

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
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# SPECIAL NOTICES

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## **Governor's Proclamation: Calling the Fifty-Fifth Legislature into an Eleventh Extraordinary Session (Senate Only)**

### **P R O C L A M A T I O N**

**WHEREAS**, since the close of the 2004 General Session of the 55th 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 Legislature in Extraordinary Session;

**NOW, THEREFORE, I, OLENE S. WALKER**, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the Laws of the State of Utah, do by this Proclamation call the Senate only of the 55th Legislature of the State of Utah into an Eleventh Extraordinary Session at the Senate Chambers, State Capitol Complex in Salt Lake City, Utah, on the 15th day of September, 2004, at 12:00 noon, 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 2004 General Session of the 55th 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 State Capitol Complex in Salt Lake City, Utah, this 31st day of August, 2004.

(State Seal)

**Olene S. Walker**  
Governor

**Gayle F. McKeachnie**  
Lieutenant Governor

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### **Natural Resources Wildlife Resources**

#### **Public Notice of Emergency Changes to the 2004 Utah Fishing Regulations Established by the Wildlife Board for Taking Fish and Crayfish**

I, Kevin Conway, by authority granted in Section 23-14-8 of the Wildlife Resources Code of Utah, declare an emergency amendment to the 2004 Utah Fishing Regulations. The following has been amended:

#### **BIG SAND WASH RESERVOIR** (Duchesne County):

Effective August 27, 2004, the daily bag and possession limits for all game fish will be doubled (i.e., increase of trout limit to eight (8)).

This reservoir will be chemically treated before October 1, 2004, prior to refilling.

## SPECIAL NOTICES

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Dam reconstruction is occurring, and anglers need to avoid the construction area. According to the contractors, access along the highway on the west side of the reservoir is allowed.

Except for other emergency changes made since January 1, 2004, all other rules established in 2004 Utah Fishing Regulations remain in effect.

UTAH DIVISION OF WILDLIFE RESOURCES

By: Miles Moretti, Acting Director

Subscribed and sworn to before me this 26th day of August 2004.

Tina Sweet, Notary Public

My commission expires: May 5, 2007

**End of the Special Notices Section**



## NOTICES OF PROPOSED RULES

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A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between August 17, 2004, 12:00 a.m., and September 1, 2004, 11:59 p.m. are included in this, the September 15, 2004, issue of the *Utah State Bulletin*.

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

Following the RULE ANALYSIS, the text of the PROPOSED RULE is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [~~example~~]). Rules being repealed are completely struck out. A row of dots in the text (. . . . .) indicates that unaffected text was removed to conserve space. If a PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least October 15, 2004. The agency may accept comment beyond this date and will list 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 to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through January 13, 2005, 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 31 days 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 or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

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

PROPOSED RULES are governed by *Utah Code* Section 63-46a-4 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

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

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

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 27377

FILED: 08/30/2004, 13:12

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division is proposing amendments to the rule to address Division practices and policies not previously in the rule. The Division is also proposing amendments as a result of statute changes made during the 2004 legislative session in S.B. 114 and S.B. 123. (DAR NOTE: S.B. 114 is found at UT L 2004 Ch 280, and was effective 07/01/2004; and S.B. 123 is found at UT L 2004 Ch 77, and was effective 05/03/2004.)

**SUMMARY OF THE RULE OR CHANGE:** In Section R156-1-102, additions are made to clarify the definitions of "aggravating circumstances", "cancel or cancellation" and "mitigating circumstances"; a new definition for "branching questionnaire" was added; and the remaining subsections were renumbered.

In Section R156-1-109, amendments were made in this section to redefine who may be a presiding officer for formal and informal adjudicative proceedings as a result of changes being proposed in Rule R156-46b. In Section R156-1-301, added that an applicant may be denied the privilege to retake an exam for a period of time if found cheating. In Section R156-1-305, amendments are made to delete which professions may not be granted an inactive license and adds which professions may be granted an inactive license. In Section R156-1-308a, deletes pharmacy names that no longer exist and adds pharmacy (class A-B-C-D-E) licenses due to statute changes; renames certified shorthand reporter to certified court report as a result of a statute change and changes the renewal date for health care assistants from November 30 in even years to May 31 in odd years; additions are made to clarify that a certified social worker intern license is issued for a period of six months or until the examination is passed, whichever occurs first; and also added that a hearing instrument intern license may be extended for good cause. In Section R156-1-308c, updated this section to comply with current Division practice regarding renewal notices. In Sections R156-1-308g, R156-1-308i, and R156-1-308k, clarified requirements for reinstatement/relicensure. In Section R156-1-502, added an unprofessional conduct clause for prescribing practitioners who fail to follow model guidelines. Also, added a new Section R156-1-601 which establishes protocols for medical online assessment, diagnosis, and prescribing pursuant to Subsection 58-1-501(4). (DAR NOTES: A corresponding 120-day (emergency) rule is under DAR No. 27358 in this issue, and was effective 08/24/2004. The proposed amendment to Rule

R156-46b is under DAR No. 27401 and will be published in the October 1, 2004, issue of the Bulletin.)

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-1-308, and Subsections 58-1-106(1)(a) and 58-1-501(4)

**THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL:** Adds: Model Policy for the Use of Controlled Substances for the Treatment of Pain, 2004, established by the Federation of State Medical Boards

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** The Division will incur costs of approximately \$50 to reprint the rule as a result of these proposed amendments. Any costs incurred will be absorbed in the Division's current budget.

❖ **LOCAL GOVERNMENTS:** The proposed amendments are specific to Division processes or individual licensees and do not affect local government. Therefore, there are no costs or savings to local government.

❖ **OTHER PERSONS:** Any costs or savings would only apply to licensees and applicants for licensure. Mitigating and aggravating circumstances are used to determine whether an application should be denied. By making an appeal for reconsideration of an accusation of cheating on an examination a part of the licensure process, an individual would be required to pay the respective application fee in order to appeal the denial of licensure for cheating. With respect to inactive licensure amendments, the Division has found that very few licensees opt for an inactive license so any change will be negligible. A licensee who allows a license to expire or surrenders a license to avoid paying a fine or citation will be held to paying that debt should reapplication occur. Online diagnosing and prescribing is becoming more prevalent. The proposed protocols will control who may practice online and the steps necessary to be authorized for such practice. The Division does not anticipate any costs or savings associated with the online prescribing amendments.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Any costs or savings would only apply to licensees and applicants for licensure. Mitigating and aggravating circumstances are used to determine whether an application should be denied. By making an appeal for reconsideration of an accusation of cheating on an examination a part of the licensure process, an individual would be required to pay the respective application fee in order to appeal the denial of licensure for cheating. With respect to inactive licensure amendments, the Division has found that very few licensees opt for an inactive license so any change will be negligible. A licensee who allows a license to expire or surrenders a license to avoid paying a fine or citation will be held to paying that debt should reapplication occur. Online diagnosing and prescribing is becoming more prevalent. The proposed protocols will control who may practice online and the steps necessary to be authorized for such practice. The Division does not anticipate any costs or savings associated with the online prescribing amendments.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The amendments codify

existing procedures, clarify existing standards, and establish standards of practice for online assessment and diagnosis. Although some of these amendments could create some costs for practitioners, there appears to be no fiscal impact to businesses as a result of this rule filing. Klarice A. Bachman, Executive Director

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:

Laura Poe at the above address, by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at lpoe@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2004

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 9/17/2004 at 10:00 AM, Heber Wells Building, 160 East 300 South, Conference Room 428 (Fourth floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2004

AUTHORIZED BY: J. Craig Jackson, Director

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

### **R156-1. General Rules of the Division of Occupational and Professional Licensing.**

#### **R156-1-102. Definitions.**

In addition to the definitions in Title 58, as used in Title 58 or these rules:

(1) "Active and in good standing" means a licensure status which allows the licensee full privileges to engage in the practice of the occupation or profession subject to the scope of the licensee's license classification.

(2) "Aggravating circumstances" means any consideration or factors that may justify an increase in the severity of an action to be imposed upon an applicant or licensee. Aggravating circumstances include:

(a) prior record of disciplinary action, unlawful conduct, or unprofessional conduct;

(b) dishonest or selfish motive;

(c) pattern of misconduct;

(d) multiple offenses;

(e) obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the Division;

(f) submission of false evidence, false statements or other deceptive practices during the disciplinary process including creating, destroying or altering records after an investigation has begun;

(g) refusal to acknowledge the wrongful nature of the misconduct involved, either to the client or to the Division;

(h) vulnerability of the victim;

(i) lack of good faith to make restitution or to rectify the consequences of the misconduct involved;

(j) illegal conduct, including the use of controlled substances; and

(k) intimidation or threats of withholding clients' records or other detrimental consequences if the client reports or testifies regarding the unprofessional or unlawful conduct.

(3) "Branching questionnaire", as used in Section R156-1-601, means an adaptive, progressive inquiry used by a physician to determine a health history and assessment, and serves as the basis for a diagnosis.

([3]4) "Cancel" or "cancellation" means nondisciplinary action by the division to rescind, repeal, annul, or void a license issued in error. Such action includes rescinding a license issued to an applicant whose payment of the required application fee is dishonored when presented for payment, or who has been issued a conditional license pending a criminal background check and fails to complete the process such as having an outstanding warrant.

([4]5) "Charges" means the acts or omissions alleged to constitute either unprofessional or unlawful conduct or both by a licensee, which serve as the basis to consider a licensee for inclusion in the diversion program authorized in Section 58-1-404.

([5]6) "Denial of licensure" means action by the division refusing to issue a license to an applicant for initial licensure, renewal of licensure, reinstatement of licensure or relicensure.

([6]7) "Disciplinary action" means adverse licensure action by the division under the authority of Subsections 58-1-401(2)(a) through (2)(b).

([7]8) "Diversion agreement" means a formal written agreement between a licensee, the division, and a diversion committee, outlining the terms and conditions with which a licensee must comply as a condition of entering in and remaining under the diversion program authorized in Section 58-1-404.

([8]9) "Diversion committees" mean diversion advisory committees authorized by Subsection 58-1-404(2)(a)(i) and created under Subsection R156-1-404a.

([9]10) "Duplicate license" means a license reissued to replace a license which has been lost, stolen, or mutilated.

([40]11) "Emergency review committees" mean emergency adjudicative proceedings review committees created by the division under the authority of Subsection 58-1-108(2).

([44]12) "Expire" or "expiration" means the automatic termination of a license which occurs:

(a) at the expiration date shown upon a license if the licensee fails to renew the license before the expiration date; or

(b) prior to the expiration date shown on the license:

(i) upon the death of a licensee who is a natural person;

(ii) upon the dissolution of a licensee who is a partnership, corporation, or other business entity; or

(iii) upon the issuance of a new license which supersedes an old license, including a license which:

(A) replaces a temporary license;

(B) replaces a student or other interim license which is limited to one or more renewals or other renewal limitation; or

(C) is issued to a licensee in an upgraded classification permitting the licensee to engage in a broader scope of practice in the licensed occupation or profession.

([12]13) "Inactive" or "inactivation" means action by the division to place a license on inactive status in accordance with Sections 58-1-305 and R156-1-305.

([13]14) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the division enforcement counsel, or if the division enforcement counsel is unable to so serve for any reason, the assistant director, or if both the division enforcement counsel and the assistant director are unable to so serve for any reason, the department enforcement counsel.

([14]15) "License" means a right or privilege to engage in the practice of a regulated occupation or profession as a licensee.

([15]16) "Limit" or "limitation" means nondisciplinary action placing either terms and conditions or restrictions or both upon a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

([16]17) "Mitigating circumstances" means any consideration or factors that may justify a reduction in the severity of an action to be imposed upon an applicant or licensee.

(a) Mitigating circumstances include:

(i) absence of prior record of disciplinary action, unlawful conduct or unprofessional conduct;

(ii) absence of dishonest or selfish motive;

(iii) personal, mental or emotional problems provided such problems have not posed a risk to the health, safety or welfare of the public or clients served such as drug or alcohol abuse while engaged in work situations or similar situations where the licensee or applicant should know that they should refrain from engaging in activities that may pose such a risk;

(iv) timely and good faith effort to make restitution or rectify the consequences of the misconduct involved;

(v) full and free disclosure to the client or Division prior to the discovery of any misconduct;

(vi) inexperience in the practice of the occupation and profession provided such inexperience is not the result of failure to obtain appropriate education or consultation that the applicant or licensee should have known they should obtain prior to beginning work on a particular matter;

(vii) imposition of other penalties or sanctions; and

(viii) remorse.

(b) The following factors should not be considered as mitigating circumstances:

(i) forced or compelled restitution;

(ii) withdrawal of complaint by client or other affected persons;

(iii) resignation prior to disciplinary proceedings;

(iv) failure of injured client to complain; and

(v) complainant's recommendation as to sanction.

([17]18) "Nondisciplinary action" means adverse licensure by the division under the authority of Subsections 58-1-401(1) or 58-1-401(2)(c) through (2)(d).

([18]19) "Peer committees" mean advisory peer committees to boards created by the legislature in Title 58 or by the division under the authority of Subsection 58-1-203(1)(f).

([19]20) "Private reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a private record.

([20]21) "Probation" means disciplinary action placing terms and conditions upon a license;

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

([21]22) "Public reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a public record.

([22]23) "Regulatory authority" as used in Subsection 58-1-501(2)(d) means any governmental entity who licenses, certifies, registers, or otherwise regulates persons subject to its jurisdiction, or who grants the right to practice before or otherwise do business with the governmental entity.

([23]24) "Reinstate" or "reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (26)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.

([24]25) "Relicense" or "relicensure" means to license an applicant who has previously been revoked or has previously surrendered a license.

([25]26) "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (26)(a), placed on a license issued to an applicant for licensure.

([26]27) "Restrict" or "restriction" means disciplinary action qualifying or limiting the scope of a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-304; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

([27]28) "Revoke" or "revocation" means disciplinary action by the division extinguishing a license.

([28]29) "Suspend" or "suspension" means disciplinary action by the division removing the right to use a license for a period of time or indefinitely as indicated in the disciplinary order, with the possibility of subsequent reinstatement of the right to use the license.

([29]30) "Surrender" means voluntary action by a licensee giving back or returning to the division in accordance with Section 58-1-306, all rights and privileges associated with a license issued to the licensee.

([30]31) "Temporary license" or "temporary licensure" means a license issued by the division on a temporary basis to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-303.

([31]32) "Unprofessional conduct" as defined in Title 58 is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-1-502.

([32]33) "Warning or final disposition letters which do not constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions of law and do not constitute a reprimand, but which may address any or all of the following:

(a) division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of division concerns.

**R156-1-109. Presiding Officers.**

In accordance with Subsection 63-46b-2(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

(1) The division regulatory and compliance officer is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the division regulatory and compliance officer is unable to so serve for any reason, the assistant director is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Unless otherwise specified in writing by the director, or with regard to Title 58, Chapter 55, by the Construction Services Commission, the department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the director or commission, respectively, determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as provided in Subsection (4) or otherwise specified in writing by the director, the presiding officer for adjudicative proceedings before the division are as follows:

(a) Director. The director shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(f) through (g), and R156-46b-201(2)(a) through (b), however resolved, including stipulated settlements and hearings; and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)([g]d), ([j]h), ([i]i), ([o]m), ([p]n), ([r]p), and ([s]q), and R156-46b-202(2)(a) through (d), however resolved, including memorandums of understanding and stipulated settlements.

(b) Bureau managers or program coordinators. Except for Title 58, Chapter 55, the bureau manager or program coordinator over the occupation or profession or program involved shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and shall issue a recommended order to the division based upon the record developed at the hearing determining all issues pending before the division to the director for a final order, and R156-46b-201(1)(e). The authority of the presiding officer in formal adjudicative proceedings described in R156-46b-201(1)(e) shall be limited to approval of claims, conditional denial of claims, and final denial of claims based upon jurisdictional defects;

(ii) formal adjudicative proceedings described in Subsection R156-46b-201(1)(h), for purposes of determining whether a request for a board of appeal is properly filed as set forth in Subsections R156-56-105(1) through (4); and

(iii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through ([f]e), ([h]e), ([i]g), ([k]l), ([m]k), and ([r]o).

(iv) At the direction of a bureau manager or program coordinator, a licensing technician or program technician may sign an informal order in the name of the licensing technician or program

technician provided the wording of the order has been approved in advance by the bureau manager or program coordinator and provided the caption "FOR THE BUREAU MANAGER" or "FOR THE PROGRAM COORDINATOR" immediately precedes the licensing technician's or program technician's signature.

(c) Contested Citation Hearing Officer. The regulatory and compliance officer or other contested citation hearing officer designated in writing by the director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)([h]l).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-201(1)([h]f) for convening a board of appeal under Subsection 58-56-8(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. An administrative law judge shall perform the role specified in Subsection 58-1-109(2).

(e) Residence Lien Recovery Fund Advisory Board. The Residence Lien Recovery Fund Advisory Board shall be the presiding officer for adjudicative proceedings described in Subsection R156-46b-201(1)(e) and R156-46b-202(1)([i]g) that exceed the authority of the program coordinator, as delegated by the board, or are otherwise referred by the program coordinator to the board for action.

(4) Unless otherwise specified in writing by the Construction Services Commission, the presiding officers and process for adjudicative proceedings under Title 58, Chapter 55, are established or clarified as follows:

(a) Commission.

(i) The commission shall be the presiding officer for all adjudicative proceedings under Title 58, Chapter 55, except as otherwise delegated by the commission in writing or as otherwise provided in these rules; provided, however, that all orders adopted by the commission as a presiding officer shall require the concurrence of the director.

(ii) Unless otherwise specified in writing by the commission, the commission is designated as the presiding officer:

(A) for formal adjudicative proceedings described in Subsections R156-46b-201(1)(g) and R156-46b-201(2)(a) through (b), however resolved, including stipulated settlements and hearings;

(B) informal adjudicative proceedings described in Subsections R156-46b-202(1)([g]d), ([o]m), ([p]n), ([r]p), and ([s]q), and R156-46b-202(2)(a) and (c), however resolved, including memorandums of understanding and stipulated settlements;

(C) to serve as fact finder and adopt orders in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed under Title 58, Chapter 55; and

(D) to review recommended orders of a board, an administrative law judge, or other designated presiding officer who acted as the fact finder in an evidentiary hearing involving a person licensed or required to be licensed under Title 58, Chapter 55, and to adopt an order of its own. In adopting its order, the commission may accept, modify or reject the recommended order.

(iii) If the commission is unable for any reason to act as the presiding officer as specified, it shall designate another presiding officer in writing to so act.

(iv) Orders of the commission shall address all issues before the commission and shall be based upon the record developed in an adjudicative proceeding conducted by the commission. In cases in

which the commission has designated another presiding officer to conduct an adjudicative proceeding and submit a recommended order, the record to be reviewed by the commission shall consist of the findings of fact, conclusions of law, and recommended order submitted to the commission by the presiding officer based upon the evidence presented in the adjudicative proceeding before the presiding officer.

(v) The commission or its designee shall submit adopted orders to the director for the director's concurrence or rejection within 30 days after it receives a recommended order or adopts an order, whichever is earlier. An adopted order shall be deemed issued and constitute a final order upon the concurrence of the director.

(vi) If the director or his designee refuses to concur in an adopted order of the commission or its designee, the director or his designee shall return the order to the commission or its designee with the reasons set forth in writing for the nonconcurrence therein. The commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return, provided that unless the director or his designee and the commission or its designee agree to an extension, any final order must be issued within 90 days of the date of the initial recommended order, or the adjudicative proceeding shall be dismissed. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the commission or its designee and the director or his designee to resolve the reasons for the director's refusal to concur in an adopted order.

(vii) The record of the adjudicative proceeding shall include recommended orders, adopted orders, refusals to concur in adopted orders, and final orders.

(viii) The final order issued by the commission and concurred in by the director may be appealed by filing a request for agency review with the executive director or his designee within the department.

(ix) The content of all orders shall comply with the requirements of Subsection 63-46b-5(1)(i) and Sections 63-46b-10 and 63-46b-11.

(b) Director. Unless otherwise specified in writing by the commission, the director is designated as the presiding officer for conducting informal adjudicative proceedings specified in R156-46b-202(2)(b).

(c) Administrative Law Judge. Unless otherwise specified in writing by the commission, the department administrative law judge is designated as the presiding officer to conduct formal adjudicative proceedings before the commission and its advisory boards, as specified in Subsection 58-1-109(2).

(d) Bureau Manager. Unless otherwise specified in writing by the commission, the responsible bureau manager is designated as the presiding officer for conducting:

(i) formal adjudicative proceedings specified in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board or commission who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and to adopt orders as set forth in these rules; and

(ii) informal adjudicative proceedings specified in Subsections R156-46b-202(1)(a) through ([§]e), ([§]e), ([§]i), and ([§]o).

(iii) At the direction of a bureau manager, a licensing technician may sign an informal order in the name of the licensing technician provided the wording of the order has been approved in advance by the bureau manager and provided the caption "FOR THE

BUREAU MANAGER" immediately precedes the licensing technician's signature.

(e) Plumbers Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Plumbers Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as plumbers.

(f) Electricians Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Electricians Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as electricians.

(g) Alarm System Security and Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Alarm System Security and Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as alarm companies or agents.

#### **R156-1-301. Cheating on Examinations.**

##### **(1) Policy.**

The passing of an examination, when required as a condition of obtaining or maintaining a license issued by the division, is considered to be a critical indicator that an applicant or licensee meets the minimum qualifications for licensure. Failure to pass an examination is considered to be evidence that an applicant or licensee does not meet the minimum qualifications for licensure. Accordingly, the accuracy of the examination result as a measure of an applicant's or licensee's competency must be assured. Cheating by an applicant or licensee on any examination required as a condition of obtaining a license or maintaining a license shall be considered unprofessional conduct and shall result in imposition of an appropriate penalty against the applicant or licensee.

##### **(2) Cheating Defined.**

Cheating is defined as the use of any means or instrumentality by or for the benefit of an examinee to alter the results of an examination in any way to cause the examination results to inaccurately represent the competency of an examinee with respect to the knowledge or skills about which they are examined. Cheating includes:

(a) communication between examinees inside of the examination room or facility during the course of the examination;

(b) communication about the examination with anyone outside of the examination room or facility during the course of the examination;

(c) copying another examinee's answers or looking at another examinee's answers while an examination is in progress;

(d) permitting anyone to copy answers to the examination;

(e) substitution by an applicant or licensee or by others for the benefit of an applicant or licensee of another person as the examinee in place of the applicant or licensee;

(f) use by an applicant or licensee of any written material, audio material, video material or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination;

(g) obtaining, using, buying, selling, possession of or having access to a copy of the examination prior to administration of the examination.

(3) Action Upon Detection of Cheating.

(a) The person responsible for administration of an examination, upon evidence that an examinee is or has been cheating on an examination shall notify the division of the circumstances in detail and the identity of the examinees involved with an assessment of the degree of involvement of each examinee;

(b) If cheating is detected prior to commencement of the examination, the examinee may be denied the privilege of taking the examination; or if permitted to take the examination, the examinee shall be notified of the evidence of cheating and shall be informed that the division may consider the examination to have been failed by the applicant or licensee because of the cheating; or

(c) If cheating is detected during the examination, the examinee may be requested to leave the examination facility and in that case the examination results shall be the same as failure of the examination; however, if the person responsible for administration of the examination determines the cheating detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further cheating shall be taken and the examinee may be permitted to continue with the examination.

(d) If cheating is detected after the examination, the division shall make appropriate inquiry to determine the facts concerning the cheating and shall thereafter take appropriate action.

(e) Upon determination that an applicant has cheated on an examination, ~~the applicant may be denied the privilege of retaking the examination for a reasonable period of time, and~~ the division may deny the applicant a license and may establish conditions the applicant must meet to qualify for a license including the earliest date on which the division will again consider the applicant for licensure.

(4) Notification.

The division shall notify all proctors, test administrators and examinees of the rules concerning cheating.

**R156-1-305. Inactive Licensure.**

(1) In accordance with Section 58-1-305, except as provided in Subsection (2), a licensee ~~[who holds an active in good standing license under Title 58]~~ may not apply for inactive licensure status.

(2) The following licenses issued under Title 58 ~~that are active in good standing may~~ [not] be placed on inactive licensure status:

- (a) ~~[Agency performing animal euthanasia]~~ advanced practice registered nurse;
- (b) ~~[Analytical laboratory]~~ audiologist;
- (c) ~~[Branch pharmacy]~~ certified nurse midwife;
- (d) ~~[Certified professional accountant firm]~~ certified public accountant emeritus;
- (e) ~~[Controlled substance]~~ certified registered nurse anesthetist;
- (f) ~~[Controlled substance handler]~~ certified court reporter;
- (g) ~~[Controlled substance precursor distributors and purchasers]~~ certified social worker;
- (h) ~~[Cosmetologist/barber school]~~ chiropractic physician;
- (i) ~~[Funeral service establishment]~~ clinical social worker;
- (j) ~~[Hospital, institutional, nuclear, out-of-state mail service and retail pharmacy]~~ contractor;
- (k) ~~[Licensed substance abuse counselor]~~ deception detection examiner;
- (l) ~~[Pharmaceutical manufacturer, researcher, teaching organization, wholesaler or distributor]~~ deception detection intern;

- (m) ~~[Preneed funeral arrangement provider]~~ dental hygienist;
- (n) ~~[Professional employer organization; and]~~ dentist;
- (o) ~~[Veterinary pharmaceutical outlet.]~~ genetic counselor;
- (p) health facility administrator;
- (q) hearing instrument specialist;
- (r) licensed substance abuse counselor;
- (s) marriage and family therapist;
- (t) naturopath/naturopathic physician;
- (u) optometrist;
- (v) osteopathic physician and surgeon;
- (w) pharmacist;
- (x) pharmacy technician;
- (y) physician assistant;
- (z) physician and surgeon;
- (aa) podiatric physician;
- (bb) private probation provider;
- (cc) professional counselor;
- (dd) psychologist;
- (ee) radiology practical technician;
- (ff) radiology technologist;
- (gg) security personnel;
- (hh) speech-language pathologist; and
- (ii) veterinarian.

(3) Applicants for inactive licensure shall apply to the division in writing upon forms available from the division. Each completed application shall contain documentation of requirements for inactive licensure, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

(4) If all requirements are met for inactive licensure, the division shall place the license on inactive status.

(5) A license may remain on inactive status indefinitely except as otherwise provided in Title 58 or rules which implement Title 58.

(6) An inactive license may be activated by requesting activation in writing upon forms available from the division. Unless otherwise provided in Title 58 or rules which implement Title 58, each reactivation application shall contain documentation that the applicant meets current renewal requirements, shall be verified by the applicant, and shall be accompanied by the appropriate fee.

**R156-1-308a. Renewal Dates.**

(1) The following standard two-year renewal cycle renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

TABLE  
RENEWAL DATES

(1) Acupuncturist	May 31	even years
(2) Advanced Practice Registered Nurse	January 31	even years
(3) Animal Euthanasia Agency	May 31	odd years
(4) Alternate Dispute Resolution Provdr	September 30	even years
<del>[(5) Analytical Laboratory]</del>	<del>May 31</del>	<del>odd years</del>
<del>[(6) 5] Architect</del>	May 31	even years
<del>[(7) 6] Athlete Agent</del>	September 30	even years
<del>[(8) 7] Audiologist</del>	May 31	odd years
<del>[(9) Branch Pharmacy]</del>	May 31	odd years
<del>[(10) 8] Building Inspector</del>	July 31	odd years
<del>[(11) 9] Burglar Alarm Security</del>	July 31	even years
<del>[(12) 10] C.P.A. Firm</del>	September 30	even years
<del>[(13) 11] Certified [Short-hand] Court Reporter</del>	May 31	even years
<del>[(14) 12] Certified Dietitian</del>	September 30	even years
<del>[(15) 13] Certified Nurse Midwife</del>	January 31	even years
<del>[(16) 14] Certified Public Accountant</del>	September 30	even years
<del>[(17) 15] Certified Registered Nurse Anesthetist</del>	January 31	even years

<del>(19)16</del>	Certified Social Worker	September 30	even years				
<del>(19)17</del>	Chiropractic Physician	May 31	even years				
<del>(20)18</del>	Clinical Social Worker	September 30	even years				
<del>(21)19</del>	Construction Trades Instructor	July 31	odd years				
<del>(22)20</del>	Contractor	July 31	odd years				
<del>(23)21</del>	Controlled Substance Precursor Distributor	May 31	odd years				
<del>(24)22</del>	Controlled Substance Precursor Purchaser	May 31	odd years				
<del>(25)23</del>	Controlled Substance Handler	May 31	odd years				
<del>(26)24</del>	Cosmetologist/Barber	September 30	odd years				
<del>(27)25</del>	Cosmetology/Barber School	September 30	odd years				
<del>(28)26</del>	Deception Detection	July 31	even years				
<del>(29)27</del>	Dental Hygienist	May 31	even years				
<del>(30)28</del>	Dentist	May 31	even years				
<del>(31)29</del>	Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	July 31	even years				
<del>(32)30</del>	Electrologist	September 30	odd years				
<del>(33)31</del>	Electrology School	September 30	odd years				
<del>(34)32</del>	Environmental Health Scientist	May 31	odd years				
<del>(35)33</del>	Esthetician	September 30	odd years				
<del>(36)34</del>	Esthetics School	September 30	odd years				
<del>(37)35</del>	Factory Built Housing Dealer	September 30	even years				
<del>(38)36</del>	Funeral Service Director	May 31	even years				
<del>(39)37</del>	Funeral Service Establishment	May 31	even years				
<del>(40)38</del>	Genetic Counselor	September 30	even years				
<del>(41)39</del>	Health Care Assistant	<del>[November 30 even years]</del>	<del>May 31 odd years</del>				
<del>(42)40</del>	Health Facility Administrator	May 31	odd years				
<del>(43)41</del>	Hearing Instrument Specialist	September 30	even years				
<del>(44)</del>	<del>Hospital Pharmacy</del>	<del>May 31</del>	<del>odd years</del>				
<del>(45)</del>	<del>Institutional Pharmacy</del>	<del>May 31</del>	<del>odd years</del>				
<del>(46)42</del>	Landscape Architect	May 31	even years				
<del>(47)43</del>	Licensed Practical Nurse	January 31	even years				
<del>(48)44</del>	Licensed Substance Abuse Counselor	May 31	odd years				
<del>(49)45</del>	Marriage and Family Therapist	September 30	even years				
<del>(50)46</del>	Massage Apprentice, Therapist	May 31	odd years				
<del>(51)47</del>	Master Esthetician	September 30	odd years				
<del>(52)48</del>	Nail Technologist	September 30	odd years				
<del>(53)49</del>	Nail Technology School	September 30	odd years				
<del>(54)50</del>	Naturopath/Naturopathic Physician	May 31	even years				
<del>(55)</del>	<del>Nuclear Pharmacy</del>	<del>May 31</del>	<del>odd years</del>				
<del>(56)51</del>	Occupational Therapist	May 31	odd years				
<del>(57)52</del>	Occupational Therapy Assistant	May 31	odd years				
<del>(58)53</del>	Optometrist	September 30	even years				
<del>(59)54</del>	Osteopathic Physician and Surgeon	May 31	even years				
<del>(60)</del>	<del>Out of State Mail Order Pharmacy</del>	<del>May 31</del>	<del>odd years</del>				
<del>(61)</del>	<del>Pharmaceutical Administration Facility</del>	<del>May 31</del>	<del>odd years</del>				
<del>(62)</del>	<del>Pharmaceutical Dog Trainer</del>	<del>May 31</del>	<del>odd years</del>				
<del>(63)</del>	<del>Pharmaceutical Manufacturer</del>	<del>May 31</del>	<del>odd years</del>				
<del>(64)</del>	<del>Pharmaceutical Researcher</del>	<del>May 31</del>	<del>odd years</del>				
<del>(65)</del>	<del>Pharmaceutical Teaching Organization</del>	<del>May 31</del>	<del>odd years</del>				
<del>(66)</del>	<del>Pharmaceutical Wholesaler/Distributor</del>	<del>May 31</del>	<del>odd years</del>				
<del>(55)</del>	<del>Pharmacy (Class A-B-C-D-E)</del>	<del>May 31</del>	<del>odd years</del>				
<del>(67)56</del>	Pharmacist	May 31	odd years				
<del>(68)57</del>	Pharmacy Technician	May 31	odd years				
<del>(69)58</del>	Physical Therapist	May 31	odd years				
<del>(70)59</del>	Physician Assistant	May 31	even years				
<del>(71)60</del>	Physician and Surgeon	January 31	even years				
<del>(72)61</del>	Plumber Apprentice, Journeyman, Residential Apprentice,						
<del>(73)62</del>	Podiatric Physician	September 30	even years				
<del>(74)63</del>	Pre Need Funeral Arrangement Provider	May 31	even years				
<del>(75)64</del>	Pre Need Funeral Arrangement Sales Agent	May 31	even years				
<del>(76)65</del>	Private Probation Provider	May 31	odd years				
<del>(77)66</del>	Professional Counselor	September 30	even years				
<del>(78)67</del>	Professional Engineer	December 31	even years				
<del>(79)68</del>	Professional Geologist	December 31	even years				
<del>(80)69</del>	Professional Land Surveyor	December 31	even years				
<del>(81)70</del>	Professional Structural Engineer	December 31	even years				
<del>(82)71</del>	Psychologist	September 30	even years				
<del>(83)72</del>	Radiology Practical Technician	May 31	odd years				
<del>(84)73</del>	Radiology Technologist	May 31	odd years				
<del>(85)74</del>	Recreational Therapy Technician, Specialist, Master Specialist	May 31	odd years				
<del>(86)75</del>	Registered Nurse	January 31	odd years				
<del>(87)76</del>	Respiratory Care Practitioner	September 30	even years				
<del>(88)77</del>	Retail Pharmacy	May 31	odd years				
<del>(89)78</del>	Security Personnel	July 31	even years				
<del>(90)79</del>	Social Service Worker	September 30	even years				
<del>(91)80</del>	Speech-Language Pathologist	May 31	odd years				
<del>(92)81</del>	Veterinarian	September 30	even years				
<del>(93)</del>	<del>Veterinary Pharmaceutical Outlet</del>	<del>May 31</del>	<del>odd years</del>				

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:

(a) Certified Marriage and Family Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(b) Certified Professional Counselor Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(c) Certified Social Worker Intern licenses shall be issued for a ~~three year term and~~ period of six months or until the examination is passed whichever occurs first. An intern license may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(d) Funeral Service Apprentice licenses shall be issued for a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.



([d]e) Professional Employer Organization registrations expire every year on September 30.

([e]f) Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(g) Hearing Instrument Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examination, but a circumstance arose beyond the control of the licensee, to prevent the completion of the examination process.

### **R156-1-308c. Renewal of Licensure Procedures.**

The procedures for renewal of licensure shall be as follows:

(1) The division shall mail a renewal notice to each licensee at least 60 days prior to the expiration date shown on the licensee's license. The notice shall include directions for the licensee to renew the license via the Division's website.

(2) Renewal notices shall be sent by letter deposited in the post office with postage prepaid, addressed to the last address shown on the division's automated license system. Such mailing shall constitute legal notice. It shall be the duty and responsibility of each licensee to maintain a current address with the division.

(3) Renewal notices shall specify the renewal requirements and require that each licensee document or certify that the licensee meets the renewal requirements.

~~(4) [Renewal notices shall specify a renewal application due date at least 30 days prior to the expiration date shown on the licensee's license in order to permit the renewal applications to be processed prior to the expiration of licensure in accordance with Subsection 58-1-308(4).~~

~~—(5)—[Renewal notices shall advise each licensee that a license that is not renewed prior to the expiration date shown on the license automatically expires and that any continued practice without a license constitutes a criminal offense under Subsection 58-1-501(1)(a).]~~

~~—(6) Renewal notices shall further advise each licensee that if the licensee fails to return the renewal application to the division or its designee by the renewal application due date, the licensee's license may expire before it is renewed.~~

~~—(7) Renewal notices shall specify the address or addresses to where the renewal applications should be submitted.~~

~~—(8) When a renewal application contains multiple parts to be returned to separate addresses, the division shall facilitate proper submission by using, to the extent resources permit, color coded renewal applications with perforated sections and return envelopes.]~~

([9]5) Licensees licensed during the last four months of a renewal cycle shall be licensed for a full renewal cycle plus the period of time remaining until the impending renewal date, rather than being required to immediately renew their license.

### **R156-1-308g. Reinstatement of Licensure which was Active and in Good Standing at the Time of Expiration of Licensure - Requirements.**

The following requirements shall apply to reinstatement of licensure which was active and in good standing at the time of expiration of licensure:

(1) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the division between the date of the expiration of the license and 31 days after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and a late fee.

(2) In accordance with Subsection 58-1-308(5), if an application for reinstatement is received by the division between 31 days after the expiration of the license and two years after the date of the expiration of the license, the applicant shall:

(a) submit a completed renewal form as furnished by the division demonstrating compliance with requirements and/or conditions of license renewal; and

(b) pay the established license renewal fee and reinstatement fee.

(3) In accordance with Subsection 58-1-308(6)(a), if an application for reinstatement is received by the division more than two years after the date the license expired and the applicant has not been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States during the time the license was expired, the applicant shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(b) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to engage in the occupation or profession for which reinstatement of licensure is requested;

(c) if the applicant has not been engaged in unauthorized practice of the applicant's occupation or profession following the expiration of the applicant's license, pay the established license fee for a new applicant for licensure and the reinstatement fee; and

(d) if the applicant has been engaged in unauthorized practice of the applicant's occupation or profession following the expiration of the applicant's license, pay the current license renewal fee multiplied by the number of renewal periods for which the license renewal fee has not been paid since the time of expiration of license, plus a reinstatement fee.

(4) In accordance with Subsection 58-1-308(6)(b), if an application for reinstatement is received by the division more than two years after the date the license expired but the applicant has been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States shall:

(a) ~~submit~~ provide documentation of prior licensure in the State of Utah;

(b) ~~submit~~ provide documentation that the applicant has continuously, since the expiration of the applicant's license in Utah, been active in the licensed occupation or profession while in the full-time employ of the United States government or under license to practice that occupation or profession in any other state or territory of the United States;

(c) provide documentation that the applicant has completed or is in compliance with any renewal qualifications;

(d) ~~provide information requested by the division and board to clearly demonstrate the applicant is currently competent to engage in the occupation or profession for which reinstatement of licensure is requested;~~ provide documentation that the applicant's application was submitted within six months after reestablishing domicile within Utah or terminating full-time government service; and

(e) ~~pass a law and rules examination if such an examination has been adopted for the occupation or profession to which the application pertains; and~~

~~(f)~~ pay the established license renewal fee and the reinstatement fee.

**R156-1-308i. Reinstatement of Restricted, Suspended, or Probationary Licensure After the Specified Term of Suspension of the License or After the Expiration of License in a Restricted or Probationary Status - Requirements.**

Unless otherwise provided by a disciplinary order, an applicant who applies for reinstatement of a license after the specified term of suspension of the license or after the expiration of the license in a restricted or probationary status shall:

(1) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and conditions of license reinstatement;

(2) pay the established license renewal fee and the reinstatement fee; ~~and~~

(3) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be reinstated to engage in the occupation or profession for which the applicant was suspended, restricted, or placed on probation; and

~~(4)~~ pay any fines or citations owed to the Division prior to the expiration of license.

**R156-1-308k. Relicensure Following Surrender of Licensure - Requirements.**

The following requirements shall apply to relicensure applications following the surrender of licensure:

(1) An applicant who surrendered a license that was active and in good standing at the time it was surrendered shall meet the requirements for licensure listed in Section R156-1-308.

(2) An applicant who surrendered a license while the license was active but not in good standing as evidenced by the written agreement supporting the surrender of license shall:

(a) submit an application for licensure complete with all supporting documents as is required of an individual making an initial application for license demonstrating the applicant meets all current qualifications for licensure and compliance with requirements and/or conditions of license reinstatement;

(b) pay the established license fee for a new applicant for licensure; ~~and~~

(c) provide information requested by the division and board to clearly demonstrate the applicant is currently competent to be relicensed to engage in the occupation or profession for which the applicant was surrendered;

~~(d)~~ pay any fines or citations owed to the Division prior to the surrender of license.

**R156-1-502. 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 to conform to the Privacy Rules of the federal Health Insurance Portability and Accountability Act (HIPAA) as a licensed health care provider; or

~~(7) 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.~~

**R156-1-601. Online Assessment, Diagnosis and Prescribing Protocols.**

(1) In accordance with Subsection 58-1-501(4), a person licensed to prescribe under this title may prescribe legend drugs to a person located in this state following an online assessment and diagnosis in accordance with the following conditions:

(a) the prescribing practitioner is licensed in good standing in this state;

(b) an assessment and diagnosis is based upon a comprehensive health history and an assessment tool that requires the patient to provide answers to all the required questions and does not rely upon default answers, such as a branching questionnaire;

(c) only includes legend drugs and may not include controlled substances;

(d) the practice is authorized in a consent agreement signed by the Division and the practitioner and approved by a panel comprised of three board members from the Physicians Licensing Board or the Osteopathic Physician and Surgeon's Licensing Board and three members from the Utah State Board of Pharmacy. The consent agreement shall include:

(i) the specific name of the drug or drugs approved to be prescribed;

(ii) the policies and procedures that address patient confidentiality;

(iii) a method for electronic communication by the physician and patient;

(iv) a mechanism for the Division to be able to conduct audits of the website and records to ensure an assessment and diagnosis has been made prior to prescribing any medications; and

(v) a mechanism for the physician to have ready access to all patients' records.

**KEY: diversion programs, licensing, occupational licensing [January 20,]2004**

**Notice of Continuation May 2, 2002**

**58-1-106(1)(a)**

**58-1-308**

**58-1-501(4)**

## Commerce, Occupational and Professional Licensing

### **R156-73**

## Chiropractic Physician Practice Act Rules

### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 27355

FILED: 08/17/2004, 07:47

### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: As a result of S.B. 249 passed during the 2004 legislative session, amendments are being proposed to update definitions, clarify continuing education requirements, and update requirements for chiropractic physicians who provide acupuncture services as part of their practice. (DAR NOTE: S.B. 249 is found at UT L 2004 Ch 309, and was effective 05/03/2004.)

SUMMARY OF THE RULE OR CHANGE: In Section R156-73-102, added definitions for the following: "Distance learning", "FCLB" (Federation of Chiropractic Licensing Boards), "NBCE" (National Board of Chiropractic Examiners); "PACE" (Providers of Approved Continuing Education sponsored by the Federation of Chiropractic Licensing Boards) and renumbered the remaining subsections. In Section R156-73-103, updated a statute citation reference. In Section R156-73-303b, added Providers of Continuing Education (PACE) of the Federation of Chiropractic Licensing Boards as an additional organization that may approve chiropractic continuing education programs. Also, added that no more than 10 hours of continuing education in each 2-year period may be completed by distance learning and added that as part of the 40 continuing education hours required every 2 years, a chiropractic physician who provides acupuncture services as a part of their practice shall complete 10 hours of acupuncture-related continuing education. In Section R156-73-601, changes are being proposed to clarify what competency,

training, and examinations are required for chiropractic physicians to practice clinical acupuncture.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-73-101, and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division will incur costs of approximately \$100 to reprint the rule once these proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ LOCAL GOVERNMENTS: Proposed amendments do not apply to local governments. Therefore, no costs or savings are anticipated.

❖ OTHER PERSONS: Proposed amendments will only apply to licensed chiropractic physicians and or applicants for licensure as a chiropractic physician. The proposed amendment allowing no more than 10 continuing education hours in distance learning may result in a potential savings to licensed chiropractic physicians. Usually, distance learning continuing education programs are more expensive than in-person programs and if a chiropractic physician is only allowed 10 hours out of the total 40 hours required, the remaining 30 hours must be obtained through continuing education programs that may cost less money. The Division is unable to determine any exact savings amount since the cost of continuing education programs is so varied. Licensed chiropractic physicians who begin providing clinical acupuncture services as a part of their practice on or after January 1, 2005, will be required to meet the requirements to take and receive a passing score on one of two acupuncture examinations. The cost of either examination is \$300 in addition to costs to obtain the required training, which costs are unknown to the Division. The Division is unable to determine how many chiropractic physicians will begin providing clinical acupuncture services after January 1, 2005.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Proposed amendments will only apply to licensed chiropractic physicians and or applicants for licensure as a chiropractic physician. Licensed chiropractic physicians who begin providing clinical acupuncture services as a part of their practice on or after January 1, 2005, will be required to meet the requirements to take and receive a passing score on one of two acupuncture examinations. The cost of either examination is \$300 in addition to costs to obtain the required training, which costs are unknown to the Division. The Division is unable to determine how many chiropractic physicians will begin providing clinical acupuncture services after January 1, 2005.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change requires a chiropractic physician to obtain continuing education in acupuncture, 10 credit hours for each 2-year period, in order to practice acupuncture. The rule also adds an examination requirement in acupuncture for chiropractic physicians who begin providing acupuncture services on or after January 1, 2005. There are currently 712 chiropractic physician licensees; approximately 30% already practice acupuncture. The cost of each credit of continuing education is

approximately \$20; the cost of each examination is approximately \$300. Thus, the rule change will impact 30% of the current chiropractic physicians as to the continuing education requirement. It is difficult to determine how many of the remaining 70% will begin practicing acupuncture after January 1, 2005, and will incur the cost of the examinations. The rule filing also contains some technical changes, including definitions, which do not create any fiscal impact to businesses. Klarice A. Bachman, Executive Director

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:

Daniel T. Jones at the above address, by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at dantjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2004

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 10/14/2004 at 9:00 AM, Heber Wells Building, 160 E 300 S, Conference Room 4A (Fourth Floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2004

AUTHORIZED BY: J. Craig Jackson, Director

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

##### **R156-73. Chiropractic Physician Practice Act Rules.**

##### **R156-73-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 73, as used in Title 58, Chapters 1 and 73, or these rules:

(1) "Clinical acupuncture" means the application of mechanical, thermal, manual, and/or electrical stimulation of acupuncture points and meridians, including the insertion of needles, by a chiropractic physician that has demonstrated competency and training by completing a recognized course that is sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b.

(2) "Distance learning" means the acquisition of knowledge and skills through information and instruction encompassing all technologies and other forms of learning at a distance, including internet, audio/visual recordings, mail or other correspondence.

(3) "FCLB" means the Federation of Chiropractic Licensing Boards.

(~~2~~4) "Indirect supervision" means the supervising licensed chiropractic physician shall be available for immediate voice contact by telephone, radio, or other means and shall provide daily face to face consultation and review of cases at the chiropractic facility for

the chiropractic intern, temporarily licensed or unlicensed person being supervised.

(5) "NBCE" means the National Board of Chiropractic Examiners.

(6) "PACE" means Providers of Approved Continuing Education sponsored by the Federation of Chiropractic Licensing Boards.

(~~3~~7) "Preceptor" means a licensed chiropractic physician who is a supervisor of interns and externs in the professional practice of chiropractic.

(~~4~~8) "Preceptorship" means a supervised training program established by a written contract between a chiropractic college or university whose program or institution is accredited by the Council on Chiropractic Education, Inc., and a licensee for the purpose of providing chiropractic training to a student enrolled in the chiropractic college or university while under the supervision of a licensee.

(~~5~~9) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 73, is further defined in accordance with Subsection 58-1-203(5), in Section R156-73-501.

##### **R156-73-103. Authority - Purpose.**

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 73.

##### **R156-73-303b. Continuing Education - Standards.**

(1) The standards for continuing education are as follows:

(a) the content must be relevant to chiropractic practice and consistent with the laws and rules of this state;

(b) the course must be under the sponsorship of or approved by:

(i) a chiropractic college or university whose doctor of chiropractic program is accredited by the Council on Chiropractic Education, Inc.;

(ii) a professional association or nonprofit organization representing a licensed profession whose program objectives relate to the practice of chiropractic;~~or~~

(iii) the licensing agency of another state; or

(iv) PACE;

(c) learning objectives must be reasonably and clearly stated;

(d) teaching methods must be clearly stated and appropriate;

(e) faculty must be qualified, both in experience and in teaching expertise;

(f) documentation of attendance must be provided;~~and~~

(g) there shall be no more than four clock hours related to chiropractic practice marketing or practice building;

(h) no more than 10 hours of continuing education, in each two year period of licensure, may be by distance learning.

(2) A licensee shall be responsible for maintaining competent records of completed continuing education for a period of two years after close of the two year period to which the records pertain.

(3) The board may, after review, waive the continuing education requirements for a licensee presenting sufficient evidence of hardship or illness or other reason making it impossible or highly impractical for the licensee to attend or have attended a sufficient number of continuing education classes.

(4) As part of the 40 continuing education hours required every two years, a chiropractic physician, who provides acupuncture services as a part of their practice, shall complete 10 hours of acupuncture related continuing education.

**R156-73-601. Scope of Practice.**

The requirements to demonstrate competency and training to perform clinical acupuncture include:

(1) Licensees who provided acupuncture services as a part of their practice prior to January 1, 2002 are not required to meet the requirements of Subsections (2) or (3), but are required to complete[completing] a recognized clinical acupuncture course sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b, consisting of at least 100 classroom hours of instruction and passing a certifying examination in order to continue to provide clinical acupuncture as a part of their practice after January 1, 2002.

(2) ~~[Beginning January 1, 2002, for licensees who have not previously met the requirements listed in Subsection (1), the requirements to demonstrate competency and training to perform clinical acupuncture shall be]~~Licensees who begin providing clinical acupuncture as a part of their practice on or after January 1, 2002 and prior to January 1, 2005 shall:

(a) ~~[completing]complete~~ a recognized clinical acupuncture course sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b, consisting of at least 200 classroom hours of instruction and passing a certifying examination; or

(b) ~~[completing]complete~~ a recognized clinical acupuncture course sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b, consisting of at least 100 classroom hours of instruction, passing a certifying examination, and completing 100 hours of clinical experience under the indirect supervision of a licensed health care provider who has met the requirements in Subsection (1) or (2)(a), and has practiced clinical acupuncture for at least two years.

(3) Licensees who begin providing clinical acupuncture as a part of their practice on or after January 1, 2005 shall:

(a) meet the requirements to take and receive a passing score on the NBCE Acupuncture Examination; or

(b) meet the requirements to take and receive a passing score on the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) Examination.

**KEY: chiropractors, licensing, chiropractic physician**

**[September 5, 2002]2004**

**Notice of Continuation July 5, 2001**

**58-73-101**

**58-1-106(1)(a)**

**58-1-202(1)(a)**



Community and Economic  
Development, Community  
Development, History

**R212-4**

Archaeological Permits

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 27359

FILED: 08/24/2004, 10:53

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed changes will address concerns raised by Kent Bishop, the Rules Analyst from the Governor's Office of Planning and Budget, and the Utah Professional Archaeological Council.

**SUMMARY OF THE RULE OR CHANGE:** Permit applicants will be required to be registered as a Registered Professional Archaeologist. A provision for "grandfathering" current permittees who may not qualify has also been added. Also, adopts the Utah Professional Archaeological Council and Registered Professional Archaeologist standards as the standards for work, while maintaining the phrase "to current standards of scientific rigor."

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 9-8-201, 9-8-203, 9-8-302, 9-8-304, 9-8-305, 9-8-306, 9-8-307, 9-8-404, 9-9-403, and 76-9-704; Title 63, Chapter 2; 16 USC 470 Sec. 304; and 43 CFR 7.8 Subtitle A (October 1, 2000, edition)

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** The proposed amendment to this rule requires archaeologists named on an Antiquities Permit as a Principal Investigator or Field Supervisor to be Registered Professional Archaeologists (RPAs) (as sanctioned and listed by the Register of Professional Archaeologists, 5024-R Campbell Blvd., Baltimore, MD 21236; <http://www.rpanet.org/>). Registration costs are as follows: There is an initial \$35 application fee, and an annual fee of \$45 if the registrant is a member of one of the affiliated societies (Society of American Archaeology, Society for Historic Archaeology, Archaeological Institute of America), or \$125 for nonmembers. Most professional archaeologists are affiliated with one or more of these societies and are thus eligible for the reduced annual fee. For most individuals, this will amount to a fee, including of the application fee, of \$80 to \$160 for the first year, and \$45 to \$125 each subsequent year. This cost may be borne by the individual, or the employer, which may be a governmental agency or private firm. For the State of Utah, there are 18 archaeologists currently listed on Antiquities Permits in 5 agencies. The total initial cost to the state, at \$80 per individual, were the agencies to cover the fees and dues, would be \$1,440 and for subsequent years at \$45 annually the total cost would be \$810. Some individuals may not be members of an affiliated society, thus increasing the costs by \$80 per year per individual registrant.

❖ **LOCAL GOVERNMENTS:** The proposed amendment to this rule requires archaeologists named on an Antiquities Permit as a Principal Investigator or Field Supervisor to be Registered Professional Archaeologists (RPAs) (as sanctioned and listed by the Register of Professional Archaeologists, 5024-R Campbell Blvd., Baltimore, MD 21236; <http://www.rpanet.org/>). Registration costs are as follows: There is an initial \$35 application fee, and an annual fee of \$45 if the registrant is a member of one of the affiliated societies (Society of American Archaeology, Society for Historic Archaeology, Archaeological Institute of America), or \$125 for nonmembers. Most professional archaeologists are affiliated with one or more of these societies and are thus eligible for the reduced annual

fee. For most individuals, this will amount to a fee, including of the application fee, of \$80 to \$160 for the first year, and \$45 to \$125 each subsequent year. This cost may be borne by the individual, or the employer, which may be a governmental agency or private firm.

❖ OTHER PERSONS: The proposed amendment to this rule requires archaeologists named on an Antiquities Permit as a Principal Investigator or Field Supervisor to be Registered Professional Archaeologists (RPAs) (as sanctioned and listed by the Register of Professional Archaeologists, 5024-R Campbell Blvd., Baltimore, MD 21236; <http://www.rpanet.org/>). Registration costs are as follows: There is an initial \$35 application fee, and an annual fee of \$45 if the registrant is a member of one of the affiliated societies (Society of American Archaeology, Society for Historic Archaeology, Archaeological Institute of America), or \$125 for nonmembers. Most professional archaeologists are affiliated with one or more of these societies and are thus eligible for the reduced annual fee. For most individuals, this will amount to a fee, including of the application fee, of \$80 to \$160 for the first year, and \$45 to \$125 each subsequent year. This cost may be borne by the individual, or the employer, which may be a governmental agency or private firm. Most archaeologists named as Principal Investigators of Field Supervisors on Antiquities Permits work for archaeological consulting firms; the cost of RPA registration will likely be borne by the firm, and passed on to clients. The total initial cost to a firm would be \$80 per individual, \$45 annually for subsequent years. Some individuals may not be members of an affiliated society, thus increasing the costs by \$80 per year per individual registrant. The costs for firms with a current Antiquities Permit will therefore range from an initial fee of \$80 to \$160, with an annual fee of either \$45 or \$125, for a firm with one employee named on the permit. For firms with multiple employees, the initial cost would be \$80 or \$160 per permitted employee for the first year, and \$45 or \$125 per year permitted employee thereafter. The firm with the greatest number of currently permitted employees has 28 individuals named on its permit; its fees would therefore be between \$2,240 and \$4,480 for the initial year, and between \$1,260 and \$3,500 each subsequent year. Summary of current State Antiquities Permits: 18 State Employees on permits; 7 State University/College employees on permits; greatest number of Principal Investigators from one firm 10; greatest number of Field Supervisors from one firm 18; 53 Private Consultants; 5 State Agencies: School and Institutional Trust Lands Administration, History, Parks, Transportation, and Wildlife; 3 State University Permit Holders: University of Utah, Utah State University, and Salt Lake Community College; 5 Federal agencies: Bureau of Land Management, Fish and Wildlife, Corps of Engineers, Natural Resources Conservation Service (NRCS), and Dugway Proving Ground; and 1 Out-of-State University. Total number of individuals listed on permits: 246.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendment to this rule requires archaeologists named on an Antiquities Permit as a Principal Investigator or Field Supervisor to be Registered Professional Archaeologists (RPAs) (as sanctioned and listed by the Register of Professional Archaeologists, 5024-R Campbell Blvd., Baltimore, MD 21236; <http://www.rpanet.org/>). Registration

costs are as follows: There is an initial \$35 application fee, and an annual fee of \$45 if the registrant is a member of one of the affiliated societies (Society of American Archaeology, Society for Historic Archaeology, Archaeological Institute of America), or \$125 for nonmembers. Most professional archaeologists are affiliated with one or more of these societies and are thus eligible for the reduced annual fee. For most individuals, this will amount to a fee, including of the application fee, of \$80 to \$160 for the first year, and \$45 to \$125 each subsequent year. This cost may be borne by the individual, or the employer, which may be a governmental agency or private firm. For the State of Utah, there are 18 archaeologists currently listed on Antiquities Permits in 5 agencies. The total initial cost to the state, at \$80 per individual, were the agencies to cover the fees and dues, would be \$1,440 and for subsequent years at \$45 annually the total cost would be \$810. Some individuals may not be members of an affiliated society, thus increasing the costs by \$80 per year per individual registrant. Most archaeologists named as Principal Investigators of Field Supervisors on Antiquities Permits work for archaeological consulting firms; the cost of RPA registration will likely be borne by the firm, and passed on to clients. The total initial cost to a firm would be \$80 per individual, \$45 annually for subsequent years. Some individuals may not be members of an affiliated society, thus increasing the costs by \$80.00 per year per individual registrant. The costs for firms with a current Antiquities Permit will therefore range from an initial fee of \$80 to \$160, with an annual fee of either \$45 or \$125, for a firm with one employee named on the permit. For firms with multiple employees, the initial cost would be \$80 or \$160 per permitted employee for the first year, and \$45 or \$125 per year permitted employee thereafter. The firm with the greatest number of currently permitted employees has 28 individuals named on its permit; its fees would therefore be between \$2,240 and \$4,480 for the initial year, and between \$1,260 and \$3,500 each subsequent year. Summary of current State Antiquities Permits: 18 State Employees on permits; 7 State University/College employees on permits; greatest number of Principal Investigators from one firm 10; greatest number of Field Supervisors from one firm 18; 53 Private Consultants; 5 State Agencies: School and Institutional Trust Lands Administration, History, Parks, Transportation, and Wildlife; 3 State University Permit Holders: University of Utah, Utah State University, and Salt Lake Community College; 5 Federal agencies: Bureau of Land Management, Fish and Wildlife, Corps of Engineers, Natural Resources Conservation Service (NRCS), and Dugway Proving Ground; and 1 Out-of-State University. Total number of individuals listed on permits: 246.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The increased cost indicated above constitute the only fiscal impact on business.

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

COMMUNITY AND ECONOMIC DEVELOPMENT  
COMMUNITY DEVELOPMENT, HISTORY  
300 RIO GRANDE  
SALT LAKE CITY UT 84101-1182, or  
at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

Wilson Martin or Alycia Aldrich at the above address, by phone at 801-533-3552 or 801-533-3556, by FAX at 801-533-3503 or 801-533-3503, or by Internet E-mail at [wmartin@utah.gov](mailto:wmartin@utah.gov) or [AALDRICH@utah.gov](mailto:AALDRICH@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2004

AUTHORIZED BY: Philip F. Notarianni, Director

## **R212. Community and Economic Development, History.**

### **R212-4. Archaeological Permits.**

#### **R212-4-5. Qualifications of Permit Holders.**

The division shall issue a permit for the survey or excavation of archaeological resources to individuals and entities who demonstrate compliance with the following requirements:

##### A. Education, Experience, and Capabilities.

1. Archaeologists shall meet the minimum standards for education and experience set by federal regulation. The federal regulations, codified as 43 CFR 7.8, Subtitle A (October 1, 2000 Edition) as amended. Issuance of permits are hereby incorporated by reference.

a) Archaeologists shall be Registered Professional Archaeologists (RPA) in good standing, as recognized by the Register of Professional Archaeologists. Applicants listed on Antiquities Permits at the time this rule takes effect, but who may not meet the standards for RPA status, will not have their permit status revoked.

2. Applicants shall submit a resume or vita as proof of compliance.

3. Applicants shall provide written evidence indicating the ability to conduct surveys or the proposed excavation in a manner consistent with current professional practice, including access to proper equipment and facilities, and use of other personnel qualified to execute portions of the research design.

4. All work conducted under authority of an Antiquities Permit shall be undertaken to current standards of scientific rigor, and must conform to standards established by the Utah Professional Archaeological Council and the Register of Professional Archaeologists.

#### **R212-4-7. Excavation Permits.**

A. The division may issue a permit for excavation on lands owned or controlled by the state and its subdivisions, and on school and institutional trust lands when permitting authority is delegated to the division, when the applicant complies with the requirements of sub-section C.

B. The division may issue a permit for excavation on other lands, including private lands, when the landowner gives permission and the applicant complies with the requirements of sub-section C.

C. The division shall require that the applicant:

1. Provide a research design which:

- a) explicitly states the questions to be addressed;
- b) the reasons for conducting the work;
- c) defines the methods to be used;
- d) describes the analysis to be performed;

e) outlines the expected results and the plans for reporting;

f) evaluates expected contributions of the proposed archaeological work to archaeological science and the field of anthropology or related disciplines;

g) provides for recovery of the maximum amount of historic, scientific, archaeological, anthropological, and educational information;

h) provides that the physical recovery of specimens and the reporting of archaeological information meet current standards of scientific rigor and conforms to standards established by the Utah Professional Archaeological Council and the Register of Professional Archaeologists; and

i) provides that no specimen, site or portion of any site is removed from the state of Utah, prior to placement in a museum, repository, or curation facility, without explicit permission from the division and after consultation with landowners and any other agency managing any interest in the land.

2. Possess written proof of consultation with the appropriate Native American Tribe or Nation, if required by law.

3. Provide written proof of consultation with the Museum of Natural History, if required by law.

4. Possess written proof of consultation with other agencies that manage other legal interests in the land.

5. Provide all other information requested by the division.

**KEY: administrative procedure, archaeology[≠]**

~~[March 11, 2003]~~2004

Notice of Continuation September 26, 2001

9-8-302

9-8-305

9-9-403

63-2

16 USC 470 Sec. 304

43 CFR 7.8 Subtitle A



## Health, Health Care Financing, Coverage and Reimbursement Policy **R414-54** Speech-Language Pathology Services

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27366

FILED: 08/26/2004, 10:25

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is necessary to reconcile this rule (R414-54) with changes made in Rule R414-1 (DAR No. 26264) that restored benefits to categorically and medically needy individuals older than age 20. (DAR NOTE: The filing on R414-1 was published in the June 1, 2003, issue of the Bulletin under DAR No. 26264 and was effective 07/02/2003.)

SUMMARY OF THE RULE OR CHANGE: The language that restricts speech-language pathology services to Medicaid clients who are ages 20 and younger and to adults who are pregnant, is deleted in Subsection R414-54-1(1). Also, language that

restricts speech-language pathology services to Medicaid clients who are ages 20 and younger or who are pregnant is deleted in Subsection R414-54-1(3). Another nonsubstantive change is made in Section R414-54-5 where the word "the" is inserted. Finally, a nonsubstantive change is made in Subsection R414-54-6(1), where the word "fees" is changed to "fee".

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5, Subsection 26-18-3(2)(a), and 42 CFR 440.110

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There is no impact to the state budget associated with this rulemaking because the change had been already implemented in an earlier amendment to Rule R414-1. The costs for this change were discussed in the prior rulemaking for Rule R414-1 under DAR No. 26264.
- ❖ LOCAL GOVERNMENTS: There is no impact to local government associated with this rulemaking because the change had been already implemented in an earlier amendment to Rule R414-1. The costs for this change were discussed in the prior rulemaking for Rule R414-1 under DAR No. 26264.
- ❖ OTHER PERSONS: There is no impact to Other persons associated with this rulemaking because the change had been already implemented in an earlier amendment to Rule R414-1. The costs for this change were discussed in the prior rulemaking for Rule R414-1 under DAR No. 26264.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to Affected persons associated with this rulemaking because the change had been already implemented in an earlier amendment to Rule R414-1. The costs for this change were discussed in the prior rulemaking for Rule R414-1 under DAR No. 26264.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule amendment reconciles this rule to changes made to Rule R414-1 (DAR No. 26264). No fiscal impact as a result of this rule change on business. Scott D. Williams, MD

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 at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

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

**R414-54. Speech-Language Pathology Services.**

**R414-54-1. Introduction and Authority.**

(1) The Speech-Language Pathology Program provides speech-language services to meet the basic speech-language pathology needs of Medicaid clients [~~and is limited to recipients age 20 and younger and pregnant adults~~].

(2) Speech-language pathology services are described in 42 CFR, subsection 440.110(c)(1)(2), October 1997 edition, which is adopted and incorporated by reference.

**R414-54-3. Client Eligibility Requirements.**

Speech-language pathology services are available to Categorically Needy and Medically Needy individuals [~~clients who are ages 20 and younger or who are pregnant~~].

**KEY: Medicaid**

~~January 28, 2004~~

Notice of Continuation March 23, 2004

26-1-5

26-18-3



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

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27378

FILED: 08/30/2004, 17:22

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is needed to change the eligibility criteria for the Family Medicaid program so that a family receiving financial assistance under the Temporary Assistance to Needy Families (TANF) (called the Family Employment Program (FEP) in Utah) will no longer automatically qualify for medical assistance under 1931 Family Medicaid. Families receiving financial assistance will need to meet the same eligibility criteria for 1931 Family Medicaid assistance as families who do not receive financial assistance. It also modifies the income deductions for specified relatives to match those allowed for other Family Medicaid households, including a deduction for the cost of caring for an incapacitated spouse to the because this deduction was missed for specified relatives when it was added for Family Medicaid in a recent change under R414-304. These changes will result in the same



eligibility criteria being applied to all households for Family Medicaid.

SUMMARY OF THE RULE OR CHANGE: The changes include: 1) in Section R414-303-4, added a new Subsection R414-303-4(1) to state that this section pertains to eligibility for Family Medicaid programs and the other subsections are renumbered accordingly; 2) the old Subsection R414-303-4(2) is removed because these definitions are no longer needed, and the old Subsections R414-303-4(4) and R414-303-4(6) are removed because receipt of a cash payment under FEP or under the FEP Diversion program is no longer an automatic way of receiving eligibility for 1931 Family Medicaid; 3) the new Subsection R414-303-4(3) has been modified to more clearly define the eligibility criteria required for coverage under the 1931 Family Medicaid coverage group. The old R414-303-4(7)(c) is removed as it is not needed in this rule, the requirements for duty of support are covered in Rule R414-302, and the other subsections are renumbered accordingly; 4) in the new Subsection R414-303-4(4)(d), the terms "FEP household" and "FEP" are being removed to comply with the change in policy about eligibility for 1931 Family Medicaid, and the new Subsection R414-303-4(4)(g) is modified to make the income deductions to determine eligibility for a specified relative the same as they are for other Family Medicaid households, including a deduction for the cost of providing care for an incapacitated spouse of the specified relative which was added to a recent rule change in Rule R414-304, but did not get added in this rule at the same time; and 5) in the old Subsection R414-303-5(2), language about FEP or FEP diversion eligible households receiving Transitional Medicaid when their cash assistance ends is being removed. If households receiving cash assistance meet the regular eligibility criteria for 1931 Family Medicaid, they can receive Transitional Medicaid in the same manner as any other 1931 Family Medicaid eligible household. (DAR NOTE: The proposed amendment to Rule R414-304 is under DAR No. 27379 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 18

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: A savings of \$157,920 of which \$113,702 is federal funds and \$44,218 is state funds will be realized. This estimate could be less if these individuals can meet a spenddown to become eligible, qualify for a different Medicaid program, or enroll in the Primary Care Network.

❖ LOCAL GOVERNMENTS: Local governments are not affected by this rulemaking as this only affects eligibility for individuals.

❖ OTHER PERSONS: It is difficult to estimate the aggregate costs to the group of about 40 families who may not be able to qualify for Medicaid because of this change. If they have no other medical coverage, their costs would be equal to whatever medical expenses they incur during the year. That total could be anything up to the \$157,920 savings the Department anticipates or more.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is difficult to estimate the costs individuals (the members of about 40 families) may incur who are not able to qualify for Medicaid

because of this change. If they have no other medical coverage, their costs would be equal to whatever medical expenses they incur during the year. Individual costs could be a prorated portion of anything up to the \$157,987 savings the Department anticipates or more.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes are being made at the request of the Department of Workforce Services.

This will improve the efficiency and flexibility of their eligibility determination processes. The consequence is that an estimated 40-50 adults that may lose Medicaid eligibility. This will have an impact on these individuals and on their health care provider lasting until these individuals can obtain employer-based health insurance. Scott D. Williams, MD

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HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY UT 84116-3231, or  
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THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

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

**R414-303. Coverage Groups.**

**R414-303-4. Family Medicaid and Family Institutional Medicaid Coverage Groups.**

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

~~(1)~~ (2) The Department ~~shall~~ provides Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.113 through 435.117, 435.119, 435.210 for groups defined under 201(a)(5) and (6), 435.211, 435.217, 435.223, and 435.300 through 435.310, 200~~(1)~~<sup>(2)</sup> ed. ~~and 45 CFR 233.90, 2001 ed.,~~ and Title XIX of the Social Security Act ~~as in effect January 1, 2001,~~ Sections 1902(e)(1), (4), (5), (6), (7), and 1931(a), (b), and (g) (1931 FM) in effect January 1, 2003, which are incorporated by reference.

~~(2) The following definitions apply to this rule:~~

~~(a) "1931 Family Medicaid" (1931 FM) means a medical assistance program that meets the criteria found in Section 1931(a) and (b) of the Social Security Act in effect January 1, 2001 that requires the Department to use the eligibility criteria of the pre-~~

welfare reform Aid to Families With Dependent Children cash assistance program along with any subsequent amendments made by the Department as allowed under Section 1931 of the Act.

~~(b) "Family Employment Program" (FEP) means a grant program providing financial assistance to eligible families with dependent children. It is also referred to as Temporary Assistance to Needy Families (TANF).~~

~~(c) "Diversion" means a one-time FEP payment that may equal up to three months of FEP cash assistance.~~

~~(3) The Department provides Medicaid coverage to individuals who are 1931 FM qualified, as described in 45 CFR 233.39, 233.90, and 233.100, 2001 ed., which are incorporated by reference.~~

~~(4) The Department provides 1931 Family Medicaid coverage to individuals who are qualified for FEP cash assistance.~~

~~(5) For unemployed two-parent households, the Department shall does not require the primary wage earner to have an employment history.~~

~~(6) Households that receive a FEP diversion payment shall have the option to receive 1931 Family Medicaid coverage for three months beginning with the month of application for the diversion payment.~~

~~(7) A specified relative, as that term is used in the provisions incorporated into this section, other than the child's parents, may apply for assistance for a child. In addition to other Family Medicaid requirements, all the following rules apply applies to a Family Medicaid application by a specified relative:~~

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

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

~~(c) The parents' obligation to financially support their child shall be enforced.~~

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

~~(e) If the specified relative is currently included in a FEP household or a 1931 Family Medicaid household, the child shall must be included in the FEP or 1931 FM ease of eligibility determination for the specified relative.~~

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

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

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

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

~~(ii) The unearned income of the relative and the excluded spouse shall be counted.~~

~~(i) For each employed person, \$90 will be deducted from the monthly gross earned income for each employed person.~~

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

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

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

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

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

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

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

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

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

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

(11) The Department imposes no suitable home requirement.

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

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

(a) receive SSI;

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

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

**R414-303-5. 12 Month Transitional Family Medicaid.**

~~[(1) The Department complies with Title XIX of the Social Security Act, Sections 1925 and 1931 (c)(2) as in effect January 1, 2001, which are incorporated by reference.~~

~~—(2) The Department shall consider Medicaid coverage under 12 month Transitional Medicaid for households that lose eligibility for 1931 Family Medicaid, FEP cash assistance, and households that receive 1931 Family Medicaid for three months because they received a FEP Diversion payment.]The Department covers households that lose eligibility for 1931 Family Medicaid, in accordance with the provisions of Title XIX of the Social Security Act, Sections 1925 and 1931 (c)(2).~~

**KEY: income, coverage groups**

**2004**

**Notice of Continuation January 31, 2003**

**26-18-3**

**26-1-5**

▼ ————— ▼

## Health, Health Care Financing, Coverage and Reimbursement Policy

# R414-304

## Income and Budgeting

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27379

FILED: 08/30/2004, 17:31

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rulemaking is needed to make certain changes in the income provisions to correspond with the changes in eligibility under the 1931 Family Medicaid program being submitted in Rule R414-303. It also is needed to make a change to Family-related Medicaid programs so that ineligible alien family members will be counted in the household size to determine the applicable income limit to use for eligibility of the U.S. citizen or qualified alien family members. (DAR NOTE: The proposed amendment to Rule R414-303 is under DAR No. 27378 in this issue.)

**SUMMARY OF THE RULE OR CHANGE:** The changes include: 1) a new subsection is added at the beginning of Section R414-304-4 to clarify that these rules apply to Family Medicaid programs; 2) in Subsection R414-304-4(15), language is being changed to clarify the type of financial assistance programs from the Department of Workforce Services, and language is being added that even though the cash payments under financial assistance payments will not count as income to determine Family Medicaid eligibility, household income used to determine the amount of such financial assistance payments will count; 3) in Subsection R414-304-6(2), the definition of "1931 Family Medicaid" is being changed to reference the definition found in Rule R414-303, and the definition of "Temporary Assistance to Needy Families" is being removed as it is no longer needed in this rule; 4) in

Subsection R414-304-6(3), JTPA is being replaced with the name of the new program that replaced it; 5) in Subsection R414-304-6(4), the phrase "TANF financial payment" is being removed as that is no longer an eligibility criteria; 6) Subsection R414-304-13(2) is being added that will count nonqualified alien family members as part of the household size to determine eligibility for the U.S. citizen or qualified alien family members, and subsequent subsections have been renumbered; 7) in the new Subsection R414-304-13(3), wording has been added to make it clear that an ineligible alien child may be excluded by request of the applicant and by doing so the income and resources of that child will not be counted to determine eligibility for any other family members; and 8) in the new Subsection R414-304-13(9), clarifying language was added.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 18

#### ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** A savings of \$157,920 (\$113,702 in federal funds and \$44,218 in state funds) could be realized. This estimate could be less if these individuals can meet a spenddown to become eligible, qualify for a different Medicaid program, or enroll in the Primary Care Network. This savings will be offset by a potential increase in costs for individuals who will now qualify for Medicaid because of the change in counting ineligible alien family members in the household. The increase should be minimal, perhaps up to 50 individuals, most of whom will be children. The estimated annual cost for 50 children is \$81,000 (\$58,350 in federal funds and \$22,650 in state funds).

❖ **LOCAL GOVERNMENTS:** Local governments are not affected by this rulemaking as this only affects eligibility for individuals.

❖ **OTHER PERSONS:** It is difficult to estimate the costs individuals may incur who are not able to qualify for Medicaid because of the change to determine eligibility for 1931 Family Medicaid separately from eligibility for the Family Employment program. These individuals can receive some primary care services at community health centers. If they have no other medical coverage, their other medical costs would be equal to whatever medical expenses they incur during the year.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Individuals who cannot receive Medicaid because of the change in determining eligibility for 1931 Family Medicaid and who have no other medical coverage will incur costs for their personal medical expenses. Medical providers may be affected if they provide services to these individuals and then cannot receive payment from these individuals.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** These changes are being made at the request of the Department of Workforce Services.

This will improve the efficiency and flexibility of their eligibility determination processes. The consequence is that an estimated 40 - 50 adults that may lose Medicaid eligibility. This will have an impact on these individuals and on their health care provider lasting until these individuals can obtain employer-based health insurance. Scott D. Williams, MD

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

HEALTH  
HEALTH CARE FINANCING,  
COVERAGE AND REIMBURSEMENT POLICY  
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288 N 1460 W  
SALT LAKE CITY UT 84116-3231, or  
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THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

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

**R414-304. Income and Budgeting.**

**R414-304-4. Family Medicaid and Institutional Family Medicaid Unearned Income Provisions.**

This section provides eligibility criteria governing unearned income for the determination of eligibility for Family Medicaid and Institutional Family Medicaid coverage groups.

(1) The Department adopts 42 CFR 435.725, 435.726, 435.811 through 435.832, 2001 ed., and 45 CFR 233.20(a)(1), 233.20(a)(3)(iv), 233.20(a)(3)(v), 233.20(a)(3)(xxi), 233.20(4)(ii), and 233.51, 200[+] ed., which are incorporated by reference. The Department adopts Subsection 404(h)(4) of the Compilation of the Social Security Laws in effect January 1, 200[+] ed., which is incorporated by reference. The Department shall not count as income any payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The following definitions apply to this section:

(a) A "bona fide loan" is a loan that has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment.

(b) "Unearned income" means cash received for which the individual performs no service.

(c) "Quarter" means any three-month period that includes January through March, April through June, July through September or October through December.

(3) Bona fide loans are not countable income.

(4) Support and maintenance assistance provided in-kind by a non-profit organization certified by the Department of Human Services is not countable income.

(5) The value of food stamp assistance is not countable income.

(6) SSI and State Supplemental Payments are income for children receiving Child, Family, Newborn, or Newborn Plus Medicaid.

(7) If rental income is unearned income, deduct \$30. If the rental income is consistent with community standards, additional deductions are allowed if the client can prove greater expenses. The following expenses in excess of \$30 may be allowed:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property. This includes utility costs.

(c) only the interest can be deducted on a loan or mortgage made for upkeep or repair;

(d) if meals are provided to a boarder, the value of a one-person food stamp allotment.

(8) Cash gifts that do not exceed \$30 a quarter per person in the assistance unit are not countable income. A cash gift may be divided equally among all members of the assistance unit.

(9) Deferred income that was not deferred by choice is countable income when it is received by the client if receipt can be reasonably anticipated. If the income was deferred by choice, count it as income when it could have been received.

(10) The value of special circumstance items is not countable income if the items are paid for by donors.

(11) Home energy assistance is not countable income.

(12) Do not count payments from any source that are to repair or replace lost, stolen or damaged exempt property. If the payments include an amount for temporary housing, count only the amount that the client does not intend to use or that is more than what is needed for temporary housing.

(13) SSA reimbursements of Medicare premiums are not countable income.

(14) Payments from trust funds are countable income in the month the payment is received or made available to the individual.

(15) ~~FFP~~ Payments from the Department of Workforce Services under the Family Employment program, the Working Toward Employment Program [~~payments~~], and the Refugee Cash Assistance program are not countable income. Income used to determine the amount of these payments is counted to determine eligibility for Medicaid, unless the income is an excluded income under other laws or regulations.

(16) Only the portion of a Veteran's Administration check to which the client is legally entitled is countable income.

(17) If the entitlement amount of a benefit differs from the payment, the full entitlement amount is counted as income unless the amount being withheld from the entitlement is due to an overpayment of such benefits, in which case the entitlement less the amount withheld to repay the overpayment is counted. If deductions are being withheld that are purely voluntary, or are to repay a debt or meet a legal obligation other than an overpayment of the benefit, the full entitlement is counted as income.

(18) Deposits to joint checking or savings accounts are countable income, even if the deposits are made by a non-household member. Clients who dispute ownership of deposits to joint checking or savings accounts shall be given an opportunity to prove that the deposits do not represent income to them. Funds that are successfully disputed are not countable income.

(19) Income, unearned and earned, ~~shall be~~ is deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997.

(20) Sponsor deeming ~~will end~~ when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited

with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(21) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

(22) The interest earned from a sales contract on either or both the lump sum and installment payments is countable unearned income when it is received or made available to the client.

(23) Interest accrued on an Individual Development Account as defined in ~~[Sections 404-416 of Pub. L. No. 105-285 effective October 27, 1998, shall not]~~ 42 USC 604(h) does not count as income.

(24) Current child support payments are countable income to the child for whom the payments are being made. If a payment is for more than one child, the amount is divided equally among the children unless a court order indicates a different division. Child support payments made for past months or years (arrearages) are countable income to determine eligibility of the parent or guardian who is receiving the payment. If ORS is collecting the child support, it is counted as current even if it is mailed late by ORS. Arrearages are payments collected for past months or years that were not paid on time and are like repayments for past-due debts. ORS may be collecting both current child support and arrearages.

(25) Payments from annuities count as unearned income in the month received.

(26) If income such as retirement income has been divided between divorced spouses by the divorce decree pursuant to a Qualified Domestic Relations Order, count only the amount paid to the individual.

#### **R414-304-6. Family Medicaid and Family Institutional Medicaid Earned Income Provisions.**

This section provides eligibility criteria governing earned income for the determination of eligibility for Family Medicaid and Institutional Family Medicaid coverage groups.

(1) The Department adopts 42 CFR 435.725, 435.726, 435.811 through 435.832, 2001 ed. and 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(B), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), 200~~[4]~~<sup>[3]</sup> ed., which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Full-time student" means a person enrolled for the number of hours defined by the particular institution as fulfilling full-time requirements.

(b) "Part-time student" means a person who is enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time-period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours a day, whichever is less.

(c) "School attendance" means enrollment in a public or private elementary or secondary school, a university or college, vocational or technical school or the Job Corps, for the express purpose of gaining skills that ~~[will]~~ lead to gainful employment.

(d) "Full-time employment" means an average of 100 or more hours of work a month or an average of 23 hours a week.

(e) "Aid to Families with Dependent Children" (AFDC) means a state plan for aid that was in effect on June 16, 1996.

(f) "1931 Family Medicaid" ~~[means a medical assistance program that uses the AFDC eligibility criteria in effect on June 16, 1996 along with any subsequent amendments in the State Plan, except that 1931 Family Medicaid eligibility for recipients of TANF~~

~~cash assistance follows the eligibility criteria of the Family Employment Program]~~ is Medicaid coverage required by Subsection 1931(a), (b), and (g) of the Compilation of Social Security Laws, [—(g) "Temporary Assistance to Needy Families" (TANF) means a grant program providing financial assistance to eligible families with dependent children. It is also referred to as Family Employment Program (FEP).

] (3) The income of a dependent child is not countable income if the child is:

(a) in school or training full-time;

(b) in school or training part-time, if employed less than 100 hours a month;

(c) in ~~[JTPA]~~ a job placement under the federal Workforce Information Act (WIA).

(4) For Family Medicaid, the AFDC \$30 and 1/3 of earned income deduction is allowed if the wage earner has received ~~[a TANF financial payment or]~~ 1931 Family Medicaid in one of the four previous months and this disregard has not been exhausted.

(5) ~~[To]~~ The Department determines countable net income from self-employment ~~[, the state shall]~~ by allowing a 40 percent flat rate exclusion off the gross self-employment income as a deduction for business expenses. [For] If a self-employed individual[s] provides verification of actual business expenses[who have actual allowable business expenses] greater than the 40 percent flat rate exclusion amount, ~~[if the individual provides verification of the actual expenses,]~~ the Department allows actual expenses to be deducted. [the self-employment net profit amount will be calculated using the same deductions that are] The expenses must be business expenses allowed under federal income tax rules.

(6) Items such as personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods, are not business expenses.

(7) For Family Medicaid, the Department shall deduct child-care costs, and the costs of providing care for an incapacitated adult who is included in the Medicaid household size, from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to \$200.00 per month per child under age 2 and \$175.00 per month per child age 2 and older or incapacitated adult, may be deducted. A maximum of up to \$160.00 per month per child under age 2 and \$140.00 per month per child age 2 and older or incapacitated adult, may be deducted from the earned income of clients working less than 100 hours in a calendar month.

(8) For Family Institutional Medicaid, the Department shall deduct child-care costs from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to \$160 a month per child may be deducted. A maximum of up to \$130 a month ~~[shall be]~~ is deducted from the earned income of clients working less than 100 hours in a calendar month.

(9) Earned income paid by the U.S. Census Bureau to temporary census takers ~~[shall be]~~ is excluded for any family Medicaid programs that use a percentage of the federal poverty guideline as an eligibility income limit, and for determining eligibility for 1931 Family Medicaid.

(10) Under 1931 Family Medicaid, for households that pass the 185% gross income test, if net income does not exceed the applicable BMS, the household ~~[shall be]~~ is eligible for 1931 Family Medicaid. No health insurance premiums or medical bills ~~[shall be]~~ are deducted from gross income to determine net income for 1931 Family Medicaid.

(11) For Family Medicaid recipients who otherwise meet 1931 Family Medicaid criteria, who lose eligibility because of earned income that does not exceed 185% of the federal poverty guideline, the state shall disregard earned income of the specified relative for six months to determine eligibility for 1931 Family Medicaid. Before the end of the sixth month, the state shall conduct a review of the household's earned income. If the earned income exceeds 185% of the federal poverty guideline, the household ~~will be~~ is eligible to receive Transitional Medicaid following the provisions of R414-303 as long as it meets all other criteria.

(12) After the first six months of disregarding earned income, if the average monthly earned income of the household does not exceed 185% of the federal poverty guideline for a household of the same size, the state shall continue to disregard earned income for an additional six months to determine eligibility for 1931 Family Medicaid. In the twelfth month of receiving such income disregard, if the household continues to have earned income, the household ~~will be~~ is eligible to receive Transitional Medicaid following the provisions of R414-303 as long as it meets all other criteria.

#### **R414-304-13. Family Medicaid Filing Unit.**

This section provides criteria governing who is included in a family Medicaid household.

(1) The Department adopts 42 CFR 435.601 and 435.602, 2001 ed., 45 CFR 206.10(a)(1)(iii), 233.20(a)(1) and 233.20(a)(3)(vi), 2001 ed., which are incorporated by reference.

(2) For Family Medicaid programs, if a household includes individuals who meet the U.S. citizen or qualified alien status requirements and family members who do not meet U.S. citizen or qualified alien status requirements, the Department includes the ineligible alien family members in the household size to determine the applicable income limit for the eligible family members. The ineligible alien family members do not receive regular Medicaid coverage, but may be able to qualify for Medicaid that covers only emergency services under other provisions of Medicaid law.

(~~2~~3) Except for determinations under 1931 Family Medicaid, any unemancipated minor child may be excluded from the Medicaid coverage group, and an ineligible alien child may be excluded from the household size, at the request of the specified relative responsible for the children. An excluded child ~~shall be~~ is considered an ineligible child and ~~shall not be~~ is not counted as part of the household size for deciding what income limit ~~will be~~ is applicable to the family. Income and resources of an excluded child ~~shall~~ are not ~~be~~ considered when determining eligibility or spenddown.

(~~3~~4) The Department ~~shall~~ does not use a grandparent's income to determine eligibility or spenddown for a minor child, and the grandparent ~~shall not be~~ is not counted in the household size. A cash contribution from the grandparents received by the minor child or parent of the minor child is countable income.

(~~4~~5) Except for determinations under 1931 Family Medicaid, if anyone in the household is pregnant, the unborn child ~~shall be~~ is included in the household size. If a medical authority confirms that the pregnant woman will have more than one child, all of the unborn children ~~shall be~~ are included in the household size.

(~~5~~6) If a child is voluntarily placed in foster care and is in the custody of a state agency, the parents ~~shall be~~ are included in the household size.

(~~6~~7) Parents who have relinquished their parental rights shall not be included in the household size.

(~~7~~8) If a court order places a child in the custody of the state, and the child is temporarily placed in an institution, the parents shall not be included in the household size.

(~~8~~9) If a person is "included" or "counted" in the household size, it means that that family member ~~shall be~~ is counted as part of the household and his or her income and resources ~~shall be~~ are counted to determine eligibility for the household, whether or not that family member receives medical assistance. The household size determines which BMS income level or, in the case of poverty-related programs, which poverty guideline income level ~~will~~ apply ~~applies~~ to determine eligibility for the client or family.

**KEY: financial disclosures, income, budgeting  
2004**

**Notice of Continuation January 31, 2003  
26-18-1**



## Health, Health Systems Improvement, Licensing **R432-100-7** Medical and Professional Staff

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27374

FILED: 08/27/2004, 11:53

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Mass casualty incidents are likely to overwhelm the capacity of individual hospitals and the availability of adequate numbers of credentialed staff required. This rule requires hospitals to establish policies and procedures to issue temporary credentialing when there is an emergency or disaster situation. This rulemaking updates the rule to what is currently in place in hospitals for emergency or disaster situations.

SUMMARY OF THE RULE OR CHANGE: This change amends the General Hospital standard to allow hospitals to establish policies on issuing a temporary credential or privilege to a staff member who is not an employee.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

#### ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The only state-owned and operated hospital already has the procedures in place to issue a temporary credential to a staff member in case of emergency or disaster situation. There is no anticipated cost.
- ❖ LOCAL GOVERNMENTS: Local government-owned and operated hospitals already have procedures in place to issue a temporary credential to a staff member in case of an emergency or disaster situation. There is no anticipated cost.
- ❖ OTHER PERSONS: Privately-owned and operated hospitals already have the procedures in place to issue a temporary

credential to a staff member in case of an emergency or disaster situation. There is no anticipated cost.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs for persons, this rule change matches the community practice for disaster planning and preparedness.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule reflects current practice in regulated businesses. No fiscal impact on business is anticipated. Scott D. Williams, MD

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

HEALTH  
HEALTH SYSTEMS IMPROVEMENT, LICENSING  
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:  
Debra Wynkoop at the above address, by phone at 801-538-6152, by FAX at 801-538-6325, or by Internet E-mail at debwynkoop@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

#### **R432. Health, Health Systems Improvement, Licensing.**

##### **R432-100. General Hospital Standards.**

##### **R432-100-7. Medical and Professional Staff.**

(1) Each hospital shall have an organized medical and professional staff that operates under bylaws approved by the board.

(2) The medical and professional staff shall advise and be accountable to the board for the quality of medical care provided to patients.

(3) The medical and professional staff must adopt bylaws and policies and procedures to establish and maintain a qualified medical and professional staff including current licensure, relevant training and experience, and competency to perform the privileges requested. The bylaws shall address:

- (a) the appointment and re-appointment process;
- (b) the necessary qualifications for membership;
- (c) the delineation of privileges;
- (d) the participation and documentation of continuing education;

(e) temporary credentialing and privileging of staff in emergency or disaster situations; and

(e)f) a fair hearing and appeals process.

(4) The medical care of all persons admitted to the hospital shall be under the supervision and direction of a fully qualified physician who is licensed by the state. During an emergency or

disaster situation a member of the credentialed and privileged staff must supervise temporary credentialed practitioners.

(5) An applicant for staff membership and privileges may not be denied solely on the ground that the applicant is a licensed podiatrist or licensed psychologist rather than licensed to practice medicine under the Utah Medical Practice Act or the Utah Osteopathic Medical Licensing Act.

(6) Membership and privileges may not be denied on any ground that is otherwise prohibited by law.

(7) Each applicant for medical and professional staff membership must be oriented to the bylaws and must agree in writing to abide by all conditions.

(8) The medical and professional staff shall review each applicant and grant privileges based on the scope of their license and abilities.

(9) The medical and professional staff shall review appointments and re-appointments to the medical and professional staff at least every two years.

(10) During an emergency or disaster situation the hospital shall orient each temporary practitioner to the practitioner's assigned area of the hospital.

**KEY: health facilities**

~~January 9, 2004~~

**Notice of Continuation October 16, 2003**

26-21-5

26-21-2.1

26-21-20



## Health, Health Systems Improvement, Licensing **R432-150-16** Physician Services

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 27372

FILED: 08/27/2004, 11:25

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule amendment eliminates a requirement that a physician see a patient within five days if the patient has been admitted to a nursing facility by a physician assistant or nurse practitioner.

SUMMARY OF THE RULE OR CHANGE: Subsection R432-150-16(4)(b) is deleted which requires a physician to see a patient admitted to a nursing facility by a physician assistant or nurse practitioner.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 21

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no impact to State budget, since there are no nursing facilities operated by the State.

❖ LOCAL GOVERNMENTS: Local governments that pay for the physician visit out of nursing home funds will experience a savings. However, limited research indicates that nursing homes are not paying physicians for the service. There is no anticipated impact to local government budgets.

❖ OTHER PERSONS: Limited research indicates that nursing homes, insurance providers, and private-pay patients have not paid physicians for this service. Physicians who have been providing this service without reimbursement will no longer provide the service without compensation. However, it is not possible to calculate to what extent physicians may be benefitted financially.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule change removes a requirement and will have no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change eliminates a requirement on regulated businesses and should have a positive fiscal impact. Scott D. Williams, MD

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

HEALTH  
HEALTH SYSTEMS IMPROVEMENT, LICENSING  
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:

Debra Wynkoop at the above address, by phone at 801-538-6152, by FAX at 801-538-6325, or by Internet E-mail at debwynkoop@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

**R432. Health, Health Systems Improvement, Licensing.**

**R432-150. Nursing Care Facility.**

**R432-150-16. Physician Services.**

(1) A physician must personally approve in writing a recommendation that an individual be admitted to a nursing care facility.

(a) Each resident must remain under the care of a physician licensed in Utah to deliver the scope of services required by the resident.

(b) Nurse practitioners or physician assistants, working under the direction of a licensed physician may initiate admission to a nursing care facility pending personal review by the physician.

(2) The facility must provide supervision to ensure that the medical care of each resident is supervised by a physician. When a resident's attending physician is unavailable, another qualified physician must supervise the medical care of the resident.

(3) The physician must:

(a) review the resident's total program of care, including medications and treatments, at each visit;

(b) write, sign, and date progress notes at each visit;

(c) indicate, in writing, direction and supervision of health care provided to residents by nurse practitioners or physician assistants; and

(d) sign all orders.

(4) Physician visits must conform to the following:

(a) The physician shall notify the facility of the name of the nurse practitioner or physician assistant who is providing care to the resident at the facility.

(b) ~~Each resident must be seen by the physician within five days of admission to a facility when admission is initiated by a nurse practitioner or physician assistant working under the direction of the physician.~~

~~(c)~~ Each resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least every 60 days thereafter.

~~(d)~~ Physician visits must be completed within ten days of the date the visit is required.

~~(e)~~ Except as required by R432-150-16(4)(f), all required physician visits must be made by the physician.

~~(f)~~ At the option of the physician, required visits after the initial visit may alternate between personal visits by the physician and visits by a physician assistant or nurse practitioner.

(5) The facility must provide or arrange for the provision of physician services 24 hours a day in case of an emergency.

**KEY: health facilities**

~~December 1, 1999~~ **2004**

**Notice of Continuation October 9, 2002**

**26-21-5**

**26-21-16**



## Human Services, Recovery Services

# R527-200-10

## Availability of a Hearing in Informal Adjudicative Proceedings

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27376

FILED: 08/30/2004, 11:40

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section R527-200-10 lists the criteria to permit an administrative hearing. This amendment is being requested to clarify that the criterion found in Subsection R527-200-10(1)(c) applies to the Office of Recovery Services/Children in Care bureau too.

SUMMARY OF THE RULE OR CHANGE: In order to clarify that the criterion listed in Subsection R527-200-10(1)(c) applies to the Children in Care bureau, the words "for child support services" need to be deleted.



STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 30-3-32 through 30-3-38, 62A-11-304.1, 62A-11-304.2, 62A-11-304.4, 62A-11-307.2, and Title 63, Chapter 46b

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This change will not have an affect on the state budget. The Children in Care bureau procedures have always required a parent to participate in a preliminary agency conference prior to allowing an administrative hearing.

The change is being requested to clarify the Children in Care bureau procedures.

❖ LOCAL GOVERNMENTS: None--Administrative rules of the Office of Recovery Services (ORS) do not apply to local governments.

❖ OTHER PERSONS: This change will not have an impact on other persons. The procedures are not changing. The Children in Care bureau procedures have always required a parent to participate in a preliminary agency conference prior to allowing an administrative hearing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The change will not change compliance costs for affected persons, since the change only clarifies procedures.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule change represents a minor correction to the rule and results in no substantive change to ORS processes. There would be no additional impact posed to businesses by adopting the proposed rule.

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

HUMAN SERVICES  
RECOVERY SERVICES  
515 E 100 S  
SALT LAKE CITY UT 84102-4211, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kari Smith at the above address, by phone at 801-536-8137, by FAX at 801-536-8509, or by Internet E-mail at ksmith@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2004

AUTHORIZED BY: Emma Chacon, Director

**R527. Human Services, Recovery Services.**

**R527-200. Administrative Procedures.**

**R527-200-10. Availability of a Hearing in Informal Adjudicative Proceedings.**

1. A hearing before a presiding officer in the Office of Administrative Hearings, Department of Human Services is permitted in an informal adjudicative proceeding if:

- a. the proceeding was initiated by a notice of agency action; and
- b. the respondent in a properly filed request for hearing or in the course of participation raises a genuine issue as to a material fact as provided in R527-200-11; and
- c. ~~[for child support services,]the respondent~~ participates in a preliminary agency conference.

2. A proceeding before a presiding officer in the Office of Recovery Services, Department of Human Services is permitted if an informal adjudicative proceeding is initiated by a request for agency action.

a. The presiding officer shall conduct a review of all documentation provided by the requesting party and in the agency files, and issue a Decision and Order stating the decision and the reasons for the decision.

b. The requesting party shall not be required to appear, either in person or through representation when the proceeding is conducted, but may choose to attend.

**KEY: administrative law, child support**

~~[October 29, 2003]~~2004

Notice of Continuation May 7, 2001

30-3-32 through 30-3-38

62A-11-304.1

62A-11-304.2

62A-11-304.4

62A-11-307.2

63-46b



**Human Services, Recovery Services**

**R527-300**

**Income Withholding**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 27391

FILED: 09/01/2004, 16:28

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To clarify that the District Court is the appropriate tribunal for a noncustodial parent to register a direct income withholding notice/order issued by another state when he wants to contest the other state's direct withholding notice/order.

**SUMMARY OF THE RULE OR CHANGE:** If another state sends a direct income withholding notice/order to a Utah employer, the noncustodial parent may contest the income withholding order by registering it in a tribunal of this state in accordance with Section 78-45f-506. Section 78-45f-102 designates both the district court and the Department of Human Services, of which the Office of Recovery Services (ORS) is a part of, as tribunals for the State of Utah for a number of Uniform Interstate Family Support Act (UIFSA) purposes. However, order registration is a judicial procedure, not an administrative procedure, so if another state sends direct income withholding to a Utah employer, the appropriate tribunal for contesting the out-of-state notice/order would be the District Court. In addition, normally there would not be an open case with the ORS; the income withholding order should be registered with the appropriate district court. Section R527-300-8 is added which would require that when the noncustodial parent wants to contest the direct income withholding order issued by another state by registering it in a tribunal of this state, to register it in the appropriate district court.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 62A-11-401, 62A-11-405, 62A-11-406, 62-11-413, 62A-11-414, and 78-45f-506

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** None--As this is making the rule consistent with where the statute places jurisdiction and responsibility for these actions.
- ❖ **LOCAL GOVERNMENTS:** None--As this is making the rule consistent with where the statute places jurisdiction and responsibility for these actions.
- ❖ **OTHER PERSONS:** None--As this is making the rule consistent with where the statute places jurisdiction and responsibility for these actions.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Because the noncustodial parent must file/register a contest on a income withholding order issued by another state with the appropriate District Courts, there will be no further compliance costs for them.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There should be no fiscal impact on business as there is no change, the change to the rule only provides clarification with where the statutes place jurisdiction and responsibility for this type of an action.

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

HUMAN SERVICES  
RECOVERY SERVICES  
515 E 100 S  
SALT LAKE CITY UT 84102-4211, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

LeAnn Wilber at the above address, by phone at 801-536-8950, by FAX at 801-536-8509, or by Internet E-mail at [lwilber@utah.gov](mailto:lwilber@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 11/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 11/02/2004

AUTHORIZED BY: Emma Chacon, Director

**R527. Human Services, Recovery Services.**

**R527-300. Income Withholding.**

**R527-300-8. Contesting an Income Withholding Order Issued by Another State.**

The Obligor may contest the validity or enforcement of an income-withholding order issued by another state in this state by registering and filing a contest to that order in the appropriate Utah court.

**KEY: child support, income, wages**

**~~June 16, 1998~~2004**

**Notice of Continuation September 11, 2002**

**62A-11-401**

**62A-11-405**

**62A-11-406**

**62A-11-413**

**62A-11-414**

**78-45f-506**

**Lieutenant Governor, Elections**

**R623-1**

**Lieutenant Governor's Procedure for Regulation of Lobbyist Activities**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27381

FILED: 08/31/2004, 15:37

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of the rule is to make technical corrections to Utah Code references. The rule also defines procedures for lobbyist to file reports (license applications, license updates/changes) electronically.

**SUMMARY OF THE RULE OR CHANGE:** The changes made in this rule update the Utah Code references that have been renumbered because of recent legislative changes to the Lobbyist statutes. This rule also defines procedures for lobbyist to file reports (license applications, license updates/changes) electronically.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 36-11-404

## ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This rule only makes technical changes to Utah Code references and authorizes individuals to use the State's electronic filing system for lobbyist filings. There are no anticipated costs or savings to the State Budget.
- ❖ LOCAL GOVERNMENTS: This rule only makes technical changes to Utah Code references and authorizes individuals to use the State's electronic filing system for lobbyist filings. There are no anticipated costs or savings to local government.
- ❖ OTHER PERSONS: This rule only makes technical changes to Utah Code references and authorizes individuals to use the State's electronic filing system for lobbyist filings. There are no anticipated costs or savings to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only makes technical changes to Utah Code references and authorizes individuals to use the State's electronic filing system for lobbyist filings. It will have no compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule only makes technical changes to Utah Code references and authorizes individuals to use the State's electronic filing system for lobbyist filings. It will have no fiscal impact on businesses.

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

LIEUTENANT GOVERNOR  
ELECTIONS  
Room E325 EAST BUILDING  
420 N STATE ST  
SALT LAKE CITY UT 84114-2325, or  
at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

Amy Naccarato or Leslie Barron at the above address, by phone at 801-538-1041 or 801-538-1526, by FAX at 801-538-1133 or 801-538-1133, or by Internet E-mail at [anaccarato@utah.gov](mailto:anaccarato@utah.gov) or [lbarron@utah.gov](mailto:lbarron@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2004

AUTHORIZED BY: Amy Naccarato, Director

**R623. Lieutenant Governor, Elections.****R623-1. Lieutenant Governor's Procedure for Regulation of Lobbyist Activities.****R623-1-4. Registration/License Application Procedure.**

A. In order to register and obtain a license, a lobbyist shall:

1. ~~File a registration/license application statement in compliance with the provisions of Section 36-11-103. The lieutenant governor's office shall make available forms that comply with Section 36-11-103.~~ Pay the \$25 registration fee.

2. ~~Submit the completed form to the lieutenant governor's office; and~~ File a registration/license application statement in compliance with the provisions of Section 36-11-103. The lieutenant governor's office shall make available forms that comply with Section 36-11-103. The lobbyist may either:

(a) Submit the completed form to the lieutenant governor's office; or

(b) File the lobbyist registration/license application by completing the electronic form available on the Utah Lobbyist Online system; and submit the completed signature authorization form to the lieutenant governor's office.

~~3. Pay the \$25 registration fee.~~

B. Upon receipt of a completed lobbyist registration/license application form the lieutenant governor's office shall:

1. Review the registration form for accuracy, completeness and compliance with the law;
2. Approve or disapprove the registration/license application; and
3. Notify the lobbyist in writing within 30 days of approval or disapproval.

C. An applicant who has not been convicted of any of the offenses listed in Section ~~[36-11-105(2)(a)(i)]~~ 36-11-103(4)(a)(i), and who has not had a civil penalty imposed as described in Section ~~[36-11-105(2)(a)(ii)]~~ 36-11-103(4)(a)(ii), may commence lobbying activities upon filing of a completed registration/license application form with the lieutenant governor's office and payment of the registration fee.

D. By applying for a license, the lobbyist certifies that the lobbyist intends to engage in lobbying activities under the circumstances stated in the application or supplements filed with the lieutenant governor's office during the time the registration and license are valid.

1. If a lobbyist intends to cease all lobbying activities for the remainder of the period of licensure, the lobbyist shall notify the lieutenant governor's office in writing and surrender the license.

2. If the lobbyist has a change in circumstances that affects the lobbyist's activities, the lobbyist shall notify the lieutenant governor's office in writing.

3. If a lobbyist has surrendered the license and then decides to re[~~-~~]engage in lobbying activities, a re[~~-~~]issued license without a fee may be requested, if it is within the 2-year period of the original registration.

4. The lobbyist must submit a written request to the lieutenant governor's office in order to have the license reissued.

5. A reissued license expires on December 31 of each even numbered year in accordance with Section 36-11-103(3)(b).

E. A lobbyist may ~~[apply for a license,]~~ add and delete principals[~~;~~] and provide other notices electronically ~~[according to requirements specified by]~~ as prescribed by the lieutenant governor's office.

**R623-1-5. Disapproval of Application.**

A. A lobbyist who is convicted of violation of any of the offenses listed in Utah Code Section ~~[36-11-105]~~ 36-11-103, shall have his application for license disapproved by the lieutenant governor's office and a license will not be issued.

B. The lobbyist will receive written notice of the license disapproval from the lieutenant governor's office within 30 days.

**R623-1-6. Suspensions, Revocations and Fines.**

A. Registration and reporting violations.

1. In addition to any fines imposed under 36-11-401, a lobbyist license may be suspended for any of the following willful and knowing violations of Section 36-11-103, Sections 36-11-201:

- a. Failure to register;
- b. Failure to file a year end or supplemental report on or before the statutory due date;
- c. Failure to file a year end or supplemental report;
- d. Filing a report or other document that contains materially false information or the omission of material information; including, but not limited to, the failure to list all principals for which the lobbyist works or is hired as an independent contractor;
- e. Failure to update a registration when a lobbyist accepts a new client for lobbying; or
- f. Otherwise violating Sections 36-11-103, 36-11-201.

2. If a fine or other penalty is imposed more than once under the immediately preceding section, suspension or permanent revocation of the lobbyist license shall be imposed.

3. The determination of the penalty to be imposed will be made by following the procedures as provided by Section R623-1-7.

B. Illegal Activities of lobbyists.

1. If the lieutenant governor's office discovers or receives evidence of a possible violation of Sections 36-11-301 to 305, the evidence will be sent to the appropriate county attorney or district attorney's office for prosecution.

2. If a lobbyist is convicted of a violation of Sections ~~36-11-103, 36-11-201, 36-11-301, 36-11-302, [36-11-303, 36-11-304, 36-11-305 or 36-11-403]~~, the lieutenant governor shall revoke the lobbyist license for one year as required by Subsection ~~[36-11-401(3)]36-11-401(1)~~ and give the lobbyist notice of the same, together with notice of the lobbyist's right to request a hearing under Section R623-1-9.

3. If the county or district attorney does not prosecute a possible violation under Sections 36-11-302 or 36-11-303, the lieutenant governor's office shall review the evidence to determine if a civil fine or suspension may be appropriate following the procedures for civil enforcement set forth in Section R623-1-7.

4. If a lobbyist is convicted of a violation of any of the Title 76 Criminal Code Sections referenced in Subsection ~~[36-11-401(2)]36-11-401(4)~~, suspension of up to three years or permanent revocation of the lobbyist license shall be imposed, but no civil fine may be imposed. The determination of whether to revoke or suspend a lobbyist license and for what length of time shall be made following the procedures for civil enforcement as provided by Section R623-1-7.

**R623-1-9. Reinstatement of a Lobbyist License.**

A. A lobbyist whose license is suspended or revoked may apply for reinstatement~~[as provided by Section 36-11-402]~~.

B. The lieutenant governor's office shall not reinstate any lobbyist license until the lobbyist pays any fines that have been imposed~~[and the reinstatement fee provided by Section 36-11-402]~~.

**KEY: lobbyist**

~~[December 20, 2001]~~2004  
36-11-404



## Natural Resources, Water Rights

# R655-4

## Water Well Drillers

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE No.: 27392

FILED: 09/01/2004, 17:18

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division of Water Rights needs to amend Rule R655-4 so it conforms with changes made in the Water Rights Law, Title 73, Chapter 3, by H.B. 232 during the 2004 legislative session. The Water Well Amendments in H.B. 232 revised well driller bonding, well driller licensing and renewal, and the definition of well drilling. In conjunction with the required changes needed to conform with the statute, other changes have also been proposed by the Division and licensed well drillers. Parts of the rules were clarified, reorganized and generally reworded to eliminate confusion or to make them more succinct. (DAR NOTE: H.B. 232 is found at UT L 2004 Ch 191, and was effective 05/03/2004.)

**SUMMARY OF THE RULE OR CHANGE:** The revisions pertain not only to the statute changes but also to other parts of the rule that required modification. Revisions involve the following items: 1) license renewal cycle; 2) well driller bonding; 3) agency Action process; 4) well drilling definition; 5) authorization to drill; 6) driller/operator relationship; 7) infractions; 8) continuing education; 9) well casing standards; 10) surface seal placement; 11) pitless adapter standards; 12) protection of the aquifer; and 13) jurisdiction pertaining to heating/cooling exchange wells.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 73-3-22, 73-3-24, 73-3-25, and 73-3-26

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** There will be no budgetary changes required as a result of this rule revision. The revisions to the well driller bonding rules primarily provide clarification and will not increase staff effort. Changes to the driller license renewal process will spread the staff workload out over two years and should not increase or decrease the overall staff effort. Other rule changes simply provide clarification and will not increase staff efforts or costs.

❖ **LOCAL GOVERNMENTS:** There is no impact to local government because they are not involved in the regulation of water well drillers.

❖ **OTHER PERSONS:** The change from a one-year renewal cycle to a two-year renewal cycle will reduce by half the administrative efforts of licensed well drillers. Moreover, the license renewal fee will not change, which will reduce the cost of renewal in half over a two-year period. The well driller bonding requirements have been clarified, however, the amount of bonding required by a licensed driller will not change and should not financially impact them. The other rule

changes are clarifications and should not impact licensed drillers, registered operators, or the public.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are approximately 160 licensed well drillers whose renewal fees will be reduced in half from \$50 over a 2-year period to \$25 over a 2-year period. Other changes provide clarification to existing rules and should not result in a compliance cost to licensed driller or registered operators.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Changes provide clarification to the existing rule and should not result in a fiscal impact on businesses.

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

NATURAL RESOURCES  
WATER RIGHTS  
Room 220  
1594 W NORTH TEMPLE  
SALT LAKE CITY UT 84116-3154, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Gail Nelson at the above address, by phone at 801-538-7370, by FAX at 801-538-7442, or by Internet E-mail at gailnelson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2004

AUTHORIZED BY: Jerry Olds, Director

## **R655. Natural Resources, Water Rights.**

### **R655-4. Water Well Drillers.**

#### **R655-4-1. Purpose, Scope, and Exclusions.**

##### 1.1 Purpose.

These rules are promulgated pursuant to Section 73-3-25. The purpose of these rules is to assist in the orderly development of underground water; insure that minimum construction standards are followed in the drilling, construction, deepening, repairing, renovating, cleaning, development, and abandonment of water wells and other regulated wells; prevent pollution of aquifers within the state; prevent wasting of water from flowing wells; obtain accurate records of well construction operations; and insure compliance with the state engineer's authority for appropriating water.

All administrative procedures involving applications, approvals, hearings, notices, revocations, orders and their judicial review, and all other administrative procedures required or allowed by these rules are governed by R655-6 "Administrative Procedures for Informal Proceedings Before the Division of Water Rights".

##### 1.2 Scope.

The drilling, construction, deepening, repair, renovation, replacement, cleaning, development, or abandonment of the following types of wells is regulated by these administrative rules

and the work must be completed by a licensed well driller. The rules contained herein pertain only to work on the well itself. These rules do not regulate the incidental work around the well such as pump and motor installation and repair; plumbing, electrical, and excavation work up to the well; and the building of well enclosures unless these activities directly impact or change the construction of the well itself. The process for an applicant to obtain approval to construct, or replace the wells listed below in 1.2.1, 1.2.2, or 1.2.3 is outlined in Section R655-4-7 of these rules. The process for an applicant to obtain approval to construct, deepen, repair, clean, or replace the wells listed below in 1.2.4, 1.2.5, or 1.2.6 is outlined in Appendix 1.

1.2.1 Cathodic protection wells.

1.2.2 Heating or cooling exchange wells which are 30 feet or greater in depth and which encounter formations containing groundwater. If a separate well or borehole is required for re-injection purposes, it must also comply with these administrative rules.

1.2.3 Monitor wells which are completed to a depth of 30 feet ~~[of]~~ or greater.

1.2.4 Private water production wells which are completed to a depth of 30 feet ~~[of]~~ or greater.

1.2.5 Public water system supply wells.

1.2.6 Recharge and recovery wells which are drilled under the provisions of Title 73, Chapter 3b "Groundwater Recharge and Recovery Act" Utah Code Annotated.

1.3 Exclusions.

The construction, repair, replacement, or abandonment of the following types of wells or boreholes are excluded from regulation under these administrative rules:

1.3.1 Any cathodic protection wells, heating or cooling exchange wells, monitor wells and water production wells that are constructed to a final depth of less than 30 feet. However, diversion and beneficial use of groundwater from wells less than 30 feet deep shall require approval through the appropriation procedures and policies of the state engineer and Title 73, Chapter 3 of the Utah Code Annotated.

1.3.2 Geothermal wells. ~~[However]~~ Although not regulated under the Administrative Rules for Water Well Drillers, geothermal wells are subject to Section 73-22-1 "Utah Geothermal Resource Conservation Act" Utah Code Annotated and the rules promulgated by the state engineer including Section R655-1, Wells Used for the Discovery and Production of Geothermal Energy in the State of Utah.

1.3.3 Temporary exploratory wells drilled to obtain information on the subsurface strata on which an embankment or foundation is to be placed or an area proposed to be used as a potential source of material for construction.

1.3.4 Wells or boreholes constructed to monitor man-made structures, house instrumentation to monitor structural performance, or dissipate hydraulic pressures on structures provided the wells or boreholes do not interfere with established aquifers or their primary purpose is not for monitoring water quality.

1.3.5 Wells or boreholes drilled or constructed into non-water bearing zones or which are less than 30 feet in depth for the purpose of utilizing heat from the surrounding earth.

1.3.6 Geotechnical borings drilled ~~[for Preliminary Site Assessment (PSA) or ]~~ to obtain lithologic data which are not installed for the purpose of utilizing or monitoring groundwater.

**R655-4-2. Definitions.**

ABANDONED WELL - any well which is not in use and has been filled or plugged so that it is rendered unproductive and will prevent contamination of groundwater. A properly abandoned well will not produce water nor serve as a channel for movement of water from the well or between water bearing zones.

AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI) - a nationally recognized testing laboratory that certifies building products and adopts standards including those for steel and plastic (PVC) casing utilized in the well drilling industry. ANSI standards are often adopted for use by ASTM and AWWA. Current information on standards can be obtained from: ANSI, 1430 Broadway, New York, NY 10018.

AMERICAN SOCIETY FOR TESTING AND MATERIALS (ASTM) - an independent organization concerned with the development of standards on characteristics and performance of materials, products and systems including those utilized in the well drilling industry. Information may be obtained from: ASTM, 1916 Race Street, Philadelphia, PA 19013.

AMERICAN WATER WORKS ASSOCIATION (AWWA) - an international association which publishes standards intended to represent a consensus of the water supply industry that the product or procedure described in the standard will provide satisfactory service or results. Information may be obtained from: AWWA, 6666 West Quincy Avenue, Denver CO 80235.

ANNULAR SPACE - the space between the inner well casing and the outer well casing or borehole.

~~[— APPRENTICE - an apprentice drill rig operator is an individual who is employed by a licensed Utah Water Well Driller, who works under the direct supervision of the licensee or a drill rig operator, who assists with, but never has responsible charge for the construction of water wells; and who uses equipment that is under the direct control of the licensee.~~

] AQUIFER - a porous underground formation yielding with] drawable water.

ARTESIAN AQUIFER - a water-bearing formation which contains underground water under sufficient pressure to rise above the zone of saturation.

ARTESIAN WELL - a well where the water level rises appreciably above the zone of saturation.

BENTONITE - a highly plastic, highly absorbent, colloidal swelling clay composed largely of mineral sodium montmorillonite.

Bentonite is commercially available in powdered, granular, tablet, pellet, or chip form which is hydrated with potable water and used for a variety of purposes including the stabilization of borehole walls during drilling, the control of potential or existing high fluid pressures encountered during drilling below a water table, well abandonment, and to provide a seal in the annular space between the well casing and borehole wall.

BENTONITE GROUT - a mixture of bentonite and potable water specifically designed to seal and plug wells and boreholes mixed at manufacturer's specifications to a grout consistency which can be pumped through a pipe directly into the annular space of a well or used for abandonment. Its primary purpose is to seal the borehole or well in order to prevent the subsurface migration or communication of fluids.

CASH BOND - A type of well driller bond in the form of a certificate of deposit (CD) submitted and assigned to the State Engineer by a licensed driller to satisfy the required bonding requirements.

CASING - a tubular retaining and sealing structure that is installed in the borehole to maintain the well opening.

CATHODIC PROTECTION WELL - a well constructed for the purpose of installing deep anodes to minimize or prevent electrolytic corrosive action of metallic structures installed below ground surface, such as pipelines, transmission lines, well casings, storage tanks, or pilings.

CONFINING UNIT - a geological layer either of unconsolidated material, usually clay or hardpan, or bedrock, usually shale, through which virtually no water moves.

CONSOLIDATED FORMATION - bedrock consisting of sedimentary, igneous, or metamorphic rock (e.g. shale, sandstone, limestone, quartzite, conglomerate, basalt, granite, tuff, etc.).

DISINFECTION - or disinfecting is the use of chlorine or other disinfecting agent or process approved by the state engineer, in sufficient concentration and contact time adequate to inactivate coliform or other organisms.

DRAWDOWN - the difference in elevation between the static and pumping water levels.

DRILL RIG - any power-driven percussion, rotary, boring, coring, digging, jetting, or augering machine used in the construction of a well or borehole.

EMERGENCY SITUATION - any situation where immediate action is required to protect life or property. Emergency status would also extend to any situation where life is not immediately threatened but action is needed immediately and it is not possible to contact the state engineer for approval. For example, it would be considered an emergency if a domestic well needed immediate repair over a weekend when the state engineer's offices are closed.

GRAVEL PACKED WELL - a well in which filter material is placed in the annular space to increase the effective diameter of the well and to prevent fine-grained sediments from entering the well.

GROUNDWATER - subsurface water in a zone of saturation.

GROUT - a fluid mixture of Portland cement or bentonite with water of a consistency that can be forced through a pipe and placed as required. Various additives ~~[— of]~~ such as sand, bentonite, and hydrated lime ~~[—]~~ may be included in the mixture to meet different requirements.

HYDRAULIC FRACTURING - the process whereby water or other fluid is pumped under high pressure into a well to fracture and clean-out the reservoir rock surrounding the well bore thus increasing the flow to the well.

MONITOR WELL - a well, as defined under "well" in [Subsection R655-4-2(2.8)] this section, that is constructed for the purpose of determining water levels, monitoring chemical, bacteriological, radiological, or other physical properties of ground water or vadose zone water.

NATIONAL SANITATION FOUNDATION (NSF) - a voluntary third party consensus standards and testing entity established under agreement with the U. S. Environmental Protection Agency (EPA) to develop testing and adopt standards and certification programs for all direct and indirect drinking water additives and products.

Information may be obtained from: NSF, 3475 Plymouth Road, P O Box 1468, Ann Arbor, Michigan 48106.

NEAT CEMENT GROUT - cement conforming to the ~~[American Society for Testing and Materials (ASTM)]~~ Standard C150 (standard specification of Portland cement), with no more than six ~~[(6)]~~ gallons of water per 94 pound sack (one cubic foot) of cement of sufficient weight density of not less than 15 lbs/gallon.

OPERATOR - a drill rig operator is an individual who works under the direct supervision of a licensed Utah Water Well Driller and who can be left in responsible charge to construct water wells using equipment that is under the direct control of the licensee.

PITLESS ADAPTER OR UNIT - an assembly of parts designed for attachment to a well casing which allows buried pump discharge from the well and allows access to the interior of the well casing for installation or removal of the pump or pump appurtenances, while preventing contaminants from entering the well. Such devices protect the water and distribution lines from temperature extremes, permit ~~termination~~ extension of the casing above ground as required in Subsection R655-4-~~(8)(2)~~ 9.3.2 and allow access to the well, pump or system components within the well without exterior excavation or disruption of surrounding earth or surface seal.

POLLUTION - the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water that renders the water harmful, detrimental, or injurious to humans, animals, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any or reasonable purpose.

POTABLE WATER - water supplied for human consumption, sanitary use, or for the preparation of food or pharmaceutical products which is free from biological, chemical, physical, and radiological impurities.

PRESSURE GROUTING - a process by which grout is confined within the drillhole or casing by the use of retaining plugs ~~in~~ or packers and by which sufficient pressure is applied to drive the grout slurry into the annular space or zone to be grouted.

PRIVATE WATER PRODUCTION WELL - a privately owned well constructed to supply water for any purpose which has been approved by the state engineer (such as irrigation, stockwater, domestic, commercial, industrial, etc.).

PROBATION - A disciplinary action that may be taken by the state engineer that entails greater review and regulation of well drilling activities but which does not prohibit a well driller from engaging in the well drilling business or operating well drilling equipment.

PROVISIONAL WELL - authorization granted by the state engineer to drill under a pending, unapproved water right or exchange; or for the purpose of determining characteristics of an aquifer, or the existence of a useable groundwater source.

PUBLIC WATER SYSTEM SUPPLY WELL - a well, either publicly or privately owned, providing water for human consumption and other domestic uses which has at least 15 service connections or regularly serves an average of at least 25 individuals daily for at least 60 days out of the year.

PUMPING LEVEL - the elevation of the surface of the water in a well after a period of pumping at a given rate.

REVOCAION - A disciplinary action that may be taken by the state engineer that rescinds the well driller's Utah Water Well Driller's License

SAND - a material having a prevalent grain size ranging from 2 millimeters to 0.06 millimeters.

SAND CEMENT GROUT - a grout consisting of equal parts of cement conforming to ASTM standard C150 and sand/aggregate with no more than six (6) gallons of water per 94 pound sack (one cubic foot) of cement.

STANDARD DIMENSION RATIO (SDR) - the ratio of average outside pipe diameter to minimum pipe wall thickness.

STATE ENGINEER - the director of the Utah Division of Water Rights or any employee of the Division of Water Rights designated by the state engineer to act in administering these rules.

STATIC LEVEL - stabilized water level in a non-pumped well beyond the area of influence of any pumping well.

SURETY BOND - an indemnity agreement in a sum certain and payable to the state engineer, executed by the licensee as principal and which is supported by the guarantee of a corporation authorized to transact business as a surety in the State of Utah.

SUSPENSION - A disciplinary action that may be taken by the state engineer that prohibits the well driller from engaging in the well drilling business or operating well drilling equipment as a registered operator for a definite period of time and /or until certain conditions are met.

TREMIE PIPE - a device that carries materials to a designated depth in a drill hole or annular space.

UNCONSOLIDATED FORMATION - loose, soft, incoherent rock material composed of sedimentary, igneous, or metamorphic rock which includes sand, gravel, and mixtures of sand and gravel. These formations are widely distributed and can possess good water storage and ~~water~~ transmissivity characteristics.

UNHYDRATED BENTONITE - dry bentonite consisting primarily of granules, tablets, pellets, or chips that may be placed in a well or borehole in the dry state and hydrated in place by either formation water or by the addition of potable water into the well or borehole containing the dry bentonite. Unhydrated bentonite can be used for sealing and abandonment of wells.

VADOSE ZONE - the zone containing water under less than atmospheric pressure, including soil water, intermediate vadose water and capillary water. The zone extends from land surface to the zone of saturation or water table.

WELL - a horizontal or vertical excavation or opening into the ground made by digging, boring, drilling, jetting, augering, or driving or any other artificial method for utilizing or monitoring underground waters.

WELL DRILLER - any person who is licensed by the state engineer to construct water wells for compensation or otherwise. The licensed driller has total responsibility for the construction work in progress at the well drilling site.

WELL DRILLER BOND - A financial guarantee to the state engineer, in the form of a surety bond or cash bond, by which a licensed driller binds himself to pay the penal sum of \$5,000 to the state engineer in the event of significant noncompliance with the Administrative Rules for Water Well Drillers.

WELL DRILLING - the act of drilling, constructing, repairing, renovating, or deepening, cleaning, developing, or abandoning a well ~~[including all incidental work]~~.

### **R655-4-3. Licenses and Registrations.**

#### 3.1 General.

3.1.1 Section 73-3-25 of the Utah Code requires every person that constructs a well in the state to obtain a license from the state engineer. Licenses and registrations are not transferable. ~~[All licenses, registrations, and listings expire at 12 midnight on December 31 of the year in which they are issued and are not transferable.]~~

3.1.2 Any person found to be drilling a well without a valid well driller's license or operator's registration will be ordered to cease drilling by the state engineer. The order may be made verbally but must also be followed by a written order. The order may be posted at an unattended well drilling site. A person found drilling

without a license will be prosecuted under Section 73-3-26 of the Utah Code annotated, 1953, (s) See [Subsection R655-4-5(5-8)] Appendix 2 Selected Water Laws of Utah.

### 3.2 Well Driller's License.

\_\_\_An applicant must meet the following requirements to become licensed as a Utah Water Well Driller:

3.2.1 Applicants must be 21 years of age or older.

3.2.2 Complete and submit the application form provided by the state engineer.

3.2.3 Pay the application fee approved by the state legislature.

3.2.4 Provide documentation of at least two (2) years of full time prior water well drilling experience OR documentation of 15 wells constructed by the applicant under the supervision of a licensed well driller. A copy of the well log for each well constructed must be included. The documentation must also show the applicant's experience with each type of drilling rig to be listed on the license. Acceptable documentation will include registration with the Division of Water Rights, letters from licensed well drillers (Utah or other states), or a water well drilling license granted by another state, etc.

Successful completion of classroom study in geology, well drilling, map reading, and other related subjects may be substituted for up to, but not exceeding, 12 months of drilling experience, and for up to, but not exceeding, five (5) of the required drilled wells. The state engineer will determine the number of months of drilling experience and the number of drilled wells that will be credited for the classroom study.

3.2.5 ~~File a bond in the sum of \$5,000 with the Division of Water Rights which is conditioned upon proper compliance with the law and these rules and which is effective for the calendar year in which the license is to be issued. The bond shall stipulate the obligee as the "Office of the State Engineer".~~ File a well driller bond in the sum of \$5,000 with the Division of Water Rights payable to the state engineer. The well driller bond must be filed under the conditions and criteria described in Section 4-3.6.

3.2.6 Obtain a score of at least 70% on each of the written licensing examinations required and administered by the state engineer. The required examinations test the applicant's knowledge of:

- a. The Administrative Rules for Water Well Drillers and Utah water law as it pertains to underground water;
- b. The minimum construction standards established by the state engineer for water well construction;
- c. Geologic formations and proper names used in describing underground material types;
- d. Reading maps and locating points from descriptions based on section, township, and range;
- e. Groundwater geology and the occurrence and movement of groundwater;
- f. The proper operating procedures and construction methods associated with the various types of water well drilling rigs. (A separate test is required for each type of water well drilling rig to be listed on the license).

3.2.7 Demonstrate proficiency in resolving problem situations that might be encountered during the construction of a water well by passing an oral examination administered by the state engineer.

### 3.3 Drill Rig Operator's Registration.

\_\_\_An applicant must meet the following requirements to become registered as a drill rig operator:

3.3.1 Applicants must be 18 years of age or older.

3.3.2 Complete and submit the application form provided by the state engineer.

3.3.3 Pay the application fee approved by the state legislature.

3.3.4 Provide documentation of at least six (6) months of prior water well drilling experience. The documentation must show the applicant's experience with each type of drilling rig to be listed on the registration. Acceptable documentation will include ~~being listed as an apprentice with the Division of Water Rights,~~ letters from licensed well drillers~~;~~ or registration as an operator in another state.

3.3.5 Obtain a score of at least 70% on a written examination of the minimum construction standards established by the state engineer for water well construction. The test will be provided to the licensed well driller by the state engineer. The licensed well driller will administer the test to the prospective operator and return it to the state engineer for scoring.

~~3.4 Apprenticeship Listing. An applicant must meet the following requirements to become listed as an apprentice drill rig operator:~~

~~3.4.1 Applicants must be 18 years of age or older.~~

~~3.4.2 Complete and submit the application form provided by the state engineer.~~

3.4[5] Conditional, Restricted, or Limited Licenses.

\_\_\_The state engineer may issue a restricted, conditional, or limited license to an applicant based on prior drilling experience.

3.5[6] Refusal to Issue a License or Registration.

\_\_\_The state engineer may, upon investigation and after a hearing, refuse to issue a license or a registration to an applicant if it appears the applicant has not had sufficient training or experience to qualify as a competent well driller or operator.

### 3.6 Well Driller Bond.

#### 3.6.1 General

3.6.1.1. In order to become licensed and to continue licensure, a well driller must file a well driller bond in the form of a surety bond or cash bond, approved by the state engineer, in the sum of five thousand dollars (\$5,000) with the Division of Water Rights, on a form provided by the Division, which is conditioned upon proper compliance with the law and these rules and which is effective for the licensing period in which the license is to be issued. The bond shall stipulate the obligee as the "Office of the State Engineer". The well driller bond is penal in nature and is designed to ensure compliance by the licensed well driller to protect the groundwater resource, the environment, and public health and safety. The bond may only be exacted by the state engineer for the purposes of investigating, repairing, or abandoning wells in accordance with applicable rules and standards. No other person or entity may initiate a claim against the well driller bond. Lack of a current and valid well driller bond shall be deemed sufficient grounds for denial of a driller's license. The well driller bond may consist of a surety bond or a cash bond as described below.

#### 3.6.2 Surety Bonds.

3.6.2.1. The licensed well driller and a surety company or corporation authorized to do business in the State of Utah as surety shall bind themselves and their successors and assigns jointly and severally to the state engineer for the use and benefit of the public in full penal sum of five thousand dollars (\$5,000). The surety bond shall specifically cover the licensee's compliance with the Administrative Rules for Water Well Drillers found in R655-4 of the Utah Administrative Code. Forfeiture of the surety bond shall be predicated upon a failure to drill, construct, repair, renovate, deepen, clean, develop, or abandon a regulated well in accordance with these



rules (R655-4 UAC). The bond shall be made payable to the 'Utah State Engineer' upon forfeiture. The surety bond must be effective and exactable in the State of Utah.

3.6.2.2. The bond and any subsequent renewal certificate shall specifically identify the licensed individual covered by that bond. The licensee shall notify the state engineer of any change in the amount or status of the bond. The licensee shall notify the state engineer of any cancellation or change at least thirty (30) days prior to the effective date of such cancellation or change. Prior to the expiration of the 30-days notice of cancellation, the licensee shall deliver to the state engineer a replacement surety bond or transfer to a cash bond. If such a bond is not delivered, all activities covered by the license and bond shall cease at the expiration of the 30 day period. Termination shall not relieve the licensee or surety of any liability for incidences that occurred during the time the bond was in force.

3.6.2.3. Before the bond is forfeited by the licensed driller and exacted by the state engineer, the licensed driller shall have the option of resolving the noncompliance to standard either by personally doing the work or by paying to have another licensed driller do the work. If the driller chooses not to resolve the problem that resulted in noncompliance, the entire bond amount of five thousand dollars (\$5,000) shall be forfeited by the surety and expended by the state engineer to investigate, repair or abandon the well(s) in accordance with the standards in R655-4 UAC. Any excess there from shall be retained by the state engineer and expended for the purpose of investigating, repairing, or abandoning wells in accordance with applicable rules and standards. All claims initiated by the state engineer against the surety bond will be made in writing.

3.6.2.4. The bond of a surety company that has failed, refused or unduly delayed to pay, in full, on a forfeited bond is not approvable.

### 3.6.3 Cash Bonds.

3.6.3.1. The requirements for the well driller bond may alternatively be satisfied by a cash bond in the form of a certificate of deposit (CD) for the amount of five thousand dollars (\$5,000) issued by a federally insured bank or credit union with an office(s) in the State of Utah. The cash bond must be in the form of a CD. Savings accounts, checking accounts, letters of credit, etc., are not acceptable cash bonds. The CD shall specifically identify the licensed individual covered by that fund. The CD shall be automatically renewable and fully assignable to the state engineer. CD shall state on its face that it is automatically renewable.

3.6.3.2. The cash bond shall specifically cover the licensee's compliance with well drilling rules found in R655-4 of the Utah Administrative Code. The CD shall be made payable or assigned to the state engineer and placed in the possession of the state engineer. If assigned, the state engineer shall require the bank or credit union issuing the CD to waive all rights of setoff or liens against those CD. The CD, if a negotiable instrument, shall be placed in the state engineer's possession. If the CD is not a negotiable instrument, the CD and a withdrawal receipt, endorsed by the licensee, shall be placed in the state engineer's possession.

3.6.3.3. The licensee shall submit CDs in such a manner which will allow the state engineer to liquidate the CD prior to maturity, upon forfeiture, for the full amount without penalty to the state engineer. Any interest accruing on a CD shall be for the benefit of the licensee.

3.6.3.4. The period of liability for a cash bond is five (years) after the expiration, suspension, or revocation of the license. The

cash bond will be held by the state engineer until the five year period is over, then it will be relinquished to the licensed driller. In the event that a cash bond is replaced by a surety bond, the period of liability, during which time the cash bond will be held by the state engineer, shall be five (5) years from the date the new surety bond becomes effective.

### 3.6.4 Exacting a Well Driller Bond.

3.6.4.1. If the state engineer determines, following an investigation and a hearing in accordance with the process defined in Section 4-5, that the licensee has failed to comply with the Administrative Rules for Water Well Drillers and refused to remedy the noncompliance, the state engineer may suspend or revoke a well driller's license and fully exact the well driller bond and deposit the money as a non-lapsing dedicated credit.

3.6.4.2. The state engineer may expend the funds derived from the bond to investigate or correct any deficiencies which could adversely affect the public interest resulting from non-compliance with the Administrative Rules by any well driller.

3.6.4.3. The state engineer shall send written notification by certified mail, return receipt requested, to the licensee and the surety on the bond, if applicable, informing them of the determination to exact the well driller bond. The state engineer's decision regarding the noncompliance will be attached to the notification which will provide facts and justification for bond exaction. In the case of a surety bond exaction, the surety company will then forfeit the total bond amount to the state engineer. In the case of a cash bond, the state engineer will cash out the CD. The exacted well driller bond funds may then be used by the state engineer to cover the costs of well investigation, repair, and/or abandonment.

## **R655-4.4. Administrative Requirements and General Procedures.**

### 4.1 Authorization to Drill.

The well driller shall make certain that a valid authorization or approval to drill exists before beginning drilling or work on a well. [A valid a] Authorization to drill shall consist of a valid 'start card' based on any of the [items] approvals listed below. Items 4.1.1 through 4.1.[7]11 allow the applicant to contract with a well driller to drill, replace, renovate, or abandon exactly one well at each location listed on the start card or approval form. The drilling of multiple borings/wells at an approved location/POD is not allowed without authorization from the state engineer's office. Most start cards list the date when the authorization to drill expires. If the expiration date has passed, the start card is no longer valid. If there is no expiration date on the start card, the driller must contact the state engineer's office to determine if the authorization to drill is still valid. When the work is completed, the permission to drill is terminated.

4.1.1 An approved application to appropriate.

4.1.2 A provisional well approval letter.

An approved provisional well letter grants authority to drill but allows only enough water to be diverted to determine the characteristics of an aquifer or the existence of a useable groundwater source.

4.1.3 An approved permanent change application.

4.1.4 An approved exchange application.

4.1.5 An approved temporary change application.

4.1.6 An approved application to renovate or deepen an existing well.

4.1.7 An approved application to replace an existing well.

4.1.8 An approved monitor well letter.

An approved monitor well letter grants authority to drill but allows only enough water to be diverted to monitor groundwater.

4.1.9 An approved heat exchange well letter.

4.1.10 An approved cathodic protection well letter.

4.1.11<sup>[9]</sup> Any letter or document from the state engineer directing or authorizing a well to be drilled or work to be done on a well.

4.2 Start Cards.

4.2.1 Prior to commencing any work (other than abandonment, see 4.2.4) on any well governed by these administrative rules, the driller must notify the state engineer of that intention by transmitting the information on the "Start Card" to the state engineer by telephone, by facsimile (FAX), by hand delivery, or by e-mail. A completed original Start Card ~~[OR a facsimile (FAX) of the Start Card]~~ must be sent to the state engineer by the driller after it has been telephoned or E-mailed.

4.2.2 A specific Start Card is printed for each well drilling approval and is furnished by the state engineer to the applicant or the well owner. The start card is preprinted with the water right number/provisional/monitor well number, owner name/address, and the approved location of the well. The state engineer marks the approved well drilling activity on the card. The driller must put the following information on the card:

- The date on which work on the well will commence;
- The projected completion date of the work;
- The well driller's license number;
- The well driller's signature.

4.2.3 When a single authorization is given to drill wells at more than one point of diversion, a start card shall be submitted for each location to be drilled.

4.2.4 A start card is not required to abandon a well. However, prior to commencing well abandonment work, the driller is required to notify the state engineer by telephone, by facsimile, or by e-mail of the proposed abandonment work. The notice must include the location of the well. The notice should also include the water right number associated with the well and the well owner if that information is available.

4.3 General Requirements During Construction.

4.3.1 The well driller shall have the required penal bond continually in effect during the term of the well driller's license.

4.3.2 The well driller's license number or the well driller's company name exactly as shown on the well drilling license must be prominently displayed on each well drilling rig operated under the well driller's license. If the well driller's company name is changed the well driller must immediately inform the state engineer of the change in writing.

4.3.3 A licensed well driller or a registered operator must be at the well site whenever the following aspects of well construction are in process: advancing the borehole, setting casing and screen, placing a filter pack, constructing a surface seal, or similar activities involved in well renovation or repair, or abandoning a well. All registered operators working under a well driller's license must be employees of the well driller and must use equipment either owned by or leased by the licensed well driller.

4.3.4 A<sup>[n]</sup> registered operator who is left in responsible charge of advancing the borehole, setting casing and screen, placing a filter pack, constructing a surface seal, or similar activities involved in well renovation or repair, or abandoning a well must have a working knowledge of the minimum construction standards and the proper operation of the drilling rig. The licensed well driller is responsible to ensure that a<sup>[n]</sup> registered operator is adequately trained to meet

these requirements. If, during a field inspection by the staff of the Division of Water Rights, it is determined that a<sup>[n]</sup> registered operator in responsible charge does not meet these requirements, a state engineer's red tag (see ~~[paragraph]~~ Section 4.3.5~~[-below]~~) will be placed on the drilling rig and the drilling operation will be shut down. The order to cease work will remain effective until a qualified person is available to perform the work.

4.3.5 The state engineer or staff of the Division of Water Rights may order that work cease on the construction, repair, or abandonment of a well if a field inspection reveals that the construction does not meet the minimum construction standards to the extent that the public interest might be adversely affected. A cease work order may also be issued if the well driller is not licensed for the drilling method being used for the well construction. The state engineer's order will be in the form of a red tag which will be attached to the drilling rig. A letter from the state engineer will be sent to the licensed driller to explain the sections of the administrative rules which were violated. The letter will also explain the requirements that must be met before the order can be lifted.

4.3.6 When required by the state engineer, the well driller or registered operator shall take lithologic samples at the specified intervals and submit them in the bags provided by the state engineer.

4.3.7 A copy of the current Administrative Rules for Water Well Drillers should be available at each well construction site for review by the construction personnel.

4.4 Removing Drill Rig From Well Site.

4.4.1 A well driller shall not remove his drill rig from a well site unless the well is completed or abandoned. Completion of a well shall include all surface seals, gravel<sup>[s]</sup> packs, or curbs required.

4.4.2 For the purposes of these rules, the construction, repair or abandonment work on a well will be considered completed when the well driller removes his drilling rig from the well site.

4.4.3 The well driller may request a variance from the state engineer. The written request must indicate that the well has been temporarily abandoned as provided in Section R655-4-12 and must give the date when the well driller plans to continue work.

4.5 Official Well Driller's Report (Well Log).

4.5.1 Within 30 days of the completion of work on any well, the driller shall file an official well driller's report (well log) with the state engineer. The blank well log form will be mailed to the licensed well driller upon receipt of the information on the Start Card as described in Subsection ~~[R655-4-4(4.2)]~~ 4.2.

4.5.2 The water right number/provisional/monitor well number, owner name/address, and the approved location of the well will be preprinted on the blank well log provided to the well driller. The driller is required to verify this information and make any necessary changes on the well log prior to submittal. The state engineer will mark the approved activity (e.g., new, replace, repair, deepen) on the well log. The driller must provide the following information on the well log:

- The start and completion date of work on the well;
- The nature of use for the well (e.g., domestic, irrigation, stock watering, commercial, municipal, provisional, monitor, cathodic protection, heat pump, etc.);
- The borehole diameter, depth interval, drilling method and drilling fluids utilized to drill the well;
- The lithologic log of the well based on strata samples taken from the borehole as drilling progresses;

e. Static water level information to include date of measurement, static level, measurement method, reference point, artesian flow and pressure, and water temperature;

f. The size, type, description, joint type, and depth intervals of casing, screen, and perforations;

g. A description of the filter pack, surface and interval seal material, and packers used in the well along with necessary related information such as the depth interval, quantity, and mix ratio;

h. A description of the finished wellhead configuration;

i. The date and method of well development;

j. The date, method, yield, drawdown, and elapsed time of a well yield test;

k. A description of pumping equipment (if available);

l. Other comments pertinent to the well activity completed;

m. The well driller's statement to include the driller name, license number, signature, and date.

4.5.3 Accuracy and completeness of the submitted well log are required. Of particular importance is the lithologic section which should accurately reflect the geologic strata penetrated during the drilling process. Sample identification must be logged in the field as the borehole advances and the information transferred to the well log form for submission to the state engineer.

4.5.4 An amended well log shall be submitted by the licensed driller if it becomes known that the original report contained inaccurate or incorrect information, or if the original report requires supplemental data or information. Any amended well log must be accompanied by a written statement, signed and dated by the licensed well driller, attesting to the circumstances and the reasons for submitting the amended well log.

4.6 Official Well Abandonment Reports (Abandonment Logs).

4.6.1 Whenever a well driller is contracted to replace an existing well under state engineer's approval, it shall be the responsibility of the well driller to inform the well owner that it is required by law to permanently abandon the old well in accordance with the provisions of Section R655-4-12.

4.6.2 Within 30 days of the completion of abandonment work on any well, the driller shall file an abandonment log with the state engineer. The blank abandonment log will be mailed to the licensed well driller upon notice to the state engineer of commencement of abandonment work as described in Subsection R655-4-4(4.2.4).

4.6.3 The water right number/provisional/monitor well number, owner name/address, and the well location (if available)[-] will be preprinted on the blank abandonment log provided to the well driller. The driller is required to verify this information and make any necessary changes on the abandonment log prior to submitting the log. The driller must provide the following information on the abandonment log:

a. Existing well construction information;

b. Date of abandonment;

c. Reason for abandonment;

d. A description of the abandonment method;

e. A description of the abandonment materials including depth intervals, material type, quantity, and mix ratio;

f. Replacement well information (if applicable);

g. The well driller's statement to include the driller name, license number, signature, and date.

4.6.4 When a well is replaced and the well owner will not allow the driller to abandon the existing well, the driller must briefly explain the situation on the abandonment form and submit the form to the state engineer within 30 days of completion of the replacement well.

4.7 Incomplete or Incorrectly Completed Reports.

An incomplete well/abandonment log or a well/abandonment log that has not been completed correctly will be returned to the licensed well driller to be completed or corrected. The well log will not be considered filed with the state engineer until it is complete and correct.

4.8 Extensions of Time.

The well driller may request an extension of time for filing the well log if there are circumstances which prevent the driller from obtaining the necessary information before the expiration of the 30 days. The extension request must be submitted in writing before the end of the 30[-]day period.

**R655-4-5. Infractions of the Administrative Requirements and the Minimum Construction Standards.**

**5.1 List of Infractions and Points.**

Licensed well drillers who commit the infractions listed below in Table 1 shall have assessed against their well drilling record the number of points assigned to the infraction.

TABLE 1

Infractions of Administrative Requirements

	Points
<u>Start Cards/Authorization</u>	
Failure to properly notify the state engineer before the <u>proposed start date shown on the start card[<del>of construction</del>]</u>	20
Performing any well drilling activity without valid authorization (except in emergency situations)	100
<u>Well Logs</u>	
Intentionally making a material misstatement of fact in an official well driller's report or amended official well driller's report (well log)	100
Well log submitted late	10
<u>Well Abandonment</u>	
Well abandonment report submitted late	<del>30</del> 10
<u>Licenses</u>	
Intentionally making a material misstatement of fact in the application for a well driller's license	100
Well driller license or well driller name not clearly posted on well drilling rig	10
Failing to notify the state engineer in a timely manner of a change in the well driller's company name	10
<u>Operators / Contract Drillers</u>	
Employing an operator who is not registered with the state	75
Contracting out work to an unlicen[ <del>e</del> ]sed driller (using the unlicensed driller's rig) without prior written approval from the state	75
<u>Infractions of Construction Standards / Conditions</u>	
	Points
<u>Approvals</u>	
Constructing a replacement well further than 150 ft from the original well without the	

authorization of an approved change application	50
Failing to comply with any conditions included on the well approval such as minimum or maximum depths, specified locations of perforations, etc.	50
Using a method of drilling not listed on the well driller's license	30
Performing any well construction activity in violation of a red tag cease work order	100
<b>Casing</b>	
Using or attempting to use sub-standard well casing	50
Using improper casing joints	40
Failure to extend well casing at least 18" above ground	30
<b>Surface Seals</b>	
<del>Using improper procedures to install a surface seal</del>	<del>50</del>
<del>Using improper products to install a surface seal</del>	<del>50</del>
Using improper products or procedures to install a surface seal	100
Failure to seal off artesian flow on the outside of casing	100
Failure to install surface seal to adequate depth based on formation type	100
<b>Well Abandonment</b>	
Using improper procedures to abandon a well	50
Using improper products to abandon a well	50
<b>Construction Fluids</b>	
Using water of unacceptable quality in the well drilling operation	40
Using improper circulation materials	30
Using an unacceptable mud pit	20
<b>Filter Packs</b>	
Failure to install filter pack properly	40
Failure to disinfect filter pack	30
<b>Well Completion</b>	
Failure to make well accessible to water level or pressure head measurements	30
Failure to install casing annular seals, cap, and valving, and to control artesian flow	30
Removing the well drilling rig from the well site before completing the well or temporarily or permanently abandoning the well	50
<b>General</b>	
Failure to securely cover an unattended well during construction	30

5.2 When Points Are Assessed.

Points will be assessed against a driller's record upon verification by the state engineer that an infraction has occurred. Points will be assessed at the time the state engineer becomes aware of the infraction regardless of when the infraction occurred.

5.3 Appeal of Infractions.

Well drillers may appeal each infraction in writing within 30 days of written notification by the state engineer.

5.4 Warning Letter.

When the number of points assessed against the well driller's record equals seventy-five (75) points, a warning letter will be sent to the well driller. The letter will notify the driller that if he

continues to violate the administrative requirements or minimum construction standards contained in the Administrative Rules for Water Well Drillers, a hearing will be held to determine if his license should be suspended or revoked or the bond exacted. The letter will also describe the options available to the driller to delete points from the record as described in Subsection R655-4-~~5(5-10)~~5.7. A copy of the driller's infraction record will be included with the letter. In the event numerous points are assessed against the well drillers record so that the total surpasses seventy-five (75) and one hundred (100) points at the same time, no warning letter will be sent.

5.5 Notice of Agency Action.

5.5.1 When the number of points assessed against the well driller's record equals 100, a Notice of Agency Action (NAA) will be sent to the well driller. The NAA will set forth the alleged facts, provide an opportunity for a response from the well driller, and provide notice of the [a] hearing [will be scheduled to consider whether the well driller's license should be suspended or revoked.]scheduled to consider the issues. The hearing will be scheduled at least 10 days from the date the NAA is mailed. The NAA will indicate the date, time, and place of the hearing. [~~The state engineer will determine the duration of the revocation or suspension period.~~]

~~[5-6]~~5.5.2 A NAA may also be sent and a hearing may also be convened as a result of a complaint filed by a well owner regardless of the total number of points shown on the well driller's record.

~~[5-7]~~5.5.3 [A well driller will be given ten (10) days notice, by registered mail, of any hearing which is scheduled to consider suspending or revoking the well driller's license or exacting the well driller's bond.]The purpose of the hearing will be to determine if disciplinary action is necessary regarding the water well driller's Utah Water Well License. The hearing will be conducted informally according to the rules adopted under Sections 63-46b-4 and 63-45b-5. The hearing will be recorded. At the hearing, testimony will be taken under oath regarding the alleged facts included in the NAA. Those providing testimony may include the water well driller, the well owner, Division of Water Rights staff, and others as deemed necessary. Evidence that is pertinent to the alleged facts may also be presented at the hearing. After considering the testimony and the evidence presented at the hearing, the State Engineer may determine either that there is no cause for action against the well driller's license or that disciplinary action is necessary. Disciplinary action may consist of probation, suspension, or revocation of the Utah Water Well License.

5.6 License Probation, Suspension or Revocation.

~~[5-8]~~5.6.1 [A well driller whose license has been revoked or suspended, will be prohibited from engaging in the well drilling business or operating well drilling equipment during the revocation or suspension period set by the state engineer.]Probation will generally be the disciplinary action imposed in situations where the facts established through testimony and evidence describe first time infractions of the administrative rules that are limited in number and less serious in their impact on the well owner and on the health of the aquifer. The probation period will generally last until the number of infraction points on the well driller's record is reduced below 70 through any of the options described in Subsection 4-5.7.

~~[5-9]~~5.6.2 [After the suspension period has expired, the well driller will be notified by the state engineer that he/she may again engage in the well drilling business, however, there will be a probation period lasting until the total number of points on the well driller's infraction record is reduced through any of the options

~~described in Subsection R655-4-5(5-10).~~ Suspension will generally be the disciplinary action imposed in situations where the facts established through testimony and evidence describe repeated infractions of the administrative rules, or infractions that a pose serious threat to the health of the aquifer, or a well driller's apparent disregard for the administrative rules or the state's efforts to regulate water well drilling. Depending upon the number and severity of the rule infractions, the state engineer may elect to suspend a well driller license for a certain period of time and/or until certain conditions have been met by the well driller. In establishing the length of the suspension, the state engineer will generally follow the guideline that three infraction points is the equivalent of one day of suspension. A well driller whose license has been suspended will be prohibited from engaging in the well drilling business or operating well drilling equipment as a registered operator. License suspension may also result in the exaction of the Well Driller Bond as set forth in Subsection 4-3.6.4. A well driller whose license has been suspended is allowed to work as a helper under the direct, continuous, and on-site supervision of a licensed well driller or registered operator. If the suspension period extends beyond the expiration date of the water well license, the water well driller may not apply to renew the license until the suspension period has run and any conditions have been met. Once the suspension period has run and once any conditions have been met by the well driller, the suspension will be lifted and the driller will be notified that he/she may again engage in the well drilling business. The well driller will then be placed on probation until the number of infraction points on the well driller's record is reduced below 70 through any of the options described in Subsection 4-5.7.

~~[5-10]~~ 5.6.3 Revocation will generally be the disciplinary action imposed in situations where the facts established through testimony and evidence describe infractions of the administrative rules for which the well driller's Utah Water Well License has previously been suspended. A well driller whose license has been revoked will be prohibited from engaging in the well drilling business or operating well drilling equipment as a registered operator. License suspension may also result in the exaction of the Well Driller Bond as set forth in Subsection 4-3.6.4. A well driller whose license has been revoked is allowed to work as a helper under the direct, continuous, and on-site supervision of a licensed well driller or registered operator. A well driller whose water well license has been revoked may not make application for a new water well license for a period of two years from the date of revocation. After the revocation period has run~~expired~~, a well driller may make application for a new license as provided in Section R655-4-3. However, the well drilling experience required must be based on new experience obtained since the license was revoked.

~~[5-11]~~ 5.7 Deleting Point from the Driller Record.

Points assessed against a well driller's record will remain on the record unless deleted through any of the following options:

~~[5-11-1]~~ 5.7.1 Points will be deleted three years after the date when the infraction is noted by the state engineer and the points are assessed against the driller's record.

~~[5-11-2]~~ 5.7.2 One half the points on the record will be deleted if the well driller is free of infractions for an entire year.

~~[5-11-3]~~ 5.7.3 Thirty (30) points will be deleted for obtaining six (6) hours of approved continuing education credits in addition to the credits required to renew the water well driller's license. A driller may exercise this option only once each year.

~~[5-11-4]~~ 5.7.4 Twenty (20) points will be deleted for taking and passing (with a minimum score of 70%) the test covering the

administrative requirements and the minimum construction standards. A driller may exercise this option only every other year.  
~~5-12~~ If the state engineer determines, following an investigation and a hearing, that the licensee has failed to comply with the Administrative Rules for Water Well Drillers, the state engineer may exact the bond and deposit the money as a non-lapsing dedicated credit.

~~5-13~~ The state engineer may expend the funds derived from the bond to investigate or correct any deficiencies which could adversely affect the public interest resulting from non-compliance with the Administrative Rules by any well driller.

~~5-14~~ An operator's registration may be revoked or suspended for failure to comply with the minimum construction standards.]

~~[5-15]~~ 5.8 Lack of Knowledge Not an Excuse.

Lack of knowledge of the law or the administrative requirements and minimum construction standards related to well drilling shall not constitute an excuse for violation thereof.

~~[5-16]~~ 5.9 Misdemeanors.

Section 73-3-26 of the Utah Code annotated, 1953, [CLASSIFIES CERTAIN ACTIONS AS CLASS B MISDEMEANORS]classifies certain actions as class B Misdemeanors. Each day that a violation continues is a separate offense. (Reference: Statutes Appendix B.)

**R655-4-6. Renewal of Well Driller's License~~]~~ and Operator's Registration~~], and Apprenticeship Listing].~~**

6.1 Well Driller's Licenses.

6.1.1 ~~[All well driller's licenses expire at 12 midnight on December 31 of the year in which they are issued.]~~ Water well driller licenses shall expire and be renewed according to the following provisions:

a. Between January 1, 2004 and June 30, 2006 water well driller licenses shall expire and be renewed according to the following schedule:

1. The licenses of water well drillers whose last name begins with A thru L shall not expire on December 31, 2004 but shall expire at 12 midnight on June 30, 2005. The continuation of the license will depend on documentation of a valid \$5,000 well driller bond for the period thru June 30, 2005. Well drillers whose licenses expire on June 30, 2005 and who meet the application requirements of R655-4-6(6.1.2) including the documentation of nine (9) continuing education credits, shall receive a license that expires on June 30, 2007.

2. The licenses of water well drillers whose last name begins with M thru Z shall expire at midnight on December 30, 2004. Well drillers whose last name begins with M thru Z and who meet the application requirements of R655-4-6(6.1.2) shall receive a license that expires on June 30, 2006. The \$5,000 well driller bond must be valid for the period January 1, 2005 through June 30, 2006. Well drillers whose licenses expire on June 30, 2006 and who meet the application requirements of R655-4-6(6.1.2) including the documentation of nine (9) continuing education credits, shall receive a renewed license for the a 2 year period.

b. After June 30, 2005, the licenses of well drillers whose last name begins with A thru L shall expire at 12 midnight on June 30 of odd numbered years.

c. After June 30, 2006, the licenses of well drillers whose last name begins with M thru Z shall expire at 12 midnight on June 30 of even numbered years.

d. Drillers who meet the renewal requirements set forth in Subsection R655-4-6(6.1.2) on or before ~~[2 midnight December~~

~~34~~the expiration deadlines set forth in Subsection R655-4-6(6.1.1) shall be authorized to operate as a licensed well driller until the new license is issued.

e. Drillers must renew their licenses within 24 months of the license expiration date. Drillers failing to renew within 24 months of the license expiration date must re-apply for a well driller's license, ~~and~~meet all the application requirements of Subsection R655-4-3(3.2), and provide documentation of 12 hours of continuing education according to the requirements of R655-4-6 (6.2) obtained within the previous 24 months.

6.1.2 Applications to renew a well driller's license must include the following items:

a. Payment of the license renewal fee determined and approved by the legislature;

b. Written application to the state engineer;

c. ~~Documentation of \$5,000 penal bond for the next calendar year~~Documentation of continuing well driller bond coverage in the amount of five thousand dollars (\$5,000) penal bond for the next licensing period calendar year. The form and conditions of well driller bond shall be as set forth in Section 4.3. Allowable documentation can include bond continuation certificates and CD statements;

d. Proper submission of all start cards, official well driller reports (well logs), and well~~;~~ abandonment reports for the current calendar year;

e. Documentation of compliance with the continuing education requirements described in ~~6.1.4~~Section 6.2.1. Acceptable documentation of attendance at approved courses must include the following information: the name of the course, the date it was conducted, the number of approved credits, the name and signature of the instructor and the driller's name; for example, certificates of completion, transcripts, attendance rosters, diplomas, etc. (Note: drillers are advised that the state engineer will not keep track of the continuing education courses each driller attends during the year. Drillers are responsible to acquire and then submit documentation with the renewal application.)

6.1.3 License renewal applications that do not meet the requirements of Subsection R655-5-6(6.1.2) by ~~December 31~~June 30 of the expiration year or which are received after ~~December 31~~June 30 of the expiration year, will be assessed an additional administrative late fee determined and approved by the legislature.

6.1.4 The state engineer may renew a license on a restricted, conditional, or limited basis according to the driller's performance and compliance with established rules and construction standards. The state engineer may refuse to renew a license to a well driller if it appears that there has been a violation of these rules or a failure to comply with Section 73-3-22 of the Utah Code.

#### 6.2 Continuing Education.

~~6.1.4~~6.2.1 During each license period~~calendar year~~, licensed well drillers are required to earn at least twelve (12)~~six (6)~~ continuing education credits by attending training sessions sponsored or sanctioned by the state engineer. Drillers who do not renew their licenses, but who intend to renew within the following 24 month period allowed in ~~Subsection R655-5-6(6.1.1)~~Section 6.1.1, are also required to earn twelve (12)~~six (6)~~ continuing education credits~~each year~~.

~~6.1.5~~6.2.2 The state engineer shall establish a committee consisting of the state engineer or a representative, no more than four licensed well drillers, a ground water scientist, and a

manufacturer/supplier of well drilling products. The committee will develop criteria for the training courses, approve the courses which can offer continuing education credits, and assign the number of credits to each course. The committee will make recommendations to the state engineer concerning appeals from training course sponsors~~;~~ and well drillers~~;~~ and operators related to earning continuing education credit.

~~6.1.6~~6.2.3 The committee established in ~~Subsection R655-5-6(6.1.5)~~Section 6.2.2 shall assign the number of continuing education credits to each proposed training session based on the instructor's qualifications, a written outline of the subjects to be covered, and written objectives for the session. Well drillers wishing continuing education credit for other training sessions shall provide the committee with all information it needs to assign continuing education requirements.

~~6.1.7~~ The state engineer may renew a license on a restricted, conditional, or limited basis according to the driller's performance and compliance with established rules and construction standards.~~6.2.4 Licensed drillers must complete a State Engineer-sponsored "Administrative Rules for Well Drillers" review course or other approved rules review once every four (4) years.~~

6.2.5 CE credits cannot be carried over from one licensing period to another.

~~6.2~~6.3 Drill Rig Operator's Registration.

~~6.2.1~~6.3.1 All operator's registrations shall expire at ~~42 midnight on December 31 of the year in which they are issued~~the same time as the license of the well driller by whom they are employed. Operators who meet the renewal requirements set forth in Subsection R655-4-6(6.2)3.2) on or before 12 midnight ~~December 31~~June 30 of the expiration year shall be authorized to act as a registered operator until the new registration is issued. Operators must renew their registrations within ~~42~~24 months of the registration expiration date. Operators failing to renew within ~~42~~24 months of the registration expiration date must re-apply for an operator's registration and meet all the application requirements of Subsection R655-4-3(3.3).

~~6.2.2~~6.3.2 Applications to renew an operator's registration must include the following items:

a. Payment of the registration renewal fee determined and approved by the legislature;

b. Written application to the state engineer.

~~6.2.3~~6.3.3 Registration renewal applications that do not meet the requirements of Subsection R655-4-6(6.1)3.2) by the June 30 expiration date or that are received after the ~~December 31~~June 30 expiration date will be assessed an additional administrative late fee determined and approved by the legislature.

~~6.2.4~~6.3.4 During each ~~calendar year~~licensing period, it is suggested that registered operators earn at least ~~three (3)~~six (6) continuing education credits by attending training sessions sponsored or sanctioned by the state engineer. Documented continuing education credits may be allowed as substitute for drilling experience in an application for a well driller's license as described in Subsection R655-4-3(3.2.4).]

~~6.3 Apprenticeship Listing.~~

~~6.3.1 All apprentice's listings expire at 12 midnight on December 31 of the year in which they are issued.~~

~~6.3.2 A written application must be submitted to the Division of Water Rights to renew an apprenticeship listing.]~~

**R655-4-7. The Approval Process for Cathodic Protection Wells, Heating, or Cooling Exchange Wells and Monitor Wells.**

7.1 General.

Only cathodic protection wells, heating or cooling exchange wells, and monitor wells drilled and constructed to a depth of 30 feet or greater below natural ground surface require approval from the state engineer.

7.2 Approval to Construct or Replace.

Approval to construct or replace cathodic protection wells, heating or cooling exchange wells, and monitor wells is issued by the state engineer's regional offices following review of written requests from the owner or applicant, federal or state agency or engineering representative. The requests for approval shall be made on forms provided by the state engineer entitled "Request for Non-Production Well Construction". The following information must be included on the form:

- a. General location or common description of the project.
- b. Specific course and distance locations from established government surveyed outside section corners or quarter corners ~~location by 1/4, 1/4 section~~.
- c. Total anticipated number of wells to be installed.
- d. Diameters, approximate depths and materials used in the wells.
- e. Projected start and completion dates.
- f. Name and license number of the driller contracted to install the wells.

There is no fee required to request approval to drill a cathodic protection well, a heating or cooling exchange well, or a monitor well. Upon written approval by the state engineer, the project will be assigned an approved authorization number which will be referenced on all start cards and official well driller's reports.

**R655-4-8. General Requirements.**

8.1 Standards.

8.1.1 In some locations, the compliance with the following minimum standards will not result in a well being free from pollution or from being a source of subsurface leakage, waste, or contamination of the groundwater resource. Since it is impractical to attempt to prepare standards for every conceivable situation, the well driller shall judge when to construct wells under more stringent standards when such precautions are necessary to protect the groundwater supply and those using the well in question. Other state and local regulations pertaining to well drilling and construction, groundwater protection, and water quality regulations may exist that are either more stringent than these rules or that specifically apply to a given situation. It is the well driller's responsibility to understand and apply other regulations as applicable.

8.2 Well Site Locations.

8.2.1 Well site locations are described by course and distance from outside section corners or quarter corners (based on a Section/Township/Range Cadastral System) on all state engineer authorizations to drill (Start Cards). However, the licensee should also be familiar with local zoning ordinances, or county boards of health requirements which may limit or restrict the actual well location and construction in relationship to existing or proposed concentrated sources of pollution or contamination such as septic tanks, drain fields, sewer lines, stock corrals, feed lots, etc. The licensee should also be familiar with the Utah Underground Facilities Act (Title 54, Chapter 8a of the Utah Code Annotated 1953 as amended) which requires subsurface excavators (including

well drilling) to notify operators of underground utilities prior to any subsurface excavation. Information on this requirement can be found by calling (800)662-4111.

8.2.2 The driller shall check the drilling location to see if it generally matches the state-approved location listed on the Driller's Start Card. If the actual drilling location is significantly different than the Start Card location, the driller shall indicate the difference on the Well Log.

8.3 Unusual Conditions.

8.3.1 If unusual conditions occur at a well site and compliance with these rules and standards will not result in a satisfactory well or protection to the groundwater supply, a licensed water well driller shall request that special standards be prescribed for a particular well. The request for special standards shall be in writing and shall set forth the location of the well, the name of the owner, the unusual conditions existing at the well site, the reasons that compliance with the rules and minimum standards will not result in a satisfactory well, and the proposed standards that the licensed water well driller believes will be more adequate for this particular well. If the state engineer finds that the proposed changes are in the best interest of the public, he will approve the proposed changes by assigning special standards for the particular well under consideration.

**R655-4-9. Well Drilling and Construction Requirements.**

9.0 General.

9.0.1 Figures 1 through ~~[6]~~5 are used to illustrate typical well construction standards, and can be viewed in the most current publication, State of Utah Water Well Handbook, ~~[publication, State of Utah Administrative Rules for Water Well Drillers, dated January 4, 2004]~~ available at the Division of Water Rights, 1594 West North Temple, Salt Lake City, Utah. Figure 1 illustrates the typical construction of a drilled well with driven casing such as a well drilled using the cable tool method or air rotary with a drill ~~[-]~~ through casing driver. Figure 2 illustrates the typical construction of a well drilled with an oversized borehole and/or gravel packed without the use of surface casing. Figure 3 illustrates the typical construction of a well drilled with an oversized borehole and/or gravel packed with the use of surface casing. Figure 4 illustrates the typical construction of a well drilled with an oversized borehole and/or gravel packed completed in stratified formations in which poor formation material or poor quality water is encountered. Figure 5 illustrates the typical construction of a well completed with PVC or nonmetallic casing.

9.1 Approved Products, Materials, and Procedures.

9.1.1 Any product, material or procedure designed for use in the drilling, construction, cleaning, renovation, development or abandonment of water or monitor wells, which has received certification and approval for its intended use by the National Sanitation Foundation (NSF) under ANSI/NSF Standard 60 or 61, the American Society for Testing Materials (ASTM), the American Water Works Association (AWWA) or the American National Standards Institute (ANSI) may be utilized. Other products, materials or procedures may also be utilized for their intended purpose upon manufacturers certification that they meet or exceed the standards or certifications referred to in this section.

9.2 Well Casing ~~[-]~~ - General

9.2.1 Drillers Responsibility. It shall be the sole responsibility of the well driller to determine the suitability of any type of well casing for the particular well being constructed, in accordance with these minimum requirements.

9.2.2 Casing Stick-up. The well casing shall extend a minimum of 18 inches above finished ground level and the natural ground surface should slope away from the casing. A sanitary, weatherproof seal or a completely welded cap shall be placed on the top of the well casing to prevent contamination of the well. If a vent is placed in the cap, it shall be properly screened to prevent access to the well by debris, insects, or other animals.

9.2.3 Steel Casing. All steel casing installed in Utah shall be in new or like-new condition, being free from pits or breaks, and shall meet the minimum specifications listed in Table 2 of these rules. In order to utilize steel well casing that does not fall within the categories specified in Table 2, the driller shall receive written approval from the state engineer. All steel casing installed in Utah shall meet or exceed the minimum ASTM, ANSI, or AWWA standards for steel pipe as described in Subsection ~~[R655-4-9(9.1.1)]~~ 9.1. Applicable standards (most recent revisions) may include:

- ANSI/AWWA A100-AWWA Standard for Water Wells.
- ANSI/ASTM A53-Standard Specifications for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless.
- ANSI/ASTM A139-Standard Specification for Electric-Fusion (Arc)-Welded Steel Pipe (NPS 4 and over).
- ANSI/ASTM A606-Standard Specification for Steel, Sheet, and Strip, High-Strength, Low-Alloy, Hot-Rolled and Cold-Rolled, with Improved Atmospheric Corrosion Resistance.
- ANSI/AWWA C200-Standard for Steel Water Pipe-6 in. and Larger.
- API Spec.5L-Specification for Liner Pipe.
- ASTM A778-Standard Specifications for Welded, Unannealed Austenitic Stainless Steel Tubular Products.
- ASTM A252-Standard Specification for Welded and Seamless Steel Pipe Piles.

TABLE 2  
MINIMUM WALL THICKNESS FOR STEEL WELL CASING

Depth	0		200		300		400		600		800		1000		1500	
	Nominal	to	Nominal	to	Nominal	to	Nominal	to	Nominal	to	Nominal	to	Nominal	to	Nominal	to
Casing Diameter	(ft)	(ft)	(ft)	(ft)	(ft)	(ft)	(ft)	(ft)	(ft)	(ft)	(ft)	(ft)	(ft)	(ft)	(ft)	(ft)
2	.154	.154	.154	.154	.154	.154	.154	.154	.154	.154	.154	.154	.154	.154	.154	.154
3	.216	.216	.216	.216	.216	.216	.216	.216	.216	.216	.216	.216	.216	.216	.216	.216
4	.237	.237	.237	.237	.237	.237	.237	.237	.237	.237	.237	.237	.237	.237	.237	.237
5	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250
6	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250
8	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250
10	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250	.31[3]2	.31[3]2	.31[3]2	.31[3]2
12	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250	.250	.31[3]2	.31[3]2	.31[3]2	.31[3]2
14	.250	.250	.250	.250	.250	.250	.250	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2
16	.250	.250	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2
18	.250	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2
20	.250	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2
22	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2
24	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2
30	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2	.31[3]2

Note: Minimum wall thickness is in inches.

9.2.4 Plastic and Other Non-metallic Casing.

9.2.4.1 Materials. PVC, SR, ABS, or other types of non-metallic well casing and screen may be installed in Utah upon obtaining permission of the well owner. Plastic well casing and screen shall be manufactured and installed to conform with The American National Standards Institute (ANSI) or the American Society for Testing and Materials (ASTM) Standard F 480 (most recent version), which are incorporated by reference to these rules. Casing and screen meeting this standard is normally marked "WELL CASING" and with the ANSI/ASTM designation "F 480-95 (or most recent version), SDR-17 (or 13.5)". All plastic casing and

screen for use in potable water supplies shall be manufactured to be acceptable to the American National Standards Institute/National Sanitation Foundation (NSF) standard 61. Other types of plastic casings and screens may be installed upon manufacturers certification that such casing meets or exceeds the above described ASTM/SDR specification or ANSI/NSF approval.

9.2.4.2 Minimum Wall Thickness and Depth Requirements. PVC well casing and screen with an outside diameter equal to or less than four and one half (4.5) inches shall meet the minimum wall thickness required under ASTM Standard F480 (most recent version) SDR 21 or a Schedule 40 designation. PVC well casing and screen with an outside diameter greater than ~~[of]~~ four and one half (4.5) inches ~~[or greater]~~ shall meet the minimum wall thickness required under ASTM Standard F480 (most recent version) SDR 17 or a Schedule 80 designation. Additionally, caution should be used whenever other than factory slots or perforations are added to PVC well casing. The installation of hand cut slots or perforations significantly reduces the collapse strength tolerances of unaltered casings. The depth at which plastic casing and screen is placed in a well shall conform to the minimum requirements and restrictions as outlined in ASTM Standard F-480 (most recent version).

9.2.4.3 Fiberglass Casing. Fiberglass reinforced plastic well casings and screens may be installed in wells upon obtaining permission of the well owner. All fiberglass casing or screens installed in wells for use in potable water supplies shall be manufactured to be acceptable by ANSI/NSF Standard 61.

9.2.4.4 Driving Non-metallic Casing. Non-metallic casing shall not be driven or dropped and may only be installed in an oversized borehole.

9.2.4.5 Protective Casing. If plastic or other non-metallic casing is utilized, the driller shall install a protective steel casing which complies with the provisions of Subsection ~~[R655-4-9(9.2.3)]~~ or an equivalent protective covering approved by the state engineer over and around the well casing at ground surface to a depth of at least two and one half (2.5) feet. If a pitless adapter is installed on the well, the bottom of the ~~[steel-]protective [casing]cover~~ shall be placed above the pitless adapter/well connection. If the pitless adapter is placed in the protective casing, the protective casing shall extend below the pitless entrance in the well casing and be sealed both on the outside of the protective casing and between the protective casing and well casing. The ~~[steel casing]protective cover~~ shall be sealed in the borehole in accordance with the requirements of Subsection ~~[R655-4-9(9.4)]~~. The annular space between the ~~[steel-]protective [casing]cover~~ and non-metallic casing shall also be sealed with acceptable materials in accordance with Subsection ~~[R655-4-9(9.4)]~~. A sanitary, weather-tight seal or a completely welded cap shall be placed on top of the protective ~~[casing]cover, thus enclosing the well itself.~~ If the sanitary seal is vented, screens shall be placed in the vent to prevent debris insects, and other animals from entering the well. This protective casing requirement does not apply to monitor wells. Figure 5 depicts this requirement.

9.3 Casing Joints.

9.3.1 General. All well casing joints shall be made water tight.

In instances in which a reduction in casing diameter is made, there shall be enough overlap of the casings to prevent misalignment and to insure the making of an adequate seal in the annular space between casings to prevent the movement of unstable sediment or formation material into the well, in addition to preventing the degradation of the water supply by the migration of inferior quality water through the annular space between the two casings.



9.3.2 Steel Casing. All steel casing shall be screw-coupled or welded. If the joints are welded, the weld shall be at least as thick as the wall thickness of the casing and shall consist of at least two beads for the full circumference of the joint. Spot welding of joints is prohibited.

9.3.3 Plastic Casing. All plastic well casing shall be mechanically screw coupled, chemically welded, cam-locked or lug coupled to provide water tight joints as per ANSI/ASTM F480 (most recent version). Metal screws driven into casing joints shall not be long enough to penetrate the inside surface of the casing. Metal screws should be used only when surrounding air temperatures are below 50 degrees Fahrenheit (F) which retards the normal setting of the cement.

#### 9.4 Surface Seals and Interval Seals.

9.4.1 General. Before the drill rig is removed from the drill site of a well, a surface seal shall be installed. Well casings shall be sealed to prevent the possible downward movement of contaminated surface waters in the annular space around the well casing. The seal shall also prevent the upward movement of artesian waters within the annular space around the well casing. The sealing is also to prevent the movement of groundwater either upward or downward from zones that have been cased out of the well due to poor water quality or other reasons. The following surface seal requirements apply equally to rotary drilled, cable tool drilled, bored, jetted, augered, and driven wells unless otherwise specified.

##### 9.4.2 Seal Material.

9.4.2.1 General. The seal material shall consist of neat cement grout, sand cement grout, unhydrated bentonite, or bentonite grout as defined in Section R655-4-2. Use of sealing materials other than those listed above must be approved by the state engineer. Bentonite drilling fluid (mud), dry drilling bentonite, or drill cuttings are not an acceptable bentonite grout or sealing material. In no case shall drilling fluid (mud), drill cuttings, drill chips, or puddling clay be used, or allowed to fill, partially fill, or fall into the required sealing interval of a well during construction of the well. All hydrated sealing materials shall be placed by tremie pipe, pumping, or pressure from the bottom of the seal interval upwards in one continuous operation when placed below a depth of 30 feet or when placed below static groundwater level. Portland Cement grouts must be allowed to cure a minimum of 72 hours for Type I-II cement or 36 hours for Type III cement before well drilling, construction, or testing may be resumed. The volume of annular space in the seal interval shall be calculated by the driller to determine the estimated volume of seal material required to seal the annular space. ~~The driller shall place at least the volume of material equal to the volume of annular space.~~ The driller shall place at least the volume of material equal to the volume of annular space, thus ensuring that a continuous seal is placed. The driller shall maintain the well casing centered in the borehole during seal placement using centralizers or other means to ensure that the seal is placed radially and vertically continuous.

9.4.2.2 Bentonite Grout. Bentonite used to prepare grout for sealing shall have the ability to gel; not separate into water and solid materials after it gels; have a hydraulic conductivity or permeability value of  $10^{-7}$  centimeters per second or less; contain at least 20 percent solids by weight of bentonite, and have a fluid weight of 9.5 pounds per gallon or greater and be specifically designed for the purpose of sealing. Bentonite or polymer drilling fluid (mud) does not meet the definition of a grout with respect to density, gel strength, and solids content and shall not be used for sealing purposes. At no time shall bentonite grout contain materials that are

toxic, polluting, develop odor or color changes, or serve as a micro-bacterial nutrient. All bentonite grout shall be prepared and installed according to the manufacturer's instructions. All additives must be certified by a recognized certification authority such as NSF.

9.4.2.3 Unhydrated Bentonite. Unhydrated bentonite (e.g., granular, tabular, pelletized,<sup>[F]</sup> or chip bentonite) may be used in the construction of well seals above a depth of 50 feet. Unhydrated bentonite can be placed below a depth of 50 feet when placed inside the annulus of two casings or when placed using a tremie pipe. The bentonite material shall be specifically designed for well sealing and be within industry tolerances. All unhydrated bentonite used for sealing must be free of organic polymers and other contamination. Placement of bentonite shall conform to the manufacturer's specifications and instructions and result in a seal free of voids or bridges. Granular or powered bentonite shall not be placed under water by gravity feeding from the surface. When placing unhydrated bentonite, a sounding or tamping tool shall be run in the sealing interval during pouring to measure fill-up rate, verify a continuous seal placement, and to break up possible bridges or cake formation.

##### 9.4.3 Seal and Unperforated Casing Placement.

9.4.3.1 General Seal Requirements. Figure 1 illustrates the construction of a surface seal for a typical well. The surface seal must be placed in an annular space that has a minimum diameter of four (4) inches larger than the nominal size of the permanent well casing (This amounts to a 2-inch annulus). The surface seal must extend from land surface to a minimum depth of 30 feet. The completed surface seal must fully surround the permanent well casing, must be evenly distributed, free of voids, and extend to undisturbed or recompacted soil. ~~[A surface casing with a minimum depth of 30 feet and a minimum nominal diameter of four (4) inches greater than the permanent casing may be used in unconsolidated formations such as gravels, sands, or other unstable conditions when the use of drilling fluid or other means of keeping the borehole open are not employed.]~~ In unconsolidated formations such as gravels, sands, or other unstable conditions when the use of drilling fluid or other means of keeping the borehole open are not employed, either a temporary surface casing with a minimum depth of 30 feet and a minimum nominal diameter of four (4) inches greater than the outermost permanent casing shall be utilized to ensure proper seal placement or the well driller shall notify the state engineer's office that the seal will be placed in a potentially unstable open borehole without a temporary surface casing by telephone or FAX in conjunction with the start card submittal in order to provide an opportunity for the state engineer's office to inspect the placement of the seal. If a temporary surface casing is utilized, <sup>[F]</sup>the surface casing shall be removed in conjunction with the placement of the seal. Alternatively, the surface casing may be sealed permanently in place to a depth of 30 feet with a minimum 2-inch annular seal between the surface casing and borehole wall. If the surface casing is to be removed, the surface casing shall be withdrawn as sealing material is placed between the permanent well casing and borehole wall. The sealing material shall be kept at a sufficient height above the bottom of the temporary surface casing as it is withdrawn to prevent caving of the borehole wall. If the temporary conductor casing is driven in place without a 2-inch annular seal between the surface casing and borehole wall, the surface casing may be left in place in the borehole only if it is impossible to remove because of unforeseen conditions and not because of inadequate drilling equipment, or if the removal will seriously jeopardize the integrity of the well and the integrity of subsurface barriers to pollutants or

contaminant movement. The temporary surface casing can only be left in place without a sufficient 2-inch annular seal as describe above with the approval of the state engineer on a case by case basis.

If the surface casing is left in place, it shall be perforated to allow seal material to penetrate through the casing and into the formation and annular space between the surface casing and borehole wall. Unhydrated bentonite shall not be used to construct the surface seal when the surface casing is left in place. Grout seal materials must be used to construct the surface seal when the surface casing is left in place. The grout must be placed with sufficient pressure to force the grout through the surface casing perforations and into the annular space between the surface casing and borehole wall and into the formation. Surface seals and unperforated casing shall be installed in wells located in unconsolidated formation such as sand and gravel with minor clay or confining units; unconsolidated formation consisting of stratified layers of materials such as sand, gravel, and clay or other confining units; and consolidated formations according to the following procedures.

9.4.3.2 Unconsolidated Formation without Significant Confining Units. This includes wells that penetrate an aquifer overlain by unconsolidated formations such as sand and gravel without significant clay beds (at least six feet thick) or other confining formations. The surface seal must be placed in a 2-inch annular space to a minimum depth of 30 feet. Permanent unperforated casing shall extend at least to a depth of 30 feet and also extend below the lowest anticipated pumping level. Additional casing placed in the open borehole below the required depths noted above shall meet the casing requirements of Subsection ~~[R655-4-9(9.2)]~~ unless the casing is installed as a liner inside a larger diameter approved casing.

9.4.3.3 Unconsolidated Formation with Significant Confining Units. This includes wells that penetrate an aquifer overlain by clay or other confining formations that are at least six (6) feet thick. The surface seal must be placed in a 2-inch annular space to a minimum depth of 30 feet and at least five (5) feet into the confining unit above the water bearing formation. Unperforated casing shall extend from ground surface to at least 30 feet and to the bottom of the confining unit overlying the water bearing formation. If necessary to complete the well, a smaller diameter casing, liner, or well screen may be installed below the unperforated casing. The annular space between the two casings shall be sealed with grout, bentonite, or a mechanical packer. Additional casing placed in the open borehole below the required depths noted above shall meet the casing requirements of Subsection ~~[R655-4-9(9.2)]~~ unless the casing is installed as a liner inside a larger diameter approved casing.

9.4.3.4 Consolidated Formation. This includes drilled wells that penetrate an aquifer, either within or overlain by a consolidated formation. The surface seal must be placed in a 2-inch annular space to a minimum depth of 30 feet and at least five (5) feet into competent consolidated formation. Unperforated permanent casing shall be installed to extend to a depth of at least 30 feet and the lower part of the casing shall be driven and sealed at least five (5) feet into the consolidated formation. If necessary to complete the well, a smaller diameter casing, liner, or well screen may be installed below the unperforated casing. The annular space between the two casings shall be sealed with grout, bentonite, or a mechanical packer. Additional casing placed in the open borehole below the required depths noted above shall meet the casing requirements of Subsection ~~[R655-4-9(9.2)]~~ unless the casing is installed as a liner inside a larger diameter approved casing.

9.4.3.5 Sealing Artesian Wells. Unperforated well casing shall extend into the confining stratum overlying the artesian zone, and shall be adequately sealed into the confining stratum to prevent both surface and subsurface leakage from the artesian zone. If leaks occur around the well casing or adjacent to the well, the well shall be completed with the seals, packers, or casing necessary to eliminate the leakage. The driller shall not move the drilling rig from the well site until leakage is completely stopped, unless authority for temporary removal of the drilling rig is granted by the state engineer, or when loss of life or property is imminent. If the well flows ~~[from the well]~~ naturally at land surface due to artesian pressure, the well shall be equipped with a control valve so that the flow can be completely stopped. The control valve must be available for inspection by the state engineer at all times.

9.4.4 Interval Seals. Formations containing undesirable materials (e.g., fine sand and silt that can damage pumping equipment and result in turbid water), contaminated groundwater, or poor quality groundwater must be sealed off so that the unfavorable formation cannot contribute to the performance and quality of the well. These zones must also be sealed to eliminate the potential of cross contamination or commingling between two aquifers of differing quality. Figure 4 illustrates this situation.

9.4.5 Other Sealing Methods. In wells where the above[-] described methods of well sealing do not apply, special sealing procedures can be approved by the state engineer upon written request by the licensed well driller.

9.5 Special Requirements for Oversized and Gravel Packed Wells. This section applies to wells in which casing is installed in an open borehole without driving or drilling in the casing and an annular space is left between the borehole wall and well casing (e.g., mud rotary wells, flooded reverse circulation wells, air rotary wells in open bedrock).

9.5.1 Oversized Borehole. The diameter of the borehole shall be at least four (4) inches larger than the outside diameter of the well casing to be installed to allow for proper placement of the gravel pack and/or formation stabilizer and adequate clearance for grouting and surface seal installations. In order to accept a smaller diameter casing in any oversized borehole penetrating unconsolidated or stratified formations, the annular space must be sealed in accordance with Subsection ~~[R655-4-9(9.4)]~~. In order to minimize the risk of: 1) borehole caving or collapse; 2) casing failure or collapse; or 3) axial distortion of the casing, it is recommended that the entire annular space in an oversized borehole between the casing and borehole wall be filled with formation stabilizer such as approved seal material, gravel pack, filter material or other state engineer-approved materials. Well casing placed in an oversized borehole should be suspended at the ground surface until all formation stabilizer material is placed in order to reduce axial distortion of the casing if it is allowed to rest on the bottom of an open oversized borehole. In order to accept a smaller diameter casing, the annular space in an oversized borehole penetrating unconsolidated formations (with no confining layer) must be sealed in accordance with Subsection ~~[R655-4-9(9.4)]~~ to a depth of at least 30 feet or from static water level to ground surface, whichever is deeper. The annular space in an oversized borehole penetrating stratified or consolidated formations must be sealed in accordance with Subsection ~~[R655-4-9(9.4)]~~ to a depth of at least 30 feet or five (5) feet into an impervious strata (e.g., clay) or competent consolidated formation overlying the water producing zones back to ground surface, whichever is deeper. Especially in the case of an oversized

borehole, the requirements of Subsection ~~[R655-4-9(9.4)]~~ regarding interval sealing must be followed.

9.5.2 Gravel Pack or Filter Material. The gravel pack or filter material shall consist of clean, well[-]rounded, chemically stable grains that are smooth and uniform. The filter material should not contain more than 2% by weight of thin, flat, or elongated pieces and should not contain organic impurities or contaminants of any kind. In order to assure that no contamination is introduced into the well via the gravel pack, the gravel pack must be washed with a minimum 100 ppm solution of chlorinated water or dry hypochlorite mixed with the gravel pack at the surface before it is introduced into the well (see Table 3 of these rules for required amount of chlorine material).

9.5.3 Placement of Filter Material. All filter material shall be placed using a method that through common usage has been shown to minimize a) bridging of the material between the borehole and the casing, and b) excessive segregation of the material after it has been introduced into the annulus and before it settles into place. It is not acceptable to place filter material by pouring from the ground surface unless proper sounding devices are utilized to measure dynamic filter depth, evaluate pour rate, and minimize bridging and formation of voids.

9.5.4 No Surface Casing Used. If no permanent surface casing is installed, neat cement grout, sand cement grout, bentonite grout, or unhydrated bentonite seal shall be installed in accordance with Subsection ~~[R655-4-9(9.4)]~~. Figure 2 of these rules illustrates the construction of a typical well of this type.

9.5.5 Surface Casing Used. If permanent surface casing is installed, it shall be unperforated and installed and sealed in accordance with Subsection ~~[R655-4-9(9.4)]~~ as depicted in Figure 3 of these rules. After the gravel pack has been installed between the surface casing and the well casing, the annular space between the two casings shall be sealed by either welding a water-tight steel cap between the two casings at land surface or filling the annular space between the two casings with neat cement grout, sand cement grout, bentonite grout, or unhydrated bentonite from at least 50 feet to the surface and in accordance with Subsection ~~[R655-4-9(9.4)]~~. If a hole will be created in the surface casing in order to install a pitless adapter into the well casing, the annular space between the surface casing and well casing shall be sealed with neat cement grout, sand cement grout, bentonite grout, or unhydrated bentonite and a waterproof cap sealing the two casings at the surface by itself is unacceptable. Moreover in this case, the annular space between the surface casing and well casing must be at least 2 inches in order to facilitate seal placement.

9.5.6 Gravel Feed Pipe. If a gravel feed pipe, used to add gravel to the gravel pack after well completion, is installed, the diameter of the borehole in the sealing interval must be at least four (4) inches in diameter greater than the permanent casing plus the diameter of the gravel feed pipe. The gravel feed pipe must be completely surrounded by the seal. The gravel feed pipe must extend at least 18 inches above ground and must be sealed at the top with a water[-]tight cap or plug (see Figure 2).

9.6 Protection of the Aquifer.

9.6.1 Drilling Fluids and LCMs. The well driller shall take due care to protect the producing aquifer from clogging or contamination. Organic substances shall not be introduced into the well or borehole during drilling or construction. Every effort shall be made to remove all substances and materials introduced into the aquifer or aquifers during well construction. "Substances and materials" shall mean all drilling fluids, filter cake, and any other

~~organic or~~ inorganic substances added to the drilling fluid that may seal or clog the aquifer. The introduction of lost circulation materials (LCM's) during the drilling process shall be limited to those products which will not present a potential medium for bacterial growth or contamination. Only LCM's which are non-organic ~~and biodegradable~~, such as "rock wool" consisting of spun calcium carbonate, which can be safely broken down and removed from the borehole, may be utilized. This is especially important in the construction of wells designed to be used as a public water system supply.

9.6.2 Containment of Drilling Fluid. Drilling or circulating fluid introduced into the drilling process shall be contained in a manner to prevent surface or subsurface contamination and to prevent degradation of natural or man-made water courses or impoundments. Rules regarding the discharges to waters of the state are promulgated under R317-8-2 of the Utah Administrative Code and regulated by the Utah Division of Water Quality (Tel. 801-536-6146). Pollution of waters of the state is a violation of the Utah Water Quality Act, Utah Code Annotated Title 19, Chapter 5.

9.6.3 Mineralized, Contaminated or Polluted Water. Whenever a water bearing stratum that contains nonpotable mineralized, contaminated or polluted water is encountered, the stratum shall be adequately sealed off so that contamination or comingling of the overlying or underlying groundwater zones will not occur (see Figure 4).

9.6.4 Drilling Equipment. All tools, drilling equipment, and materials used to drill a well shall be free of contaminants prior to beginning well construction. Contaminants include lubricants, fuel, bacteria, etc. that will reduce the well efficiency, and any other item(s) that will be harmful to public health and/or the resource or reduce the life of the water well. It is recommended that excess lubricants placed on drilling equipment be wiped clean prior to insertion into the borehole.

9.6.5 Well Disinfection and Chlorination of Water. No contaminated or untreated water shall be placed in a well during construction. Water should be obtained from a chlorinated municipal system. Where this is not possible, the water must be treated to give 100 parts per million free chlorine residual. Upon completion of a well or work on a well, the driller shall disinfect the well using accepted disinfection procedures to give 100 parts per million free chlorine residual in the well water. Table 3 provides the amount of common laundry bleach or dry powder hypochlorite required per 100 gallons of water or 100 feet linear casing volume of water to mix a 100 parts per million solution. Additional recommendations and guidelines for water well system disinfection are available from the state engineer upon request.

TABLE 3  
AMOUNT OF HYPOCHLORITE FOR EACH 100 FEET OF WATER  
STANDING IN WELL (100 ppm solution)

Well Diameter (inches)	5.25% Solution (cups)	25% Powder (ounces)	70% Powder (ounces)
2	0.50	1.00	0.50
4	2.25	3.50	1.50
6	5.00	8.00	3.00
8	8.50	14.50	5.50
10	13.00	22.50	8.50
12	19.00	32.50	12.00
14	26.00	44.50	16.50
16	34.00	58.00	26.00
20	53.00	90.50	33.00

For every 100 gal. of water add:	3.50	5.50	2.00
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NOTES: \*Common Laundry Bleach  
 \*\*High Test Hypochlorite

#### 9.7[-] Special Requirements.

9.7.1[-] Explosives. Explosives used in well construction shall not be detonated within the section of casing designed or expected to serve as the surface seal of the completed well, whether or not the surface seal has been placed. If explosives are used in the construction of a well, their use shall be reported on the official well log. In no case shall explosives, other than explosive shot perforators specifically designed to perforate steel casing, be detonated inside the well casing or liner pipe.

9.7.2 Access Port. Every well shall be equipped with a usable access port so that the position of the water level, or pressure head, in the well can be measured at all times.

9.7.3 Completion or Abandonment. A licensed driller shall not remove his drill rig from a well site unless the well is completed or abandoned. Completion of a well shall include all surface seals, gravel packs or curbs required. Dry boreholes, or otherwise unsuccessful attempts at completing a well, shall be properly abandoned in accordance with Section R655-4-12. Upon completion, all wells shall be equipped with a water[-]tight, tamper-resistant casing cap or sanitary seal.

9.7.4 Surface Security. If it becomes necessary for the driller to temporarily discontinue the drilling operation before completion of the well or otherwise leave the well or borehole unattended, the well and/or borehole must be covered securely to prevent contaminants from entering the casing or borehole and rendered secure against entry by children, vandals, domestic animals, and wildlife.

9.7.5 Pitless Adapters. Pitless adapters or units are acceptable to use with steel well casing as long as they are installed in accordance with manufacturers recommendations and specifications.

The pitless adaptor, including the cap or cover, casing extension, and other attachments, must be so designed and constructed to be water tight and to prevent contamination of the potable water supply from external sources. Pitless adapters or units are not recommended to be mounted on PVC well casing. If a pitless adapter is to be used with PVC casing, it should be designed for use with PVC casing, and the driller should ensure that the weight of the pump and column do not exceed the strength of the PVC well casing.

9.7.6 Hydraulic Fracturing. The hydraulic fracturing pressure shall be transmitted through a drill string and shall not be transmitted to the well casing. Hydraulic fracturing intervals shall be at least 20 feet below the bottom of the permanent casing of a well. All hydraulic fracturing equipment shall be thoroughly disinfected with a 100 part per million chlorine solution prior to insertion into the well. The driller shall include the appropriate hydraulic fracturing information on the well log including methods, materials, maximum pressures, location of packers, and initial/final yields.

9.7.7 Static Water Level, Well Development, and Well Yield. To fulfill the requirements of Subsection R655-4-4[~~4~~].5.2[~~3~~], new wells designed to produce water shall be developed to remove drill cuttings, drilling mud, or other materials introduced into the well during construction and to restore the natural groundwater flow to the well to the extent possible. After a water production well is developed, a test should be performed to determine the rate at which groundwater can be reliably produced from the well. Following

development and testing, the static water level in the well should also be measured. Static water level, well development information, and well yield information shall be noted on the official submittal of the Well Log by the well driller.

### R655-4-10. Special Wells.

#### 10.1 Construction Standards for Special Wells.

10.1.1 General. The construction standards outlined in Section R655-4-9 are meant to serve as minimum acceptable construction standards. Certain types of wells such as cathodic protection wells, heating or cooling exchange wells, recharge and recovery wells, and public supply wells require special construction standards that are addressed in this section or in rules promulgated by other regulating agencies. At a minimum, when constructing special wells as listed above, the well shall be constructed by a licensed well driller, and the minimum construction standards of Section R655-4-9 shall be followed in addition to the following special standards.

10.1.2 Public Water Supply Wells. Public water supply wells are subject to the minimum construction standards outlined in Section R655-4-~~4~~9 in addition to the requirements established by the Department of Environmental Quality, Division of Drinking Water under Rules R309-204 and R309-~~600~~113. Plans and specifications for a public supply well must be reviewed and approved by the Division of Drinking Water before the well is drilled. These plans and specifications shall include the procedures, practices, and materials used to drill, construct, seal, develop, clean, disinfect, and test the public supply well. A Preliminary Evaluation Report describing the potential vulnerability and protection strategies of the new well to contamination must also be submitted and approved prior to drilling. A representative of the Division of Drinking Water must be present at the time the surface grout seal is placed in all public supply wells, so that the placement of the seal can be certified. In order to assure that a representative will be available, and to avoid down-time waiting for a representative, notice should be given several days in advance of the projected surface grout seal placement. When the time and date for the surface grout seal installation are confirmed a definite appointment should be made with the representative of the Division of Drinking Water to witness the grout seal placement by calling (801) 536-4200. The licensed driller shall have available a copy of the start card relating to the well and provide that information to the inspecting representative at the time of the surface grout seal installation and inspection.

10.1.3 Cathodic Protection Well Construction. Cathodic protection wells shall be constructed in accordance with the casing, joint, surface seal, and other applicable requirements outlined in Section R655-4-9. Any annular space existing between the base of the annular surface seal and the top of the anode and conductive fill interval shall be filled with appropriate fill or sealing material. Fill material shall consist of washed granular material such as sand, pea gravel, or sealing material. Fill material shall not be subject to decomposition or consolidation and shall be free of pollutants and contaminants. Fill material shall not be toxic or contain drill cuttings or drilling mud. Additional sealing material shall be placed below the minimum depth of the annular surface seal, as needed, to prevent the cross-connection and commingling of separate aquifers and water bearing zones. Vent pipes, anode access tubing, and any other tubular materials (i.e., the outermost casing) that pass through the interval to be filled and sealed are considered casing for the purposes of these standards and shall meet the requirements of Subsections R655-4-~~9~~9.2[~~3~~] and [~~R655-4-9(9.3)~~]9.3. Cathodic

protection well casing shall be at least 2 inches in internal diameter to facilitate eventual well abandonment. Figure 6 illustrates the construction of a typical cathodic protection well.

10.1.4 Heating or Cooling Exchange Wells. Wells or boreholes utilized for heat exchange or thermal heating, which are 30 feet or greater in depth and encounter formations containing groundwater, must be drilled by a licensed driller and the owner or applicant must have an approved application for that specific purpose as outlined in Section R655-4-7. Wells or boreholes installed for heat or thermal exchange process must comply with the minimum construction standards of ~~Rule~~ Section R655-4-9. If a separate well or borehole is required for re-injection purposes, it must also comply with these standards and the groundwater must be injected into the same water bearing zones as from which it is initially withdrawn, and a non-consumptive use water right is required. The quality and quantity of groundwater shall not be diminished or degraded upon re-injection. The rules herein pertain only to the heating and cooling exchange well constructed to a depth greater than 30 feet and are not intended to regulate the incidental work that may occur up to the well such as plumbing, electrical, piping, trenching, and backfilling activities.

10.1.5 Recharge and Recovery Wells. Any well drilled under the provisions of Title 73, Chapter 3b (Groundwater Recharge and Recovery Act) shall be constructed in a manner consistent with these rules and shall be drilled by a currently licensed driller. Special rules regarding the injection of water into the ground are also promulgated under the jurisdiction of the Utah Department of Environmental Quality, Division of Water Quality (Rule R317-7 "Underground Injection Control Program" of the Utah Administrative Code) and must be followed in conjunction with the Water Well Drilling rules.

**KEY: water rights, licensing, well drilling**  
**~~January 1, 2001~~2004**  
**Notice of Continuation September 12, 2000**  
**73-3**



## Natural Resources, Wildlife Resources

# R657-9

## Taking Waterfowl, Common Snipe and Coot

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 27367  
 FILED: 08/26/2004, 16:12

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to the Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the division's waterfowl program.

SUMMARY OF THE RULE OR CHANGE: Subsection R657-9-2(u) is being amended to delete the definition of "youth." Subsection R657-9-5(1)(a) is being amended to eliminate the posting of drawing results and provides that applicants will be notified by

mail or e-mail of the drawing results. Section R657-9-7 is being amended to clarify requirements for responding to the Swan Harvest Questionnaire. Section R657-9-14 is being amended to provide that off-highway vehicle use is not permitted on state waterfowl management areas, except as marked or posted open. Other provisions are being amended for consistency.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 50 CFR 20, 50 CFR 32.64, and 50 CFR 27.21, 2003

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This amendment clarifies existing requirements. Therefore, the amendments do not create a cost or savings impact to the state budget.
- ❖ LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the amendment. Nor are local governments indirectly impacted because the amendment does not create a situation requiring services from local governments.
- ❖ OTHER PERSONS: The amendments are for clarification, therefore, the amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The amendments clarify existing requirements. Therefore, there are not any additional compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES  
 WILDLIFE RESOURCES  
 1594 W NORTH TEMPLE  
 SALT LAKE CITY UT 84116-3154, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at [debbiesundell@utah.gov](mailto:debbiesundell@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2004

AUTHORIZED BY: Kevin Conway, Director

**R657. Natural Resources, Wildlife Resources.****R657-9. Taking Waterfowl, Common Snipe and Coot.****R657-9-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, and in accordance with 50 CFR 20, 50 CFR 32.64 and 50 CFR 27.21, [2002]2003 edition, which is incorporated by reference, the Wildlife Board has established this rule for taking waterfowl, Common snipe, and coot.

(2) Specific dates, areas, limits, requirements and other administrative details which may change annually are published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

**R657-9-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aggregate daily bag limit" means the maximum number of migratory game birds permitted to be taken by one person in any one day during the open season when such person hunts in more than one specified geographic area and/or for more than one species for which a combined daily bag limit is prescribed. The aggregate daily bag limit is equal to, but shall not exceed, the largest daily bag limit prescribed for any one species or for any one specified geographical area in which taking occurs.

(b) "Aggregate possession limit" means the maximum number of migratory game birds of a single species or combination of species taken in the United States permitted to be possessed by any one person when taking and possession occurs in more than one specified geographic area for which a possession limit is prescribed. The aggregate possession limit is equal to, but shall not exceed, the largest possession limit prescribed for any one of the species or specified geographic areas in which taking and possession occurs.

(c) "Bait" means shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that lures, attracts or entices birds.

(d) "Baited area" means any area on which shelled, shucked or unshucked corn, wheat or other grain, salt or other feed has been placed, exposed, deposited, distributed or scattered, if that shelled, shucked or unshucked corn, wheat or other grain, salt or other feed could serve as a lure or attraction for migratory game birds to, on, or over areas where hunters are attempting to take migratory game birds. Any such area will remain a baited area for ten days following the complete removal of all such shelled, shucked or unshucked corn, wheat or other grain, salt or other feed.

(e) "Baiting" means the direct or indirect placing, depositing, exposing, distributing or scattering of shelled, shucked or unshucked corn, wheat or other grain, salt or other feed that could serve as a lure or attraction for migratory game birds to, on, or over any areas where hunters are attempting to take migratory game birds.

(f) "CFR" means the Code of Federal Regulations.

(g) "Closed season" means, for purposes of this rule, the days on which migratory game birds shall not be taken.

(h) "Daily bag limit" means the maximum number of migratory game birds of a single species or combination (aggregate) of species permitted to be taken by one person in any one day during the open season in any one specified geographic area for which a daily bag limit is prescribed.

(i) "Live decoys" means tame or captive ducks, geese or other live birds.

(j) "Migratory game birds" means those migratory birds included in the terms of conventions between the United States and any foreign country for the protection of migratory birds, for which

open seasons are prescribed in this part and belong to the following families:

(i) Anatidae (ducks, geese, including brant, and swans);

(ii) Columbidae (doves and pigeons);

(iii) Gruidae (cranes);

(iv) Rallidae (rails, coots, and gallinules); and

(v) Scolopocidae (woodcock and snipe).

(k) "Nontoxic shot" means soft iron, steel, copper-plated steel, nickel-plated steel, zinc-plated steel, bismuth-tin, tungsten-iron, tungsten-polymer, tungsten-matrix, tin and any other shot types approved by the U.S. Fish and Wildlife Service. Lead, nickel-plated lead, copper-plated lead, copper and lead/copper alloy shot have not been approved.

(l) "Off-highway vehicle" means any motor vehicle designed for or capable of travel over unimproved terrain.

(m) "Open season" means, for purposes of this rule, the days on which migratory game birds may lawfully be taken. Each period prescribed as an open season shall be construed to include the first and last days thereof.

(n) "Permanent waterfowl blind" means any waterfowl blind that is left unattended overnight and that is not a portable structure capable of immediate relocation.

(o) "Personal abode" means one's principal or ordinary home or dwelling place, as distinguished from one's temporary or transient place of abode or dwelling, such as a hunting club, or any cabin, tent or trailer house used as a hunting club or any hotel, motel or rooming house used during a hunting, pleasure or business trip.

(p) "Possession limit" means the maximum number of migratory game birds of a single species or a combination of species permitted to be possessed by any one person when lawfully taken in the United States in any one specified geographic area for which a possession limit is prescribed.

(q) "Sinkbox" means any type of low floating device, having a depression, affording the hunter a means of concealment beneath the surface of the water.

(r) "Transport" means to ship, export, import or receive or deliver for shipment.

(s) "Waterfowl" means ducks, mergansers, geese, brant and swans.

(t) "Waterfowl blind" means any manufactured place of concealment, including boats, rafts, tents, excavated pits, or similar structures, which have been designed to partially or completely conceal a person while hunting waterfowl. [

—(u) "Youth" means a person 12 to 15 years of age.]

**R657-9-5. Drawing.**

(1)(a) [~~Drawing results are posted at the Lee Kay Center for Hunter Education, Cache Valley Hunter Education Center, division offices and on the division Internet address~~] Applicants will be notified by mail or e-mail of draw results on the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe, and coot.

(b) Any remaining permits are available by mail-in request or over the counter at the Salt Lake division office beginning on the date specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

(2)(a) The Division shall issue no more than the number of swan permits authorized by the U.S. Fish and Wildlife Service each year.

(b) The Division may withhold up to 1% of the authorized number of swan permits each year to correct division errors, which may occur during the drawing process.

(c) Division errors may be corrected using the withheld swan permits in accordance with the Division Error Remedy Rule R657-50.

(d) Withheld swan permits shall be used to correct Division errors reported to or discovered by the Division on or before the fifth day preceding the opening day of the swan hunt.

(e) Withheld swan permits remaining after correcting any division errors shall be issued prior to the opening day of the swan hunt to the next person on the alternate drawing list.

(3)(a) A person who is successful in drawing a swan permit, must complete a one-time orientation course, except as provided under Subsection R657-9-7(3)(b), as prescribed by the division before the swan permit is distributed.

(b) Remaining swan permits available for sale by mail shall be issued only to persons having previously completed the orientation course.

(4) Licenses and permits are mailed to successful applicants.

(5)(a) An applicant may withdraw their application for the swan permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking waterfowl, Common snipe, and coot.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake Division office.

(c) Handling fees will not be refunded.

(6)(a) An applicant may amend their application for the swan permit drawing by requesting such in writing by the initial application deadline.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the Salt Lake Division office.

(c) The applicant must identify in their statement the requested amendment to their application.

(d) An amendment may cause rejection if the amendment causes an error on the application.

#### **R657-9-7. Return of Swan Harvest and Hunt Information.**

(1) Swan permit holders who do not hunt or are unsuccessful in taking a swan must ~~[complete]~~respond to the swan questionnaire [included with the permit and return it to the division] through the Division's Internet address, or by telephone, within ten days of the conclusion of the prescribed swan hunting season.

(2) Within three days of harvest, swan permit holders successful in taking a swan must personally present the swan or its head for measurement to the Division or the Bear River Migratory Bird Refuge and further provide all harvest information requested by the Division or Refuge.

(3) Hunters who fail to comply with the requirements of Subsections (1) or (2) shall be ineligible to:

(a) obtain a swan permit the following season; and

(b) obtain a swan permit after the first season of ineligibility until the swan orientation course is retaken.

#### **R657-9-8. Purchase of License ~~[and Wildlife Habitat Authorization]~~ by Mail.**

(1) A person may purchase a license by mail by sending the following information to the Salt Lake division office: full name, complete mailing address, phone number, date of birth, weight,

height, sex, color of hair and eyes, Social Security number, driver license number (if available), proof of hunter education certification, and fees.

(2)(a) Personal checks, money orders and cashier's checks are accepted.

(b) Personal checks drawn on an out-of-state account are not accepted.

(c) Checks must be made payable to the Utah Division of Wildlife Resources.

#### **R657-9-14. Motorized Vehicle Access.**

(1) Motorized vehicle travel is restricted to county roads, improved roads and parking areas.

(2) Off-highway vehicles are ~~[confined to those areas open to the use of airboats, and]~~not permitted on state waterfowl management areas, except as marked and posted open.

(3) Off-highway vehicles are not permitted on Bear River Migratory Bird Refuge.

(4) Motorized boat use is restricted on waterfowl management areas as specified in the proclamation of the Wildlife Board for taking waterfowl, Common snipe and coot.

**KEY: wildlife, birds, migratory birds, waterfowl**

**~~[October 2, 2003]~~2004**

**Notice of Continuation August 30, 2001**

**23-14-18**

**23-14-19**

**50 CFR part 20**



## Natural Resources, Wildlife Resources

### **R657-10**

### Taking Cougar

#### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27368

FILED: 08/26/2004, 16:13

#### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to the Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the division's cougar program.

SUMMARY OF THE RULE OR CHANGE: Provisions are being amended to clarify the application process and make changes for consistency in accordance with Section 23-19-22.5, which was amended during the 2004 Legislative Session (S.B. 138). (DAR NOTE: S.B. 138 is found at UT L 2004 Ch 287, and was effective 05/03/2004.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This amendment clarifies existing requirements. Therefore, the Division of Wildlife Resources

(DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget.

❖ LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the amendment. Nor are local governments indirectly impacted because the amendment does not create a situation requiring services from local governments.

❖ OTHER PERSONS: This amendment clarifies existing requirements, therefore, the amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment clarifies existing requirements. DWR determines that there are no additional compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES  
WILDLIFE RESOURCES  
1594 W NORTH TEMPLE  
SALT LAKE CITY UT 84116-3154, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at [debbiesundell@utah.gov](mailto:debbiesundell@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2004

AUTHORIZED BY: Kevin Conway, Director

## **R657. Natural Resources, Wildlife Resources.**

### **R657-10. Taking Cougar.**

#### **R657-10-5. Purchase of Permit by Mail.**

(1) A person may obtain a wildlife habitat authorization, cougar pursuit permit or cougar harvest objective permit by mail by sending the following information to ~~the Salt Lake~~ any division office: full name, complete mailing address, phone number, date of birth, weight, height, sex, color of hair and eyes, driver's license number (if available), proof of hunter education certification, and fee.

(2)(a) Personal checks, cashier's checks, or money orders are accepted.

(b) Personal checks drawn on an out-of-state account are not accepted.

(c) Checks must be made payable to the Utah Division of Wildlife Resources.

### **R657-10-27. General Application Information.**

(1) A person may not apply for or obtain more than one cougar permit for the same year, except as provided in Section R657-10-4.

(2) ~~A person must be 12 years of age or older by the posting date of the drawing to apply for a limited entry cougar permit.~~

~~(3)~~ Limited entry cougar permits are valid only for the management unit and for the specified season designated on the permit.

### **R657-10-30. Fees.**

(1) Each application must include:

- (a) the permit fee; and
- (b) the nonrefundable handling fee.

(2) Permits are mailed to successful applicants.

(3)(a) Unsuccessful applicants, who applied in the drawing and who applied with a check or money order, will receive a refund in December.

(b) Unsuccessful applicants, who applied with a credit or debit card, will not be charged for a permit.

(c) The handling fees are nonrefundable.

### **R657-10-31. Drawing and Remaining Permits.**

(1) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation shall be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(2) ~~Drawing results will be posted~~ Applicants will be notified by mail or e-mail of drawing results on the date published in the proclamation of the Wildlife Board for taking cougar ~~at division offices, Lee Kay Center for Hunter Education, Cache Valley Hunter Education Center and~~. The drawing results will be posted on the division Internet address.

(3) Beginning on the date published in the proclamation of the Wildlife Board for taking cougar, residents or nonresidents may purchase any of the remaining permits by mail-in application from the Salt Lake division office.

(4) Any limited entry cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(5) Waiting periods do not apply to the purchase of remaining limited entry permits after the drawing. However, waiting periods are incurred as a result of purchasing remaining permits after the drawing. Therefore, if a remaining permit is purchased in the current year, waiting periods will be in effect when applying for limited entry permits in the drawing in following years.

(6)(a) An applicant may withdraw their application for the limited entry cougar permit drawing by requesting such in writing by the date published in the proclamation of the Wildlife Board for taking cougar.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to ~~the Salt Lake Division office~~. Utah Wildlife Administrative Services, P.O. Box 30389, Salt Lake City, Utah 84130-0389.

(c) Handling fees will not be refunded.

(7)(a) An applicant may amend their application for the limited entry cougar permit drawing by requesting such in writing by the ~~initial application deadline~~. date published in the proclamation of the Wildlife Board for taking cougar.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to ~~the Salt Lake Division office~~. Utah Wildlife Administrative Services, P.O. Box 30389, Salt Lake City, Utah 84130-0389.



(c) The applicant must identify in their statement the requested amendment to their application.

(d) An amendment may cause rejection if the amendment causes an error on the application.

**KEY: wildlife, cougar[~~z~~], game laws**  
**[~~October 2, 2003~~2004**  
**Notice of Continuation August 30, 2001**  
**23-14-18**  
**23-14-19**



## Natural Resources, Wildlife Resources

# R657-11

### Taking Furbearers

#### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 27369  
 FILED: 08/26/2004, 16:13

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to the Regional Advisory Council and Wildlife Board meetings conducted for taking public input and reviewing the division's furbearer program.

SUMMARY OF THE RULE OR CHANGE: Section R657-11-4 is amended to clarify the application process. Section R657-11-9 is being amended to provide that registration numbers may be obtained from any division office. Section R657-11-13 is being amended to provide that bobcats may be taken by shooting, trapping, or with the aid of dogs during the specified seasons as provided in Section R657-11-26.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

#### ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This amendment clarifies existing requirements. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget.
- ❖ LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the amendment. Nor are local governments indirectly impacted because the amendment does not create a situation requiring services from local governments.
- ❖ OTHER PERSONS: This amendment clarifies existing requirements, therefore, the amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment clarifies existing requirements. DWR determines that there are no additional compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES  
 WILDLIFE RESOURCES  
 1594 W NORTH TEMPLE  
 SALT LAKE CITY UT 84116-3154, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at debbiesundell@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2004

AUTHORIZED BY: Kevin Conway, Director

#### R657. Natural Resources, Wildlife Resources.

##### R657-11. Taking Furbearers.

##### R657-11-4. Temporary Possession Tags for Bobcat.

- (1) Any person who has obtained a valid furbearer license may apply for up to six temporary bobcat possession tags.
- (2) Applications will be available on the date published in the proclamation of the Wildlife Board for taking furbearers from any division office or will be mailed upon request.
- (3) Applications must be received ~~through~~by the ~~mail~~division no later than 5 p.m., on the date published in the proclamation of the Wildlife Board for taking furbearers. Applications completed incorrectly or received after the date published in the proclamation of the Wildlife Board for taking furbearers ~~will~~may be rejected.
- (4)(a) Applicants must provide a valid furbearer license number on the application.
- (b) The application must include \$5 for each tag requested. Applications ~~must be~~may be delivered to any division office or sent to: Bobcat Application, P.O. Box 168888, Salt Lake City, Utah 84116-8888.
- (5)(a) Temporary bobcat possession tags are valid for the entire bobcat season.

##### R657-11-9. Identification Numbers.

- (1) Each trapping device used to take furbearers must be permanently marked or tagged with the registered number of the person using them.
- (2) Only the registration number of the person using the trapping device may be on the trapping device.
- (3) No more than two trap registration numbers may be on a trapping device.
- (4) Identification numbers must be legible and at least 1/4 inch in height.

(5) Registration numbers are permanent and may be obtained by mail or in person from ~~the Salt Lake~~ any division office.

(6) Applicants must include their full name, including middle initial, and complete home address.

(7) A registration fee of \$5 must accompany the request. This fee is payable only once.

(8) Each individual is issued only one registration number.

(9) Any person who has obtained a registration number must notify the division within 30 days of any change in address or the theft of traps.

#### **R657-11-13. Methods of Take and Shooting Hours.**

(1) Furbearers, except bobcats, may be taken by any means, excluding explosives, poisons, and crossbows, or as otherwise provided in Section 23-13-17.

(2) Bobcats may be taken only by shooting, trapping, or with the aid of dogs ~~], except:~~

~~— (a) bobcats may not be taken with traps during the specified dates published in the proclamation of the Wildlife Board for taking furbearers; and~~

~~— (b) bobcats may not be taken with the aid of dogs during the specified dates published in the proclamation of the Wildlife Board for taking furbearers.] as provided in Section R657-11-26.~~

(3) Marten may be taken only with an elevated, covered set in which the maximum trap size shall not exceed 1 1/2 foothold or 160 Conibear.

(4) Taking furbearers by shooting or with the aid of dogs is restricted to one-half hour before sunrise to one-half hour after sunset, except as provided in Section 23-13-17.

(5) A person may not take any wildlife from an airplane or any other airborne vehicle or device or any motorized terrestrial or aquatic vehicle, including snowmobiles and other recreational vehicles.

**KEY: wildlife, furbearers, game laws, wildlife law**  
**[October 2, 2003]2004**

**Notice of Continuation August 30, 2000**

**23-14-18**

**23-14-19**

**23-13-17**



**Regents (Board Of), Administration**  
**R765-605**  
**Utah Centennial Opportunity Program**  
**for Education**

#### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27390

FILED: 09/01/2004, 15:31

#### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The addition of language to the current rule includes a provision for the

Cesar Chavez Scholarship Program as provided for by S.B. 40 passed by the 2004 legislature. (DAR NOTE: S.B. 40 is found at UT L 2004 Ch 10, and was effective 07/01/2004.)

SUMMARY OF THE RULE OR CHANGE: As S.B. 40 allows for the waiver of the nonresident portion of tuition for Utah college students who have lived and attended high school in Utah for three years and subsequently graduated from a Utah high school, but do not qualify for resident status nor federal student aid because of their nonimmigrant status, this amendment provides for scholarship funds for such individuals as defined within.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 53B, Chapter 13a; and Section 53B-8-102

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no anticipated increase in cost nor savings to the state budget as this amendment would allow up to 10 percent of annual UCOPE funds allocated to public and private nonprofit colleges to be used for Cesar Chavez Scholarships. This is not a 10% increase in Utah Centennial Opportunity Program for Education (UCOPE) funds, but it allows 10% of the annual allocation to be used by schools to offset some of the cost of tuition for students defined by S.B. 40.

❖ LOCAL GOVERNMENTS: There are no costs nor savings to local governmental units since the UCOPE funds are allocated on an annual basis to eligible institutions of higher education.

❖ OTHER PERSONS: There are no costs nor savings for individuals because UCOPE funds are allocated to institutions of higher education to be awarded to eligible students.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with the implementation of this amendment beyond the normal functions of departments within institutions of higher education which may provide scholarship funds to eligible students.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule has no impact on businesses.

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

REGENTS (BOARD OF)  
ADMINISTRATION  
BOARD OF REGENTS BUILDING, THE GATEWAY  
60 SOUTH 400 WEST  
SALT LAKE CITY UT 84101-1284, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ronell Crossley at the above address, by phone at 801-321-7291, by FAX at 801-321-7299, or by Internet E-mail at rccrossley@utahsbr.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2004

AUTHORIZED BY: Mark H. Spencer, Acting Executive Director

**R765. Regents (Board of), Administration.**

**R765-605. Utah Centennial Opportunity Program for Education.**

**R765-605-1. Purpose.**

To provide Board of Regents ("the Board") policy and procedures for implementing the Utah Centennial Opportunity Program for Education ("UCOPE," or "program"), UCA 53B-13a, enacted in H.B. 64 by the 1996 General Session of the Utah Legislature, as amended in 1997,~~and~~ 1998 and 2004 by S.B. 40, Cesar Chavez Scholarship Program.

**R765-605-2. References.**

2.1. Utah Code. Title 53B, Utah System of Higher Education, Chapter 8, Section 102.

2.2. Utah Code. Title 53B, Utah System of Higher Education, Chapter 8, Section 106.

2.~~2~~3. Utah Code. Title 53B, Utah System of Higher Education, Chapter 13a.

2.~~3~~4. State Board of Regents Policy R512, Determination of Resident Status.

**R765-605-3. Effective Date.**

These policies and procedures are effective ~~July 2, 1998~~ July 1, 2004.

**R765-605-4. Policy.**

4.1. Program Description - UCOPE is a State supplement to increasingly inadequate grant and work assistance from Federal Government student financial aid programs. In UCA 53B-13a-103(1), the Legislature finds "that the general welfare and well-being of the state are directly related to the educational levels and skills of the citizens of the state, and that limited financial aid for students with demonstrated financial need to help finance costs of attendance at Utah postsecondary institutions is a necessary component for ensuring access to postsecondary education and training as the state enters its second century of statehood". Program funds may be used for either grants or work-study awards to students with demonstrated financial need, with no more than 3.0% of funds allocated to an eligible institution permitted to be used for administrative costs. These are the only purposes for which program funds may be used.

4.2. Award Year - The award year for UCOPE is the twelve-month period designated by an eligible institution, coinciding approximately with the state fiscal year beginning July 1 and ending June 30. An institution may choose to have its Summer enrollment period as either the first or the final enrollment period of the award year for UCOPE purposes.

4.3. Institutions Eligible to Participate - Eligible institutions include the ten institutions of the Utah System of Higher Education, and~~a~~ Utah private nonprofit postsecondary institutions which ~~is~~ are accredited by a regional accrediting organization recognized by the Board. These are the only institutions eligible to participate. For purposes of this section, the Board recognizes the Northwest Association of Schools and Colleges. Utah private nonprofit postsecondary institutions accredited by the Northwest Association of Schools and Colleges are Brigham Young University, Westminster College and LDS Business College.

4.4. Students Eligible to Participate - To be eligible for grant or work-study assistance from UCOPE funds, a student must:

4.4.1. Be a resident student of the State of Utah under UCA 53B-8-102 and Board Policy R512 or exempt from paying the nonresident portion of total tuition under Utah Code Section 53B-8-106. For purposes of this section, in addition to the qualification methods set forth in Policy R512, an institution may recognize a student, other than a nonimmigrant alien, as a resident student of the State of Utah if the student graduated from a Utah high school within 12 months of enrolling in the institution.

4.4.2. Be unconditionally admitted and currently enrolled in an eligible institution on at least a half-time basis as defined in Federal regulations applicable to Title IV of the Higher Education Act, in a post-high school program of at least nine months duration, leading to an Associate or Bachelor's degree, or to a diploma or certificate in an applied technology or other occupational specialty. This does not include unmatriculated students or students enrolled in postbaccalaureate programs or in remedial or developmental programs to prepare for admittance to a degree, diploma, or occupational certificate program.

4.4.3. Be maintaining satisfactory progress, as defined by the institution, toward the degree, diploma, or certificate objective in which enrolled.

4.4.4. Meet all requirements of general eligibility for Federal Higher Education Act Part IV Student Financial Aid Programs, as defined in applicable U. S. Department of Education Regulations and the current edition of the Department of Education Student Aid Handbook.

4.4.5. Have a demonstrated need for financial assistance based on the defined Cost of Attendance for the applicable student category at the institution and the expected family contribution as determined by the Federal need analysis process for Higher Education Act Title IV student financial assistance programs, or, to qualify for a Cesar Chavez Scholarship, have a family income less than 200% of the federal poverty guideline issued each year by the U.S. Department of Education for the family size.

4.5. Program Administrator - The program administrator for UCOPE is the Associate Commissioner for Student Financial Aid, or a person designated in a formal delegation of authority by the Associate Commissioner, under executive direction of the Commissioner of Higher Education.

4.6. Determination of Funds Available for The Program - Funds available for UCOPE allotments to institutions may come from specifically earmarked state appropriations, from the statewide student financial aid line item appropriation to the Board, or from other sources such as private contributions. Amounts available for allotment each year are determined as follows:

4.6.1. Consistent with the original purposes of the Statewide Student Financial Aid line item appropriation to the Board, funds appropriated in the line item are applied in the following priority order:

4.6.1.1. First priority is given to matching funds for Utah System of Higher Education institutional awards from the Federal Government for campus-based Federal Perkins Loan Program capital contributions, Federal Supplemental Educational Opportunities Grant Program funds, and partial matching for the Federal College Work Study Program.

4.6.1.2. Second priority is given to providing the required state match for allocations of Leveraging Educational Assistance Partnership Program funds to the State of Utah.

4.6.1.3. All remaining funds are used for UCOPE.

4.6.2. All funds appropriated by specific legislation, or in a specific line item for UCOPE, and any funds from other sources

contributed for UCOPE, are added together with funds available for UCOPE pursuant to subsection 4.6.1, to determine the total amount available for the program.

#### 4.7. Allotment of Program Funds To Institutions.

4.7.1. The chief executive officer or chief student services officer of an eligible institution wishing to participate in UCOPE is required to submit to the program administrator a letter of intent to participate by the 15th of May preceding the beginning of the fiscal year (July 1 through June 30), and to include in the letter of intent a certification, subject to audit, of: (a) the total dollar amount of Federal Pell Grant funds awarded in the most recent completed award year to all students at the institution; and (b) the total dollar amount of Pell Grant funds awarded specifically to students at the institution who were resident students of the state of Utah under UCA 53B-8-102 and Board Policy R512.

4.7.2. Failure to submit its letter of intent with the required Pell Grant information by the specified date constitutes an automatic decision by an eligible institution not to participate in the program for the specific fiscal year.

4.7.3. An eligible institution which submits a qualifying letter of intent by the specified date for a specific fiscal year is a participating institution for that fiscal year.

4.7.4. Allotment of program funds to participating institutions is in the same proportion as the amount of Federal Pell Grant funds received by each participating institution for resident undergraduate students bears to the total of such funds received for such students in the most recently completed award year by all participating institutions.

4.7.5. The program administrator sends official notification of its allotment, together with a program participation agreement, and blank copies of the format for institutional UCOPE reports to be submitted within 30 days of the end of the applicable fiscal year, to the chief executive officer of each participating institution, by the 20th of May preceding the fiscal year.

4.8. Annual Institutional Participation Agreements - To receive UCOPE funds for an award year, a participating institution is required to submit a participation agreement, signed by the chief executive officer, accepting the funds and agreeing to the following terms and conditions:

#### 4.8.1. Use of Program Funds Received by the Institution.

4.8.1.1. The institution may at its discretion place up to, but in no case more than, 3.0% of the total amount of program funds allotted to it for the award year in a budget for student financial aid administrative expenses of the institution, and will expend all funds so budgeted before the end of the state fiscal year for which allotted.

4.8.1.2(a). For the 1996-97 award year and award years 2000-01 and 2001-02, if the institution's allotment for the fiscal year is \$100,000 or more, the institution will place at least 30% of the total amount of program funds allotted to it for the award year in a budget to be used only for payment of work-study stipends to eligible students, for employment during the award year either in jobs provided under Federal Work-Study Program (FWSP) regulations or in jobs provided in accordance with UCOPE Work-Study Program (UWSP) policies (Section 4.9 herein). For award years 1997-98 through 1999-2000, if the institution's allotment for the fiscal year is \$50,000 or more, the institution will place at least 50% of the total amount of program funds allotted to it in a budget to be used only for payment of work-study stipends to eligible students, for employment during the award year either in jobs provided under FWSP regulations or in jobs provided in accordance with Section 4.9.

4.8.1.2(b). For any award year, the institution may, at its option, place all or any portion of its allotted UCOPE funds in a budget to be

used only for payment of work-study stipends to eligible students, for employment during the award year either in jobs provided under Federal Work-Study Program (FWSP) regulations or in jobs provided in accordance with UCOPE Work-Study Program (UWSP) policies (Section 4.0 herein).

4.8.1.2(c). Work-study payments from the institution's UCOPE work-study budget, for jobs under either FWSP regulations or UWSP policies, will be counted as UCOPE awards for purposes of subsection 4.8.2.3.

4.8.1.3. All work-study jobs provided using UCOPE funds from the budget pursuant to this subsection, including those established under FWSP regulations, will be identified to the recipient as UCOPE work-study awards. No portion of the institution's UCOPE allotment may be used as institutional match for Federal Work-Study Program allocations.

4.8.1.4. The institution will place the total remainder of program funds allotted to it for the award year, after amounts budgeted pursuant to subsections 4.8.1.1 and 4.8.1.2, in a budget to be used only for payment of UCOPE grants to eligible students during and for periods of enrollment within the award year. Grants awarded from this budget will be identified to the recipient as Utah Centennial Opportunity Program Grants.

4.8.1.5. The institution may carry forward or carry back from one fiscal year to another up to 10% of the amount of its UCOPE allocation for the fiscal year, or a larger percentage if approved in advance by the UCOPE program administrator, except for any portion budgeted for administrative expenses pursuant to Section 4.8.1.1.

#### 4.8.2. Determination of Awards to Eligible Students.

4.8.2.1. Student Cost of Attendance budgets will be established by the institution, in accordance with Federal regulations applicable to student financial aid programs under Title IV of the Higher Education Act as amended, for specific student categories authorized in the Federal regulations, and providing for the total of costs payable to the institution plus other direct educational expenses, transportation and living expenses.

4.8.2.2. UCOPE work-study or grant amounts will be awarded based on financial aid information and cost of attendance budgets at the time the awards are determined, with first priority given to eligible students who qualify for Federal Pell Grant assistance.

4.8.2.3. The total amount of any UCOPE grant award to an eligible student in an award year will not exceed \$5,000, and the minimum UCOPE grant and/or work-study award to an eligible student will be \$300, except that:

4.8.2.3(a). the minimum amount may be the amount of funds remaining in the institution's allotment for the award year in the case of the last eligible student receiving a UCOPE grant award for the year; and

4.8.2.3(b). An eligible student whose period of enrollment is less than the normally-expected period of enrollment within the award year (such as two semesters, three quarters, nine months, or 900 clock hours) will be awarded a minimum or maximum grant amount in proportion to the portion of the normally-expected period of enrollment represented by the quarter(s), semester(s) or other defined term for which the student is enrolled.

4.8.2.4. UCOPE Grants and work-study stipends will be awarded and packaged on an annual award year basis. Grants will be paid one quarter or semester at a time (or in thirds, if applicable to some other enrollment basis such as total months or total clock hours), contingent upon the student's maintaining satisfactory progress as defined by the institution in published policies or rules. Work-study wages will be

paid regularly as earned, provided the student is continuing to make satisfactory progress.

4.8.2.5. All awards under the program will be made without regard to an applicant's race, creed, color, religion, ancestry, or age.

4.8.2.6. Students receiving financial aid under the program will be required to agree in writing to use the funds received for expenses covered in the student's cost of attendance budget.

4.8.2.6(a). The student's signature on the Free Application for Federal Student Aid satisfies this requirement.

4.8.2.6(b). If the institution determines, after opportunity for a hearing on appeal according to established institutional procedures, that a student used UCOPE grant or work-study funds for other purposes, the institution will disqualify the student from UCOPE eligibility beginning with the quarter, semester, or other defined enrollment period after the one in which the determination is made.

4.8.2.7. In no case will the institution initially award program grants or work-study stipends or both in amounts which, with Federal Stafford, Ford, and/or Perkins Loans and other financial aid from any source, both need and merit-based, and with expected family contributions, exceed the cost of attendance for the student at the institution for the award year.

4.8.2.8. If, after the student's aid has been packaged and awarded, the student later receives other financial assistance (for example, merit or program-based scholarship aid) or the student's cost of attendance budget changes, resulting in a later overaward of more than \$500, the institution will appropriately reduce the amount of financial aid disbursed to the student so that the total does not exceed the cost of attendance.

4.8.3. Unit-Record Information - The institution agrees to cooperate with the program administrator and the Commissioner of Higher Education in development of a unit-record data base on student financial aid and related demographic information, to be used for: (a) research into the effects of student financial aid on students' access to and participation in postsecondary education and training; and (b) planning and modifying the design of the program.

4.8.4. Notification and Reports - The institution will inform the program administrator immediately if it determines it will not be able to utilize all program funds allotted to it for an award year, and will submit an annual report within 30 days after completion of the award year, providing information on individual awards and such other program-relevant information as the board may reasonably require.

4.8.5. Records Retention and Cooperation in Program Reviews - The institution will cooperate with the program administrator in providing records and information requested for any scheduled audits or program reviews, and will maintain records substantiating its compliance with all terms of the participation agreement for three years after the end of the award year, or until a program review has been completed and any exceptions raised in the review have been resolved, whichever occurs first. If at the end of the three year retention period, an audit or program review exception is pending resolution, the institution will retain records for the award year involved until the exception has been resolved.

4.8.6. Dissemination of Employment Opportunity Information - The institution will cooperate with the program administrator in disseminating to its students periodic information provided by the board, regarding employment opportunities determined from marketplace surveys.

4.9. UCOPE Work-Study Program Guidelines - If an institution elects to utilize its UCOPE Work-Study funds for the Utah Work-Study Program (UWSP) instead of in accordance with Federal Work-Study (FWSP) regulations, the following guidelines apply.

4.9.1. The institution may establish designated UWSP institutional jobs on campus or in other institutional operating sites, and administer such jobs in accordance with the following conditions.

4.9.1.1. The job must be supplemental to, and not displace, any regularly-established job held by a greater-than-half-time institutional employee in the three months immediately prior to establishment of the UWSP institutional job.

4.9.1.2. The hourly wage for the UWSP institutional job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the institution in equivalent positions in the institution's personnel system, unless the hourly wage of equivalent positions is less than the current Federal minimum wage.

4.9.1.3. The institution may pay up to one hundred percent of the hourly wage for the institutional job from its UCOPE work-study budget established pursuant to subsection 4.9.1, provided the total wages paid to a student for the job from UCOPE and any other institutional funds do not exceed the amount of the award to the student for the award year.

4.9.2. The institution may establish designated UWSP school assistant jobs for volunteer tutors, mentors, or teacher assistants, to work with educationally disadvantaged and high risk school pupils, by contract with individual schools or school districts, and administer such jobs in accordance with the following conditions.

4.9.2.1. The hourly wage for the UWSP school assistant job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the school or school district in equivalent positions in its personnel system, unless the hourly wage of equivalent positions is less than the current Federal minimum wage.

4.9.2.2. The institution may pay up to one hundred percent of the hourly wage for the job from its UCOPE work-study budget established pursuant to subsection 4.9.2, provided the total wages paid to a student for the job from any source do not exceed the amount of the award to the student for the award year.

4.9.3. The institution may establish designated UWSP community service jobs with volunteer community service organizations certified by the program administrator on advice of the Utah Commission on Volunteers, and administer such jobs in accordance with the following conditions.

4.9.3.1. The hourly wage for the UWSP community service job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the organization in equivalent positions in its personnel system, unless the hourly wage of equivalent positions is less than the current Federal minimum wage.

4.9.3.2. The institution may pay up to one hundred percent of the hourly wage for the job from its UCOPE work-study budget established pursuant to subsection 4.9.3, provided the total wages paid to a student for the position from any source do not exceed the amount of the award to the student for the award year.

4.9.4. The institution may establish designated UWSP matching jobs by contract with government agencies, private businesses, or non-profit corporations, and administer such jobs in accordance with the following conditions.

4.9.4.1. The matching job may not involve any religious or partisan political activities, or be with an organization whose primary purpose is religious or political.

4.9.4.2. The matching job must be supplemental to, and not displace, any regularly-established job held by a greater-than-half-time employee in the government agency, private business, or non-profit corporation in the three months immediately prior to establishment of the UWSP matching job.

4.9.4.3. The hourly wage for the UWSP matching job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the organization in equivalent positions in its personnel system, unless the hourly wage of equivalent positions is less than the current Federal minimum wage.

4.9.4.4. The institution may pay up to fifty percent of the hourly wage for the job from its UCOPE work-study budget established pursuant to subsection 4.9.4, provided the total wages (including the employer-paid portion) paid to the student do not exceed the amount of the award to the student for the award year.

4.9.5. Institutions are strongly encouraged to place students, when possible, in UWSP jobs which have a relationship to the student's field of study or training.

4.9.6. If an institution employs students in work-study jobs or other institutional jobs cumulatively over time to a point at which the institution is required to pay employee benefits other than the direct job wages for a UCOPE-funded work-study job, the institution is required to pay the costs of any such required employee benefits from institutional funds other than UCOPE-allotted funds.

4.10. Cesar Chavez Scholarship - The Cesar Chavez Scholarship Program is part of the Utah Centennial Opportunity Program for Education.

4.10.1. Students Eligible - To qualify for a Cesar Chavez Scholarship, a student must:

4.10.1.1. be an eligible student as defined in Section 53B-13a-102; and

4.10.1.3. have a family income less than 200% of the federal poverty guideline for the family size.

4.10.2. Scholarship Amounts - Cesar Chavez Scholarships shall be awarded in the following amounts:

4.10.2.1. if the scholarship recipient is enrolled at a public institution, an amount not to exceed the total of resident tuition and general fee charges; or

4.10.2.2. if the scholarship recipient is enrolled at a private, nonprofit institution, an amount not to exceed the total of tuition and general fee charges, but a scholarship for a student enrolled at a private, nonprofit institution may not exceed the maximum program grant established by the board for the fiscal year.

4.10.3. Allocation of UCOPE Funds to Cesar Chavez Scholarships - The board may allocate up to 10% of the money appropriated to the board for the Utah Centennial Opportunity Program in Education for the Cesar Chavez Scholarship Program.

**KEY: financial aid, higher education**

**[August 15, 2002]2004**

**Notice of Continuation June 30, 2003**

**53B-8-102**

**53B-13a**



**Regents (Board Of), Administration**

**R765-612**

**Lender Participation**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 27387

FILED: 09/01/2004, 14:19

## **RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** In order to align with current market conditions and practices, the Utah Higher Education Assistance Authority (UHEAA) Board of Directors, on August 31, 2004, voted to eliminate the reference and requirement for a lender to be headquartered in Utah in order to provide a UHEAA guarantee for a Federal Stafford, PLUS, or Consolidation loan for any eligible borrower. By eliminating the "headquartered" provision, all lenders currently participating as a UHEAA partner lender will be treated equally and can make student loans to any eligible borrower.

**SUMMARY OF THE RULE OR CHANGE:** The UHEAA Board of Directors voted to eliminate the requirement of a lender or entity to be headquartered in Utah in order to offer loans to any eligible borrower of student loans. UHEAA will offer loan guarantees for any eligible borrower seeking a loan through any eligible UHEAA partner lender participating in the Federal Family Education Loan Program, which maintains a full service office in Utah.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 53B-12-101(6)

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** There are no associated costs nor savings to the state budget as a result of this amendment since this rule change pertains to participating lenders ability to make loans to eligible borrowers.

❖ **LOCAL GOVERNMENTS:** There are no anticipated costs nor savings to local governments as a result of this amendment since the rule only involves the ability of lenders to participate in, and make loans to eligible borrowers, the Federal Family Educational Loan Program.

❖ **OTHER PERSONS:** There are no anticipated costs nor savings that affect any individual as a result of this amendment because this rule only pertains to lending institutions participating in the Federal Family Educational Loan Program.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance issues nor costs for any individual or entity. This amendment imposes no compliance costs for any person, corporation, association, governmental entity or public or private organization.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule change will permit participating Utah banks to possibly increase loan volume and thus revenue.

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

REGENTS (BOARD OF)

ADMINISTRATION

BOARD OF REGENTS BUILDING, THE GATEWAY

60 SOUTH 400 WEST

SALT LAKE CITY UT 84101-1284, or

at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

Ronell Crossley at the above address, by phone at 801-321-7291, by FAX at 801-321-7299, or by Internet E-mail at rcrossley@utahsbr.edu

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2004

AUTHORIZED BY: Mark H. Spencer, Acting Executive Director

**R765. Regents (Board of), Administration.****R765-612. Lender Participation.****R765-612-1. Purpose.**

To establish the lender eligibility requirements for participation as an originating lender in the UHEAA loan program.

**R765-612-2. References.**

- 2.1 Utah Code Annotated Title 53B, Chapter 12.
- 2.2 Higher Education Act of 1965, as amended.

**R765-612-3. Definitions.**

3.1 Originating Lender. A lending institution which originates Federal Stafford, PLUS, SLS or Consolidation Loans.

3.2 Located in Utah. With respect to this rule, a lender is located in Utah if the lender has an office in Utah where the lender's full range of products and services is available to the lender's customers for routine business transactions. An office established for the sole purpose of collecting student loan applications is not sufficient to qualify a lender as being located in Utah.[]

~~3.3 Headquartered. With respect to this rule, the state in which a lender or entity is headquartered is determined by the location of its primary administrative center.~~

~~3.4 Affiliation. With respect to this rule, an affiliation exists between schools if a school is under common control with another school and the controlling entity is headquartered in Utah.]~~

**R765-612-4. Policy.**

4.1 To participate as an originating lender in the UHEAA loan program, a lender must:

- 4.1.1 be located in Utah;
- 4.1.2 be an eligible lender as defined by the Higher Education Act of 1965, as amended;
- 4.1.3 obtain a six-digit lender identification number issued by the U.S. Department of Education; and
- 4.1.4 execute an "Agreement to Guarantee Loans" with UHEAA.

4.2 A lender which meets the requirements of 4.1 may make loans guaranteed by UHEAA to any eligible borrower, ~~who:~~

- ~~4.2.1 attends a school which is located in Utah or has an affiliation with a school located in Utah; or~~
- ~~4.2.2 is a Utah resident, or a non Utah resident who has previously received a loan guaranteed by UHEAA.~~

~~4.3 A lender which meets the requirements of 4.1 and is headquartered in Utah may make loans guaranteed by UHEAA to any eligible borrower.]~~

4.[4]3 A lender which participates in the UHEAA loan program is considered pre-approved.

4.[5]4 By disbursing the loan, the lender acknowledges its approval of the loan.

4.[6]5 A guarantee issued by UHEAA may be cancelled by the lender, if the lender does not grant approval of the loan.

4.[7]6 If the lender violates or fails to comply with the provisions of this policy or the Higher Education Act of 1965, as amended, the lender will be liable for any penalties, claims, actions and expenses relating to the violation. In addition, the lender may be subject to limitation, suspension or termination under the Higher Education Act of 1965, as amended.

**KEY: higher education, student loans[<sup>±</sup>]**

**[December 4, 2001]2004**

**Notice of Continuation January 4, 2002  
53B-12-101(6)**



## Tax Commission, Auditing

**R865-4D-24**

**Off-Highway Use of Undyed Diesel Fuel  
Pursuant to Utah Code Ann. Section  
59-13-301**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 27389

FILED: 09/01/2004, 14:56

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-13-301 provides that special fuel taxes paid for undyed diesel fuel used off-highway shall be refunded. That section also requires the Tax Commission to make rules governing the application and refund for off-highway use of undyed diesel fuel.

SUMMARY OF THE RULE OR CHANGE: The proposed section indicates when undyed diesel fuel is considered off-highway use, and the documentation that must accompany a refund request for off-highway use of undyed diesel fuel.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-13-301

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Insignificant increase in state revenues as this slightly narrows the conditions that satisfy off-highway use.

❖ LOCAL GOVERNMENTS: This is a state tax only, and therefore, there are no costs or savings to local government.

❖ OTHER PERSONS: Insignificant cost as this slightly narrows the conditions that satisfy off-highway use.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Depending on an individual's use of fuel, this proposed amendment may

decrease the individual's refund for off-highway use of undyed diesel fuel.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses may see a slight decrease in the tax refunded for off highway use since this clarification slightly narrows the conditions that allow for a refund.

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

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at cleee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

#### **R865. Tax Commission, Auditing.**

##### **R865-4D. Special Fuel Tax.**

##### **R865-4D-24. Off-Highway Use of Undyed Diesel Fuel Pursuant to Utah Code Ann. Section 59-13-301.**

A. 1. "Off-highway," for purposes of determining whether undyed diesel fuel is used in a vehicle off-highway, means every way or place, of whatever nature, that is not generally open to the use of the public for the purpose of vehicular travel.

2. "Off-highway" does not include:

- a) a parking lot that the public may use; or
- b) the curbside of a highway.

B. The following documentation must accompany a refund request for special fuel tax paid on undyed diesel fuel used in a vehicle off-highway:

1. evidence that clearly indicates that the undyed diesel fuel was used in a vehicle off-highway;

2. the specific address of the off-highway use with a detailed description of the off-highway nature of the location;

3. the amount of time in which the vehicle used the fuel off-highway;

4. the amount of fuel the vehicle used off-highway; and

5. the make and model, weight, and miles per gallon of the vehicle used off-highway.

**KEY: taxation, fuel, special fuel**

**[September 25, 2003]2004**

**Notice of Continuation March 15, 2002**

**59-13-301**



## Tax Commission, Auditing **R865-6F-8**

### Allocation and Apportionment of Net Income (Uniform Division of Income for Tax Purposes Act) Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321

#### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27388

FILED: 09/01/2004, 14:39

#### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendments incorporate proposals adopted by the Multistate Tax Commission defining gross receipts and indicating how gains and losses on the sale of liquid assets are to be treated in the apportionment of income among the states.

SUMMARY OF THE RULE OR CHANGE: This section is a model Multistate Tax Commission rule. Under Section 59-7-321, this area shall be construed in a manner uniform with other states.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-7-302 through 59-7-321

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Insignificant increase to revenues as these amendments eliminate distortions to the sales factor and thereby increase the overall apportionment fraction.

❖ LOCAL GOVERNMENTS: This is a state tax only, and therefore, there are no costs or savings to local government.

❖ OTHER PERSONS: Insignificant cost increase--see the response under State budget.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Potential insignificant increase in tax if the entity was including gross receipts from sales of liquid assets in the denominator of the sales factor.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There could be a slight increase in tax for some businesses depending on previous reporting practice as a result of this uniform definition of gross receipts.

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

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.



## DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at cleec@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.****R865-6F. Franchise Tax.****R865-6F-8. Allocation and Apportionment of Net Income (Uniform Division of Income for Tax Purposes Act) Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.**

A. Business and Nonbusiness Income Defined. Section 59-7-302 defines business income as income arising from transactions and activity in the regular course of the taxpayer's trade or business operations. In essence, all income that arises from the conduct of trade or business operations of a taxpayer is business income. For purposes of administration of the Uniform Division of Income for Tax Purposes Act (UDITPA), the income of the taxpayer is business income unless clearly classifiable as nonbusiness income.

1. Nonbusiness income means all income other than business income and shall be narrowly construed.

2. The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, and nonoperating income, is of no aid in determining whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business. Accordingly, the critical element in determining whether income is business income or nonbusiness income is the identification of the transactions and activity that are the elements of a particular trade or business. In general, all transactions and activities of the taxpayer that are dependent upon or contribute to the operation of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and will be transactions and activity arising in the regular course of business, and will constitute integral parts of a trade or business.

3. Business and Nonbusiness Income. Application of Definitions. The following are rules for determining whether particular income is business or nonbusiness income:

a) Rents from real and tangible personal property. Rental income from real and tangible property is business income if the property with respect to which the rental income was received is used in the taxpayer's trade or business or is incidental thereto and therefore is includable in the property factor under G.1.a).

b) Gains or Losses from Sales of Assets. Gain or loss from the sale, exchange or other disposition of real or tangible or intangible personal property constitutes business income if the property while owned by the taxpayer was used in the taxpayer's trade or business. However, if the property was utilized for the production of nonbusiness income the gain or loss will constitute nonbusiness income. See G.1.b).

c) Interest. Interest income is business income where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the intangible is related to or incidental to trade or business operations.

d) Dividends. Dividends are business income where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the stock is related to or incidental to the trade or business operations. Because of the regularity with which most corporate taxpayers engage in investment activities, because the source of capital for those investments arises in the ordinary course of a taxpayer's business, because the income from those investments is utilized in the ordinary course of the taxpayer's business and because those investment assets are used for general credit purposes, income arising from the ownership or sale or other disposition of investments is presumptively business income. This presumption may be rebutted if the taxpayer can prove that the investment is unrelated to the regular trade or business activities.

e) Proration of Deductions. In most cases an allowable deduction of a taxpayer will be applicable only to the business income arising from the trade or business or to a particular item of nonbusiness income. In some cases an allowable deduction may be applicable to the business income and to nonbusiness income. In those cases the deduction shall be prorated among the business and nonbusiness income in a manner that fairly distributes the deduction among the classes of income to which it is applicable.

f) A schedule must be submitted with the return showing:

- (1) the gross income from each class of income being allocated;
- (2) the amount of each class of applicable expenses, together with explanation or computations showing how amounts were arrived at;
- (3) the total amount of the applicable expenses for each income class; and
- (4) the net income of each income class. The schedules should provide appropriate columns as set forth above for items allocated to this state and for items allocated outside this state.

g) In filing returns with this state, if the taxpayer departs from or modifies the manner of prorating any such deduction used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

h) If the returns or reports filed by a taxpayer with all states to which the taxpayer reports under UDITPA are not uniform in the application or proration of any deduction, the taxpayer shall disclose in its return to this state the nature and extent of the variance.

## B. Definitions.

1. "Taxpayer," for purposes of this rule, is as defined in Section 59-7-101.

2. "Apportionment" means the division of business income between states by the use of a formula containing apportionment factors.

3. "Allocation" means the assignment of nonbusiness income to a particular state.

4. "Business activity" refers to the transactions and activity occurring in the regular course of the trade or business of a taxpayer.

5. "Gross receipts" are the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest and dividends) in a transaction that produces business income, in which the income or loss is recognized (or would be recognized if the transaction

were in the United States) under the Internal Revenue Code. Amounts realized on the sale or exchange of property are not reduced for the cost of goods sold or the basis of property sold.

a) Gross receipts, even if business income, do not include such items as, for example:

(1) repayment, maturity, or redemption of the principal of a loan, bond, or mutual fund or certificate of deposit or similar marketable instrument;

(2) the principal amount received under a repurchase agreement or other transaction properly characterized as a loan;

(3) proceeds from issuance of the taxpayer's own stock or from sale of treasury stock;

(4) damages and other amounts received as the result of litigation;

(5) property acquired by an agent on behalf of another;

(6) tax refunds and other tax benefit recoveries;

(7) pension reversions;

(8) contributions to capital (except for sales of securities by securities dealers);

(9) income from forgiveness of indebtedness; or

(10) amounts realized from exchanges of inventory that are not recognized by the Internal Revenue Code.

b) Exclusion of an item from the definition of "gross receipts" is not determinative of its character as business or nonbusiness income. Nothing in this definition shall be construed to modify, impair or supersede any provision of J.

#### C. Apportionment.

1. If the business activity with respect to the trade or business of a taxpayer occurs both within and without this state, and if by reason of that business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from the trade or business derived from sources within this state shall be determined by apportionment in accordance with Sections 59-7-311 to 59-7-319.

2. Allocation. Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with Sections 59-7-306 to 59-7-310.

.....

#### 3. Sales Factors.

The following special rules are established in respect to the sales factor of the apportionment formula:

a) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, those gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded.

b) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from such transactions as the sale of office furniture, and business automobiles.

c) Where the income producing activity in respect to business income from intangible personal property can be readily identified, that income is included in the denominator of the sales factor and, if the income producing activity occurs in this state, in the numerator of the sales factor as well. For example, usually the income producing activity can be readily identified in respect to interest income received on deferred payments on sales of tangible property, see I.1.a), and income from the sale, licensing or other use of intangible personal property, see I.6.b)(4).

(1) Where business income from intangible property cannot readily be attributed to any particular income producing activity of the taxpayer, the income cannot be assigned to the numerator of the sales factor for any state and shall be excluded from the denominator of the sales factor. For example, where business income in the form of dividends received on stock, royalties received on patents or copyrights, or interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, such dividends and interest shall be excluded from the denominator of the sales factor.

(2) Exclude from the denominator of the sales factor, receipts from the sales of securities unless the taxpayer is a dealer therein.

d) Where gains and losses on the sale of liquid assets are not excluded from the sales factor by other provisions under J.3.a) through c), such gains or losses shall be treated as provided in this J.3.d). This J.3.d) does not provide rules relating to the treatment of other receipts produced from holding or managing such assets.

(1) If a taxpayer holds liquid assets in connection with one or more treasury functions of the taxpayer, and the liquid assets produce business income when sold, exchanged or otherwise disposed, the overall net gain from those transactions for each treasury function for the tax period is included in the sales factor. For purposes of this J.3.d), each treasury function will be considered separately.

(2) For purposes of this J.3.d), a liquid asset is an asset (other than functional currency or funds held in bank accounts) held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. Liquid assets include:

(a) foreign currency (and trading positions therein) other than functional currency used in the regular course of the taxpayer's trade or business;

(b) marketable instruments (including stocks, bonds, debentures, options, warrants, futures contracts, etc.); and

(c) mutual funds which hold such liquid assets.

(3) An instrument is considered marketable if it is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. Stock in a corporation which is unitary with the taxpayer, or which has a substantial business relationship with the taxpayer, is not considered marketable stock.

(4) For purposes of this J.3.d), a treasury function is the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, business acquisitions, etc. A taxpayer principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets set forth herein is not performing a treasury function with respect to income so produced.

(5) Overall net gain refers to the total net gain from all transactions incurred at each treasury function for the entire tax period, not the net gain from a specific transaction.

4. Domestic International Sales Corporation (DISC). In any case in which a corporation, subject to the income tax jurisdiction of Utah, owns 50 percent or more of the voting power of the stock of a corporation classified as a DISC under the provisions of Sec. 992 Internal Revenue Code, a combined filing with the DISC corporation is required.

5. Partnership or Joint Venture Income. Income or loss from partnership or joint venture interests shall be included in income and apportioned to Utah through application of the three-factor formula consisting of property, payroll and sales. For apportionment purposes, the portion of partnership or joint venture property, payroll and sales to

be included in the corporation's property, payroll and sales factors shall be computed on the basis of the corporation's ownership interest in the partnership or joint venture, and otherwise in accordance with other applicable provisions of this rule.

**KEY: taxation, franchises, historic preservation, trucking industries**

~~November 1, 2002~~ 2004

Notice of Continuation April 3, 2002  
59-7-302 through 59-7-321



**Tax Commission, Auditing**  
**R865-6F-36**  
**Taxation of Registered Securities or**  
**Commodities Broker or Dealer Pursuant**  
**to Utah Code Ann. Sections 59-7-302**  
**through 59-7-321**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27386

FILED: 09/01/2004, 13:55

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-7-320 provides for adjustments to the three-factor apportionment formula if that formula does not fairly represent a taxpayer's business activity in the state.

SUMMARY OF THE RULE OR CHANGE: The proposed section modifies the three-factor apportionment formula for income reported by securities dealers to provide that securities (intangible property) shall be included in the property factor (which normally does not include intangible property), and to indicate when sale of securities take place in Utah.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-7-302 through 59-7-321

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: No overall impact--While the change in the property factor works in favor of the taxpayer, the change in the sales factor works in favor of the state.
- ❖ LOCAL GOVERNMENTS: This rule deals with corporate franchise and income taxes, which are state taxes, and therefore there are no costs or savings to local government.
- ❖ OTHER PERSONS: No overall impact--See the response under State budget.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed changes of this rule have no overall impact on a securities dealer.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses.

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

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at [clee@utah.gov](mailto:clee@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-6F. Franchise Tax.**

**R865-6F-36. Taxation of Registered Securities or Commodities Broker or Dealer Pursuant to Utah Code Ann. Sections 59-7-302 through 59-7-321.**

A. Definitions.

1. "Brokerage commission income" means income earned by a registered securities or commodities broker or dealer from the purchase and sale of securities or commodities by the broker or dealer:

- a) for which the broker or dealer does not take title; and
- b) as an agent for a customer's account.

2. "Commodity" is as defined in Section 475(e)(2), Internal Revenue Code.

3. "Principal transaction" means a transaction where the registered securities or commodities broker or dealer acts as a principal or underwriter for the broker or dealer's own account, rather than as an agent for the customer.

4. "Registered securities or commodities broker or dealer" means a corporation registered as a broker or dealer with the Securities and Exchange Commission or the Commodities Futures Trading Commission.

5. "Security" is as defined in Section 475(c)(2), Internal Revenue Code.

6. "Securities or commodities used to produce income" means securities or commodities that are purchased and held by a registered securities or commodities broker or dealer as a principal or underwriter for resale to its customers.

B. Apportionment and allocation.

1. A registered securities or commodities broker or dealer whose business activity is taxable both within and without this state shall allocate and apportion its net income as provided in this rule. All items of nonbusiness income shall be allocated pursuant to the provisions of Section 59-7-306.

2. All business income shall be apportioned to this state by multiplying that income by the apportionment percentage. The apportionment percentage is determined by adding the taxpayer's property factor, payroll factor, and sales factor, and dividing that

sum by three. If one of the factors is missing, the remaining factors are added and that sum is divided by two. If two of the factors are missing, the remaining factor is the apportionment percentage. A factor is missing if both its numerator and denominator are zero.

3. Except as otherwise provided in this rule, the property factor shall be determined in accordance with R865-6F-8(G), the payroll factor in accordance with R865-6F-8(H), and the sales factor in accordance with R865-6F-8(I).

C. Property factor.

1. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used, or available for use, within this state during the taxable year, plus the average value of securities or commodities used to produce income during the taxable year that are held for resale exclusively through a branch, office, or other place of business in this state. The denominator is the average value of the total of the taxpayer's real and tangible personal property owned or rented and used within and without this state during the taxable year, plus the average value of all securities or commodities used to produce income during the taxable year.

2. Securities or commodities used to produce income shall be valued at original cost.

D. Sales factor.

1. The sales factor is a fraction, the numerator of which is the total revenue that is derived from transactions and activities in the regular course of the taxpayer's trade or business within this state during the taxable year. The denominator is the total revenue that is derived from transactions and activities in the regular course of the taxpayer's trade or business within and without this state during the taxable year.

2. Brokerage commission income shall be included in the denominator of the sales factor. Brokerage commission income shall be included in the numerator of the sales factor if the customer that is paying the commission is located in Utah. A customer is located in Utah if the mailing address of the customer as it appears in the broker or dealer's records is in Utah.

3. Gross receipts from principal transactions shall be included in the denominator of the sales factor. Gross receipts from principal transactions shall be included in the numerator of the sales factor if the sale is made through a branch, office, or other place of business in Utah. Gross receipts from principal transactions shall be determined after the deduction of any cost incurred by the taxpayer to acquire the securities or commodities.

4. Other gross receipts such as margin interest on brokerage accounts and account maintenance fees shall be included in the denominator of the sales factor, and, if the customer that is paying the amounts or fees is located in Utah based on the customer address as it appears in the broker or dealer's records, in the numerator of the sales factor.

**KEY: taxation, franchises, historic preservation, trucking industries**

**[November 1, 2002]2004**

**Notice of Continuation April 3, 2002**

**59-7-302 through 59-7-321**



## Tax Commission, Auditing **R865-19S-38** Isolated and Occasional Sales Pursuant to Utah Code Ann. Section 59-12-104

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27383

FILED: 09/01/2004, 13:00

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Section 59-12-104 provides a sales tax exemption for isolated or occasional sales.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendments clarify that the provisions for transferring a vehicle as an isolated or occasional sale include a transfer in which the ownership of the vehicle before and after the transfer is substantially the same.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-12-104

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** Minimal decrease in revenues as the amendment slightly expands the universe of transfers that are isolated or occasional sales from transfers between organizations to include transfers from an individual to that individual's trust.

❖ **LOCAL GOVERNMENTS:** Minimal decrease in revenues as the amendment slightly expands the universe of transfers that are isolated or occasional sales from transfers between organizations to include transfers from an individual to that individual's trust.

❖ **OTHER PERSONS:** Minimal savings for individuals, who transfer a vehicle to a trust in their name.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--The amendment clarifies that the transfer of a vehicle from an individual to a trust in that individual's name is an isolated or occasional sale and exempt from sales tax.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There will be no impact on businesses.

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

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at [clee@utah.gov](mailto:clee@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-19S. Sales and Use Tax.**

**R865-19S-38. Isolated and Occasional Sales Pursuant to Utah Code Ann. Section 59-12-104.**

A.1. ~~[Sales]~~ Except as provided in A.2., sales made by officers of a court, pursuant to court orders, are occasional sales ~~[with the exception of].~~

2. Notwithstanding A.1., sales made by trustees, receivers, or assignees ~~[and the like,]~~ in connection with the liquidation or conduct of a regularly established place of business are not occasional sales.

3. Examples of ~~[casual]~~ occasional sales are those made by sheriffs in foreclosing proceedings and sales of confiscated property.

B. If a sale is an integral part of a business ~~[whose]~~ the primary function of which is not the sale of tangible personal property, ~~[then such]~~ the sale is not isolated or occasional. For example, the sale of repossessed radios~~[,]~~ or refrigerators~~[, etc.,]~~ by a finance company is not isolated or occasional.

C.1. ~~[Sales]~~ Except as provided in C.2., sales of vehicles required to be titled or registered under the laws of this state are not isolated or occasional sales ~~[, except that any].~~

2. Notwithstanding C.1., a transfer of a vehicle ~~[in a business reorganization]~~ where the ownership of the vehicle before and after the transfer ~~[transferee organization]~~ is substantially the same ~~[as the ownership of the transferor organization shall be considered]~~ is an isolated or occasional sale.

D.1. Isolated or occasional sales made by persons not regularly engaged in business are not subject to ~~[the]~~ sales and use tax.

2. ~~[The word]~~ For purposes of D.1., "business" refers to an enterprise engaged in selling tangible personal property or taxable services notwithstanding the fact that the sales may be few or infrequent.

3. ~~[Any]~~ The sale of an entire business to a single buyer is an isolated or occasional sale ~~[and].~~

a) Except as provided in D.3.b), no tax applies to the sale of any assets ~~[made]~~ that are part of ~~[such]~~ a sale described in D.3.

b) If a sale described in D.3. includes the ~~[(with the exception)]~~ sale of ~~[vehicles]~~ a vehicle subject to registration~~[,]~~ that vehicle is subject to sales and use tax.

E. The sale of used fixtures, machinery, and equipment items is not an ~~[exempt]~~ occasional sale if the sale is one of a series of sales sufficient in number, amount, and character to indicate ~~[that]~~ the seller deals in the sale of ~~[such]~~ those items.

F. Sales of items at public auctions do not qualify as ~~[exempt]~~ isolated or occasional sales.

G. Wholesalers, manufacturers, and processors ~~[who]~~ that primarily sell at other than retail are not making isolated or occasional sales when they sell ~~[such]~~ tangible personal property for use or consumption.

**KEY: charities, tax exemptions, religious activities, sales tax 2004**

**Notice of Continuation April 5, 2002**

**59-12-104**



**Tax Commission, Auditing**

**R865-19S-49**

**Sales to and by Farmers and Other Agricultural Producers Pursuant to Utah Code Ann. Section 59-12-104**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 27384

FILED: 09/01/2004, 13:21

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-12-104 provides a sales tax exemption for property used primarily and directly in farming operations.

SUMMARY OF THE RULE OR CHANGE: The proposed amendments define "farming operation" for purposes of the sales tax exemption for property used primarily and directly in farming operations as an operation that is eligible to deduct farm-related expenses for federal tax purposes. The previous language required the filing of a federal schedule F in order to take the exemption.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-104

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Insignificant decrease in revenue since not all operations with a loss file a federal schedule F, but are none the less engaged in the business of farming.

❖ LOCAL GOVERNMENTS: Insignificant decrease in revenue since not all operations with a loss file a federal schedule F, but are none the less engaged in the business of farming.

❖ OTHER PERSONS: Insignificant savings because amendments will allow an entity with a loss that does not file federal schedule F to qualify for the exemption if the entity is eligible to deduct farm-related expenses for income tax purposes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The amendments will allow some individuals to qualify for the exemption that the current rule does not allow.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There could be a slight tax savings for some farming operations on sales tax paid for some purchases.

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

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R865. Tax Commission, Auditing.**

**R865-19S. Sales and Use Tax.**

**R865-19S-49. Sales to and by Farmers and Other Agricultural Producers Pursuant to Utah Code Ann. Section 59-12-104.**

A. 1. For purposes of the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations, a person is engaged in "farming operations" if that person may deduct farm related expenses under Sections 162 or 212, Internal Revenue Code.

2. To determine whether a person may deduct farm related expenses under Sections 162 or 212 of the Internal Revenue Code, the commission shall consider Treas. Reg. Sections 1.183-1 and 1.183-2.

[A.]B. The purchase of feed, medicine, and veterinary supplies by a farmer or other agricultural producer qualify for the sales and use tax exemption for tangible personal property used or consumed primarily and directly in farming operations if the feed, medicine, or veterinary supplies are used:

1. to produce or care for agricultural products that are for sale;
2. to feed or care for working dogs and working horses in agricultural use;
3. to feed or care for animals that are marketed.

[B.]C. Fur-bearing animals that are kept for breeding or for their products are agricultural products.

[—]C. The sales and use tax exemption for sales of tangible personal property used or consumed primarily and directly in farming operations applies only to commercial farming operations, as evidenced by the filing of a federal Farm Income and Expenses Statement (Schedule F) or other similar evidence that the farm is operated as a commercial venture.

] D. A vendor making sales to a farmer or other agricultural producer is liable for the tax unless that vendor obtains from the purchaser a certificate as set forth in Rule R865-19S-23.

E. Poultry, eggs, and dairy products are not seasonal products for purposes of the sales and use tax exemption for the exclusive sale of locally grown seasonal crops, seedling plants, or garden, farm, or other agricultural produce sold by a producer during the harvest season.

**KEY: charities, tax exemptions, religious activities, sales tax 2004**

**Notice of Continuation April 5, 2002  
59-12-104**



**Tax Commission, Property Tax**  
**R884-24P-24**  
**Form for Notice of Property Valuation  
and Tax Changes Pursuant to Utah  
Code Ann. Sections 59-2-918 through  
59-2-294**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 27382

FILED: 09/01/2004, 12:03

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-2-924 provides that the certified tax rate is calculated based on prior year budgeted values. That section also requires the Commission to make rules indicated how budgeted revenues are calculated.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment indicates how "budgeted revenues" will be calculated for purposes of determining the certified tax rate.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-2-918 through 59-2-924

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Any costs or savings were taken into account by H.B. 116 (2003). (DAR NOTE: H.B. 116 is found at UT L 2003 Ch 122, and was effective 01/01/2004.)
- ❖ LOCAL GOVERNMENTS: None--Any costs or savings were taken into account by H.B. 116 (2003).
- ❖ OTHER PERSONS: None--Any costs or savings were taken into account by H.B. 116 (2003).

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs associated with the determination of budgeted revenues. Use of budgeted revenues, however, instead of the previous "collected" revenues may have an impact on the calculation of the certified tax rate - in some instances positive, in others, negative.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no fiscal impacts on business as a result of this rule.

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

TAX COMMISSION  
PROPERTY TAX

210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

**R884. Tax Commission, Property Tax.**

**R884-24P. Property Tax.**

**R884-24P-24. Form for Notice of Property Valuation and Tax Changes Pursuant to Utah Code Ann. Sections 59-2-918 through 59-2-924.**

A. The county auditor must notify all real property owners of property valuation and tax changes on the Notice of Property Valuation and Tax Changes form.

1. If a county desires to use a modified version of the Notice of Property Valuation and Tax Changes, a copy of the proposed modification must be submitted for approval to the Property Tax Division of the Tax Commission no later than March 1.

a) Within 15 days of receipt, the Property Tax Division will issue a written decision, including justifications, on the use of the modified Notice of Property Valuation and Tax changes.

b) If a county is not satisfied with the decision, it may petition for a hearing before the Tax Commission as provided in R861-1A-22.

2. The Notice of Property Valuation and Tax Changes, however modified, must contain the same information as the unmodified version. A property description may be included at the option of the county.

B. The Notice of Property Valuation and Tax Changes must be completed by the county auditor in its entirety, except in the following circumstances:

1. New property is created by a new legal description; or

2. The status of the improvements on the property has changed.

3. In instances where partial completion is allowed, the term nonapplicable will be entered in the appropriate sections of the Notice of Property Valuation and Tax Changes.

4. If the county auditor determines that conditions other than those outlined in this section merit deletion, the auditor may enter the term "nonapplicable" in appropriate sections of the Notice of Property Valuation and Tax Changes only after receiving approval from the Property Tax Division in the manner described in A.

C. Real estate assessed under the Farmland Assessment Act of 1969 must be reported at full market value, with the value based upon Farmland Assessment Act rates shown parenthetically.

D. All completion dates specified for the disclosure of property tax information must be strictly observed.

1. Requests for deviation from the statutory completion dates must be submitted in writing on or before June 1, and receive the approval of the Property Tax Division in the manner described in A.

E. If the proposed rate exceeds the certified rate, jurisdictions in which the fiscal year is the calendar year are required to hold public hearings even if budget hearings have already been held for that fiscal year.

F. If the cost of public notice required under Sections 59-2-918 and 59-2-919 is greater than one percent of the property tax revenues to be received, an entity may combine its advertisement with other entities, or use direct mail notification.

G. Calculation of the amount and percentage increase in property tax revenues required by Sections 59-2-918 and 59-2-919, shall be computed by comparing property taxes levied for the current year with property taxes collected the prior year, without adjusting for revenues attributable to new growth.

H. If a taxing district has not completed the tax rate setting process as prescribed in Sections 59-2-919 and 59-2-920 by August 17, the county auditor must seek approval from the Tax Commission to use the certified rate in calculating taxes levied.

I. The value of property subject to the uniform fee under Section 59-2-405 is excluded from taxable value for purposes of calculating new growth, the certified tax rate, and the proposed tax rate.

J. The value and taxes of property subject to the uniform fee under Section 59-2-405, as well as tax increment distributions and related taxable values of redevelopment agencies, are excluded when calculating the percentage of property taxes collected as provided in Section 59-2-913.

K. The following formulas and definitions shall be used in determining new growth:

1. Actual new growth shall be computed as follows:

a) the taxable value for the current year adjusted for redevelopment minus year-end taxable value for the previous year adjusted for redevelopment; then

b) plus or minus changes in value as a result of factoring; then

c) plus or minus changes in value as a result of reappraisal; then

d) plus or minus any change in value resulting from a legislative mandate or court order.

2. Net annexation value is the taxable value for the current year adjusted for redevelopment of all properties annexed into an entity during the previous calendar year minus the taxable value for the previous year adjusted for redevelopment for all properties annexed out of the entity during the previous calendar year.

3. New growth is equal to zero for an entity with:

a) an actual new growth value less than zero; and

b) a net annexation value greater than or equal to zero.

4. New growth is equal to actual new growth for:

a) an entity with an actual new growth value greater than or equal to zero; or

b) an entity with:

~~(1)~~(1) an actual new growth value less than zero; and

~~(2)~~(2) the actual new growth value is greater than or equal to the net annexation value.

5. New growth is equal to the net annexation value for an entity with:

a) a net annexation value less than zero; and

b) the actual new growth value is less than the net annexation value.

6. Adjusted new growth equals new growth multiplied by the mean collection rate for the previous five years.

L. 1. For purposes of determining the certified tax rate, ad valorem property tax revenues budgeted by a taxing entity for the prior year are calculated by:

a) increasing or decreasing the adjustable taxable value from the prior year Report 697 by the average of the percentage net change in the value of taxable property for the equalization period for the three calendar years immediately preceding the current calendar year; and

b) multiplying the result obtained in L.1.a) by:

(1) the percentage of property taxes collected for the five calendar years immediately preceding the current calendar year; and

(2) the prior year approved tax rate.

2. If a taxing entity levied the prior year approved tax rate, the budgeted revenues determined under L.1. are reflected in the budgeted revenue column of the prior year Report 693.

[L.]M. 1. Entities required to set levies for more than one fund must compute an aggregate certified rate. The aggregate certified rate is the sum of the certified rates for individual funds for which separate levies are required by law. The aggregate certified rate computation applies where:

a) the valuation bases for the funds are contained within identical geographic boundaries; and

b) the funds are under the levy and budget setting authority of the same governmental entity.

2. Exceptions to [L.]M.1. are the county assessing and collecting levy, as described in Section 59-2-906.1(3), and the additional levies for property valuation and reappraisal, as described in Section 59-2-906.3.

a) These levies may not be included as part of a county's aggregate certified rate. Instead, they must be segregated into a separate aggregate certified rate.

b) The separate aggregate certified rate representing these levies is subject to the proposed tax increase requirements of Sections 59-2-918 and 59-2-919.

[M.]N. For purposes of determining the certified tax rate of a municipality incorporated on or after July 1, 1996, the levy imposed for municipal-type services or general county purposes shall be the certified tax rate for municipal-type services or general county purposes, as applicable.

[N.]O. No new entity, including a new city, may have a certified tax rate or levy a tax for any particular year unless that entity existed on the first day of that calendar year.

**KEY: taxation, personal property, property tax, appraisals 2004**

**Notice of Continuation April 5, 2002  
59-2-918 through 59-2-924**

## Workforce Services, Employment Development **R986-600**

### Workforce Investment Act

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 27393

FILED: 09/01/2004, 19:22

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment is to clarify some language in the rule and bring it into compliance with federal regulation.

SUMMARY OF THE RULE OR CHANGE: Section R986-600-601 is changed so Workforce Investment Act (WIA) applicants do not have to fill out the assistance application because not all the questions on the application are relevant to WIA. Section R986-600-603 is changed to add "mentoring" services, stipends, and clarify that youth services are often contracted out. Section R986-600-605 is changed to clarify what services are available under federal regulation and the follow-up period. Section R986-600-606 is changed to clarify what intensive services are available under federal regulation. Section R986-600-607 is changed to clarify what training services are available under federal regulation. Section R986-600-608 is changed to clarify that services to dislocated workers can be provided even if the worker is under 18 years of age. Section R986-600-609 is changed to take out redundant language. Sections R986-600-610 and R986-600-611 are changed to clarify language. Section R986-600-612 is changed to provide that Youth Councils determine priorities. Section R986-600-613 is clarified to show these are categorical eligibility factors. Section R986-600-616 is changed based on clarification from federal government on counting certain types of income. Section R986-600-618 is changed to make it clear services are available to dislocated workers if they don't have the skill to reenter the industry. Section R986-600-620 language is changed to reflect contract providers. Section R986-600-621 is amended to reflect federal regulations regarding employment taking out the word "suitable". In Section R986-600-623, there is a change to language and to provide services are only available if appropriate under federal regulations. Section R986-600-653 is changed to reflect the changing educational environment by removing the requirement that distance learners go to a physical campus.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 35A, Chapter 5

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no costs or savings to the state budget as all of the programs covered by this rule are federally funded and no state funding is used for these programs.

❖ LOCAL GOVERNMENTS: This is a federally-funded program and had no effect on local government. There will be no costs or savings to local government.

❖ OTHER PERSONS: There will be no costs or savings to any other persons because this rule is being amended to comply with federal regulation. Because this is a federally-funded program, it will not affect any other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs as this is a federally-funded program and the department does not charge fees for compliance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact



by this amendment to any business in Utah. This federally-funded program is designed to assist business at no cost and there are no changes in this amendment which will change the level of those services.

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 at the above address, 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 TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/18/2004

AUTHORIZED BY: Raylene G. Ireland, Executive Director

#### **R986. Workforce Services, Employment Development.**

##### **R986-600. Workforce Investment Act.**

##### **R986-600-601. Authority for Workforce Investment Act (WIA) and Other Applicable Rules.**

(1) The Department provides services to eligible clients under the authority granted in the Workforce Investment Act, (WIA) 29 USC 2801 et seq. Funding is provided by the federal government through the WIA. Utah is required to file a State Plan to obtain the funding. A copy of the State Plan is available at Department administrative offices and on the Internet. The regulations contained in 20 CFR 652, 20 CFR 660 through 20 CFR 671 and 29 CFR 37 (2000) are also applicable ~~and incorporated herein by reference~~.

(2) The provisions of Rule R986-100 apply to WIA unless expressly noted otherwise in these rules even though R986-100 refers to public assistance and WIA funding does not meet the technical definition of public assistance. The residency requirements of R986-100-106 and the application for assistance requirement of R986-100-111 do not apply to WIA.

##### **R986-600-603. Youth Services.**

(1) The goals of WIA youth services are to provide options for improving educational and skill competencies; to provide effective connections to employers; to ensure access to mentoring, training opportunities and support services; to provide incentives for achievement; and to provide opportunities for leadership, citizenship and community service.

(2) WIA youth services are available to low-income youth who are between the ages of 14 and 21 years old and who have barriers which interfere with the ability to complete an educational program or to secure and hold employment.

(a) Services to youths include eligibility determination, assessment, employment planning and referral to community resources delivering youth services. The Department may provide

~~[some]~~ youth services or the services may be provided under contract as determined by competitive bid.

(b) Youth may be referred to appropriate community resources based on need. Services include educational achievement services, employment services, summer employment opportunities, supportive services, leadership development, mentoring, and follow-up services.

(c) A bonus/incentive/stipend may be paid to provide recognition of achievement to eligible youth.

##### **R986-606-604. Adults, Youth, and Dislocated Workers.**

The Department offers three levels of service for adults, youth and dislocated workers:

- (1) core services,
- (2) intensive services,
- (3) training services

##### **R986-600-605. Core Services.**

(1) There are no eligibility requirements for core services offered by the Department.

(2) Core services include:

(a) providing the following informational resources:

(i) outreach, intake, and orientation to, and information about, available services, including resource and referral services;

(ii) local, regional and national labor market information including job vacancy listings and occupations in demand and the skills necessary to obtain those jobs and occupations.

(iii) the performance of and program costs for all eligible providers of training and education ~~and rehabilitation~~ services.

(iv) performance measures with respect to the one-stop delivery system;

(b) ~~initial~~ assessment of skill levels, aptitudes, abilities, and supportive service needs;

(c) job search and placement assistance, and where appropriate, career counseling;

(d) follow-up services will be provided for a period of not less than 12 months after active participation ends for all youth. If requested, follow-up services will also be provided for 12 months after the first day of employment to adults and dislocated workers who have been placed in unsubsidized employment ~~including counseling regarding the workplace, for participants in workforce investment activities who are placed in unsubsidized employment, for a period of not less than 12 months after the first day of the employment~~ and,

(e) determining if a client is eligible for and assistance in applying for: WIA funded programs, unemployment insurance benefits, ~~welfare to work activities,~~ financial aid assistance available for training and educational programs not funded under WIA, food stamps, other supportive services such as child care, medical services, and transportation.

##### **R986-600-606. Intensive Services.**

(1) If the client establishes appropriateness and need, intensive services are available to adults and dislocated workers:

(a) who are unemployed and are unable to obtain 'suitable employment' through core services and who have been determined by a Department employment counselor to be in need of more intensive services in order to obtain employment; or

(b) who are employed, but who are determined by the Department to be in need of intensive services in order to obtain or retain suitable employment.[]

~~—(2) The employment counselor determines what is suitable employment based on the customer's individual circumstances.] Suitable employment is employment that allows for self-sufficiency. Self-sufficiency for WIA is generally determined to be 200% of the Office of Management and Budget poverty level.~~

~~(2) Intensive services are available to youth who:~~

~~(a) establish appropriateness and need, and~~

~~(b) require additional assistance to complete an educational program or to secure and hold employment, and~~

~~(c) meet the regional service priority level.~~

~~(3) intensive services for adults, dislocated workers and youth consist of:~~

~~(a) an assessment as provided in R986-600-620,~~

~~(b) development of an employment plan as provided in R986-600-621. [If the client is not receiving other forms of public assistance some modifications to the plan may be made to reflect the client's circumstances,]~~

~~(c) Short-term prevocational services, including development of learning skills, communication skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct, to prepare individuals for unsubsidized employment or training, [and]~~

~~(d) case management, counseling and career planning, and~~

~~(e) supportive services.~~

~~(4) Additional intensive services available to youth include:~~

~~(a) leadership development.~~

~~(b) mentoring.~~

~~(c) comprehensive guidance and counseling, and~~

~~(d) follow-up services.~~

#### **R986-600-607. Training Services.**

(1) If the client establishes appropriateness and need, training services are available to adults and dislocated workers:

(a) who are unemployed and are unable to obtain 'suitable employment' through intensive services and who have been determined by a Department employment counselor to be in need of training services in order to obtain suitable employment; or

(b) who are employed, but who are determined by the Department to be in need of training services in order to obtain or retain suitable employment as defined in R986-600-606(2).

(2) The employment counselor determines what is suitable employment based on the customer's individual circumstances.

(3) Training services include employment related education and work site learning.

~~(4) Training services are available to youth who:~~

~~(a) establish appropriateness and need, and~~

~~(b) require additional assistance to complete an educational program or to secure and hold employment, and~~

~~(c) meet the regional service priority level.~~

~~(5) Training services for youth consist of:~~

~~(a) tutoring.~~

~~(b) alternative school.~~

~~(c) occupational skills training.~~

~~(d) paid and unpaid internships, and/or~~

~~(e) summer youth employment opportunities.~~

#### **R986-600-608. Eligibility Requirements, General Definition.**

(1) Core services are available to all customers.

(2) There are different eligibility criteria for low-income youth services (ages 14-21), and adult ~~[and dislocated workers]~~ (18 and over) and dislocated workers. Eligibility requirements for intensive

and training services must be determined before an adult, youth, or dislocated worker can receive those services. If a client is eligible for services in more than one category, the Department or youth contract provider will determine the most appropriate program placement for the client. The Department may choose to contract out these services for youth.

#### **R986-600-609. Citizenship, Alienage and Residency Requirements.**

An individual seeking intensive or training services must be a citizen of the United States or be employment eligible in the United States. Employment eligible is defined by the WIA Act, section 188 (a)(5) as citizens and nationals of the US, lawfully admitted permanent resident aliens, refugees, asylees and parolees and other immigrants authorized by the U.S. Attorney General to work in the US. ~~[Any youth seeking WIA services must also meet these requirements.]~~

#### **R986-600-610. Selective Service Registration Requirements.**

Male applicants must be in compliance with Selective Service registration requirements to receive intensive or training services, ~~[or]~~ which includes youth services.

#### **R986-600-611. Income Eligibility Requirements.**

(1) Applicants for all youth and adult programs must meet the income eligibility requirements in this rule.

(2) Dislocated workers do not need to meet income eligibility requirements however appropriate training is only available if the dislocated worker is unable to obtain or retain

(a) employment at 80% or more of his or her lay off wage, or

(b) suitable employment as defined in this rule. ~~[~~

~~(3) Adult workers must meet the income eligibility requirements of this rule.]~~

#### **R986-600-612. Prioritization Factors Used for Determining Eligibility for Adult and Dislocated Workers.**

(1) For adults and dislocated workers, in addition to meeting the eligibility requirements found in rules R996-600-608 through R996-600-611, [in addition to income eligibility,] the Department will prioritize clients' eligibility based on prioritization factors developed by the Department. Current prioritization factors are available at the Department. When a client is approved for intensive or training services, the Department will estimate the anticipated cost to the Department associated with that services and "obligate" and reserve that amount for accounting purposes. The total amount of money obligated and reserved will determine which prioritization factors are operational at any given time.

(2) A dislocated worker can only get funding if he or she cannot find a job paying 80% of the lay off wage or suitable employment as defined in this rule and they meet the Department's current prioritization factors.

~~(3) WIA Youth Councils set regional priority levels for services for youth based on the needs of youth in specific regions or sub-region areas.~~

~~([3]4) Because the funding is separate and distinct for each program, the prioritization factors operate independently for each of the two affected programs.~~

#### **R986-600-613. Categorical Income Eligibility.**

(1) A client is deemed to have met the income eligibility requirements for youth services, and adult services, if the client is

receiving or is a member of a household that has been determined to be eligible for food stamps within the last six months or is currently receiving financial assistance from the Department or is homeless. Categorical income eligibility does not apply to expedited food stamps.

(2) In addition, a client is deemed to have met the income eligibility requirements for youth services if the youth is a runaway or a foster child.

(3) If a client is not eligible under paragraphs (1) and (2) above, the client must meet the low income eligibility guidelines in this rule.

#### **R986-600-616. Countable Income.**

(1) Countable income is total annual cash receipts before taxes are deducted, from all sources with the exceptions listed below under "Excludable Income". If income is not specifically excluded, it is counted. Countable income, for WIA purposes includes:

- (a) money, wages, and salaries before any deductions,
- (b) net receipts from self-employment, including farming,
- (c) Job Corps payments to participants,
- (d) railroad retirement,
- (e) strike benefits from union funds,
- (f) workers' compensation benefits,
- (g) veterans' payments, except disability payments,
- (h) training stipends,
- (i) alimony,
- (j) military family allotments or other regular support from an absent family member or someone not living in the household,
- (k) private pensions or government employee pensions, including military retirement pay, except Social Security payments are excluded,
- (l) any [regular] insurance, [or] annuity, regular disability, and social security payments, [including regular disability payments, only veterans' disability payments are excluded. SSDI is included] other than social security disability (SSI or SSDI) or veterans disability.
- (m) college or university scholarships, grants, fellowships, and assistantship (excluding Pell Grants),
- (n) dividends,
- (o) interest,
- (p) net rental income,
- (q) net royalties, including tribal payments from casino royalties,
- (r) periodic receipts from estates or trusts, and
- (s) net gambling or lottery winnings.

(2) Excludable [4] income, which is income that is not counted, is:

- (a) cash welfare payments under a Federal, state or local welfare program, including public assistance under FEP, FEPTP, GA, WTE, SSI, Emergency Assistance,
- (b) child support,
- (c) unemployment compensation,
- (d) capital gains and assets drawn down as withdrawals from a bank, the sale of property, a house or car,
- (e) [100% of Social Security and Old Age Survivors' Insurance benefit payments under Title II of the Social Security Act, SSI, SSDI, and veterans disability payments,
- (f) educational financial assistance received under title IV of the Higher Education Act as amended by section 479(B) 1992 and other needs-based scholarship assistance and Pell grants. This includes some Work-Study programs,

- (g) foster child care payments,
- (h) tax refunds,
- (i) gifts,
- (j) loans,
- (k) lump-sum inheritances,
- (l) one-time insurance payments or compensation for injury,
- (m) Earned Income Credit from the IRS,
- (n) income received by a veteran while on active military duty in the Armed Forces if the veteran applies for WIA services within six months of discharge,
- (o) benefit payments to veterans under 38 U.S.C 4212, part 3,
- (p) non-cash benefits such as employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the value of rent from owner-occupied non farm or farm housing, federal noncash benefits programs such as Medicare, Medicaid, food stamps, school lunches and housing assistance, and
- (q) other amounts specifically excluded by Federal statute.

#### **R986-600-618. Dislocated Worker.**

(1) A dislocated worker is an individual who meets one of the following criteria:

(a)(i) has been terminated or laid off, or has received a notice of termination or layoff from employment, and

(ii)(1) is eligible for or has exhausted unemployment compensation entitlement, or

(ii)(2) has been employed for a duration sufficient to demonstrate attachment to the workforce, but is not eligible for unemployment compensation due to insufficient earnings or having performed services for an employer that were not covered under unemployment compensation law, and

(iii) is unlikely to return to the individual's previous industry or occupation. 'Unlikely to return' means that labor market information shows a lack of jobs in either that industry OR occupation, or the customer lacks the skills to re-enter the industry or occupation, or the client declares that they will not return to that industry or occupation.

(b)(i) Has been terminated or laid off, or has received a notice of termination or layoff, from employment as a result of any permanent closure of, or any substantial layoff at, a plant, facility, or enterprise, or

(ii) is employed at a facility at which the employer has made a general announcement that such facility will close within 180 days; or

(iii) for purposes of eligibility to receive rapid response services, is employed at a facility at which the employer has made a general announcement that such facility will close. Rapid response services are defined by WIA.

(c) Was self-employed (including employment as a farmer, a rancher, or a fisherman) but is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters.

(d) Is a displaced homemaker. A WIA displaced homemaker is an individual who has been providing unpaid services to family members in the home and who:

(i) has been dependent on the income of another family member but is no longer supported by that income; and

(ii) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

(2) The dislocation must have occurred within the prior two years.

(3) There are no income or asset guidelines for dislocated worker eligibility. Training appropriateness must still be determined before training services can be provided.

(4) The following documentation is acceptable to confirm dislocated worker status:

- a. Unemployment Insurance records;
- b. An individual layoff letter;
- c. Rapid Response Unit analysis or review;
- d. Public announcements of layoff;
- e. If no other means of verification are available, the employer can provide verification; or
- f. Worker self certification, although this is a last resort and requires documentation that other attempts to verify were unsuccessful.

(5) If the Department is providing services under a National Reserve Discretionary Grant, additional documentation may be needed.

**R986-600-620. Participation in Obtaining an Assessment.**

(1) When the Department or youth contract provider determines that a client has a need for intensive services, an employment counselor/case worker will be assigned to assess the needs of the client.

(2) The assessment evaluation is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

- (a) family circumstances including health, needs of the children, support systems, and relationships;
- (b) personal needs or potential barriers to employment;
- (c) education;
- (d) work history;
- (e) skills;
- (f) financial resources and needs; and
- (g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

**R986-600-621. Requirements of an Employment Plan.**

(1) A client is required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan. The client will be provided with a copy of the employment plan.

(2) The goal of the employment plan is obtaining marketable skills and [suitable] employment and the plan must contain the soonest possible target date for entry into employment consistent with the needs of the client.

(3) An employment plan consists of activities designed to help an individual become employed.

(4) Each activity must be directed toward the goal of [suitable] employment.

(5) The employment plan may require that the client:

- (a) search for suitable, immediate employment.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(g) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.

(6) The client must meet the performance expectations of each activity in the employment plan in order to stay eligible for intensive or training services.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which may include providing ongoing information and or documentation relative to their progress and providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available and appropriate, supportive services may be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

**R986-600-623. Education and Training and Support Services as Part of an Employment Plan.**

(1) A client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited per exposure to the lesser of:

(a) 24 months which need not be continuous and which can be waived by a Department supervisor based on individual circumstances, or

(b) the completion of the education and training goals of the employment plan.

(2) Education and training will only be supported where:

(a) the client is unable to find suitable employment due to a lack of marketable skills;

(b) the education or training will substantially increase the income level the client would be able to attain without the education or training;

(c) the plan must show that the client has the ability to be successful in the education or training and in the market thereafter;

(d) the education or training is required for the occupation;

(e) the client is willing to complete the education or training as quickly as is reasonable;

(f) the mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed; and

(g) the specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(3) [The following a] Additional payments and/or services are allowable under certain circumstances based on individual need[=

~~—(a) any costs or services associated with education or training]~~  
 provided they are necessary and appropriate to enable the client to participate in activities authorized under this title (WIA).

**R986-600-653. Distance Learning Providers.**

(1) Distance learning is training that is made possible due to advances in computer technology. Using an online computer connection, distance learning can establish a setting for students and instructors where lessons are assigned, completed, and returned, and discussions can be held online.

(2) Distance learning can only be approved when it is a part of a curriculum that:

- (a) leads to the completion of a training program;
- (b) requires students to interact with instructors;
- (c) requires students to take periodic tests~~[-and~~
- ~~—(d) requires students to come onto campus or other approved facility, for tests and meetings with instructors].~~

**KEY: Workforce Investment Act**  
**~~July 1, 2002~~2004**  
**35A-5**



**End of the Notices of Proposed Rules Section**

## NOTICES OF CHANGES IN PROPOSED RULES

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After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [example]). A row of dots in the text (· · · · ·) indicates that unaffected text was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends October 15, 2004. At its option, the agency may hold public hearings.

From the end of the waiting period through January 13, 2005, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

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**The Changes in Proposed Rules Begin on the Following Page.**

**Money Management Council,  
Administration  
R628-15  
(Second)  
Certification as an Investment Adviser**

**NOTICE OF CHANGE IN PROPOSED RULE**

DAR File No.: 27136  
Filed: 09/01/2004, 14:21

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Money Management Council held a public hearing on 07/07/2004 and received comments on this rule that required additional changes from the first two filings.

**SUMMARY OF THE RULE OR CHANGE:** The changes include: 1) a clarifying statement regarding what an investment adviser is not; 2) defines the term "soft dollar" which had been used in the rule with no clear parameters; 3) cleans up some language that was vague or not needed; 4) changes one type of insurance coverage from surety to fidelity, which is more appropriate in the case of investment advisers, and provides a tier structure on the fidelity bond coverage based on Utah public funds under management; 5) drops the percentage requirement on the errors and omissions insurance to 5% of Utah public funds under management, with a minimum of \$1,000,000, from 20% based on comments that 20% was too high; and 6) clarifies language on procedures for denial or suspension of status as a certified investment adviser. (DAR NOTE: This is the second change in proposed rule (CPR) for R628-15. The original proposed new rule upon which the first CPR was based was published in May 15, 2004, issue of the Utah State Bulletin, on page 28. The first CPR upon which this second CPR is based was published in the June 15, 2004, issue of the Utah State Bulletin, on page 74. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the first CPR, the second CPR, and the proposed new rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsections 51-7-3(3), 51-7-18(2)(b)(vi), 51-7-18(2)(b)(vii), 51-7-11.5(2)(b), and 51-7-11.5(2)(c)

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** There will be no cost or savings in the state budget as the bonding requirement is still on the investment adviser.

❖ **LOCAL GOVERNMENTS:** It is still not known if the investment advisory firms will pass through the cost of bonding requirements to the public treasurer who uses such firms, but the cost may be lower as the fidelity insurance is now tiered based on total public funds under management and lower percentages.

❖ **OTHER PERSONS:** Cost of errors and omissions insurance should not increase. However, even though fidelity insurance is now based on tiered amounts, there may be additional costs to investment advisers as they may not carry fidelity insurance. The cost is not known at this time nor how many this could effect.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Some firms that become certified may have to purchase fidelity insurance policies, based on public funds under management. Exact costs were unable to be determined however, as noted in the last filing (the first CPR), a general cost was approximately 1% of the amount of the policy.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The revisions on the bonds required should drop costs of insurance for most investment advisers from the previous requirement. However, overall, the investment adviser may have to increase coverage as it has been determined that investment advisers may not currently purchase fidelity insurance, or if they do it is a minimal amount.

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

MONEY MANAGEMENT COUNCIL  
ADMINISTRATION  
Room E315 EAST OFFICE BLDG  
STATE CAPITOL COMPLEX  
PO BOX 142315  
SALT LAKE CITY UT 84114-2315, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ann Pedroza at the above address, by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at apedroza@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2004

AUTHORIZED BY: Larry Richardson, Chair

**R628. Money Management Council, Administration.  
R628-15. Certification as an Investment Adviser.  
R628-15-1. Authority.**

This rule is issued pursuant to Sections 51-7-3(3), ~~51-7-3(10), and 51-7-18(2)(b)(vi) and (vii), and 51-7-11.5(2)(b) and (c).~~

**R628-15-2. Scope.**

This rule establishes the criteria applicable to all investment advisers and investment adviser representatives for certification by the Director as eligible to provide advisory services to public treasurers under the State Money Management Act (the "Act"). It further establishes the application contents and procedures, and the criteria and the procedures for denial, suspension, termination and

reinstatement of certification. Additionally, the qualification of non-certified dealers and the use of these qualified dealers by certified investment advisers is provided for.

**R628-15-3. Purpose.**

This rule establishes a uniform standard to evaluate the financial condition and the standing of an investment adviser to determine if investment of public funds~~[transactions with public treasurers]~~ by investment advisers would expose said public funds to undue risk.

**R628-15-4. Definitions.**

A. The following terms are defined in Section 51-7-3 of the Act, and when used in this rule, have the same meaning as in the Act:

1. "Certified investment adviser";
2. "Council";
3. "Director";
4. "Public treasurer"; and
5. "Investment adviser representative".

B. For purposes of this rule the following terms are defined:

1. a. "Investment adviser" means either a federal covered adviser as defined in Section 61-1-13 or an investment adviser as defined in Section 61-1-13.

b. "Investment adviser" does not mean mutual funds, commingled investment funds, private limited partnerships and similar limited liability investments through which a public treasurer may conduct investment transactions directly with issuers of the investment securities, in accordance with Section 51-7-11(1)(a) and Rule R628-2(4)A)(2).

2. "Qualified dealer" means a non-certified broker/dealer that is licensed by the Division and is qualified by the Council to conduct investment transactions on behalf of a public treasurer pursuant to an investment adviser contract not inconsistent with the Act or Rules of the Council between the public treasurer and a certified investment adviser.

3. "Soft dollar" means the value of research services and other benefits, whether tangible or intangible, that broker/dealers supply to a certified investment adviser in exchange for the certified investment adviser's business.

**R628-15-5. General Rule.**

Before an investment adviser or investment adviser representative provides investment advisory services to any public treasurer, the investment adviser or investment adviser representative must submit and receive approval of an application to the Division, pay to the Division a non-refundable fee as described in Section 51-7-18.4(2), and become a Certified investment adviser or Investment adviser representative under the Act.

**R628-15-6. Criteria for Certification of an Investment Adviser.**

To be certified by the Director as a Certified investment adviser or Investment adviser representative under the Act, an investment adviser or investment adviser representative shall:

A. Submit an application to the Division on Form 628-15 and pay to the Division the non-refundable fee described in Section 51-7-18.4(2).

B. Be licensed with the Division under its laws and rules, effective as of the date of the application. Licensing is required for all of the following:

- (1) the investment adviser;

(2) its designated official as defined in R164-4-2 of the Division; and

(3) any investment adviser representative who provides investment advisory services to public treasurers in the state.

C. Have a current Certificate of Good Standing dated within 30 days of application from the state in which the applicant is incorporated or organized.

D. Have net worth as of its most recent fiscal year-end of not less than \$150,000 documented by financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles.

E. Allow the public treasurer to select the forum and method for dispute resolution, whether that forum be arbitration, mediation or litigation in any state or federal court. No agreement, contract, or other document that the applicant requires or intends to require to be signed by the public treasurer to establish an investment advisory relationship~~[open or maintain an account]~~ shall require or propose to require that any dispute between the applicant and the public treasurer must be submitted to arbitration.

F. Agree to the jurisdiction of the Courts of the State of Utah and applicability of Utah law, where relevant, for litigation of any dispute arising out of transactions between the applicant and the public treasurer.

G. All Investment adviser representatives who have any contact with a public treasurer or its account, must sign and have notarized a statement that the representative:

(1) is familiar with the authorized investments as set forth in the Act and the rules of the Council;

(2) is familiar with the investment objectives of the public treasurer, as set forth in Section 51-7-17(2);

(3) acknowledges, understands, and agrees that all investment transactions conducted for the benefit of the public treasurer are required to be settled on a delivery vs. payment basis only at the treasurer's safekeeping bank and that the Certified investment adviser and any Investment adviser representative is prohibited from receiving custody of any public funds or investment securities at any time.

**R628-15-7. Certification.**

A. The initial application for certification must be received on or before the last day of the month for approval at the following month's Council meeting.

B. All certifications shall be effective upon acceptance by the Council.

C. All certifications not otherwise terminated shall expire on June 30 of each year, unless renewed.~~[-Renewal applications must be received on or before April 30 of each year.]~~

**R628-15-8. Renewal of Application.**

A. Certified investment advisers shall apply annually, on or before April 30 of each year, for certification to be effective July 1 of each year.

B. The application must contain all of the documents and meet all of the requirements as set forth above with respect to initial applications.

C. The application must be accompanied by an annual certification fee as described in section 51-7-18.4(2).

D. A Certified investment adviser whose certification has expired as of June 30 may not function as a Certified investment adviser until the investment adviser's certification is renewed.



**R628-15-9. Post Certification Requirements.**

A. Certified investment advisers shall notify the Division of any changes to any items or information contained in the original application within 30 calendar days of the change. The notification shall provide copies, where necessary, of relevant documents.

B. Certified investment advisers shall maintain licensing with the Division and registration as an investment adviser under the Investment Advisers Act of 1940 throughout the term of any agreement or contract with any public treasurer.

C. Certified investment advisers shall ~~have and~~ provide written evidence of insurance coverage and shall maintain insurance coverage as follows:

(1) ~~[surety bond]~~ fidelity coverage based on the following table: ~~[of not less than twenty percent (20%) of Utah public funds under management; and]~~

TABLE

Utah Public funds under management	Percent for Bond
\$0 to 25,000,000	10% but not less than 1,000,000
25,000,001 to 50,000,000	8% but not less than 2,500,000
50,000,001 to 100,000,000	7% but not less than 4,000,000
100,000,001 to 500,000,000	5% but not less than 7,000,000
500,000,001 to 1,250,000,000	4% but not less than 25,000,000
1,250,000,001 and higher	Not less than 50,000,000

(2) errors and omissions coverage equal to ~~[twenty]~~ five percent (~~[20]~~ 5%) of Utah public funds under management, but not less than \$1,000,000 nor more than \$10,000,000 per occurrence.

D. Certified investment advisers shall provide to the public treasurer the SEC Form ADV Part II prior to contract execution.

E. Certified investment advisers shall file annual audited financial statements with all public treasurers with whom they are doing business and with the Division.

F. Certified investment advisers shall fully disclose all conflicts of interest and all economic interests in qualified dealers and other affiliates, consultants and experts used by the Investment adviser in providing investment advisory services.

G. Certified investment advisers shall act with the degree of care, skill, prudence, and diligence that a person having special skills or expertise acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

H. Certified investment advisers shall exercise good faith in allocating transactions to qualified dealers in the best interest of the account and in overseeing the completion of transactions and performance of qualified dealers used by the Investment adviser in connection with investment advisory services.

I. Certified investment advisers shall fully disclose to the public treasurer any self-dealing with subsidiaries, affiliates or partners of the Investment adviser and any ~~[ ]~~ soft dollar ~~[ ]~~ benefits to the Investment adviser for transactions placed on behalf of the public treasurer.

J. Certified investment advisers shall fully and completely disclose to all public treasurers with whom they do business the basis for calculation of fees, whether and how fees may be adjusted during the term of any agreement, and any other costs chargeable to the account. If performance-based fees are proposed, the disclosure shall include a clear explanation of the amount of the fee at specific levels of performance and how prior losses are handled in calculation of the performance-based fee.

K. Certified investment advisers shall not assign any contract or agreement with a public treasurer without the written consent of the public treasurer.

L. Certified investment advisers shall provide immediate written notification to any public treasurer to whom advisory services are provided and to the Division upon conviction of any crime involving breach of trust or fiduciary duty or securities law violations.

M. Not less than once each calendar quarter and as often as requested by the public treasurer, Certified investment advisers shall timely deliver to the public treasurer:

(1) copies of all trade confirmations for transactions in the account;

(2) a summary of all transactions completed during the reporting period;

(3) a listing of all securities in the portfolio at the end of each reporting period, the market value and cost of each security, and the credit rating of each security;

(4) performance reports for each reporting period showing the total return on the portfolio as well as the accrual basis return and the net return after calculation of all fees and charges permitted by the agreement; and

(5) a statistical analysis showing the portfolio's weighted average maturity and duration as of the end of each reporting period.

**R628-15-10. Notification of Certification.**

The Director shall provide a list of Certified investment advisers and Investment adviser representatives to the Council at least semiannually. The Council shall mail this list to each public treasurer.

**R628-15-11. Criteria for Qualification of a Non-Certified Dealer.**

A. Before a Certified investment adviser uses a non-certified dealer to conduct investment transactions on behalf of a public treasurer, the investment adviser must submit an application for each non-certified dealer for qualification by the Division.

B. The application must include:

(1) Proof of licensing with the Division under its laws and rules, effective as of the date of the application, of the following:

(a) the broker-dealer;

(b) any agents of a firm doing business in the state.

(2) A Certificate of Good Standing, obtained from the state in which the applicant is incorporated or organized.

(3) With respect to applicants who are not primary reporting dealers, financial statements, prepared by an independent certified public accountant in accordance with generally accepted accounting principles, indicating that the applicant has, as of its most recent fiscal year end:

(a) Minimum net capital, as calculated under rule 15c3-1 of the Securities and Exchange Act of 1934 (17 CFR 240.15c3-1(2004)), of at least 5% of the applicant's aggregate debt balances, as defined in the rule, and;

(b) Total capital as follows:

(i) of at least \$10 million or;

(ii) of at least \$25 million, calculated on a consolidated basis, with respect to an applicant which is a wholly-owned subsidiary.

**R628-15-12. Grounds for Denial, Suspension or Termination of Status as a Certified Investment Adviser.**

Any of the following constitutes grounds for denial, suspension, or termination of status as a Certified investment adviser:

A. Denial, suspension or termination of the Certified investment adviser's license by the Division.

B. Failure to maintain a license with the Division by the firm or any of its Investment adviser representatives conducting investment transactions with a public treasurer.

C. Failure to maintain the required minimum net worth and the required surety bond.

D. Requiring the public treasurer to sign any documents, contracts, or agreements which require that disputes be submitted to mandatory arbitration.

E. Failure to pay the annual certification fee.

F. Making any false statement or filing any false report with the Division.

G. Failure to comply with any requirement of section R628-15-9.

H. Engaging in any material act in negligent or willful violation of the Act or Rules of the Council.

I. Failure to respond to requests for information from the Division or the Council within 15 days after receipt of a request for information.

J. Engaging in a dishonest or unethical practice. "Dishonest or unethical practice" includes but is not limited to those acts and practices enumerated in Rule R164-6-1g.

K. Being the subject of:

(1) an adjudication or determination, within the past five years by a securities or commodities agency or administrator of another state, Canadian province or territory, or a court of competent jurisdiction that the person has willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or the securities or commodities law of any other state; or

(2) an order entered within the past five years by the securities administrator of any state or Canadian province or territory or by the Securities and Exchange Commission denying or revoking license as a broker-dealer, agent, investment adviser, or investment adviser representative or the substantial equivalent of those terms or is the subject of an order of the Securities and Exchange Commission suspending or expelling the person from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order.

**R628-15-13. Procedures for Denial, Suspension, or Termination and Reinstatement of Status.**

A. Where it appears to the Division or to the Council that grounds may exist to deny, suspend, or terminate status as a Certified investment adviser, the Council shall proceed under the Utah Administrative Procedures Act, Chapter 46b, Title 63 ("UAPA").

B. All proceedings to suspend a Certified investment adviser or to terminate status as a certified investment adviser are designated as informal proceedings under ("UAPA").

C. In any hearings held, the Chair of the Council shall be the presiding officer, and that person may act as the hearing officer, or may designate another person from the Council or the Division to be

the hearing officer. At the close of the hearing, other members of the Council may make recommendations to the hearing officer after the close of the hearing.

D. The Notice of Agency Action as set forth under UAPA, or any petition filed in connection with it, shall include a statement of the grounds for termination, and the remedies required to cure the violation.

E. ~~[After the date of service of the Notice of Agency Action, the]~~ A Certified investment adviser and its Investment adviser representative [s shall not conduct any] who has received a Notice of Agency Action alleging violations of the Act or these rules, may continue, in the discretion of the public treasurer, to conduct investment transactions with [any] the public treasurer [if so ordered] until the violations asserted by the Money Management Council [The order issued by the hearing officer on behalf of the Council at the conclusion of the proceedings shall lift this prohibition if the order allows the Certified investment adviser to keep its status as a Certified investment adviser] in the Notice of Agency Action becomes subject to a written order of the Council or Council enters an order indicating that public funds will be jeopardized by continuing investment transactions with the adviser or adviser representative.

**KEY: cash management, public investments, securities regulation, investment advisers**

**2004**

**51-7-3(3[4])**

**51-7-18(2)(b)(vi)**

**51-7-18(2)(b)(vii)**

**51-7-11.5(2)(b)**

**51-7-11.5(2)(c)**



**Money Management Council,  
Administration**

**R628-19**

**Requirements for the Use of Investment  
Advisers by Public Treasurers**

**NOTICE OF CHANGE IN PROPOSED RULE**

DAR File No.: 27137

Filed: 09/01/2004, 16:00

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Money Management Council received comments from a public hearing held 07/07/2004 which required additional changes to the original filing.

SUMMARY OF THE RULE OR CHANGE: These changes add a clarification regarding public treasurers who operate under Rule R628-2. It also clarifies what an investment adviser is not. The charge to not rely on certification as the only means of due diligence to hire an investment adviser, has been changed to a suggestion. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the May 15, 2004,

issue of the Utah State Bulletin, on page 31. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 51-7-18(2)(b)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There are no additional costs from what was identified in the original filing for the State budget.
- ❖ LOCAL GOVERNMENTS: There are no additional costs from what was identified in the original filing for the Local government.
- ❖ OTHER PERSONS: There would be no costs associated with complying with this rule change for any persons; and there were no costs in the original filing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There would be no costs associated with complying with this rule change for any persons; and there were no costs in the original filing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on businesses as it only applies to Utah public treasurers.

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

MONEY MANAGEMENT COUNCIL  
ADMINISTRATION  
Room E315 EAST OFFICE BLDG  
STATE CAPITOL COMPLEX  
PO BOX 142315  
SALT LAKE CITY UT 84114-2315, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ann Pedroza at the above address, by phone at 801-538-1883, by FAX at 801-538-1465, or by Internet E-mail at apedroza@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 10/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 10/16/2004

AUTHORIZED BY: Larry Richardson, Chair

**R628. Money Management Council, Administration.  
R628-19. Requirements for the Use of Investment Advisers by Public Treasurers.**

**R628-19-1. Authority.**

This rule is issued pursuant to Section 51-7-18(2)(b).

**R628-19-2. Scope.**

This rule establishes basic requirements for public treasurers when using investment advisers, and recognizes an exception with regard to public treasurers to which R628-2 applies concerning investment transactions conducted by such public treasurer directly with issuers of the investment securities, including, but not limited to investment transactions conducted with mutual funds, commingled investment funds, and private limited partnerships.

**R628-19-3. Purpose.**

The purpose of this rule is to outline requirements for public treasurers who are considering utilizing investment advisers to invest public funds. [~~These are minimum requirements and not exhaustive criteria to be used when choosing an adviser.~~]

**R628-19-4. Definitions.**

(1) The following terms are defined in Section 51-7-3 of the Act, and when used in this rule, have the same meaning as in the Act:

- (a) "Certified investment adviser";
- (b) "Council";
- (c) "Director"; and
- (d) "Investment adviser representative".

(2) For purposes of this rule:

(a) "Investment adviser" means either a federal covered adviser as defined in Section 61-1-13 or an investment adviser as defined in Section 61-1-13.

(i) Investment adviser, with respect to public treasurers to which R628-2 applies, does not mean a mutual fund, commingled investment fund, private limited partnership and similar limited liability investments through which such public treasurer may conduct investment transactions directly with issuers of investment securities, in accordance with Section 51-7-11(1)(a), R628-2-4(A)(2), and this R628-19.

(b) "Realized rate of return" means: yield calculated by combining interest earned, discounts accreted and premiums amortized, plus any gains or losses realized during the month, less all fees, divided by the average daily balance during the reporting period. The realized return should then be annualized.

**R628-19-5. General Rule.**

1. A public treasurer may use an investment adviser to conduct investment transactions on behalf of the public treasurer as permitted by statute, rules of the Council, and local ordinance or policy.

2. A public treasurer using an investment adviser to conduct investment transactions on behalf of the public treasurer is responsible for full compliance with the Act and rules of the Council.

3. Due diligence in the selection of an investment adviser and in monitoring ~~the~~ compliance with the Act and Rules of the Council and the performance of investment advisers is the responsibility of the public treasurer. [In that regard, the public treasurer may not rely on certification by the Director as satisfaction of prudent and reasonable due diligence on the part of the public treasurer.] (The Council advises public treasurers that reliance on certification by the Director may not be sufficient to satisfy prudent and reasonable due diligence.)

4. The public treasurer shall assure compliance with the following minimum standards:

(a) A public treasurer may use a Certified investment adviser properly designated pursuant to R628-15.

(b) A public treasurer's use of a Certified investment adviser shall be governed by a written investment advisory services agreement between the public treasurer and the Certified investment adviser. Terms of the agreement shall conform to the requirements of R628-15, and shall be adopted pursuant to all procurement requirements of statute and local ordinance or policy.

(c) Prior to entering into an investment advisory services agreement with a Certified investment adviser, the public treasurer shall request and the investment adviser shall furnish, the SEC Form ADV Part II for review and consideration by the public treasurer.

(d) All investment transactions and activities of the public treasurer and the Certified investment adviser must be in full compliance with all aspects of the Money Management Act and Rules of the Council particularly those requirements governing criteria for investments, safekeeping, utilizing only certified dealers or qualified dealers, and purchasing only the types of securities listed in 51-7-11., 51-7-12. and 51-7-13. as applicable.

(e) Prior to entering into an investment advisory services agreement with a Certified investment adviser, the public treasurer shall request and the investment adviser shall furnish a clear and concise explanation of the investment adviser's program, objectives, management approach and strategies used to add value to the portfolio and return, including the methods and securities to be employed.

[§5] If selection of a Certified investment adviser to provide investment advisory services to a public treasurer is based upon the investment adviser's representation of special skills or expertise, the investment advisory services agreement shall require the Certified investment adviser to act with the degree of care, skill, prudence, and diligence that a person having special skills or expertise acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

[§6] The public treasurer is advised to review and consider standards of practice recommended by other sources, such as the Government Finance Officers Association, in the selection and management of investment adviser services.

**R628-19-6. Reporting to the Council.**

When a public treasurer has contracted with an investment adviser for the management of public funds, the public treasurer shall provide the detail of those investments to the Council, pursuant to Section 51-7-18.2.

**KEY: securities, investment advisers, public funds**

**2004**

**51-7-18(2)(b)**

**61-1-13**



**End of the Notices of Changes in Proposed Rules Section**

## NOTICES OF 120-DAY (EMERGENCY) RULES

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An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (*Utah Code* Subsection 63-46a-7(1) (2001)).

As with a PROPOSED RULE, a 120-DAY RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the 120-DAY RULE including the name of a contact person, justification for filing a 120-DAY RULE, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (· · · · ·) indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A 120-DAY RULE is effective for 120 days or until it is superseded by a permanent rule.

Because 120-DAY RULES are effective immediately, the law does not require a public comment period. However, when an agency files a 120-DAY RULE, it usually files a PROPOSED RULE at the same time, to make the requirements permanent. Comment may be made on the proposed rule. Emergency or 120-DAY RULES are governed by *Utah Code* Section 63-46a-7 (2001); and *Utah Administrative Code* Section R15-4-8.

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### Commerce, Occupational and Professional Licensing **R156-1** General Rules of the Division of Occupational and Professional Licensing

#### NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 27358  
FILED: 08/24/2004, 08:30

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendments add provisions to allow the prescribing of certain drugs by physicians via the Internet thus implementing Subsection 58-1-501(4) which was amended during the 2004 legislative session in S.B. 114. (DAR NOTE: S.B. 114 is found at UT L 2004 Ch 280, and was effective 07/01/2004.)

SUMMARY OF THE RULE OR CHANGE: In Section R156-1-102, added a definition for "branching questionnaire" which is used in Section R156-1-601. Section R156-1-601 is a new section that is being added which establishes the protocols for medical online assessment, diagnosis, and prescribing. (DAR NOTE: A corresponding amendment is under DAR No. 27377 in this issue.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 58-1-106(1)(a) and 58-1-501(4), and Section 58-1-308

#### ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The Division will incur costs of approximately \$50 to reprint the rule as a result of this emergency rule filing. Any costs incurred will be absorbed in the Division's current budget.
- ❖ LOCAL GOVERNMENTS: Emergency amendments do not apply to local governments.
- ❖ OTHER PERSONS: The Division does not foresee any costs or savings associated with this emergency rule filing except that the changes will allow a company which has operated in Utah under a consent agreement to continue to provide their services. If the proposed changes are not adopted via an emergency rule filing, that company may have to cease and desist their services until the changes may be adopted through a regular rule filing, thus creating a significant adverse effect on their financial welfare.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division does not foresee any costs or savings associated with this emergency rule filing except that the changes will allow a company which has operated in Utah under a consent agreement to continue to provide their services. If the proposed changes are not adopted via an emergency rule filing, that company may have to cease and desist their services until the changes may be adopted through a regular rule filing, thus creating a significant adverse effect on their financial welfare.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This emergency rule filing establishes standards of practice for online assessment and diagnosis as authorized by recent statutory amendments. No additional fiscal impact to businesses is foreseen beyond those previously addressed by the Utah Legislature in its passage of the amendments to Section 58-1-501. Klarice A. Bachman, Executive Director

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare. place the agency in violation of federal or state law.

The Division of Occupational and Professional Licensing entered into a Consent Agreement with PCM Venture I that allows a physician licensed in Utah to prescribe specific legend drugs to Utahns based on a branching health questionnaire. If PCM Venture I was required to cease and desist from providing services, the economic effect would be great and would create a threat to their economic welfare. The Division believed that the statute, as written, would allow the existing Consent Agreement to carry forth without and before implementing rules specific to Subsection 58-1-501(4).

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:

Laura Poe at the above address, by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at lpoe@utah.gov

THIS RULE IS EFFECTIVE ON: 08/24/2004

AUTHORIZED BY: J. Craig Jackson, Director

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

**R156-1-102. Definitions.**

In addition to the definitions in Title 58, as used in Title 58 or these rules:

(1) "Active and in good standing" means a licensure status which allows the licensee full privileges to engage in the practice of the occupation or profession subject to the scope of the licensee's license classification.

(2) "Aggravating circumstances" means any consideration or factors that may justify an increase in the severity of an action to be imposed upon an applicant or licensee.

(3) "Branching questionnaire", as used in Section R156-1-601, means an adaptive, progressive inquiry used by a physician to determine a health history and assessment, and serves as the basis for a diagnosis.

(~~3~~4) "Cancel" or "cancellation" means nondisciplinary action by the division to rescind, repeal, annul, or void a license issued in error. Such action includes rescinding a license issued to an applicant whose payment of the required application fee is dishonored when presented for payment.

(~~4~~5) "Charges" means the acts or omissions alleged to constitute either unprofessional or unlawful conduct or both by a licensee, which serve as the basis to consider a licensee for inclusion in the diversion program authorized in Section 58-1-404.

(~~5~~6) "Denial of licensure" means action by the division refusing to issue a license to an applicant for initial licensure, renewal of licensure, reinstatement of licensure or relicensure.

(~~6~~7) "Disciplinary action" means adverse licensure action by the division under the authority of Subsections 58-1-401(2)(a) through (2)(b).

(~~7~~8) "Diversion agreement" means a formal written agreement between a licensee, the division, and a diversion committee, outlining the terms and conditions with which a licensee must comply as a condition of entering in and remaining under the diversion program authorized in Section 58-1-404.

(~~8~~9) "Diversion committees" mean diversion advisory committees authorized by Subsection 58-1-404(2)(a)(i) and created under Subsection R156-1-404a.

(~~9~~10) "Duplicate license" means a license reissued to replace a license which has been lost, stolen, or mutilated.

(~~10~~11) "Emergency review committees" mean emergency adjudicative proceedings review committees created by the division under the authority of Subsection 58-1-108(2).

(~~11~~12) "Expire" or "expiration" means the automatic termination of a license which occurs:

- (a) at the expiration date shown upon a license if the licensee fails to renew the license before the expiration date; or
- (b) prior to the expiration date shown on the license:
  - (i) upon the death of a licensee who is a natural person;
  - (ii) upon the dissolution of a licensee who is a partnership, corporation, or other business entity; or
  - (iii) upon the issuance of a new license which supersedes an old license, including a license which:
    - (A) replaces a temporary license;
    - (B) replaces a student or other interim license which is limited to one or more renewals or other renewal limitation; or
    - (C) is issued to a licensee in an upgraded classification permitting the licensee to engage in a broader scope of practice in the licensed occupation or profession.

(~~12~~13) "Inactive" or "inactivation" means action by the division to place a license on inactive status in accordance with Sections 58-1-305 and R156-1-305.

(~~13~~14) "Investigative subpoena authority" means, except as otherwise specified in writing by the director, the division enforcement counsel, or if the division enforcement counsel is unable to so serve for any reason, the assistant director, or if both the division enforcement counsel and the assistant director are unable to so serve for any reason, the department enforcement counsel.

(~~14~~15) "License" means a right or privilege to engage in the practice of a regulated occupation or profession as a licensee.

(~~15~~16) "Limit" or "limitation" means nondisciplinary action placing either terms and conditions or restrictions or both upon a license:

- (a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or
- (b) issued to a licensee in place of the licensee's current license or disciplinary status.

(~~16~~17) "Mitigating circumstances" means any consideration or factors that may justify a reduction in the severity of an action to be imposed upon an applicant or licensee.

(~~17~~18) "Nondisciplinary action" means adverse licensure by the division under the authority of Subsections 58-1-401(1) or 58-1-401(2)(c) through (2)(d).

~~(18)~~19 "Peer committees" mean advisory peer committees to boards created by the legislature in Title 58 or by the division under the authority of Subsection 58-1-203(1)(f).

~~(19)~~20 "Private reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a private record.

~~(20)~~21 "Probation" means disciplinary action placing terms and conditions upon a license;

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

~~(21)~~22 "Public reprimand" means disciplinary action to formally reprove or censure a licensee for unprofessional or unlawful conduct, with the documentation of the action being classified as a public record.

~~(22)~~23 "Regulatory authority" as used in Subsection 58-1-501(2)(d) means any governmental entity who licenses, certifies, registers, or otherwise regulates persons subject to its jurisdiction, or who grants the right to practice before or otherwise do business with the governmental entity.

~~(23)~~24 "Reinstate" or "reinstatement" means to activate an expired license or to restore a license which is restricted, as defined in Subsection (26)(b), or is suspended, or placed on probation, to a lesser restrictive license or an active in good standing license.

~~(24)~~25 "Relicense" or "relicensure" means to license an applicant who has previously been revoked or has previously surrendered a license.

~~(25)~~26 "Remove or modify restrictions" means to remove or modify restrictions, as defined in Subsection (26)(a), placed on a license issued to an applicant for licensure.

~~(26)~~27 "Restrict" or "restriction" means disciplinary action qualifying or limiting the scope of a license:

(a) issued to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-304; or

(b) issued to a licensee in place of the licensee's current license or disciplinary status.

~~(27)~~28 "Revoke" or "revocation" means disciplinary action by the division extinguishing a license.

~~(28)~~29 "Suspend" or "suspension" means disciplinary action by the division removing the right to use a license for a period of time or indefinitely as indicated in the disciplinary order, with the possibility of subsequent reinstatement of the right to use the license.

~~(29)~~30 "Surrender" means voluntary action by a licensee giving back or returning to the division in accordance with Section 58-1-306, all rights and privileges associated with a license issued to the licensee.

~~(30)~~31 "Temporary license" or "temporary licensure" means a license issued by the division on a temporary basis to an applicant for initial licensure, renewal or reinstatement of licensure, or relicensure in accordance with Section 58-1-303.

~~(31)~~32 "Unprofessional conduct" as defined in Title 58 is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-1-502.

~~(32)~~33 "Warning or final disposition letters which do not constitute disciplinary action" as used in Subsection 58-1-108(3) mean letters which do not contain findings of fact or conclusions of law and do not constitute a reprimand, but which may address any or all of the following:

(a) division concerns;

(b) allegations upon which those concerns are based;

(c) potential for administrative or judicial action; and

(d) disposition of division concerns.

**R156-1-601. Online Assessment, Diagnosis and Prescribing Protocols.**

(1) In accordance with Subsection 58-1-501(4), a person licensed to prescribe under this title may prescribe legend drugs to a person located in this state following an online assessment and diagnosis in accordance with the following conditions:

(a) the prescribing practitioner is licensed in good standing in this state;

(b) an assessment and diagnosis is based upon a comprehensive health history and an assessment tool that requires the patient to provide answers to all the required questions and does not rely upon default answers, such as a branching questionnaire;

(c) only includes legend drugs and may not include controlled substances;

(d) the practice is authorized in a consent agreement signed by the Division and the practitioner and approved by a panel comprised of three board members from the Physicians Licensing Board or the Osteopathic Physician and Surgeon's Licensing Board and three members from the Utah State Board of Pharmacy. The consent agreement shall include:

(i) the specific name of the drug or drugs approved to be prescribed;

(ii) the policies and procedures that address patient confidentiality;

(iii) a method for electronic communication by the physician and patient;

(iv) a mechanism for the Division to be able to conduct audits of the website and records to ensure an assessment and diagnosis has been made prior to prescribing any medications; and

(v) a mechanism for the physician to have ready access to all patients' records.

**KEY: diversion programs, licensing, occupational licensing**

**August 24, 2004**

**Notice of Continuation May 2, 2002**

**58-1-106(1)(a)**

**58-1-308**

**58-1-501(4)**



# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

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## Health, Health Care Financing, Coverage and Reimbursement Policy **R414-501** Preadmission and Continued Stay Review

### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 27370  
FILED: 08/27/2004, 11:18

### 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 Utah Department of Health the power to adopt, amend, or rescind rules. In addition, this rule is authorized under Section 26-18-3, which requires the Department to administer the Medicaid program. Furthermore, this rule is required under 42 USC 1396r(b), which states the necessary provision of services for nursing facilities to promote a higher quality of life.

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 or oral comments have been received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it contains utilization control and utilization review requirements for long-term care facilities, which require the evaluation of each Medicaid resident's need for admission and continued stay in a nursing facility.

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 at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at [cdevashrayee@utah.gov](mailto:cdevashrayee@utah.gov)

AUTHORIZED BY: Scott D. Williams, Executive Director

EFFECTIVE: 08/27/2004



## Health, Health Care Financing, Coverage and Reimbursement Policy **R414-502** Nursing Facility Levels of Care

### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 27371  
FILED: 08/27/2004, 11:22

### 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 Utah Department of Health the power to adopt, amend, or



rescind rules. In addition, this rule is authorized under Section 26-18-3, which requires the Department to administer the Medicaid program. Furthermore, the criteria for nursing facility care is authorized under 42 CFR 456.370 and 42 CFR 409.31 through 409.35.

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 or oral comments have been received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it defines the criteria needed to determine the level of care provided in certified nursing facilities in the state of Utah. These facilities include Nursing Facility III, Nursing Facility II, Nursing Facility I, Intensive Skilled Care, and Intermediate Care Facilities for the Mentally Retarded (ICF/MR).

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 at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: Scott D. Williams, Executive Director

EFFECTIVE: 08/27/2004

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**Health, Health Care Financing,  
Coverage and Reimbursement Policy**  
**R414-503**  
**Preadmission Screening and Annual  
Resident Review**

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

DAR FILE No.: 27373  
FILED: 08/27/2004, 11:26

**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 Utah Department of Health the power to adopt, amend, or

rescind rules. In addition, this rule is authorized under Section 26-18-3, which requires the Department to administer the Medicaid program. Furthermore, this rule is required under 42 USC 1396r(b), which requires preadmission screening and annual review of nursing facility residents with serious mental illness or mental retardation.

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 or oral comments have been received regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it contains the federal mandatory requirement for Preadmission Screening and Annual Review (PASRR) of residents with serious mental illness or mental retardation.

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 at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: Scott D. Williams, Executive Director

EFFECTIVE: 08/27/2004

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**Human Services, Child and Family  
Services**  
**R512-41**  
**Qualifying Adoptive Families and  
Adoption Placement**

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

DAR FILE No.: 27375  
FILED: 08/27/2004, 15:25

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 62A-4a-105, 62A-4a-106, and 62A-4a-205.6 require the Division to provide adoption services for those children who are in the Division's

custody and cannot return home. These statutes specify that the Division must find appropriate adoptive homes in a timely manner and work with private child placing agencies to facilitate the best adoptive placements for children. This rule establishes standards for selecting adoptive parents and matching them with children in need of permanent homes.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued to provide standards and criteria for providing Division adoption services.

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

HUMAN SERVICES  
CHILD AND FAMILY SERVICES  
Room 225  
120 N 200 W  
SALT LAKE CITY UT 84103-1500, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Steven Bradford at the above address, by phone at 801-538-8210, by FAX at 801-538-3993, or by Internet E-mail at sbradford@utah.gov

AUTHORIZED BY: Richard Anderson, Director

EFFECTIVE: 08/27/2004

## Public Safety, Driver License **R708-10** Classified License System

### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 27360  
FILED: 08/25/2004, 12:48

### 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 53-3-401 requires the Driver License Division to establish a driver license classified system defining the various classes, endorsements, and restrictions.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule needs to be continued because the rule defines what the various Utah Driver License classes are such as Class A Commercial Driver license, Class B Commercial Driver License, Class C Operator License, Class D Operator License, and Class M Operator License, and the requirements to get them. The rule also defines each endorsement and restriction.

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

PUBLIC SAFETY  
DRIVER LICENSE  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W 3RD FL  
SALT LAKE CITY UT 84119-5595, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Vinn Roos at the above address, by phone at 801-965-4456, by FAX at 801-964-4482, or by Internet E-mail at vroos@utah.gov

AUTHORIZED BY: Judy Hamaker Mann, Director

EFFECTIVE: 08/25/2004

## Public Safety, Driver License **R708-22** Commercial Driver License Administrative Proceedings

### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 27361  
FILED: 08/25/2004, 15:09

### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53-3-221(5)(a)(i) states that a person has the right to have an opportunity for a hearing in the county they reside if their driver License has been suspended. This rule ensures all drivers including commercial driver license drivers will have a right to a hearing.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule needs to be

continued so administrative proceedings can be available to those who have commercial driver licenses.

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

PUBLIC SAFETY  
DRIVER LICENSE  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W 3RD FL  
SALT LAKE CITY UT 84119-5595, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Vinn Roos at the above address, by phone at 801-965-4456, by FAX at 801-964-4482, or by Internet E-mail at vroos@utah.gov

AUTHORIZED BY: Judy Hamaker Mann, Director

EFFECTIVE: 08/25/2004



Public Safety, Driver License  
**R708-24**  
Renewal of a Commercial Driver License (CDL)

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

DAR FILE NO.: 27365  
FILED: 08/25/2004, 16:48

**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 53-3-413 requires Commercial Driver License (CDL) operators to renew their CDL driver licenses. This rule defines what is needed for them to renew their licenses.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it is needed to define what is needed to renew CDLs.

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

PUBLIC SAFETY  
DRIVER LICENSE  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W 3RD FL  
SALT LAKE CITY UT 84119-5595, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
Vinn Roos at the above address, by phone at 801-965-4456, by FAX at 801-964-4482, or by Internet E-mail at vroos@utah.gov

AUTHORIZED BY: Judy Hamaker Mann, Director

EFFECTIVE: 08/25/2004



Public Safety, Driver License  
**R708-26**  
Temporary Learner Permit Rule

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

DAR FILE NO.: 27362  
FILED: 08/25/2004, 15:47

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53-3-104(1)(b) says the division will make rules regarding restrictions to be imposed on a person driving a motor vehicle with a temporary learner permit. This rule defines those restrictions.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule needs to be continued so the Division is in compliance with the statute in defining restrictions for a temporary learner permit.

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

PUBLIC SAFETY  
DRIVER LICENSE  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W 3RD FL  
SALT LAKE CITY UT 84119-5595, or  
at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

Vinn Roos at the above address, by phone at 801-965-4456, by FAX at 801-964-4482, or by Internet E-mail at vroos@utah.gov

AUTHORIZED BY: Judy Hamaker Mann, Director

EFFECTIVE: 08/25/2004

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**Public Safety, Driver License**

**R708-31**

**Ignition Interlock Systems**

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

DAR FILE No.: 27364  
FILED: 08/25/2004, 16:26

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 41-6-44.7(11) requires us to make a rule setting standards for the certification of ignition interlock systems. This rule defines those standards.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule needs to be continued to be in compliance with the statute requesting that a rule be established setting standards for ignition interlock systems.

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

PUBLIC SAFETY  
DRIVER LICENSE  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W 3RD FL  
SALT LAKE CITY UT 84119-5595, or  
at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

Vinn Roos at the above address, by phone at 801-965-4456, by FAX at 801-964-4482, or by Internet E-mail at vroos@utah.gov

AUTHORIZED BY: Judy Hamaker Mann, Director

EFFECTIVE: 08/25/2004

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

## NOTICES OF RULE EFFECTIVE DATES

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These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

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### Abbreviations

AMD = Amendment  
CPR = Change in Proposed Rule  
NEW = New Rule  
R&R = Repeal and Reenact  
REP = Repeal

### Commerce

Occupational and Professional Licensing  
No. 27101 (AMD): R156-56. Utah Uniform Building Standard Act Rules.  
Published: May 1, 2004  
Effective: August 17, 2004

No. 27101 (CPR): R156-56. Utah Uniform Building Standard Act Rules.  
Published: July 15, 2004  
Effective: August 17, 2004

No. 27285 (AMD): R156-60a. Social Worker Licensing Act Rules.  
Published: August 1, 2004  
Effective: September 1, 2004

### Education

Administration  
No. 27271 (AMD): R277-444. Distribution of Funds to Arts and Sciences Organizations.  
Published: July 15, 2004  
Effective: August 17, 2004

No. 27270 (AMD): R277-503. Licensing Routes.  
Published: July 15, 2004  
Effective: August 17, 2004

### Environmental Quality

Water Quality  
No. 27177 (AMD): R317-6. Ground Water Quality Protection.  
Published: June 1, 2004  
Effective: August 20, 2004

No. 27179 (AMD): R317-100-3. Numeric Project Priority Ranking System.  
Published: June 1, 2004  
Effective: August 20, 2004

No. 27180 (REP): R317-103. Rural Communities Hardship Grants Program.  
Published: June 1, 2004  
Effective: August 20, 2004

### Health

Health Care Financing, Coverage and Reimbursement Policy  
No. 27230 (AMD): R414-303. Coverage Groups.  
Published: July 1, 2004  
Effective: August 26, 2004

No. 27232 (AMD): R414-304. Income and Budgeting.  
Published: July 1, 2004  
Effective: August 26, 2004

Health Systems Improvement, Child Care Licensing  
No. 27244 (AMD): R430-100. Child Care Center.  
Published: July 15, 2004  
Effective: August 27, 2004

Health Systems Improvement, Licensing  
No. 27250 (NEW): R432-32. Licensing Exemption for Non-Profit Volunteer End-of-Life Care.  
Published: July 15, 2004  
Effective: September 1, 2004

### Human Services

Aging and Adult Services  
No. 27249 (AMD): R510-107. Title V Senior Community Service Employment Program Standards and Procedures.  
Published: July 15, 2004  
Effective: August 17, 2004

Mental Health  
No. 27257 (AMD): R523-1-22. Rural Mental Health Therapist Scholarship and Grants.  
Published: July 15, 2004  
Effective: August 17, 2004

Services for People with Disabilities  
No. 27233 (AMD): R539-1. Eligibility.  
Published: July 1, 2004  
Effective: August 19, 2004

### Natural Resources

Parks and Recreation  
No. 27305 (AMD): R651-611. Fee Schedule.  
Published: August 1, 2004  
Effective: September 1, 2004

No. 27306 (AMD): R651-634-1. User Fees.  
Published: August 1, 2004  
Effective: September 1, 2004

NOTICES OF RULE EFFECTIVE DATES

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Wildlife Resources

No. 27283 (AMD): R657-6. Taking Upland Game.  
Published: August 1, 2004  
Effective: September 1, 2004

No. 27251 (AMD): R708-3. Driver License Point System Administration.  
Published: July 15, 2004  
Effective: August 17, 2004

Public Safety

Driver License

No. 27246 (AMD): R708-2. Commercial Driver Training Schools.  
Published: July 15, 2004  
Effective: August 17, 2004

Workforce Services

Workforce Information and Payment Services

No. 27253 (AMD): R994-404-101. Payments Following Workers' Compensation.  
Published: July 15, 2004  
Effective: August 18, 2004

**End of the Notices of Rule Effective Dates Section**

# RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

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The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2004, including notices of effective date received through September 1, 2004, the effective dates of which are no later than September 15, 2004. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *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).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

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## RULES INDEX - BY AGENCY (CODE NUMBER)

### ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>Administrative Services</b>					
<u>Facilities Construction and Management</u>					
R23-3	Planning and Programming for Capital Projects	27313	5YR	07/28/2004	2004-16/33
R23-29	Across the Board Delegation	26991	5YR	03/10/2004	2004-7/35
<u>Finance</u>					
R25-7	Travel-Related Reimbursements for State Employees	27120	AMD	07/01/2004	2004-10/4
R25-7-6	Reimbursements for Meals	27164	AMD	07/02/2004	2004-11/4
<u>Fleet Operations, Surplus Property</u>					
R28-3	Utah State Agency for Surplus Property Adjudicative Proceedings	26843	AMD	02/12/2004	2004-1/4
<u>Records Committee</u>					
R35-1	State Records Committee Appeal Hearing Procedures (5YR EXTENSION)	26973	NSC	07/02/2004	Not Printed
R35-1	State Records Committee Appeal Hearing Procedures	27277	5YR	07/02/2004	2004-15/62

RULES INDEX

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R35-2	Declining Appeal Hearings	27278	5YR	07/02/2004	2004-15/62
R35-3	Prehearing Conferences	27279	5YR	07/02/2004	2004-15/63
R35-4	Compliance with State Records Committee Decisions and Orders	27280	5YR	07/02/2004	2004-15/63
R35-5	Subpoenas Issued by the Records Committee	27281	5YR	07/02/2004	2004-15/64
R35-6	Expedited Hearings	27282	5YR	07/02/2004	2004-15/64
<b>Agriculture and Food</b>					
<u>Animal Industry</u>					
R58-20	Domesticated Elk Hunting Parks	26990	5YR	03/05/2004	2004-7/35
R58-20-5	Facilities	26989	AMD	05/04/2004	2004-7/3
R58-21	Trichomoniasis	26891	AMD	03/04/2004	2004-3/4
<u>Plant Industry</u>					
R68-7-6	Categorization of Pesticide Applicators	26794	NSC	01/01/2004	Not Printed
R68-20-1	Authority	26949	AMD	04/01/2004	2004-5/2
R68-20-1	Authority	26987	NSC	05/01/2004	Not Printed
<u>Regulatory Services</u>					
R70-310	Grade A Pasteurized Milk	27149	AMD	07/02/2004	2004-11/6
R70-310	Grade A Pasteurized Milk	27286	5YR	07/09/2004	2004-15/65
R70-330	Raw Milk for Retail	27069	AMD	06/02/2004	2004-9/4
R70-630	Water Vending Machine	27291	5YR	07/13/2004	2004-15/65
R70-630	Water Vending Machine	27290	AMD	09/08/2004	2004-15/4
<b>Alcoholic Beverage Control</b>					
<u>Administration</u>					
R81-1-3	General Policies	27025	AMD	06/01/2004	2004-8/4
R81-1-8	Consent Calendar Procedures	27027	AMD	06/01/2004	2004-8/5
R81-1-21	Beer Advertising in Event Venues	27028	AMD	06/01/2004	2004-8/6
R81-1-22	Diplomatic Embassy Shipments and Purchases	27029	AMD	06/01/2004	2004-8/8
R81-1-23	Sales Restrictions on Products of Limited Availability	27030	AMD	06/01/2004	2004-8/10
R81-2-1	Special Orders of Liquor by Public	27031	AMD	06/01/2004	2004-8/11
R81-2-2	Liquor Returns, Refunds and Exchanges	27032	AMD	06/01/2004	2004-8/12
R81-2-7	Minors on Premises	27033	AMD	06/01/2004	2004-8/14
R81-2-8	Accepting Checks as Payment for Liquor	27034	AMD	06/01/2004	2004-8/14
R81-2-9	Accepting Credit Cards as Payment for Liquor	27035	AMD	06/01/2004	2004-8/16
R81-2-9	Accepting Credit Cards as Payment for Liquor	27201	AMD	08/02/2004	2004-12/3
R81-2-10	State Store Hours	27036	AMD	06/01/2004	2004-8/17
R81-2-11	Industry Members in State Stores	27037	AMD	06/01/2004	2004-8/18
R81-3-5	Special Orders of Liquor by Public	27038	AMD	06/01/2004	2004-8/19
R81-3-6	Liquor Returns, Refunds and Exchanges	27039	AMD	06/01/2004	2004-8/20
R81-3-14	Type 5 Package Agencies	27040	AMD	06/01/2004	2004-8/22
R81-3-16	Minors on Premises	27041	AMD	06/01/2004	2004-8/23
R81-3-17	Consignment Inventory Package Agencies	27042	AMD	06/01/2004	2004-8/24
R81-3-18	Type 4 Package Agency Room Service - Mini-Bottle/187 ml Wine Sales	27043	AMD	06/01/2004	2004-8/25
R81-3-19	Credit Cards	27044	AMD	06/01/2004	2004-8/26
R81-4D-13	On-Premise Banquet License Room Service - Mini-Bottle/187 ml Wine Sales	27045	AMD	06/01/2004	2004-8/27



CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
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### ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

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<b><u>midwifery</u></b>					
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	27016	R647-6	NEW	06/01/2004	2004-8/76
	27017	R647-7	NEW	06/01/2004	2004-8/79
	27018	R647-8	NEW	06/01/2004	2004-8/83
<b><u>motor carrier</u></b> Public Safety, Highway Patrol	27337	R714-600	5YR	08/06/2004	2004-17/58
	27100	R714-600	NSC	08/06/2004	Not Printed
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<b><u>natural resources; management; surveys</u></b> Natural Resources, Forestry, Fire and State Lands	26865	R652-40-1800	AMD	02/24/2004	2004-2/2
<b><u>naturopathic physician</u></b> Commerce, Occupational and Professional Licensing	26998	R156-71-202	AMD	05/04/2004	2004-7/3
<b><u>naturopaths</u></b> Commerce, Occupational and Professional Licensing	26998	R156-71-202	AMD	05/04/2004	2004-7/3
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<b><u>noise walls</u></b> Transportation, Preconstruction	27156	R930-3	AMD	07/20/2004	2004-11/84
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	26848	R277-720	NSC	02/01/2004	Not Printed
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	26805	R156-1-106	AMD	01/20/2004	2003-24/4
	27112	R156-55b	AMD	06/15/2004	2004-10/6
<b><u>occupational therapy</u></b> Commerce, Occupational and Professional Licensing	27400	R156-42a	5YR	09/02/2004	Not Printed
<b><u>off-highway vehicles</u></b> Natural Resources, Parks and Recreation	27183	R651-411	NEW	07/19/2004	2004-12/61
	27181	R651-601-17	AMD	07/19/2004	2004-12/62
	27185	R651-615-7	AMD	07/19/2004	2004-12/65
<b><u>offset</u></b> Environmental Quality, Air Quality	27218	R307-420	5YR	06/08/2004	2004-13/69
	27107	R307-420	NSC	06/08/2004	Not Printed
<b><u>online testing</u></b> Education, Administration	27202	R277-402	NEW	07/16/2004	2004-12/5
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<b><u>operating permits</u></b> Environmental Quality, Air Quality	26940	R307-415	5YR	02/09/2004	2004-5/45
	26947	R307-415-6c	AMD	08/03/2004	2004-5/10
	26941	R307-417	5YR	02/09/2004	2004-5/45
<b><u>operator certification</u></b> Environmental Quality, Water Quality	27022	R317-10	AMD	06/23/2004	2004-8/52
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<b><u>organ transplants</u></b> Health, Health Care Financing, Coverage and Reimbursement Policy	26935	R414-58	5YR	02/03/2004	2004-5/46
<b><u>orthodontia</u></b> Health, Health Care Financing, Coverage and Reimbursement Policy	26782	R414-51	AMD	01/28/2004	2003-23/25
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	26946	R307-110-28	AMD	06/08/2004	2004-5/9
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	27219	R307-343	5YR	06/08/2004	2004-13/69
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<b><u>paleontological resources</u></b> Regents (Board Of), University of Utah, Museum of Natural History (Utah)	26913	R807-1	5YR	01/26/2004	2004-4/77
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	26948	R651-611	AMD	04/01/2004	2004-5/29
	26776	R651-611	AMD	01/06/2004	2003-23/52
	27185	R651-615-7	AMD	07/19/2004	2004-12/65
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	26981	R277-514	AMD	04/15/2004	2004-6/10
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	26849	R746-100	AMD	04/01/2004	2004-1/28
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<b><u>real estate business</u></b>					
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