority Health Insurance Claims Reporting	35201	NEW	03/07/2012	2011-18/41
R590-262	Health Data Authority Health Insurance Claims Reporting	35201	CPR	03/07/2012	2011-24/84
R590-263-3	Most Commonly Selected	35483	AMD	01/25/2012	2011-24/76

Title and Escrow Commission

R592-8	Application Process for an Attorney Exemption for Title Agency Licensing	35898	NSC	03/12/2012	Not Printed
R592-14	Delay or Failure to Record Documents and the Insuring of Properties with the False Appearance of Unmarketability as Unfair Title Insurance Practices	35648	5YR	01/10/2012	2012-3/120

JUDICIAL PERFORMANCE EVALUATION COMMISSION

Administration

R597-3	Judicial Performance Evaluations	35930	EMR	03/15/2012	2012-7/57
R597-3	Judicial Performance Evaluations	35934	AMD	06/01/2012	2012-7/50

LABOR COMMISSION

Adjudication

R602-1	General Provisions	36399	5YR	06/19/2012	Not Printed
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R602-2	Adjudication of Workers' Compensation and Occupational Disease Claims	36400	5YR	06/19/2012	Not Printed
<u>Administration</u>					
R600-2	Operations	36401	5YR	06/19/2012	Not Printed
R600-3-1	Authority and Scope	35446	NSC	02/01/2012	Not Printed
<u>Antidiscrimination and Labor, Labor</u>					
R610-3-21	Uniforms	35833	AMD	04/16/2012	2012-5/88
<u>Boiler and Elevator Safety</u>					
R616-2-3	Safety Codes and Rules for Boilers and Pressure Vessels	35963	AMD	05/22/2012	2012-8/12
R616-2-15	Deputy Boiler/Pressure Vessel Inspectors	35961	AMD	05/22/2012	2012-8/14
R616-3-3	Safety Codes for Elevators	35962	AMD	05/22/2012	2012-8/16
<u>Industrial Accidents</u>					
R612-1	Workers' Compensation Rules - Procedures	36402	5YR	06/19/2012	Not Printed
MONEY MANAGEMENT COUNCIL					
<u>Administration</u>					
R628-17	Limitations on Commercial Paper and Corporate Notes	35640	5YR	01/09/2012	2012-3/121
NATURAL RESOURCES					
<u>Forestry, Fire and State Lands</u>					
R652-1	Definition of Terms	36005	5YR	04/02/2012	2012-8/82
R652-3	Applicant Qualification and Application Forms	36006	5YR	04/02/2012	2012-8/83
R652-4	Application Fees and Assessments	36007	5YR	04/02/2012	2012-8/83
R652-5	Payments, Royalties, Audits and Reinstatements	36008	5YR	04/02/2012	2012-8/84
R652-6	Government Records Access and Management	36018	5YR	04/02/2012	2012-8/84
R652-20	Mineral Resources	36009	5YR	04/02/2012	2012-8/85
R652-30	Special Use Leases	36010	5YR	04/02/2012	2012-8/85
R652-40	Easements	36011	5YR	04/02/2012	2012-8/86
R652-50	Range Management	36012	5YR	04/02/2012	2012-8/86
R652-60	Cultural Resources	36013	5YR	04/02/2012	2012-8/87
R652-70	Sovereign Lands	36014	5YR	04/02/2012	2012-8/87
R652-90	Sovereign Land Management Planning	36015	5YR	04/02/2012	2012-8/88
R652-100	Materials Permits	36016	5YR	04/02/2012	2012-8/88
R652-140	Utah Forest Practices Act	35698	5YR	01/19/2012	2012-4/108
<u>Geological Survey</u>					
R638-3	Energy Efficiency Fund	35685	EMR	02/01/2012	2012-3/97
<u>Oil, Gas and Mining: Abandoned Mine Reclamation</u>					
R643-870	Abandoned Mine Reclamation Regulation Definitions	35792	5YR	02/01/2012	2012-4/101
R643-872	Abandoned Mine Reclamation Fund	35793	5YR	02/01/2012	2012-4/101
R643-874	General Reclamation Requirements	35794	5YR	02/01/2012	2012-4/102
R643-875	Noncoal Reclamation	35795	5YR	02/01/2012	2012-4/102
R643-877	Rights of Entry	35796	5YR	02/01/2012	2012-4/103
R643-879	Acquisition, Management, and Disposition of Lands and Water	35797	5YR	02/01/2012	2012-4/104
R643-882	Reclamation on Private Land	35798	5YR	02/01/2012	2012-4/104
R643-884	State Reclamation Plan	35799	5YR	02/01/2012	2012-4/105
R643-886	State Reclamation Grants	35800	5YR	02/01/2012	2012-4/105
<u>Oil, Gas and Mining: Administration</u>					
R642-100	Records of the Division and Board of Oil, Gas and Mining	35791	5YR	02/01/2012	2012-4/100
<u>Oil, Gas and Mining: Coal</u>					
R645-100	Administrative: Introduction	35801	5YR	02/01/2012	2012-4/106
R645-100-200	Definitions	35995	AMD	05/23/2012	2012-8/18

RULES INDEX

R645-103	Areas Unsuitable for Coal Mining and Reclamation Operations	35802	5YR	02/01/2012	2012-4/106
R645-200	Coal Exploration: Introduction	35803	5YR	02/01/2012	2012-4/107
R645-201	Coal Exploration: Requirements for Exploration Approval	35804	5YR	02/01/2012	2012-4/107
R645-202	Coal Exploration: Compliance Duties	35836	5YR	02/03/2012	2012-5/117
R645-203	Coal Exploration: Public Availability of Information	35837	5YR	02/03/2012	2012-5/117
R645-300	Coal Mine Permitting: Administrative Procedures	35838	5YR	02/03/2012	2012-5/118
R645-300-100	Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions	35996	AMD	05/23/2012	2012-8/31
R645-301	Coal Mine Permitting: Permit Application Requirements	35839	5YR	02/03/2012	2012-5/118
R645-301-100	General Contents	35997	AMD	05/23/2012	2012-8/39
R645-301-500	Engineering	36151	NSC	05/30/2012	Not Printed
R645-302	Coal Mine Permitting: Special Categories and Areas of Mining	35840	5YR	02/03/2012	2012-5/119
R645-302-200	Special Categories of Mining	35998	AMD	05/23/2012	2012-8/43
R645-303	Coal Mine Permitting: Change, Renewal, and Transfer, Assignment, or Sale of Permit Rights	35841	5YR	02/03/2012	2012-5/120
R645-303-300	Transfer, Assignment, or Sale of Permit Rights	35999	AMD	05/23/2012	2012-8/52
R645-400-300	Provisions of State Enforcement	36000	AMD	05/23/2012	2012-8/54
R645-402	Inspection and Enforcement: Individual Civil Penalties	35842	5YR	02/03/2012	2012-5/120
R645-403	Alternative Enforcement	36001	NEW	05/23/2012	2012-8/58
<u>Oil, Gas and Mining: Oil and Gas</u>					
R649-1	Oil and Gas General Rules	35843	5YR	02/03/2012	2012-5/121
R649-1	Oil and Gas General Rules	35871	NSC	02/29/2012	Not Printed
R649-2	General Rules	35845	5YR	02/03/2012	2012-5/121
R649-3	Drilling and Operating Practices	35846	5YR	02/03/2012	2012-5/122
R649-3-1	Bonding	36177	NSC	05/30/2012	Not Printed
R649-5	Underground Injection Control of Recovery Operations and Class II Injection Wells	35847	5YR	02/03/2012	2012-5/122
R649-8	Reporting and Report Forms	35848	5YR	02/03/2012	2012-5/123
R649-9	Waste Management and Disposal	35849	5YR	02/03/2012	2012-5/123
<u>Parks and Recreation</u>					
R651-102	Government Records Access Management Act	36060	5YR	04/11/2012	2012-9/98
R651-301	State Recreation Fiscal Assistance Programs	36225	5YR	05/16/2012	2012-12/86
<u>Water Rights</u>					
R655-1	Wells Used for the Discovery and Production of Geothermal Energy in the State of Utah	36376	5YR	06/15/2012	2012-13/112
R655-2	Procedure for Administrative Proceedings Before the Division of Water Rights Commenced Prior to January 1, 1988	36380	5YR	06/15/2012	2012-13/112
R655-6	Administrative Procedures for Informal Proceedings Before the Division of Water Rights	36381	5YR	06/15/2012	2012-13/113
R655-15	Administrative Procedures for Distribution Systems and Water Commissioners	36382	5YR	06/15/2012	2012-13/113
<u>Wildlife Resources</u>					
R657-2	Adjudicative Proceedings	36149	5YR	05/04/2012	2012-11/181
R657-4	Possession of Live Game Birds	36280	5YR	05/29/2012	2012-12/87
R657-5	Taking Big Game	35520	AMD	02/07/2012	2012-1/29
R657-13	Taking Fish and Crayfish	35440	AMD	01/10/2012	2011-23/75
R657-17	Lifetime Hunting and Fishing License	35209	AMD	01/10/2012	2011-18/63
R657-20	Falconry	35734	AMD	04/02/2012	2012-4/25
R657-22	Commercial Hunting Areas	36150	5YR	05/04/2012	2012-11/182
R657-27	License Agent Procedures	36003	5YR	04/02/2012	2012-8/89
R657-29	Government Records Access Management Act	36131	5YR	05/01/2012	2012-10/95
R657-30	Fishing License for the Terminally Ill	36152	5YR	05/04/2012	2012-11/182
R657-33	Taking Bear	35733	AMD	04/02/2012	2012-4/32

R657-38	Dedicated Hunter Program	35211	AMD	01/10/2012	2011-18/65
R657-42	Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents	35435	AMD	01/10/2012	2011-23/76
R657-43	Landowner Permits	35210	AMD	01/10/2012	2011-18/71
R657-43	Landowner Permits	35909	5YR	03/05/2012	2012-7/70
R657-44	Big Game Depredation	36392	5YR	06/19/2012	Not Printed
R657-50	Error Remedy	36004	5YR	04/02/2012	2012-8/89
R657-58	Fishing Contests and Clinics	35439	AMD	01/10/2012	2011-23/79
R657-59	Private Fish Ponds	35438	AMD	01/10/2012	2011-23/80
R657-62	Drawing Application Procedures	35436	AMD	01/10/2012	2011-23/85

PARDONS (BOARD OF)

Administration

R671-101	Rules	35730	5YR	01/26/2012	2012-4/108
R671-102	Americans with Disabilities Act Complaint Procedures	35731	5YR	01/26/2012	2012-4/109
R671-201	Original Parole Grant Hearing Schedule and Notice.	35732	5YR	01/26/2012	2012-4/109
R671-202	Notification of Hearings	35737	5YR	01/31/2012	2012-4/110
R671-203	Victim Input and Notification	35738	5YR	01/31/2012	2012-4/110
R671-205	Credit for Time Served	35739	5YR	01/31/2012	2012-4/111
R671-206	Competency of Offenders	35758	5YR	02/01/2012	2012-4/111
R671-207	Mentally Ill and Deteriorated Offender Custody Transfer	35740	5YR	01/31/2012	2012-4/112
R671-301	Personal Appearance	35741	5YR	01/31/2012	2012-4/112
R671-302	News Media and Public Access to Hearings	35742	5YR	01/31/2012	2012-4/113
R671-303	Information Received, Maintained or Used by the Board	35743	5YR	01/31/2012	2012-4/113
R671-304	Hearing Record	35744	5YR	01/31/2012	2012-4/113
R671-305	Notification of Board Decision	35745	5YR	01/31/2012	2012-4/114
R671-305	Notification of Board Decision	35551	AMD	03/26/2012	2012-2/101
R671-308	Offender Hearing Assistance	35746	5YR	01/31/2012	2012-4/114
R671-309	Impartial Hearings	35747	5YR	01/31/2012	2012-4/115
R671-310	Rescission Hearings	35748	5YR	01/31/2012	2012-4/115
R671-311	Special Attention Hearings and Reviews	35749	5YR	01/31/2012	2012-4/116
R671-315	Pardons	35750	5YR	01/31/2012	2012-4/116
R671-316	Redetermination	35751	5YR	01/31/2012	2012-4/117
R671-402	Special Conditions of Parole	35752	5YR	01/31/2012	2012-4/117
R671-405	Parole Termination	35753	5YR	01/31/2012	2012-4/118

PUBLIC LANDS POLICY COORDINATING OFFICE

Administration

R694-1	Archeological Permits	35874	NEW	04/30/2012	2012-5/90
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PUBLIC SAFETY

Criminal Investigations and Technical Services. Criminal Identification

R722-300	Concealed Firearm Permit and Instructor Rule	35650	AMD	03/09/2012	2012-3/79
R722-350-3	Application for a Certificate of Eligibility	35487	AMD	01/24/2012	2011-24/77

Driver License

R708-2	Commercial Driver Training Schools	35702	5YR	01/20/2012	2012-4/118
R708-3	Driver License Point System Administration	35636	5YR	01/09/2012	2012-3/121
R708-7	Functional Ability in Driving: Guidelines for Physicians	35632	5YR	01/09/2012	2012-3/122
R708-8	Review Process: Driver License Medical Section	35633	5YR	01/09/2012	2012-3/123
R708-10	Classified License System	35629	EMR	01/07/2012	2012-3/101
R708-10	Classified License System	36330	EMR	06/06/2012	2012-13/95
R708-14	Adjudicative Proceedings For Driver License Actions Involving Alcohol and Drugs	35637	5YR	01/09/2012	2012-3/123
R708-21	Third-Party Testing	35703	5YR	01/20/2012	2012-4/119
R708-25	Commercial Driver License Applicant Fitness Certification	35704	5YR	01/20/2012	2012-4/119

RULES INDEX

R708-27	Certification of Driver Education Teachers in the Public Schools to Administer Knowledge and Driving Skills Tests	35705	5YR	01/20/2012	2012-4/120
R708-34	Medical Waivers for Intrastate Commercial Driving Privileges	35634	5YR	01/09/2012	2012-3/124
R708-34	Medical Waivers for Intrastate Commercial Driving Privileges	35635	NSC	01/31/2012	Not Printed
R708-35	Adjudicative Proceedings For Driver License Offenses Not Involving Alcohol or Drug Actions	35638	5YR	01/09/2012	2012-3/124
R708-39	Physical and Mental Fitness Testing	35854	5YR	02/06/2012	2012-5/124
R708-47	Emergency Contact Database	36283	EMR	07/01/2012	2012-12/79
R708-48	Ignition Interlock System Program	36419	EMR	07/01/2012	Not Printed
<u>Fire Marshal</u>					
R710-1	Concerns Servicing Portable Fire Extinguishers	36198	5YR	05/15/2012	2012-11/183
R710-2	Rules Pursuant to the Utah Fireworks Act	35690	AMD	03/09/2012	2012-3/73
R710-2	Rules Pursuant to the Utah Fireworks Act	36251	5YR	05/21/2012	2012-12/87
R710-3	Assisted Living Facilities	36273	5YR	05/23/2012	2012-12/88
R710-4	Buildings Under the Jurisdiction of the State Fire Prevention Board	36278	5YR	05/24/2012	2012-12/89
R710-4-3	Amendments and Additions	36022	AMD	05/22/2012	2012-8/60
R710-7	Concerns Servicing Automatic Fire Suppression Systems	36250	5YR	05/21/2012	2012-12/89
R710-8	Day Care Rules	35929	5YR	03/13/2012	2012-7/71
R710-9	Rules Pursuant to the Utah Fire Prevention and Safety Act	36343	5YR	06/07/2012	2012-13/114
R710-10-5	Fire Service Standards and Training Council	36023	AMD	05/22/2012	2012-8/62
<u>Highway Patrol</u>					
R714-110	Permit to Operate a Motor Vehicle in Violation of Equipment Laws	36440	5YR	07/02/2012	Not Printed
R714-158	Vehicle Safety Inspection Program Requirements	36442	5YR	07/02/2012	Not Printed
R714-159	Vehicle Safety Inspection Apprenticeship Program Guidelines	36439	5YR	07/02/2012	Not Printed
R714-200	Standards for Vehicle Lights and Illuminating Devices	36433	5YR	07/02/2012	Not Printed
R714-210	Standards for Motor Vehicle Air Conditioning Equipment	36441	5YR	07/02/2012	Not Printed
R714-220	Standards for Protective Headgear	36434	5YR	07/02/2012	Not Printed
R714-230	Standards and Specifications for Vehicle Seat Belts and Safety Harnesses	36435	5YR	07/02/2012	Not Printed
R714-240	Standards and Specifications for Child Restraint Devices and Safety Belts	36437	5YR	07/02/2012	Not Printed
R714-300	Standards for Motor Vehicle Braking Systems	36438	5YR	07/02/2012	Not Printed
R714-550	Rule for Spending Fees Provided under Section 53-1-117	36436	5YR	07/02/2012	Not Printed
<u>Peace Officer Standards and Training</u>					
R728-408	POST Academy and the Emergency Vehicle Operations Range are Secure Facilities	35568	REP	05/14/2012	2012-2/102
R728-411	Guidelines Regarding Administrative Action Taken Against Individuals Functioning As Peace Officers Without Peace Officer Certification Or Powers	35627	5YR	01/06/2012	2012-3/125
R728-505	Service Dog Program Rules	36245	5YR	05/17/2012	2012-12/90
PUBLIC SERVICE COMMISSION					
<u>Administration</u>					
R746-100	Practice and Procedures Governing Formal Hearings	35508	AMD	02/07/2012	2012-1/30
R746-100	Practice and Procedures Governing Formal Hearings	35900	AMD	05/07/2012	2012-6/24
R746-310-1	General Provisions	35505	AMD	02/07/2012	2012-1/38
R746-310-2	Customer Relations	35925	NSC	03/22/2012	Not Printed
R746-320	Uniform Rules Governing Natural Gas Service	35926	NSC	03/22/2012	Not Printed

R746-342	Rule on One-Way Paging	35509	REP	02/07/2012	2012-1/40
R746-343-4	Approval of an Application	36029	AMD	06/20/2012	2012-9/64
R746-348	Interconnection	35651	5YR	01/11/2012	2012-3/126
R746-349	Competitive Entry and Reporting Requirements	35916	5YR	03/06/2012	2012-7/71
R746-351	Pricing Flexibility	35917	5YR	03/06/2012	2012-7/72
R746-365	Intercarrier Service Quality	35927	NSC	03/22/2012	Not Printed
R746-400	Public Utility Reports	36358	5YR	06/13/2012	2012-13/114
R746-405-2	Format and Construction of Tariffs	35507	AMD	02/07/2012	2012-1/41
R746-405-2	Format and Construction of Tariffs	35896	AMD	05/07/2012	2012-6/31
R746-420	Requests for Approval of a Solicitation Process	36166	5YR	05/10/2012	2012-11/183
R746-430	Procedural and Informational Requirements for Action Plans, for an Approval of a Significant Energy Resource, for Determination of Whether to Proceed, and for Waivers of a Solicitation Process or of an Approval of a Significant Energy Resource	36167	5YR	05/10/2012	2012-11/184
R746-440	Voluntary Resource Decision	35924	5YR	03/08/2012	2012-7/73
R746-800	Working 4 Utah Operations	35506	REP	02/07/2012	2012-1/43

REGENTS (BOARD OF)

College of Eastern Utah

R767-1	Government Records Access and Management Act	36391	EXT	06/18/2012	Not Printed
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University of Utah, Commuter Services

R810-2	Parking Meters	35888	5YR	02/17/2012	2012-6/38
R810-5	Permit Types, Eligibility and Designated Parking Areas	35889	5YR	02/17/2012	2012-6/39
R810-6	Permit Prices and Refunds	35882	5YR	02/16/2012	2012-6/39
R810-9	Contractors and Their Employees	35883	5YR	02/17/2012	2012-6/40
R810-10	Enforcement System	35884	5YR	02/17/2012	2012-6/40
R810-11	Appeals System	35890	5YR	02/17/2012	2012-6/41

SCHOOL AND INSTITUTIONAL TRUST LANDS

Administration

R850-1	Definition of Terms	36274	5YR	05/23/2012	2012-12/90
R850-2	Trust Land Management Objectives	36275	5YR	05/23/2012	2012-12/91
R850-3	Applicant Qualifications, Application Forms, and Application Processing	36276	5YR	05/23/2012	2012-12/91
R850-4	Application Fees and Assessments	36408	5YR	06/27/2012	Not Printed
R850-5	Payments, Royalties, Audits, and Reinstatements	36409	5YR	06/27/2012	Not Printed
R850-6	Government Records Access and Management	36410	5YR	06/27/2012	Not Printed
R850-11	Procurement	36088	5YR	04/24/2012	2012-10/95
R850-30	Special Use Leases	36411	5YR	06/27/2012	Not Printed
R850-40	Easements	36412	5YR	06/27/2012	Not Printed
R850-41	Rights of Entry	35542	NEW	02/07/2012	2012-1/44
R850-50	Range Management	36413	5YR	06/27/2012	Not Printed
R850-60	Cultural Resources	36414	5YR	06/27/2012	Not Printed
R850-80	Sale of Trust Lands	36415	5YR	06/27/2012	Not Printed
R850-90	Land Exchanges	35655	5YR	01/12/2012	2012-3/126
R850-120	Beneficiary Use of Institutional Trust Land	35656	5YR	01/12/2012	2012-3/127

SCIENCE TECHNOLOGY AND RESEARCH GOVERNING AUTH.

Administration

R856-1	Formation and Funding of Utah Science Technology and Research Innovation Teams	36083	EXD	04/05/2012	2012-9/101
R856-2	Distribution of Utah Science Technology and Research Commercialization Revenues	36084	EXD	04/05/2012	2012-9/101

TAX COMMISSION

Administration

R861-1A	Administrative Procedures	35595	5YR	01/03/2012	2012-2/122
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RULES INDEX

R861-1A-9	Tax Commission as Board of Equalization Pursuant to Utah Code Ann. Sections 59-2-212, 59-2-1004, and 59-2-1006	35862	AMD	04/12/2012	2012-5/93
R861-1A-16	Utah State Tax Commission Management Plan Pursuant to Utah Code Ann. Section 59-1-207	36061	AMD	06/14/2012	2012-9/65
<u>Auditing</u>					
R865-3C	Corporation Income Tax	35597	5YR	01/03/2012	2012-2/125
R865-3C-1	Allocation of Net Income Pursuant to Utah Code Ann. Section 59-7-204	35863	AMD	04/12/2012	2012-5/95
R865-4D	Special Fuel Tax	35598	5YR	01/03/2012	2012-2/125
R865-6F	Franchise Tax	35599	5YR	01/03/2012	2012-2/126
R865-9I	Income Tax	35600	5YR	01/03/2012	2012-2/127
R865-11Q	Self-Insured Employer Assessment	35601	5YR	01/03/2012	2012-2/130
R865-12L	Local Sales and Use Tax	35602	5YR	01/03/2012	2012-2/130
R865-13G	Motor Fuel Tax	35603	5YR	01/03/2012	2012-2/131
R865-14W	Mineral Producers' Withholding Tax	35604	5YR	01/03/2012	2012-2/132
R865-15O	Oil and Gas Tax	35605	5YR	01/03/2012	2012-2/133
R865-19S	Sales and Use Tax	35606	5YR	01/03/2012	2012-2/133
R865-19S-32	Leases and Rentals Pursuant to Utah Code Ann. Section 59-12-103	35511	AMD	02/09/2012	2012-1/48
R865-20T	Tobacco Tax	35607	5YR	01/03/2012	2012-2/137
<u>Motor Vehicle</u>					
R873-22M	Motor Vehicle	35608	5YR	01/03/2012	2012-2/138
<u>Motor Vehicle Enforcement</u>					
R877-23V	Motor Vehicle Enforcement	35609	5YR	01/03/2012	2012-2/140
R877-23V-7	Misleading Advertising Pursuant to Utah Code Ann. Section 41-3-210	36062	AMD	06/14/2012	2012-9/67
R877-23V-20	Reasonable Cause to Deny, Suspend, or Revoke a License Issued Under Title 41, Chapter 3 Pursuant to Utah Code Ann. Section 41-3-209	35512	AMD	02/09/2012	2012-1/49
R877-23V-21	Automated License Plate Recognition System Pursuant to Utah Code Ann. Section 41-3-105	35513	AMD	02/09/2012	2012-1/50
R877-23V-22	Reasonable Cause to Waive, Reduce, or Compromise a Penalty Pursuant to Utah Code Ann. Section 41-3-704	36063	AMD	06/14/2012	2012-9/70
<u>Property Tax</u>					
R884-24P	Property Tax	35592	5YR	01/03/2012	2012-2/141
R884-24P-62	Valuation of State Assessed Unitary Properties Pursuant to Utah Code Ann. Section 59-2-201	35514	AMD	02/09/2012	2012-1/51
R884-24P-66	Appeal to County Board of Equalization Pursuant to Utah Code Ann. Section 59-2-1004	35864	AMD	04/12/2012	2012-5/96
R884-24P-68	Property Tax Exemption for Taxable Tangible Personal Property With a Total Aggregate Fair Market Value of \$3,500 or Less Pursuant to Utah Code Ann. Section 59-2-1115	36064	AMD	06/14/2012	2012-9/71
TECHNOLOGY SERVICES					
<u>Administration</u>					
R895-3	Computer Software Licensing, Copyright, Control, Retention, and Transfer	35989	EXT	03/29/2012	2012-8/91
TRANSPORTATION					
<u>Administration</u>					
R907-60	Handling of Publications Prepared by the Utah Department of Transportation Either for Sale or Free Copy	35670	REP	03/12/2012	2012-3/80
R907-69	Records Access	35672	NEW	03/12/2012	2012-3/81
<u>Motor Carrier</u>					
R909-1	Safety Regulations for Motor Carriers	35425	AMD	01/10/2012	2011-23/90

R909-1	Safety Regulations for Motor Carriers	35873	AMD	04/11/2012	2012-5/99
R909-16	Overall Motor Carrier Safety Standing	35427	REP	01/10/2012	2011-23/92
R909-17	Appeal Process for Utah Commercial Vehicle Safety Alliance Inspections	35428	REP	01/10/2012	2011-23/94
R909-19	Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification	35256	AMD	02/07/2012	2011-20/41
R909-19	Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification	35256	CPR	02/07/2012	2012-1/64
R909-75	Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes	35426	AMD	01/10/2012	2011-23/96
<u>Operations, Maintenance</u>					
R918-3	Snow Removal	35515	AMD	02/07/2012	2012-1/55
R918-4	Using Volunteer Groups for the Adopt-a-Highway Program	35669	AMD	03/12/2012	2012-3/82
<u>Operations, Traffic and Safety</u>					
R920-50	Ropeway Operation Safety	36081	5YR	04/16/2012	2012-9/98
R920-50	Ropeway Operation Safety	36082	AMD	06/07/2012	2012-9/72
<u>Preconstruction</u>					
R930-3	Highway Noise Abatement	35516	AMD	02/07/2012	2012-1/57
<u>Preconstruction, Right-of-Way Acquisition</u>					
R933-1	Right of Way Acquisition	35429	AMD	01/10/2012	2011-23/97
R933-2	Control of Outdoor Advertising Signs	36180	EMR	05/14/2012	2012-11/168
<u>Program Development</u>					
R926-4	Establishing and Defining a Functional Classification of Highways in the State of Utah	35959	5YR	03/20/2012	2012-8/90
R926-4	Establishing and Defining a Functional Classification of Highways in the State of Utah	35960	NSC	04/11/2012	Not Printed
R926-6 (Changed to R940-7)	Transportation Corridor Preservation Revolving Loan Fund	36179	NSC	05/30/2012	Not Printed
WORKFORCE SERVICES					
<u>Administration</u>					
R982-101	Americans with Disabilities Complaint Procedure	36354	5YR	06/12/2012	2012-13/115
R982-201	Government Records Access and Management Act	36355	5YR	06/12/2012	2012-13/115
R982-301	Councils	36356	5YR	06/12/2012	2012-13/116
R982-601	Provider Code of Conduct	36357	5YR	06/12/2012	2012-13/116
<u>Employment Development</u>					
R986-200-214	Assistance for Specified Relatives	35919	AMD	05/22/2012	2012-7/54
R986-200-247	Utah Back to Work Pilot Program (BWP)	35501	AMD	02/01/2012	2011-24/78
R986-700-713	Amount of CC Payment	35586	AMD	04/01/2012	2012-2/104
R986-900-902	Options and Waivers	35993	AMD	07/01/2012	2012-8/67
<u>Unemployment Insurance</u>					
R994-102	Employment Security Act, Public Policy and Authority	36091	5YR	04/25/2012	2012-10/96
R994-106	Combined Wage Claims	36092	5YR	04/25/2012	2012-10/96
R994-207-102	General Requirements for Eligibility	35992	NSC	04/11/2012	Not Printed
R994-303	Contribution Rates	36093	5YR	04/25/2012	2012-10/97
R994-401	Payment of Benefits	36094	5YR	04/25/2012	2012-10/97
R994-402	Extended Benefits (EB)	36095	5YR	04/25/2012	2012-10/98
R994-403-112c	Available	35448	AMD	01/17/2012	2011-23/98
R994-404	Payments Following Workers' Compensation	36256	5YR	05/22/2012	2012-12/92
R994-405-104	Quit to Accompany, Follow or Join a Spouse	36134	AMD	07/01/2012	2012-10/84
R994-406	Fraud, Fault and Nonfault Overpayments	36257	5YR	05/22/2012	2012-12/92
R994-508	Appeal Procedures	35455	AMD	02/01/2012	2011-23/101

RULES INDEX - BY KEYWORD (SUBJECT)

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	

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>accessing records</u> Human Services, Recovery Services	35631	R527-5	5YR	01/06/2012	2012-3/116
<u>accidents</u> Administrative Services, Fleet Operations	36024	R27-7	AMD	06/28/2012	2012-9/4
<u>accounts receivable</u> Administrative Services, Debt Collection	36420 36421 36422	R21-1 R21-2 R21-3	5YR 5YR 5YR	06/28/2012 06/28/2012 06/28/2012	Not Printed Not Printed Not Printed
<u>acid rain</u> Environmental Quality, Air Quality	36340	R307-417	5YR	06/06/2012	2012-13/105
<u>action plan</u> Public Service Commission, Administration	36167	R746-430	5YR	05/10/2012	2012-11/184
<u>ADA</u> Insurance, Administration	36386	R590-149	5YR	06/18/2012	Not Printed
<u>adjudicative procedures</u> Community and Culture, Library	36328	R223-1	5YR	06/05/2012	2012-13/98
<u>adjudicative proceedings</u> Commerce, Administration Community and Culture, History Environmental Quality, Environmental Response and Remediation Environmental Quality, Radiation Control Public Safety, Driver License	36104 36299 36054 35416 35637 35638	R151-4-306 R212-1 R311-210 R313-17 R708-14 R708-35	AMD 5YR 5YR AMD 5YR 5YR	06/21/2012 05/31/2012 04/10/2012 03/19/2012 01/09/2012 01/09/2012	2012-10/16 2012-12/83 2012-9/89 2011-23/50 2012-3/123 2012-3/124
<u>adjudicative process</u> Administrative Services, Debt Collection	36421	R21-2	5YR	06/28/2012	Not Printed
<u>administrative law</u> Human Services, Recovery Services	36348 36350	R527-253 R527-258	5YR 5YR	06/12/2012 06/12/2012	2012-13/109 2012-13/110
<u>administrative offset</u> Administrative Services, Debt Collection	36422	R21-3	5YR	06/28/2012	Not Printed
<u>administrative procedures</u> Commerce, Administration Commerce, Consumer Protection Community and Culture, History Community and Culture, Library Corrections, Administration Education, Administration	36104 35974 36299 36328 35762 35769 35807 35449	R151-4-306 R152-6 R212-1 R223-1 R251-108 R251-108 R251-108 R277-100	AMD 5YR 5YR 5YR EXD EMR NEW AMD	06/21/2012 03/26/2012 05/31/2012 06/05/2012 01/18/2012 02/01/2012 04/09/2012 01/10/2012	2012-10/16 2012-8/71 2012-12/83 2012-13/98 2012-4/123 2012-4/49 2012-5/15 2011-23/21

	35534	R277-102	R&R	02/07/2012	2012-1/8
	35856	R277-102	NSC	02/29/2012	Not Printed
Environmental Quality, Radiation Control	35416	R313-17	AMD	03/19/2012	2011-23/50
Health, Administration	36096	R380-1	5YR	04/26/2012	2012-10/88
	36097	R380-5	5YR	04/26/2012	2012-10/89
	36098	R380-10	5YR	04/26/2012	2012-10/89
Human Resource Management, Administration	35823	R477-3	5YR	02/02/2012	2012-5/108
	36120	R477-3	AMD	07/02/2012	2012-10/54
	35832	R477-12	5YR	02/03/2012	2012-5/114
	35835	R477-15	5YR	02/03/2012	2012-5/115
Labor Commission, Adjudication	36399	R602-1	5YR	06/19/2012	Not Printed
	36400	R602-2	5YR	06/19/2012	Not Printed
Labor Commission, Industrial Accidents	36402	R612-1	5YR	06/19/2012	Not Printed
Natural Resources, Forestry, Fire and State Lands	36005	R652-1	5YR	04/02/2012	2012-8/82
	36006	R652-3	5YR	04/02/2012	2012-8/83
	36007	R652-4	5YR	04/02/2012	2012-8/83
	36008	R652-5	5YR	04/02/2012	2012-8/84
	36009	R652-20	5YR	04/02/2012	2012-8/85
	36010	R652-30	5YR	04/02/2012	2012-8/85
	36011	R652-40	5YR	04/02/2012	2012-8/86
	36012	R652-50	5YR	04/02/2012	2012-8/86
	36014	R652-70	5YR	04/02/2012	2012-8/87
	36016	R652-100	5YR	04/02/2012	2012-8/88
Natural Resources, Water Rights	36381	R655-6	5YR	06/15/2012	2012-13/113
Natural Resources, Wildlife Resources	36149	R657-2	5YR	05/04/2012	2012-11/181
Public Safety, Driver License	35632	R708-7	5YR	01/09/2012	2012-3/122
	35633	R708-8	5YR	01/09/2012	2012-3/123
School and Institutional Trust Lands, Administration	36274	R850-1	5YR	05/23/2012	2012-12/90
	36276	R850-3	5YR	05/23/2012	2012-12/91
	36408	R850-4	5YR	06/27/2012	Not Printed
	36409	R850-5	5YR	06/27/2012	Not Printed
	36411	R850-30	5YR	06/27/2012	Not Printed
	36412	R850-40	5YR	06/27/2012	Not Printed
	35542	R850-41	NEW	02/07/2012	2012-1/44
	36413	R850-50	5YR	06/27/2012	Not Printed
	36415	R850-80	5YR	06/27/2012	Not Printed
	35655	R850-90	5YR	01/12/2012	2012-3/126
	35656	R850-120	5YR	01/12/2012	2012-3/127
<u>administrative proceedings</u>					
Commerce, Real Estate	35915	R162-2e-402	AMD	05/23/2012	2012-7/25
Environmental Quality, Environmental Response and Remediation	35447	R311-201	AMD	01/13/2012	2011-23/45
	36045	R311-201	5YR	04/10/2012	2012-9/82
	36054	R311-210	5YR	04/10/2012	2012-9/89
<u>administrative responsibility</u>					
Human Resource Management, Administration	35822	R477-2	5YR	02/02/2012	2012-5/108
	36119	R477-2	AMD	07/02/2012	2012-10/51
<u>administrative rules</u>					
Human Resource Management, Administration	35834	R477-13	5YR	02/03/2012	2012-5/115
	36127	R477-13	AMD	07/02/2012	2012-10/81
<u>adopt-a-highway</u>					
Transportation, Operations, Maintenance	35669	R918-4	AMD	03/12/2012	2012-3/82
<u>adoption</u>					
Human Services, Child and Family Services	35910	R512-2	5YR	03/05/2012	2012-7/68
	35913	R512-40	5YR	03/05/2012	2012-7/69
	35914	R512-42	5YR	03/05/2012	2012-7/70
	36044	R512-51	5YR	04/09/2012	2012-9/93
<u>adult education</u>					
Education, Administration	36076	R277-733	AMD	06/07/2012	2012-9/49

RULES INDEX

affidavit of merit

Commerce, Occupational and Professional Licensing 35820 R156-78B 5YR 02/02/2012 2012-5/102

agricultural laws

Agriculture and Food, Animal Industry 35696 R58-19 5YR 01/18/2012 2012-4/60
 Agriculture and Food, Plant Industry 35697 R68-19 5YR 01/18/2012 2012-4/62
 Agriculture and Food, Regulatory Services 35660 R70-201 5YR 01/12/2012 2012-3/108

air conditioning

Public Safety, Highway Patrol 36441 R714-210 5YR 07/02/2012 Not Printed

air pollution

Environmental Quality, Air Quality 35615 R307-101-3 AMD 04/05/2012 2012-3/40
 36333 R307-105 5YR 06/06/2012 2012-13/101
 35774 R307-110 5YR 02/01/2012 2012-4/65
 35775 R307-120 5YR 02/01/2012 2012-4/81
 35716 R307-121 5YR 01/23/2012 2012-4/81
 35718 R307-121-7 NSC 02/09/2012 Not Printed
 35776 R307-130 5YR 02/01/2012 2012-4/82
 35777 R307-135 5YR 02/01/2012 2012-4/82
 35496 R307-210-1 AMD 03/07/2012 2011-24/7
 35922 R307-214 AMD 06/07/2012 2012-7/42
 35531 R307-220-3 AMD 03/07/2012 2012-1/21
 35530 R307-222 AMD 03/07/2012 2012-1/22
 36026 R307-222-1 NSC 04/25/2012 Not Printed
 35779 R307-320 5YR 02/01/2012 2012-4/84
 35780 R307-325 5YR 02/01/2012 2012-4/84
 35781 R307-326 5YR 02/01/2012 2012-4/85
 35782 R307-327 5YR 02/01/2012 2012-4/86
 35783 R307-328 5YR 02/01/2012 2012-4/86
 35784 R307-335 5YR 02/01/2012 2012-4/87
 35785 R307-340 5YR 02/01/2012 2012-4/87
 35786 R307-341 5YR 02/01/2012 2012-4/88
 35787 R307-343 5YR 02/01/2012 2012-4/89
 36334 R307-401 5YR 06/06/2012 2012-13/101
 36154 R307-401-11 NSC 05/30/2012 Not Printed
 35413 R307-405 AMD 02/02/2012 2011-23/42
 35872 R307-405-3 NSC 02/29/2012 Not Printed
 36336 R307-406 5YR 06/06/2012 2012-13/102
 36337 R307-410 5YR 06/06/2012 2012-13/103
 36338 R307-414 5YR 06/06/2012 2012-13/104
 36339 R307-415 5YR 06/06/2012 2012-13/104
 35529 R307-415-2 AMD 03/07/2012 2012-1/25
 36341 R307-420 5YR 06/06/2012 2012-13/106
 36342 R307-421 5YR 06/06/2012 2012-13/106
 36033 R307-424 5YR 04/05/2012 2012-9/79

air pollution control

Environmental Quality, Air Quality 35778 R307-301 5YR 02/01/2012 2012-4/83

air quality

Environmental Quality, Air Quality 36335 R307-403 5YR 06/06/2012 2012-13/102
 36340 R307-417 5YR 06/06/2012 2012-13/105

air travel

Administrative Services, Finance 36112 R25-7 AMD 07/01/2012 2012-10/4

aircraft

Tax Commission, Motor Vehicle 35608 R873-22M 5YR 01/03/2012 2012-2/138

alarm company

Commerce, Occupational and Professional Licensing 35860 R156-55d 5YR 02/07/2012 2012-5/102
 36191 R156-55d NSC 05/30/2012 Not Printed

alcohol

Human Services, Substance Abuse and Mental Health 35625 R523-24 AMD 03/09/2012 2012-3/67

Public Safety, Highway Patrol	36436	R714-550	5YR	07/02/2012	Not Printed
<u>alcoholic beverages</u>					
Alcoholic Beverage Control, Administration	35588	R81-1-6	AMD	03/01/2012	2012-2/20
	35943	R81-4A-2	AMD	05/22/2012	2012-7/5
	35944	R81-4B-2	AMD	05/22/2012	2012-7/6
	35945	R81-4C-2	AMD	05/22/2012	2012-7/8
	35946	R81-4D-2	AMD	05/22/2012	2012-7/9
	35947	R81-4E-2	AMD	05/22/2012	2012-7/11
	35948	R81-4F-2	AMD	05/22/2012	2012-7/12
	36113	R81-4F-7	AMD	07/01/2012	2012-10/9
	36115	R81-4F-13	AMD	07/01/2012	2012-10/10
	35949	R81-5-2	AMD	05/22/2012	2012-7/13
	35950	R81-6-1	AMD	05/22/2012	2012-7/15
	36114	R81-7	AMD	07/01/2012	2012-10/11
	35951	R81-8-1	AMD	05/22/2012	2012-7/16
	35952	R81-9-1	AMD	05/22/2012	2012-7/17
	35953	R81-10A-3	AMD	05/22/2012	2012-7/19
	36116	R81-10B	AMD	07/01/2012	2012-10/14
	35954	R81-10C-2	AMD	05/22/2012	2012-7/20
	35955	R81-10D-2	AMD	05/22/2012	2012-7/21
	35956	R81-11-1	AMD	05/22/2012	2012-7/23
	35957	R81-12-1	AMD	05/22/2012	2012-7/24
<u>all payer database</u>					
Health, Center for Health Data, Health Care Statistics	35616	R428-15	AMD	03/16/2012	2012-3/51
<u>alternative fuels</u>					
Environmental Quality, Air Quality	35716	R307-121	5YR	01/23/2012	2012-4/81
	35718	R307-121-7	NSC	02/09/2012	Not Printed
<u>alternative licensing</u>					
Education, Administration	35677	R277-503	AMD	03/12/2012	2012-3/24
	35939	R277-503	5YR	03/15/2012	2012-7/63
	36073	R277-503	AMD	06/07/2012	2012-9/39
<u>alternative school</u>					
Education, Administration	35538	R277-730	REP	02/07/2012	2012-1/16
<u>anchor location</u>					
Administrative Services, Archives	35304	R17-9	NEW	01/30/2012	2011-20/6
<u>annuity suitability</u>					
Insurance, Administration	35699	R590-230	AMD	03/26/2012	2012-4/21
<u>appeals</u>					
Education, Administration	35452	R277-481	NEW	01/10/2012	2011-23/34
Transportation, Motor Carrier	35428	R909-17	REP	01/10/2012	2011-23/94
<u>appellate procedures</u>					
Agriculture and Food, Administration	35614	R51-2	5YR	01/04/2012	2012-3/107
Workforce Services, Unemployment Insurance	35455	R994-508	AMD	02/01/2012	2011-23/101
<u>applications</u>					
Health, Health Care Financing, Coverage and Reimbursement Policy	35441	R414-308	AMD	02/06/2012	2011-23/70
	35790	R414-308	AMD	04/01/2012	2012-4/14
<u>appraisal management company</u>					
Commerce, Real Estate	35915	R162-2e-402	AMD	05/23/2012	2012-7/25
<u>appraisals</u>					
Tax Commission, Property Tax	35592	R884-24P	5YR	01/03/2012	2012-2/141
	35514	R884-24P-62	AMD	02/09/2012	2012-1/51
	35864	R884-24P-66	AMD	04/12/2012	2012-5/96
	36064	R884-24P-68	AMD	06/14/2012	2012-9/71

RULES INDEX

<u>apprentices</u>						
Public Safety, Highway Patrol	36439	R714-159	5YR	07/02/2012	Not Printed	
<u>approval orders</u>						
Environmental Quality, Air Quality	36334	R307-401	5YR	06/06/2012	2012-13/101	
	36154	R307-401-11	NSC	05/30/2012	Not Printed	
<u>aquaculture</u>						
Natural Resources, Wildlife Resources	35438	R657-59	AMD	01/10/2012	2011-23/80	
<u>ARC</u>						
Administrative Services, Fleet Operations	36024	R27-7	AMD	06/28/2012	2012-9/4	
<u>archeological permits</u>						
Public Lands Policy Coordinating Office, Administration	35874	R694-1	NEW	04/30/2012	2012-5/90	
<u>armored car company</u>						
Commerce, Occupational and Professional Licensing	36192	R156-63b-102	NSC	05/30/2012	Not Printed	
<u>armored car security officers</u>						
Commerce, Occupational and Professional Licensing	36192	R156-63b-102	NSC	05/30/2012	Not Printed	
<u>art</u>						
Capitol Preservation Board (State), Administration	35686	R131-9	R&R	03/09/2012	2012-3/13	
<u>art donations</u>						
Community and Culture, Arts and Museums	35724	R207-2	5YR	01/24/2012	2012-4/65	
<u>art financing</u>						
Community and Culture, Arts and Museums	35723	R207-1	5YR	01/24/2012	2012-4/64	
<u>art in public places</u>						
Community and Culture, Arts and Museums	35723	R207-1	5YR	01/24/2012	2012-4/64	
	35724	R207-2	5YR	01/24/2012	2012-4/65	
<u>art loans</u>						
Community and Culture, Arts and Museums	35724	R207-2	5YR	01/24/2012	2012-4/65	
<u>art preservation</u>						
Community and Culture, Arts and Museums	35723	R207-1	5YR	01/24/2012	2012-4/64	
<u>art work</u>						
Community and Culture, Arts and Museums	35724	R207-2	5YR	01/24/2012	2012-4/65	
<u>asbestos</u>						
Environmental Quality, Air Quality	35777	R307-135	5YR	02/01/2012	2012-4/82	
<u>asphalt</u>						
Environmental Quality, Air Quality	35786	R307-341	5YR	02/01/2012	2012-4/88	
<u>assembly</u>						
Administrative Services, Facilities Construction and Management	36148	R23-20	5YR	05/03/2012	2012-11/178	
<u>assessment instruments</u>						
Human Services, Substance Abuse and Mental Health	36310	R523-20	5YR	06/05/2012	2012-13/107	
<u>assignments</u>						
Education, Administration	35680	R277-520	AMD	03/12/2012	2012-3/32	
	36074	R277-520-6	AMD	06/07/2012	2012-9/43	
<u>assistance</u>						
Natural Resources, Parks and Recreation	36225	R651-301	5YR	05/16/2012	2012-12/86	

<u>assisted living facilities</u>						
Public Safety, Fire Marshal	36273	R710-3	5YR	05/23/2012	2012-12/88	
<u>athletic trainer</u>						
Commerce, Occupational and Professional Licensing	36089	R156-40a	AMD	06/28/2012	2012-10/22	
<u>attorney exemption application process</u>						
Insurance, Title and Escrow Commission	35898	R592-8	NSC	03/12/2012	Not Printed	
<u>Attorney General</u>						
Attorney General, Administration	35904	R105-1	NEW	04/24/2012	2012-6/6	
<u>attorneys</u>						
Administrative Services, Finance	35663	R25-14	5YR	01/12/2012	2012-3/105	
<u>automobile repair</u>						
Commerce, Consumer Protection	35967	R152-20	5YR	03/22/2012	2012-8/72	
<u>automobiles</u>						
Commerce, Consumer Protection	35967	R152-20	5YR	03/22/2012	2012-8/72	
<u>aviculture</u>						
Natural Resources, Wildlife Resources	36280	R657-4	5YR	05/29/2012	2012-12/87	
<u>background checks</u>						
Human Services, Substance Abuse and Mental Health, State Hospital	35591	R525-5	AMD	02/21/2012	2012-2/97	
<u>barrier</u>						
Transportation, Preconstruction	35516	R930-3	AMD	02/07/2012	2012-1/57	
<u>bear</u>						
Natural Resources, Wildlife Resources	35733	R657-33	AMD	04/02/2012	2012-4/32	
<u>beneficiaries</u>						
School and Institutional Trust Lands, Administration	35656	R850-120	5YR	01/12/2012	2012-3/127	
<u>benefits</u>						
Community and Culture, Home Energy Assistance Target (HEAT)	35406	R195-5	AMD	03/26/2012	2011-23/17	
	36296	R195-5	EXT	05/31/2012	2012-12/96	
	35408	R195-7	AMD	03/26/2012	2011-23/19	
	36298	R195-7	EXT	05/31/2012	2012-12/96	
Workforce Services, Unemployment Insurance	36094	R994-401	5YR	04/25/2012	2012-10/97	
<u>bicycles</u>						
Public Safety, Highway Patrol	36434	R714-220	5YR	07/02/2012	Not Printed	
<u>big game</u>						
Natural Resources, Wildlife Resources	36392	R657-44	5YR	06/19/2012	Not Printed	
<u>big game seasons</u>						
Natural Resources, Wildlife Resources	35520	R657-5	AMD	02/07/2012	2012-1/29	
	35210	R657-43	AMD	01/10/2012	2011-18/71	
	35909	R657-43	5YR	03/05/2012	2012-7/70	
<u>birds</u>						
Natural Resources, Wildlife Resources	36280	R657-4	5YR	05/29/2012	2012-12/87	
	35734	R657-20	AMD	04/02/2012	2012-4/25	
<u>bison</u>						
Agriculture and Food, Animal Industry	36143	R58-3	EMR	05/08/2012	2012-11/167	
<u>Board of Examiners</u>						
Examiners (Board of), Administration	35497	R320-101	NEW	02/10/2012	2011-24/10	

RULES INDEX

<u>boilers</u>						
Labor Commission, Boiler and Elevator Safety	35963	R616-2-3	AMD	05/22/2012	2012-8/12	
	35961	R616-2-15	AMD	05/22/2012	2012-8/14	
<u>boxing</u>						
Governor, Economic Development, Pete Suazo Utah Athletic Commission	36002	R359-1	5YR	03/30/2012	2012-8/74	
	36130	R359-1-506	AMD	06/30/2012	2012-10/29	
<u>brakes</u>						
Public Safety, Highway Patrol	36438	R714-300	5YR	07/02/2012	Not Printed	
<u>breaks</u>						
Human Resource Management, Administration	35828	R477-8	5YR	02/02/2012	2012-5/112	
	36124	R477-8	AMD	07/02/2012	2012-10/71	
<u>broad scope</u>						
Environmental Quality, Radiation Control	35417	R313-22-75	AMD	01/16/2012	2011-23/51	
<u>brucellosis</u>						
Agriculture and Food, Animal Industry	36143	R58-3	EMR	05/08/2012	2012-11/167	
<u>building inspections</u>						
Commerce, Occupational and Professional Licensing	35735	R156-56	5YR	01/31/2012	2012-4/62	
<u>building inspectors</u>						
Commerce, Occupational and Professional Licensing	35735	R156-56	5YR	01/31/2012	2012-4/62	
<u>burglar alarms</u>						
Commerce, Occupational and Professional Licensing	35860	R156-55d	5YR	02/07/2012	2012-5/102	
	36191	R156-55d	NSC	05/30/2012	Not Printed	
<u>burial</u>						
Community and Culture, History	36301	R212-12	5YR	05/31/2012	2012-12/84	
	36305	R212-12	NSC	06/29/2012	Not Printed	
<u>capital punishment</u>						
Administrative Services, Finance	35663	R25-14	5YR	01/12/2012	2012-3/105	
Pardons (Board Of), Administration	35739	R671-205	5YR	01/31/2012	2012-4/111	
<u>captive insurance</u>						
Insurance, Administration	36142	R590-238	5YR	05/02/2012	2012-11/181	
<u>career education</u>						
Education, Administration	35682	R277-718	REP	03/12/2012	2012-3/37	
<u>cattle</u>						
Agriculture and Food, Animal Industry	36143	R58-3	EMR	05/08/2012	2012-11/167	
<u>cemetery</u>						
Community and Culture, History	36301	R212-12	5YR	05/31/2012	2012-12/84	
	36305	R212-12	NSC	06/29/2012	Not Printed	
<u>census</u>						
Transportation, Program Development	35959	R926-4	5YR	03/20/2012	2012-8/90	
	35960	R926-4	NSC	04/11/2012	Not Printed	
<u>certificate of compliance</u>						
Commerce, Occupational and Professional Licensing	35820	R156-78B	5YR	02/02/2012	2012-5/102	
<u>certificate of eligibility</u>						
Public Safety, Criminal Investigations and Technical Services, Criminal Identification	35487	R722-350-3	AMD	01/24/2012	2011-24/77	
<u>certification</u>						
Environmental Quality, Water Quality	36135	R317-11	AMD	06/27/2012	2012-10/23	

<u>certification of instructors</u>						
Human Services, Substance Abuse and Mental Health	36383	R523-22	5YR	06/18/2012	Not Printed	
<u>certifications</u>						
Labor Commission, Boiler and Elevator Safety	35963	R616-2-3	AMD	05/22/2012	2012-8/12	
	35961	R616-2-15	AMD	05/22/2012	2012-8/14	
	35962	R616-3-3	AMD	05/22/2012	2012-8/16	
Transportation, Motor Carrier	35256	R909-19	AMD	02/07/2012	2011-20/41	
	35256	R909-19	CPR	02/07/2012	2012-1/64	
<u>charities</u>						
Commerce, Consumer Protection	35970	R152-22	5YR	03/22/2012	2012-8/72	
Tax Commission, Auditing	35606	R865-19S	5YR	01/03/2012	2012-2/133	
	35511	R865-19S-32	AMD	02/09/2012	2012-1/48	
<u>charter schools</u>						
Education, Administration	35451	R277-470	AMD	01/10/2012	2011-23/28	
	35935	R277-479	NEW	05/08/2012	2012-7/31	
	36160	R277-479-1	NSC	05/30/2012	Not Printed	
	35582	R277-480-1	NSC	01/31/2012	Not Printed	
	35817	R277-480-1	NSC	02/29/2012	Not Printed	
	35452	R277-481	NEW	01/10/2012	2011-23/34	
<u>child abuse</u>						
Human Services, Child and Family Services	35931	R512-60	AMD	06/07/2012	2012-7/47	
<u>child care</u>						
Workforce Services, Employment Development	35586	R986-700-713	AMD	04/01/2012	2012-2/104	
<u>child care facilities</u>						
Health, Family Health and Preparedness, Child Care Licensing	35581	R430-1	NEW	05/01/2012	2012-2/37	
	35579	R430-2	REP	05/01/2012	2012-2/40	
	35580	R430-3	REP	05/01/2012	2012-2/42	
	35653	R430-4	REP	05/01/2012	2012-3/57	
	35573	R430-6	AMD	05/01/2012	2012-2/46	
	35654	R430-30	REP	05/01/2012	2012-3/61	
	35574	R430-50	AMD	05/01/2012	2012-2/47	
	35575	R430-60	R&R	05/01/2012	2012-2/55	
	35576	R430-70	AMD	05/01/2012	2012-2/70	
	35577	R430-90	AMD	05/01/2012	2012-2/77	
	35578	R430-100	AMD	05/01/2012	2012-2/82	
<u>child support</u>						
Human Services, Recovery Services	36346	R527-3	5YR	06/12/2012	2012-13/108	
	35728	R527-34	AMD	03/27/2012	2012-4/19	
	35729	R527-35	AMD	03/27/2012	2012-4/20	
	36347	R527-37	5YR	06/12/2012	2012-13/108	
	35619	R527-201	AMD	03/27/2012	2012-3/70	
	36348	R527-253	5YR	06/12/2012	2012-13/109	
	36349	R527-255	5YR	06/12/2012	2012-13/109	
	36350	R527-258	5YR	06/12/2012	2012-13/110	
	36351	R527-330	5YR	06/12/2012	2012-13/111	
<u>child welfare</u>						
Administrative Services, Child Welfare Parental Defense (Office of)	35205	R19-1-6	AMD	01/12/2012	2011-18/6	
	35206	R19-1-7	AMD	01/12/2012	2011-18/7	
Human Services, Child and Family Services	35895	R512-1	5YR	02/23/2012	2012-6/38	
	35910	R512-2	5YR	03/05/2012	2012-7/68	
	35911	R512-31	5YR	03/05/2012	2012-7/68	
	35912	R512-32	5YR	03/05/2012	2012-7/69	
	35931	R512-60	AMD	06/07/2012	2012-7/47	
	35630	R512-80	NEW	03/15/2012	2012-3/64	
<u>children</u>						

RULES INDEX

Health, Family Health and Preparedness, WIC Services	35812	R406-100	5YR	02/02/2012	2012-5/104
	35813	R406-200	5YR	02/02/2012	2012-5/105
	35814	R406-201	5YR	02/02/2012	2012-5/105
	35815	R406-202	5YR	02/02/2012	2012-5/106
	35816	R406-301	5YR	02/02/2012	2012-5/106
<u>Children's Account</u>					
Human Services, Child and Family Services	35931	R512-60	AMD	06/07/2012	2012-7/47
<u>children's health benefits</u>					
Health, Children's Health Insurance Program	35788	R382-10	AMD	04/01/2012	2012-4/7
<u>Class I area</u>					
Environmental Quality, Air Quality	35413	R307-405	AMD	02/02/2012	2011-23/42
	35872	R307-405-3	NSC	02/29/2012	Not Printed
<u>classified license</u>					
Public Safety, Driver License	35629	R708-10	EMR	01/07/2012	2012-3/101
	36330	R708-10	EMR	06/06/2012	2012-13/95
<u>client rights</u>					
Community and Culture, Home Energy Assistance Target (HEAT)	35403	R195-1	AMD	03/26/2012	2011-23/12
<u>CNG</u>					
Administrative Services, Fleet Operations	35727	R27-9	NEW	03/26/2012	2012-4/6
<u>coal mines</u>					
Natural Resources, Oil, Gas and Mining; Coal	35801	R645-100	5YR	02/01/2012	2012-4/106
	35995	R645-100-200	AMD	05/23/2012	2012-8/18
	35802	R645-103	5YR	02/01/2012	2012-4/106
	35803	R645-200	5YR	02/01/2012	2012-4/107
	35804	R645-201	5YR	02/01/2012	2012-4/107
	35836	R645-202	5YR	02/03/2012	2012-5/117
	35837	R645-203	5YR	02/03/2012	2012-5/117
	35838	R645-300	5YR	02/03/2012	2012-5/118
	35996	R645-300-100	AMD	05/23/2012	2012-8/31
	35839	R645-301	5YR	02/03/2012	2012-5/118
	35997	R645-301-100	AMD	05/23/2012	2012-8/39
	36151	R645-301-500	NSC	05/30/2012	Not Printed
	35840	R645-302	5YR	02/03/2012	2012-5/119
	35998	R645-302-200	AMD	05/23/2012	2012-8/43
	35841	R645-303	5YR	02/03/2012	2012-5/120
	35999	R645-303-300	AMD	05/23/2012	2012-8/52
	36000	R645-400-300	AMD	05/23/2012	2012-8/54
	35842	R645-402	5YR	02/03/2012	2012-5/120
	36001	R645-403	NEW	05/23/2012	2012-8/58
<u>coatings</u>					
Environmental Quality, Air Quality	35787	R307-343	5YR	02/01/2012	2012-4/89
<u>code of conduct</u>					
Workforce Services, Administration	36357	R982-601	5YR	06/12/2012	2012-13/116
<u>collection transfer</u>					
Administrative Services, Debt Collection	36420	R21-1	5YR	06/28/2012	Not Printed
<u>collections</u>					
Tax Commission, Auditing	35602	R865-12L	5YR	01/03/2012	2012-2/130
<u>comments</u>					
Environmental Quality, Radiation Control	35416	R313-17	AMD	03/19/2012	2011-23/50
<u>commercial solicitations</u>					
Capitol Preservation Board (State), Administration	35687	R131-10	5YR	01/17/2012	2012-3/111

<u>commercialization revenues</u>						
Science Technology and Research Governing Auth., Administration	36084	R856-2	EXD	04/05/2012	2012-9/101	
<u>community-based corrections</u>						
Corrections, Administration	35755	R251-306	EXT	01/31/2012	2012-4/121	
	36040	R251-306	5YR	04/06/2012	2012-9/77	
<u>complaints</u>						
Commerce, Administration	35897	R151-3	5YR	02/28/2012	2012-6/35	
Education, Administration	36067	R277-104	R&R	06/07/2012	2012-9/31	
Education, Rehabilitation	36068	R280-201	REP	06/07/2012	2012-9/56	
Human Services, Substance Abuse and Mental Health, State Hospital	35594	R525-7	AMD	02/21/2012	2012-2/99	
	35855	R525-7	NSC	02/29/2012	Not Printed	
Workforce Services, Administration	36354	R982-101	5YR	06/12/2012	2012-13/115	
<u>compressed natural gas</u>						
Administrative Services, Fleet Operations	35727	R27-9	NEW	03/26/2012	2012-4/6	
<u>computer software</u>						
Technology Services, Administration	35989	R895-3	EXT	03/29/2012	2012-8/91	
<u>concealed firearm permit instructor</u>						
Public Safety, Criminal Investigations and Technical Services, Criminal Identification	35650	R722-300	AMD	03/09/2012	2012-3/79	
<u>concerns</u>						
Human Services, Substance Abuse and Mental Health, State Hospital	35594	R525-7	AMD	02/21/2012	2012-2/99	
	35855	R525-7	NSC	02/29/2012	Not Printed	
<u>condemnation</u>						
Transportation, Preconstruction, Right-of-Way Acquisition	35429	R933-1	AMD	01/10/2012	2011-23/97	
<u>conduct</u>						
Commerce, Real Estate	35915	R162-2e-402	AMD	05/23/2012	2012-7/25	
<u>confidential information</u>						
Public Service Commission, Administration	35508	R746-100	AMD	02/07/2012	2012-1/30	
	35900	R746-100	AMD	05/07/2012	2012-6/24	
<u>confidentiality of information</u>						
Community and Culture, Home Energy Assistance Target (HEAT)	35403	R195-1	AMD	03/26/2012	2011-23/12	
Human Resource Management, Administration	35822	R477-2	5YR	02/02/2012	2012-5/108	
	36119	R477-2	AMD	07/02/2012	2012-10/51	
Regents (Board Of), College of Eastern Utah	36391	R767-1	EXT	06/18/2012	Not Printed	
<u>conflict of interest</u>						
Human Resource Management, Administration	35829	R477-9	5YR	02/02/2012	2012-5/112	
	36125	R477-9	AMD	07/02/2012	2012-10/76	
<u>consumer protection</u>						
Commerce, Consumer Protection	35974	R152-6	5YR	03/26/2012	2012-8/71	
	35965	R152-15	5YR	03/22/2012	2012-8/71	
	35967	R152-20	5YR	03/22/2012	2012-8/72	
	35970	R152-22	5YR	03/22/2012	2012-8/72	
	35971	R152-23	5YR	03/22/2012	2012-8/73	
	36360	R152-34	5YR	06/14/2012	2012-13/98	
	35972	R152-42	5YR	03/22/2012	2012-8/73	
<u>contractors</u>						
Capitol Preservation Board (State), Administration	35611	R131-13	EMR	01/03/2012	2012-2/105	
	35610	R131-13	AMD	02/21/2012	2012-2/24	

RULES INDEX

contracts

Administrative Services, Facilities Construction and Management	36145	R23-1	5YR	05/03/2012	2012-11/177
Capitol Preservation Board (State), Administration	35611	R131-13	EMR	01/03/2012	2012-2/105
	35610	R131-13	AMD	02/21/2012	2012-2/24

controlled substance database

Commerce, Occupational and Professional Licensing	35892	R156-37	5YR	02/21/2012	2012-6/36
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controlled substances

Commerce, Occupational and Professional Licensing	35892	R156-37	5YR	02/21/2012	2012-6/36
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copyright

Technology Services, Administration	35989	R895-3	EXT	03/29/2012	2012-8/91
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corporation tax

Tax Commission, Auditing	35597	R865-3C	5YR	01/03/2012	2012-2/125
	35863	R865-3C-1	AMD	04/12/2012	2012-5/95

correctional institutions

Corrections, Administration	35764	R251-704	EXD	01/18/2012	2012-4/124
	35771	R251-704	EMR	02/01/2012	2012-4/52
	35809	R251-704	NEW	04/09/2012	2012-5/18

corrections

Corrections, Administration	35760	R251-106	EXD	01/18/2012	2012-4/123
	35767	R251-106	EMR	02/01/2012	2012-4/45
	35805	R251-106	NEW	04/09/2012	2012-5/11
	35761	R251-107	EXD	01/18/2012	2012-4/123
	35768	R251-107	EMR	02/01/2012	2012-4/47
	35806	R251-107	NEW	04/09/2012	2012-5/13
	35762	R251-108	EXD	01/18/2012	2012-4/123
	35769	R251-108	EMR	02/01/2012	2012-4/49
	35807	R251-108	NEW	04/09/2012	2012-5/15
	35754	R251-305	EXT	01/31/2012	2012-4/121
	36039	R251-305	5YR	04/06/2012	2012-9/77
	35755	R251-306	EXT	01/31/2012	2012-4/121
	36040	R251-306	5YR	04/06/2012	2012-9/77
	35763	R251-703	EXD	01/18/2012	2012-4/124
	35770	R251-703	EMR	02/01/2012	2012-4/51
	35808	R251-703	NEW	04/09/2012	2012-5/17
	35765	R251-705	EXD	01/18/2012	2012-4/124
	35772	R251-705	EMR	02/01/2012	2012-4/53
	35810	R251-705	NEW	04/09/2012	2012-5/19
	35766	R251-706	EXD	01/18/2012	2012-4/124
	35773	R251-706	EMR	02/01/2012	2012-4/56
	35811	R251-706	NEW	04/09/2012	2012-5/22
	35756	R251-707	EXT	01/31/2012	2012-4/121
	36041	R251-707	5YR	04/06/2012	2012-9/78
	35757	R251-710	EXT	01/31/2012	2012-4/121
	36042	R251-710	5YR	04/06/2012	2012-9/78

cosmetologists/barbers

Commerce, Occupational and Professional Licensing	35853	R156-11a	5YR	02/06/2012	2012-5/101
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cost sharing

Health, Health Care Financing, Coverage and Reimbursement Policy	36185	R414-200	5YR	05/14/2012	2012-11/180
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costs

Financial Institutions, Administration	36021	R331-22	EXT	04/02/2012	2012-8/91
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cottage foods

Agriculture and Food, Regulatory Services	35662	R70-560	5YR	01/12/2012	2012-3/111
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councils

Workforce Services, Administration	36356	R982-301	5YR	06/12/2012	2012-13/116
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<u>coverage groups</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	35789	R414-303	AMD	04/01/2012	2012-4/12	
<u>covered-at-work</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	36309	R414-310	5YR	06/04/2012	2012-13/107	
<u>CPB</u>						
Capitol Preservation Board (State), Administration	35686	R131-9	R&R	03/09/2012	2012-3/13	
<u>criminal background screening</u>						
Human Services, Child and Family Services	36044	R512-51	5YR	04/09/2012	2012-9/93	
<u>criminal competency</u>						
Pardons (Board Of), Administration	35758	R671-206	5YR	02/01/2012	2012-4/111	
	35740	R671-207	5YR	01/31/2012	2012-4/112	
<u>critical languages</u>						
Education, Administration	36369	R277-488	5YR	06/15/2012	2012-13/100	
<u>cultural resources</u>						
Natural Resources, Forestry, Fire and State Lands	36013	R652-60	5YR	04/02/2012	2012-8/87	
School and Institutional Trust Lands, Administration	36414	R850-60	5YR	06/27/2012	Not Printed	
<u>curricula</u>						
Education, Administration	36075	R277-700	AMD	06/07/2012	2012-9/45	
	35537	R277-703	AMD	02/07/2012	2012-1/14	
	35818	R277-705	5YR	02/02/2012	2012-5/103	
<u>data standards</u>						
Education, Administration	35676	R277-484-3	AMD	03/12/2012	2012-3/23	
<u>day care</u>						
Public Safety, Fire Marshal	35929	R710-8	5YR	03/13/2012	2012-7/71	
<u>deadlines</u>						
Education, Administration	35676	R277-484-3	AMD	03/12/2012	2012-3/23	
<u>debt</u>						
Human Services, Recovery Services	36351	R527-330	5YR	06/12/2012	2012-13/111	
<u>debt-management</u>						
Commerce, Consumer Protection	35972	R152-42	5YR	03/22/2012	2012-8/73	
<u>deception detection examiners</u>						
Commerce, Occupational and Professional Licensing	35736	R156-64	5YR	01/31/2012	2012-4/64	
<u>deception detection interns</u>						
Commerce, Occupational and Professional Licensing	35736	R156-64	5YR	01/31/2012	2012-4/64	
<u>declaratory orders</u>						
Health, Administration	36096	R380-1	5YR	04/26/2012	2012-10/88	
	36097	R380-5	5YR	04/26/2012	2012-10/89	
<u>decommissioning</u>						
Environmental Quality, Radiation Control	35417	R313-22-75	AMD	01/16/2012	2011-23/51	
<u>definitions</u>						
Environmental Quality, Air Quality	35615	R307-101-3	AMD	04/05/2012	2012-3/40	
	35857	R307-840	AMD	05/03/2012	2012-5/33	
	36161	R307-840-1	NSC	05/30/2012	Not Printed	
Human Resource Management, Administration	35821	R477-1	5YR	02/02/2012	2012-5/107	
	36118	R477-1	AMD	07/02/2012	2012-10/47	
Natural Resources, Forestry, Fire and State Lands	36005	R652-1	5YR	04/02/2012	2012-8/82	
School and Institutional Trust Lands, Administration	36274	R850-1	5YR	05/23/2012	2012-12/90	

RULES INDEX

<u>degreasing</u>						
Environmental Quality, Air Quality	35784	R307-335	5YR	02/01/2012	2012-4/87	
<u>demonstration</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	36309	R414-310	5YR	06/04/2012	2012-13/107	
<u>depredation</u>						
Natural Resources, Wildlife Resources	36392	R657-44	5YR	06/19/2012	Not Printed	
<u>design</u>						
Health, Disease Control and Prevention, Environmental Services	35710	R392-200	5YR	01/20/2012	2012-4/91	
<u>developmental disabilities</u>						
Tax Commission, Administration	35595	R861-1A	5YR	01/03/2012	2012-2/122	
	35862	R861-1A-9	AMD	04/12/2012	2012-5/93	
	36061	R861-1A-16	AMD	06/14/2012	2012-9/65	
<u>disabilities</u>						
Commerce, Administration	35897	R151-3	5YR	02/28/2012	2012-6/35	
Pardons (Board Of), Administration	35731	R671-102	5YR	01/26/2012	2012-4/109	
Workforce Services, Administration	36354	R982-101	5YR	06/12/2012	2012-13/115	
<u>disabled persons</u>						
Education, Administration	36067	R277-104	R&R	06/07/2012	2012-9/31	
Education, Rehabilitation	36068	R280-201	REP	06/07/2012	2012-9/56	
Health, Administration	36099	R380-100	5YR	04/26/2012	2012-10/90	
Human Services, Administration	35717	R495-878	5YR	01/23/2012	2012-4/99	
<u>discharge permits</u>						
Environmental Quality, Water Quality	35238	R317-8	AMD	01/25/2012	2011-19/31	
<u>disciplinary problems</u>						
Education, Administration	35454	R277-608	AMD	01/10/2012	2011-23/41	
<u>discipline of employees</u>						
Human Resource Management, Administration	35831	R477-11	5YR	02/03/2012	2012-5/114	
	36126	R477-11	AMD	07/02/2012	2012-10/79	
<u>disclosure requirements</u>						
Tax Commission, Administration	35595	R861-1A	5YR	01/03/2012	2012-2/122	
	35862	R861-1A-9	AMD	04/12/2012	2012-5/93	
	36061	R861-1A-16	AMD	06/14/2012	2012-9/65	
<u>disease control</u>						
Agriculture and Food, Animal Industry	35691	R58-1	5YR	01/18/2012	2012-4/59	
	35692	R58-6	5YR	01/18/2012	2012-4/59	
<u>dismissal of employees</u>						
Human Resource Management, Administration	35831	R477-11	5YR	02/03/2012	2012-5/114	
	36126	R477-11	AMD	07/02/2012	2012-10/79	
<u>dissemination of information</u>						
Education, Administration	35681	R277-714	AMD	03/12/2012	2012-3/36	
<u>distribution</u>						
Natural Resources, Water Rights	36382	R655-15	5YR	06/15/2012	2012-13/113	
<u>distribution of revenues</u>						
Science Technology and Research Governing Auth., Administration	36084	R856-2	EXD	04/05/2012	2012-9/101	
<u>distribution system</u>						
Natural Resources, Water Rights	36382	R655-15	5YR	06/15/2012	2012-13/113	

<u>diversion programs</u>						
Commerce, Occupational and Professional Licensing	35624	R156-1	5YR	01/05/2012	2012-3/112	
	36077	R156-1	AMD	06/07/2012	2012-9/8	
Human Services, Juvenile Justice Services	36136	R547-1	5YR	05/01/2012	2012-10/92	
<u>do not resuscitate</u>						
Health, Family Health and Preparedness, Licensing	35976	R432-31	5YR	03/28/2012	2012-8/76	
<u>domestic violence</u>						
Human Services, Child and Family Services	35895	R512-1	5YR	02/23/2012	2012-6/38	
<u>driver education</u>						
Education, Administration	35940	R277-507	5YR	03/15/2012	2012-7/64	
Public Safety, Driver License	35702	R708-2	5YR	01/20/2012	2012-4/118	
	35703	R708-21	5YR	01/20/2012	2012-4/119	
	35705	R708-27	5YR	01/20/2012	2012-4/120	
<u>drugs</u>						
Public Safety, Highway Patrol	36436	R714-550	5YR	07/02/2012	Not Printed	
<u>dual employment</u>						
Human Resource Management, Administration	35828	R477-8	5YR	02/02/2012	2012-5/112	
	36124	R477-8	AMD	07/02/2012	2012-10/71	
<u>dual language immersion</u>						
Education, Administration	36369	R277-488	5YR	06/15/2012	2012-13/100	
<u>due process</u>						
Human Services, Child and Family Services	35911	R512-31	5YR	03/05/2012	2012-7/68	
<u>DUI programs</u>						
Human Services, Substance Abuse and Mental Health	36383	R523-22	5YR	06/18/2012	Not Printed	
<u>dumping of wastes</u>						
Environmental Quality, Water Quality	36389	R317-550	5YR	06/18/2012	Not Printed	
<u>economic development</u>						
Workforce Services, Administration	36357	R982-601	5YR	06/12/2012	2012-13/116	
<u>economic opportunity</u>						
Governor, Economic Development	36066	R357-1	5YR	04/13/2012	2012-9/92	
<u>education</u>						
Commerce, Consumer Protection	36360	R152-34	5YR	06/14/2012	2012-13/98	
Education, Administration	35451	R277-470	AMD	01/10/2012	2011-23/28	
	35876	R277-521	REP	04/10/2012	2012-5/26	
	35682	R277-718	REP	03/12/2012	2012-3/37	
	35538	R277-730	REP	02/07/2012	2012-1/16	
<u>education finance</u>						
Education, Administration	35905	R277-419-5	AMD	05/08/2012	2012-7/28	
	36069	R277-419-7	AMD	06/07/2012	2012-9/34	
	36070	R277-420	AMD	06/07/2012	2012-9/35	
	35535	R277-425	AMD	02/07/2012	2012-1/11	
	35536	R277-426	AMD	02/07/2012	2012-1/13	
	35933	R277-454	AMD	05/08/2012	2012-7/30	
<u>educational facilities</u>						
Education, Administration	35933	R277-454	AMD	05/08/2012	2012-7/30	
<u>educational media</u>						
Education, Administration	36365	R277-467	5YR	06/15/2012	2012-13/99	
<u>educational tuition</u>						
Human Resource Management, Administration	35830	R477-10	5YR	02/03/2012	2012-5/113	

RULES INDEX

<u>educator licensure</u>						
Education, Administration	35940	R277-507	5YR	03/15/2012	2012-7/64	
<u>educators</u>						
Education, Administration	35680	R277-520	AMD	03/12/2012	2012-3/32	
	36074	R277-520-6	AMD	06/07/2012	2012-9/43	
<u>electric generating units</u>						
Environmental Quality, Air Quality	35531	R307-220-3	AMD	03/07/2012	2012-1/21	
	36033	R307-424	5YR	04/05/2012	2012-9/79	
<u>electric utility industries</u>						
Public Service Commission, Administration	35505	R746-310-1	AMD	02/07/2012	2012-1/38	
	35925	R746-310-2	NSC	03/22/2012	Not Printed	
<u>electrologists</u>						
Commerce, Occupational and Professional Licensing	35853	R156-11a	5YR	02/06/2012	2012-5/101	
<u>electronic meetings</u>						
Administrative Services, Child Welfare Parental Defense (Office of)	35206	R19-1-7	AMD	01/12/2012	2011-18/7	
Administrative Services, Finance Examiners (Board of), Administration	35975	R25-20	NEW	05/22/2012	2012-8/5	
	35497	R320-101	NEW	02/10/2012	2011-24/10	
<u>electronic participation</u>						
Administrative Services, Archives	35304	R17-9	NEW	01/30/2012	2011-20/6	
<u>elevators</u>						
Labor Commission, Boiler and Elevator Safety	35962	R616-3-3	AMD	05/22/2012	2012-8/16	
<u>eligibility</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	36085	R414-307	5YR	04/17/2012	2012-10/91	
	35441	R414-308	AMD	02/06/2012	2011-23/70	
	35790	R414-308	AMD	04/01/2012	2012-4/14	
Human Services, Child and Family Services	35895	R512-1	5YR	02/23/2012	2012-6/38	
	35910	R512-2	5YR	03/05/2012	2012-7/68	
<u>eligibility and priority</u>						
Human Services, Public Guardian (Office of)	35759	R549-1	5YR	02/01/2012	2012-4/100	
<u>emergency contact database</u>						
Public Safety, Driver License	36283	R708-47	EMR	07/01/2012	2012-12/79	
<u>emergency medical services</u>						
Health, Family Health and Preparedness, Emergency Medical Services	36100	R426-5	5YR	04/26/2012	2012-10/92	
<u>emergency powers</u>						
Environmental Quality, Air Quality	36333	R307-105	5YR	06/06/2012	2012-13/101	
<u>emergency vehicle operations range</u>						
Public Safety, Peace Officer Standards and Training	35568	R728-408	REP	05/14/2012	2012-2/102	
<u>emission controls</u>						
Environmental Quality, Air Quality	35780	R307-325	5YR	02/01/2012	2012-4/84	
	35785	R307-340	5YR	02/01/2012	2012-4/87	
	35786	R307-341	5YR	02/01/2012	2012-4/88	
<u>emission fees</u>						
Environmental Quality, Air Quality	36339	R307-415	5YR	06/06/2012	2012-13/104	
	35529	R307-415-2	AMD	03/07/2012	2012-1/25	
<u>employee benefit plans</u>						
Human Resource Management, Administration	35826	R477-6	5YR	02/02/2012	2012-5/110	

<u>employee performance evaluations</u>						
Human Resource Management, Administration	35830	R477-10	5YR	02/03/2012	2012-5/113	
<u>employee productivity</u>						
Human Resource Management, Administration	35830	R477-10	5YR	02/03/2012	2012-5/113	
<u>employee recruitment</u>						
Workforce Services, Unemployment Insurance	36095	R994-402	5YR	04/25/2012	2012-10/98	
<u>employee termination</u>						
Workforce Services, Unemployment Insurance	36134	R994-405-104	AMD	07/01/2012	2012-10/84	
<u>employee's rights</u>						
Workforce Services, Unemployment Insurance	36134	R994-405-104	AMD	07/01/2012	2012-10/84	
<u>employees' rights</u>						
Human Resource Management, Administration	35832	R477-12	5YR	02/03/2012	2012-5/114	
<u>employment</u>						
Human Resource Management, Administration	35824	R477-4	5YR	02/02/2012	2012-5/109	
	36121	R477-4	AMD	07/02/2012	2012-10/55	
	35825	R477-5	5YR	02/02/2012	2012-5/109	
Workforce Services, Unemployment Insurance	36134	R994-405-104	AMD	07/01/2012	2012-10/84	
<u>energy assistance</u>						
Community and Culture, Home Energy Assistance Target (HEAT)	36293	R195-2	EXT	05/31/2012	2012-12/95	
	36294	R195-3	EXT	05/31/2012	2012-12/95	
	35405	R195-3-3	AMD	03/26/2012	2011-23/16	
	36295	R195-4	EXT	05/31/2012	2012-12/95	
	35406	R195-5	AMD	03/26/2012	2011-23/17	
	36296	R195-5	EXT	05/31/2012	2012-12/96	
	35407	R195-6	AMD	03/26/2012	2011-23/18	
	36297	R195-6	EXT	05/31/2012	2012-12/96	
	35408	R195-7	AMD	03/26/2012	2011-23/19	
	36298	R195-7	EXT	05/31/2012	2012-12/96	
	35409	R195-8	AMD	03/26/2012	2011-23/20	
	36302	R195-8	EXT	05/31/2012	2012-12/96	
<u>energy efficiency</u>						
Natural Resources, Geological Survey	35685	R638-3	EMR	02/01/2012	2012-3/97	
<u>energy industries</u>						
Community and Culture, Home Energy Assistance Target (HEAT)	35409	R195-8	AMD	03/26/2012	2011-23/20	
	36302	R195-8	EXT	05/31/2012	2012-12/96	
<u>energy utility</u>						
Public Service Commission, Administration	35924	R746-440	5YR	03/08/2012	2012-7/73	
<u>enforcement</u>						
Commerce, Real Estate	36079	R162-2c	AMD	06/07/2012	2012-9/12	
Natural Resources, Oil, Gas and Mining; Coal	36001	R645-403	NEW	05/23/2012	2012-8/58	
<u>enrollment</u>						
Education, Administration	35936	R277-485	AMD	05/08/2012	2012-7/33	
	36153	R277-612	5YR	05/07/2012	2012-11/179	
<u>enterprise zones</u>						
Tax Commission, Auditing	35600	R865-9I	5YR	01/03/2012	2012-2/127	
<u>environment</u>						
Tax Commission, Auditing	35603	R865-13G	5YR	01/03/2012	2012-2/131	
<u>environmental analysis</u>						
Environmental Quality, Radiation Control	36277	R313-24	5YR	05/24/2012	2012-12/84	

RULES INDEX

<u>environmental assessment</u>						
Natural Resources, Forestry, Fire and State Lands	36015	R652-90	5YR	04/02/2012	2012-8/88	
<u>environmental health scientist</u>						
Commerce, Occupational and Professional Licensing	35430	R156-20a	AMD	01/10/2012	2011-23/10	
<u>environmental health scientist-in-training</u>						
Commerce, Occupational and Professional Licensing	35430	R156-20a	AMD	01/10/2012	2011-23/10	
<u>Equine Viral Arteritis (EVA)</u>						
Agriculture and Food, Animal Industry	35693	R58-23	5YR	01/18/2012	2012-4/61	
<u>equipment</u>						
Environmental Quality, Air Quality	35775	R307-120	5YR	02/01/2012	2012-4/81	
Environmental Quality, Water Quality	35726	R317-12	5YR	01/25/2012	2012-4/89	
<u>essential facilities</u>						
Public Service Commission, Administration	35916	R746-349	5YR	03/06/2012	2012-7/71	
<u>estheticians</u>						
Commerce, Occupational and Professional Licensing	35853	R156-11a	5YR	02/06/2012	2012-5/101	
<u>evaluation cycles</u>						
Judicial Performance Evaluation Commission, Administration	35930	R597-3	EMR	03/15/2012	2012-7/57	
	35934	R597-3	AMD	06/01/2012	2012-7/50	
<u>ex-convicts</u>						
Human Services, Juvenile Justice Services	36227	R547-10	5YR	05/16/2012	2012-12/86	
<u>exceptional children</u>						
Education, Administration	35539	R277-751	AMD	02/07/2012	2012-1/18	
<u>executions</u>						
Corrections, Administration	35761	R251-107	EXD	01/18/2012	2012-4/123	
	35768	R251-107	EMR	02/01/2012	2012-4/47	
	35806	R251-107	NEW	04/09/2012	2012-5/13	
<u>expansion</u>						
Education, Administration	35453	R277-482	NEW	01/10/2012	2011-23/38	
<u>expelled</u>						
Education, Administration	36071	R277-483-4	AMD	06/07/2012	2012-9/36	
<u>expert witnesses</u>						
Attorney General, Administration	35904	R105-1	NEW	04/24/2012	2012-6/6	
<u>extended benefits</u>						
Workforce Services, Unemployment Insurance	36095	R994-402	5YR	04/25/2012	2012-10/98	
<u>extended school year</u>						
Education, Administration	35539	R277-751	AMD	02/07/2012	2012-1/18	
<u>extended-day</u>						
Education, Administration	36372	R277-489	5YR	06/15/2012	2012-13/100	
<u>extinguishers</u>						
Public Safety, Fire Marshal	36198	R710-1	5YR	05/15/2012	2012-11/183	
<u>facilities</u>						
Human Services, Substance Abuse and Mental Health, State Hospital	35596	R525-8	AMD	02/21/2012	2012-2/100	
<u>facilities use</u>						
Administrative Services, Facilities Construction and Management	36146	R23-19	5YR	05/03/2012	2012-11/177	
Capitol Preservation Board (State), Administration	35899	R131-3	EXT	02/29/2012	2012-6/43	

	36359	R131-3	5YR	06/13/2012	2012-13/97
<u>facility</u>					
Health, Health Care Financing, Coverage and Reimbursement Policy	36106	R414-9-5	AMD	07/01/2012	2012-10/37
<u>factory built housing</u>					
Commerce, Occupational and Professional Licensing	35735	R156-56	5YR	01/31/2012	2012-4/62
<u>fair employment practice</u>					
Human Resource Management, Administration	36119	R477-2	AMD	07/02/2012	2012-10/51
<u>fair employment practices</u>					
Human Resource Management, Administration	35822	R477-2	5YR	02/02/2012	2012-5/108
	35824	R477-4	5YR	02/02/2012	2012-5/109
	36121	R477-4	AMD	07/02/2012	2012-10/55
<u>falconry</u>					
Natural Resources, Wildlife Resources	35734	R657-20	AMD	04/02/2012	2012-4/25
<u>family employment program</u>					
Workforce Services, Employment Development	35919	R986-200-214	AMD	05/22/2012	2012-7/54
	35501	R986-200-247	AMD	02/01/2012	2011-24/78
<u>federal law</u>					
Financial Institutions, Credit Unions	35700	R337-10	5YR	01/20/2012	2012-4/90
<u>fees</u>					
Administrative Services, Finance	35663	R25-14	5YR	01/12/2012	2012-3/105
Corrections, Administration	36312	R251-401	5YR	06/05/2012	2012-13/99
Environmental Quality, Air Quality	36338	R307-414	5YR	06/06/2012	2012-13/104
Environmental Quality, Environmental Response and Remediation	36047	R311-203	5YR	04/10/2012	2012-9/84
Human Services, Child and Family Services	36044	R512-51	5YR	04/09/2012	2012-9/93
Public Safety, Highway Patrol	36436	R714-550	5YR	07/02/2012	Not Printed
<u>filing</u>					
Public Service Commission, Administration	35506	R746-800	REP	02/07/2012	2012-1/43
<u>filing deadlines</u>					
Labor Commission, Adjudication	36399	R602-1	5YR	06/19/2012	Not Printed
Labor Commission, Industrial Accidents	36402	R612-1	5YR	06/19/2012	Not Printed
Workforce Services, Unemployment Insurance	35448	R994-403-112c	AMD	01/17/2012	2011-23/98
<u>filing fees</u>					
Natural Resources, Forestry, Fire and State Lands	36007	R652-4	5YR	04/02/2012	2012-8/83
School and Institutional Trust Lands, Administration	36408	R850-4	5YR	06/27/2012	Not Printed
<u>filing requirements</u>					
Public Service Commission, Administration	36166	R746-420	5YR	05/10/2012	2012-11/183
	35924	R746-440	5YR	03/08/2012	2012-7/73
<u>financial disclosures</u>					
Community and Culture, Home Energy Assistance Target (HEAT)	36295	R195-4	EXT	05/31/2012	2012-12/95
<u>financial institutions</u>					
Financial Institutions, Administration	35684	R331-7	AMD	03/09/2012	2012-3/46
	36021	R331-22	EXT	04/02/2012	2012-8/91
Financial Institutions, Credit Unions	35700	R337-10	5YR	01/20/2012	2012-4/90
Financial Institutions, Nondepository Lenders	35628	R343-1	5YR	01/06/2012	2012-3/114
<u>financial responsibility</u>					
Environmental Quality, Environmental Response and Remediation	36051	R311-207	5YR	04/10/2012	2012-9/87

RULES INDEX

financing of programs

Human Services, Substance Abuse and Mental Health 36310 R523-20 5YR 06/05/2012 2012-13/107

fire prevention

Public Safety, Fire Marshal 36198 R710-1 5YR 05/15/2012 2012-11/183
 36278 R710-4 5YR 05/24/2012 2012-12/89
 36022 R710-4-3 AMD 05/22/2012 2012-8/60
 35929 R710-8 5YR 03/13/2012 2012-7/71

fire prevention law

Public Safety, Fire Marshal 36343 R710-9 5YR 06/07/2012 2012-13/114

fire prevention systems

Public Safety, Fire Marshal 36250 R710-7 5YR 05/21/2012 2012-12/89

fire training

Public Safety, Fire Marshal 36023 R710-10-5 AMD 05/22/2012 2012-8/62

firearms

Human Services, Juvenile Justice Services 36043 R547-14 5YR 04/09/2012 2012-9/93
 Public Safety, Peace Officer Standards and Training 35568 R728-408 REP 05/14/2012 2012-2/102

fireworks

Public Safety, Fire Marshal 35690 R710-2 AMD 03/09/2012 2012-3/73
 36251 R710-2 5YR 05/21/2012 2012-12/87

fiscal

Natural Resources, Parks and Recreation 36225 R651-301 5YR 05/16/2012 2012-12/86

fish

Natural Resources, Wildlife Resources 35440 R657-13 AMD 01/10/2012 2011-23/75
 35439 R657-58 AMD 01/10/2012 2011-23/79
 35438 R657-59 AMD 01/10/2012 2011-23/80

fishing

Natural Resources, Wildlife Resources 35440 R657-13 AMD 01/10/2012 2011-23/75
 36152 R657-30 5YR 05/04/2012 2012-11/182
 35439 R657-58 AMD 01/10/2012 2011-23/79

fleet expansion

Administrative Services, Fleet Operations 35622 R27-4 5YR 01/05/2012 2012-3/105

food establishment registration

Agriculture and Food, Regulatory Services 35662 R70-560 5YR 01/12/2012 2012-3/111

food inspections

Agriculture and Food, Animal Industry 35866 R58-11 AMD 05/15/2012 2012-5/5
 36144 R58-11 NSC 05/30/2012 Not Printed
 Agriculture and Food, Regulatory Services 35661 R70-320 5YR 01/12/2012 2012-3/109
 35658 R70-350 5YR 01/12/2012 2012-3/109
 35657 R70-360 5YR 01/12/2012 2012-3/110

food safety

Agriculture and Food, Regulatory Services 35920 R70-530 5YR 03/07/2012 2012-7/63
 35662 R70-560 5YR 01/12/2012 2012-3/111

food services

Health, Disease Control and Prevention, Environmental Services 35715 R392-100 5YR 01/20/2012 2012-4/91
 35445 R392-100 AMD 01/26/2012 2011-23/62

food stamps

Workforce Services, Employment Development 35993 R986-900-902 AMD 07/01/2012 2012-8/67

foreign exchange students

Education, Administration 36153 R277-612 5YR 05/07/2012 2012-11/179

<u>forensic</u>						
Human Services, Substance Abuse and Mental Health, State Hospital	35596	R525-8	AMD	02/21/2012	2012-2/100	
<u>forest practices</u>						
Natural Resources, Forestry, Fire and State Lands	35698	R652-140	5YR	01/19/2012	2012-4/108	
<u>foster care</u>						
Human Services, Child and Family Services	35910	R512-2	5YR	03/05/2012	2012-7/68	
	35911	R512-31	5YR	03/05/2012	2012-7/68	
	35912	R512-32	5YR	03/05/2012	2012-7/69	
	36044	R512-51	5YR	04/09/2012	2012-9/93	
<u>franchises</u>						
Commerce, Administration	36329	R151-35	5YR	06/05/2012	2012-13/97	
Commerce, Consumer Protection	35965	R152-15	5YR	03/22/2012	2012-8/71	
Tax Commission, Auditing	35599	R865-6F	5YR	01/03/2012	2012-2/126	
<u>free speech</u>						
Administrative Services, Facilities Construction and Management	36148	R23-20	5YR	05/03/2012	2012-11/178	
<u>free speech activities</u>						
Capitol Preservation Board (State), Administration	35688	R131-11	5YR	01/17/2012	2012-3/112	
<u>freedom of information</u>						
Natural Resources, Parks and Recreation	36060	R651-102	5YR	04/11/2012	2012-9/98	
Natural Resources, Wildlife Resources	36131	R657-29	5YR	05/01/2012	2012-10/95	
<u>fuel</u>						
Tax Commission, Auditing	35598	R865-4D	5YR	01/03/2012	2012-2/125	
<u>fuel dispensing</u>						
Administrative Services, Fleet Operations	35620	R27-6	5YR	01/05/2012	2012-3/106	
<u>functional classification</u>						
Transportation, Program Development	35959	R926-4	5YR	03/20/2012	2012-8/90	
	35960	R926-4	NSC	04/11/2012	Not Printed	
<u>funeral directors</u>						
Commerce, Occupational and Professional Licensing	36117	R156-9	AMD	06/21/2012	2012-10/17	
<u>funeral industries</u>						
Commerce, Occupational and Professional Licensing	36117	R156-9	AMD	06/21/2012	2012-10/17	
<u>game birds</u>						
Natural Resources, Wildlife Resources	36150	R657-22	5YR	05/04/2012	2012-11/182	
<u>game laws</u>						
Natural Resources, Wildlife Resources	36280	R657-4	5YR	05/29/2012	2012-12/87	
	35520	R657-5	AMD	02/07/2012	2012-1/29	
	35209	R657-17	AMD	01/10/2012	2011-18/63	
	35733	R657-33	AMD	04/02/2012	2012-4/32	
<u>gasoline</u>						
Environmental Quality, Air Quality	35778	R307-301	5YR	02/01/2012	2012-4/83	
	35781	R307-326	5YR	02/01/2012	2012-4/85	
	35782	R307-327	5YR	02/01/2012	2012-4/86	
Tax Commission, Auditing	35603	R865-13G	5YR	01/03/2012	2012-2/131	
<u>gasoline transport</u>						
Environmental Quality, Air Quality	35783	R307-328	5YR	02/01/2012	2012-4/86	
<u>geology</u>						
Commerce, Occupational and Professional Licensing	35894	R156-76	5YR	02/21/2012	2012-6/37	

RULES INDEX

<u>geothermal resources</u>						
Natural Resources, Water Rights	36376	R655-1	5YR	06/15/2012	2012-13/112	
<u>government documents</u>						
Community and Culture, Home Energy Assistance Target (HEAT)	35408	R195-7	AMD	03/26/2012	2011-23/19	
Environmental Quality, Administration	36298	R195-7	EXT	05/31/2012	2012-12/96	
Health, Administration	35928	R305-1	5YR	03/13/2012	2012-7/65	
Human Services, Administration	36025	R380-20	5YR	04/03/2012	2012-9/92	
Natural Resources, Forestry, Fire and State Lands	35689	R495-810	5YR	01/17/2012	2012-3/115	
Natural Resources, Parks and Recreation	36018	R652-6	5YR	04/02/2012	2012-8/84	
Natural Resources, Wildlife Resources	36060	R651-102	5YR	04/11/2012	2012-9/98	
School and Institutional Trust Lands, Administration	36131	R657-29	5YR	05/01/2012	2012-10/95	
Transportation, Administration	36410	R850-6	5YR	06/27/2012	Not Printed	
	35672	R907-69	NEW	03/12/2012	2012-3/81	
<u>government ethics</u>						
Human Resource Management, Administration	35829	R477-9	5YR	02/02/2012	2012-5/112	
	36125	R477-9	AMD	07/02/2012	2012-10/76	
<u>government hearings</u>						
Agriculture and Food, Administration	35614	R51-2	5YR	01/04/2012	2012-3/107	
Commerce, Administration	36104	R151-4-306	AMD	06/21/2012	2012-10/16	
Commerce, Consumer Protection	35974	R152-6	5YR	03/26/2012	2012-8/71	
Human Resource Management, Administration	35831	R477-11	5YR	02/03/2012	2012-5/114	
	36126	R477-11	AMD	07/02/2012	2012-10/79	
Pardons (Board Of), Administration	35739	R671-205	5YR	01/31/2012	2012-4/111	
	35744	R671-304	5YR	01/31/2012	2012-4/113	
	35745	R671-305	5YR	01/31/2012	2012-4/114	
	35551	R671-305	AMD	03/26/2012	2012-2/101	
Public Service Commission, Administration	35508	R746-100	AMD	02/07/2012	2012-1/30	
	35900	R746-100	AMD	05/07/2012	2012-6/24	
<u>government paperwork</u>						
Transportation, Administration	35670	R907-60	REP	03/12/2012	2012-3/80	
<u>government purchasing</u>						
Administrative Services, Purchasing and General Services	35664	R33-1	AMD	03/30/2012	2012-3/4	
	36423	R33-1	5YR	07/02/2012	Not Printed	
	36424	R33-2	5YR	07/02/2012	Not Printed	
	35613	R33-3	AMD	03/30/2012	2012-2/6	
	36425	R33-3	5YR	07/02/2012	Not Printed	
	35667	R33-3-7	AMD	03/30/2012	2012-3/6	
	35665	R33-4	AMD	03/30/2012	2012-3/10	
	36426	R33-4	5YR	07/02/2012	Not Printed	
	36428	R33-5	5YR	07/02/2012	Not Printed	
	35666	R33-6-101	AMD	03/30/2012	2012-3/12	
	36430	R33-8	5YR	07/02/2012	Not Printed	
School and Institutional Trust Lands, Administration	36088	R850-11	5YR	04/24/2012	2012-10/95	
<u>governmental immunity act caps</u>						
Administrative Services, Risk Management	36289	R37-4	5YR	05/30/2012	2012-12/83	
	35844	R37-4	AMD	05/31/2012	2012-5/4	
<u>governor</u>						
Environmental Quality, Air Quality	36333	R307-105	5YR	06/06/2012	2012-13/101	
<u>grading system</u>						
Education, Administration	35875	R277-497	NEW	04/10/2012	2012-5/24	
<u>graduation requirements</u>						
Education, Administration	35537	R277-703	AMD	02/07/2012	2012-1/14	
<u>GRAMA</u>						
Environmental Quality, Administration	35928	R305-1	5YR	03/13/2012	2012-7/65	
Health, Administration	36025	R380-20	5YR	04/03/2012	2012-9/92	

Natural Resources, Forestry, Fire and State Lands	36018	R652-6	5YR	04/02/2012	2012-8/84
Regents (Board Of), College of Eastern Utah	36391	R767-1	EXT	06/18/2012	Not Printed
School and Institutional Trust Lands, Administration	36410	R850-6	5YR	06/27/2012	Not Printed
Transportation, Administration	35672	R907-69	NEW	03/12/2012	2012-3/81
<u>GRAMA compliance</u>					
Human Services, Recovery Services	35631	R527-5	5YR	01/06/2012	2012-3/116
<u>grants</u>					
Education, Administration	35671	R277-511	5YR	01/17/2012	2012-3/113
	35678	R277-511	REP	03/12/2012	2012-3/28
Natural Resources, Oil, Gas and Mining; Abandoned Mine Reclamation	35800	R643-886	5YR	02/01/2012	2012-4/105
<u>greenhouse gases</u>					
Environmental Quality, Air Quality	36334	R307-401	5YR	06/06/2012	2012-13/101
	36154	R307-401-11	NSC	05/30/2012	Not Printed
	35413	R307-405	AMD	02/02/2012	2011-23/42
	35872	R307-405-3	NSC	02/29/2012	Not Printed
	36339	R307-415	5YR	06/06/2012	2012-13/104
	35529	R307-415-2	AMD	03/07/2012	2012-1/25
<u>grievance procedures</u>					
Career Service Review Office, Administration	35559	R137-1-21	AMD	02/21/2012	2012-2/26
Health, Administration	36099	R380-100	5YR	04/26/2012	2012-10/90
Human Services, Administration	35717	R495-878	5YR	01/23/2012	2012-4/99
Tax Commission, Administration	35595	R861-1A	5YR	01/03/2012	2012-2/122
	35862	R861-1A-9	AMD	04/12/2012	2012-5/93
	36061	R861-1A-16	AMD	06/14/2012	2012-9/65
<u>grievances</u>					
Commerce, Administration	35897	R151-3	5YR	02/28/2012	2012-6/35
Human Resource Management, Administration	35823	R477-3	5YR	02/02/2012	2012-5/108
	36120	R477-3	AMD	07/02/2012	2012-10/54
	35831	R477-11	5YR	02/03/2012	2012-5/114
	36126	R477-11	AMD	07/02/2012	2012-10/79
	35832	R477-12	5YR	02/03/2012	2012-5/114
<u>guardianship</u>					
Human Services, Public Guardian (Office of)	35759	R549-1	5YR	02/01/2012	2012-4/100
<u>halfway houses</u>					
Corrections, Administration	35755	R251-306	EXT	01/31/2012	2012-4/121
	36040	R251-306	5YR	04/06/2012	2012-9/77
<u>Hatch Act</u>					
Human Resource Management, Administration	35829	R477-9	5YR	02/02/2012	2012-5/112
	36125	R477-9	AMD	07/02/2012	2012-10/76
<u>hazardous air pollutant</u>					
Environmental Quality, Air Quality	35922	R307-214	AMD	06/07/2012	2012-7/42
	36337	R307-410	5YR	06/06/2012	2012-13/103
<u>hazardous materials transportation</u>					
Transportation, Motor Carrier	35426	R909-75	AMD	01/10/2012	2011-23/96
<u>hazardous pollutant</u>					
Environmental Quality, Air Quality	35777	R307-135	5YR	02/01/2012	2012-4/82
<u>hazardous substance priority list</u>					
Environmental Quality, Environmental Response and Remediation	36030	R311-401	5YR	04/04/2012	2012-9/91
<u>hazardous substances</u>					
Environmental Quality, Environmental Response and Remediation	35447	R311-201	AMD	01/13/2012	2011-23/45
	36045	R311-201	5YR	04/10/2012	2012-9/82

RULES INDEX

	36046	R311-202	5YR	04/10/2012	2012-9/84
	36047	R311-203	5YR	04/10/2012	2012-9/84
	36048	R311-204	5YR	04/10/2012	2012-9/85
	36050	R311-206	5YR	04/10/2012	2012-9/86
	36056	R311-212	5YR	04/10/2012	2012-9/90
	36030	R311-401	5YR	04/04/2012	2012-9/91
Transportation, Motor Carrier	35426	R909-75	AMD	01/10/2012	2011-23/96
<u>hazardous waste</u>					
Environmental Quality, Solid and Hazardous Waste	35349	R315-1	AMD	01/13/2012	2011-21/27
	35350	R315-2	AMD	01/13/2012	2011-21/30
	35351	R315-3	AMD	01/13/2012	2011-21/38
	35352	R315-5	AMD	01/13/2012	2011-21/53
	35353	R315-6	AMD	01/13/2012	2011-21/57
	35354	R315-7	AMD	01/13/2012	2011-21/60
	35355	R315-8	AMD	01/13/2012	2011-21/67
	35356	R315-13	AMD	01/13/2012	2011-21/75
	35357	R315-14-8	AMD	01/13/2012	2011-21/76
	35867	R315-16	AMD	04/17/2012	2012-5/62
	35358	R315-50-9	AMD	01/13/2012	2011-21/77
Transportation, Motor Carrier	35426	R909-75	AMD	01/10/2012	2011-23/96
<u>headgear</u>					
Public Safety, Highway Patrol	36434	R714-220	5YR	07/02/2012	Not Printed
<u>health</u>					
Governor, Planning and Budget, Inspector General of Medicaid Services (Office of)	35879	R367-1	NEW	04/23/2012	2012-5/74
	35973	R367-1-7	NSC	04/23/2012	Not Printed
	35958	R367-1-15	AMD	05/23/2012	2012-8/6
Health, Center for Health Data, Health Care Statistics	35868	R428-2	AMD	04/26/2012	2012-5/80
	35869	R428-5	AMD	06/28/2012	2012-5/83
	36027	R428-5	NSC	06/28/2012	Not Printed
	35870	R428-10	AMD	05/31/2012	2012-5/85
	36111	R428-13	AMD	07/02/2012	2012-10/44
	35492	R428-20	REP	01/24/2012	2011-24/20
<u>health administration</u>					
Health, Administration	36098	R380-10	5YR	04/26/2012	2012-10/89
<u>health benefit plan insurance</u>					
Insurance, Administration	35918	R590-261-11	NSC	03/22/2012	Not Printed
<u>health care facilities</u>					
Health, Family Health and Preparedness, Licensing	35459	R432-4	AMD	02/21/2012	2011-24/21
	35469	R432-4-8	NSC	02/21/2012	Not Printed
	35460	R432-5	AMD	02/21/2012	2011-24/28
	35461	R432-6	AMD	02/21/2012	2011-24/33
	35462	R432-7	AMD	02/21/2012	2011-24/38
	35463	R432-8	AMD	02/21/2012	2011-24/40
	35464	R432-9	AMD	02/21/2012	2011-24/43
	35465	R432-10	AMD	02/21/2012	2011-24/46
	35466	R432-11	AMD	02/21/2012	2011-24/50
	35467	R432-12	AMD	02/21/2012	2011-24/53
	35468	R432-13	AMD	02/21/2012	2011-24/57
	35469	R432-14	AMD	02/21/2012	2011-24/59
	35470	R432-16	AMD	02/21/2012	2011-24/61
	35977	R432-40	5YR	03/28/2012	2012-8/77
	35500	R432-100	AMD	02/08/2012	2011-24/67
	35471	R432-100	AMD	02/21/2012	2011-24/65
	35978	R432-150	5YR	03/28/2012	2012-8/77
	35979	R432-151	5YR	03/28/2012	2012-8/78
	35980	R432-152	5YR	03/28/2012	2012-8/78
	35981	R432-200	5YR	03/28/2012	2012-8/79
	35982	R432-201	5YR	03/28/2012	2012-8/79
	35499	R432-270-6	AMD	02/08/2012	2011-24/73
	35983	R432-300	5YR	03/28/2012	2012-8/80

	35472	R432-650	AMD	02/21/2012	2011-24/74
	35652	R432-650	AMD	03/28/2012	2012-3/63
	35984	R432-650	5YR	03/28/2012	2012-8/80
	35985	R432-700	5YR	03/28/2012	2012-8/81
	35986	R432-750	5YR	03/28/2012	2012-8/81
	35987	R432-950	5YR	03/28/2012	2012-8/82
<u>health care professionals</u>					
Public Safety, Driver License	35632	R708-7	5YR	01/09/2012	2012-3/122
<u>health care quality</u>					
Health, Center for Health Data, Health Care Statistics	36110	R428-12	AMD	07/02/2012	2012-10/43
	35616	R428-15	AMD	03/16/2012	2012-3/51
<u>health claims insurance reporting</u>					
Health, Center for Health Data, Health Care Statistics	35616	R428-15	AMD	03/16/2012	2012-3/51
<u>health insurance</u>					
Capitol Preservation Board (State), Administration	35611	R131-13	EMR	01/03/2012	2012-2/105
	35610	R131-13	AMD	02/21/2012	2012-2/24
Human Services, Recovery Services	35619	R527-201	AMD	03/27/2012	2012-3/70
<u>health insurance claims reporting</u>					
Insurance, Administration	35201	R590-262	NEW	03/07/2012	2011-18/41
	35201	R590-262	CPR	03/07/2012	2011-24/84
<u>health insurance exemptions</u>					
Insurance, Administration	36031	R590-239	5YR	04/04/2012	2012-9/97
	36344	R590-240	5YR	06/07/2012	2012-13/111
<u>health maintenance organization</u>					
Health, Center for Health Data, Health Care Statistics	36110	R428-12	AMD	07/02/2012	2012-10/43
<u>health planning</u>					
Health, Center for Health Data, Health Care Statistics	35868	R428-2	AMD	04/26/2012	2012-5/80
	35869	R428-5	AMD	06/28/2012	2012-5/83
	36027	R428-5	NSC	06/28/2012	Not Printed
	35870	R428-10	AMD	05/31/2012	2012-5/85
	36111	R428-13	AMD	07/02/2012	2012-10/44
	35492	R428-20	REP	01/24/2012	2011-24/20
<u>health policy</u>					
Health, Center for Health Data, Health Care Statistics	35868	R428-2	AMD	04/26/2012	2012-5/80
	35869	R428-5	AMD	06/28/2012	2012-5/83
	36027	R428-5	NSC	06/28/2012	Not Printed
	36111	R428-13	AMD	07/02/2012	2012-10/44
	35492	R428-20	REP	01/24/2012	2011-24/20
<u>health spas</u>					
Commerce, Consumer Protection	35971	R152-23	5YR	03/22/2012	2012-8/73
<u>hearings</u>					
Community and Culture, Home Energy Assistance Target (HEAT)	35403	R195-1	AMD	03/26/2012	2011-23/12
Environmental Quality, Environmental Response and Remediation	36054	R311-210	5YR	04/10/2012	2012-9/89
Environmental Quality, Radiation Control	35416	R313-17	AMD	03/19/2012	2011-23/50
Labor Commission, Adjudication	36400	R602-2	5YR	06/19/2012	Not Printed
<u>HEAT</u>					
Community and Culture, Home Energy Assistance Target (HEAT)	36293	R195-2	EXT	05/31/2012	2012-12/95
<u>highly qualified</u>					
Education, Administration	35671	R277-511	5YR	01/17/2012	2012-3/113
	35678	R277-511	REP	03/12/2012	2012-3/28

RULES INDEX

<u>highways</u>						
Transportation, Preconstruction	35516	R930-3	AMD	02/07/2012	2012-1/57	
<u>hiring practices</u>						
Human Resource Management, Administration	35824	R477-4	5YR	02/02/2012	2012-5/109	
	36121	R477-4	AMD	07/02/2012	2012-10/55	
<u>historic preservation</u>						
Tax Commission, Auditing	35599	R865-6F	5YR	01/03/2012	2012-2/126	
	35600	R865-9I	5YR	01/03/2012	2012-2/127	
<u>holidays</u>						
Human Resource Management, Administration	35827	R477-7	5YR	02/02/2012	2012-5/111	
	36123	R477-7	AMD	07/02/2012	2012-10/63	
<u>honey</u>						
Agriculture and Food, Plant Industry	35566	R68-21	REP	03/07/2012	2012-2/16	
<u>hospital policy</u>						
Health, Center for Health Data, Health Care Statistics	35870	R428-10	AMD	05/31/2012	2012-5/85	
<u>hospitals</u>						
Environmental Quality, Air Quality	35530	R307-222	AMD	03/07/2012	2012-1/22	
	36026	R307-222-1	NSC	04/25/2012	Not Printed	
<u>hostile work environment</u>						
Human Resource Management, Administration	35835	R477-15	5YR	02/03/2012	2012-5/115	
<u>hotels</u>						
Health, Disease Control and Prevention, Environmental Services	36017	R392-502	5YR	04/02/2012	2012-8/75	
<u>hours of business</u>						
Labor Commission, Administration	36401	R600-2	5YR	06/19/2012	Not Printed	
	35446	R600-3-1	NSC	02/01/2012	Not Printed	
<u>hunting</u>						
Natural Resources, Wildlife Resources	35211	R657-38	AMD	01/10/2012	2011-18/65	
<u>hunting and fishing licenses</u>						
Natural Resources, Wildlife Resources	35209	R657-17	AMD	01/10/2012	2011-18/63	
<u>Ignition Interlock System Program</u>						
Public Safety, Driver License	36419	R708-48	EMR	07/01/2012	Not Printed	
<u>implements of husbandry</u>						
Transportation, Motor Carrier	35425	R909-1	AMD	01/10/2012	2011-23/90	
	35873	R909-1	AMD	04/11/2012	2012-5/99	
<u>import requirements</u>						
Agriculture and Food, Animal Industry	35691	R58-1	5YR	01/18/2012	2012-4/59	
<u>imputation</u>						
Public Service Commission, Administration	35916	R746-349	5YR	03/06/2012	2012-7/71	
<u>incapacitated</u>						
Human Services, Public Guardian (Office of)	35759	R549-1	5YR	02/01/2012	2012-4/100	
<u>incidents</u>						
Administrative Services, Fleet Operations	36024	R27-7	AMD	06/28/2012	2012-9/4	
<u>incinerators</u>						
Environmental Quality, Air Quality	35531	R307-220-3	AMD	03/07/2012	2012-1/21	
<u>income</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	35789	R414-303	AMD	04/01/2012	2012-4/12	

<u>income eligibility</u>						
Community and Culture, Home Energy Assistance Target (HEAT)	36294	R195-3	EXT	05/31/2012	2012-12/95	
	35405	R195-3-3	AMD	03/26/2012	2011-23/16	
<u>income tax</u>						
Tax Commission, Auditing	35600	R865-9I	5YR	01/03/2012	2012-2/127	
<u>independent foster care adolescent</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	35789	R414-303	AMD	04/01/2012	2012-4/12	
<u>Indigent Defense Funds board</u>						
Administrative Services, Finance	35975	R25-20	NEW	05/22/2012	2012-8/5	
<u>indoor air pollution</u>						
Health, Disease Control and Prevention, Environmental Services	36019	R392-510	5YR	04/02/2012	2012-8/75	
<u>industry</u>						
Environmental Quality, Radiation Control	35906	R313-35	5YR	03/02/2012	2012-7/65	
	35418	R313-36	AMD	01/16/2012	2011-23/54	
<u>infants</u>						
Health, Family Health and Preparedness, WIC Services	35812	R406-100	5YR	02/02/2012	2012-5/104	
	35813	R406-200	5YR	02/02/2012	2012-5/105	
	35814	R406-201	5YR	02/02/2012	2012-5/105	
	35815	R406-202	5YR	02/02/2012	2012-5/106	
	35816	R406-301	5YR	02/02/2012	2012-5/106	
<u>infectious waste</u>						
Environmental Quality, Air Quality	35530	R307-222	AMD	03/07/2012	2012-1/22	
	36026	R307-222-1	NSC	04/25/2012	Not Printed	
<u>informal procedures</u>						
Community and Culture, Library	36328	R223-1	5YR	06/05/2012	2012-13/98	
<u>inmate visiting</u>						
Corrections, Administration	35766	R251-706	EXD	01/18/2012	2012-4/124	
	35773	R251-706	EMR	02/01/2012	2012-4/56	
	35811	R251-706	NEW	04/09/2012	2012-5/22	
<u>inmates</u>						
Corrections, Administration	35766	R251-706	EXD	01/18/2012	2012-4/124	
	35773	R251-706	EMR	02/01/2012	2012-4/56	
	35811	R251-706	NEW	04/09/2012	2012-5/22	
Pardons (Board Of), Administration	35732	R671-201	5YR	01/26/2012	2012-4/109	
	35737	R671-202	5YR	01/31/2012	2012-4/110	
	35741	R671-301	5YR	01/31/2012	2012-4/112	
	35743	R671-303	5YR	01/31/2012	2012-4/113	
	35746	R671-308	5YR	01/31/2012	2012-4/114	
	35747	R671-309	5YR	01/31/2012	2012-4/115	
	35748	R671-310	5YR	01/31/2012	2012-4/115	
	35749	R671-311	5YR	01/31/2012	2012-4/116	
	35751	R671-316	5YR	01/31/2012	2012-4/117	
<u>inmates' rights</u>						
Pardons (Board Of), Administration	35743	R671-303	5YR	01/31/2012	2012-4/113	
<u>inspections</u>						
Agriculture and Food, Animal Industry	35695	R58-18	5YR	01/18/2012	2012-4/60	
	35694	R58-22	5YR	01/18/2012	2012-4/61	
	35693	R58-23	5YR	01/18/2012	2012-4/61	
Agriculture and Food, Regulatory Services	35920	R70-530	5YR	03/07/2012	2012-7/63	
	35662	R70-560	5YR	01/12/2012	2012-3/111	

RULES INDEX

Public Safety, Highway Patrol	36442	R714-158	5YR	07/02/2012	Not Printed
Transportation, Motor Carrier	35428	R909-17	REP	01/10/2012	2011-23/94
<u>Inspector General</u>					
Governor, Planning and Budget, Inspector General of	35879	R367-1	NEW	04/23/2012	2012-5/74
Medicaid Services (Office of)	35973	R367-1-7	NSC	04/23/2012	Not Printed
	35958	R367-1-15	AMD	05/23/2012	2012-8/6
<u>insurance</u>					
Human Resource Management, Administration	35826	R477-6	5YR	02/02/2012	2012-5/110
Insurance, Administration	35644	R590-114	5YR	01/10/2012	2012-3/117
	36036	R590-146	5YR	04/05/2012	2012-9/96
	35647	R590-147	5YR	01/10/2012	2012-3/119
	36386	R590-149	5YR	06/18/2012	Not Printed
	36417	R590-173	5YR	06/27/2012	Not Printed
	36035	R590-203	5YR	04/05/2012	2012-9/96
	35699	R590-230	AMD	03/26/2012	2012-4/21
<u>insurance companies</u>					
Insurance, Administration	36032	R590-108	5YR	04/04/2012	2012-9/95
	35850	R590-116	5YR	02/06/2012	2012-5/116
	35851	R590-117	5YR	02/06/2012	2012-5/116
	35645	R590-150	5YR	01/10/2012	2012-3/120
<u>insurance continuing education</u>					
Insurance, Administration	35642	R590-142	5YR	01/10/2012	2012-3/118
	35543	R590-142	AMD	02/08/2012	2012-1/26
<u>insurance fees</u>					
Insurance, Administration	35725	R590-102-1	NSC	02/09/2012	Not Printed
<u>insurance health benefit plans</u>					
Insurance, Administration	35483	R590-263-3	AMD	01/25/2012	2011-24/76
<u>insurance law</u>					
Insurance, Administration	36037	R590-68	5YR	04/05/2012	2012-9/94
	35643	R590-70	5YR	01/10/2012	2012-3/116
	36034	R590-85	5YR	04/05/2012	2012-9/94
	35641	R590-95	5YR	01/10/2012	2012-3/117
	36385	R590-122	5YR	06/18/2012	Not Printed
	35646	R590-143	5YR	01/10/2012	2012-3/118
Insurance, Title and Escrow Commission	35648	R592-14	5YR	01/10/2012	2012-3/120
<u>insurance rule</u>					
Insurance, Administration	36059	R590-120	5YR	04/11/2012	2012-9/95
<u>interconnection</u>					
Public Service Commission, Administration	35651	R746-348	5YR	01/11/2012	2012-3/126
	35927	R746-365	NSC	03/22/2012	Not Printed
<u>intern program</u>					
Education, Administration	35819	R277-915	5YR	02/02/2012	2012-5/104
	35683	R277-915	AMD	03/12/2012	2012-3/39
<u>internet facilitators</u>					
Commerce, Occupational and Professional Licensing	35585	R156-83-502	AMD	02/21/2012	2012-2/28
<u>interstate compacts</u>					
Workforce Services, Unemployment Insurance	36092	R994-106	5YR	04/25/2012	2012-10/96
<u>interstate shellfish safety</u>					
Agriculture and Food, Regulatory Services	35659	R70-550	5YR	01/12/2012	2012-3/110
<u>intrastate driver license waivers</u>					
Public Safety, Driver License	35634	R708-34	5YR	01/09/2012	2012-3/124
	35635	R708-34	NSC	01/31/2012	Not Printed

<u>jail reimbursement</u> Governor, Criminal and Juvenile Justice (State Commission on)	36141	R356-1	AMD	07/01/2012	2012-10/27
<u>job creation</u> Governor, Economic Development	36066	R357-1	5YR	04/13/2012	2012-9/92
<u>job descriptions</u> Human Resource Management, Administration	35823 36120	R477-3 R477-3	5YR AMD	02/02/2012 07/02/2012	2012-5/108 2012-10/54
<u>judges</u> Judicial Performance Evaluation Commission, Administration	35930 35934	R597-3 R597-3	EMR AMD	03/15/2012 06/01/2012	2012-7/57 2012-7/50
<u>judicial performance evaluations</u> Judicial Performance Evaluation Commission, Administration	35930 35934	R597-3 R597-3	EMR AMD	03/15/2012 06/01/2012	2012-7/57 2012-7/50
<u>juvenile corrections</u> Human Services, Juvenile Justice Services	36136 36137 36226 36140 36227 36138 36139	R547-1 R547-3 R547-6 R547-7 R547-10 R547-12 R547-13	5YR 5YR 5YR 5YR 5YR 5YR 5YR	05/01/2012 05/01/2012 05/16/2012 05/01/2012 05/16/2012 05/01/2012 05/01/2012	2012-10/92 2012-10/93 2012-12/85 2012-10/93 2012-12/86 2012-10/94 2012-10/94
<u>juvenile detention</u> Human Services, Juvenile Justice Services	36139	R547-13	5YR	05/01/2012	2012-10/94
<u>juvenile offenders</u> Education, Administration	35681	R277-714	AMD	03/12/2012	2012-3/36
<u>K-9 training</u> Public Safety, Peace Officer Standards and Training	36245	R728-505	5YR	05/17/2012	2012-12/90
<u>kindergarten</u> Education, Administration	36372	R277-489	5YR	06/15/2012	2012-13/100
<u>labor</u> Labor Commission, Antidiscrimination and Labor, Labor	35833	R610-3-21	AMD	04/16/2012	2012-5/88
<u>labor commission</u> Labor Commission, Administration	36401 35446	R600-2 R600-3-1	5YR NSC	06/19/2012 02/01/2012	Not Printed Not Printed
<u>land exchanges</u> School and Institutional Trust Lands, Administration	35655	R850-90	5YR	01/12/2012	2012-3/126
<u>land use</u> Natural Resources, Forestry, Fire and State Lands School and Institutional Trust Lands, Administration	36015 35656	R652-90 R850-120	5YR 5YR	04/02/2012 01/12/2012	2012-8/88 2012-3/127
<u>landfills</u> Environmental Quality, Air Quality	35531	R307-220-3	AMD	03/07/2012	2012-1/21
<u>landowner permits</u> Natural Resources, Wildlife Resources	35210 35909	R657-43 R657-43	AMD 5YR	01/10/2012 03/05/2012	2011-18/71 2012-7/70
<u>law enforcement officers</u> Public Safety, Peace Officer Standards and Training	35568	R728-408	REP	05/14/2012	2012-2/102

RULES INDEX

lead-based paint

Environmental Quality, Air Quality	35857	R307-840	AMD	05/03/2012	2012-5/33
	36161	R307-840-1	NSC	05/30/2012	Not Printed
	35858	R307-841	AMD	05/03/2012	2012-5/39
	36162	R307-841	NSC	05/30/2012	Not Printed
	35859	R307-842	AMD	05/03/2012	2012-5/47
	36163	R307-842	NSC	05/30/2012	Not Printed

lead-based paint abatement

Environmental Quality, Air Quality	35859	R307-842	AMD	05/03/2012	2012-5/47
	36163	R307-842	NSC	05/30/2012	Not Printed

lead-based paint renovation

Environmental Quality, Air Quality	35858	R307-841	AMD	05/03/2012	2012-5/39
	36162	R307-841	NSC	05/30/2012	Not Printed

leafleting

Capitol Preservation Board (State), Administration	35687	R131-10	5YR	01/17/2012	2012-3/111
	35688	R131-11	5YR	01/17/2012	2012-3/112

leases

Financial Institutions, Administration	35684	R331-7	AMD	03/09/2012	2012-3/46
Natural Resources, Forestry, Fire and State Lands	36010	R652-30	5YR	04/02/2012	2012-8/85
School and Institutional Trust Lands, Administration	36411	R850-30	5YR	06/27/2012	Not Printed

leave benefits

Human Resource Management, Administration	35827	R477-7	5YR	02/02/2012	2012-5/111
	36123	R477-7	AMD	07/02/2012	2012-10/63

legal aid

Corrections, Administration	35756	R251-707	EXT	01/31/2012	2012-4/121
	36041	R251-707	5YR	04/06/2012	2012-9/78

legislative procedures

Public Safety, Driver License	35633	R708-8	5YR	01/09/2012	2012-3/123
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libraries

Education, Administration	36365	R277-467	5YR	06/15/2012	2012-13/99
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library

Community and Culture, Library	36328	R223-1	5YR	06/05/2012	2012-13/98
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license

Education, Administration	35876	R277-521	REP	04/10/2012	2012-5/26
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license plates

Tax Commission, Motor Vehicle	35608	R873-22M	5YR	01/03/2012	2012-2/138
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licenses

Education, Administration	35680	R277-520	AMD	03/12/2012	2012-3/32
	36074	R277-520-6	AMD	06/07/2012	2012-9/43

licensing

Commerce, Occupational and Professional Licensing	35624	R156-1	5YR	01/05/2012	2012-3/112
	36077	R156-1	AMD	06/07/2012	2012-9/8
	36117	R156-9	AMD	06/21/2012	2012-10/17
	35893	R156-16a	5YR	02/21/2012	2012-6/35
	35430	R156-20a	AMD	01/10/2012	2011-23/10
	35892	R156-37	5YR	02/21/2012	2012-6/36
	36089	R156-40a	AMD	06/28/2012	2012-10/22
	36132	R156-47b	5YR	05/01/2012	2012-10/87
	35498	R156-47b-102	AMD	01/26/2012	2011-24/6
	35860	R156-55d	5YR	02/07/2012	2012-5/102
	36191	R156-55d	NSC	05/30/2012	Not Printed
	35735	R156-56	5YR	01/31/2012	2012-4/62
	36192	R156-63b-102	NSC	05/30/2012	Not Printed

	35736	R156-64	5YR	01/31/2012	2012-4/64
	35389	R156-67-503	AMD	03/09/2012	2011-22/14
	35389	R156-67-503	CPR	03/09/2012	2012-3/86
	35388	R156-68-503	AMD	03/09/2012	2011-22/19
	35388	R156-68-503	CPR	03/09/2012	2012-3/90
	35894	R156-76	5YR	02/21/2012	2012-6/37
	35585	R156-83-502	AMD	02/21/2012	2012-2/28
Commerce, Real Estate	36079	R162-2c	AMD	06/07/2012	2012-9/12
Environmental Quality, Radiation Control	35418	R313-36	AMD	01/16/2012	2011-23/54
Governor, Economic Development, Pete Suazo Utah Athletic Commission	36002	R359-1	5YR	03/30/2012	2012-8/74
	36130	R359-1-506	AMD	06/30/2012	2012-10/29
Human Services, Juvenile Justice Services	36136	R547-1	5YR	05/01/2012	2012-10/92
	36140	R547-7	5YR	05/01/2012	2012-10/93
Natural Resources, Wildlife Resources	36003	R657-27	5YR	04/02/2012	2012-8/89
	36152	R657-30	5YR	05/04/2012	2012-11/182
Public Safety, Driver License	35629	R708-10	EMR	01/07/2012	2012-3/101
	36330	R708-10	EMR	06/06/2012	2012-13/95
	35704	R708-25	5YR	01/20/2012	2012-4/119
Technology Services, Administration	35989	R895-3	EXT	03/29/2012	2012-8/91
<u>licensure</u>					
Education, Administration	35673	R277-512	5YR	01/17/2012	2012-3/114
<u>Life with Dignity Order</u>					
Health, Family Health and Preparedness, Licensing	35976	R432-31	5YR	03/28/2012	2012-8/76
<u>lights</u>					
Public Safety, Highway Patrol	36433	R714-200	5YR	07/02/2012	Not Printed
<u>limitation on judgments</u>					
Administrative Services, Risk Management	36289	R37-4	5YR	05/30/2012	2012-12/83
	35844	R37-4	AMD	05/31/2012	2012-5/4
<u>litigation support</u>					
Attorney General, Administration	35904	R105-1	NEW	04/24/2012	2012-6/6
<u>litter</u>					
Transportation, Operations, Maintenance	35669	R918-4	AMD	03/12/2012	2012-3/82
<u>livestock</u>					
Agriculture and Food, Animal Industry	35866	R58-11	AMD	05/15/2012	2012-5/5
	36144	R58-11	NSC	05/30/2012	Not Printed
<u>loan origination</u>					
Commerce, Real Estate	36079	R162-2c	AMD	06/07/2012	2012-9/12
<u>loans</u>					
Natural Resources, Geological Survey	35685	R638-3	EMR	02/01/2012	2012-3/97
<u>MACT</u>					
Environmental Quality, Air Quality	35922	R307-214	AMD	06/07/2012	2012-7/42
<u>mammography</u>					
Health, Family Health and Preparedness, Licensing	35987	R432-950	5YR	03/28/2012	2012-8/82
<u>management</u>					
Natural Resources, Forestry, Fire and State Lands	36011	R652-40	5YR	04/02/2012	2012-8/86
	36015	R652-90	5YR	04/02/2012	2012-8/88
School and Institutional Trust Lands, Administration	36412	R850-40	5YR	06/27/2012	Not Printed
	35542	R850-41	NEW	02/07/2012	2012-1/44
<u>Marda Dillree Corridor Preservation Fund</u>					
Transportation, Program Development	36179	R926-6	NSC	05/30/2012	Not Printed
<u>marketing</u>					
Commerce, Consumer Protection	35965	R152-15	5YR	03/22/2012	2012-8/71

RULES INDEX

<u>massage apprentice</u>					
Commerce, Occupational and Professional Licensing	36132	R156-47b	5YR	05/01/2012	2012-10/87
	35498	R156-47b-102	AMD	01/26/2012	2011-24/6
<u>massage therapist</u>					
Commerce, Occupational and Professional Licensing	36132	R156-47b	5YR	05/01/2012	2012-10/87
	35498	R156-47b-102	AMD	01/26/2012	2011-24/6
<u>massage therapy</u>					
Commerce, Occupational and Professional Licensing	36132	R156-47b	5YR	05/01/2012	2012-10/87
	35498	R156-47b-102	AMD	01/26/2012	2011-24/6
<u>materials handling</u>					
Natural Resources, Forestry, Fire and State Lands	36016	R652-100	5YR	04/02/2012	2012-8/88
<u>media</u>					
Corrections, Administration	35760	R251-106	EXD	01/18/2012	2012-4/123
	35767	R251-106	EMR	02/01/2012	2012-4/45
	35805	R251-106	NEW	04/09/2012	2012-5/11
<u>Medicaid</u>					
Health, Health Care Financing	35901	R410-14	AMD	04/27/2012	2012-6/16
Health, Health Care Financing, Coverage and Reimbursement Policy	35907	R414-1	5YR	03/02/2012	2012-7/66
	35902	R414-1-2	AMD	04/27/2012	2012-6/21
	35584	R414-1-5	AMD	02/21/2012	2012-2/33
	35994	R414-1-5	AMD	05/24/2012	2012-8/9
	36102	R414-1-29	AMD	07/01/2012	2012-10/33
	36128	R414-1A	5YR	04/30/2012	2012-10/90
	35390	R414-2A	AMD	01/11/2012	2011-22/30
	36107	R414-2A	AMD	07/01/2012	2012-10/35
	35719	R414-7C	5YR	01/24/2012	2012-4/96
	36106	R414-9-5	AMD	07/01/2012	2012-10/37
	35720	R414-10	5YR	01/24/2012	2012-4/97
	35722	R414-10A	5YR	01/24/2012	2012-4/97
	35503	R414-14A	AMD	02/01/2012	2011-24/11
	35908	R414-21	5YR	03/02/2012	2012-7/66
	35921	R414-38	5YR	03/07/2012	2012-7/67
	35721	R414-45	5YR	01/24/2012	2012-4/98
	36105	R414-49-3	AMD	07/01/2012	2012-10/38
	36103	R414-50	AMD	07/01/2012	2012-10/39
	36129	R414-60	5YR	04/30/2012	2012-10/91
	36406	R414-60A	5YR	06/25/2012	Not Printed
	35504	R414-61-2	AMD	01/24/2012	2011-24/18
	36184	R414-100	5YR	05/14/2012	2012-11/180
	36185	R414-200	5YR	05/14/2012	2012-11/180
	35437	R414-305	AMD	02/06/2012	2011-23/65
	35441	R414-308	AMD	02/06/2012	2011-23/70
	35790	R414-308	AMD	04/01/2012	2012-4/14
	36309	R414-310	5YR	06/04/2012	2012-13/107
	36108	R414-401-3	AMD	07/01/2012	2012-10/40
	35583	R414-401-5	AMD	02/21/2012	2012-2/36
	36101	R414-506	AMD	07/01/2012	2012-10/41
	35639	R414-510	5YR	01/09/2012	2012-3/115
Human Services, Recovery Services	35619	R527-201	AMD	03/27/2012	2012-3/70
<u>Medicaid fraud waste abuse</u>					
Governor, Planning and Budget, Inspector General of Medicaid Services (Office of)	35879	R367-1	NEW	04/23/2012	2012-5/74
	35973	R367-1-7	NSC	04/23/2012	Not Printed
	35958	R367-1-15	AMD	05/23/2012	2012-8/6
<u>medical incinerator</u>					
Environmental Quality, Air Quality	35530	R307-222	AMD	03/07/2012	2012-1/22

<u>medical incinerators</u>						
Environmental Quality, Air Quality	36026	R307-222-1	NSC	04/25/2012	Not Printed	
<u>medical laboratories</u>						
Health, Disease Control and Prevention, Laboratory Improvement	35701	R444-11	5YR	01/20/2012	2012-4/99	
<u>medical malpractice</u>						
Commerce, Occupational and Professional Licensing	35820	R156-78B	5YR	02/02/2012	2012-5/102	
<u>medication treatment</u>						
Human Services, Substance Abuse and Mental Health, State Hospital	35590	R525-3	AMD	02/21/2012	2012-2/96	
<u>mental health</u>						
Human Services, Substance Abuse and Mental Health, State Hospital	35596	R525-8	AMD	02/21/2012	2012-2/100	
<u>mercury</u>						
Environmental Quality, Air Quality	36033	R307-424	5YR	04/05/2012	2012-9/79	
<u>migrant labor</u>						
Health, Disease Control and Prevention, Environmental Services	35713	R392-501	5YR	01/20/2012	2012-4/96	
<u>mineral resources</u>						
Tax Commission, Auditing	35604	R865-14W	5YR	01/03/2012	2012-2/132	
<u>mines</u>						
Natural Resources, Oil, Gas and Mining; Abandoned Mine Reclamation	35792	R643-870	5YR	02/01/2012	2012-4/101	
	35793	R643-872	5YR	02/01/2012	2012-4/101	
	35794	R643-874	5YR	02/01/2012	2012-4/102	
	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	
	35798	R643-882	5YR	02/01/2012	2012-4/104	
	35799	R643-884	5YR	02/01/2012	2012-4/105	
	35800	R643-886	5YR	02/01/2012	2012-4/105	
<u>mining law</u>						
Natural Resources, Oil, Gas and Mining; Abandoned Mine Reclamation	35796	R643-877	5YR	02/01/2012	2012-4/103	
	35797	R643-879	5YR	02/01/2012	2012-4/104	
<u>minors</u>						
Labor Commission, Antidiscrimination and Labor, Labor	35833	R610-3-21	AMD	04/16/2012	2012-5/88	
<u>mobile homes</u>						
Health, Disease Control and Prevention, Environmental Services	35712	R392-402	5YR	01/20/2012	2012-4/95	
<u>modeling</u>						
Environmental Quality, Air Quality	36337	R307-410	5YR	06/06/2012	2012-13/103	
<u>monitoring</u>						
Education, Administration	35452	R277-481	NEW	01/10/2012	2011-23/34	
Environmental Quality, Radiation Control	36277	R313-24	5YR	05/24/2012	2012-12/84	
<u>motels</u>						
Health, Disease Control and Prevention, Environmental Services	36017	R392-502	5YR	04/02/2012	2012-8/75	
<u>motor fuel</u>						
Tax Commission, Auditing	35603	R865-13G	5YR	01/03/2012	2012-2/131	

RULES INDEX

motor vehicle safety

Public Safety, Highway Patrol	36442	R714-158	5YR	07/02/2012	Not Printed
	36433	R714-200	5YR	07/02/2012	Not Printed
	36441	R714-210	5YR	07/02/2012	Not Printed
	36435	R714-230	5YR	07/02/2012	Not Printed
	36437	R714-240	5YR	07/02/2012	Not Printed
	36438	R714-300	5YR	07/02/2012	Not Printed

motor vehicles

Commerce, Consumer Protection	35967	R152-20	5YR	03/22/2012	2012-8/72
Environmental Quality, Air Quality	35716	R307-121	5YR	01/23/2012	2012-4/81
	35718	R307-121-7	NSC	02/09/2012	Not Printed
	35778	R307-301	5YR	02/01/2012	2012-4/83
	35779	R307-320	5YR	02/01/2012	2012-4/84
Public Safety, Highway Patrol	36439	R714-159	5YR	07/02/2012	Not Printed
Tax Commission, Motor Vehicle	35608	R873-22M	5YR	01/03/2012	2012-2/138
Tax Commission, Motor Vehicle Enforcement	35609	R877-23V	5YR	01/03/2012	2012-2/140
	36062	R877-23V-7	AMD	06/14/2012	2012-9/67
	35512	R877-23V-20	AMD	02/09/2012	2012-1/49
	35513	R877-23V-21	AMD	02/09/2012	2012-1/50
	36063	R877-23V-22	AMD	06/14/2012	2012-9/70

motorcycles

Commerce, Administration	36329	R151-35	5YR	06/05/2012	2012-13/97
Public Safety, Highway Patrol	36434	R714-220	5YR	07/02/2012	Not Printed

nail technicians

Commerce, Occupational and Professional Licensing	35853	R156-11a	5YR	02/06/2012	2012-5/101
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natural resources

Natural Resources, Forestry, Fire and State Lands	36011	R652-40	5YR	04/02/2012	2012-8/86
School and Institutional Trust Lands, Administration	36412	R850-40	5YR	06/27/2012	Not Printed
	35542	R850-41	NEW	02/07/2012	2012-1/44

network interconnection

Public Service Commission, Administration	35651	R746-348	5YR	01/11/2012	2012-3/126
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new source review

Environmental Quality, Air Quality	35496	R307-210-1	AMD	03/07/2012	2011-24/7
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news agencies

Pardons (Board Of), Administration	35742	R671-302	5YR	01/31/2012	2012-4/113
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non-traditional

Health, Health Care Financing, Coverage and Reimbursement Policy	36185	R414-200	5YR	05/14/2012	2012-11/180
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nonattainment

Environmental Quality, Air Quality	36335	R307-403	5YR	06/06/2012	2012-13/102
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notification

Natural Resources, Forestry, Fire and State Lands	35698	R652-140	5YR	01/19/2012	2012-4/108
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nursing facility

Health, Health Care Financing, Coverage and Reimbursement Policy	36108	R414-401-3	AMD	07/01/2012	2012-10/40
	35583	R414-401-5	AMD	02/21/2012	2012-2/36

nutrition

Education, Administration	35937	R277-720	AMD	05/08/2012	2012-7/34
Health, Family Health and Preparedness, WIC Services	35812	R406-100	5YR	02/02/2012	2012-5/104
	35813	R406-200	5YR	02/02/2012	2012-5/105
	35814	R406-201	5YR	02/02/2012	2012-5/105
	35815	R406-202	5YR	02/02/2012	2012-5/106
	35816	R406-301	5YR	02/02/2012	2012-5/106

<u>occupational licensing</u>						
Commerce, Occupational and Professional Licensing	35624	R156-1	5YR	01/05/2012	2012-3/112	
	36077	R156-1	AMD	06/07/2012	2012-9/8	
	36089	R156-40a	AMD	06/28/2012	2012-10/22	
Environmental Quality, Water Quality	36135	R317-11	AMD	06/27/2012	2012-10/23	
<u>off road vehicles</u>						
Commerce, Administration	36329	R151-35	5YR	06/05/2012	2012-13/97	
<u>off-premises</u>						
Human Services, Substance Abuse and Mental Health	35625	R523-24	AMD	03/09/2012	2012-3/67	
<u>offenders</u>						
Corrections, Administration	36312	R251-401	5YR	06/05/2012	2012-13/99	
<u>office hours</u>						
Public Service Commission, Administration	35506	R746-800	REP	02/07/2012	2012-1/43	
<u>offset</u>						
Environmental Quality, Air Quality	36335	R307-403	5YR	06/06/2012	2012-13/102	
	36341	R307-420	5YR	06/06/2012	2012-13/106	
	36342	R307-421	5YR	06/06/2012	2012-13/106	
<u>oil and gas conservation</u>						
Natural Resources, Oil, Gas and Mining; Oil and Gas	35848	R649-8	5YR	02/03/2012	2012-5/123	
<u>oil and gas law</u>						
Natural Resources, Oil, Gas and Mining; Oil and Gas	35843	R649-1	5YR	02/03/2012	2012-5/121	
	35871	R649-1	NSC	02/29/2012	Not Printed	
	35845	R649-2	5YR	02/03/2012	2012-5/121	
	35846	R649-3	5YR	02/03/2012	2012-5/122	
	36177	R649-3-1	NSC	05/30/2012	Not Printed	
	35847	R649-5	5YR	02/03/2012	2012-5/122	
	35849	R649-9	5YR	02/03/2012	2012-5/123	
<u>on-premise</u>						
Human Services, Substance Abuse and Mental Health	36384	R523-23	5YR	06/18/2012	Not Printed	
	35626	R523-23-4	AMD	03/09/2012	2012-3/66	
<u>online</u>						
Education, Administration	35673	R277-512	5YR	01/17/2012	2012-3/114	
<u>online prescribing</u>						
Commerce, Occupational and Professional Licensing	35585	R156-83-502	AMD	02/21/2012	2012-2/28	
<u>onsite professional</u>						
Environmental Quality, Water Quality	36135	R317-11	AMD	06/27/2012	2012-10/23	
<u>open meetings</u>						
Examiners (Board of), Administration	35497	R320-101	NEW	02/10/2012	2011-24/10	
<u>opening and closing dates</u>						
Community and Culture, Home Energy Assistance Target (HEAT)	36293	R195-2	EXT	05/31/2012	2012-12/95	
<u>operating permit</u>						
Environmental Quality, Air Quality	35529	R307-415-2	AMD	03/07/2012	2012-1/25	
	36340	R307-417	5YR	06/06/2012	2012-13/105	
<u>operating permits</u>						
Environmental Quality, Air Quality	36339	R307-415	5YR	06/06/2012	2012-13/104	
<u>optometrists</u>						
Commerce, Occupational and Professional Licensing	35893	R156-16a	5YR	02/21/2012	2012-6/35	

RULES INDEX

order to proceed

Public Service Commission, Administration	36166	R746-420	5YR	05/10/2012	2012-11/183
	36167	R746-430	5YR	05/10/2012	2012-11/184

osteopathic physician

Commerce, Occupational and Professional Licensing	35388	R156-68-503	AMD	03/09/2012	2011-22/19
	35388	R156-68-503	CPR	03/09/2012	2012-3/90

osteopaths

Commerce, Occupational and Professional Licensing	35388	R156-68-503	AMD	03/09/2012	2011-22/19
	35388	R156-68-503	CPR	03/09/2012	2012-3/90

outside counsel

Attorney General, Administration	35904	R105-1	NEW	04/24/2012	2012-6/6
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overpayments

Workforce Services, Unemployment Insurance	36257	R994-406	5YR	05/22/2012	2012-12/92
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oversight

Education, Administration	35452	R277-481	NEW	01/10/2012	2011-23/34
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overtime

Human Resource Management, Administration	35828	R477-8	5YR	02/02/2012	2012-5/112
	36124	R477-8	AMD	07/02/2012	2012-10/71

ozone

Environmental Quality, Air Quality	35774	R307-110	5YR	02/01/2012	2012-4/65
	35780	R307-325	5YR	02/01/2012	2012-4/84
	35781	R307-326	5YR	02/01/2012	2012-4/85
	35782	R307-327	5YR	02/01/2012	2012-4/86
	35783	R307-328	5YR	02/01/2012	2012-4/86
	35784	R307-335	5YR	02/01/2012	2012-4/87
	35785	R307-340	5YR	02/01/2012	2012-4/87
	35787	R307-343	5YR	02/01/2012	2012-4/89
	36341	R307-420	5YR	06/06/2012	2012-13/106

paint

Environmental Quality, Air Quality	35857	R307-840	AMD	05/03/2012	2012-5/33
	36161	R307-840-1	NSC	05/30/2012	Not Printed
	35858	R307-841	AMD	05/03/2012	2012-5/39
	36162	R307-841	NSC	05/30/2012	Not Printed
	35859	R307-842	AMD	05/03/2012	2012-5/47
	36163	R307-842	NSC	05/30/2012	Not Printed

pardons

Pardons (Board Of), Administration	35730	R671-101	5YR	01/26/2012	2012-4/108
	35750	R671-315	5YR	01/31/2012	2012-4/116

parental defense

Administrative Services, Child Welfare Parental Defense (Office of)	35205	R19-1-6	AMD	01/12/2012	2011-18/6
	35206	R19-1-7	AMD	01/12/2012	2011-18/7

parking facilities

Regents (Board Of), University of Utah, Commuter Services	35888	R810-2	5YR	02/17/2012	2012-6/38
	35889	R810-5	5YR	02/17/2012	2012-6/39
	35882	R810-6	5YR	02/16/2012	2012-6/39
	35883	R810-9	5YR	02/17/2012	2012-6/40
	35884	R810-10	5YR	02/17/2012	2012-6/40
	35890	R810-11	5YR	02/17/2012	2012-6/41

parole

Human Services, Juvenile Justice Services	36226	R547-6	5YR	05/16/2012	2012-12/85
Pardons (Board Of), Administration	35732	R671-201	5YR	01/26/2012	2012-4/109
	35737	R671-202	5YR	01/31/2012	2012-4/110
	35739	R671-205	5YR	01/31/2012	2012-4/111

	35741	R671-301	5YR	01/31/2012	2012-4/112
	35743	R671-303	5YR	01/31/2012	2012-4/113
	35746	R671-308	5YR	01/31/2012	2012-4/114
	35747	R671-309	5YR	01/31/2012	2012-4/115
	35748	R671-310	5YR	01/31/2012	2012-4/115
	35749	R671-311	5YR	01/31/2012	2012-4/116
	35751	R671-316	5YR	01/31/2012	2012-4/117
	35752	R671-402	5YR	01/31/2012	2012-4/117
	35753	R671-405	5YR	01/31/2012	2012-4/118
<u>patient rights</u>					
Human Services, Substance Abuse and Mental Health, State Hospital	35589	R525-2	AMD	02/21/2012	2012-2/95
<u>paying standards</u>					
Public Service Commission, Administration	35509	R746-342	REP	02/07/2012	2012-1/40
<u>payment determination</u>					
Community and Culture, Home Energy Assistance Target (HEAT)	36294	R195-3	EXT	05/31/2012	2012-12/95
	35405	R195-3-3	AMD	03/26/2012	2011-23/16
<u>penalties</u>					
Environmental Quality, Environmental Response and Remediation	36052	R311-208	5YR	04/10/2012	2012-9/88
<u>penalty</u>					
Environmental Quality, Air Quality	35776	R307-130	5YR	02/01/2012	2012-4/82
<u>per diem allowances</u>					
Administrative Services, Finance	36112	R25-7	AMD	07/01/2012	2012-10/4
<u>performance measurement</u>					
Health, Center for Health Data, Health Care Statistics	36110	R428-12	AMD	07/02/2012	2012-10/43
<u>performing arts</u>					
Community and Culture, Arts and Museums	35723	R207-1	5YR	01/24/2012	2012-4/64
<u>permits</u>					
Environmental Quality, Air Quality	36334	R307-401	5YR	06/06/2012	2012-13/101
	36154	R307-401-11	NSC	05/30/2012	Not Printed
	36336	R307-406	5YR	06/06/2012	2012-13/102
Natural Resources, Forestry, Fire and State Lands	36014	R652-70	5YR	04/02/2012	2012-8/87
	36016	R652-100	5YR	04/02/2012	2012-8/88
Natural Resources, Wildlife Resources	35435	R657-42	AMD	01/10/2012	2011-23/76
	36004	R657-50	5YR	04/02/2012	2012-8/89
	35436	R657-62	AMD	01/10/2012	2011-23/85
<u>permitting authority</u>					
Environmental Quality, Air Quality	36340	R307-417	5YR	06/06/2012	2012-13/105
<u>persistently dangerous schools</u>					
Education, Administration	36071	R277-483-4	AMD	06/07/2012	2012-9/36
<u>personal property</u>					
Tax Commission, Property Tax	35592	R884-24P	5YR	01/03/2012	2012-2/141
	35514	R884-24P-62	AMD	02/09/2012	2012-1/51
	35864	R884-24P-66	AMD	04/12/2012	2012-5/96
	36064	R884-24P-68	AMD	06/14/2012	2012-9/71
<u>personnel management</u>					
Human Resource Management, Administration	35821	R477-1	5YR	02/02/2012	2012-5/107
	36118	R477-1	AMD	07/02/2012	2012-10/47
	35825	R477-5	5YR	02/02/2012	2012-5/109
	35826	R477-6	5YR	02/02/2012	2012-5/110
	35829	R477-9	5YR	02/02/2012	2012-5/112
	36125	R477-9	AMD	07/02/2012	2012-10/76

RULES INDEX

	35834	R477-13	5YR	02/03/2012	2012-5/115
	36127	R477-13	AMD	07/02/2012	2012-10/81
<u>pesticides</u>					
Environmental Quality, Water Quality	35238	R317-8	AMD	01/25/2012	2011-19/31
<u>petroleum</u>					
Environmental Quality, Air Quality	35778	R307-301	5YR	02/01/2012	2012-4/83
	35782	R307-327	5YR	02/01/2012	2012-4/86
Environmental Quality, Environmental Response and Remediation	35668	R311-200	AMD	03/09/2012	2012-3/42
	36057	R311-200	5YR	04/10/2012	2012-9/82
	36046	R311-202	5YR	04/10/2012	2012-9/84
	36047	R311-203	5YR	04/10/2012	2012-9/84
	36048	R311-204	5YR	04/10/2012	2012-9/85
	36049	R311-205	5YR	04/10/2012	2012-9/86
	36050	R311-206	5YR	04/10/2012	2012-9/86
	36051	R311-207	5YR	04/10/2012	2012-9/87
	36052	R311-208	5YR	04/10/2012	2012-9/88
	36053	R311-209	5YR	04/10/2012	2012-9/89
	36055	R311-211	5YR	04/10/2012	2012-9/90
	36056	R311-212	5YR	04/10/2012	2012-9/90
Tax Commission, Auditing	35605	R865-150	5YR	01/03/2012	2012-2/133
<u>petroleum industries</u>					
Tax Commission, Auditing	35605	R865-150	5YR	01/03/2012	2012-2/133
<u>physical and mental fitness testing</u>					
Public Safety, Driver License	35854	R708-39	5YR	02/06/2012	2012-5/124
<u>physical examinations</u>					
Public Safety, Driver License	35704	R708-25	5YR	01/20/2012	2012-4/119
<u>physically handicapped</u>					
Public Service Commission, Administration	36029	R746-343-4	AMD	06/20/2012	2012-9/64
<u>physicians</u>					
Commerce, Occupational and Professional Licensing	35389	R156-67-503	AMD	03/09/2012	2011-22/14
	35389	R156-67-503	CPR	03/09/2012	2012-3/86
Public Safety, Driver License	35632	R708-7	5YR	01/09/2012	2012-3/122
<u>plots</u>					
Community and Culture, History	36301	R212-12	5YR	05/31/2012	2012-12/84
	36305	R212-12	NSC	06/29/2012	Not Printed
<u>PM10</u>					
Environmental Quality, Air Quality	35774	R307-110	5YR	02/01/2012	2012-4/65
	36342	R307-421	5YR	06/06/2012	2012-13/106
<u>PM2.5</u>					
Environmental Quality, Air Quality	35774	R307-110	5YR	02/01/2012	2012-4/65
	36342	R307-421	5YR	06/06/2012	2012-13/106
<u>point-system</u>					
Public Safety, Driver License	35636	R708-3	5YR	01/09/2012	2012-3/121
<u>police dog training rules</u>					
Public Safety, Peace Officer Standards and Training	36245	R728-505	5YR	05/17/2012	2012-12/90
<u>police training</u>					
Public Safety, Peace Officer Standards and Training	35627	R728-411	5YR	01/06/2012	2012-3/125
<u>policy</u>					
Capitol Preservation Board (State), Administration	35686	R131-9	R&R	03/09/2012	2012-3/13
<u>political subdivisions</u>					
Natural Resources, Geological Survey	35685	R638-3	EMR	02/01/2012	2012-3/97

<u>POLST</u>						
Health, Family Health and Preparedness, Licensing	35976	R432-31	5YR	03/28/2012	2012-8/76	
<u>pools</u>						
Health, Disease Control and Prevention, Environmental Services	35707	R392-302	5YR	01/20/2012	2012-4/93	
<u>position classifications</u>						
Human Resource Management, Administration	35823	R477-3	5YR	02/02/2012	2012-5/108	
	36120	R477-3	AMD	07/02/2012	2012-10/54	
<u>post-conviction</u>						
Administrative Services, Finance	35663	R25-14	5YR	01/12/2012	2012-3/105	
<u>posting notices</u>						
Capitol Preservation Board (State), Administration	35687	R131-10	5YR	01/17/2012	2012-3/111	
<u>postsecondary proprietary schools</u>						
Commerce, Consumer Protection	36360	R152-34	5YR	06/14/2012	2012-13/98	
<u>poultry</u>						
Agriculture and Food, Animal Industry	35866	R58-11	AMD	05/15/2012	2012-5/5	
	36144	R58-11	NSC	05/30/2012	Not Printed	
<u>powersport vehicles</u>						
Commerce, Administration	36329	R151-35	5YR	06/05/2012	2012-13/97	
<u>preferred provider organization</u>						
Health, Center for Health Data, Health Care Statistics	36110	R428-12	AMD	07/02/2012	2012-10/43	
<u>prelitigation</u>						
Commerce, Occupational and Professional Licensing	35820	R156-78B	5YR	02/02/2012	2012-5/102	
<u>preneed funeral arrangements</u>						
Commerce, Occupational and Professional Licensing	36117	R156-9	AMD	06/21/2012	2012-10/17	
<u>press</u>						
Corrections, Administration	35760	R251-106	EXD	01/18/2012	2012-4/123	
	35767	R251-106	EMR	02/01/2012	2012-4/45	
	35805	R251-106	NEW	04/09/2012	2012-5/11	
<u>pricing flexibility</u>						
Public Service Commission, Administration	35917	R746-351	5YR	03/06/2012	2012-7/72	
<u>primary care</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	36309	R414-310	5YR	06/04/2012	2012-13/107	
<u>primary care network</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	36184	R414-100	5YR	05/14/2012	2012-11/180	
<u>primary term</u>						
Natural Resources, Forestry, Fire and State Lands	36009	R652-20	5YR	04/02/2012	2012-8/85	
<u>printing</u>						
Transportation, Administration	35670	R907-60	REP	03/12/2012	2012-3/80	
<u>prison release</u>						
Pardons (Board Of), Administration	35739	R671-205	5YR	01/31/2012	2012-4/111	
<u>prisons</u>						
Corrections, Administration	35760	R251-106	EXD	01/18/2012	2012-4/123	
	35767	R251-106	EMR	02/01/2012	2012-4/45	
	35805	R251-106	NEW	04/09/2012	2012-5/11	
	35761	R251-107	EXD	01/18/2012	2012-4/123	

RULES INDEX

	35768	R251-107	EMR	02/01/2012	2012-4/47
	35806	R251-107	NEW	04/09/2012	2012-5/13
	35763	R251-703	EXD	01/18/2012	2012-4/124
	35770	R251-703	EMR	02/01/2012	2012-4/51
	35808	R251-703	NEW	04/09/2012	2012-5/17
	35765	R251-705	EXD	01/18/2012	2012-4/124
	35772	R251-705	EMR	02/01/2012	2012-4/53
	35810	R251-705	NEW	04/09/2012	2012-5/19
	35766	R251-706	EXD	01/18/2012	2012-4/124
	35773	R251-706	EMR	02/01/2012	2012-4/56
	35811	R251-706	NEW	04/09/2012	2012-5/22
	35756	R251-707	EXT	01/31/2012	2012-4/121
	36041	R251-707	5YR	04/06/2012	2012-9/78
	35757	R251-710	EXT	01/31/2012	2012-4/121
	36042	R251-710	5YR	04/06/2012	2012-9/78
<u>private schools</u>					
Education, Administration	35536	R277-426	AMD	02/07/2012	2012-1/13
<u>procurement</u>					
Administrative Services, Facilities Construction and Management	36145	R23-1	5YR	05/03/2012	2012-11/177
Administrative Services, Purchasing and General Services	36428	R33-5	5YR	07/02/2012	Not Printed
<u>professional competency</u>					
Education, Administration	35679	R277-513	REP	03/12/2012	2012-3/30
	35941	R277-519	5YR	03/15/2012	2012-7/64
Public Safety, Peace Officer Standards and Training	35627	R728-411	5YR	01/06/2012	2012-3/125
<u>professional education</u>					
Education, Administration	35940	R277-507	5YR	03/15/2012	2012-7/64
<u>professional engineers</u>					
Commerce, Occupational and Professional Licensing	36090	R156-22	AMD	06/21/2012	2012-10/19
	36405	R156-22	5YR	06/25/2012	Not Printed
<u>professional geologists</u>					
Commerce, Occupational and Professional Licensing	35894	R156-76	5YR	02/21/2012	2012-6/37
<u>professional land surveyors</u>					
Commerce, Occupational and Professional Licensing	36090	R156-22	AMD	06/21/2012	2012-10/19
	36405	R156-22	5YR	06/25/2012	Not Printed
<u>professional staff</u>					
Education, Administration	36072	R277-486	AMD	06/07/2012	2012-9/37
<u>professional structural engineers</u>					
Commerce, Occupational and Professional Licensing	36090	R156-22	AMD	06/21/2012	2012-10/19
	36405	R156-22	5YR	06/25/2012	Not Printed
<u>program</u>					
Capitol Preservation Board (State), Administration	35686	R131-9	R&R	03/09/2012	2012-3/13
<u>prohibited devices</u>					
Human Services, Juvenile Justice Services	36043	R547-14	5YR	04/09/2012	2012-9/93
<u>prohibited items</u>					
Human Services, Juvenile Justice Services	36043	R547-14	5YR	04/09/2012	2012-9/93
<u>prohibited items and devices</u>					
Human Services, Juvenile Justice Services	36136	R547-1	5YR	05/01/2012	2012-10/92
Human Services, Substance Abuse and Mental Health, State Hospital	35593	R525-6	AMD	02/21/2012	2012-2/98
<u>property tax</u>					
Tax Commission, Property Tax	35592	R884-24P	5YR	01/03/2012	2012-2/141

	35514	R884-24P-62	AMD	02/09/2012	2012-1/51
	35864	R884-24P-66	AMD	04/12/2012	2012-5/96
	36064	R884-24P-68	AMD	06/14/2012	2012-9/71
<u>PSD</u>					
Environmental Quality, Air Quality	35413	R307-405	AMD	02/02/2012	2011-23/42
	35872	R307-405-3	NSC	02/29/2012	Not Printed
<u>public assistance</u>					
Public Service Commission, Administration	36029	R746-343-4	AMD	06/20/2012	2012-9/64
Workforce Services, Employment Development	35993	R986-900-902	AMD	07/01/2012	2012-8/67
<u>public assistance programs</u>					
Health, Health Care Financing, Coverage and Reimbursement Policy	35441	R414-308	AMD	02/06/2012	2011-23/70
	35790	R414-308	AMD	04/01/2012	2012-4/14
Human Services, Recovery Services	36351	R527-330	5YR	06/12/2012	2012-13/111
<u>public buildings</u>					
Administrative Services, Facilities Construction and Management	36145	R23-1	5YR	05/03/2012	2012-11/177
	36146	R23-19	5YR	05/03/2012	2012-11/177
Capitol Preservation Board (State), Administration	35899	R131-3	EXT	02/29/2012	2012-6/43
	36359	R131-3	5YR	06/13/2012	2012-13/97
Public Safety, Fire Marshal	36278	R710-4	5YR	05/24/2012	2012-12/89
	36022	R710-4-3	AMD	05/22/2012	2012-8/60
<u>public education</u>					
Education, Administration	35681	R277-714	AMD	03/12/2012	2012-3/36
<u>public fueling</u>					
Administrative Services, Fleet Operations	35727	R27-9	NEW	03/26/2012	2012-4/6
<u>public health</u>					
Health, Disease Control and Prevention, Environmental Services	35715	R392-100	5YR	01/20/2012	2012-4/91
	35445	R392-100	AMD	01/26/2012	2011-23/62
	35710	R392-200	5YR	01/20/2012	2012-4/91
	35709	R392-300	5YR	01/20/2012	2012-4/92
	35708	R392-301	5YR	01/20/2012	2012-4/93
	35711	R392-400	5YR	01/20/2012	2012-4/94
	35714	R392-401	5YR	01/20/2012	2012-4/94
	35712	R392-402	5YR	01/20/2012	2012-4/95
	35713	R392-501	5YR	01/20/2012	2012-4/96
	36017	R392-502	5YR	04/02/2012	2012-8/75
	36019	R392-510	5YR	04/02/2012	2012-8/75
<u>public health emergency</u>					
Health, Administration	35571	R380-60	NEW	03/07/2012	2012-2/31
<u>public information</u>					
Human Resource Management, Administration	35822	R477-2	5YR	02/02/2012	2012-5/108
	36119	R477-2	AMD	07/02/2012	2012-10/51
<u>public investments</u>					
Money Management Council, Administration	35640	R628-17	5YR	01/09/2012	2012-3/121
<u>public meetings</u>					
Examiners (Board of), Administration	35497	R320-101	NEW	02/10/2012	2011-24/10
Natural Resources, Forestry, Fire and State Lands	36015	R652-90	5YR	04/02/2012	2012-8/88
<u>public records</u>					
Environmental Quality, Administration	35928	R305-1	5YR	03/13/2012	2012-7/65
Health, Administration	36025	R380-20	5YR	04/03/2012	2012-9/92
Natural Resources, Forestry, Fire and State Lands	36018	R652-6	5YR	04/02/2012	2012-8/84
Natural Resources, Oil, Gas and Mining; Administration	35791	R642-100	5YR	02/01/2012	2012-4/100

RULES INDEX

Natural Resources, Parks and Recreation	36060	R651-102	5YR	04/11/2012	2012-9/98
Natural Resources, Wildlife Resources	36131	R657-29	5YR	05/01/2012	2012-10/95
Regents (Board Of), College of Eastern Utah	36391	R767-1	EXT	06/18/2012	Not Printed
School and Institutional Trust Lands, Administration	36410	R850-6	5YR	06/27/2012	Not Printed
Transportation, Administration	35672	R907-69	NEW	03/12/2012	2012-3/81
<u>public schools</u>					
Education, Administration	35819	R277-915	5YR	02/02/2012	2012-5/104
	35683	R277-915	AMD	03/12/2012	2012-3/39
	35938	R277-916	AMD	05/08/2012	2012-7/35
<u>public utilities</u>					
Public Service Commission, Administration	35508	R746-100	AMD	02/07/2012	2012-1/30
	35900	R746-100	AMD	05/07/2012	2012-6/24
	35505	R746-310-1	AMD	02/07/2012	2012-1/38
	35925	R746-310-2	NSC	03/22/2012	Not Printed
	35926	R746-320	NSC	03/22/2012	Not Printed
	35509	R746-342	REP	02/07/2012	2012-1/40
	35916	R746-349	5YR	03/06/2012	2012-7/71
	35917	R746-351	5YR	03/06/2012	2012-7/72
	35927	R746-365	NSC	03/22/2012	Not Printed
	36358	R746-400	5YR	06/13/2012	2012-13/114
	35507	R746-405-2	AMD	02/07/2012	2012-1/41
	35896	R746-405-2	AMD	05/07/2012	2012-6/31
<u>RACT</u>					
Environmental Quality, Air Quality	35780	R307-325	5YR	02/01/2012	2012-4/84
<u>radioactive materials</u>					
Environmental Quality, Radiation Control	35417	R313-22-75	AMD	01/16/2012	2011-23/51
	35418	R313-36	AMD	01/16/2012	2011-23/54
<u>rally</u>					
Administrative Services, Facilities Construction and Management	36148	R23-20	5YR	05/03/2012	2012-11/178
<u>range management</u>					
Natural Resources, Forestry, Fire and State Lands	36012	R652-50	5YR	04/02/2012	2012-8/86
School and Institutional Trust Lands, Administration	36413	R850-50	5YR	06/27/2012	Not Printed
<u>rates</u>					
Natural Resources, Forestry, Fire and State Lands	36007	R652-4	5YR	04/02/2012	2012-8/83
Public Service Commission, Administration	36029	R746-343-4	AMD	06/20/2012	2012-9/64
School and Institutional Trust Lands, Administration	36408	R850-4	5YR	06/27/2012	Not Printed
Workforce Services, Unemployment Insurance	36093	R994-303	5YR	04/25/2012	2012-10/97
<u>reading</u>					
Education, Administration	35675	R277-476	REP	03/12/2012	2012-3/22
<u>reception center licenses</u>					
Alcoholic Beverage Control, Administration	36113	R81-4F-7	AMD	07/01/2012	2012-10/9
	36115	R81-4F-13	AMD	07/01/2012	2012-10/10
<u>reclamation</u>					
Natural Resources, Oil, Gas and Mining; Abandoned Mine Reclamation	35792	R643-870	5YR	02/01/2012	2012-4/101
	35793	R643-872	5YR	02/01/2012	2012-4/101
	35794	R643-874	5YR	02/01/2012	2012-4/102
	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
	35798	R643-882	5YR	02/01/2012	2012-4/104
	35799	R643-884	5YR	02/01/2012	2012-4/105
	35800	R643-886	5YR	02/01/2012	2012-4/105
Natural Resources, Oil, Gas and Mining; Coal	35801	R645-100	5YR	02/01/2012	2012-4/106
	35995	R645-100-200	AMD	05/23/2012	2012-8/18
	35802	R645-103	5YR	02/01/2012	2012-4/106

	35803	R645-200	5YR	02/01/2012	2012-4/107
	35804	R645-201	5YR	02/01/2012	2012-4/107
	35836	R645-202	5YR	02/03/2012	2012-5/117
	35837	R645-203	5YR	02/03/2012	2012-5/117
	35838	R645-300	5YR	02/03/2012	2012-5/118
	35996	R645-300-100	AMD	05/23/2012	2012-8/31
	35839	R645-301	5YR	02/03/2012	2012-5/118
	35997	R645-301-100	AMD	05/23/2012	2012-8/39
	36151	R645-301-500	NSC	05/30/2012	Not Printed
	35840	R645-302	5YR	02/03/2012	2012-5/119
	35998	R645-302-200	AMD	05/23/2012	2012-8/43
	35841	R645-303	5YR	02/03/2012	2012-5/120
	35999	R645-303-300	AMD	05/23/2012	2012-8/52
	36000	R645-400-300	AMD	05/23/2012	2012-8/54
	35842	R645-402	5YR	02/03/2012	2012-5/120
	36001	R645-403	NEW	05/23/2012	2012-8/58
<u>reconsiderations</u>					
Career Service Review Office, Administration	35559	R137-1-21	AMD	02/21/2012	2012-2/26
<u>record requests</u>					
Human Services, Recovery Services	35631	R527-5	5YR	01/06/2012	2012-3/116
<u>records</u>					
Pardons (Board Of), Administration	35743	R671-303	5YR	01/31/2012	2012-4/113
Workforce Services, Administration	36355	R982-201	5YR	06/12/2012	2012-13/115
<u>records access</u>					
Regents (Board Of), College of Eastern Utah	36391	R767-1	EXT	06/18/2012	Not Printed
Transportation, Administration	35672	R907-69	NEW	03/12/2012	2012-3/81
<u>records fees</u>					
Human Services, Recovery Services	35631	R527-5	5YR	01/06/2012	2012-3/116
<u>recreation</u>					
Natural Resources, Parks and Recreation	36225	R651-301	5YR	05/16/2012	2012-12/86
Natural Resources, Wildlife Resources	35211	R657-38	AMD	01/10/2012	2011-18/65
<u>recreation areas</u>					
Health, Disease Control and Prevention, Environmental Services	35709	R392-300	5YR	01/20/2012	2012-4/92
	35708	R392-301	5YR	01/20/2012	2012-4/93
	35714	R392-401	5YR	01/20/2012	2012-4/94
<u>refinery</u>					
Environmental Quality, Air Quality	35781	R307-326	5YR	02/01/2012	2012-4/85
<u>registration</u>					
Commerce, Real Estate	35915	R162-2e-402	AMD	05/23/2012	2012-7/25
Natural Resources, Forestry, Fire and State Lands	35698	R652-140	5YR	01/19/2012	2012-4/108
Workforce Services, Unemployment Insurance	35448	R994-403-112c	AMD	01/17/2012	2011-23/98
<u>registration requirements</u>					
Commerce, Consumer Protection	36360	R152-34	5YR	06/14/2012	2012-13/98
<u>reimbursement</u>					
Health, Health Care Financing, Coverage and Reimbursement Policy	36106	R414-9-5	AMD	07/01/2012	2012-10/37
<u>religious activities</u>					
Tax Commission, Auditing	35606	R865-19S	5YR	01/03/2012	2012-2/133
	35511	R865-19S-32	AMD	02/09/2012	2012-1/48
<u>renewal</u>					
Environmental Quality, Solid and Hazardous Waste	36246	R315-15	5YR	05/17/2012	2012-12/85

RULES INDEX

repairs

Administrative Services, Fleet Operations 35621 R27-8 5YR 01/05/2012 2012-3/107

reporting

Health, Family Health and Preparedness, Emergency 36100 R426-5 5YR 04/26/2012 2012-10/92

Medical Services

Natural Resources, Oil, Gas and Mining; Oil and Gas 35848 R649-8 5YR 02/03/2012 2012-5/123

reports

Education, Administration 35676 R277-484-3 AMD 03/12/2012 2012-3/23

Public Service Commission, Administration 36358 R746-400 5YR 06/13/2012 2012-13/114

request for proposals

School and Institutional Trust Lands, Administration 36411 R850-30 5YR 06/27/2012 Not Printed

research data requests

Education, Administration 35676 R277-484-3 AMD 03/12/2012 2012-3/23

research funding

Science Technology and Research Governing Auth., 36083 R856-1 EXD 04/05/2012 2012-9/101

Administration

residency requirements

Community and Culture, Home Energy Assistance 36293 R195-2 EXT 05/31/2012 2012-12/95

Target (HEAT)

Natural Resources, Forestry, Fire and State Lands 36006 R652-3 5YR 04/02/2012 2012-8/83

School and Institutional Trust Lands, Administration 36276 R850-3 5YR 05/23/2012 2012-12/91

residential mortgage

Commerce, Real Estate 36079 R162-2c AMD 06/07/2012 2012-9/12

resorts

Health, Disease Control and Prevention, 36017 R392-502 5YR 04/02/2012 2012-8/75

Environmental Services

resource decision

Public Service Commission, Administration 35924 R746-440 5YR 03/08/2012 2012-7/73

resources

Health, Health Care Financing, Coverage and 35437 R414-305 AMD 02/06/2012 2011-23/65

Reimbursement Policy

restaurants

Tax Commission, Auditing 35602 R865-12L 5YR 01/03/2012 2012-2/130

retirement

Human Resource Management, Administration 35832 R477-12 5YR 02/03/2012 2012-5/114

revocation procedures

Environmental Quality, Environmental Response and 35447 R311-201 AMD 01/13/2012 2011-23/45

Remediation

36045 R311-201 5YR 04/10/2012 2012-9/82

revolving account

Education, Administration 35582 R277-480-1 NSC 01/31/2012 Not Printed

35817 R277-480-1 NSC 02/29/2012 Not Printed

right of way

Transportation, Program Development 36179 R926-6 NSC 05/30/2012 Not Printed

right of way acquisition

Transportation, Preconstruction, Right-of-Way 35429 R933-1 AMD 01/10/2012 2011-23/97

Acquisition

risk management

Administrative Services, Risk Management 36286 R37-1 5YR 05/30/2012 2012-12/81

36287 R37-2 5YR 05/30/2012 2012-12/81

	36288	R37-3	5YR	05/30/2012	2012-12/82
	36289	R37-4	5YR	05/30/2012	2012-12/83
	35844	R37-4	AMD	05/31/2012	2012-5/4
<u>roads</u>					
Transportation, Program Development	35959	R926-4	5YR	03/20/2012	2012-8/90
	35960	R926-4	NSC	04/11/2012	Not Printed
<u>ropeways</u>					
Transportation, Operations, Traffic and Safety	36081	R920-50	5YR	04/16/2012	2012-9/98
	36082	R920-50	AMD	06/07/2012	2012-9/72
<u>royalties</u>					
Natural Resources, Forestry, Fire and State Lands	36009	R652-20	5YR	04/02/2012	2012-8/85
<u>rules and procedures</u>					
Education, Administration	35449	R277-100	AMD	01/10/2012	2011-23/21
	35534	R277-102	R&R	02/07/2012	2012-1/8
	35856	R277-102	NSC	02/29/2012	Not Printed
Health, Administration	36096	R380-1	5YR	04/26/2012	2012-10/88
	36097	R380-5	5YR	04/26/2012	2012-10/89
Human Resource Management, Administration	35821	R477-1	5YR	02/02/2012	2012-5/107
	36118	R477-1	AMD	07/02/2012	2012-10/47
	35834	R477-13	5YR	02/03/2012	2012-5/115
	36127	R477-13	AMD	07/02/2012	2012-10/81
Natural Resources, Wildlife Resources	36003	R657-27	5YR	04/02/2012	2012-8/89
	36152	R657-30	5YR	05/04/2012	2012-11/182
Public Safety, Driver License	35702	R708-2	5YR	01/20/2012	2012-4/118
Public Service Commission, Administration	35508	R746-100	AMD	02/07/2012	2012-1/30
	35900	R746-100	AMD	05/07/2012	2012-6/24
	35926	R746-320	NSC	03/22/2012	Not Printed
	35509	R746-342	REP	02/07/2012	2012-1/40
	36358	R746-400	5YR	06/13/2012	2012-13/114
	35507	R746-405-2	AMD	02/07/2012	2012-1/41
	35896	R746-405-2	AMD	05/07/2012	2012-6/31
School and Institutional Trust Lands, Administration	36275	R850-2	5YR	05/23/2012	2012-12/91
<u>rules procedures</u>					
Insurance, Administration	35850	R590-116	5YR	02/06/2012	2012-5/116
	35851	R590-117	5YR	02/06/2012	2012-5/116
<u>rural economic development</u>					
Governor, Economic Development	36066	R357-1	5YR	04/13/2012	2012-9/92
<u>Rural Fast Track Program</u>					
Governor, Economic Development	36066	R357-1	5YR	04/13/2012	2012-9/92
<u>safety</u>					
Labor Commission, Boiler and Elevator Safety	35963	R616-2-3	AMD	05/22/2012	2012-8/12
	35961	R616-2-15	AMD	05/22/2012	2012-8/14
	35962	R616-3-3	AMD	05/22/2012	2012-8/16
<u>safety inspections</u>					
Public Safety, Highway Patrol	36439	R714-159	5YR	07/02/2012	Not Printed
<u>safety regulations</u>					
Transportation, Motor Carrier	35256	R909-19	AMD	02/07/2012	2011-20/41
	35256	R909-19	CPR	02/07/2012	2012-1/64
	35426	R909-75	AMD	01/10/2012	2011-23/96
<u>safety standing</u>					
Transportation, Motor Carrier	35427	R909-16	REP	01/10/2012	2011-23/92
<u>salaries</u>					
Human Resource Management, Administration	35826	R477-6	5YR	02/02/2012	2012-5/110

RULES INDEX

<u>sales</u>						
School and Institutional Trust Lands, Administration	36415	R850-80	5YR	06/27/2012	Not Printed	
<u>sales tax</u>						
Tax Commission, Auditing	35602	R865-12L	5YR	01/03/2012	2012-2/130	
	35606	R865-19S	5YR	01/03/2012	2012-2/133	
	35511	R865-19S-32	AMD	02/09/2012	2012-1/48	
<u>salt</u>						
Natural Resources, Forestry, Fire and State Lands	36009	R652-20	5YR	04/02/2012	2012-8/85	
<u>sanitarian</u>						
Commerce, Occupational and Professional Licensing	35430	R156-20a	AMD	01/10/2012	2011-23/10	
<u>sanitation</u>						
Health, Disease Control and Prevention, Environmental Services	35715	R392-100	5YR	01/20/2012	2012-4/91	
	35445	R392-100	AMD	01/26/2012	2011-23/62	
<u>satellite</u>						
Education, Administration	35453	R277-482	NEW	01/10/2012	2011-23/38	
<u>scholarships</u>						
Education, Administration	35675	R277-476	REP	03/12/2012	2012-3/22	
<u>school buses</u>						
Education, Administration	35877	R277-600-7	AMD	04/10/2012	2012-5/28	
<u>school choice</u>						
Education, Administration	36071	R277-483-4	AMD	06/07/2012	2012-9/36	
<u>school enrollment</u>						
Education, Administration	35905	R277-419-5	AMD	05/08/2012	2012-7/28	
	36069	R277-419-7	AMD	06/07/2012	2012-9/34	
<u>school lunch programs</u>						
Education, Administration	35937	R277-720	AMD	05/08/2012	2012-7/34	
<u>school personnel</u>						
Education, Administration	35674	R277-107	AMD	03/12/2012	2012-3/19	
	35932	R277-107-6	AMD	05/08/2012	2012-7/27	
	35679	R277-513	REP	03/12/2012	2012-3/30	
<u>school reports</u>						
Education, Administration	35875	R277-497	NEW	04/10/2012	2012-5/24	
<u>school transportation</u>						
Education, Administration	35877	R277-600-7	AMD	04/10/2012	2012-5/28	
<u>schools</u>						
Environmental Quality, Air Quality	35777	R307-135	5YR	02/01/2012	2012-4/82	
Health, Disease Control and Prevention, Environmental Services	35710	R392-200	5YR	01/20/2012	2012-4/91	
Natural Resources, Geological Survey	35685	R638-3	EMR	02/01/2012	2012-3/97	
Public Safety, Driver License	35702	R708-2	5YR	01/20/2012	2012-4/118	
<u>search and seizure</u>						
Corrections, Administration	35757	R251-710	EXT	01/31/2012	2012-4/121	
	36042	R251-710	5YR	04/06/2012	2012-9/78	
<u>searches</u>						
Education, Administration	35878	R277-615	NEW	04/10/2012	2012-5/29	
<u>seat belts</u>						
Public Safety, Highway Patrol	36435	R714-230	5YR	07/02/2012	Not Printed	
	36437	R714-240	5YR	07/02/2012	Not Printed	

<u>secure areas</u>						
Human Services, Substance Abuse and Mental Health, State Hospital	35593	R525-6	AMD	02/21/2012	2012-2/98	
<u>secure facilities</u>						
Public Safety, Peace Officer Standards and Training	35568	R728-408	REP	05/14/2012	2012-2/102	
<u>securities</u>						
Commerce, Securities	35558	R164-101	NEW	02/21/2012	2012-2/29	
Money Management Council, Administration	35640	R628-17	5YR	01/09/2012	2012-3/121	
<u>securities fraud reporting program</u>						
Commerce, Securities	35558	R164-101	NEW	02/21/2012	2012-2/29	
<u>securities regulation</u>						
Commerce, Securities	35558	R164-101	NEW	02/21/2012	2012-2/29	
Money Management Council, Administration	35640	R628-17	5YR	01/09/2012	2012-3/121	
<u>security guards</u>						
Commerce, Occupational and Professional Licensing	36192	R156-63b-102	NSC	05/30/2012	Not Printed	
<u>security measures</u>						
Corrections, Administration	35764	R251-704	EXD	01/18/2012	2012-4/124	
	35771	R251-704	EMR	02/01/2012	2012-4/52	
	35809	R251-704	NEW	04/09/2012	2012-5/18	
	35757	R251-710	EXT	01/31/2012	2012-4/121	
	36042	R251-710	5YR	04/06/2012	2012-9/78	
<u>self-employment income</u>						
Community and Culture, Home Energy Assistance Target (HEAT)	36294	R195-3	EXT	05/31/2012	2012-12/95	
	35405	R195-3-3	AMD	03/26/2012	2011-23/16	
<u>self-insured employer</u>						
Tax Commission, Auditing	35601	R865-11Q	5YR	01/03/2012	2012-2/130	
<u>seminars</u>						
Human Services, Substance Abuse and Mental Health	35625	R523-24	AMD	03/09/2012	2012-3/67	
<u>sentencing</u>						
Pardons (Board Of), Administration	35753	R671-405	5YR	01/31/2012	2012-4/118	
<u>server training</u>						
Human Services, Substance Abuse and Mental Health	36384	R523-23	5YR	06/18/2012	Not Printed	
	35626	R523-23-4	AMD	03/09/2012	2012-3/66	
<u>service continuum</u>						
Human Services, Substance Abuse and Mental Health	36310	R523-20	5YR	06/05/2012	2012-13/107	
<u>settlements</u>						
Labor Commission, Adjudication	36400	R602-2	5YR	06/19/2012	Not Printed	
<u>sewer collection systems</u>						
Environmental Quality, Water Quality	35903	R317-801	NEW	06/21/2012	2012-6/12	
<u>sewerage</u>						
Environmental Quality, Water Quality	36388	R317-5	5YR	06/18/2012	Not Printed	
	36387	R317-560	5YR	06/18/2012	Not Printed	
<u>significant energy resources</u>						
Public Service Commission, Administration	36166	R746-420	5YR	05/10/2012	2012-11/183	
	36167	R746-430	5YR	05/10/2012	2012-11/184	

RULES INDEX

<u>signs</u>						
Transportation, Preconstruction, Right-of-Way Acquisition	36180	R933-2	EMR	05/14/2012	2012-11/168	
<u>single event permits</u>						
Alcoholic Beverage Control, Administration	36114	R81-7	AMD	07/01/2012	2012-10/11	
<u>slaughter</u>						
Agriculture and Food, Animal Industry	35866	R58-11	AMD	05/15/2012	2012-5/5	
	36144	R58-11	NSC	05/30/2012	Not Printed	
<u>smoking</u>						
Health, Disease Control and Prevention, Environmental Services	36019	R392-510	5YR	04/02/2012	2012-8/75	
<u>snow removal</u>						
Transportation, Operations, Maintenance	35515	R918-3	AMD	02/07/2012	2012-1/55	
<u>sobriety tests</u>						
Health, Disease Control and Prevention, Laboratory Services	35706	R438-12	5YR	01/20/2012	2012-4/98	
<u>social services</u>						
Human Services, Child and Family Services	35895	R512-1	5YR	02/23/2012	2012-6/38	
<u>solicitation process</u>						
Public Service Commission, Administration	36166	R746-420	5YR	05/10/2012	2012-11/183	
<u>solicitations</u>						
Commerce, Consumer Protection	35970	R152-22	5YR	03/22/2012	2012-8/72	
<u>solid waste management</u>						
Environmental Quality, Solid and Hazardous Waste	35988	R315-304	5YR	03/29/2012	2012-8/74	
	35432	R315-312-1	AMD	01/13/2012	2011-23/59	
	35433	R315-315-5	AMD	01/13/2012	2011-23/60	
	35434	R315-320-2	AMD	01/13/2012	2011-23/61	
<u>solvent</u>						
Environmental Quality, Air Quality	35786	R307-341	5YR	02/01/2012	2012-4/88	
<u>solvent cleaning</u>						
Environmental Quality, Air Quality	35784	R307-335	5YR	02/01/2012	2012-4/87	
<u>sovereign lands</u>						
Natural Resources, Forestry, Fire and State Lands	36014	R652-70	5YR	04/02/2012	2012-8/87	
<u>space heaters</u>						
Administrative Services, Facilities Construction and Management	36146	R23-19	5YR	05/03/2012	2012-11/177	
<u>spas</u>						
Health, Disease Control and Prevention, Environmental Services	35707	R392-302	5YR	01/20/2012	2012-4/93	
<u>special events</u>						
Health, Disease Control and Prevention, Environmental Services	35711	R392-400	5YR	01/20/2012	2012-4/94	
<u>special fuel</u>						
Tax Commission, Auditing	35598	R865-4D	5YR	01/03/2012	2012-2/125	
<u>special income group</u>						
Health, Health Care Financing, Coverage and Reimbursement Policy	36085	R414-307	5YR	04/17/2012	2012-10/91	
<u>specific licenses</u>						
Environmental Quality, Radiation Control	35417	R313-22-75	AMD	01/16/2012	2011-23/51	

<u>sponsor-a-highway</u>					
Transportation, Operations, Maintenance	35669	R918-4	AMD	03/12/2012	2012-3/82
<u>sponsors</u>					
Corrections, Administration	35755	R251-306	EXT	01/31/2012	2012-4/121
	36040	R251-306	5YR	04/06/2012	2012-9/77
<u>stack height</u>					
Environmental Quality, Air Quality	36337	R307-410	5YR	06/06/2012	2012-13/103
<u>standards</u>					
Transportation, Administration	35670	R907-60	REP	03/12/2012	2012-3/80
<u>STAR</u>					
Science Technology and Research Governing Auth., Administration	36083	R856-1	EXD	04/05/2012	2012-9/101
	36084	R856-2	EXD	04/05/2012	2012-9/101
<u>state buildings</u>					
Capitol Preservation Board (State), Administration	35899	R131-3	EXT	02/29/2012	2012-6/43
	36359	R131-3	5YR	06/13/2012	2012-13/97
<u>state employees</u>					
Administrative Services, Finance	36112	R25-7	AMD	07/01/2012	2012-10/4
Human Resource Management, Administration	35825	R477-5	5YR	02/02/2012	2012-5/109
<u>state fleet information system</u>					
Administrative Services, Fleet Operations	35617	R27-5	5YR	01/05/2012	2012-3/106
	35623	R27-5	NSC	01/31/2012	Not Printed
<u>state HEAT office records</u>					
Community and Culture, Home Energy Assistance Target (HEAT)	35408	R195-7	AMD	03/26/2012	2011-23/19
	36298	R195-7	EXT	05/31/2012	2012-12/96
<u>state hospital</u>					
Human Services, Substance Abuse and Mental Health, State Hospital	35593	R525-6	AMD	02/21/2012	2012-2/98
<u>state parole inmates</u>					
Governor, Criminal and Juvenile Justice (State Commission on)	36141	R356-1	AMD	07/01/2012	2012-10/27
<u>state probationary inmates</u>					
Governor, Criminal and Juvenile Justice (State Commission on)	36141	R356-1	AMD	07/01/2012	2012-10/27
<u>stationary sources</u>					
Environmental Quality, Air Quality	35496	R307-210-1	AMD	03/07/2012	2011-24/7
<u>student eligibility</u>					
Workforce Services, Unemployment Insurance	35448	R994-403-112c	AMD	01/17/2012	2011-23/98
<u>student financial aid</u>					
Education, Administration	35682	R277-718	REP	03/12/2012	2012-3/37
<u>students</u>					
Education, Administration	35936	R277-485	AMD	05/08/2012	2012-7/33
	35878	R277-615	NEW	04/10/2012	2012-5/29
<u>students with disabilities</u>					
Education, Administration	35935	R277-479	NEW	05/08/2012	2012-7/31
	36160	R277-479-1	NSC	05/30/2012	Not Printed
<u>students' rights</u>					
Education, Administration	35454	R277-608	AMD	01/10/2012	2011-23/41

RULES INDEX

<u>substance abuse</u>						
Human Services, Substance Abuse and Mental Health	36310	R523-20	5YR	06/05/2012	2012-13/107	
	36384	R523-23	5YR	06/18/2012	Not Printed	
	35626	R523-23-4	AMD	03/09/2012	2012-3/66	
<u>suggestions</u>						
Human Services, Substance Abuse and Mental Health, State Hospital	35594	R525-7	AMD	02/21/2012	2012-2/99	
	35855	R525-7	NSC	02/29/2012	Not Printed	
<u>supervision</u>						
Commerce, Occupational and Professional Licensing	35624	R156-1	5YR	01/05/2012	2012-3/112	
	36077	R156-1	AMD	06/07/2012	2012-9/8	
Corrections, Administration	36312	R251-401	5YR	06/05/2012	2012-13/99	
<u>surface coating</u>						
Environmental Quality, Air Quality	35785	R307-340	5YR	02/01/2012	2012-4/87	
<u>surveys</u>						
Environmental Quality, Radiation Control	35906	R313-35	5YR	03/02/2012	2012-7/65	
	35418	R313-36	AMD	01/16/2012	2011-23/54	
Judicial Performance Evaluation Commission, Administration	35930	R597-3	EMR	03/15/2012	2012-7/57	
	35934	R597-3	AMD	06/01/2012	2012-7/50	
Natural Resources, Forestry, Fire and State Lands	36011	R652-40	5YR	04/02/2012	2012-8/86	
School and Institutional Trust Lands, Administration	36412	R850-40	5YR	06/27/2012	Not Printed	
<u>tailings</u>						
Environmental Quality, Radiation Control	36277	R313-24	5YR	05/24/2012	2012-12/84	
<u>tariffs</u>						
Public Service Commission, Administration	35507	R746-405-2	AMD	02/07/2012	2012-1/41	
	35896	R746-405-2	AMD	05/07/2012	2012-6/31	
<u>tax credits</u>						
Environmental Quality, Air Quality	35716	R307-121	5YR	01/23/2012	2012-4/81	
	35718	R307-121-7	NSC	02/09/2012	Not Printed	
<u>tax exemptions</u>						
Environmental Quality, Air Quality	35775	R307-120	5YR	02/01/2012	2012-4/81	
Environmental Quality, Water Quality	35726	R317-12	5YR	01/25/2012	2012-4/89	
Tax Commission, Auditing	35606	R865-19S	5YR	01/03/2012	2012-2/133	
	35511	R865-19S-32	AMD	02/09/2012	2012-1/48	
<u>tax returns</u>						
Tax Commission, Auditing	35600	R865-9I	5YR	01/03/2012	2012-2/127	
<u>taxation</u>						
Tax Commission, Administration	35595	R861-1A	5YR	01/03/2012	2012-2/122	
	35862	R861-1A-9	AMD	04/12/2012	2012-5/93	
	36061	R861-1A-16	AMD	06/14/2012	2012-9/65	
Tax Commission, Auditing	35597	R865-3C	5YR	01/03/2012	2012-2/125	
	35863	R865-3C-1	AMD	04/12/2012	2012-5/95	
	35598	R865-4D	5YR	01/03/2012	2012-2/125	
	35599	R865-6F	5YR	01/03/2012	2012-2/126	
	35601	R865-11Q	5YR	01/03/2012	2012-2/130	
	35602	R865-12L	5YR	01/03/2012	2012-2/130	
	35603	R865-13G	5YR	01/03/2012	2012-2/131	
	35604	R865-14W	5YR	01/03/2012	2012-2/132	
	35605	R865-15O	5YR	01/03/2012	2012-2/133	
	35607	R865-20T	5YR	01/03/2012	2012-2/137	
Tax Commission, Motor Vehicle	35608	R873-22M	5YR	01/03/2012	2012-2/138	
Tax Commission, Motor Vehicle Enforcement	35609	R877-23V	5YR	01/03/2012	2012-2/140	
	36062	R877-23V-7	AMD	06/14/2012	2012-9/67	
	35512	R877-23V-20	AMD	02/09/2012	2012-1/49	

	35513	R877-23V-21	AMD	02/09/2012	2012-1/50
	36063	R877-23V-22	AMD	06/14/2012	2012-9/70
Tax Commission, Property Tax	35592	R884-24P	5YR	01/03/2012	2012-2/141
	35514	R884-24P-62	AMD	02/09/2012	2012-1/51
	35864	R884-24P-66	AMD	04/12/2012	2012-5/96
	36064	R884-24P-68	AMD	06/14/2012	2012-9/71
<u>teacher certification</u>					
Education, Administration	35679	R277-513	REP	03/12/2012	2012-3/30
	35941	R277-519	5YR	03/15/2012	2012-7/64
Public Safety, Driver License	35705	R708-27	5YR	01/20/2012	2012-4/120
<u>teachers</u>					
Education, Administration	35675	R277-476	REP	03/12/2012	2012-3/22
	35677	R277-503	AMD	03/12/2012	2012-3/24
	35939	R277-503	5YR	03/15/2012	2012-7/63
	36073	R277-503	AMD	06/07/2012	2012-9/39
	35671	R277-511	5YR	01/17/2012	2012-3/113
	35678	R277-511	REP	03/12/2012	2012-3/28
	35454	R277-608	AMD	01/10/2012	2011-23/41
<u>technology funding</u>					
Science Technology and Research Governing Auth., Administration	36083	R856-1	EXD	04/05/2012	2012-9/101
<u>telecommunications</u>					
Public Service Commission, Administration	35509	R746-342	REP	02/07/2012	2012-1/40
	36029	R746-343-4	AMD	06/20/2012	2012-9/64
	35651	R746-348	5YR	01/11/2012	2012-3/126
	35916	R746-349	5YR	03/06/2012	2012-7/71
	35917	R746-351	5YR	03/06/2012	2012-7/72
	35927	R746-365	NSC	03/22/2012	Not Printed
<u>telecommuting</u>					
Human Resource Management, Administration	35828	R477-8	5YR	02/02/2012	2012-5/112
	36124	R477-8	AMD	07/02/2012	2012-10/71
<u>telephone utility regulations</u>					
Public Service Commission, Administration	35651	R746-348	5YR	01/11/2012	2012-3/126
<u>telephonic participation</u>					
Administrative Services, Archives	35304	R17-9	NEW	01/30/2012	2011-20/6
<u>temporary beer event permits</u>					
Alcoholic Beverage Control, Administration	36116	R81-10B	AMD	07/01/2012	2012-10/14
<u>temporary mass gatherings</u>					
Health, Disease Control and Prevention, Environmental Services	35711	R392-400	5YR	01/20/2012	2012-4/94
<u>terminally ill</u>					
Natural Resources, Wildlife Resources	36152	R657-30	5YR	05/04/2012	2012-11/182
<u>tickets</u>					
Administrative Services, Fleet Operations	36024	R27-7	AMD	06/28/2012	2012-9/4
<u>time</u>					
Labor Commission, Adjudication	36399	R602-1	5YR	06/19/2012	Not Printed
Labor Commission, Antidiscrimination and Labor, Labor	35833	R610-3-21	AMD	04/16/2012	2012-5/88
Labor Commission, Industrial Accidents	36402	R612-1	5YR	06/19/2012	Not Printed
<u>timelines</u>					
Education, Administration	35453	R277-482	NEW	01/10/2012	2011-23/38
<u>tobacco products</u>					
Tax Commission, Auditing	35607	R865-20T	5YR	01/03/2012	2012-2/137

RULES INDEX

<u>toilets</u>						
Environmental Quality, Water Quality	36387	R317-560	5YR	06/18/2012	Not Printed	
<u>towing</u>						
Transportation, Motor Carrier	35256	R909-19	AMD	02/07/2012	2011-20/41	
	35256	R909-19	CPR	02/07/2012	2012-1/64	
<u>traffic noise abatement</u>						
Transportation, Preconstruction	35516	R930-3	AMD	02/07/2012	2012-1/57	
<u>traffic regulations</u>						
Public Safety, Highway Patrol	36440	R714-110	5YR	07/02/2012	Not Printed	
<u>traffic violations</u>						
Public Safety, Driver License	35636	R708-3	5YR	01/09/2012	2012-3/121	
<u>training</u>						
Education, Administration	35453	R277-482	NEW	01/10/2012	2011-23/38	
Human Services, Substance Abuse and Mental Health	35625	R523-24	AMD	03/09/2012	2012-3/67	
<u>training programs</u>						
Human Resource Management, Administration	35830	R477-10	5YR	02/03/2012	2012-5/113	
Public Safety, Driver License	35703	R708-21	5YR	01/20/2012	2012-4/119	
Workforce Services, Administration	36357	R982-601	5YR	06/12/2012	2012-13/116	
<u>tramway permits</u>						
Transportation, Operations, Traffic and Safety	36081	R920-50	5YR	04/16/2012	2012-9/98	
	36082	R920-50	AMD	06/07/2012	2012-9/72	
<u>tramways</u>						
Transportation, Operations, Traffic and Safety	36081	R920-50	5YR	04/16/2012	2012-9/98	
	36082	R920-50	AMD	06/07/2012	2012-9/72	
<u>transfer</u>						
Technology Services, Administration	35989	R895-3	EXT	03/29/2012	2012-8/91	
<u>transparency</u>						
Health, Center for Health Data, Health Care Statistics	35616	R428-15	AMD	03/16/2012	2012-3/51	
<u>transportation</u>						
Administrative Services, Finance	36112	R25-7	AMD	07/01/2012	2012-10/4	
Transportation, Preconstruction	35516	R930-3	AMD	02/07/2012	2012-1/57	
Transportation, Program Development	35959	R926-4	5YR	03/20/2012	2012-8/90	
	35960	R926-4	NSC	04/11/2012	Not Printed	
<u>transportation planning</u>						
Transportation, Program Development	36179	R926-6	NSC	05/30/2012	Not Printed	
<u>transportation research</u>						
Transportation, Administration	35670	R907-60	REP	03/12/2012	2012-3/80	
<u>transportation safety</u>						
Transportation, Motor Carrier	35425	R909-1	AMD	01/10/2012	2011-23/90	
	35873	R909-1	AMD	04/11/2012	2012-5/99	
Transportation, Operations, Traffic and Safety	36081	R920-50	5YR	04/16/2012	2012-9/98	
	36082	R920-50	AMD	06/07/2012	2012-9/72	
<u>trauma</u>						
Health, Family Health and Preparedness, Emergency Medical Services	36100	R426-5	5YR	04/26/2012	2012-10/92	
<u>trauma center designation</u>						
Health, Family Health and Preparedness, Emergency Medical Services	36100	R426-5	5YR	04/26/2012	2012-10/92	

<u>trip reduction</u>						
Environmental Quality, Air Quality	35779	R307-320	5YR	02/01/2012	2012-4/84	
<u>trucking industries</u>						
Tax Commission, Auditing	35599	R865-6F	5YR	01/03/2012	2012-2/126	
<u>trucks</u>						
Transportation, Motor Carrier	35425	R909-1	AMD	01/10/2012	2011-23/90	
	35873	R909-1	AMD	04/11/2012	2012-5/99	
	35427	R909-16	REP	01/10/2012	2011-23/92	
	35256	R909-19	AMD	02/07/2012	2011-20/41	
	35256	R909-19	CPR	02/07/2012	2012-1/64	
<u>trust land management</u>						
School and Institutional Trust Lands, Administration	36411	R850-30	5YR	06/27/2012	Not Printed	
<u>unarmed combat</u>						
Governor, Economic Development, Pete Suazo Utah Athletic Commission	36002	R359-1	5YR	03/30/2012	2012-8/74	
	36130	R359-1-506	AMD	06/30/2012	2012-10/29	
<u>underground storage tanks</u>						
Environmental Quality, Environmental Response and Remediation	35668	R311-200	AMD	03/09/2012	2012-3/42	
	36057	R311-200	5YR	04/10/2012	2012-9/82	
	35447	R311-201	AMD	01/13/2012	2011-23/45	
	36045	R311-201	5YR	04/10/2012	2012-9/82	
	36046	R311-202	5YR	04/10/2012	2012-9/84	
	36047	R311-203	5YR	04/10/2012	2012-9/84	
	36048	R311-204	5YR	04/10/2012	2012-9/85	
	36049	R311-205	5YR	04/10/2012	2012-9/86	
	36050	R311-206	5YR	04/10/2012	2012-9/86	
	36051	R311-207	5YR	04/10/2012	2012-9/87	
	36052	R311-208	5YR	04/10/2012	2012-9/88	
	36053	R311-209	5YR	04/10/2012	2012-9/89	
	36054	R311-210	5YR	04/10/2012	2012-9/89	
	36055	R311-211	5YR	04/10/2012	2012-9/90	
	36056	R311-212	5YR	04/10/2012	2012-9/90	
<u>unemployed workers</u>						
Workforce Services, Administration	36357	R982-601	5YR	06/12/2012	2012-13/116	
Workforce Services, Unemployment Insurance	35992	R994-207-102	NSC	04/11/2012	Not Printed	
<u>unemployment compensation</u>						
Workforce Services, Unemployment Insurance	36091	R994-102	5YR	04/25/2012	2012-10/96	
	36092	R994-106	5YR	04/25/2012	2012-10/96	
	35992	R994-207-102	NSC	04/11/2012	Not Printed	
	36093	R994-303	5YR	04/25/2012	2012-10/97	
	36094	R994-401	5YR	04/25/2012	2012-10/97	
	36095	R994-402	5YR	04/25/2012	2012-10/98	
	35448	R994-403-112c	AMD	01/17/2012	2011-23/98	
	36256	R994-404	5YR	05/22/2012	2012-12/92	
	36134	R994-405-104	AMD	07/01/2012	2012-10/84	
	36257	R994-406	5YR	05/22/2012	2012-12/92	
	35455	R994-508	AMD	02/01/2012	2011-23/101	
<u>uranium mills</u>						
Environmental Quality, Radiation Control	36277	R313-24	5YR	05/24/2012	2012-12/84	
<u>used oil</u>						
Environmental Quality, Solid and Hazardous Waste	36246	R315-15	5YR	05/17/2012	2012-12/85	
<u>USHRAB board meetings</u>						
Administrative Services, Archives	35304	R17-9	NEW	01/30/2012	2011-20/6	
<u>Utah Sewer Management Program</u>						
Environmental Quality, Water Quality	35903	R317-801	NEW	06/21/2012	2012-6/12	

RULES INDEX

<u>utilities</u>					
Public Service Commission, Administration	36167	R746-430	5YR	05/10/2012	2012-11/184
	35506	R746-800	REP	02/07/2012	2012-1/43
<u>utility regulations</u>					
Public Service Commission, Administration	35505	R746-310-1	AMD	02/07/2012	2012-1/38
	35925	R746-310-2	NSC	03/22/2012	Not Printed
	35507	R746-405-2	AMD	02/07/2012	2012-1/41
	35896	R746-405-2	AMD	05/07/2012	2012-6/31
<u>utility service shutoff</u>					
Public Service Commission, Administration	35926	R746-320	NSC	03/22/2012	Not Printed
<u>vacations</u>					
Human Resource Management, Administration	35827	R477-7	5YR	02/02/2012	2012-5/111
	36123	R477-7	AMD	07/02/2012	2012-10/63
<u>vaccinations</u>					
Agriculture and Food, Animal Industry	36143	R58-3	EMR	05/08/2012	2012-11/167
Health, Family Health and Preparedness, Licensing	35977	R432-40	5YR	03/28/2012	2012-8/77
<u>vehicle maintenance</u>					
Administrative Services, Fleet Operations	35621	R27-8	5YR	01/05/2012	2012-3/107
<u>vehicle replacement</u>					
Administrative Services, Fleet Operations	35622	R27-4	5YR	01/05/2012	2012-3/105
<u>vendor approvals</u>					
Administrative Services, Fleet Operations	35621	R27-8	5YR	01/05/2012	2012-3/107
<u>ventilation</u>					
Health, Disease Control and Prevention, Environmental Services	36019	R392-510	5YR	04/02/2012	2012-8/75
<u>veterinarians</u>					
Environmental Quality, Radiation Control	35906	R313-35	5YR	03/02/2012	2012-7/65
<u>victims of crimes</u>					
Pardons (Board Of), Administration	35738	R671-203	5YR	01/31/2012	2012-4/110
<u>visibility</u>					
Environmental Quality, Air Quality	36336	R307-406	5YR	06/06/2012	2012-13/102
<u>visitation</u>					
Corrections, Administration	35754	R251-305	EXT	01/31/2012	2012-4/121
	36039	R251-305	5YR	04/06/2012	2012-9/77
<u>volunteers</u>					
Human Resource Management, Administration	35834	R477-13	5YR	02/03/2012	2012-5/115
	36127	R477-13	AMD	07/02/2012	2012-10/81
Transportation, Operations, Maintenance	35669	R918-4	AMD	03/12/2012	2012-3/82
<u>wages</u>					
Labor Commission, Antidiscrimination and Labor, Labor	35833	R610-3-21	AMD	04/16/2012	2012-5/88
<u>waivers</u>					
Health, Health Care Financing, Coverage and Reimbursement Policy	36085	R414-307	5YR	04/17/2012	2012-10/91
<u>waste disposal</u>					
Environmental Quality, Solid and Hazardous Waste	35988	R315-304	5YR	03/29/2012	2012-8/74
	35432	R315-312-1	AMD	01/13/2012	2011-23/59
	35433	R315-315-5	AMD	01/13/2012	2011-23/60
	35434	R315-320-2	AMD	01/13/2012	2011-23/61
Environmental Quality, Water Quality	36387	R317-560	5YR	06/18/2012	Not Printed

<u>waste water</u>						
Environmental Quality, Water Quality	36135	R317-11	AMD	06/27/2012	2012-10/23	
<u>wastewater</u>						
Environmental Quality, Water Quality	36190	R317-3	5YR	05/15/2012	2012-11/179	
	36387	R317-560	5YR	06/18/2012	Not Printed	
<u>water</u>						
Natural Resources, Water Rights	36382	R655-15	5YR	06/15/2012	2012-13/113	
<u>water commissioner</u>						
Natural Resources, Water Rights	36382	R655-15	5YR	06/15/2012	2012-13/113	
<u>water policy</u>						
Natural Resources, Oil, Gas and Mining; Abandoned Mine Reclamation	35797	R643-879	5YR	02/01/2012	2012-4/104	
<u>water pollution</u>						
Environmental Quality, Water Quality	35359	R317-2	AMD	04/01/2012	2011-21/78	
	35359	R317-2	CPR	04/01/2012	2012-4/40	
	36190	R317-3	5YR	05/15/2012	2012-11/179	
	36388	R317-5	5YR	06/18/2012	Not Printed	
	35238	R317-8	AMD	01/25/2012	2011-19/31	
	35726	R317-12	5YR	01/25/2012	2012-4/89	
<u>water quality</u>						
Environmental Quality, Water Quality	36190	R317-3	5YR	05/15/2012	2012-11/179	
<u>water quality standards</u>						
Environmental Quality, Water Quality	35359	R317-2	AMD	04/01/2012	2011-21/78	
	35359	R317-2	CPR	04/01/2012	2012-4/40	
<u>water rights</u>						
Natural Resources, Water Rights	36381	R655-6	5YR	06/15/2012	2012-13/113	
<u>water rights procedures</u>						
Natural Resources, Water Rights	36380	R655-2	5YR	06/15/2012	2012-13/112	
<u>water slides</u>						
Health, Disease Control and Prevention, Environmental Services	35707	R392-302	5YR	01/20/2012	2012-4/93	
<u>weapons</u>						
Human Services, Juvenile Justice Services	36043	R547-14	5YR	04/09/2012	2012-9/93	
Human Services, Substance Abuse and Mental Health, State Hospital	35593	R525-6	AMD	02/21/2012	2012-2/98	
<u>welfare</u>						
Human Services, Recovery Services	36346	R527-3	5YR	06/12/2012	2012-13/108	
<u>white collar contests</u>						
Governor, Economic Development, Pete Suazo Utah Athletic Commission	36002	R359-1	5YR	03/30/2012	2012-8/74	
<u>white-collar contests</u>						
Governor, Economic Development, Pete Suazo Utah Athletic Commission	36130	R359-1-506	AMD	06/30/2012	2012-10/29	
<u>wildlife</u>						
Natural Resources, Wildlife Resources	36149	R657-2	5YR	05/04/2012	2012-11/181	
	36280	R657-4	5YR	05/29/2012	2012-12/87	
	35520	R657-5	AMD	02/07/2012	2012-1/29	
	35440	R657-13	AMD	01/10/2012	2011-23/75	
	35209	R657-17	AMD	01/10/2012	2011-18/63	
	35734	R657-20	AMD	04/02/2012	2012-4/25	
	36150	R657-22	5YR	05/04/2012	2012-11/182	

RULES INDEX

	36003	R657-27	5YR	04/02/2012	2012-8/89
	35733	R657-33	AMD	04/02/2012	2012-4/32
	35211	R657-38	AMD	01/10/2012	2011-18/65
	35435	R657-42	AMD	01/10/2012	2011-23/76
	35210	R657-43	AMD	01/10/2012	2011-18/71
	35909	R657-43	5YR	03/05/2012	2012-7/70
	36392	R657-44	5YR	06/19/2012	Not Printed
	36004	R657-50	5YR	04/02/2012	2012-8/89
	35439	R657-58	AMD	01/10/2012	2011-23/79
	35438	R657-59	AMD	01/10/2012	2011-23/80
	35436	R657-62	AMD	01/10/2012	2011-23/85
<u>wildlife conservation</u>					
Natural Resources, Wildlife Resources	35211	R657-38	AMD	01/10/2012	2011-18/65
<u>wildlife law</u>					
Natural Resources, Wildlife Resources	35440	R657-13	AMD	01/10/2012	2011-23/75
	36150	R657-22	5YR	05/04/2012	2012-11/182
	36003	R657-27	5YR	04/02/2012	2012-8/89
	35439	R657-58	AMD	01/10/2012	2011-23/79
<u>withholding tax</u>					
Tax Commission, Auditing	35604	R865-14W	5YR	01/03/2012	2012-2/132
<u>witness fees</u>					
Labor Commission, Adjudication	36399	R602-1	5YR	06/19/2012	Not Printed
<u>women</u>					
Health, Family Health and Preparedness, WIC Services	35812	R406-100	5YR	02/02/2012	2012-5/104
	35813	R406-200	5YR	02/02/2012	2012-5/105
	35814	R406-201	5YR	02/02/2012	2012-5/105
	35815	R406-202	5YR	02/02/2012	2012-5/106
	35816	R406-301	5YR	02/02/2012	2012-5/106
<u>wood furniture</u>					
Environmental Quality, Air Quality	35787	R307-343	5YR	02/01/2012	2012-4/89
<u>work-based learning programs</u>					
Education, Administration	35938	R277-916	AMD	05/08/2012	2012-7/35
<u>workers' compensation</u>					
Administrative Services, Risk Management	36287	R37-2	5YR	05/30/2012	2012-12/81
Labor Commission, Adjudication	36400	R602-2	5YR	06/19/2012	Not Printed
Labor Commission, Industrial Accidents	36402	R612-1	5YR	06/19/2012	Not Printed
Workforce Services, Unemployment Insurance	36256	R994-404	5YR	05/22/2012	2012-12/92
<u>x-rays</u>					
Environmental Quality, Radiation Control	35906	R313-35	5YR	03/02/2012	2012-7/65