

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 Division of Administrative Rules, part of the Department of Administrative Services, produces the *Bulletin* under authority of Section 63G-3-402.

The Portable Document Format (PDF) version of the *Bulletin* is the official version. The PDF version of this issue is available at <http://www.rules.utah.gov/publicat/bulletin.htm>. Any discrepancy between the PDF version and other versions will be resolved in favor of the PDF version.

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. 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)* of the same volume and issue number. The *Digest* is available by e-mail subscription or online. Visit <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for January 2014 Medicaid Rate Changes

Effective January 1, 2014, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies, potential adjustments to existing codes, and nursing home rate changes to case mix components consistent with adopted payment methodology. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>.

Health Health Care Financing, Coverage and Reimbursement Policy

Pharmacy Services: Changes to the Medicaid State Plan in Order to Implement Coverage Changes for Barbiturate, Benzodiazepine, and Drugs Used for Smoking Cessation

The Division of Medicaid and Health Financing (DMHF) will submit changes to the Medicaid State Plan in order to implement coverage changes for barbiturate, benzodiazepine, and drugs used for smoking cessation. These changes are necessary to comply with Medicaid program requirements relating to the coverage of drugs in the Medicaid program that are also covered in the Medicare Part D program for dual eligible individuals.

SPA 14-008-UT *Pharmacy Services*, therefore, amends the coverage of barbiturates, benzodiazepine drugs, and smoking cessation drugs in Attachments 3.1-A and 3.1-B of the State Plan to clarify drug coverage for these drug classes. All barbiturates, benzodiazepine, and smoking cessation drugs are covered under Medicaid except for dual eligible individuals effective January 1, 2014, since Medicare Part D will now cover these drugs for dual eligible recipients.

DMHF anticipates a decrease in overall total annual expenditures by approximately \$300,000 to result from these changes. This is due to a shift in coverage for these drugs from Medicaid to Medicare for dual eligible individuals. This decrease will be offset by a slight increase in federal estimated quarterly rebate offset amount (EQROA); however, the specific impact is unknown.

These proposed changes, if approved, become effective on January 1, 2014.

These proposed changes are pending Centers for Medicare and Medicaid Services approval. A copy of the changes may be obtained from Craig Devashrayee (801-538-6641), or by writing the Technical Writing Unit, Utah Department of Health, P.O. Box 143102, Salt Lake City, UT 84114-3102. Comments are welcome at the same address. Copies of the changes are also available at local county health department offices.

Health Health Care Financing, Coverage and Reimbursement Policy

Pharmacy Services: Changes to the Medicaid State Plan to Implement a 340B Drug Dispensing Fee

The Division of Medicaid and Health Financing (DMHF) will submit changes to the Medicaid State Plan to implement a 340B drug dispensing fee.

SPA 14-009-UT *340B Dispensing Fee*, therefore, amends the Special Category Fees list in Attachment 4.19-B of the State Plan to incorporate a 340B dispensing fee, to be determined consistent with surveys, in-house studies of dispensing fee costs, national and regional data, and economic trends and conditions.

SPECIAL NOTICES

The 340B drug program reimburses for drugs dispensed to eligible clients of 340B covered entities. These drugs are highly discounted such that expenses normally satisfied under traditional dispensing fees are not adequately covered. Consequently, these changes should be budget neutral, and DMHF does not anticipate an impact in total annual expenditures to result from these changes.

These proposed changes, if approved, become effective on January 1, 2014.

These proposed changes are pending Centers for Medicare & Medicaid Services approval. A copy of the changes may be obtained from Craig Devashrayee (801-538-6641), or by writing the Technical Writing Unit, Utah Department of Health, P.O. Box 143102, Salt Lake City, UT 84114-3102. Comments are welcome at the same address. Copies of the changes are also available at local county health department offices.

End of the Special Notices Section

EXECUTIVE DOCUMENTS

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

The Governor's Office staff files **EXECUTIVE DOCUMENTS** that have legal effect with the Division of Administrative Rules for publication and distribution.

Governor's Proclamation 2013/04/E: Calling the Sixtieth Legislature Into the Fourth Extraordinary Session

PROCLAMATION

WHEREAS, since the close of the 2013 General Session of the 60th Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

WHEREAS, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Senate in Extraordinary Session;

NOW, THEREFORE, I, Gary R. Herbert, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 60th Legislature into the Fourth Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 20th day of November 2013, at 1:30 p.m., for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2013 General Session of the Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 18th day of November 2013.

(State Seal)

Gary R. Herbert
Governor

ATTEST:

Spencer J. Cox
Lieutenant Governor

2013/04/E

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a substantive change to an existing rule. With a **NOTICE OF PROPOSED RULE**, an agency may create a new rule, amend an existing rule, repeal an existing rule, or repeal an existing rule and reenact a new rule. Filings received between November 16, 2013, 12:00 a.m., and December 02, 2013, 11:59 p.m. are included in this, the December 15, 2013, 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 (example). Deletions made to existing rules are struck out with brackets surrounding them (~~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 usually printed. If a **PROPOSED RULE** is too long to print, the Division of Administrative Rules may 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 January 14, 2014. 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 April 14, 2014, 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.

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, R15-4-5a, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page

**Commerce, Occupational and
Professional Licensing
R156-1-501
Unprofessional Conduct**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38157

FILED: 11/25/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Osteopathic Physicians and Surgeon's Licensing Board, Physicians Licensing Board, Podiatric Physician Board and Physician Assistant Licensing Board are recommending the adoption of a new Federation of State Medical Board's model policy on the use of opioid analgesics in the treatment of chronic pain applicable to all prescribing practitioners. These guidelines in the model policy support Utah's initiative to reduce overdose deaths and increase safe prescribing.

SUMMARY OF THE RULE OR CHANGE: Subsection R156-1-501(7) is added to incorporate by reference the Federation of State Medical Board's Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain, dated July 2013.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-1-308 and Subsection 58-1-106(1) (a) and Subsection 58-1-501(2)

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain, published by Federation of State Medical Boards, July 2013

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
- ◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed prescribing practitioners in Utah. As a result, the proposed amendments do not apply to local governments.
- ◆ **SMALL BUSINESSES:** The proposed amendments only apply to licensed prescribing practitioners in Utah. Such licensees may work in a small business; however, the proposed amendments would not directly affect the business.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to licensed prescribing practitioners in Utah. There may be a slight fiscal impact to licensees because of time needed to re-educate or update

themselves on the new policy with respect to the use of opioid analgesics in the treatment of chronic pain; however any total costs cannot be estimated by the Division. It should also be noted that no costs are involved with obtaining a copy of the model policy since the document is available at no cost from the Federation of State Medical Board's website.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed prescribing practitioners in Utah. There may be a slight fiscal impact to licensees because of time needed to re-educate or update themselves on the new policy with respect to the use of opioid analgesics in the treatment of chronic pain; however any total costs cannot be estimated by the Division. It should also be noted that no costs are involved with obtaining a copy of the model policy since the document is available at no cost from the Federation of State Medical Board's website.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As explained in the rule analysis, this filing requires medical practitioners to understand and comply with a nationally-recognized model policy regarding the prescribing of opioid analgesics. No fiscal impact to businesses is anticipated.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2014

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-1. General Rule of the Division of Occupational and Professional Licensing.**

R156-1-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

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

been filed against the applicant or licensee alleging unprofessional or unlawful conduct;

(2) practicing a regulated occupation or profession in, through, or with a limited liability company which has omitted the words "limited company," "limited liability company," or the abbreviation "L.C." or "L.L.C." in the commercial use of the name of the limited liability company;

(3) practicing a regulated occupation or profession in, through, or with a limited partnership which has omitted the words "limited partnership," "limited," or the abbreviation "L.P." or "Ltd." in the commercial use of the name of the limited partnership;

(4) practicing a regulated occupation or profession in, through, or with a professional corporation which has omitted the words "professional corporation" or the abbreviation "P.C." in the commercial use of the name of the professional corporation;

(5) using a DBA (doing business as name) which has not been properly registered with the Division of Corporations and with the Division of Occupational and Professional Licensing; or

(6) failing, as a prescribing practitioner, to follow the "Model Policy for the Use of Controlled Substances for the Treatment of Pain", 2004, established by the Federation of State Medical Boards, which is hereby adopted and incorporated by reference; and

(7) failing, as a prescribing practitioner, to follow the "Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain", July 2013, adopted by the Federation of State Medical Boards, which is incorporated by reference.

KEY: diversion programs, licensing, supervision, evidentiary restrictions

Date of Enactment or Last Substantive Amendment: ~~[November 21, 2013]~~2014

Notice of Continuation: January 5, 2012

Authorizing, and Implemented or Interpreted Law: 58-1-106(1) (a); 58-1-308; 58-1-501(2)

Commerce, Occupational and
Professional Licensing
R156-46a
Hearing Instrument Specialist Licensing
Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38155

FILED: 11/25/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Hearing Instrument Specialist Licensing Board are proposing amendments to delete the experience requirement as a result of changes made by H.B. 46 passed during the 2013 General Legislative Session. H.B. 46 eliminated the experience requirement for

licensure as a hearing instrument specialist. The proposed amendments also update outdated portions of the rule, eliminate portions that are duplicative or already addressed in statute, and make technical corrections.

SUMMARY OF THE RULE OR CHANGE: In Section R156-46a-102, amendments eliminate definitions that are no longer needed because the usage of these words is being deleted from other sections in the rule. Section R156-46a-302a is deleted in its entirety to eliminate the requirement that the certificate from National Board for Certification in Hearing Instrument Sciences (NBC-HIS) be notarized. This notarization is not needed because of the ease of verifying the authenticity of registrations directly with NBC-HIS. Section R156-46a-302b is deleted in its entirety because it contains information relating to experience requirements which were deleted by H.B. 46. Section R156-46a-302c is renumbered to R156-46a-302a. Subsection R156-46a-302a(1) is deleted because it contains information relating to experience requirements which were deleted by H.B. 46. Subsection R156-46a-302a(2) is amended to reorganize the sentence to make the requirement easier to read and understand. Section R156-46a-302d is renumbered to R156-46a-302b. Amendments delete existing language that prohibits a person from becoming a hearing instrument specialist intern supervisor if the person has had any disciplinary action within five years. The statute provides that a supervisor must be active and in good standing. Any prior disciplinary action should itself address limitations that are necessary to protect the public. Subsections R156-46a-302b(5) through (7) are deleted because they contain information relating to experience requirements which were deleted by H.B. 46. In Section R156-46a-303, rule citations are updated. In Section R156-46a-304, amendments eliminate a redundancy in the wording. Subsection R156-46a-502a(3) is deleted to eliminate a redundant provision regarding aiding or abetting unlicensed conduct which is already specified as unlawful conduct under Subsection 58-1-501(2)(c). In old Subsection R156-46a-502a(4), now subsection (3), amendments correct an error in the current rule which states a medical evaluation must be completed by a physician. The statute allows other appropriately licensed persons to perform these evaluations. Amendments also add a citation to the federal Food and Drug Administration law that is referenced in the rule. Subsections R156-46a-502a(5) and (7) are being deleted to eliminate redundant provisions regarding misleading and deceptive practices that are already defined as unprofessional conduct in Subsection 58-1-501(2)(h). Subsections R156-46a-502a(9) through (12) are being deleted because they are redundant with other sections of statutes or rules which already address these requirements. Old Subsection R156-46a-502a(13), now subsection (5), is updating the Code of Ethics of the International Hearing Society to the March 2009 edition and deleting the incorporation by reference to the Utah Code of Ethics established by the Hearing Health Care Providers of Utah Association, September 6, 2006 edition, because the Utah Code of Ethics is duplicative of the national standard.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-46a-101 and Section 58-46a-304 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1) (a)

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Removes Utah Code of Ethics, published by Hearing Health Care Providers of Utah Association, September 6, 2006
- ◆ Adds Code of Ethics, published by International Hearing Society, March 2009

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
- ◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed hearing instrument specialists and applicants for licensure in that classification. As a result, the proposed amendments do not apply to local governments.
- ◆ **SMALL BUSINESSES:** The proposed amendments only apply to licensed hearing instrument specialists and applicants for licensure in that classification. Licensees and applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments affect persons licensed or obtaining licensure as hearing instrument specialists. The elimination of the experience requirement will have no effect beyond the effect already incurred by the statute change as a result of H.B. 46. In addition, the elimination of the experience requirement will have little if any practical effect on these persons because these persons are still required by statute to obtain a certification from the National Board for Certification-Hearing Instrument Sciences in order to be licensed as a hearing instrument specialist in Utah. That organization continues to have a two-year experience requirement for certification. Therefore, the actual experience that must be obtained before licensure is granted is unchanged. The remaining rule amendments are mostly technical changes rather than changes that substantively affect the practice of licensing hearing instrument specialists. Therefore, these changes will have little if any financial impact on these persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments affect persons licensed or obtaining licensure as hearing instrument specialists. The elimination of the experience requirement will have no effect beyond the effect already incurred by the statute change as a result of H.B. 46. In addition, the elimination of the experience requirement will have little if any practical effect on these persons because these persons are still required by statute to obtain a certification from the National Board for Certification-Hearing Instrument Sciences in order to be licensed as a hearing instrument specialist in Utah. That organization

continues to have a two-year experience requirement for certification. Therefore, the actual experience that must be obtained before licensure is granted is unchanged. The remaining rule amendments are mostly technical changes rather than changes that substantively affect the practice of licensing hearing instrument specialists. Therefore, these changes will have little if any financial impact on these persons. It should also be noted that no costs are associated with the updated Code of Ethics of the International Hearing Society since this document can be found online at no cost.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As explained in the rule analysis, this filing makes technical corrections and clarifications, and responds to legislative action taken in the 2013 General Legislative Session (H.B. 46). No fiscal impact to businesses is anticipated from these amendments beyond that considered by the Legislature in determining to amend the statute.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Dan Jones by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dansjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 01/02/2014 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 475 (fourth floor), Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2014

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-46a. Hearing Instrument Specialist Licensing Act Rule.
R156-46a-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 46a, as used in Title 58, Chapters 1 and 46a or this rule,:

- ~~(1) "Analog" means a continuous variable physical signal.~~
- ~~(2) "Digital" means using or involving numerical digits, expressed in a scale of notation to represent discretely all variables occurring.~~
- ~~(3) "Programmable" means the electronic technology in the hearing instrument can be modified independently.~~

~~(4) "Unprofessional conduct," as defined in Title 58 Chapters 1 and 46a, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-46a-502.~~

~~**R156-46a-302a. Qualifications for Licensure - Hearing Instrument Specialist Certification Requirement.**~~

~~In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), an applicant shall submit a notarized copy of his current certificate documenting National Board for Certification in Hearing Instrument Sciences (NBC-HIS) to satisfy the certification requirement for licensure as a hearing instrument specialist in Subsection 58-46a-302(1)(e).~~

~~**R156-46a-302b. Qualifications for Licensure - Hearing Instrument Specialist Experience Requirement.**~~

~~In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the experience requirement for licensure as a hearing instrument specialist in Subsection 58-46a-302(1)(d) is defined and clarified as follows:~~

~~An applicant shall document successful completion of 4000 hours of acceptable practice as a hearing instrument intern by submitting a notarized Completion of Internship form provided by the division.~~

~~**R156-46a-302[e]a. Qualifications for Licensure - Examination Requirements.**~~

~~In accordance with Subsections 58-46a-302(1)(f) and 58-46a-302.5(2)(a), the requirements for the examination of a hearing instrument intern are defined [as clarified as follows:~~

~~(1) In order to qualify to take the Utah Practical Examination for Hearing Instrument Interns, an applicant as a hearing instrument intern shall have been licensed, have completed 500 hours of the 4,000 hour hearing instrument internship under direct supervision and have completed the National Institute for Hearing Instrument Studies education and examination program.~~

~~(2) In order to pass [to require a minimum score of 85% on each section of the Utah Law and Rules Examination for Hearing Instrument Specialists], an applicant as a hearing instrument specialist or hearing instrument intern shall achieve a score of at least 85%.~~

~~**R156-46a-302[d]b. Qualifications for Licensure - Internship Supervision Requirements.**~~

~~In accordance with Subsections 58-46a-102(7) and 58-1-203(1)(b), the requirements for supervision of a hearing instrument intern are defined and clarified as follows. The hearing instrument intern supervisor shall:~~

~~(1) [not have been disciplined for any unprofessional or unlawful conduct within five years of the start of any internship program;~~

~~(2) [supervise no more than one hearing instrument intern on direct supervision;~~

~~(3) [2] supervise no more than two hearing instrument interns at one time;~~

~~(4) [3] not begin an internship program until:~~

~~(a) the hearing instrument intern is properly licensed as a hearing instrument intern; and~~

~~(b) the supervisor is approved by the Division in collaboration with the Board; and]~~

~~(5) keep a daily record on forms available from the Division, during the direct supervision period, which shall include the hours of instruction, the duties assigned, the total hours worked each week and the type of services performed;~~

~~(6) make available to the Division, upon request, upon completion of direct supervision and upon completion of the internship, the intern's training records;~~

~~(7) notify the Division immediately when the intern has completed direct supervision on forms available from the Division; and]~~

~~(8) [4] notify the Division within ten working days if [the]an internship program is terminated.~~

~~**R156-46a-303. Renewal Cycle - Procedures.**~~

~~(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 46a is established by rule in Section R156-1-308a.~~

~~(2) Renewal procedures shall be in accordance with Section R156-1-308c.~~

~~**R156-46a-304. Continuing Education.**~~

~~In accordance with Section 58-46a-304, the continuing education requirement for renewal of licensure as a hearing instrument specialist is defined and clarified as follows:~~

~~(1) Continuing education courses shall be offered in the following areas:~~

~~(a) acoustics;~~

~~(b) nature of the ear (normal ear, hearing process, disorders of hearing);~~

~~(c) hearing measurement;~~

~~(d) hearing aid technology;~~

~~(e) selection of hearing aids;~~

~~(f) marketing and customer relations;~~

~~(g) client counseling;~~

~~(h) ethical practice;~~

~~(i) state laws and regulations regarding the dispensing of hearing aids; and~~

~~(j) other areas deemed appropriate by the Division in collaboration with the Board.~~

~~(2) [Only contact hours from]Continuing education courses required under this section shall be approved by the American Speech-Language-Hearing Association (ASHA) or the International Hearing Society (IHS)[shall be applied towards meeting the minimum requirements set forth in Subsection R156-46a-304(4).~~

~~(3) As verification of contact hours earned, the Division will accept copies of transcripts or certificates of completion from continuing education courses approved by ASHA or IHS. Licensees shall retain copies of transcripts or certificates of completion from continuing education courses approved under this section for a period of four years, during which time the Division may audit the licensee's compliance with the requirements of this section.~~

~~(4) A minimum of 20 [contact]continuing education course hours shall be obtained by a hearing instrument specialist in order to have the license renewed every two years.~~

~~**R156-46a-502a. Unprofessional Conduct.**~~

~~"Unprofessional conduct" includes:~~

(1) violating any state or federal law applicable to persons practicing as a hearing instrument specialist or hearing instrument intern;

(2) ~~[failure]~~failing to perform the minimum components of an evaluation for a hearing aid as set forth in Section R156-46a-502b;

(3) ~~[aiding or abetting any person other than a Utah-licensed hearing instrument specialist, a licensed hearing instrument intern, a licensed audiologist, or a licensed physician to perform a hearing aid examination;~~

~~(4)]dispensing a hearing aid without the purchaser having:~~

(a) received a medical evaluation ~~[by a licensed-physician]~~as required by Subsection 58-46-502(5) within the ~~[preceeding-]six-[-]month[s] period~~ prior to the purchase of a hearing aid; or

(b) a document signed by the purchaser being a fully informed adult waiving the medical evaluation in accordance with Food and Drug Administration (FDA) required disclosures in CFR Title 21, Section 801.421, except a person under the age of 18 years may not waive the medical evaluation;[

~~(5) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or other representation, however disseminated or published, which is misleading, deceiving, or untruthful;]~~

~~(6)~~4) engaging in unprofessional conduct specified in Subsection 58-1-501(2)(h) including:

(a) quoting prices of competitive hearing instruments or devices without disclosing that they are not the current prices or to show, demonstrate, or represent competitive models as being current when such is not the fact; and

~~(7) using the word digital in any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or other representation when the hearing instrument circuit is less than 100% digital, unless the word digital is accompanied by the word analog, as in "digitally programmable analog hearing aid";~~

~~(8)~~b) using stalling tactics, excuses, arguing or attempting to dissuade the purchaser to avoid or delay the customer from exercising the 30-day right to cancel a hearing aid purchase pursuant to Subsection 58-46a-503(1); and

~~(9) failing to start the reimbursement process within 48 hours of the purchaser's request to cancel a hearing aid purchase pursuant to Subsection 58-46a-503(1);~~

~~(10) failure to perform a prepurchase hearing evaluation;~~

~~(11) supervising more than two hearing instrument interns at one time;~~

~~(12) failing as a hearing instrument intern supervisor to comply with any of the requirements of Section R156-46a-302d; and]~~

~~(13)~~5) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the [Hearing Health Care Providers of Utah Association, "Utah Code of Ethics and Standards of Practice", adopted September 6, 2006, and the]Code of Ethics of the International Hearing Society, adopted [April 2007]March 2009, which [are]is hereby incorporated by reference.

KEY: licensing, hearing aids, hearing instrument specialist, hearing instrument intern

Date of Enactment or Last Substantive Amendment: [December 22, 2008]2014

Notice of Continuation: February 24, 2009

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-46a-101; 58-46a-304

Commerce, Occupational and Professional Licensing

R156-55a

Utah Construction Trades Licensing Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38151

FILED: 11/19/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Construction Services Commission are proposing amendments to the rule as a result of changes made by S.B. 44, S.B. 102, and S.B. 208, which were passed during the 2013 General Legislative Session. The proposed rule amendments also update requirements for the S211 boiler installation contractor license, update continuing education requirements, and make other technical changes.

SUMMARY OF THE RULE OR CHANGE: In Subsection R156-55a-301(S202), amendments change the scope of practice for some contractors who held the solar photovoltaic contractor license between January 2009 and April 2011 to correspond with S.B. 208 (2013). In Subsection R156-55a-301(S211), amendments clarify the scope of practice for a boiler installation contractor and specify what related work must be performed by a licensed plumber. In Section R156-55a-302a, adds a requirement that an applicant for licensure as an S211 Boiler Installation Contractor must pass a trade examination. In Section R156-55a-302b, amendments change the experience requirement to two years for all contractor classifications as specified in S.B. 102 (2013). The following related technical changes are also made in this section: 1) moving the experience requirements from Subsections R156-55a-302b(2)(a)(i), (3)(a), and (5)(a) to Subsection R156-55a-302(1)(a)(i); 2) moving the provision allowing certain outdated experience to be acceptable upon the applicant's passing certain examinations from Subsections R156-55a-302b(2)(a)(ii), (3)(b), and (5)(b) to Subsection R156-55a-302b(1)(f); and 3) eliminating Subsections R156-55a-302b(3) and (5) which are no longer needed with the moves to other subsections and the

reduction of experience required from four years to two years. In Subsection R156-55a-303b(2)(g), amendments require that the provider of certain home study continuing education courses prepare multiple versions of the end of the course exam. Subsection R156-55a-303b(9) is added to clarify that approval of a continuing education course may be revoked, suspended, restricted, or placed on probation. Section R156-55a-602 has been changed and rearranged to add requirements added by S.B. 44 (2013). Subsection R156-55a-602(2) clarifies the scope of the bond coverage. Subsection R156-55a-602(4) specifies the amount of the bond for certain contractor licensees.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-55-101 and Subsection 58-1-106(1) (a) and Subsection 58-1-202(1)(a) and Subsection 58-55-102(39)(a) and Subsection 58-55-308(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. The Division does not anticipate any additional costs as a result of these proposed rule amendments beyond those considered by the Legislature in the passage of bills identified above during the 2013 General Legislative Session.

◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed contractors, applicants for licensure in various contractor classifications and contractor continuing education providers. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** Persons applying for the S211 boiler installation contractor license will be required to take and pass a trade examination which will cost approximately \$72 per exam. An applicant who fails the exam may have to take the exam more than one time. Small businesses engaged in selling home study continuing education courses for contractors may be required to make additional versions of examinations as part of the continuing education course material. It is impossible for the Division to estimate the cost to make these additional versions, but it is not anticipated that this change will significantly add to the cost of creating a continuing education course. Except for the cost of the examinations for the S211 boiler installation contractor and continuing education provider costs identified above, the proposed amendments should not affect small business beyond the effect that resulted from the passage of S.B. 44, S.B. 102, and S.B. 208 (2013).

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Persons applying for the S211 boiler installation contractor license will be required to take and pass a trade examination which will cost approximately \$72 per exam. An applicant who fails the exam may have to take the exam more than one time. Persons engaged in selling home study continuing education courses for contractors may be required to make additional versions of examinations as part of the continuing

education course material. It is impossible for the Division to estimate the cost to make these additional versions, but it is not anticipated that this change will significantly add to the cost of creating a continuing education course. Except for the cost of the examinations for the S211 boiler installation contractor and continuing education provider costs identified above, the proposed amendments should not affect other persons beyond the effect that resulted from the passage of S.B. 44, S.B. 102, and S.B. 208 (2013).

COMPLIANCE COSTS FOR AFFECTED PERSONS: Persons applying for the S211 boiler installation contractor license will be required to take and pass a trade examination which will cost approximately \$72 per exam. An applicant who fails the exam may have to take the exam more than one time. Persons engaged in selling home study continuing education courses for contractors may be required to make additional versions of examinations as part of the continuing education course material. It is impossible for the Division to estimate the cost to make these additional versions, but it is not anticipated that this change will significantly add to the cost of creating a continuing education course. Except for the cost of the examinations for the S211 boiler installation contractor and continuing education provider costs identified above, the proposed amendments should not affect persons beyond the effect that resulted from the passage of S.B. 44, S.B. 102, and S.B. 208 (2013).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Most of the amendments contained in this filing respond to legislative action taken during the 2013 General Legislative Session (S.B. 44, S.B. 102, and S.B. 208). As to those amendments, no fiscal impact to businesses is anticipated beyond that considered by the Legislature in determining to pass the bills. This filing also imposes an examination requirement on the boiler installation contractor license. The cost of the examination is currently \$72; this cost is more likely to affect individual applicants than businesses. Finally, this filing requires that a business that provides home study continuing education courses to prepare multiple versions of each course's final examination. While it is possible that there will be attendant costs, they will vary and cannot be estimated. Any such costs are anticipated to be minimal.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Dan Jones by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dansjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 12/18/2013 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2014

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.

R156-55a. Utah Construction Trades Licensing Act Rule.

R156-55a-301. License Classifications - Scope of Practice.

(1) In accordance with Subsection 58-55-301(2), the classifications of licensure are listed and described in this section. The construction trades or specialty contractor classifications listed are those determined to significantly impact the public health, safety, and welfare. A person who is engaged in work which is included in the items listed in Subsections R156-55a-301(4) and (5) is exempt from licensure in accordance with Subsection 58-55-305(1)(i).

(2) Licenses shall be issued in the following primary classifications and subclassifications:

E100 - General Engineering Contractor. A General Engineering contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(22).

B100 - General Building Contractor. A General Building contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(21) and pursuant to Subsection 58-55-102(21)(b) is clarified as follows:

(a) The General Building Contractor scope of practice does not include activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the North American Board of Certified Energy Practitioners.

(b) The General Building Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

B200 - Modular Unit Installation Contractor. Set up or installation of modular units as defined in Subsection 15A-1-302(8) and constructed in accordance with Section 15A-1-304. The scope of the work permitted under this classification includes construction of the permanent or temporary foundations, placement of the modular unit on a permanent or temporary foundation, securing the units together if required and securing the modular units to the foundations. Work excluded from this classification includes installation of factory built housing and connection of required utilities.

R100 - Residential and Small Commercial Contractor. A Residential and Small Commercial contractor is a contractor

licensed to perform work as defined in Subsection 58-55-102(32) and pursuant to Subsection 58-55-102(32) is clarified as follows:

(a) The Residential and Small Commercial Contractor scope of practice does not include activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the North American Board of Certified Energy Practitioners.

(b) The Residential and Small Commercial Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

R101 - Residential and Small Commercial Non Structural Remodeling and Repair. Remodeling and repair to any existing structure built for support, shelter and enclosure of persons, animals, chattels or movable property of any kind with the restriction that no change is made to the bearing portions of the existing structure, including footings, foundation and weight bearing walls; and the entire project is less than \$50,000 in total cost.

R200 - Factory Built Housing Contractor. Disconnection, setup, installation or removal of manufactured housing on a temporary or permanent basis. The scope of the work permitted under this classification includes placement of the manufactured housing on a permanent or temporary foundation, securing the units together if required, securing the manufactured housing to the foundation, and connection of the utilities from the near proximity, such as a meter, to the manufactured housing unit and construction of foundations of less than four feet six inches in height. Work excluded from this classification includes site preparation or finishing, excavation of the ground in the area where a foundation is to be constructed, back filling and grading around the foundation, construction of foundations of more than four feet six inches in height and construction of utility services from the utility source to and including the meter or meters if required or if not required to the near proximity of the manufactured housing unit from which they are connected to the unit.

I101 - General Engineering Trades Instruction Facility. A General Engineering Trades Instruction Facility is a construction trades instruction facility authorized to teach the construction trades and is subject to the scope of practice defined in Subsection 58-55-102(22).

I102 - General Building Trades Instruction Facility. A General Building Trades Instruction Facility is a construction trades instruction facility authorized to teach the construction trades and is subject to the scope of practice defined in Subsections 58-55-102(21) or 58-55-102(32).

I103 - Electrical Trades Instruction Facility. An Electrical Trades Instruction Facility is a construction trades instruction facility authorized to teach the electrical trades and subject to the scope of practice defined in Subsection R156-55a-301(S200).

I104 - Plumbing Trades Instruction Facility. A Plumbing Trades Instruction Facility is a construction trades instruction facility authorized to teach the plumbing trades and subject to the scope of practice defined in Subsection R156-55a-301(S210).

I105 - Mechanical Trades Instruction Facility. A Mechanical Trades Instruction Facility is a construction trades instruction facility authorized to teach the mechanical trades and subject to the scope of practice defined in Subsection R156-55a-301(S350).

S200 - General Electrical Contractor. Fabrication, construction, and/or installation of generators, transformers, conduits, raceways, panels, switch gear, electrical wires, fixtures, appliances, or apparatus which utilizes electrical energy. The General Electrical Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

S201 - Residential Electrical Contractor. Fabrication, construction, and/or installation of services, disconnecting means, grounding devices, panels, conductors, load centers, lighting and plug circuits, appliances and fixtures in any residential unit, normally requiring non-metallic sheathed cable, including multiple units up to and including a four-plex, but excluding any work generally recognized in the industry as commercial or industrial.

S202 - Solar Photovoltaic Contractor. Fabrication, construction, installation, and replacement of photovoltaic cell panels and related components. Wiring, connections and wire methods as governed in the National Electrical Code and Subsection R156-55b-102(1) shall only be performed by an S200 General Electrical Contractor or S201 Residential Electrical Contractor. This classification is not required to install stand alone solar systems that do not tie into premises wiring or into the electrical utility, such as signage or street or parking lighting.

A contractor who obtained this classification of licensure between January 1, 2009 and April 25, 2011 and who holds an active license may, in addition to the above, perform the following activities as part of the scope of practice under this subsection: fabrication, construction, installation, and repair of photovoltaic cell panels and related components including battery storage systems, distribution panels, switch gear, electrical wires, inverters, and other electrical apparatus for solar photovoltaic systems. Work excluded from this classification includes work on any alternating current system or system component.

S210 - General Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in buildings, by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting, heating, and industrial purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a building out to the main water, sewer or gas pipeline. The General Plumbing Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

S211 - Boiler Installation Contractor. Fabrication and/or installation of fire-tube and water-tube power boilers and hot water heating boilers, including all fittings and piping, valves, gauges, pumps, radiators, converters, fuel oil tanks, fuel lines, chimney flues, heat insulation and all other devices, apparatus, and equipment related thereto in a closed system not connected to the culinary water system. Notwithstanding the foregoing, where water delivery for the closed system is connected to the culinary water system and separated from the culinary water system by a backflow prevention device, a contractor licensed under this subsection may connect the closed system to the backflow prevention device, which must be installed by an actively licensed plumber.

S212 - Irrigation Sprinkling Contractor. Layout, fabrication, and/or installation of water distribution system for artificial watering or irrigation.

S213 - Industrial Piping Contractor. Fabrication and/or installation of pipes and piping for the conveyance or transmission of steam, gases, chemicals, and other substances including excavating, trenching, and back-filling related to such work. This classification includes the above work for geo thermal systems.

S214 - Water Conditioning Equipment Contractor. Fabrication and/or installation of water conditioning equipment and only such pipe and fittings as are necessary for connecting the water conditioning equipment to the water supply system within the premises.

S215 - Solar Thermal Systems Contractor. Construction, repair and/or installation of solar thermal systems up to the system shut off valve or where the system interfaces with any other plumbing system.

S216 - Residential Sewer Connection and Septic Tank Contractor. Construction of residential sewer lines including connection to the public sewer line, and excavation and grading related thereto. Excavation, installation and grading of residential septic tanks and their drainage.

S217 - Residential Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in residential building, including multiple units up to and including a four-plex by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting and heating purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a residential building out to the main water, sewer or gas pipeline. Excluded is any new construction and service work generally recognized in the industry as commercial or industrial.

S220 - Carpentry Contractor. Fabrication for structural and finish purposes in a structure or building using wood, wood products, metal studs, vinyl materials, or other wood/plastic/metal composites as is by custom and usage accepted in the building industry as carpentry. Incidental work includes the installation of tub liners and wall systems.

S221 - Cabinet, Millwork and Countertop Installation Contractor. On-site construction and/or installation of milled wood products or countertops.

S222 - Overhead and Garage Door Contractor. The installation of overhead and garage doors and door openers.

S230 - Siding Contractor. Fabrication, construction, and/or installation of siding.

S231 - Raingutter Installation Contractor. On-site fabrication and/or installation of raingutters and drains, roof flashings, gravel stops and metal ridges.

S240 - Glass and Glazing Contractor. Fabrication, construction, installation, and/or removal of all types and sizes of glass, mirrors, substitutes for glass, glass-holding members, frames, hardware, and other incidental related work.

S250 - Insulation Contractor. Installation of any insulating media in buildings and structures for the sole purpose of temperature control, sound control or fireproofing, but shall not include mechanical insulation of pipes, ducts or conduits.

S260 - General Concrete Contractor. Fabrication, construction, mixing, batching, and/or installation of concrete and related concrete products along with the placing and setting of screeds for pavement for flatwork, the construction of forms, placing and erection of steel bars for reinforcing and application of plaster and other cement-related products.

S261 - Concrete Form Setting and Shoring Contractor. Fabrication, construction, and/or installation of forms and shoring material; but, does not include the placement of concrete, finishing of concrete or embedded items such as metal reinforcement bars or mesh.

S262 - Gunnite and Pressure Grouting Contractor. Installation of a concrete product either injected or sprayed under pressure.

S263 - Cementitious Coating Systems Resurfacing and Sealing Contractor. Fabrication, construction, mixing, batching and installation of cementitious coating systems or sealants limited to the resurfacing or sealing of existing surfaces, including the preparation or patching of the surface to be covered or sealed.

S270 - General Drywall and Plastering Contractor. Fabrication, construction, and installation of drywall, gypsum, wallboard panels and assemblies. Preparation of drywall or plaster surfaces for suitable painting or finishing. Application to surfaces of coatings made of plaster, including the preparation of the surface and the provision of a base. This does not include applying stucco to lathe, plaster and other surfaces. Exempted is the plastering of foundations.

S272 - Ceiling Grid Systems, Ceiling Tile and Panel Systems Contractor. Fabrication and/or installation of wood, mineral, fiber, and other types of ceiling tile and panels and the grid systems required for placement.

S273 - Light-weight Metal and Non-bearing Wall Partitions Contractor. Fabrication and/or installation of light-weight metal and other non-bearing wall partitions.

S280 - General Roofing Contractor. Application and/or installation of asphalt, pitch, tar, felt, flax, shakes, shingles, roof tile, slate, and any other material or materials, or any combination of any thereof which use and custom has established as usable for, or which are now used as, water-proof, weatherproof, or watertight seal or membranes for roofs and surfaces; and roof conversion. Incidental work includes the installation of roof clamp ring to the roof drain.

S290 - General Masonry Contractor. Construction by cutting, and/or laying of all of the following brick, block, or forms: architectural, industrial, and refractory brick, all brick substitutes, clay and concrete blocks, terra-cotta, thin set or structural quarry

tile, glazed structural tile, gypsum tile, glass block, clay tile, copings, natural stone, plastic refractories, and castables and any incidental works, including the installation of shower pans, as required in construction of the masonry work.

S291 - Stone Masonry Contractor. Construction using natural or artificial stone, either rough or cut and dressed, laid at random, with or without mortar. Incidental work includes the installation of shower pans.

S292 - Terrazzo Contractor. Construction by fabrication, grinding, and polishing of terrazzo by the setting of chips of marble, stone, or other material in an irregular pattern with the use of cement, polyester, epoxy or other common binders. Incidental work includes the installation of shower pans.

S293 - Marble, Tile and Ceramic Contractor. Preparation, fabrication, construction, and installation of artificial marble, burned clay tile, ceramic, encaustic, falence, quarry, semi-vitreous, and other tile, excluding hollow or structural partition tile. Incidental work includes the installation of shower pans.

S294 - Cultured Marble Contractor. Preparation, fabrication and installation of slab and sheet manmade synthetic products including cultured marble, onyx, granite, onice, corian, and corian type products. Incidental work includes the installation of shower pans.

S300 - General Painting Contractor. Preparation of surface and/or the application of all paints, varnishes, shellacs, stains, waxes and other coatings or pigments.

S310 - Excavation and Grading Contractor. Moving of the earth's surface or placing earthen materials on the earth's surface, by use of hand or power machinery and tools, including explosives, in any operation of cut, fill, excavation, grading, trenching, backfilling, or combination thereof as they are generally practiced in the construction trade.

S320 - Steel Erection Contractor. Construction by fabrication, placing, and tying or welding of steel reinforcing bars or erecting structural steel shapes, plates of any profile, perimeter or cross-section that are used to reinforce concrete or as structural members, including riveting, welding, and rigging.

S321 - Steel Reinforcing Contractor. Fabricating, placing, tying, or mechanically welding of reinforcing bars of any profile that are used to reinforce concrete buildings or structures.

S322 - Metal Building Erection Contractor. Erection of pre-fabricated metal structures including concrete foundation and footings, grading, and surface preparation.

S323 - Structural Stud Erection Contractor. Fabrication and installation of metal structural studs and bearing walls.

S330 - Landscaping Contractor.

(a) grading and preparing land for architectural, horticultural, or decorative treatment;

(b) arrangement, and planting of gardens, lawns, shrubs, vines, bushes, trees, or other decorative vegetation;

(c) construction of small decorative pools, tanks, fountains, hothouses, greenhouses, fences, walks, garden lighting of 50 volts or less, or sprinkler systems;

(d) construction of retaining walls except retaining walls which are intended to hold vehicles, structures, equipment or other non natural fill materials within the area located within a 45 degree angle from the base of the retaining wall to the level of where the additional weight bearing vehicles, structures, equipment or other non natural fill materials are located; or

(e) patio areas except that:

(i) no decking designed to support humans or structures shall be included; and

(ii) no concrete work designed to support structures to be placed upon the patio shall be included.

(f) This classification does not include running electrical or gas lines to any appliance.

S340 - Sheet Metal Contractor. Layout, fabrication, and installation of air handling and ventilating systems. All architectural sheet metal such as cornices, marquees, metal soffits, gutters, flashings, and skylights and skydomes including both plastic and fiberglass.

S350 - HVAC Contractor. Fabrication and installation of complete warm air heating and air conditioning systems, and complete ventilating systems. The HVAC Contractor scope of practice does not include activities described in this Subsection under specialty classification S354-Radon Mitigation Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP).

S351 - Refrigerated Air Conditioning Contractor. Fabrication and installation of air conditioning ventilating systems to control air temperatures below 50 degrees.

S352 - Evaporative Cooling Contractor. Fabrication and installation of devices, machinery, and units to cool the air temperature employing evaporation of liquid.

S353 - Warm Air Heating Contractor. Layout, fabrication, and installation of such sheet metal, gas piping, and furnace equipment as necessary for a complete warm air heating and ventilating system.

S354 - Radon Mitigation Contractor. Layout, fabrication, and installation of a radon mitigation system. This classification does not include work on heat recovery ventilation or makeup air components which must be performed by an HVAC Contractor and does not include electrical wiring which must be performed by an Electrical Contractor.

S360 - Refrigeration Contractor. Construction and/or installation of refrigeration equipment including, but not limited to, built-in refrigerators, refrigerated rooms, insulated refrigerated spaces and equipment related thereto; but, the scope of permitted work does not include the installation of gas fuel or electric power services other than connection of electrical devices to a junction box provided for that device and electrical control circuitry not exceeding 50 volts.

S370 - Fire Suppression Systems Contractor. Layout, fabrication, and installation of fire protection systems using water, steam, gas, or chemicals. When a potable sanitary water supply system is used as the source of supply, connection to the water system must be accomplished by a licensed journeyman plumber. Excluded from this classification are persons engaged in the installation of fire suppression systems in hoods above cooking appliances.

S380 - Swimming Pool and Spa Contractor. On-site fabrication, construction and installation of swimming pools, prefabricated pools, spas, and tubs.

S390 - Sewer and Waste Water Pipeline Contractor. Construction of sewer lines, sewage disposal and sewage drain

facilities including excavation and grading with respect thereto, and the construction of sewage disposal plants and appurtenances thereto.

S400 - Asphalt Paving Contractor. Construction of asphalt highways, roadways, driveways, parking lots or other asphalt surfaces, which will include but will not be limited to, asphalt overlay, chip seal, fog seal and rejuvenation, micro surfacing, plant mix sealcoat, slurry seal, and the removal of asphalt surfaces by milling. Also included is the excavation, grading, compacting and laying of fill or base-related thereto. Also included in painting on asphalt surfaces including striping, directional and other types of symbols or words.

S410 - Pipeline and Conduit Contractor. Fabrication, construction, and installation of pipes, conduit or cables for the conveyance and transmission from one station to another of such products as water, steam, gases, chemicals, slurries, data or communications. Included are the excavation, cabling, horizontal boring, grading, and backfilling necessary for construction of the system.

S420 - General Fencing, Ornamental Iron and Guardrail Contractor. Fabrication, construction, and installation of fences, guardrails, handrails, and barriers.

S421 - Residential Fencing Contractor. Fabrication and installation of residential fencing up to and including a height of six feet.

S430 - Metal Firebox and Fuel Burning Stove Installer. Fabrication, construction, and installation of metal fireboxes, fireplaces, and wood or coal-burning stoves, including the installation of venting and exhaust systems, provided the individual performing the installation is RMGA certified.

S440 - Sign Installation Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state or local governmental jurisdictions. Signs and graphic displays shall include signs of all types, both lighted and unlighted, permanent highway marker signs, illuminated awnings, electronic message centers, sculptures or graphic representations including logos and trademarks intended to identify or advertise the user or his product, building trim or lighting with neon or decorative fixtures, or any other animated, moving or stationary device used for advertising or identification purposes. Signs and graphic displays must be fabricated, installed and erected in accordance with professionally engineered specifications and wiring in accordance with the National Electrical Code.

S441 - Non Electrical Outdoor Advertising Sign Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state and local governmental jurisdictions. Signs and graphics shall include outdoor advertising signs which do not have electrical lighting or other electrical requirements, and in accordance with professionally engineered specifications.

S450 - Mechanical Insulation Contractor. Fabrication, application and installation of insulation materials to pipes, ducts and conduits.

S460 - Wrecking and Demolition Contractor. The raising, cribbing, underpinning, moving, and removal of building and structures.

S470 - Petroleum Systems Contractor. Installation of above and below ground petroleum and petro-chemical storage

tanks, piping, dispensing equipment, monitoring equipment and associated petroleum and petro-chemical equipment including excavation, backfilling, concrete and asphalt.

S480 - Piers and Foundations Contractor. The excavation, drilling, compacting, pumping, sealing and other work necessary to construct, alter or repair piers, piles, footings and foundations placed in the earth's subsurface to prevent structural settling and to provide an adequate capacity to sustain or transmit the structural load to the soil or rock below.

S490 - Wood Flooring Contractor. Installation of wood flooring including prefinished and unfinished material, sanding, staining and finishing of new and existing wood flooring. Underlayments, non-structural subfloors and other incidental related work.

S491 - Laminate Floor Installation Contractor. Installation of laminate floors including underlayments, non-structural subfloors and other incidental related work, but does not include the installation of sold wood flooring.

S500 - Sports and Athletic Courts, Running Tracks, and Playground Installation Contractor. Installation of sports and athletic courts including but not limited to tennis courts, racquetball courts, handball courts, basketball courts, running tracks, playgrounds, or any combination. Includes nonstructural floor subsurfaces, nonstructural wall surfaces, perimeter walls and perimeter fencing. Includes the installation and attachment of equipment such as poles, basketball standards or other equipment.

S510 - Elevator Contractor. Erecting, constructing, installing, altering, servicing, repairing or maintaining an elevator.

S600 - General Stucco Contractor. Applying stucco to lathe, plaster and other surfaces.

S700 - Specialty License Contractor.

(a) A specialty license is a license that confines the scope of the allowable contracting work to a specialized area of construction which the Division grants on a case-by-case basis.

(b) When applying for a specialty license, an applicant, if requested, shall submit to the Division the following:

(i) a detailed statement of the type and scope of contracting work that the applicant proposes to perform; and

(ii) any brochures, catalogs, photographs, diagrams, or other material to further clarify the scope of the work that the applicant proposes to perform.

(c) A contractor issued a specialty license shall confine the contractor's activities to the field and scope of operations as outlined by the Division.

(3) The scope of practice for the following primary classifications includes the scope of practice stated in the descriptions for the following subclassifications:

.....

(4) The following activities are determined to not significantly impact the public health, safety and welfare and therefore do not require a contractors license:

- (a) sandblasting;
- (b) pumping services;
- (c) tree stump or tree removal;
- (d) installation within a building of communication cables including phone and cable television;

(e) installation of low voltage electrical as described in R156-55b-102(1);

(f) construction of utility sheds, gazebos or other similar items which are personal property and not attached;

(g) building and window washing, including power washing;

(h) central vacuum systems installation;

(i) concrete cutting;

(j) interior decorating;

(k) wall paper hanging;

(l) drapery and blind installation;

(m) welding on personal property which is not attached;

(n) chimney sweepers other than repairing masonry;

(o) carpet and vinyl floor installation; and

(p) artificial turf installation.

(5) The following activities are those determined to not significantly impact the public health, safety and welfare beyond the regulations by other agencies and therefore do not require a contractors license:

(a) lead removal regulated by the Department of Environmental Quality;

(b) asbestos removal regulated by the Department of Environmental Quality; and

(c) fire alarm installation regulated by the Fire Marshal.

R156-55a-302a. Qualifications for Licensure - Examinations.

(1) In accordance with Subsection 58-55-302(1)(c), the qualifier for an applicant for licensure as a contractor or the qualifier for an applicant for licensure as a construction trades instruction facility shall pass the following examinations:

(a) the Utah Contractor Business - Law Examination; and

(b) an approved trade classification specific examination, where required in Subsection (2).

(2) An approved trade classification specific examination is required for the following contractor license classifications:

- E100 - General Engineering Contractor
- B100 - General Building Contractor
- B200 - Modular Unit Installation Contractor
- R100 - Residential and Small Commercial Contractor
- R101 - Residential and Small Commercial Non Structural

Remodeling and Repair Contractor

R200 - Factory Built Housing Contractor

I101 - General Engineering Trades Instruction Facility

I102 - General Building Trades Instruction Facility

I105 - Mechanical Trades Instruction Facility

S211 - Boiler Installation Contractor

S212 - Irrigation Sprinkling Contractor

S213 - Industrial Piping Contractor

S215 - Solar Thermal Systems Contractor

S216 - Residential Sewer Connection and Septic Tank

Contractor

S220 - Carpentry Contractor

S222 - Overhead and Garage Door Contractor

S230 - Siding Contractor

S240 - Glass and Glazing Contractor

S250 - Insulation Contractor

S260 - General Concrete Contractor

S270 - General Drywall and Plastering Contractor

- S280 - General Roofing Contractor
- S290 - General Masonry Contractor
- S293 - Marble, Tile and Ceramic Contractor
- S300 - General Painting Contractor
- S310 - Excavation and Grading Contractor
- S320 - Steel Erection Contractor
- S321 - Steel Reinforcing Contractor
- S330 - Landscaping Contractor
- S340 - Sheet Metal Contractor
- S350 - HVAC Contractor
- S351 - Refrigerated Air Conditioning Contractor
- S353 - Warm Air Heating Contractor
- S360 - Refrigeration Contractor
- S370 - Fire Suppression Systems Contractor
- S380 - Swimming Pool and Spa Contractor
- S390 - Sewer and Waste Water Pipeline Contractor
- S410 - Pipeline and Conduit Contractor
- S440 - Sign Installation Contractor
- S450 - Mechanical Insulation Contractor
- S490 - Wood Flooring Contractor
- S600 - General Stucco Contractor

(3) The passing score for each examination is 70%.
 (4) Qualifications to sit for examination.

(a) An applicant applying to take any examination specified in this Section must sign an affidavit verifying that an applicant has completed the experience required under Subsection R156-55a-302b.

(5) "Approved trade classification specific examination" means a trade classification specific examination:

(a) given, currently or in the past, by the Division's contractor examination provider; or

(b) given by another state if the Division has determined the examination to be substantially equivalent.

(6) An applicant for licensure who fails an examination may retake the failed examination as follows:

(a) no sooner than 30 days following any failure up to three failures; and

(b) no sooner than six months following any failure thereafter.

R156-55a-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsection 58-55-302(1)(e)(ii), the minimum experience requirements are established as follows:

(1) Requirements for all license classifications:

(a) Unless otherwise provided in this rule, ~~at least~~ two years of experience shall be lawfully performed within the 10-year period preceding the date of application under the general supervision of a contractor licensed in the classification applied for or a substantially equivalent classification, and shall be subject to the following:

(i) If the experience was completed in Utah, it shall be:

(A) completed while a W-2 employee of a licensed contractor; or

(B) completed while working as an owner of a licensed contractor, which has for all periods of experience claimed, employed a qualifier who performed the duties and served in the capacities specified in Subsection 58-55-304(4) and in Subsection R156-55a-304.

(ii) If the experience was completed outside of the state of Utah, it shall be:

(A) completed in compliance with the laws of the jurisdiction in which the experience is completed; and

(B) completed with supervision that is substantially equivalent to the supervision that is required in Utah.

(iii) Experience may be determined to be substantially equivalent if lawfully obtained in a setting which has supervision of qualified persons and an equivalent scope of work, such as performing construction activities in the military where licensure is not required.

(b) ~~[A]~~ Unless otherwise provided in this rule, all experience shall be directly related to the scope of practice set forth in Section R156-55a-301 of the classification the applicant is applying for, as determined by the Division.

(c) One year of work experience means 2000 hours.

(d) No more than 2000 hours of experience during any 12 month period may be claimed.

(e) Except as described in Subsection (2)(~~e~~)b, experience obtained under the supervision of a construction trades instructor as a part of an educational program is not qualifying experience for a contractors license.

If the applicant's qualifying experience is outdated but has previously been approved in the state of Utah, a passing score on the trade examination and the laws and rules examination obtained within the one-year period preceding the date of application will requalify the applicant's experience.

(2) Requirements for E100 General Engineering, B100 General Building, R100 Residential and Small Commercial Building license classifications:

(a) ~~In addition to the requirements of paragraph (1), the qualifier for an applicant for an R100, B100 or E100 license shall demonstrate the following experience:~~

~~(i) a minimum of four years experience within the past 10 years; or~~

~~(ii) if the applicant's qualifier has previously been approved as a qualifier in the state of Utah, a passing score on the trade examination and the laws and rules examination taken within one year of the date of application to requalify the qualifier's experience.~~

~~(b) Two~~ One of the required ~~four~~ two years of experience shall be in a supervisory or managerial position.

(~~e~~)b A person holding a four year bachelors degree or a two year associates degree in Construction Management may have one year of experience credited towards the supervisory or managerial experience requirement.

(~~d~~)c A person holding a Utah professional engineer license may be credited with satisfying one year toward the supervisory or managerial experience required for E100 contractor license.

(3) ~~Requirements for S220 Carpentry, S280 General Roofing, S290 General Masonry, S320 Steel Erection, S350 Heating Ventilating and Air Conditioning, S360 Refrigeration and S370 Fire Suppression Systems license classifications:~~

In addition to the requirements of paragraph (1), the qualifier for an applicant for an S220, S280, S290, S320, S350, S360 and S370 license shall demonstrate the following experience:

~~(a) a minimum of four years experience within the past 10 years; or~~

~~(b) if the applicant's qualifier has previously been approved as a qualifier in the state of Utah, a passing score on the trade examination and the laws and rules examination taken within one year of the date of application to requalify the qualifier's experience.~~

~~(4) Requirements for I101 General Engineering Trades Instruction Facility, I102 General Building Trades Instruction Facility, I103 Electrical Trades Instruction Facility, I104 Plumbing Trades Instruction Facility, I105 Mechanical Trades Instruction Facility license classifications:~~

An applicant for construction trades instruction facility license shall have the same experience that is required for the license classifications for the construction trade they will instruct. [

~~(5) Requirements for other license classifications:~~

~~Except as set forth in Subsections (6) and (7), in addition to the requirements of paragraph (1), an applicant for contractor license classification not listed above shall demonstrate the following experience:~~

~~(a) a minimum of two years experience within the past 10 years; or~~

~~(b) if the applicant's qualifier has previously been approved as a qualifier in the state of Utah, a passing score on the trade examination and the laws and rules examination taken within one year of the date of application to requalify the qualifier's experience.]~~

~~(6) Requirements for S202 Solar Photovoltaic Contractor. In addition to the requirements of Subsection[s] (1) [and (5)], an applicant shall hold a current certificate by the North American Board of Certified Energy Practitioners.~~

~~(7) Requirements for S354 Radon Mitigation Contractor. In addition to the requirements of Subsection[s] (1) [and (5)], an applicant shall hold a current certificate issued by the National Radon Safety Board (NRSB) or the National Radon Proficiency Program (NEHA-NRPP). Experience completed prior to the effective date of this rule does not need to be performed under the supervision of a licensed contractor. Experience completed after the effective date of this rule must be performed under the supervision of a licensed contractor who has authority to practice radon mitigation.~~

R156-55a-303b. Continuing Education - Standards.

(1) Required Hours. Pursuant to Subsection 58-55-302.5, each licensee shall complete a total of six hours of continuing education during each two year license term except that for the renewal term ~~ending November 30, 2009, the continuing education must be completed between July 1, 2007 and November 30, 2009].~~ A minimum of three hours shall be core education. The remaining three hours are to be professional education. Additional core education hours beyond the required amount may be substituted for professional education hours.

(a) "Core continuing education" is defined as construction codes, construction laws, OSHA 10 or OSHA 30 safety training, governmental regulations pertaining to the construction trades and employee verification and payment practices.

(b) "Professional continuing education" is defined as substantive subjects dealing with the practice of the construction trades, including land development, land use, planning and zoning,

energy conservation, professional development, arbitration practices, estimating, finance and bookkeeping, marketing techniques, servicing clients, personal and property protection for the licensee and the licensee's clients and similar topics.

(c) The following course subject matter is not acceptable as core education or professional education hours: mechanical office and business skills, such as typing, speed reading, memory improvement and report writing; physical well-being or personal development, such as personal motivation, stress management, time management, dress for success, or similar subjects; presentations by a supplier or a supplier representative to promote a particular product or line of products; and meetings held in conjunction with the general business of the licensee or employer.

(d) The Division may defer or waive the continuing education requirements as provided in Section R156-1-308d.

(2) A continuing education course shall meet the following standards:

(a) Time. Each hour of continuing education course credit shall consist of 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes is to allow for breaks.

(b) Provider. The course provider shall meet the requirements of this Section and shall be one of the following:

(i) a recognized accredited college or university;

(ii) a state or federal agency;

(iii) a professional association or organization involved in the construction trades; or

(iv) a commercial continuing education provider providing a program related to the construction trades.

(c) Content. The content of the course shall be relevant to the practice of the construction trades and consistent with the laws and rules of this state.

(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.

(e) Teaching Methods. The course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.

(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training and experience.

(g) Distance learning. A course that is provided through Internet or home study may be recognized for continuing education if the course verifies registration and participation in the course by means of a test demonstrating that the participant has learned the material presented. Test questions shall be randomized for each participant. A home study course shall include no fewer than five variations of the final examination, distributed randomly to participants. Home study courses, including the five exam variations, shall be submitted in their entirety to the Division for review.

(h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division and shall provide individuals completing the course a certificate that contains the following information:

(i) the date of the course;

(ii) the name of the course provider;

(iii) the name of the instructor;

- (iv) the course title;
 - (v) the hours of continuing education credit and type of credit (core or professional);
 - (vi) the attendee's name; and
 - (v) the signature of the course provider.
- (3) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.

(4) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due. Each licensee shall assure that the course provider has submitted the verification of attendance to the continuing education registry on behalf of the licensee as specified in Subsection (8). Alternatively, the licensee may submit the course for approval and pay any course approval fees and attendance recording fees.

(5) Licensees who lecture in continuing education courses meeting these requirements shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.

(6) The continuing education requirement for electricians, plumbers and elevator mechanics as established in Subsections 58-55-302.7 and 58-55-303(6), which is completed by an employee or owner of a contractor, shall satisfy the continuing education requirement for contractors as established in Subsection 58-55-302.5 and implemented herein. The contractor licensee shall assure that the course provider has submitted the verification of the electrician's attendance on behalf of the licensee to the continuing education registry as specified in Subsection (8).

(7) A course provider shall submit continuing education courses for approval to the continuing education registry and shall submit verification of attendance and completion on behalf of licensees attending and completing the program directly to the continuing education registry in the format required by the continuing education registry.

(8) The Division shall review continuing education courses which have been submitted through the continuing education registry and approve only those courses which meet the standards set forth under this Section.

(9) As provided in Section 58-1-401 and Subsections 58-55-302.5(2) and 58-55-302.7(4)(a), the Division may refuse to renew or may revoke, suspend, restrict, place on probation, issue a public reprimand to, or otherwise act upon the approval of any course or provider, if the course or provider fails to meet any of the requirements of this section or the provider has engaged in unlawful or unprofessional conduct.

(9)10 Continuing Education Registry.

(a) The Division shall designate an entity to act as the Continuing Education Registry under this rule.

(b) The Continuing Education Registry, in consultation with the Division and the Commission, shall:

(i) through its internet site electronically receive applications from continuing education course providers and shall submit the application for course approval to the Division for review and approval of only those programs that meet the standards set forth under this Section;

(ii) publish on their website listings of continuing education programs that have been approved by the Division, and which meet the standards for continuing education credit under this rule;

(iii) maintain accurate records of qualified continuing education approved;

(iv) maintain accurate records of verification of attendance and completion, by individual licensee, which the licensee may review for compliance with this rule; and

(v) make records of approved continuing education programs and attendance and completion available for audit by representatives of the Division.

(c) Fees. A continuing education registry may charge a reasonable fee to continuing education providers or licensees for services provided for review and approval of continuing education programs.

156-55a-602. Contractor License Bonds.

~~[(1)] Pursuant to the provisions of Subsections 58-55-306(1)(b), [and] 58-55-306(4)(c) and 58-55-306(5)(b)(iii), [except as provided in Subsection 156-55a-602(4),] a contractor shall provide a license bond issued by a surety acceptable to the Division in the amount, form, and coverage as follows: [of \$50,000 for the E100 or B100 classification of licensure, \$25,000 for the R100 classification of licensure, or \$15,000 for other classifications or such higher amount as may be determined by the Division and the Commission as provided for in Subsection 156-55a-602(3).]~~

(1) An acceptable surety is one that is listed in the Department of Treasury, Fiscal Service, Circular 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" at the date of the bond.

(2) The coverage of the license bond shall include losses that may occur as the result of the contractor's violation of the unprofessional or unlawful provisions contained in Title 58, Chapters 1 and 55 and rules R156-1 and R156-55a including the failure to maintain financial responsibility, the failure of the licensee to pay its obligations, and the failure of the owners or a licensed unincorporated entity to pay income taxes or self employment taxes on the gross distributions from the unincorporated entity to its owners.

(3) The financial history of the applicant, licensee, or any owner, as outlined in Section R156-55a-306, may be reviewed in determining the bond amount required under this section.

(4) If the licensee is submitting a bond under Subsection 58-55-306(5)(b)(iii)(B), the amount of the bond shall be 20% of the annual gross distributions from the unincorporated entity to its owners. As provided in Subsection 58-55-302(10)(c), the Division, in determining if financial responsibility has been demonstrated, may consider the total number of owners, including new owners added as reported under the provisions of Subsection 58-55-302(10)(a)(i), in setting the amount of the bond required under this subsection.

(5) If the licensee is submitting a bond under any subsection other than Subsection 58-55-306(5)(b)(iii)(B), the minimum amount of the bond shall be \$50,000 for the E100 or B100 classification of licensure; \$25,000 for the R100 classification of licensure; or \$15,000 for other classifications. A higher amount

may be determined by the Division and the Commission as provided in Subsection R156-55a-602(6).

([3]6) The amount of the bond specified under Subsection R156-55a-602([1]5) may be increased by an amount determined by the Commission and Division when the financial history of the applicant, licensee or any owner indicates the bond amount specified in Subsection R156-55a-602(1) is insufficient to reasonably cover risks to the public health, safety and welfare. The financial history of the applicant, licensee or any owner, as outlined in Section R156-55a-306 may be reviewed in determining the bond amount required.

([4]7) A contractor may provide a license bond issued by a surety acceptable to the Division in an amount less than the bond amount specified in Subsection R156-55a-602([1]5) if:

(a) the contractor demonstrates by clear and convincing evidence that:

(i) the financial history of the applicant, licensee or any owner indicates the bond amount specified in Subsection R156-55a-602(1) is in excess of what is reasonably necessary to cover risks to the public health, safety and welfare;

(ii) the contractor's lack of financial responsibility is due to extraordinary circumstances that the contractor could not control as opposed to general financial challenges that all contractors experience; and

(iii) the contractor's scope of practice will be restricted commensurate with the degree of risk the contract presents to the public health, safety, and welfare; and

(b) the Commission and Division approve the amount.

KEY: contractors, occupational licensing, licensing

Date of Enactment or Last Substantive Amendment: [~~April 22, 2013~~2014]

Notice of Continuation: October 4, 2011

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-55-101; 58-55-308(1)(a); 58-55-102(39)(a)

Commerce, Occupational and
Professional Licensing
R156-69
Dentist and Dental Hygienist Practice
Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38149

FILED: 11/18/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Dentist and Dental Hygienist Licensing Board are proposing amendments to the rule since some of the accredited American Dental Association dental and dental hygiene programs are now offering candidates the option of taking anesthesia and analgesia continuing

education courses. The proposed amendments in this filing allow applicants to take a continuing education course if it is offered through an accredited program. The Division has received course certificates for applicants to get licensed in this area but the current, existing rule language does not allow for it.

SUMMARY OF THE RULE OR CHANGE: Section R156-69-202 is updated to allow for continuing education classes offered through an American Dental Association accredited dental program to count as meeting the requirement for an upgraded anesthesia and analgesia permit for dentists. Section R156-69-204 is updated to allow for continuing education classes offered through an American Dental Association accredited dental hygiene program to count as meeting the requirement for an anesthesia and analgesia permit for dental hygienists. An additional proposed amendment also allows for all of the regional examinations with passing scores to count towards a dental hygienist anesthesia and analgesia permit.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-69-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

♦ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed dentists and dental hygienists or applicants for licensure in those classifications that apply for an upgraded anesthesia and analgesia permit/license. As a result, the proposed amendments do not apply to local governments.

♦ **SMALL BUSINESSES:** The proposed amendments only apply to licensed dentists and dental hygienists or applicants for licensure in those classifications that apply for an upgraded anesthesia and analgesia permit/license. The proposed amendments may affect small business by allowing more educational and examination latitude for licensees/applicants to meet the requirements for anesthesia and analgesia licensure. However, the Division is not able to determine any exact cost or savings to small businesses due to a wide range of circumstances involving licensees and applicants who may work for or in a small business.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to licensed dentists and dental hygienists or applicants for licensure in those classifications that apply for an upgraded anesthesia and analgesia permit/license. The proposed amendments allow more educational and examination latitude for licensees/applicants to meet the requirements for anesthesia and analgesia licensure. However, the Division is not able to determine any exact cost or savings to other persons due to a wide range of circumstances involving licensees and applicants.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed dentists and dental hygienists or applicants for licensure in those classifications that apply for an upgraded anesthesia and analgesia permit/license. The proposed amendments allow more educational and examination latitude for licensees/applicants to meet the requirements for anesthesia and analgesia licensure. However, the Division is not able to determine any exact cost or savings to affected persons due to a wide range of circumstances involving licensees and applicants.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As explained in the rule analysis, this filing identifies courses that are acceptable to satisfy the Utah requirements for obtaining a permit in anesthesia and analgesia. No fiscal impact to businesses is anticipated.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2014

AUTHORIZED BY: Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-69. Dentist and Dental Hygienist Practice Act Rule.
R156-69-202. Qualifications for Anesthesia and Analgesia Permits - Dentist.**

In accordance with Subsection 58-69-301(4)(b), the qualifications for anesthesia and analgesia permits are:

- (1) for a class I permit:
 - (a) current licensure as a dentist in Utah; and
 - (b) documentation of current CPR or BCLS certification;
- (2) for a class II permit:
 - (a) current licensure as a dentist in Utah;
 - (b) documentation of current BCLS certification;
- (c) evidence of ~~having~~ successful~~ly~~ complet~~ed~~ion of

training in the administration of nitrous oxide and pharmacological methods of conscious sedation ~~which~~that:

_____ (i) conforms to the Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, published by the

American Dental Association, October 2007, which is incorporated by reference; ~~and~~or

_____ (ii) is the substantial equivalent of Subsection (2)(c)(i) provided in a continuing education format offered by an American Dental Association accredited school; and

(d) certification that the applicant will comply with the scope of practice as set forth in Subsection R156-69-601(2);

(3) for a class III permit:

(a) compliance with Subsections (1)(a) and (2) above;

(b) evidence of current Advanced Cardiac Life Support (ACLS) certification;

(c) evidence of holding a current Utah controlled substance license in good standing and a current Drug Enforcement Administration (DEA) Registration in good standing;

(d) evidence of ~~having~~successful~~ly~~ complet~~ed~~ion of:

_____ (i)(A) a comprehensive predoctoral or post doctoral training in the administration of conscious sedation ~~which~~that conforms to the Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, published by the American Dental Association, October 2007, ~~and~~including a letter from the course director documenting competency in performing conscious sedation; and

_____ (B) 60 hours of didactic education in sedation and successful completion of 20 cases; ~~and~~or

_____ (ii) the substantial equivalent of Subsection (3)(d)(i) provided in a continuing education format offered by an American Dental Association accredited school; and

(e) certification that the applicant will comply the scope of practice as set forth in Subsection R156-69-601(3); and

(4) for a class IV permit:

(a) compliance with Subsections (1), (2), and (3) above;

(b) evidence of current ACLS certification;

(c) evidence of having successfully completed advanced training in the administration of general anesthesia and deep sedation consisting of not less than one year in a program which conforms to the Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, published by the American Dental Association, October 2007, and a letter from the course director documenting competency in performing general anesthesia and deep sedation;

(d) documentation of successful completion of advanced training in obtaining a health history, performing a physical examination and diagnosis of a patient consistent with the administration of general anesthesia or deep sedation; and

(e) certification that the applicant will comply with the scope of practice as set forth in Subsection R156-69-601(4).

R156-69-204. Qualifications for Anesthesia and Analgesia Permits - Dental Hygienist.

In accordance with Subsection 58-69-301(4)(b), the qualifications for a local anesthesia permit are the following:

(1) current Utah licensure as a dental hygienist or documentation of meeting all requirements for licensure as a dental hygienist;

(2) successful completion of a program of training in the administration of local anesthetics that:

_____ (i) is accredited by the Commission on Dental Accreditation of the ADA; or

(ii) is the substantial equivalent of Subsection (2)(i) provided in a continuing education format offered by an American Dental Association accredited school; and

(3)(a) a passing score on the WREB, NERB, SRTA, or CRDTS anesthesia examination [~~in anesthesiology~~]; or

(b) documentation of having a current, active license to administer local anesthesia in another state in the United States; and

(4) documentation of current CPR or BCLS certification.

KEY: licensing, dentists, dental hygienists

Date of Enactment or Last Substantive Amendment: [~~August 8, 2013~~2014]

Notice of Continuation: March 10, 2011

Authorizing, and Implemented or Interpreted Law: 58-69-101; 58-1-106(1)(a); 58-1-202(1)(a)

**Governor, Economic Development
R357-7
Utah Capital Investment Board**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 38154

FILED: 11/21/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: There is a statutory requirement to create a rule.

SUMMARY OF THE RULE OR CHANGE: This proposed rule establishes the manner by which the Utah Capital Investment Board conducts its affairs.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63M-1-1206

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The process and necessary staff are already in place for the Board to conduct its affairs.

◆ **LOCAL GOVERNMENTS:** Local government is not involved in the Board issuing tax credits.

◆ **SMALL BUSINESSES:** Small businesses eligible for the tax credits will not be affected by the rule in the application process.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Other applicants for the tax credits will not be affected by the rule in the application process.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No new compliance costs in application process, as process is already established in policy and practice.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No new fiscal impact as application and approval process is already established in policy and practice.

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

GOVERNOR
ECONOMIC DEVELOPMENT
60 E SOUTH TEMPLE 3RD FLR
SALT LAKE CITY, UT 84111

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jeffrey Van Hulten by phone at 801-538-8694, by FAX at 801-538-8888, or by Internet E-mail at jeffreyvan@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2014

AUTHORIZED BY: Spencer Eccles, Executive Director

R357. Governor, Economic Development.

R357-7. Utah Capital Investment Board.

R357-7-1. Purpose.

(1) The purpose of these rules is to establish the manner by which the Utah Capital Investment Board (UCIB) conducts its affairs.

R357-7-2. Authority.

(1) UCA 63M-1-1206 requires the UCIB to make rules establishing the manner by which it conducts its affairs.

R357-7-3. Conduct.

The UCIB conducts its affairs to best meet its objectives of mobilizing venture equity capital for investment in a manner that will result in a significant potential to create jobs and to diversify and stabilize the economy of the state. The UCIB conducts its affairs in a way to meet these objectives by:

(1) Making staff available to present potential tax credit agreements to the UCIB and Utah Capital Investment Corporation (UCIC) for approval;

(2) Reviewing and approving or denying potential agreements with financial entities within ninety (90) days of presentation to the UCIB;

(3) If approved by the UCIB, issuing contingent tax credit certificates to designated investors for the allocation and issuance of contingent tax credits;

KEY: economic development, capital investments

Date of Enactment or Last Substantive Amendment: 2014

Authorizing, and Implemented or Interpreted Law: 63M-1-1206

Governor, Energy Development (Office
of)
R362-2
Renewable Energy Systems Tax
Credits

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38163

FILED: 12/02/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment updates technical criteria and maximum eligible costs to align with current industry standards and market conditions.

SUMMARY OF THE RULE OR CHANGE: The nonsubstantive changes address: 1) the shifting of the credit administrator from the Utah State Energy Program (USEP or SEP) to the Office of Energy Development (OED), given that the USEP has now been fully incorporated into OED; and 2) updates to certain online references that had become out of date. The substantive changes address: 1) existing siting criteria for solar thermal and solar photovoltaic systems, making changes to reflect modern best practices; and 2) reasonable cost limitations for solar photovoltaic and geothermal systems, again with the aim of reflecting changed conditions since the rule was originally drafted. Each change being offered was determined through a stakeholder process involving contractors, trade organizations, and non-governmental organizations.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 59-10-1014(10)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The proposed changes both make the standards more restrictive (e.g., solar photovoltaic reasonable costs, which are cut by half), and less restrictive (e.g., solar photovoltaic and solar thermal siting criteria), effectively neutralizing any impact to the amount of credits authorized annually. Should there be any actual costs or savings, the impact would be negligible, because the proposed changes will only affect the total credits authorized on a very small percentage of applications.

◆ **LOCAL GOVERNMENTS:** Updates to this rule will have no impact on local government, as they are simply tax credit qualification standards for renewable energy system installations being undertaken by homeowners and businesses. These criteria need not be adopted by local code officials, as they pertain solely to the authorization of state tax credits.

◆ **SMALL BUSINESSES:** Those small businesses that could potentially apply for a Renewable Energy Tax Credits are the

only businesses that could be affected by the update to this rule, and the fact that the stakeholder group that reviewed these changes was comprised of those very companies indicates that they are not concerned about negative fiscal impacts.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The amendments to the rule describe changes to criteria that must be met for persons applying for renewable energy systems tax credits. The application process itself has not changed, and from the perspective of a standard residential or commercial applicant, the changes in standards offset each other.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments to the rule describe changes to criteria that must be met for persons applying for renewable energy systems tax credits. The application process itself has not changed, and from the perspective of a standard residential or commercial applicant, the changes in standards offset each other.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The goal of the changes being proposed by OED is simply to adjust these administrative rules to ensure that state tax credit rules are not in conflict with small contractors who are designing and installing systems in keeping with industry best practices. OED believes that as long as statute provides for such tax incentives, the rules governing them should be kept up to date with respect to evolving industry practices and understandings. The changes, then, are designed not to expand or shrink the program or its associated costs, and OED expects that any fiscal impacts - whether they be costs of savings - will be quite small.

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

GOVERNOR
ENERGY DEVELOPMENT (OFFICE OF)
60 E SOUTH TEMPLE 3RD FLR
SALT LAKE CITY, UT 84111
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jeffrey Barrett by phone at 801-739-5191, or by Internet E-mail at jhbarrett@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 01/22/2014

AUTHORIZED BY: Jeffrey Barrett, Infrastructure and Incentives Manager

R362. Governor, Energy Development (Office of).**R362-2. Renewable Energy Systems Tax Credits.****R362-2-1. Purpose.**

(A) This rule implements the responsibilities assigned to the Utah Governor's Office of Energy Development (OED) for the renewable energy systems tax credit programs established in Sections 59-7-614, 59-10-1014, and 59-10-1106.

(B) This rule establishes requirements for eligibility for renewable energy system tax credits and the criteria for determining the amount of such tax credits by defining eligible systems, eligible system components, eligible costs, and other requirements intended to ensure the safety and reliability of systems supported by tax credits, and to ensure the appropriate use of the state's energy and economic resources.

(C) This rule also establishes procedures for taxpayers to use when applying for OED certification of tax credit eligibility and tax credit amounts, and for OED to follow in reviewing such applications.

(D) This rule applies to all renewable energy systems installed or entering commercial service after January 1, 2007.

R362-2-2. Authority.

Pursuant to Sections 59-7-614, 59-10-1014, and 59-10-1106, the OED and the Utah Tax Commission may each make rules that are necessary to implement renewable energy tax credits for corporate and individual income tax filers. In addition, the OED is required to certify that an energy system for which a tax credit is sought has been installed and is a viable system for saving or producing energy from renewable resources. For taxpayers claiming a tax credit based upon a percentage of the costs of a renewable energy system, the OED may also set standards for residential and commercial systems that cover the safety, reliability, efficiency, leasing, and technical feasibility of the systems to ensure that they use the state's renewable and non-renewable energy resources in an appropriate and economic manner. For such percentage-of-cost credits, the OED may also establish rules defining the reasonable costs of a system.

R362-2-3. Definitions.

(A) The definitions below are in addition to or serve to clarify the definitions found in Sections 59-7-614, 59-10-1014, and 59-10-1106.

(B) "Active solar thermal system" means a system of apparatus and equipment capable of intercepting and transferring incident solar thermal radiation to air or liquid by a separate apparatus to the point of storage or use. Transfer of energy to the point of storage or use must be accomplished using a mechanically powered device.

1. Active solar thermal systems include systems that:

a. Heat water for space heating, culinary water, recreational use (including swimming pools), and other industrial or commercial uses;

b. Heat a liquid, contained within a closed loop system, whose transferred heat may be used for space heating, culinary water, recreational use (including swimming pools), and other industrial or commercial uses; and

c. Heat air that is transferred to a building's conditioned space using mechanical systems such as fans or blowers either for heat or to induce air movement used for cooling.

2. Active solar thermal systems do not include systems that use heat for evaporative cooling.

(C) "Biomass system" means a system of apparatus and equipment for use in converting biomass material into fuel or electricity and transporting that energy by separate apparatus to the point of use or storage.

1. Materials that may be used to produce fuel or electricity are as follows:

a. material from a plant or tree; or

b. other organic matter that is available on a renewable basis, including:

i. slash and brush from forests and woodlands;

ii. animal waste;

iii. methane produced at landfills or as a byproduct of the treatment of wastewater residuals;

iv. aquatic plants; and

v. agricultural products.

2. A biomass system does not include:

a. A system that uses, black liquor, treated woods, or biomass from municipal solid waste other than methane produced at landfills or sewage treatment plants

b. A system that combusts biomass for the primary purpose of producing and using heat or mechanical energy.

3. In order to be considered a biomass system, a fuel or electricity producing system must use biomass as its primary source of energy.

(D) "Commercial energy system" means any active solar, passive solar, geothermal electricity, direct-use geothermal, geothermal heat-pump system, wind, hydroenergy, or biomass system used to supply energy to a commercial unit or as a commercial enterprise. In the case of systems generating electricity and involving multiple but interconnected energy generation systems, a commercial energy system includes all interconnected components that:

1. Were assembled or constructed at approximately the same time as part of a single project; and

2. Supply electricity to a common grid interconnection point.

This includes wind farms connecting to a single substation and biomass generating systems using multiple small generators. Such combinations of intertied generators are considered to be single energy systems for purposes of this rule.

(E) "Commercial tax credit" means the credits defined in Subsection 59-7-614(2)(b) and Section 59-10-1106 that provide tax credits worth 10% of the reasonable cost, up to \$50,000, of a commercial energy system.

(F) "Commercial unit" means any building or structure that a business entity uses to transact its business. For purposes of the commercial investment tax credit, an agricultural water pump and a wind turbine are each considered to be single commercial units.

(G) "Direct use geothermal system" means a system of apparatus and equipment enabling the direct use of thermal energy, generally between 100 and 300 degree Fahrenheit, that is contained in the earth to meet energy needs, including heating a building, an industrial process, or aquaculture. Such systems generally make use of hot water or steam derived from wells bored through the earth's crust to reach areas of thermal energy. They may include systems that make use of groundwater or those that inject water into the earth for the purpose of deriving heat. They can also include systems that pump a heat exchanging fluid through a sealed, close loop system below the ground to extract heat for use above the earth's surface.

(H) "Eligible cost" means a cost that is reasonable as defined in this rule, that is incurred for the purchase or installation of a renewable energy system, and that may be used in computing the amount of either a commercial or residential investment tax credit.

(I) "Geothermal electricity system" means a system that uses thermal energy that flows outward from the earth as the sole source of energy for producing electricity.

(J) "Geothermal heat pump system" means a system of apparatus and equipment enabling use of the thermal properties contained in the earth well below 100 degrees Fahrenheit to help meet heating and cooling needs of a structure. For purposes of this rule, geothermal heat pump system means a system that is thermally coupled with the ground through a heat exchange medium or using mechanical heat exchange equipment and that uses a "ground-source heat pump" technology described in the American Society of Heating, Refrigerating, and Air Conditioning Engineers' (ASHRAE) Applications Handbook, Chapter 32, or the Air Conditioning Heating and Refrigeration Institute (AHRI) Certified Product Directory, Page 4-8. This can include ground source heat pumps, water source heat pumps using ground water or surface water, and direct geexchange heat pump systems.

(K) "Grid connected" describes a system that generates electricity and is electrically connected to an electrical load that is also connected to and served by the local utility's electrical grid. To be considered grid connected, a system needs be able to serve an electrical load that is also served by the local utility.

(L) "Heat transportation system" means all fans, vents, ducts, pipes and heat exchangers designed to move heat from a collection point to either the storage or heat use area.

(M) "Investment tax credit" means a tax credit authorized in any of the Sections 59-7-614, 59-10- 1014, and 59-10-1106 and that is not a production tax credit.

(N) "Loaded structure" means a part of the building that provides support to that building.

(O) "Placed in commercial service" means the earliest point in time at which a commercial energy system:

1. Produces or is capable of producing at its maximum potential output; and
2. Sells all or some portion of its energy output or uses some portion its energy output for commercial activities located at the same site.

(P) "Passive solar system" means a direct thermal system that utilizes the structure of a building and its operable components to provide for collection, storage, and distribution of heating or cooling during the appropriate times of the year by utilizing the climate resources available at the site and includes those portions and components of a building that are expressly designed and required for the collection, storage, and distribution of solar energy.

(Q) "Production tax credit" means the credits defined in Subsections 59-7-614(2)(c) and 59-10- 1106(2)(b) that provides 0.35 cents per kilowatt-hour of electricity produced for wind, geothermal, or biomass systems with production capacities of 660 kilowatts or greater.

(R) "Production tax credit window" means the period during which a company is eligible to receive production tax credits for a specific commercial energy system. The window begins on the day that the system is placed in commercial service and ends 48 months after that date.

(S) "Renewable energy system" means any of the following types of systems defined in Section 57-7- 614, 57-10-1014, and 57-10-1106:

1. Active solar including solar thermal and photovoltaics;
2. Biomass except for systems combusting biomass for heat;
3. Direct-use geothermal;
4. Geothermal electricity
5. Geothermal heat pump;
6. Hydroenergy;
7. Passive solar for heating or cooling;
8. Wind.

(T) "Residential investment tax credit" means the credits defined in Subsection 59-7-614(2)(a) and Section 59-10-1014 that provide tax credits worth 25% of the reasonable cost up to \$2,000 of a residential energy system.

(U) "Residential unit" means any house, condominium, apartment, or similar dwelling for a person or persons, but it does not include any vehicles such as motor homes, recreational vehicles, or house boats.

(V) "Solar PV energy system" means an active solar energy system that converts light to direct current electricity through the use of semiconducting materials and that is capable of producing electricity for use in a building by the use of an inverter to produce alternating current electricity.

(W) "Thermal storage mass" means a structure within the conditioned space consisting of a material with high thermal capacitance or mass to provide heat to the unit at times of low or no heat collection.

(X) "Ton" means heating and/or air conditioning capacity equivalent to 12,000 British thermal units (Btus).

~~(Y) "USEP" means that Utah State Energy Program, a subdivision of the Utah Governor's Office of Energy Development, which is responsible for certifying tax credits specified under this rule.~~

(Y)(Z) "Wind energy system" means a system of apparatus and equipment capable of intercepting and converting wind energy into mechanical or electrical energy and transferring these forms of energy by a separate apparatus to the point of use, sale, or storage.

(Z)(AA) "Solar surface" is a building wall which faces no more than 30 degrees away from true south measured in a horizontal plane.

R362-2-4. Investment Tax Credit Certification Process.

(A) ~~The Utah State Energy Program (USEP), a subdivision of the~~ OED[~~USEP~~] is responsible for certifying renewable energy systems tax credits.

(B) Applications for credits are to be made on forms developed by OED[USEP] to gather information necessary to implement this rule.

(C) OED[USEP] will evaluate each application according to the definitions and criteria established by statute and by this rule. If the information contained within an application is inadequate to determine eligibility according to this rule, OED[USEP] reserves the right to request additional information from the applicant. If an applicant is unable or unwilling to provide adequate information, OED[USEP] may deny the application and no tax credit will be certified.

(D) If, after evaluating an application, OED[USEP] finds that a renewable energy system is eligible for a residential or commercial tax credit, OED[USEP] will complete a Utah State Tax Commission Form TC-40E that will serve as the taxpayer's documentation of eligibility for a tax credit. Only OED[USEP] may issue a completed TC-40E and a tax credit may not be claimed without such documentation.

(E) Upon the completion of OED's[USEP's] evaluation of an application, OED[USEP] will provide to the applicant one of the following, as appropriate:

1. A completed TC-40E allowing the full amount of tax credit requested;
2. A completed TC-40E allowing a portion of the tax credit requested accompanied by a written explanation for the denial of the full requested amount; or
3. A letter informing the applicant that the request for a tax credit has been denied and providing an explanation for the denial.

(F) If OED[USEP] denies, in whole or in part, an application for a tax credit, the taxpayer applicant may, consistent with Section 63G-4-301 (Administrative Procedures Act), request that the decision be reviewed by the OED[USEP] manager. If, after review by the manager, the taxpayer desires a further appeal, he or she may request reconsideration of the decision by the director of OED, consistent with Section 63G-4-302.

(G) All applications for credits under this rule shall provide the following information:

1. The true legal name of the person or persons seeking a tax credit;
2. The tax identification number or numbers of persons seeking a tax credit;
3. The physical address, plat number, or global positioning satellite (GPS) coordinates of the property where the system is installed. Location information must be sufficient to permit OED[USEP] staff to locate the site for on-site verification of the information in the application.
4. A general description of the system, including technologies employed (e.g. wind, solar thermal), intended use, energy production capacity, cost, date of completed installation, and other information specified in this rule.

(H). Applications for residential and commercial tax credits must provide, either within an application form or provided as supporting documentation, each of the following:

1. Detailed diagrams of the system installed such that OED[USEP] staff, evaluating each proposal, can distinguish all major system components, how the system operates, and which components are eligible costs for computing the tax credit.
2. Photographs or copies of photographs that show major system components, how and where the system is installed, electrical interconnections with the power grid or other components of the electrical system at the taxpayer's home or business, and any other components of the renewable energy system that demonstrate that individual components are eligible costs under this rule. Photographs or copies of photographs should also demonstrate that a system is constructed in a safe and reliable manner.
3. Clear documentation of costs incurred for all components of the renewable energy system. Original or reproduced copies of all receipts or invoices should be provided and all invoices from contractors or equipment dealers must show that the invoiced amounts were paid by the taxpayer; otherwise, copies of canceled checks should

be provided. Documentation should also include an itemized listing of all components of an installed system, including manufacturer and model numbers for major equipment components, the costs of all major components, and costs for labor, installation, and/or design. The sum of documentation provided should be sufficient to allow OED to identify all eligible and ineligible costs and to determine whether such costs are reasonable. Applications that do not include a clear itemization of system costs will not be considered.

R362-2-5. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, General.

(A) Taxpayers applying for commercial investment tax credits are entitled to credits equal to 10% of the eligible costs of a renewable energy system up to a maximum of \$50,000 for a commercial unit. This limit applies to the lifetime of the commercial unit. Taxpayers may apply for multiple credits for additional renewable energy systems or for expansions to the capacity of existing systems for the same commercial unit, however, the total of all credits awarded may not exceed \$50,000 for any single commercial unit.

(B) Taxpayers applying for residential investment tax credits are entitled to credits equal to 25% of the eligible costs of a renewable energy system up to a maximum of \$2,000 for a residential unit. This limit applies to the lifetime of the residential unit. Taxpayers may apply for multiple credits for additional renewable energy systems or for expansions to the capacity of existing systems for the same [~~commercial~~]residential unit, however, the total of all credits awarded may not exceed \$2,000.

(C) Eligible costs for equipment are generally limited to system components that are both:

1. Necessary for the renewable energy system to produce energy and to deliver that energy for end- use; and
2. Are not system components that would be used for a conventional energy system fulfilling a similar role in delivering energy for end-use.

(D) Eligible costs for equipment are limited to new components only. Any component of the renewable energy system that has previously been used for any purpose is ineligible.

(E) Costs for equipment and installation of components on existing renewable energy systems are eligible only to the extent that the additional equipment increases the energy production capacity of the existing system. Costs for repair or replacement of any component of an existing system are ineligible for a tax credit.

(F) All major energy-producing, energy conversion, and energy storage components of a renewable energy system shall be commercially available and purpose-built or manufactured for the intended application. Major components built from equipment not manufactured or built primarily for the purpose of generating renewable energy are not eligible unless it can be demonstrated that the component is necessary to the system and that no commercially available, purpose-built or manufactured equivalent is available.

(G) Energy storage devices, and equipment for regulating energy storage, for renewable energy systems that produce electricity are not considered to be eligible costs when used at a residential or commercial unit that is either:

1. Connected to the electrical grid; or
2. Within the service territory of a retail electricity provider and is less than one-quarter mile from an electrical distribution line.

(H) Costs for the installation of a renewable energy system are eligible. Labor costs for installation are eligible so long as the

taxpayer has paid a qualified installer or other contractor for services. Costs that may be claimed for the estimated value of a taxpayer's own labor are not considered to be eligible.

(I) Equipment and installation costs for backup energy production devices and any other energy production equipment that does not make use of a renewable energy source are not considered to be eligible costs.

(J) Costs for the design of a renewable energy system are generally eligible. However, in instances where design costs of a renewable energy system are included within the costs of a larger project (e.g. the design of a complete building), only the component of design costs specifically attributable to the design of the renewable energy system are eligible. Claims for design costs that do not separate eligible from ineligible costs will be deemed ineligible.

(K) Any portion of the cost of an eligible renewable energy system that is offset by a cash rebate from a manufacturer, vendor, installer, utility, or any other type of rebate shall be not be considered an eligible cost for the purpose of calculating residential or commercial tax credits. For purposes of this rule, utility rebates in the form of credits against bills are considered to be cash rebates and should be deducted from eligible costs. However, the amount of any federal tax credit received for an eligible system will not be deducted from the eligible cost when calculating the amount of Utah tax credits.

(L) OED[USEP] may, at its discretion, conduct an on-site inspection of a system applying for a commercial or residential tax credit. Applications for renewable energy systems that are found not to be in compliance with this rule or that are a variance with information provided in a tax credit application may be denied or the amount of the tax credit altered.

(M) Some renewable energy technologies have additional requirements for eligible costs that may be found in technology-specific sections of this rule, below.

R362-2-6. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Active Solar Thermal.

(A) All eligible costs for active solar thermal energy systems must conform with Section R362-2-5, above. Active solar thermal energy systems must also meet the requirements in this Section.

(B) For purposes of determining eligible costs, an active solar thermal system ends at the interface between it and the conventional heating system. Eligible costs for a solar thermal system are limited to components that would not normally be associated with a conventional [hot water] heating system. Eligible equipment costs include:

1. Solar collectors that transfer solar heat to water, a heat transfer fluid, or air;
2. Thermal storage devices such as tanks or heat sinks;
3. Ductwork, piping, fans, pumps and controls that move heat directly from solar collectors to storage or to the interface between the active solar thermal system and a building's conventional heating and cooling systems.

(C) Hot water storage tanks that have dual heat exchange capabilities allowing for the heating of water by both the active solar thermal system and by a nonrenewable energy source such as natural gas or electricity are eligible for tax credits. However only one half of the costs of purchasing and installing such tanks are eligible costs for the purposes of calculating a commercial or residential tax credit.

(D) In order to be eligible for residential or commercial tax credits, a solar collector that heats water must be certified and rated by the Solar Rating Certification Corporation (SRCC) according to SRCC Standard 100, "Test Methods and Minimum Standards for Certifying Solar Collectors."

(E) In order to be eligible for residential or commercial tax credits, an active solar thermal system installed after December 31, 2008 and that heats water must be certified and rated by the Solar Rating Certification Corporation (SRCC) according to SRCC Document OG-300, "Operating Guidelines and Minimum Standards for Certifying Solar Water Heating Systems." The applicant can demonstrate to OED[USEP] that the solar thermal system meets standards that are equivalent to those of the SRCC Document OG-300 by providing:

1. Detailed engineering design and performance data that show system performance, or
2. Certification from other recognized National or European solar thermal testing labs.

(F) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a solar thermal energy system has been sited and installed appropriately in order to realize the maximum feasible energy efficiency for a given location. Specifically, the system should conform with the following:

1. Solar collectors shall be free of shade (vent pipes, trees, chimneys, etc.) and positioned accordingly so as to optimize the average annual solar radiation values (kWh/M²/day). Guidance for siting may be found at the National Renewable Energy Laboratory's (NREL) National Solar Radiation Database, which can be found at:

<http://redc.nrel.gov/solar/pubs/redbook/PDFs/UT.PDF>;

2. Fixed, non-glazed collectors shall be:
 - a. Oriented within 45 degrees of true south if the fixed pitch is greater than 30 degrees from horizontal, or
 - b. Oriented within 90 degrees of true south if the fixed pitch is 30 degrees or less from horizontal.
3. Fixed, glazed collectors shall be oriented within:
 - a. [~~65~~]115 degree[s] azimuth and [~~225~~]245 degree[s] azimuth if the fixed pitch is greater than [~~30~~]35 degrees from horizontal, or
 - b. [~~465~~]90 degree[s] azimuth and 270 degrees if the fixed pitch is [~~30~~]35 degrees or less from horizontal.

(G) In order to be eligible for a residential or commercial tax credit, all solar hot water thermal systems shall be installed by one of the following licensed contractors:

1. A Utah licensed plumbing contractor (S210 license);
 2. A Utah licensed solar hot water contractor (S215 license);
- or
3. A licensed contractor who has obtained written approval by the Utah Department of Occupational Licensing for the installation of solar hot water systems.

(H) In order to be eligible for a residential or commercial tax credit, an active solar thermal system must be certified for safety by one of the following:

1. A Utah licensed plumbing contractor (S210 license);
 2. A Utah licensed solar hot water contractor (S215 license);
- or
3. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required on the tax credit application.

(I) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a flat panel active solar thermal system is considered to be no higher than \$0.15 per Btu/day of heat output for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility). The determination of heat output shall be based upon the ratings of the Solar Rating Certification Corporation (SRCC) "Summary of SRCC Certified Solar Collectors and Water Heating System Ratings" that is found at:

<http://www.solar-rating.org/ratings/ratings.htm>.

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$0.15 per Btu/day of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($\$0.15 \times$ rated output capacity in Btu/day) - rebates) \times 0.25

2. For a commercial tax credit application with total eligible costs exceeding \$0.15 per Btu/day, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($\$0.15 \times$ rated output capacity in Btu/day) - rebates) \times 0.10

3. If the cost of a flat panel active solar thermal system exceeds \$0.15 per Btu/day of capacity due to unusual and/or unavoidable circumstances (such as a multi-story structure retrofit or difficult pipe chase and interconnection conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by OED[USEP]. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of [USEP and] OED after investigation as to the validity of the waiver claim.

(J) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of an evacuated tube active solar thermal system is considered to be no higher than \$0.27 per Btu/day of heat output for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility). The determination of heat output shall be based upon the ratings of the Solar Rating Certification Corporation (SRCC) "Summary of SRCC Certified Solar Collectors and Water Heating System Ratings" that is found at:

<http://www.solar-rating.org/ratings/ratings.htm>.

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$0.27 per Btu/day of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (($\$0.27 \times$ rated output capacity in Btu/day) - rebates) \times 0.25

2. For a commercial tax credit application with total eligible costs exceeding \$0.27 per Btu/day, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (($\$0.27 \times$ rated output capacity in Btu/day) - rebates) \times 0.10

3. If the cost of a flat panel solar thermal system exceeds \$0.27 per Btu/day of capacity due to unusual and/or unavoidable circumstances (such as multi-story structure retrofit or difficult pipe chase and interconnection conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by OED[USEP]. In order to do so, the applicant must provide written

documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of [USEP and] OED after investigation as to the validity of the waiver claim.

R362-2-7. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Solar PV (Photovoltaic).

(A) All eligible costs for solar PV energy systems must conform with Section R362-2-5, above. Solar PV energy systems must also meet the requirements in this Section.

(B) The costs of the following solar PV energy system components are eligible for residential or commercial tax credits:

1. Solar PV module(s);
2. Inverter;
3. Motors and other elements of a tracking array;
4. Mounting hardware;
5. Wiring and disconnects from modules to the inverter and from the inverter to the point of interconnection with the AC panel;
6. Lightning arrestors.

(C) The costs of additional components of solar PV energy systems are eligible for residential or commercial tax credits if the solar PV system is not grid connected and it provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider. If these conditions are met, the following components are also eligible:

1. Batteries;
2. Battery wiring;
3. Charge controllers; and
4. Battery temperature sensors.

(D) The costs of solar PV modules are eligible for Utah tax credits only if they are:

1. Listed as eligible modules under the California Solar Initiative Program. A list of eligible modules may be found at the following site:

<http://www.gosolarcalifornia.org/equipment/index.html>; or

2. The applicant can demonstrate to OED[USEP] that the modules meet standards that are equivalent to those of the California Solar Initiative Program as of calendar year 2007.

(E) For grid connected solar PV systems, the cost of inverters are eligible for Utah tax credits only if:

1. They are also listed as eligible inverters under the California Solar Initiative Program. A list of eligible inverters may be found at the following site:

<http://www.gosolarcalifornia.org/equipment/index.html>; or

2. The applicant can demonstrate to OED[USEP] that the inverter meets standards that are equivalent to those of the California Solar Initiative Program as of calendar year 2007.

(F) Solar PV modules must be certified for safety by a Nationally Recognized Testing Laboratory and be warranted by the manufacturer to produce at least 80% of rated output after twenty years of operation.

(G) Inverters and charge controllers must be certified for safety by a Nationally Recognized Testing Laboratory and be warranted by the manufacturer against failure due to materials and workmanship for at least five years.

(F) All solar PV energy systems must be designed and installed consistent with the National Electric Code Article 690.

(G) Grid connected systems must meet all interconnection standards of the local electrical utility and must include with an

application for a residential or commercial tax credit a copy of an interconnection or net metering agreement with the local electrical utility.

(H) The costs of system performance monitoring hardware and software are not eligible for residential or commercial tax credits. Grid connected backup power and monitoring systems such as Grid Point back-up power systems are not eligible for the tax credit with the exception that the inverter within such systems will be considered to carry a cost of \$2,500 for the purpose of calculating the tax credit.

(I) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a solar PV energy system has been sited and installed appropriately. Specifically, the system should be:

1. Located such that the solar modules are completely free of shade from trees and other plants, buildings, chimneys, vent pipes, utility poles, and other objects that would reduce system output for at least two-thirds of the daylight hours at the site;

2. Positioned so as to optimize the average annual solar radiation values (kWh/M²/day). Guidance for siting may be found at the National Renewable Energy Laboratory's (NREL) National Solar Radiation Database (found at:

<http://rredc.nrel.gov/solar/pubs/redbook/PDFs/UT.PDF>);

3. Positioned such that the fixed solar array azimuth shall be oriented within:

a. ~~165~~115 degrees and ~~225~~245 degrees if the fixed pitch is greater than ~~30~~35 degrees from horizontal, or

b. ~~165~~90 degrees and 270 degrees if the fixed pitch is ~~30~~35 degrees or less from horizontal.

(J) In order to be eligible for a residential or commercial tax credit, a solar PV energy system must be certified for safety by one of the following:

1. A Utah licensed electrical contractor (S200);

2. A Utah licensed solar photovoltaic contractor (S202);

3. A licensed contractor who has obtained written approval by the Utah Department of Occupational Licensing for the installation of solar PV systems; or

4. A county or municipal building inspector licensed by the State of Utah. Proof of this certification may be required on the tax credit application.

(K) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a solar PV energy system that is grid connected or that provides electricity to a building or structure that is one quarter mile or less from a power distribution line operated by a retail electric utility provider is considered to be no higher than \$~~140~~5 per watt of rated output capacity for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$~~140~~5 per watt of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = ((~~\$140~~5 x rated output capacity in watts) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding \$~~140~~5 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = ((~~\$140~~5 x rated output capacity in watts) - rebates) x 0.10

(L) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of solar PV energy system that is not grid connected and that provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider is considered to be no higher than \$~~143~~10 per watt of rated output capacity for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding \$~~143~~10 per watt of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = ((~~\$143~~10 x rated output capacity in watts) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding \$~~143~~10 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = ((~~\$143~~10 x rated output capacity in watts) - rebates) x 0.10

R362-2-8. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Passive Solar.

(A) An eligible passive solar system must be purposefully designed to use the structure of a building to collect, store, and distribute heating or cooling to a building and to do so at the appropriate season and time of day. (For example providing heat in winter or at night but not during summer days.) All passive solar systems should contain the following in order to be eligible:

1. A means to allow the solar energy to enter the system;

2. A heat-absorbing surface;

3. A thermal storage mass located within the conditioned space;

4. A heat transfer[er] system or mechanism and;

5. Protection from summer overheating and excessive winter heat-loss.

A passive system must receive an average of at least four hours of sunlight per day during the winter months of December through March and shall be primarily south facing.

(B) Eligible costs for a passive solar system include the costs of the following:

1. Trombe wall;

2. Water wall;

3. Thermosyphon;

4. Equipment or building shell components providing direct heat gain; and

5. Any item that can be demonstrated to be a component of a purpose-built system to collect, store and transport heat from the sun. The cost of ventilation, fans, movable insulation, louvers, overhangs and other shading devices shall be eligible provided that they are designed to be used as an integral part of the passive solar system and not part of the conventional building design.

(C) The cost of a solarium is also considered to be eligible if it provides heat to the living space of the house in conjunction with a thermal storage mass and a forced or natural convection heat transportation design. Solariums must also be designed to prevent heat loss at night by means of insulation devices. They must also be designed so as to prevent summer heating that would increase the load on the building's cooling system.

(D) The cost of windows and other glazing devices are eligible only when they are part of a passive solar system that uses thermal mass storage and a passive or active heat transportation system to provide heating throughout the building. In addition, windows and other glazing devices are eligible only when they are oriented within 30 degrees of true south and when they are installed with shading devices or overhangs that prevent direct sun from entering the building in the summer while allowing direct sun in the winter. Windows and other glazing devices must also carry solar heat gain coefficient (SHGC) ratings of 0.50 or higher in order to allow sufficient amounts of heat into the building, but must carry a U-factor rating of 0.35 or less in order to provide sufficient insulation to the building.

(E) The cost of heat transportation systems shall be eligible provided they are part of the passive solar design and will not be used as part of a conventional heating system.

(F) Costs for the thermal storage mass of a passive solar system are eligible subject to the following:

1. For a non-loaded structure, 100% of the cost may be eligible;
2. For a loaded structure, 50% of the cost may be eligible;
3. Notwithstanding (1) and (2) above, the cost of thermal storage mass may not exceed 30% of the total system cost against which a tax credit is calculated.

(G) No tax credit shall be given if OED[USEP] concludes that the passive solar system does not supply heating when needed or allows more heat loss than gain in the winter months or overheating in the summer months.

R362-2-9. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Wind.

(A) All eligible costs for wind energy systems must conform with Section R362-2-5, above. Wind energy systems must also meet the requirements in this Section.

(B) Wind systems of 50 kilowatts generating capacity or less must include a wind turbine that is either:

1. Listed and certified by the Small Wind Certification Council ~~as eligible under the California Emerging Renewables Program~~ in order to be eligible for a Utah commercial or residential tax credit. This list may be found at the following site: http://www.consumerenergycenter.org/cgi-bin/eligible_smallwind.cgi; or <http://www.smallwindcertification.org/certified-turbines/>

2. The applicant can demonstrate to OED[USEP] that the turbine meets standards that are equivalent to those of the California Emerging Renewables Program ~~Small Wind Certification Council~~ as of calendar year 2007.

(C) Inverters and charge controllers must be certified for safety by a Nationally Recognized Testing Laboratory as meeting Underwriters Laboratory Standard 1741.

(D) All wind energy systems must be designed and installed consistent with the National Electric Code. Grid connected systems must also meet all interconnection standards of the local electrical utility. Applications for residential or commercial tax credits for grid-connected systems must include a copy of an interconnection or net metering agreement with the local electrical utility.

(E) In order to be eligible for a residential or commercial tax credit, the taxpayer applicant must demonstrate that a wind energy system has been sited and installed appropriately. Specifically, the system should be:

1. Installed such that the central tower or pole upon which the turbine is mounted is located a distance at least equal to one and one-half times the height of the tower or pole from any:

- a. Buildings;
- b. Utility poles or overhead utility lines;
- c. Fences, roads, or other structures outside of the boundaries of the taxpayer's property.

2. Installed such that wind flowing to the system is not obstructed or airflow diminished or turbulence created by nearby:

- a. Trees or other vegetation;
- b. Buildings and other structures;
- c. Hills, cliffs, or other topographical obstructions.

The photographs included with a wind energy system should include views of the system from all angles such that OED[SEP] can verify appropriate siting. OED[SEP] also reserves the right to conduct a site visit to verify appropriate siting.

(F) Wind turbines mounted on buildings are not eligible unless it can be demonstrated by a professional engineer that the building's soundness and structural integrity are not compromised by the wind energy system and that the attachments of the system to the building are sufficient to withstand the most extreme local weather conditions.

(G) Wind energy systems must include lightning protection to be eligible for residential or commercial tax credits.

(H) Wind turbines must be covered by a manufacturer's warranty that guarantees against defects in design, material, and workmanship for at least five years after installation under normal use in a wind energy system.

(I) In order to be eligible for a residential or commercial tax credit, a wind energy system must comply with all local building or zoning ordinances. Copies of any required permits should be included with the tax credit application.

(J) In order to be eligible for a residential or commercial tax credit, a wind energy system must be certified for electrical safety by either:

1. A professional electrician licensed by the State of Utah;
2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

(K) For purposes of computing eligible costs for residential and commercial tax credits, the reasonable cost of a wind energy system is considered to be no higher than \$8 per watt of rated output capacity for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).

1. For a residential tax credit application with total prebate eligible costs exceeding \$[5]8 per watt of capacity, the amount of the tax credit shall be calculated as follows:

$$\text{Tax credit granted} = ((\$8 \times \text{rated output capacity in watts}) - \text{rebates}) \times 0.25$$

2. For a commercial tax credit application with total eligible costs exceeding \$8 per watt, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

$$\text{Tax credit granted} = ((\$8 \times \text{rated output capacity in watts}) - \text{rebates}) \times 0.10$$

R362-2-10. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Geothermal Heat Pumps.

(A) All eligible costs for geothermal heat pump systems must conform with Section R362-2-5, above. Geothermal heat pump systems must also meet the requirements in this Section.

(B) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system employed to heat and/or cool a building must derive at least 75% of the heating and cooling from the ground. Systems that provide more than an insignificant amount of energy to the building using combustion, cooling towers, air-source heat pumps, or any other mechanism not involving thermal ground coupling are not eligible.

(C) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must conform with the design and practice guidelines described in the American Society of Heating, Refrigerating, and Air Conditioning Engineers' (ASHRAE) Applications Handbook, Chapter 32, or Air Conditioning Heating and Refrigeration Institute (AHRI) Certified Product Directory, Page 4-8.

(D) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been designed by either:

1. A professional engineer licensed in Utah;
2. A person designated as a "Certified GeoExchange Designer" by the Association of Energy Engineers; or
3. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers; or
4. For geothermal heat pump systems installed in a residential unit only, a person designated as an "Accredited Installer" by the International Ground Source Heat Pump Association (IGSHPA).
5. For direct geoechange systems, a person designated as a certified designer by an AHRI accredited direct geoechange systems manufacturer.

Proof of designer qualification may be required on the tax credit application.

(E) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been installed by a plumber licensed (S210) or HVAC contractor (S350) in the State of Utah or by an installer certified by the International Ground Source Heat Pump Association (IGSHPA). Proof of installer qualification may be required on the tax credit application.

(F) In the case of a system using a vertical bore (either ground source or water source), drilling must be performed by a water well driller licensed by the Utah Division of Water Rights. Wells drilled for a vertical bore must also obtain a ~~provisional~~non-production well approval from the Utah Division of Water Rights, Department of Natural Resources. Proof of driller qualifications and well approval may be required on the tax credit application.

(G) Costs incurred for the drilling of wells or excavating trenches are eligible if actually used within the final system for the exchange of heat with the ground. The cost of exploratory wells or trenches that are not used within the final system are not eligible.

(H) Design costs for a geothermal heat pump system are eligible but only for the components of the system that would not normally be associated with a conventional heating and air conditioning system. Tax credit applications should separate design costs for the geothermal and conventional components of the system.

(I) For closed loop systems (both ground source and water source), the heat exchanging pipe loop shall be warranted by the

installer against leakage or breakage for not less than three years from the date of installation.

(J) For purposes of computing eligible costs for residential and commercial tax credits, the ~~reasonable~~eligible cost of a geothermal heat pump system is considered to be no higher than ~~[\$4,000]6,500~~ per ton of output capacity for residential systems and \$5,500 per ton of output capacity for commercial systems for all eligible costs listed above and in Section R362-2-5 and prior to any cash rebates or incentives that the taxpayer may receive from a third party (such as a utility).

1. For a residential tax credit application with total pre-rebate eligible costs exceeding ~~[\$4,000]6,500~~ per ton of capacity, the amount of the tax credit shall be calculated as follows:

Tax credit granted = (~~[\$4,000]6,500~~ x rated output capacity in tons) - rebates) x 0.25

2. For a commercial tax credit application with total eligible costs exceeding ~~[\$4,000]5,500~~ per ton, the amount of the tax credit shall be calculated as 10% of costs calculated as follows:

Tax credit granted = (~~[\$4,000]5,500~~ x rated output capacity in tons) - rebates) x 0.10

3. If the cost of a geothermal heat pump system exceeds ~~[\$4,000]6,500(residential) or \$5,500(commercial)~~ per ton of capacity due to unusual and/or unavoidable circumstances (such as poor soil or drilling conditions) the taxpayer applicant may request that the reasonable cost limitation above be waived by OED[USEP]. In order to do so, the applicant must provide written documentation and explanation from the designer or installer of the system as to why the final system cost exceeded this limit. Granting of such a waiver will be at the discretion of OED[USEP] and OED after investigation as to the validity of the waiver claim.

R362-2-11. Investment Tax Credit, Eligible Costs for Commercial Systems and Residential Systems, Geothermal Electricity.

(A) All eligible costs for geothermal electric systems must conform with Section R362-2-5, above. Geothermal electric systems must also meet the requirements in this Section.

(B) Eligible equipment costs for a geothermal electrical system are limited to components up to the point of interconnection with AC service when powering a building, or up to the point of interconnection with the electrical grid for system intended solely for the sale of power. Eligible equipment costs include production and injection wells and well casings, wellhead pumps, and turbine generators. In addition, flash tanks (flash steam systems), heat exchangers (binary cycle systems), condensers, cooling towers, associated wiring and disconnects, and associated pumps are eligible.

(C) Design costs for a geothermal electrical system are eligible but only for the cost of integrating the eligible components of the system that are listed in (B) above. Tax credit applications should separate design costs for the geothermal and conventional components of the system.

(D) Costs for studies to characterize a geothermal resource are eligible so long as a final system using the geothermal resource is build and placed into operation.

(E) Costs incurred for the drilling of wells are eligible if such wells are actually used (whether for withdrawal or reinjection of water) within the final geothermal electrical system. The cost of exploratory wells that are not used within the final system are not eligible.

(F) In the case of a system that includes any well greater than 30 feet in depth, any drilling must be performed by a water well driller licensed by the Utah Division of Water Rights. All such wells, whether water is returned to the ground through a recharge well or used or discharged at the surface, require an approved water right certification issued by the Utah state engineer in the Division of Water Rights[~~Department of Natural Resources~~]. Proof of driller qualifications and well right may be required on the tax credit application.

(G) In order to be eligible for residential or commercial tax credits, a geothermal heat pump system must have been designed by either:

1. A professional engineer licensed in Utah; or
2. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers.

Proof of designer qualification may be required on the tax credit application.

(H) In order to be eligible for a residential or commercial tax credit, a geothermal electricity system must be certified for safety by either:

1. A professional electrician licensed by the State of Utah;
2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

R362-2-12. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Direct Use Geothermal.

(A) All eligible costs for direct use geothermal systems must conform with Section R362-2-5, above. Direct use geothermal systems must also meet the requirements in this Section.

(B) Eligible costs for a direct use geothermal system are limited to components that would not normally be associated with a conventional hot water heating system. Eligible equipment costs include wells and well casings, wellhead pumps, and heat exchangers where well water is not directly used within a building or a manufacturer's heating system. Equipment and components beyond the wellhead or, where applicable, a heat exchanger, are not eligible. However, water treatment equipment that would permit the direct use of well water within a heating system, is considered eligible.

(C) Design costs for a direct use geothermal system are eligible but only for the components of the system that would not normally be associated with a conventional hot water heating system. Tax credit applications should separate design costs for the geothermal and conventional components of the system.

(D) Costs for studies to characterize a geothermal resource are eligible so long as a final system using the geothermal resource is build and placed into operation.

(E) Costs incurred for the drilling of wells are eligible if such wells are actually used (whether for withdrawal or reinjection of water) within the final direct use geothermal system. The cost of exploratory wells that are not used within the final system are not eligible.

(F) In the case of a system that includes any well greater than 30 feet in depth, any drilling must be performed by a water well driller licensed by the Utah Division of Water Rights. All such wells, whether water is returned to the ground through a recharge well or used or discharged at the surface, require an approved water right certification issued by the Utah state engineer in the Division of Water

Rights[~~Department of Natural Resources~~]. Proof of driller qualifications and well right may be required on the tax credit application.

R362-2-13. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Hydroenergy.

(A) All eligible costs for hydroenergy systems must conform with Section R362-2-5, above. Hydroenergy systems must also meet the requirements in this Section.

(B) Eligible equipment costs for a hydroenergy system are limited to components up to the point of interconnection with AC service when powering a building, or up to the point of interconnection with the electrical grid for systems intended solely for the sale of power. The costs of the following hydroenergy system components are eligible for residential or commercial tax credits:

1. Turbine;
2. Generator;
3. Rectifier;
4. Inverter;
5. Penstocks;
6. Penstock ventilation;
7. Buck and boost transformer;
8. Valves;
9. Drains;
10. Diversion structures (with the exception of storage dams, fish facilities, and canals);
11. Screened intake device; and
12. Wiring and disconnects from generator to the inverter and from the inverter to the point of interconnection with the AC panel.

(C) The costs of additional components of hydroenergy systems are eligible for residential or commercial tax credits if the hydroenergy system is not grid connected and it provides electricity to a building or structure that is more than one quarter mile from a power distribution line operated by a retail electric utility provider. If these conditions are met, the following components are also eligible:

1. Batteries and necessary wiring and disconnects;
2. Battery temperature sensors;
3. Charge controller and necessary wiring and disconnects;
4. Electric load governor and necessary wiring and disconnects.

(D) In order to be eligible for a residential or commercial tax credit, a hydroenergy system must be certified for safety by either:

1. A professional electrician licensed by the State of Utah;
2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

R362-2-14. Investment Tax Credit, Eligible Costs for Commercial and Residential Systems, Biomass.

(A) All eligible costs for biomass systems must conform with Section R362-2-5, above. Biomass systems must also meet the requirements in this Section.

(B) Eligible costs for biomass systems do not include the cost of equipment or labor for the growing or harvesting of biomass materials, nor the storage of biomass materials at a location separate from the facility at which electricity or fuel will be produced. It also does not include the cost of transporting biomass materials to the facility where electricity or fuel will be produced.

(C) For biomass systems that produce fuels, eligible system costs include the costs of equipment to receive, handle, collect, condition, store, process, and convert biomass materials into fuels at the processing site.

(D) For biomass systems that use biomass as the sole fuel for producing electricity, the following are eligible equipment costs:

1. Systems for collecting and transporting methane from a digester or landfill;
2. On-site systems or facilities for collecting biomass that will be used in a digester or boiler;
3. Equipment necessary to prepare biomass for use as a fuel (e.g. driers, chippers);
4. Engines or turbines used to power generators;
5. Generators;
6. Inverters;
7. Wiring and disconnects from the generator to the inverter and from the inverter to the point of interconnection with the AC panel.

(F) Grid connected systems must meet all interconnection standards of the local electrical utility and must include with an application for a residential or commercial tax credit a copy of an interconnection or net metering agreement with the local electrical utility.

(G) In order to be eligible for residential or commercial tax credits, a biomass system that produces electricity must have been designed by either:

1. A professional engineer licensed in Utah; or
2. A person designated as a "Certified Energy Manager" by the Association of Energy Engineers.

Proof of designer qualification may be required on the tax credit application.

(H) In order to be eligible for a residential or commercial tax credit, a biomass system must be certified for safety by either:

1. A professional electrician licensed by the State of Utah;
2. A county or municipal building inspector licensed by the State of Utah.

Proof of this certification may be required with the tax credit application.

R362-2-15. Certification of Production Tax Credit Eligibility.

(A) Businesses seeking to claim production tax credits must first apply to OED[USEP] for certification that a commercial energy system has been installed, is a viable energy production system, and meets all other relevant requirements of Sections 59-7-614 and 59-10-1106. Such certification shall be sought within the first six months of the system being placed into commercial service.

(B) Eligibility for production tax credits is limited to commercial energy systems that are also any of the following:

1. Biomass systems;
2. Wind energy systems; or
3. Geothermal electricity systems.

In addition, the name plate capacity of any system seeking production tax credits must be 660 kilowatts or greater. Electricity produced by the system must either be used by the business seeking a production tax credit or sold in order to be eligible for credits.

(C) Businesses may request certification by providing the following to OED[USEP]:

1. A written request for certification of a commercial energy system for eligibility to receive a production tax credit;

2. Information about the company seeking certification, including legal name, type of legal entity, address, telephone number, and the name and telephone number of a contact person regarding the request;

3. A description of the commercial energy system including the type of facility, total nameplate capacity, the methods to be used to produce fuel or electricity, and a list of major fuel or electricity producing components. Systems generating electricity should also provide the number, manufacturer, and model number of generating turbines to be used;

4. Information on the location of the commercial energy system sufficient to permit site inspection by OED[USEP] staff. For wind farms this should include a map of the turbine layout. For geothermal systems this should include a map showing production and injection wells along with the location of the generating turbine or turbines;

5. Photographs of key and/or representative components of the commercial energy system;

6. Projected annual electricity production in kilowatt hours for the commercial energy system once it has entered commercial service;

7. The date on which the commercial energy system entered or is expected to enter commercial service.

(D) A business requesting certification for production tax credits must also include with its request information on ownership of the commercial energy system. If the business seeking tax credit certification leases the commercial energy system, it must provide with its request evidence that the lessor of the system has irrevocably elected not to claim production tax credits for the system.

(E) If a business plans to claim production tax credits for electricity that is used and not sold, it must install a separate metering system to measure the electricity production of the commercial energy system. Such metering should be unidirectional, tamperproof, and should measure only the electricity production attributable to the commercial energy system. The meter must also measure net electricity from the system (i.e. gross electricity from the generator minus any electricity used to operate the system itself).

(F) Upon receipt of a request for certification, OED[USEP] staff will assess whether the commercial energy system applying for production tax credit certification is a viable system and whether the system has been completely installed. OED[USEP] may request that a field inspection take place to verify information in the certification request and to ensure that the system conforms with the requirements of Section 59-7-614 and with this rule.

(G) OED[USEP] will respond to a request for certification of eligibility for production tax credits within sixty days of receipt. However, if incomplete information is received or permission for field inspection has not been granted after sixty days, OED[USEP] will have an additional 30 days after receipt of complete information and/or field inspection to respond positively or negatively to a certification request.

(H) Consistent with Title 63G, Chapter 4 (Administrative Procedures Act), upon its decision to grant or deny a certification request, OED[USEP] will inform the requesting company in writing of its decision. A copy of the written decision will also be provided to the Utah State Tax Commission in order to document the company's eligibility to claim production tax credits on future tax returns.

R362-2-16. Granting of Production Tax Credits.

(A) In order for a company to be granted production tax credits on a return filed under Chapter 59, Chapter 7, Corporate Franchise and Income Taxes, or Chapter 10, Individual Income Tax Act, OED[USEP] must validate the amount of tax credits the company may claim for each commercial energy system. In order to claims to be validated, the company must submit to OED[USEP] information regarding the following:

1. The date that the commercial energy system first entered commercial service;
2. The beginning and ending dates of the company's tax year;
3. The number of kilowatt hours produced by the system that were sold or used during the company's tax year and that were also used or sold within the system's production tax credit window.

All such information will be provided on a standard claim form created by OED[USEP].

(B) For purposes of validating the number of kilowatt hours sold, the company should also submit to OED[USEP] invoices or other information that documents that number of kilowatt hours of electricity sold.

(C) For purposes of validating the number of kilowatt hours produced and used, the company should submit monthly readings from the meter used to measure the net output of the commercial energy system. OED[USEP] will retain the right to site inspect the system and meter to validate that the readings provided are true and accurate.

(D) Once it has received a production tax credit claim from a company, OED[USEP] will make a determination as to:

1. Whether the information provided conforms with this rule and is complete;
2. Whether the number of kilowatt hours claimed appears to be feasible and accurate;
3. The number of kilowatts deemed to be valid;
4. The amount of tax credit that the company may claim on its corporate income tax return. This amount will equal 0.35 cents per each validated kilowatt hour of electricity used or sold during the company's tax year and within the systems production tax credit window.

(E) A company claiming a production tax credit must submit the information specified above to OED[USEP] on or before the date the tax return on which the credit is claimed is required to be filed with the State Tax Commission. Once OED[USEP] has received complete information necessary to validate a production tax credit claim, it will provide to the company a completed validation form (to be created by either OED[USEP] or the Utah State Tax Commission) within thirty days. The form will specify the validated number of kilowatt hours that are eligible for credit and the amount (in dollars) of production tax credits that the company may claim for the commercial energy system for that tax year.

(F) If OED[USEP] denies, in whole or in part, an application for a tax credit, the taxpayer applicant may, consistent with Section 63G-4-301 (Administrative Procedures Act), request that the decision be reviewed by the OED[USEP] manager. If, after review by the manager, the taxpayer desires a further appeal, he or she may request reconsideration of the decision by the director of OED, consistent with Section 63G-4-302.

(G) Information submitted by an applicant under this section for validating a production tax credit claim will be classified as protected information under UC 63G-2-305(1) and/or UC 63G-2-

305(2) when the applicant provides OED[USEP] with a written claim of confidentiality and a concise statement supporting the claim, consistent with UC 63G-2- 309(1)(a)(i). OED[USEP] shall provide the opportunity to make such a claim on the standard form referenced in subsection (A) above.

KEY: energy, renewable, tax credits, solar

Date of Enactment or Last Substantive Amendment: [~~April 6, 2009~~]2014

Notice of Continuation: August 30, 2012

Authorizing, and Implemented or Interpreted Law: 59-7-614; 59-10-1014; 59-10-1106

Insurance, Title and Escrow Commission **R592-11**

Title Insurance Producer Annual and Controlled Business Reports

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 38156

FILED: 11/25/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended to adopt legislative changes made in the 2013 General Legislative Session by H.B. 47, Insurance Law Amendments.

SUMMARY OF THE RULE OR CHANGE: Terminology referencing title agents and individual producers was changed in Subsection 31A-19a-209(1). New terminology is "individual title insurance producers" and "agency title insurance producers." Subsection 31A-23a-413 requires that in the Title Insurance Producer Annual Report, required to be filed by an agency title insurance producer and an individual title insurance producer, not designated by an agency, file with the department the financial condition, transactions and affairs of the agency title insurance producer or the individual title insurance producer, not designated by an agency. This rule change requires the agency title insurance producer, or individual title insurance producer not designated by a title insurance agency to indicate the name of the individual "qualifying licensee" pursuant to Subsection 31A-23a-204(1) (e). Additionally, this rule change requires the agency title insurance producer and individual title insurance producer not designated by an agency to provide in the Title Insurance Producer Annual Report the physical address maintained pursuant to Subsection 31A-23a-406(1)(g). Finally, the rule change requires agency title insurance producer and individual title insurance producers not designated by an agency title insurance producer to provide title income and expenses separate from escrow income and expenses.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-23a-413 and Subsection 31A-2-404(2)(a) and Subsection 31A-23a-503(8)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The changes to this rule will have no fiscal impact on the state or department's budget.
- ◆ LOCAL GOVERNMENTS: This rule deals solely with the relationship between the department and their title insurance licensees. It will have no impact on local governments.
- ◆ SMALL BUSINESSES: The agency title insurance producer, or individual title insurance producer not associated with an agency, will be required to file electronically with SIRCON, the name of the individual they designate to file the Title Insurance Producer Annual Report with the department. The cost to designate an individual with SIRCON will be \$3.75. Currently there are 158 licensed title agencies in Utah. The number of individual title insurance producers, not associated with an agency, is not known.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The changes to this rule would have no impact on title insurers or their customers. The changes strictly relate to title individuals and agencies.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The agency title insurance producer, or individual title insurance producer not associated with an agency, will be required to file electronically with SIRCON, the name of the individual they designate to file the Title Insurance Producer Annual Report with the department. The cost to designate an individual with SIRCON will be \$3.75. Currently, there are 158 licensed title agencies in Utah. The number of individual title insurance producers, not associated with an agency, is not known.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes to this rule will have insignificant fiscal impact on Utah businesses.

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

INSURANCE
TITLE AND ESCROW COMMISSION
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 01/14/2014

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 01/13/2014 09:00 AM, Senate East Bldg, 420 N State St, Copper Room, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2014

AUTHORIZED BY: Todd Kiser, Commissioner

R592. Insurance, Title and Escrow Commission.
R592-11. Title Insurance Producer Annual and Controlled Business Reports.

R592-11-1. Authority.

- This rule is promulgated pursuant to:
- (1) Section 31A-2-404(2)(a), which requires the Title and Escrow Commission (Commission) to make rules related to title insurance;
 - (2) Section 31A-23a-413, which requires the annual filing of a report by each title insurance producer, as defined in R592-11-3, containing a verified statement of the producer's financial condition, transactions, and affairs; and
 - (3) Subsection 31A-23a-503(8), which requires the annual filing of a controlled business report.

R592-11-2. Purpose and Scope.

- (1) The purpose of this rule is to establish the form and filing deadline for the Title Insurance Producer Annual Report and Controlled Business Report required by Section 31A-23a-413 and Subsection 31A-23a-503(8)(a).
- (2) This rule applies to all title insurance producers as defined in R592-11-3.

[R592-11-3. Definition.

~~For the purpose of this rule the Commission adopts the definitions as set forth in Sections 31A-1-301 and 31A-2-402 and the following:~~

- ~~(1) "Title insurance producer" includes:~~
 - ~~(a) a title insurance agency as defined in 31A-1-301(6);~~
 - ~~(b) an individual title producer not designated to a title insurance agency; and~~
 - ~~(c) an attorney licensed to practice law in Utah who is also an individual title producer not designated to a title insurance agency.~~

[R592-11-[4]3. Title Insurance Producer Annual Report.

- (1) The following shall file a Title Insurance Producer Annual Report containing the information shown in Subsection R592-11-4(2)
 - (a) an agency [F]title insurance producer[s];
 - (b) an individual title insurance producer not designated to an agency title insurance producer; and
 - (c) an attorney licensed to practice law in Utah, who is also an individual title insurance producer not designated to a title insurance agency[-, as defined in R592-11-3, shall file a Title Insurance Producer Annual Report containing the information shown in subsection 2-below].
- (2) A Title Insurance Producer Annual Report shall consist of:

(a) a balance sheet and an income and expense statement prepared and presented in conformity with generally accepted accounting principles;

(i) title premium, including endorsement income, shall be reported separately from the escrow income;

(b) the name and address of each financial institution where a title or escrow trust account is maintained;

(c) ~~[unless the producer is an attorney exempted under 31A-23a-204(8),]~~ proof of financial protection that complies with Subsection 31A-23a-204(2) shall consist[ing] of one or more of the following:

(i) a copy of the declarations page of a fidelity bond;

(ii) a copy of the declarations page of a professional liability insurance policy; or

(iii) a copy of the commissioner's approval of equivalent financial protection; and approved by the commissioner;

(d) the name, address, and percentage of ownership of each owner[-]; and

(e) the name of the individual title insurance producer designated as the "qualifying licensee," as provided in 31A-23a-204.

(3) Subsection R592-11-4-(2)(c) does not apply to an attorney exempted under 31A-23a-204(8).

(4) [A title insurance producer, as defined in R592-11-3;] Agency title insurance producers, individual title insurance producers not designated to an agency title insurance producer and an attorney licensed to practice law in Utah, who is also an individual title insurance producer, not designated to a title insurance agency, shall file a Title Insurance Producer Annual Report not later than April 30 of each year.

~~[(4)](5)~~ The Title Insurance Producer Annual Report period shall be the preceding calendar year.

~~[(5)](6)~~ A Title Insurance Producer Annual Report will be considered protected data if the producer submitting the report requests classification as a protected record in accordance with Sections 63G-2-305 and 63G-2-309.

R592-11-[5]4. Controlled Business Report.

(1) The following shall file an annual Controlled Business Report not later than April 30 of each year:

(a) an agency title insurance producer;

(b) an individual title insurance producer not designated to an agency title insurance producer; and

(c) an attorney licensed to practice law in Utah, who is also an individual title insurance producer not designated to a title insurance agency. ~~[A title insurance producer, as defined in R592-11-3, shall file an annual Controlled Business Report not later than April 30 of each year].~~

(2) The Controlled Business Report period shall be the preceding calendar year and shall contain the information required in Subsection 31A-23a-503(8)(a).

(3) A Controlled Business Report is a public record upon filing.

R592-11-[6]5. Electronic Filing of Title Insurance Producer Annual Report and Controlled Business Report.

(1) The Title Insurance Producer Annual Report and the Controlled Business Report shall be submitted together electronically via email to market.uid@utah.gov.

(2) The Title Insurance Producer Annual Report and the Controlled Business Report shall be submitted not later than April 30 of each year as attachments to the Title Insurance Agency Annual Reports Transmittal Form.

(3) The following report forms, which are available on the department's website, shall be used to submit the Title Insurance Producer Annual Report and the Controlled Business Report:

(a) Title Insurance Producer Annual and Controlled Business Reports Transmittal form; and

(b) Controlled Business Report form.

(4) Actual copies of the forms may be used or may be adapted to a particular word processing system, however, if adapted, the content, size, font, and format shall be similar.

R592-11-[7]6. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R592-11-[8]7. Enforcement Date.

The commissioner will begin enforcing this rule 5 days from the rule's effective date.

R592-11-[9]8. Severability.

If any provision or clause of this rule or its application to any person or situation is held 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: title insurance

Date of Enactment or Last Substantive Amendment: ~~[May 19, 2009]~~ **2014**

Notice of Continuation: **June 15, 2011**

Authorizing, and Implemented or Interpreted Law: **31A-23-313; 31A-23-403**

Workforce Services, Employment Development **R986-100-117** Disqualification For Fraud (Intentional Program Violations or IPVs)

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38158

FILED: 11/27/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to align rules with child care.

SUMMARY OF THE RULE OR CHANGE: Child care contemplated a fraud overpayment for child care providers. By including this in the IPV section, it makes the language consistent throughout the rules for similar conduct.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-3-310(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** This applies to federally-funded programs so there are no costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs or savings to local government.
- ◆ **SMALL BUSINESSES:** There will be no costs to small businesses to comply with these changes because this is a federally-funded program. Child care providers will be required to repay any sums received from the Department the provider was not eligible to receive so there is a cost for committing fraud against the Department.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs to persons other than small businesses, businesses or local government entities to comply with these changes because there are no costs or fees associated with these proposed changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this rule change because there are no costs or fees associated with these proposed changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 WORKFORCE SERVICES
 EMPLOYMENT DEVELOPMENT
 140 E 300 S
 SALT LAKE CITY, UT 84111-2333
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2014

AUTHORIZED BY: Jon Pierpont, Executive Director

R986. Workforce Services, Employment Development.

R986-100. Employment Support Programs.

R986-100-117. Disqualification For Fraud (Intentional Program Violations or IPV's).

(1) Any person, including a child care provider, who is at fault in obtaining or attempting to obtain, an overpayment of assistance, as defined in Section 35A-3-602 from any of the programs listed in R986-100-102 or otherwise intentionally breaches any program rule either personally or through a representative is guilty of an intentional program violation (IPV). Acts which constitute an IPV include but are not limited to:

- (a) knowingly making false or misleading statements;
- (b) misrepresenting, concealing, or withholding facts or information;
- (c) posing as someone else;
- (d) knowingly taking or accepting a public assistance payment the party knew or should have known they were not eligible to receive or not reporting the receipt of a public assistance payment the individual knew or should have known they were not eligible to receive;
- (e) not reporting a material change as required by and in accordance with these rules;
- (f) committing an act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity; or
- (g) accessing TANF public assistance funds through an electronic benefit transfer, including through an automated teller machine or point-of-sale device, in an establishment in the state that;
 - (i) exclusively or primarily sells intoxicating liquor,
 - (ii) allows gambling or gaming, or
 - (iii) provides adult-oriented entertainment where performers disrobe or perform unclothed.

(2) An IPV occurs when a person commits any of the above acts in an attempt to obtain, maintain, increase or prevent the decrease or termination of any public assistance payment(s).

(3) When the Department determines or receives notice from a court that fraud or an IPV has occurred, the client is disqualified from receiving assistance of the same type for the time period as set forth in rule, statute or federal regulation.

(4) Disqualifications run concurrently.

(5) All income and assets of a person who has been disqualified from assistance for an IPV continue to be counted and affect the eligibility and assistance amount of the household assistance unit in which the person resides.

(6) If an individual has been disqualified in another state, the disqualification period for the IPV in that state will apply in Utah provided the act which resulted in the disqualification would have resulted in a disqualification had it occurred in Utah. If the individual has been disqualified in another state for an act which would have led to disqualification had it occurred in Utah and is found to have committed an IPV in Utah, the prior periods of disqualification in any other state count toward determining the length of disqualification in Utah.

(7) The client will be notified that a disqualification period has been determined. The disqualification period shall begin

no later than the second month which follows the date the client receives written notice of the disqualification and continues in consecutive months until the disqualification period has expired.

(8) Nothing in these rules is intended to limit or prevent a criminal prosecution for fraud based on the same facts used to determine the IPV.

KEY: employment support procedures

Date of Enactment or Last Substantive Amendment:
[September 10, 2013]2014

Notice of Continuation: September 8, 2010

Authorizing, and Implemented or Interpreted Law: 35A-3-101 et seq.; 35A-3-301 et seq.; 35A-3-401 et seq.

**Workforce Services, Employment
Development
R986-700
Child Care Assistance**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 38159

FILED: 11/27/2013

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to ensure safe child care throughout all program types.

SUMMARY OF THE RULE OR CHANGE: The Department will now authorize unlicensed child care only where the provider maintains a safe environment including taking first aid and CPR. This proposed amendment also tightens up the collection and disqualification procedure for providers who fail to repay overpayments and prohibits all types of owners of child care facilities from getting a subsidy for tending their own children. It also allows providers with certain types of class A misdemeanors over 10 years old to be approved providers.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-3-310(3)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This applies to federally-funded programs so there are no costs or savings to the state budget.

♦ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs or savings to local government.

♦ **SMALL BUSINESSES:** There will be no costs to small businesses to comply with these changes because this is a federally-funded program. Child care providers will be required to repay any sums received from the Department the

provider was not eligible to receive so there is a cost for committing fraud against the Department.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs to persons other than small businesses, businesses or local government entities to comply with these changes because there are no costs or fees associated with these proposed changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with this proposed amendment because there are no costs or fees associated with these proposed changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

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

WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT

140 E 300 S

SALT LAKE CITY, UT 84111-2333

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 01/14/2014

THIS RULE MAY BECOME EFFECTIVE ON: 01/21/2014

AUTHORIZED BY: Jon Pierpont, Executive Director

R986. Workforce Services, Employment Development.

R986-700. Child Care Assistance.

R986-700-702. General Provisions.

(1) CC is provided to support employment.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child by court order and both parents are absent from the home. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

- (a) children under the age of 13; and
- (b) children up to the age of 18 years if the child;
 - (i) meets the requirements of rule R986-700-717, and/or
 - (ii) is under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" is defined in rule R986-700-717.

(6) The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided for an eligible provider and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) CC will not be paid to a client for the care of his or her own child(ren) unless the client is working for an approved child care center. This includes clients who have an ownership interest in the child care center. CC will not be paid to a client for the care of his or her own child(ren) if the client is a stockholder, officer, director, partner, manager or members of a corporation, partnership, limited liability partnership or company or similar legal entity.

(10) Neither the Department nor the state of Utah is liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(11) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(12) Once eligibility for CC has been established, eligibility must be reviewed at least once every six months. The review is not complete until the client has completed, signed and returned all necessary review forms to the local office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department will reduce or terminate CC even if the certification period has not expired.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:

- (a) licensed and accredited providers:
 - (i) licensed homes;
 - (ii) licensed family group homes; and
 - (iii) licensed child care centers.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers. Beginning March 1, 2014 at least one person who is trained in first aid and infant/child CPR must be with the children at all times including when the children are being transported in a vehicle. Centers approved to receive CC subsidies as of March 1, 2014 will be allowed 30 days from the date of notification from the Department of Health, Child Care Licensing (CCL) to submit a complete application together with certification of completion of these requirements; or

(ii) related to at least one of the children for whom CC is provided. Related under this paragraph means: siblings who are at least 18 years of age and who live in a different residence than the parent, grandparents, step grandparents, aunts, step aunts, uncles, step uncles or people of prior generations of grandparents, aunts, or uncles, as designated by the prefix grand or, great, or persons who meet any of the above relationships even if the marriage has been terminated. Beginning October 1, 2014 this category of child care provider will be replaced with DWS Family, Friend and Neighbor approved providers (FFN). The requirements for FFN approval are provided in subsection (7) of this section and in Department policy.

(c) homes with a Residential Certificate obtained from [the Bureau of Licensing]CCL.

(2) The Department may, on a case by case basis, grant an exception and pay for CC when an eligible provider is not available:

(a) within a reasonable distance from the client's home. A reasonable distance, for the purpose of this exception only, will be determined by the transportation situation of the parent and child care availability in the community where the parent resides;

(b) because a child in the home has special needs which cannot be otherwise accommodated; or

(c) which will accommodate the hours when the client needs child care.

(d) However, the child's sibling, living in the same home, can never be approved even under the exceptions in this subsection.

(3) If an eligible provider is available, an exception may be granted in the event of unusual or extraordinary circumstances but only with the approval of a Department supervisor.

(4) If an exception is granted under paragraph (2) or (3) above, the exception will be reviewed at each of the client's review dates to determine if an exception is still appropriate.

(5) License exempt providers must register with the Department and agree to maintain minimal health and safety criteria by signing a certification before payment to the client can be approved. The minimum criteria are that:

(a) the provider be at least 18 years of age and be legally able to work in the United States;

(b) the provider's home is clean and safe from hazardous items which could cause injury to a child. This applies to outdoor areas as well;

(c) there are working smoke detectors where children are provided care;

(d) the provider and all individuals 12 years old or older living in the home where care is provided submit to and pass a background check as provided in R986-700-751 et seq.;

(e) there is a telephone in operating condition with a list of emergency numbers;

(f) food will be provided to the child in care. Food supplies will be maintained to prevent spoilage or contamination;

(g) the child in care will be immunized as required for children in licensed day care and;

(h) good hand washing practices will be maintained to discourage infection and contamination.

(6) The following providers are not eligible for receipt of a CC payment:

(a) a member of a household assistance unit who is receiving one or more of the following assistance payments: FEP, FEPTP, diversion assistance or food stamps for any child in that household assistance unit. The person may, however, be paid as a provider for a child in a different household assistance unit;

(b) a sibling of the child living in the home;

(c) household members whose income must be counted in determining eligibility for CC;

(d) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(e) illegal aliens;

(f) persons under age 18;

(g) a provider providing care for the child in another state;

(h) a provider who has committed ~~[fraud]~~an IPV as a provider, or as a recipient of any funds from the Department, as determined by the Department or by a court. The disqualification for an IPV will remain in effect until the IPV disqualification period has run and the provider is otherwise eligible including meeting the requirements of background checks under R986-700-753;

(i) any provider disqualified under R986-700-718;

(j) a provider who does not cooperate with a Department investigation of a potential overpayment;

(k) a provider living in the same home as the client unless one of the exceptions in subsection (2) of this section are met~~[-];~~or

~~(l) a provider whose child care subsidies are being taken pursuant to an IRS levy or garnishment.~~

~~(7) FFN providers, as provided in subsection (1)(b), will not be approved for a CC subsidy payment unless all of the following requirements have been successfully completed:~~

~~(a) complete, sign and submit an application to the CCL;~~

~~(b) provide a copy of a certificate of completion of New Provider orientation and agree to comply with Department requirements and policy as explained in the orientation;~~

~~(c) provide a copy of a fire clearance from the State Fire Marshal or designated local fire authority.~~

~~(d) pass a home inspection as provided in Department policy.~~

~~(e) complete an infant/child CPR training,~~

~~(f) complete first aid training and,~~

~~(g) pass a background check as required in R986-700-751 et seq.~~

~~(8) CC providers that have been approved as a license exempt provider, or apply to be an FFN approved provider will be given a grace period to complete the requirements in subsection (7) of this section as follows:~~

~~(a) the provider or applicant will be allowed up to 60 days from notification from CCL and no later than September 30, 2014 to submit a complete application to CCL together with a certification of completion of infant/child CPR training and first aid training;~~

~~(b) all requirements in subsection (7) of this section must be completed by August 31, 2014 to prevent a delay in future benefits and no later than September 30, 2014;~~

~~(c) the provider will be denied if the requirements are not met within the due dates given. After the grace period expires, all providers will be required to obtain an FFN approval and meet all requirements before being approved to care for children receiving a Department subsidy payment;~~

~~(d) an approved FFN approved provider is authorized to provide care for a limited number of children or families as defined in Department policy.~~

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

(2) If the overpayment was because the client committed ~~[fraud]~~an IPV as defined in R986-100-117, including forging a provider's name on a two party CC check, the client will be responsible for repayment of the resulting overpayment and will be disqualified from further receipt of CC:

(a) for a period of one year for the first ~~[occurrence of fraud]~~IPV;

(b) for a period of two years for the second ~~[occurrence of fraud]~~IPV; and

(c) for life for the third ~~[occurrence of fraud]~~IPV.

(3) If the client was at fault in the creation of an overpayment for any reason other than ~~[fraud]~~an IPV as provided in paragraph (2) above, the client will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault overpayment.

(4) All CC overpayments must be repaid to the Department.

Overpayments may be deducted from ongoing CC payments for clients who are receiving CC. If the Department is at fault in the creation of an overpayment, the Department will deduct \$10 from each month's CC payment unless the client requests a larger amount.

(5) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

(6) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

R986-700-718. Provider Disqualification.

(1) A child care provider removing child care subsidy funds from a client's account by way of electronic benefit transfer (EBT) and interactive voice response (IVR), can only remove those funds from a client's account that are authorized by the Department for that provider. All providers receiving payment for child care services through an EBT may learn the exact amount authorized for that provider for each client by accessing the Department's Provider Payment Authorization website. Providers who remove more funds than authorized will be required to reimburse the Department for the excess funds and will be disqualified from receipt of further CC subsidy funds as follows;

(a) if the provider has never removed unauthorized CC subsidy funds before, the Department will send a notice of agency action [~~demand letter~~] to the provider's last known address informing the provider of the unauthorized access and establishing an overpayment in the amount of the excess funds. If the provider repays the overpayment within six months of the date of the [~~demand letter~~] notice of agency action, no further action will be taken on that overpayment[~~;~~]. If the provider does not repay the overpayment in full within six months of the notice of agency action the overpayment will become an IPV and the provider will be disqualified as a provider for one year.

(b) if the provider removes funds in excess of those authorized by the Department a subsequent [~~second~~] time, there is no outstanding balance on any previous provider overpayment and the provider has never been disqualified, the subsequent overpayment is treated as a first overpayment. The provider will be given six months from the notice of agency action to repay the overpayment under these circumstances. If the subsequent overpayment is not repaid in full within six months of the notice of agency action, the provider will be disqualified for one year. [~~and the provider repaid the previous overpayment or is making a good faith effort to repay the overpayment, a second demand letter will be sent to the provider's last known address. The second letter will establish an overpayment in the amount of the excess funds removed and inform the provider that any further unauthorized access will result in disqualification. If the provider removes unauthorized funds and has not repaid the first overpayment, or is not making a good faith effort to repay the first overpayment to the Department, no second demand letter will be sent and the provider will be disqualified for a period of one year from the date the Department issues its letter, or in the case of an appeal, from the date the ALJ issues his or her determination. A good faith effort to repay the overpayment means the provider is repaying at least 10% of the overpayment due each month.~~] If the provider was previously disqualified, the provider will be given 30 days from the notice of agency action to repay all outstanding overpayments in full, including all prior and subsequent overpayments. If the overpayment/s is/are not paid within 30 days, the provider will be disqualified for a period of two years. If the provider has never been disqualified but has a balance due on a previous overpayment, the provider will be given six months to repay the overpayment but may be disqualified if the first overpayment is not paid in time.

[~~———— (e) if a child care provider removes unauthorized funds a third time, or a second time without repayment of the first overpayment as provided in paragraph (1)(b) of this subsection, the provider will be disqualified and is ineligible for receipt of further CC subsidy funds for a period of one year from the date the Department issues its letter, or in the case of an appeal, from the date the ALJ issues his or her determination,~~

~~———— (d) a CC provider previously disqualified for one year from receipt of CC subsidy funds due to unauthorized removal of funds in paragraph (1)(c) of this subsection, will be disqualified for a period of two years if the provider removes unauthorized funds again. Warning letters under paragraphs (a) and (b) of this subsection will not be sent if a provider was previously disqualified for receipt of CC subsidy funds,~~

] (e) a CC provider that removes unauthorized funds after having been disqualified for a two year period due to unauthorized removal of funds in paragraph (1)(b) of this

subsection will be given 30 days from the notice of agency action to repay all outstanding overpayments in full. If the overpayment/s is not paid in full within 30 days, the provider will be permanently disqualified. [~~a CC provider previously disqualified for a two year period due to unauthorized removal of funds in paragraph (1)(d) of this subsection will be permanently disqualified if the provider removes unauthorized funds again. Warning letters under paragraphs (a) and (b) of this subsection will not be sent if a provider was previously disqualified for receipt of CC subsidy funds.~~]

(d) each time a provider removes unauthorized funds is a separate offense even if the removal occurs on the same day. If, for instance, a provider removed funds from three separate clients on the same day, it would be three offenses. Likewise, if the provider removed unauthorized funds from the same client three times in different months, it would be three offenses.

(2) Even if CC funds are authorized under this section, a CC provider cannot remove, accept and/or retain funds for any month during which no CC services were provided. If authorized or unauthorized subsidy funds were accepted from a client or removed from a client's account as provided in this section but no CC services were provided during the month, the provider will be required to reimburse the Department for the excess funds and will be disqualified from receipt of further CC subsidy funds in the same manner as provided in subsection (1) of this section.

(3) CC providers disqualified under subsections (1) or (2) of this section will be ineligible for receipt of quality grants awarded by the Department during the period of disqualification.

(4) A CC provider overpayment not paid in full within [~~six months~~] the time limits specified in subsection (1) of this section will be referred to collection and will be collected in the same manner as all public assistance overpayments. Payment of provider overpayments must be made to the Department and not to the client.

(5) A CC provider may appeal an overpayment or disqualification as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of [~~letter~~] the notice of agency action establishing the overpayment or disqualification. A provider who has been found ineligible may continue to receive CC subsidy funds pending appeal until a decision is issued by the ALJ. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ. If the provider fails to file an appeal within 30 days of the date of the notice of agency action and the Department issues a default decision, and the provider files a request to set aside the default, CC subsidy funds will not continue unless or until the default is set aside by the ALJ. If the request to set aside the default is denied, the provider will be disqualified pending appeal of the denial to set aside the default unless the provider is within the six month or 30 day grace period allowed under subsection (1) of this section.

(6) A provider is ineligible for CC subsidy funds after a disqualification until all overpayments established in conjunction with the disqualification have been paid in full even if the disqualification period has ended.

(7) A provider that intentionally breaches any program rule as provided in R986-100-117, except as provided in subsection (1) of this section, or violates CC rule R986-700-706(2) through (5) or who assumes a client's identity in order to gain access to client

information or payment of Department funds will be disqualified for one year for the first offense, two years for the second offense and for life for the third offense.

(8) All disqualification periods run consecutively.

(9) A disqualification issued to a provider, including a child care center, under this subsection will follow both the provider, the principal provider, and any successor center or provider.

(a) A "successor" provider, including a child care center, that acquires the business or acquires substantially all of the assets of the provider or child care center. This includes a provider who changes from one status to another like a provider who was disqualified as a licensed family provider who then changes to be a license exempt provider.

(b) "Acquired" means to come into possession of, obtain control of, or obtain the right to use the assets of a business by any legal means including a gift, lease, repossession or purchase. For purposes of succession, a purchase through bankruptcy court proceedings where assets are being liquidated is not considered an acquisition, if the court places restrictions on the transfer of liabilities to the purchaser. It is not necessary to purchase the assets in order to have acquired the right to their use, nor is it necessary for the predecessor to have actually owned the assets for the successor to have acquired them. The right to the use of the asset is the determining factor.

(c) "Assets" are commonly defined to include any property, tangible or intangible, which has value. Assets may also include the acquisition of the name of the business, customers, accounts receivable, patent rights, goodwill, employees, or an agreement by the predecessor not to compete.

(d) "Substantially all" means acquisition of 90 percent or more of all of the predecessor's assets.

(f) A "principal" is the individual or individuals who were responsible for the day to day business of the child care center, provided that individual had an ownership interest in the center. An ownership interest includes a shareholder, director or officer of a corporation and a partner, member or manager of a limited liability partnership or company.

R986-700-753. Criminal Background Screening.

(1) Each client requesting approval of a covered child care provider must submit to the Department a form, which will include a waiver and certification, completed and signed by the child care provider before the client's application for child care assistance can be approved. A fingerprint card and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted unless an exception is granted under subsection (3) of this section. Normally, child care subsidy will not be delayed pending completion of the background check. Beginning October 1, 2014 no child care subsidy will be paid until the background check has been completed where required by law.

(2) The provider must state in writing, based upon the provider's best information and belief, that no covered person, including the provider's own children, has ever been convicted of a felony, misdemeanor or had a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, but is not certain it will result

in a disqualification, the Department will obtain information from the provider to assess the threat to children. If the provider knowingly makes false representations or material omissions to the Department regarding a covered individual's record, the provider will be responsible for repayment to the Department of the child care subsidy paid by the Department prior to the background check. If a provider signs an attestation, a disqualification based on a covered individual who no longer lives in the home can be cured under certain conditions.

(3) Fingerprint cards are not required if the Department is reasonably satisfied that the covered individual has resided in Utah for the last five years. A fingerprint card may be required, even if the individual has resided in Utah for the last five years, if requested by the Department.

(4) The Department will contract with the Department of Health (DOH) to perform a criminal background screening, which includes a review of the Bureau of Criminal Identification, (BCI) database maintained by the Department of Public Safety pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee are submitted, the Department or DOH will forward the fingerprint card, waiver and fee to the Utah Department of Public Safety for submission to the FBI for a national criminal history record check.

(5) If the Department takes an action adverse to any covered individual based upon the background screening, the Department will send a written decision to the client explaining the action and the right of appeal. DOH will send a denial letter to the provider and the covered individual.

R986-700-754. Exclusion from Child Care Due to Criminal Convictions.

(1) As required by Utah Code Subsection 35A-3-310.5(4), if the criminal conviction was a felony, or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide child care or reside in a home where child care is provided.

(2) As allowed by Utah Code Subsection 35A-3-310.5(5), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing child care:

(a) any class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, when the individual had a child in the car at the time of the offense;

(c) any class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for 76-4-401, Enticing a Minor;

(g) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(h) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(i) any class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code except 76-8-1201 through 1207, Public Assistance Fraud; and 76-8-1301 False statements regarding unemployment compensation;

(k) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for:

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

(l) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

(iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

(iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

(v) 76-10-1301 to 1314, Prostitution; and

(vi) 76-10-2301, Contributing to the Delinquency of a

Minor and

(m) any class A misdemeanor where the conviction occurred more than ten years ago and the offense would be an excludable offense listed in this section.

(3) The Executive Director or designee may consider and approve individual cases where a covered individual will be allowed to provide child care who would otherwise be excluded by this section.

(4) The Department will rely on the criminal background screening as conclusive evidence of the conviction and the Department may revoke or deny approval for a provider based on that evidence.

(5) If a covered individual causes a provider to be disqualified as a provider based upon the criminal background screening and the covered individual disagrees with the information provided by BCI, the covered individual may challenge the information by contacting BCI directly. If the information causing the disqualification came from a Utah court, the covered individual must contact that court or seek an expungement as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(6) All child care providers must report all felony and misdemeanor arrests, charges or convictions of covered individuals to DOH within ten calendar days of the arrest, notice of the charge, or conviction. All child care providers must also report a person aged 12 or older moving into the home where child care is provided within ten calendar days of that person moving in. A release for a background check must also be provided for that person within the time requested by the Department or DOH.

KEY: child care

Date of Enactment or Last Substantive Amendment: [~~January 2, 2013~~2014]

Notice of Continuation: September 8, 2010

Authorizing, and Implemented or Interpreted Law: 35A-3-310

End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to help the agency determine, and to notify the public, that the administrative rule in force is still authorized by statute and necessary. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (REVIEW)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **REVIEW**. By filing a **REVIEW**, the agency indicates that the rule is still necessary.

A **REVIEW** is not followed by the rule text. The rule text that is being continued may be found in the online edition of the *Utah Administrative Code* available at <http://www.rules.utah.gov/publicat/code.htm>. The rule text may also be inspected at the agency or the Division of Administrative Rules. **REVIEWS** are effective upon filing.

REVIEWS are governed by Section 63G-3-305.

Governor, Economic Development **R357-4** Government Procurement Private Proposal Program

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38152
FILED: 11/19/2013

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 administrative rule is made pursuant to authority granted under Subsections 63M-1-2603(2)(c), 63M-1-2605(5), 63M-1-2606(1)(b), 63M-1-2608(1)(h)(i), 63M-1-2609(3)(f), and 63M-1-2610(3)(i).

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 years, the agency has received no written comments on the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is the main rule outlining the agency's method of detailing the portions of an initial proposal that remain protected after the chief procurement officer initiates a procurement process. Therefore, this rule should be continued.

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

GOVERNOR
ECONOMIC DEVELOPMENT
60 E SOUTH TEMPLE 3RD FLR
SALT LAKE CITY, UT 84111
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jeffrey Van Hulten by phone at 801-538-8694, by FAX at 801-538-8888, or by Internet E-mail at jeffreyvan@utah.gov

AUTHORIZED BY: Spencer Eccles, Executive Director

EFFECTIVE: 11/19/2013

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-9**

Federally Qualified Health Centers

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 38160
FILED: 12/02/2013

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 26-1-5 grants the Department the authority to adopt, amend, or rescind rules as

necessary to implement the Medicaid program. In addition, Section 26-18-3 requires the Department to implement the Medicaid program through administrative rules.

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 did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it establishes Medicaid payment methodologies for federally qualified health centers and rural health clinics.

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: 12/02/2013

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-58
Children's Organ Transplants**

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

DAR FILE NO.: 38161
FILED: 12/02/2013

**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 26-1-5 grants the Department the authority to adopt, amend, or rescind rules as necessary to implement the Medicaid program. In addition,

Title 63G, Chapter 3, allows for the adoption and implementation of administrative rules.

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 did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it determines eligibility for awarding financial assistance to children in need of organ transplants.

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: 12/02/2013

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-99
Chiropractic Services**

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

DAR FILE NO.: 38162
FILED: 12/02/2013

**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 26-18-3 requires the Department to implement the Medicaid program through administrative rules. In addition, 42 CFR 410.21 establishes limitations on chiropractic services, and 42 CFR 433.56 outlines classes of health care services and providers.

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 did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Department will continue this rule because it sets forth eligibility and program access requirements, and specifies reimbursement and service coverage for Medicaid recipients and providers.

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: 12/02/2013

Natural Resources, Wildlife Resources
R657-61
Valuation of Real Property Interests for
Purposes of Acquisition or Disposal

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION

DAR FILE NO.: 38148

FILED: 11/18/2013

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

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 promulgated pursuant to authority granted to the Wildlife Board in Sections 63-34-21, 23-14-18, and 23-21-1.

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 R657-6 were received since 11/21/2008 when the rule was created.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-61 defines the process by which the value of real property is determined for purposes of acquisition or disposal by the Division. Therefore, this rule should be continued.

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: Gregory Sheehan, Director

EFFECTIVE: 11/18/2013

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their administrative 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 make a rule effective no fewer than seven calendar days after the close of the public comment period, nor more than 120 days after the publication date. In the case of **CHANGES IN PROPOSED RULES** with no designated comment period, the law permits an agency to make a rule effective on any date including or after the thirtieth day after the rule's publication date, but not more than 120 days after the 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.

Agencies have notified the Division of Administrative Rules that the rules listed below have been made effective.

NOTICES OF EFFECTIVE DATE are governed by Subsection 63G-3-301(12), Section 63G-3-303, and Sections R15-4-5a and R15-4-5b.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal & Reenact
REP = Repeal

Alcoholic Beverage Control

Administration

No. 38028 (AMD): R81-4A-7. Sale and Purchase of Alcoholic Beverages
Published: 10/15/2013
Effective: 11/26/2013

No. 38029 (AMD): R81-4C-7. Sale and Purchase of Alcoholic Beverages
Published: 10/15/2013
Effective: 11/26/2013

No. 38027 (AMD): R81-10C-6. Sale and Purchase of Beer
Published: 10/15/2013
Effective: 11/26/2013

Commerce

Occupational and Professional Licensing

No. 38020 (AMD): R156-1. General Rule of the Division of Occupational and Professional Licensing
Published: 10/15/2013
Effective: 11/21/2013

No. 38031 (AMD): R156-37f-102. Definitions
Published: 10/15/2013
Effective: 11/21/2013

No. 38021 (AMD): R156-46b-202. Informal Adjudicative Proceedings
Published: 10/15/2013
Effective: 11/21/2013

No. 38017 (AMD): R156-60d. Substance Use Disorder Counselor Act Rule
Published: 10/15/2013
Effective: 11/21/2013

Real Estate

No. 37949 (AMD): R162-2c-204. License Renewal, Reinstatement, and Reapplication
Published: 09/15/2013
Effective: 11/20/2013

Human Services

Administration, Administrative Services, Licensing

No. 37900 (AMD): R501-7. Child Placing Adoption Agencies
Published: 09/01/2013
Effective: 11/27/2013

Juvenile Justice Services

No. 37986 (REP): R547-1. Residential and Nonresidential, Non-Secure Community Program Standards
Published: 10/01/2013
Effective: 11/27/2013

Insurance

Administration

No. 37960 (NEW): R590-267. Personal Injury Protection Relative Value Study Rule
Published: 09/15/2013
Effective: 11/18/2013

Labor Commission

Industrial Accidents

No. 38036 (R&R): R612-300. Workers' Compensation Rules - Medical Care
Published: 10/15/2013
Effective: 11/22/2013

Public Safety
Driver License
No. 38022 (R&R): R708-43. YES or NO Notification
Published: 10/15/2013
Effective: 11/21/2013

End of the Notices of Rule Effective Dates Section

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2013 through December 02, 2013. 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 the Division of Administrative Rules (801-538-3764).

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 (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

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R17-6	Records Storage and Disposal at the State Records Center	37654	5YR	05/17/2013	2013-12/49
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R17-7	Archival Records Care and Access at the State Archives	37658	AMD	08/15/2013	2013-12/8
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 R70-330 Raw Milk for Retail 37992 AMD 11/13/2013 2013-19/4
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R81-9-1	Application	37377	AMD	04/30/2013	2013-6/12
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R162-2g	Real Estate Appraiser Licensing and Certification Administrative Rules	36973	AMD	01/02/2013	2012-22/19
R162-2g	Real Estate Appraiser Licensing and Certification Administrative Rules	37750	AMD	08/21/2013	2013-14/28
R162-2g	Real Estate Appraiser Licensing and Certification Administrative Rules	37865	AMD	10/09/2013	2013-16/4
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ABBREVIATIONS

AMD = Amendment (Proposed Rule)	LNR = Legislative Nonreauthorization
CPR = Change in Proposed Rule	NEW = New Rule (Proposed Rule)
EMR = 120-Day (Emergency) Rule	NSC = Nonsubstantive Rule Change
EXD = Expired Rule	R&R = Repeal and Reenact (Proposed Rule)
EXP = Expedited Rule	REP = Repeal (Proposed Rule)
EXT = Five-Year Review Extension	5YR = Five-Year Notice of Review and Statement of Continuation
GEX = Governor's Extension	

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>401 Certification</u>					
Environmental Quality, Water Quality	37362	R317-15	NEW	08/19/2013	2013-6/44
	37362	R317-15	CPR	08/19/2013	2013-14/101
<u>access</u>					
Environmental Quality, Drinking Water	37732	R309-545	NSC	07/09/2013	Not Printed
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	36554	R305-6	CPR	01/31/2013	2013-1/32	
	36553	R305-7	NEW	01/31/2013	2012-16/45	
	36553	R305-7	CPR	01/31/2013	2013-1/32	
<u>adjudicative proceedings</u>						
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Environmental Quality, Environmental Response and Remediation	37513	R311-500	NSC	04/29/2013	Not Printed	
Environmental Quality, Radiation Control	37192	R313-17	AMD	03/19/2013	2013-3/40	
Environmental Quality, Solid and Hazardous Waste	37314	R315-12	AMD	04/25/2013	2013-5/101	
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	37865	R162-2g	AMD	10/09/2013	2013-16/4	
	37950	R162-2g-307d	AMD	10/23/2013	2013-18/25	
Crime Victim Reparations, Administration	37063	R270-2	AMD	01/07/2013	2012-23/33	
	37167	R270-2	NSC	01/30/2013	Not Printed	
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	36554	R305-6	CPR	01/31/2013	2013-1/32	
	36553	R305-7	NEW	01/31/2013	2012-16/45	
	36553	R305-7	CPR	01/31/2013	2013-1/32	
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	37858	R309-300	AMD	11/13/2013	2013-15/30	
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	37574	R477-15	AMD	07/01/2013	2013-10/180	
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	38112	R602-5	5YR	11/08/2013	2013-23/65	
	38108	R602-6	5YR	11/08/2013	2013-23/65	
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	37139	R612-11	REP	02/25/2013	2013-2/54	
	37140	R612-12	REP	02/25/2013	2013-2/55	
	37141	R612-13	REP	02/25/2013	2013-2/57	
	37124	R612-100	NEW	02/25/2013	2013-2/58	
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	37125	R612-200	NEW	02/25/2013	2013-2/62
	37622	R612-200-1	AMD	07/08/2013	2013-11/34
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	37237	R307-355-5	NSC	02/15/2013	Not Printed
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	37702	R307-101-2	NSC	07/09/2013	Not Printed
	37582	R307-101-3	AMD	08/08/2013	2013-11/24

37261	R307-102	5YR	02/06/2013	2013-5/191
37902	R307-107	5YR	08/08/2013	2013-17/49
37903	R307-110-10	AMD	11/07/2013	2013-17/29
37904	R307-110-36	AMD	11/07/2013	2013-17/30
37260	R307-115	5YR	02/06/2013	2013-5/192
37901	R307-123	5YR	08/08/2013	2013-17/50
37259	R307-170	5YR	02/06/2013	2013-5/192
36481	R307-208	NEW	04/10/2013	2012-15/12
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36481	R307-208	CPR	04/10/2013	2013-5/184
37703	R307-214	AMD	09/12/2013	2013-13/60
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36741	R307-307	CPR	02/01/2013	2013-1/45
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36740	R307-312	NEW	02/01/2013	2012-19/45
36740	R307-312	CPR	02/01/2013	2013-1/47
36725	R307-340	REP	02/01/2013	2012-19/49
36725	R307-340	CPR	02/01/2013	2013-1/48
37275	R307-342	NEW	08/01/2013	2013-5/17
37275	R307-342	CPR	08/01/2013	2013-13/208
36738	R307-343	AMD	05/01/2013	2012-19/56
36738	R307-343	CPR	05/01/2013	2013-1/49
36738	R307-343	CPR	05/01/2013	2013-7/44
36727	R307-345	NEW	02/01/2013	2012-19/67
36727	R307-345	CPR	02/01/2013	2013-1/54
36728	R307-346	NEW	02/01/2013	2012-19/69
36728	R307-346	CPR	02/01/2013	2013-1/57
36729	R307-347	NEW	02/01/2013	2012-19/71
36729	R307-347	CPR	02/01/2013	2013-1/59
36730	R307-348	NEW	02/01/2013	2012-19/73
36730	R307-348	CPR	02/01/2013	2013-1/61
36731	R307-349	NEW	02/01/2013	2012-19/74
36731	R307-349	CPR	02/01/2013	2013-1/63
36732	R307-350	NEW	02/01/2013	2012-19/76
36732	R307-350	CPR	02/01/2013	2013-1/65
36733	R307-351	NEW	02/01/2013	2012-19/80
36733	R307-351	CPR	02/01/2013	2013-1/69
38015	R307-351-2	NSC	10/08/2013	Not Printed
37235	R307-351-4	NSC	02/15/2013	Not Printed
36734	R307-352	NEW	02/01/2013	2012-19/84
36734	R307-352	CPR	02/01/2013	2013-1/73
36735	R307-353	NEW	05/01/2013	2012-19/86
36735	R307-353	CPR	05/01/2013	2013-1/75
36735	R307-353	CPR	05/01/2013	2013-7/46
36736	R307-354	NEW	02/01/2013	2012-19/88
36736	R307-354	CPR	02/01/2013	2013-1/79
36737	R307-355	NEW	02/01/2013	2012-19/91
36737	R307-355	CPR	02/01/2013	2013-1/82
37237	R307-355-5	NSC	02/15/2013	Not Printed
37276	R307-357	NEW	08/01/2013	2013-5/22
37276	R307-357	CPR	08/01/2013	2013-13/213
37704	R307-361	NEW	10/31/2013	2013-13/64
37704	R307-361	CPR	10/31/2013	2013-19/138
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	37263	R307-403-1	CPR	07/01/2013	2013-11/73
	37264	R307-403-2	AMD	07/01/2013	2013-5/39
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	37502	R512-200	5YR	04/08/2013	2013-9/35
	37503	R512-201	5YR	04/08/2013	2013-9/36
	37504	R512-202	5YR	04/08/2013	2013-9/36
	37639	R512-300	5YR	05/16/2013	2013-12/55
	37640	R512-301	5YR	05/16/2013	2013-12/55
	37641	R512-302	5YR	05/16/2013	2013-12/56
	37646	R512-302	AMD	07/22/2013	2013-12/27
	37642	R512-305	5YR	05/16/2013	2013-12/56
	37931	R512-309	5YR	08/15/2013	2013-17/54
	37505	R512-500	5YR	04/08/2013	2013-9/37
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	37961	R317-6-6	AMD	10/24/2013	2013-18/26
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	37475	R645-401	5YR	04/02/2013	2013-9/40
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	36738	R307-343	CPR	05/01/2013	2013-1/49
	36738	R307-343	CPR	05/01/2013	2013-7/44
	36731	R307-349	NEW	02/01/2013	2012-19/74
	36731	R307-349	CPR	02/01/2013	2013-1/63
	36732	R307-350	NEW	02/01/2013	2012-19/76
	36732	R307-350	CPR	02/01/2013	2013-1/65
	36735	R307-353	NEW	05/01/2013	2012-19/86
	36735	R307-353	CPR	05/01/2013	2013-1/75
	36735	R307-353	CPR	05/01/2013	2013-7/46
	36736	R307-354	NEW	02/01/2013	2012-19/88
	36736	R307-354	CPR	02/01/2013	2013-1/79
	36737	R307-355	CPR	02/01/2013	2013-1/82
	37237	R307-355-5	NSC	02/15/2013	Not Printed
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	36734	R307-352	CPR	02/01/2013	2013-1/73
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domestic violence

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	37789	R309-200	NSC	07/19/2013	Not Printed
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	37731	R309-540	NSC	07/09/2013	Not Printed
	37732	R309-545	NSC	07/09/2013	Not Printed
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	37999	R277-113	AMD	11/07/2013	2013-19/14	
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	37981	R657-60	AMD	11/07/2013	2013-19/96	
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	37203	R657-58	5YR	01/15/2013	2013-3/114	
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Environmental Quality, Air Quality	36731	R307-349	NEW	02/01/2013	2012-19/74	
	36731	R307-349	CPR	02/01/2013	2013-1/63	
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Environmental Quality, Air Quality	36726	R307-344	NEW	02/01/2013	2012-19/65	
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Health, Disease Control and Prevention, Environmental Services	37589	R392-103	NEW	08/01/2013	2013-11/28	
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	37427	R436-8	5YR	03/21/2013	2013-8/58	
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	37193	R313-18	AMD	03/19/2013	2013-3/42
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	37840	R590-186	5YR	07/12/2013	2013-15/127
	37176	R590-218	5YR	01/09/2013	2013-3/113
	37600	R590-219	5YR	05/07/2013	2013-11/101
	37598	R590-222	5YR	05/07/2013	2013-11/102
	37838	R590-222-3	AMD	09/23/2013	2013-15/110
	38050	R590-222-3	NSC	10/30/2013	Not Printed
	38038	R590-245	5YR	10/01/2013	2013-20/52
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	37717	R708-21	AMD	08/08/2013	2013-13/198	
<u>motor vehicles</u>						
Environmental Quality, Administration	37847	R305-4	5YR	07/15/2013	2013-15/126	
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<u>municipal waste incinerator</u>						
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<u>nail technicians</u>						
Commerce, Occupational and Professional Licensing	37697	R156-11a	AMD	08/08/2013	2013-13/3	
<u>Native American Grave Protection and Repatriation</u>						
School and Institutional Trust Lands, Administration	38138	R850-61	5YR	11/13/2013	2013-23/68	

<u>NESHAP</u>						
Environmental Quality, Air Quality	37703	R307-214	AMD	09/12/2013	2013-13/60	
<u>new hire registry</u>						
Workforce Services, Unemployment Insurance	37650	R994-315	5YR	05/16/2013	2013-12/59	
<u>new state revenue</u>						
Governor, Economic Development	37208	R357-6	AMD	05/01/2013	2013-4/15	
<u>newborn hearing screening</u>						
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<u>newborn screening</u>						
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<u>non-licensed public education employee</u>						
Education, Administration	37280	R277-532	NEW	04/08/2013	2013-5/16	
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Environmental Quality, Air Quality	37263	R307-403-1	AMD	07/01/2013	2013-5/37	
	37263	R307-403-1	CPR	07/01/2013	2013-11/73	
	37264	R307-403-2	AMD	07/01/2013	2013-5/39	
	37264	R307-403-2	CPR	07/01/2013	2013-11/74	
	37266	R307-403-10	AMD	07/01/2013	2013-5/42	
	37266	R307-403-10	CPR	07/01/2013	2013-11/77	
	37267	R307-403-11	AMD	07/01/2013	2013-5/43	
	37267	R307-403-11	CPR	07/01/2013	2013-11/77	
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<u>nonpublic schools</u>						
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<u>notification requirements</u>						
Commerce, Real Estate	37393	R162-2f	AMD	05/08/2013	2013-7/8	
	37530	R162-2f	AMD	06/21/2013	2013-10/17	
	37394	R162-2f-403	AMD	05/08/2013	2013-7/16	
	37664	R162-2f-403a	NSC	06/24/2013	Not Printed	
<u>NPIP</u>						
Agriculture and Food, Animal Industry	37248	R58-6	R&R	03/25/2013	2013-4/6	
<u>nuclear medicine</u>						
Environmental Quality, Radiation Control	37184	R313-32	NSC	01/31/2013	Not Printed	
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Commerce, Occupational and Professional Licensing	37417	R156-31b	5YR	03/18/2013	2013-8/53	
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Commerce, Occupational and Professional Licensing	38021	R156-46b-202	AMD	11/21/2013	2013-20/21	
	37364	R156-55a	AMD	04/22/2013	2013-6/17	
	37533	R156-75	AMD	06/24/2013	2013-10/15	
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	37762	R651-601	5YR	06/25/2013	2013-14/107
	37794	R651-615	5YR	06/27/2013	2013-14/113

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	37263	R307-403-1	CPR	07/01/2013	2013-11/73
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	37264	R307-403-2	CPR	07/01/2013	2013-11/74
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	37267	R307-403-11	AMD	07/01/2013	2013-5/43
	37267	R307-403-11	CPR	07/01/2013	2013-11/77
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	37265	R307-420	CPR	07/01/2013	2013-11/78

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	36992	R649-3-38	AMD	01/23/2013	2012-22/140
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	37825	R649-9-10	NSC	07/26/2013	Not Printed

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Heritage and Arts, Arts and Museums, Museum Services	37846	R452-200	EMR	07/15/2013	2013-15/121
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Commerce, Occupational and Professional Licensing	37942	R156-83	AMD	10/22/2013	2013-18/21
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	37394	R162-2f-403	AMD	05/08/2013	2013-7/16
	37664	R162-2f-403a	NSC	06/24/2013	Not Printed

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Health, Health Care Financing, Coverage and Reimbursement Policy	37580	R414-52	5YR	05/01/2013	2013-10/214
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	37790	R651-609	5YR	06/27/2013	2013-14/111
	37791	R651-610	5YR	06/27/2013	2013-14/112
	37625	R651-611	AMD	07/08/2013	2013-11/40
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	37344	R671-512	5YR	02/15/2013	2013-5/213
	37458	R671-512	AMD	05/22/2013	2013-8/27
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	37465	R671-520	AMD	05/22/2013	2013-8/36

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	37234	R307-307	NSC	02/15/2013	Not Printed
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	37797	R309-405	AMD	10/12/2013	2013-14/51
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	37523	R25-7	5YR	04/15/2013	2013-9/30
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Judicial Performance Evaluation Commission, Administration	37383	R597-1	AMD	05/14/2013	2013-7/37
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	37268	R307-401-19	AMD	07/01/2013	2013-5/36
	37268	R307-401-19	CPR	07/01/2013	2013-11/72
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	37486	R311-206	NSC	04/29/2013	Not Printed
	37579	R311-207	NSC	05/17/2013	Not Printed
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	37489	R311-209	NSC	04/29/2013	Not Printed
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pharmacies

Commerce, Occupational and Professional Licensing	37707	R156-17b	AMD	08/08/2013	2013-13/7
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pharmacists

Commerce, Occupational and Professional Licensing	37707	R156-17b	AMD	08/08/2013	2013-13/7
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physical therapist

Commerce, Occupational and Professional Licensing	37526	R156-24b-503	AMD	06/10/2013	2013-9/2
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physical therapist assistant

Commerce, Occupational and Professional Licensing	37526	R156-24b-503	AMD	06/10/2013	2013-9/2
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physical therapy

Commerce, Occupational and Professional Licensing	37526	R156-24b-503	AMD	06/10/2013	2013-9/2
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Public Service Commission, Administration	37449	R746-343-15	AMD	07/01/2013	2013-8/37
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Commerce, Occupational and Professional Licensing	37705	R156-70a-304	AMD	08/08/2013	2013-13/25
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Commerce, Occupational and Professional Licensing	37270	R156-67-306	AMD	04/08/2013	2013-5/10
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	36735	R307-353	CPR	05/01/2013	2013-7/46

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