

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
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Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3764, FAX 801-537-9240. Additional rulemaking information, and electronic versions of all administrative rule publications are available at: <http://www.rules.utah.gov/>

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)*. The *Digest* is available by E-mail or over the Internet. Visit <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Division of Administrative Rules, Salt Lake City 84114

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# EXECUTIVE DOCUMENTS

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

The Governor's Office staff files **EXECUTIVE DOCUMENTS** that have legal effect with the Division of Administrative Rules for publication and distribution. All orders issued by the Governor not in conflict with existing laws have the full force and effect of law during a state of emergency when a copy of the order is filed with the Division of Administrative Rules. (See Section 63K-4-401).

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## **Governor's Proclamation 2012/05/E: Calling the Fifty-Ninth Legislature into the Fifth Extraordinary Session**

### PROCLAMATION

**WHEREAS**, since the close of the 2012 General Session of the 59th Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

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

**NOW, THEREFORE, I, GARY R. HERBERT**, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and Laws of the State of Utah, do by this Proclamation call the Senate only of the 59th Legislature into the Fifth Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 16th day of May 2012, at 1:30 p.m., for the following purpose:

For the Senate to consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2012 General Session of the Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the Utah State Capitol in Salt Lake City, Utah, this 10th day of May 2012.

**Gary R. Herbert**  
Governor

**Greg Bell**  
Lieutenant Governor

2012/05/E



## 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 May 02, 2012, 12:00 a.m., and May 15, 2012, 11:59 p.m. are included in this, the June 01, 2012 issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least July 2, 2012. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through September 29, 2012, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF a CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses and the agency must start the process over.

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

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

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

**Agriculture and Food, Animal Industry**  
**R58-21**  
**Trichomoniasis**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36164

FILED: 05/10/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to change the official test to the polymerase chain reaction (PCR) test and to change the test age for the affected livestock.

**SUMMARY OF THE RULE OR CHANGE:** The changes to the rule includes: 1) renumbering the subsections to be consistent with DAR guidelines; 2) rewording the definitions to be in alignment with DAR guidelines; 3) making the official test the PCR test; and 4) increasing the test age from 9 months to 12 months of age.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 4-31-109

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no change to state budget as existing workforce in the Division of Animal Industry currently handles all issues related to trichomoniasis and the proposed rule will not increase or decrease workload.

◆ **LOCAL GOVERNMENTS:** There are no costs to local government at this time under the current rule. All costs to run the program are through the state general fund and local governments are not involved in the program. The proposed changes made to the rule will not require local government involvement and will not require costs to be borne by local governments.

◆ **SMALL BUSINESSES:** Veterinarians and veterinary clinics under this rule change will no longer be able to culture the sample in the clinic. This has the potential in saving time for staff that no longer need to observe each sample for a total of 4 times in a 96-hour period.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Cattle producers in the state may have increased test costs associated with the official test being changed from culture and PCR to just the PCR test. The Utah Veterinary Diagnostic Laboratory will make a determined effort to keep costs around \$10 per bull.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Other than a possible increase in testing costs, there will be no additional costs to the producers. The producers have been testing their bulls for over ten years and they are used to complying with the rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The change to the rule may not be cost neutral for the cattle producer but the Department feels that the test will produce more accurate results and will minimize the risks to the livestock industry and provide better disease control. The increase in the test age will not have a fiscal impact on the producer. This rule was reviewed by the Agriculture Advisory Board on 05/01/2012.

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

AGRICULTURE AND FOOD  
ANIMAL INDUSTRY

350 N REDWOOD RD

SALT LAKE CITY, UT 84116-3034

or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Bruce King by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at [bking@utah.gov](mailto:bking@utah.gov)
- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at [kmathews@utah.gov](mailto:kmathews@utah.gov)
- ◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at [kylestephens@utah.gov](mailto:kylestephens@utah.gov)
- ◆ Wyatt Frampton by phone at 801-538-7165, by FAX at 801-538-7169, or by Internet E-mail at [wframpton@utah.gov](mailto:wframpton@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Leonard Blackham, Commissioner

**R58. Agriculture and Food, Animal Industry.**

**R58-21. Trichomoniasis.**

**R58-21-1. Authority.**

(1) Promulgated under authority of Section 4-31-109[2].

(2) It is the intent of this rule to eliminate or reduce the spread of bovine trichomoniasis in Utah.

**R58-21-2. Definitions.**

(1)[A-] "Acceptable media" [-] means a[A]ny Department approved media in which samples may be transferred and[-] transported[-, and cultured].

(2)[B-] "Approved slaughter facility" [-]means a[A] slaughter establishment that is either under state or federal inspection.

(3) "Approved test" means a test approved by the state of origination to diagnose trichomoniasis in bulls. If the state of origination has no approved test for the diagnosis of trichomoniasis it shall mean one sample tested by a method approved by the Department.

(4)[C-] "Brand" [-] means a[A] minimum of a 2 X 3 hot iron single character lazy V applied to the left of the tailhead of a bull, signifying that the bull is infected with the venereal disease, t[F]richomoniasis.

(5)[D-] "Certified veterinarian" [-] means a[A] veterinarian who has been certified by the Utah Department of Agriculture and Food to collect samples for trichomoniasis testing.

(6)[E-] "Commuter bulls" [-] means b[B]ulls traveling across state lines for grazing purposes while utilizing a Commuter Permit Agreement approved by both the respective State Veterinarians or bulls traveling on a Certificate of Veterinary Inspection where there is no change of ownership.

(7)[F-] "Confinement" [-] means b[B]ulls held in such manner that escape is improbable. Typical barbed wire or net pasture fencing does not constitute confinement.

(8)[G-] "Department" [-] means t[F]he Utah Department of Agriculture and Food.

(9)[H-] "Exposed to female cattle" [-] means bulls with f[F]reedom from restraint such that breeding is a possible activity.

(10)[I-] "Feeder Bulls" [-] means b[B]ulls not exposed to female cattle and kept in confinement for the purpose of feeding and only go to slaughter.

(11)[J-] "Negative bull" [-] means a[A] bull that has been tested with official test procedures and found free from infection by Tritrichomonas foetus.

(12)[K-] "Official tag" [-] means a[A] tag authorized by the Department that is placed in the right ear of a bull by a certified veterinarian after being tested for trichomoniasis. The color of the official tag shall be changed yearly.

(13)[M-] "Official test" [-] means a[A] test currently approved by the Department for detection of Tritrichomonas foetus. [~~The culture test and the Polymerase Chain Reaction (PCR) test are the currently approved test methods.~~]

(14)[N-] "Positive bull" [-] means a[A] bull that has been tested with official test procedures and found to be infected by Tritrichomonas foetus.

(15)[O-] "Positive herd" [-] means a[A]ny herd or group of cattle owned by one or more persons which shares common grazing or feeding operations and in which one or more animals has been diagnosed with trichomoniasis within the last 12 months.

(16)[P-] "Qualified feedlot" [-] means a[A] feedlot approved by the Utah Department of Agriculture and Food to handle heifers, cows, or bulls. These animals shall be confined to a dry lot area which is used to upgrade or finish feeding animals going only to slaughter.

(17)[Q-] "Test chart" [-] means a[A] document which certifies that a bull has been subjected to an official test for trichomoniasis and indicates the results of the test.

(18)[R-] "Trichomoniasis" [-] means a[A] venereal disease of bovidea caused by the organism Tritrichomonas foetus.

### **R58-21-3. Trichomoniasis - Sampling and Testing Procedures.**

(1)[A-] Sample collection - Samples are obtained from a vigorous scraping of the bull's prepuce using a sterile syringe and new pipette on each bull.

(2)[B-] Sample handling - Samples shall be transferred and transported in approved media. Media should be maintained at 65 to 90 degrees Fahrenheit (18 to 32 degrees Celsius) during sampling and transport to clinic. Samples shall be set up for

incubation[~~culture testing~~] within 24 hours of sampling. Samples shall also be protected from direct sunlight.

[~~-----C. Culture testing -- The inoculated media shall be incubated at 98 degrees Fahrenheit (37 degrees Celsius) and monitored for growth at 24 hour intervals for 96 hours.~~]

(3)[D-] Polymerase Chain Reaction (PCR) testing - The inoculated media shall be incubated at 98 degrees Fahrenheit (37 degrees Celsius) for 24 hours and then frozen. Samples may remain frozen for up to 3 weeks. The frozen sample(s) shall be sent overnight on postal approved frozen packs to the Utah Veterinary Diagnostic Laboratory (950 East 1400 North, Logan, Utah 84341) or an other approved laboratory for PCR testing.

[~~-----E. Test interpretation -- A sample is considered test negative if one (1) PCR test or one (1) culture test is negative for the presence of Tritrichomonas foetus.~~]

### **R58-21-4. Trichomoniasis - Rules - Prevention and Control.**

(1)[A-] All bulls twelve[nine] months of age and older, entering Utah, must be tested with [one (1) Polymerase Chain Reaction (PCR) test or three (3) culture tests, collected no less than seven days apart, an approved test for t[F]richomoniasis by an accredited veterinarian prior to entry into Utah. Bulls that have had contact with female cattle subsequent to testing must be retested prior to entry.

(2)[B-] The following bulls are exempted from (A) above:

(a)[1-] Bulls going directly to slaughter or to a qualified feedlot,

(b)[2-] Bulls kept in confinement operations,

(c)[3-] Rodeo bulls for the purpose of exhibition, and

(d)[4-] Bulls attending livestock shows for the purpose of exhibition, only to be returned to the state of origin immediately after the event.

(3)[C-] Rodeo and exhibition bulls with access to grazing, or exposed to female cattle, or being offered for sale are required to be tested prior to entry.

(4)[D-] All bulls twelve[nine] months of age and older residing in Utah, and all commuter bulls must be tested with an official test for trichomoniasis annually, between October 1 and April 30 of the following year, or prior to exposure to female cattle according to approved sampling and testing procedures. All bulls must be classified as a negative bull prior to exposure to female cattle or offered for sale.

(5)[E-] Testing shall be performed by a certified veterinarian.

(a)[1-] All test results shall be recorded on test charts provided by the Department or electronic forms created by the certified veterinarian.

(i)[a-] Electronic forms shall have the following information:

(A)[i-] Veterinarian's name and contact information

(B)[ii-] Owner's name and contact information

(C)[iii-] Bull's t[F]richomoniasis tag number, age, breed

(D)[iv-] Date of collection

(E)[v-] Test results

(b)[2-] A copy of all test charts shall be submitted to the Department within ten (10) days of collecting the sample.

[~~-----F. All bulls from positive herds are required to have three negative culture tests, no less than one week apart, or one negative~~

~~Polymerase Chain Reaction (PCR) test prior to exposure to female cattle. Exceptions include bulls going to slaughter or to a qualified feedlot, bulls in confinement operations, and feeder bulls.~~

~~]~~ (6)[G-] All bulls ~~twelve[nine]~~ months of age and older being offered for sale for reproductive purposes in the state of Utah must be tested for ~~t[F]~~richomoniasis with an official test prior to sale. Bulls that have had contact with female cattle subsequent to testing must be re-tested prior to sale or transfer of ownership.

(7)[H-] It shall be the responsibility of the owner or his agent to declare, on the auction drive-in slip, the ~~t[F]~~richomoniasis status of a bull being offered for sale at a livestock auction.

(a)[I-] Untested bulls (i.e. bulls without a current ~~t[F]~~richomoniasis test tag), including dairy bulls, must be sold for slaughter only, for direct movement to a ~~q[Q]~~qualified ~~f[F]~~eedlot, or ~~c[C]~~onfinement ~~o[O]~~peration, unless untested bulls are tested prior to exposure to female cattle.

(8)[F-] Any bull ~~[over nine months of age]~~ which has strayed and commingles with female cattle may be required to be tested (or re-tested) for trichomoniasis. The owner of the offending bull shall bear all costs for the official test.

(9)[J-] All Utah bulls, which are tested, shall be tagged in the right ear with an official tag by the certified veterinarian performing the test.

(10)[K-] Bulls entering the State of Utah under the provisions of this rule may be tagged upon arrival by a certified veterinarian upon receipt of the ~~t[F]~~richomoniasis test charts from the testing veterinarian.

(11)[E-] Bulls which bear a current ~~t[F]~~richomoniasis test tag from another state which has an official ~~t[F]~~richomoniasis testing program will be acceptable to the State of Utah providing that they meet all ~~t[F]~~richomoniasis testing requirements as described above.

#### **R58-21-5. Trichomoniasis - Rules - Positive Bull.**

(1)[A-] A bull is considered positive if:

~~1. Trichomonas organisms are identified when cultured by the examining veterinarian or a laboratory, or~~

~~2. A]a laboratory identifies Tritrichomonas foetus using an official [Polymerase Chain Reaction (PCR)]test.~~

~~B. An owner may have the option to request submission of the positive culture sample to an approved reference laboratory for confirmation by Polymerase Chain Reaction (PCR) test.~~

~~1. The sample from said bull must be shipped to the laboratory using the protocol described in R58-21-3.~~

~~2. A sample determined by Polymerase Chain Reaction (PCR) not to be Tritrichomonas foetus will be considered negative and the bull can be used for breeding purposes.~~

~~3. A sample found to be inconclusive will result in the need for the bull to be sampled and tested a second time.~~

~~]~~ (2)[C-] All bulls testing positive for ~~t[F]~~richomoniasis must be reported within 48 hours~~[immediately]~~ to: 1) the owner, and 2) the State Veterinarian, by the certified veterinarian performing the test.

(4)[D-] The owner shall be required to notify the administrators of the common grazing allotment and any neighboring (contiguous) cattlemen within ten days following such notification by the certified veterinarian.

(5)[E-] All bulls which test positive for ~~t[F]~~richomoniasis must be sent by direct movement within 14 days, to:

(a)[I-] Slaughter at an approved slaughter facility, or

(b)[2-] To a ~~q[Q]~~qualified ~~f[F]~~eedlot for finish feeding and slaughter, or

(c)[3-] To an approved auction market for sale to one of the above facilities.

(d) An exemption to the 14 day requirement will be given by the State Veterinarian to owners of bulls that are required to be in a drug withdrawal period prior to slaughter.

(6)[F-] Such bulls must move only when accompanied by a VS 1-27 Form issued by the testing veterinarian or other regulatory official.

(7)[G-] Positive bulls entering a ~~q[Q]~~qualified ~~f[F]~~eedlot, or ~~a[A]~~pproved ~~a[A]~~uction ~~m[M]~~arket shall be identified with a lazy V brand on the left side of the tailhead by either the livestock inspector or the contract veterinarian, indicating that the bull is infected with ~~t[F]~~richomoniasis.

(8) All bulls from positive herds are required to have one additional individual negative Polymerase Chain Reaction (PCR) test prior to exposure to female cattle, unless they are being sent to slaughter, to a qualified feedlot, or being feed for slaughter in a confinement operation.

#### **R58-21-6. Trichomoniasis - Rules - Non-compliance.**

(1)[A-] Any person who fails to satisfy the requirements of this rule or who knowingly sells animals infected with ~~t[F]~~richomoniasis, other than to slaughter, without declaring their disease status shall be subject to citation and fines as prescribed by the department or may be called to appear before an administrative proceeding by the department.

(2)[B-] After April 30, owners of untested bulls may be fined \$200.00 per head.

(3)[C-] Owners of untested bulls that have been exposed to female cattle may be fined up to \$1,000.00 per head regardless of the time of year.

**KEY: disease control, trichomoniasis, bulls, cattle**

**Date of Enactment or Last Substantive Amendment: [October 12, 2010]2012**

**Notice of Continuation: January 27, 2010**

**Authorizing, and Implemented or Interpreted Law: 4-31-21**

## Agriculture and Food, Regulatory Services **R70-520** Standard of Identity and Labeling Requirements for Honey

### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 36147

FILED: 05/03/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this new rule is to implement raw honey definition and labeling provisions made into law by the 2011 General Session of the Legislature under H.B. 148. The rule also replaces Rule R68-21, Standard of Identity for Honey. (DAR NOTE: The proposed repeal of Rule R68-21 was published in the January 15, 2012, issue of the Bulletin and was effective 03/07/2012.)

**SUMMARY OF THE RULE OR CHANGE:** This rule defines raw honey, provides criteria for labeling raw honey, requires non-floral honey to be labeled non-floral, and provides a standard of identity for honey.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 4-5-16 and Section 4-5-20 and Subsection 4-2-2(1)(g) and Subsection 4-5-15(1) and Subsection 4-5-6(1)(b) and Subsection 4-5-8(5)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The Legislature allocated \$8,000 for the enforcement of the new law. Thus, any enforcement has, to this degree, been covered in the UDAF budget.
- ◆ **LOCAL GOVERNMENTS:** The rule places no responsibilities on local government. There should be no cost or savings to them.
- ◆ **SMALL BUSINESSES:** Honey producers will be the only impacted group. The Department's research indicates that Utah honey producers already follow these requirements. Honey producers from other states and nations may incur costs. This was not able to be determined.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed rule only applies to producers of honey. No other persons will be impacted.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There could be compliance costs for honey producers not in Utah. In our discussions with the industry thus far, no costs have been identified.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule is required by legislative amendments to the Utah Wholesome Food Act. The Department has not identified any costs to Utah producers. A public hearing was held on 02/13/2012. This rule was reviewed and approved by the Agriculture Advisory Board on 05/01/2012.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 AGRICULTURE AND FOOD  
 REGULATORY SERVICES  
 350 N REDWOOD RD  
 SALT LAKE CITY, UT 84116-3034

or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at kmathews@utah.gov
- ◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at kylestephens@utah.gov
- ◆ Richard Clark by phone at 801-538-7150, by FAX at 801-538-7126, or by Internet E-mail at richardwclark@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012**

**AUTHORIZED BY: Leonard Blackham, Commissioner**

**R70. Agriculture and Food, Regulatory Services.**

**R70-520. Standard of Identity and Labeling Requirements for Honey.**

**R70-520-1. Purpose.**

The purpose of this rule is to establish a standard of identity and labeling requirements for honey that is produced, packed, repacked, distributed and sold in Utah. Codification of this standard is meant to reduce economic fraud by controlling the pervasive, illegal practices of blending or diluting pure honey with low-cost syrups such as sugar, cane and corn, and representing highly processed honey as raw honey.

**R70-520-2. Authority.**

This rule is promulgated under the authority of Subsections 4-2-2(1)(g), 4-5-8(5), 4-5-6(1)(b), 4-5-15(1) and Sections 4-5-16 and 4-5-20 of the UCA.

**R70-520-3. Definitions.**

(1) "Honey" means the natural sweet substance produced by honeybees from nectar of plants or from secretions of living parts of plants which the bees collect, transform by combining with specific substances of their own, then deposit, dehydrate, store, and leave in the honeycomb to ripen and mature.

(2) "Blossom Honey" or "Nectar Honey" means honey that comes from the nectar of plants.

(3) "Comb" or "Comb honey" means honey stored by bees in the cells of freshly built broodless combs and sold in sealed whole combs or sections of such combs.

(4) "Raw honey" means honey:

(a) as it exists in the beehive or as obtained by extraction, settling, or straining;

(b) that is minimally processed; and

(c) that is not pasteurized.

(5) "Straining" means the process of removing particulate matter from honey by passing it through a metal or fabric screen or cloth with mesh large enough to pass pollen grains, enzymes and minerals.

**R70-520-4. Standard of Identification for Honey.**

- (1) Honey shall meet the following standards:
- (a) honey may not be heated or processed to such an extent that its essential composition is changed or its quality is impaired;
- (b) chemical or biochemical treatments may not be used to influence honey crystallizations;
- (c) honey may not contain more than 20 percent moisture content and for heather honey not more than 23 percent;
- (d) honey may be not less than 60 percent fructose and glucose, combined; the ratio of fructose to glucose shall not be greater than 0.9;
- (e) honey may not contain oligosaccharides indicative of invert syrup;
- (f) honey, except for honeycomb and cut comb style honey, may not contain more than 0.5g/1000g water insoluble solids.

**R70-520-5. Standard of Identification for Blossom Honey.**

- (1) Blossom honey shall meet the standards for honey in R70-520-4:
- (2) Blossom honey shall not contain more than 5 percent sucrose, except for the following:
- (a) alfalfa (*Medicago sativa*), citrus spp, false acacia (*Robinia pseudoacacia*), French Honeysuckle (*Hedysarum*), Menzies banksias (*Banksia menziesii*), red gum (*Eucalyptus camaldulensis*), leatherwood (*Eucalyptus lucida*), and *Eucryphia milligani* may contain up to 10 percent sucrose.
- (b) lavender (*Lavandula* spp) and borage (*Borago officinalis*) may contain up to 15 percent sucrose.

**R70-520-6. Food Labeled as Honey or Raw Honey.**

- (1) Food meeting the standards set forth in R70-520-4 and R70-520-5 may be designated "honey".
- (a) The food may be labeled as "raw honey" if it additionally meets R70-520-3(4).
- (2) Food containing honey plus flavoring, spice or food additive shall be distinguished in the food name from honey by declaration of all of the added ingredients.
- (3) Food containing honey may be designated according to floral or plant source if the honey comes predominately from that particular source and has the organoleptic, physicochemical and microscopic properties corresponding with that origin.
- (a) Food designated according to the honey's floral source shall have the common name or the botanical name of the floral source in close proximity on the label to the word "honey".
- (4) Honey may be designated according to the following styles:
- (a) honey in liquid or crystalline state or a mixture of the two may be designated as "liquid" or "crystalline";
- (b) honey meeting the definition of "comb" or "comb honey"; or
- (c) honey containing one or more pieces of comb honey may be designated as "honey with comb" or "chunk honey".
- (5) Labels shall meet the requirements of Chapter 4-5-15 UCU.

**R70-520-7. Misbranded Food.**

Food labeled as a honey or raw honey, but not meeting the standard of identification or a labeling requirement in Sections four through six of this rule shall be deemed to be misbranded.

**R70-520-8. False Food Advertisement.**

Food advertised as honey or raw honey shall be considered falsely advertised if it does not meet the standard of identification or a labeling requirement in Sections four through six of this rule.

**R70-520-9. Embargo and Destruction of Misbranded Food.**

When an authorized agent of the department finds or has cause to believe a honey product is misbranded, the agent may follow the tagging, embargo and destruction procedures found in Title 4-5-5 UCA.

**KEY: food safety, honey**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 4-2-2(1)(g); 4-5-8(5); 4-5-6(1)(b); 4-5-16; 4-5-15(1); 4-5-20**

Commerce, Occupational and  
Professional Licensing  
**R156-55a-602**  
Contractor License Bonds

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 36157  
FILED: 05/08/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division and the Construction Services Commission are proposing amendments to allow a lower license bond amount to be posted by contractors in certain classifications of licensure.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendments to this section allow contractors with the R100 classification to post a license bond as low as \$25,000 instead of the \$50,000 minimum in the existing rule. The proposed amendments also allow contractors with lower subclassifications to post a license bond as low as \$15,000 instead of the existing \$50,000 minimum license bond amount required. The proposed amendments also provide the amount of the license bond may be higher or lower than the amounts identified in particular circumstances.

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

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
- ◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed contractors and applicants for licensure as a contractor. As a result, the proposed amendments do not apply to local governments.
- ◆ **SMALL BUSINESSES:** The proposed amendments only apply to licensed contractors and applicants for licensure as a contractor. The proposed amendments will allow lower bond costs for a limited number of contractors who must post a license bond in order to qualify for licensure as a contractor. It is impossible for the Division to estimate the amount of savings that will result due to a wide range of circumstances with contractor applicants and licensees.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to licensed contractors and applicants for licensure as a contractor. The proposed amendments will allow lower bond costs for a limited number of contractors who must post a license bond in order to qualify for licensure as a contractor. It is impossible for the Division to estimate the amount of savings that will result due to a wide range of circumstances with contractor applicants and licensees.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendments only apply to licensed contractors and applicants for licensure as a contractor. The proposed amendments will allow lower bond costs for a limited number of contractors who must post a license bond in order to qualify for licensure as a contractor. It is impossible for the Division to estimate the amount of savings that will result due to a wide range of circumstances with contractor applicants and licensees.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No fiscal impact to businesses is anticipated from this rule filing. However, affected licensees may see a cost savings as a result of the change to license bond amount requirements.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012**

**INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:**

- ◆ 06/28/2012 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

**THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012**

**AUTHORIZED BY: Mark Steinagel, Director**

**R156. Commerce, Occupational and Professional Licensing.  
 R156-55a. Utah Construction Trades Licensing Act Rule.  
 R156-55a-602. Contractor License Bonds.**

(1) Pursuant to the provisions of Subsections 58-55-306(1)(b) and 58-55-306(4)(c) and except as provided in Subsection R156-55a-602(4), a contractor shall provide a license bond issued by a surety acceptable to the Division in the amount of \$50,000 for the E100 or B100 classification of licensure, \$25,000 for the R100 classification of licensure, or \$15,000 for other classifications or such higher amount as may be determined by the Division and the Commission as provided for in Subsection R156-55a-602(3). An acceptable surety is one that is listed in the Department of Treasury, Fiscal Service, Circular 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" at the date of the bond.

(2) The coverage of the license bond shall include losses that may occur as the result of the contractor's violation of the unprofessional or unlawful provisions contained in Title 58, Chapters 1 and 55 and rules R156-1 and R156-55a including the failure to maintain financial responsibility.

(3) The amount of the bond specified under Subsection R156-55a-602(1) may be increased by an amount determined by the Commission and Division when the financial history of the applicant, licensee or any owner indicates the [~~\$50,000~~]bond amount specified in R156-55a-602(1) is insufficient to reasonably cover risks to the public health, safety and welfare. The financial history of the applicant, licensee or any owner, as outlined in Section R156-55a-306 may be reviewed in determining the bond amount required.

(4) A contractor may provide a license bond issued by a surety acceptable to the Division in an amount less than [~~\$50,000~~]the bond amount specified in R156-55a-602(1) if:

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

(i) the financial history of the applicant, licensee or any owner indicates the [~~\$50,000~~]bond amount specified in R156-55a-602(1) is in excess of what is reasonably necessary to cover risks to the public health, safety and welfare;

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

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

(b) the Commission and Division approve the amount.

**KEY: contractors, occupational licensing, licensing**

**Date of Enactment or Last Substantive Amendment:**  
~~September 12, 2011~~ 2012

**Notice of Continuation: October 4, 2011**

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

## Commerce, Occupational and Professional Licensing **R156-60a** Social Worker Licensing Act Rule

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 36189  
FILED: 05/15/2012

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division and Social Worker Licensing Board are proposing these amendments to: 1) define the human growth and development and social welfare policy courses; 2) provide needed clarification of the social work practice methods course; 3) clarify acceptable master's degree types for licensure as a social service worker; 4) outline the process that a foreign born legal resident for whom English is a second language or an enrolled member of a federally recognized Native American tribe may request additional time on examinations under authority granted by H.B. 100 passed during the 2012 General Legislative Session; 5) clarify acceptable course providers or sponsors of continuing education courses; 6) replace incorporation of the 1999 revised version of the Code of Ethics of the National Association of Social Workers (NASW) with incorporation of the 2008 version; and 7) update incorrect references and renumber subsections.

**SUMMARY OF THE RULE OR CHANGE:** Updated various statute references throughout the rule. In Section R156-60a-102, the proposed amendment renumbers subsections throughout this section. In Subsection R156-60a-102(4), adds a definition of the human growth and development course required in Subsection 58-60-205 (4)(d)(iii)(A). The proposed definition provides needed clarification of subjects that the Board believes should be covered in an acceptable human growth and development course. In Subsection R156-60a-102(6), adds a definition of the social welfare policy course required in Subsection 58-60-205 (4)(d)(iii)(A). The proposed definition provides needed clarification of subjects that the Board believes should be covered in an

acceptable social welfare policy course. In Subsection R156-60a-102(7), the definition of the social work practice methods course is clarified to require that the course be at a program accredited by the Council for Social Work Education. In Section R156-60a-302a, the term "professional counseling" is replaced with "mental health counseling" due to H.B. 100's replacement of the title "professional counselor" with "clinical mental health counselor." In Section R156-60a-302b, the proposed amendment updates an incorrect reference and makes some grammatical changes. In Subsection R156-60a-302d(5), the proposed amendment outlines the process that a foreign born legal resident for whom English is a second language or an enrolled member of a federally recognized Native American tribe may request additional time on examinations under H.B. 100. In Section R156-60a-302e, the proposed amendment updates an incorrect reference. In Subsection R156-60a-304(2)(c), the proposed amendment clarifies acceptable course providers or sponsors of continuing education courses. The current language was confusing for some licensees. Under the proposed amendment, county and federal agencies will join state agencies as acceptable providers of continuing education. In Section R156-60a-308, the proposed amendment replaces an incorrect reference. In Subsection R156-60a-502(24), the proposed amendment replaces incorporation of the 1999 revised version of the Code of Ethics of the National Association of Social Workers (NASW) with the 2008 version. The 2008 version differs from the 1999 version in that the former includes inclusive terminology regarding gender expression and immigration status.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-60-201 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

#### MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates Code of Ethics of the National Association of Social Workers, published by National Association of Social Workers, 2008

#### ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$100 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. The proposed amendments to the definitions of courses required for the social service worker license are intended to clarify the social service worker (SSW) education requirement. These changes have a savings impact on the Division and Department of Commerce because they will likely result in a decrease in the number of requests for agency review filed by applicants for the SSW license. The proposed amendments also create a process by which a foreign born legal resident for whom English is a second language or an enrolled member of a federally recognized Native American tribe may request additional time on examinations. Because only a few individuals are expected to submit a request, this new process will have minimal cost impact on the Division's budget and work load.

♦ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed social workers and applicants for licensure in various social worker classifications. As a result, the proposed amendments do not apply to local governments. Some social work licensees work in local government; however, the proposed amendments would not directly affect local governments.

♦ **SMALL BUSINESSES:** The proposed amendments only apply to licensed social workers and applicants for licensure in various social worker classifications. As a result, the proposed amendments do not apply to small businesses. Some licensees may work in small businesses; however, the proposed amendments would not directly affect the business.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to licensed social workers and applicants for licensure in various social worker classifications. The amendments to the definitions of courses and degrees required for the social service worker license are intended reflect how the Division already interprets the social service worker education requirement as established in the statute. For this reason, these amendments will not cause applicants to experience any increased compliance costs.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendments only apply to licensed social workers and applicants for licensure in various social worker classifications. The amendments to the definitions of courses and degrees required for the social service worker license are intended reflect how the Division already interprets the social service worker education requirement as established in the statute. For this reason, these amendments will not cause applicants to experience any increased compliance costs.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule filing implements a new statutory change, updates references, and clarifies existing provisions. No fiscal impact to businesses is anticipated from these amendments.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Rich Oborn by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at roborn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 06/07/2012 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Mark Steinagel, Director

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

##### **R156-60a. Social Worker Licensing Act Rule.**

##### **R156-60a-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 60, as used in Title 58, Chapters 1 and 60, or this rule:

(1) "ASWB" means the Association of Social Work Boards.

(2) "CSW" means a licensed certified social worker.

(3) "Clinical social work concentration and practicum", "clinical concentration and practicum" "case work", "group work", or "family treatment course sequence with a clinical practicum", "clinical practicum" or "practicum", as used in Subsections 58-60-205(1)(g) and (2)(d)(ii), means a track of professional education which is specifically established to prepare an individual to practice or engage in mental health therapy.

(4) "Human growth and development", as used in Subsection 58-60-205(4)(d)(iii)(A)(II), means a course at an accredited college or university that includes an emphasis on human growth and development across the lifespan, from conception to death.

(5) "LCSW" means a licensed clinical social worker.

(6) "Social welfare policy", as used in Subsection 58-60-205(4)(d)(iii)(A)(I), means a course at an accredited college or university that includes emphasis on the following:

(a) local, state, and federal social policy and how it impacts individuals, families, and communities; and

(b) the diverse needs of social welfare recipients.

(~~5~~) "Social work practice methods", as used in Subsection 58-60-205(4)(d)(iii)(A)(III), means a course at a program accredited [~~college or university~~]by the Council for Social Work Education as defined in Subsection 58-60-202(5) that includes emphasis on the following:

(a) generalist social work practice at the individual, family, group, organization, and community levels;

(b) planned client change process and social work roles at various levels;

(c) application of key values and principles of the National Association of Social Workers (NASW) Code of Ethics and resolution of ethical dilemmas; and

(d) evaluation of programs and direct practice in the social work field.

(~~6~~) "SSW" means a licensed social service worker.

(~~7~~) "Supervised practice of mental health therapy by a clinical social worker", as used in Subsection 58-60-202(4)(a), means that the CSW is under the general supervision of an LCSW meeting the requirements of Sections R156-60a-302e and R156-60a-601.

**R156-60a-302a. Education Requirements for Licensure as an SSW.**

In accordance with Subsection 58-60-205(~~3~~4)(d)(ii), a master's degree qualifying an applicant for licensure as an SSW shall be in a field of social work, psychology, marriage and family therapy, or ~~professional~~ mental health counseling.

**R156-60a-302b. Experience Requirements for Licensure as an SSW.**

In accordance with Subsection 58-60-205(4)(d)(iii)(B), the 2,000 hours of supervised qualifying experience for licensure as an SSW shall be:

- (1) ~~be~~ performed as an employee of an agency providing social work services and activities;
- (2) ~~be~~ performed according to a written social work job description approved by the licensed mental health therapist supervisor; and
- (3) ~~be~~ completed over a duration of not less than one year.

**R156-60a-302d. Examination Requirements.**

(1) In accordance with Subsection 58-60-205(1)(h), the examination requirements for licensure as an LCSW include passing the Clinical Examination of the ASWB or the Clinical Social Workers Examination of the State of California.

(2) In accordance with Subsection 58-60-205(2)(e), the examination requirements for licensure as a CSW shall include passing the Masters, Advanced Generalist, or Clinical Examination of the ASWB.

(3) In accordance with Subsection 58-60-205(4)(e), the examination requirements for licensure as an SSW shall include passing the Bachelors Examination of the ASWB.

(4) Applicants for any ASWB exam must pass the exam within one year from date of the Division's approval for the applicant to take the exam. If the applicant does not pass the required exam within one year, the pending license application shall be denied.

(5) Applicants requesting additional time to complete any ASWB exam in accordance with Subsection 58-60-205(5) shall complete an ASWB application for special arrangements approved by the Division.

**R156-60a-302e. Requirements to Become an LCSW Supervisor.**

In accordance with Subsections ~~58-60-202(2)(e)~~, 58-60-202(3)(~~a~~e) and 58-60-205(1)(e) and (f), in order for an LCSW to supervise a CSW, the LCSW shall:

- (1) be currently licensed in good standing as an LCSW; and
- (2) have engaged in active practice as an LCSW, including mental health therapy, for a period of not less than two years prior to supervising a CSW.

**R156-60a-304. Continuing Education.**

(1) Required Hours. In accordance with Subsection 58-60-105(1) and Section 58-60-205.5, during each two year renewal cycle commencing on October 1 of each even numbered year:

(a) An LCSW shall be required to complete not fewer than 40 hours of continuing education. A minimum of three of the 40 hours shall be completed in ethics and/or law.

(b) An SSW shall be required to complete not fewer than 20 hours of continuing education of which a minimum of three contact hours shall be completed in ethics and/or law.

(c) The required number of hours of continuing education for an individual who first becomes licensed during the two year renewal cycle shall be decreased in a pro-rata amount.

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

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

(a) Time. Each hour of continuing education course credit shall consist of not fewer than 50 minutes of education. Licensees shall only receive credit for lecturing or instructing the same course up to two times. Licensees shall receive one hour of continuing education for every one hour of time spent lecturing or instructing a continuing education course;

(b) Course Content and Type. A course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the course;

(i) The content of the course shall be relevant to the practice of social work and shall be completed in the form of any of the following course types:

- (A) seminar;
- (B) lecture;
- (C) conference;
- (D) training session;
- (E) webinar;
- (F) internet course;
- (G) distance learning course;
- (H) specialty certification; or
- (I) lecturing or instructing of a continuing education

course;

(ii) The following limits apply to the number of hours recognized in the following course types during a two year license renewal cycle:

(A) a maximum of ten hours for lecturing or instructing of continuing education courses meeting these requirements; and

(B) a maximum of 15 hours for online, distance learning, or home study courses that include examination and issuance of a completion certificate;

(c) Course Provider or Sponsor. The course shall be approved by, conducted by, or under the sponsorship of one of the following:

- (i) a recognized accredited college or university;
- (ii) a community mental health agency or ~~entity providing~~ a public agency that provides mental health services ~~under the auspices of the State of Utah~~;
- (iii) a professional association or society involved in the practice of social work; or
- (iv) the Division of Occupational and Professional Licensing;

(d) Objectives. The learning objectives of the course shall be clearly stated in course material;

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

(f) Documentation. Each licensee shall maintain adequate documentation as proof of compliance with this Section, such as a certificate of completion, school transcript, course

description, or other course materials. The licensee shall retain this proof for a period of three years after the end of the renewal cycle for which the continuing education is due; and

(i) At a minimum, the documentation shall contain the following:

- (A) date of the course;
- (B) name of the course provider;
- (C) name of the instructor;
- (D) course title;
- (E) number of hours of continuing education credit; and
- (F) course objectives.

(3) Extra Hours of Continuing Education. If a licensee completes more than the required number of hours of continuing education during a two year renewal cycle specified in Subsection (1), up to ten hours of the excess over the required number may be carried over to the next two year renewal cycle. No education received prior to a license being granted may be carried forward to apply towards the continuing education required after the license is granted.

**R156-60a-308. Reinstatement of an LCSW License which has Expired Beyond Two Years.**

In accordance with Subsection 58-1-308(6) and Section R156-1-308[e]g, an applicant for reinstatement for licensure as an LCSW, whose license expired after two years following the expiration of that license, shall:

(1) upon request, meet with the Board to evaluate the applicant's ability to safely and competently practice clinical social work and mental health therapy;

(2) upon recommendation of the Board, establish a plan of supervision under an approved supervisor which may include up to 4,000 hours of clinical social work and mental health therapy training as a CSW before qualifying for reinstatement of the LCSW license;

(3) pass the Clinical Examination of the ASWB if it is determined by the Board that examination or reexamination is necessary to demonstrate the applicant's ability to safely and competently practice clinical social work and mental health therapy; and

(4) complete a minimum of 40 hours of continuing education in subjects determined by the Board as necessary to ensure the applicant's ability to safely and competently practice clinical social work and mental health therapy.

**R156-60a-502. Unprofessional Conduct.**

"Unprofessional conduct" includes:

(1) using the abbreviated title of LCSW unless licensed as an LCSW;

(2) using the abbreviated title of CSW unless licensed as a CSW;

(3) using the abbreviated title of SSW unless licensed as an SSW;

(4) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-60a-302c and R156-60a-601.

(5) engaging in the supervised practice of mental health therapy as a licensed CSW unless:

(a) the licensee has completed a clinical practicum as part of the Council on Social Work Education (CSWE) accredited master's degree program; and

(b) the scope of practice is otherwise within the licensee's competency, abilities and education;

(6) engaging in the supervised practice of mental health therapy when not in compliance with Section R156-60a-302c and Subsection R156-60a-601(7);

(7) engaging in or aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(8) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(9) failing to establish and maintain professional boundaries with a client or former client;

(10) engaging in dual or multiple relationships with a client or former client in which there is a risk of or potential harm to the client;

(11) engaging in sexual activities or sexual contact with a client with or without client consent;

(12) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services even when there is no risk of exploitation or potential harm to the client;

(13) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a personal relationship when there is a risk of exploitation or potential harm to the client;

(14) embracing, massaging, cuddling, caressing, or performing any other act of physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(15) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(16) failing to exercise professional discretion and impartial judgement required for the performance of professional activities, duties and functions;

(17) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(18) exploiting a client or former client for personal gain;

(19) exploiting a person who has a personal relationship with a client for personal gain;

(20) failing to maintain client records including records of assessment, treatment, progress notes and billing information for a period of not less than ten years from the documented termination of services to the client;

(21) failing to provide client records in a reasonable time upon written request of the client, or legal guardian;

(22) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client activities or records;

(23) failing to protect the confidences of other persons named or contained in the client records; and

(24) failing to abide by the provisions of the Code of Ethics of the National Association of Social Workers (NASW) as approved by the NASW 1996 Delegate Assembly and revised by the ~~[1999]~~2008 NASW Delegate Assembly, which is adopted and incorporated by reference.

**KEY: licensing, social workers**

**Date of Enactment or Last Substantive Amendment:** ~~[February 10, 2011]~~2012

**Notice of Continuation:** August 31, 2009

**Authorizing, and Implemented or Interpreted Law:** 58-60-201; 58-1-106(1)(a); 58-1-202(1)(a)

**Commerce, Occupational and  
Professional Licensing  
R156-69-302d  
Licensing of Dentist-Educators**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36181

FILED: 05/14/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division and Dental and Dental Hygienist Licensing Board are recommending this proposed amendment to assist in the implement of S.B. 202 which was passed during the 2012 Legislative Session. S.B. 202 amended Title 58, Chapter 69, to allow for licensure of dentist-educators.

**SUMMARY OF THE RULE OR CHANGE:** A new Section R156-69-302d is being added to clarify that submission of information maintained in a practitioner data bank as required in Subsection 58-69-302.5(2)(a)(i) means submission to the National Practitioner Data Bank (NPDB).

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

**ANTICIPATED COST OR SAVINGS TO:**

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

◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to applicants for licensure as a dentist-educator. As a result, the proposed amendments do not apply to local governments.

◆ **SMALL BUSINESSES:** The Legislature passed S.B. 202 during the 2012 General Session which permits licensure of dentist-educators. For those applicants who apply for the newly created dental-educator license, their submission to the

NPDB will cost \$16. The number of applicants for licensure as a dentist-educator is unknown, but the Division expects it to be a small number, probably less than ten applicants.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Legislature passed S.B. 202 during the 2012 General Session which permits licensure of dentist-educators. For those applicants who apply for the newly created dental-educator license, their submission to the NPDB will cost \$16. The number of applicants for licensure as a dentist-educator is unknown, but the Division expects it to be a small number, probably less than ten applicants.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The Legislature passed S.B. 202 during the 2012 General Session which permits licensure of dentist-educators. For those applicants who apply for the newly created dental-educator license, their submission to the NPDB will cost \$16. The number of applicants for licensure as a dentist-educator is unknown, but the Division expects it to be a small number, probably less than ten applicants.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This filing implements a recent statutory change by defining the practitioner data bank where applicants for dentist-educator licenses must submit their information. No fiscal impact to businesses is anticipated beyond those addressed by the 2012 Legislative Session.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Noel Taxin by phone at 801-530-6621, by FAX at 801-530-6511, or by Internet E-mail at [ntaxin@utah.gov](mailto:ntaxin@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012**

**AUTHORIZED BY:** Mark Steinagel, Director

**R156. Commerce, Occupational and Professional Licensing.  
R156-69. Dentist and Dental Hygienist Practice Act Rule.  
R156-69-302d. Licensing of Dentist-Educators.**

In accordance with Subsection 58-69-302.5(2)(a)(i), submission of information maintained in a practitioner data bank means submission to the National Practitioner Data Bank (NPDB).

**KEY:** licensing, dentists, dental hygienists

**Date of Enactment or Last Substantive Amendment:** ~~February 7, 2011~~ 2012

**Notice of Continuation:** March 10, 2011

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

## Commerce, Occupational and Professional Licensing R156-75

### Genetic Counselors Licensing Act Rule

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36183

FILED: 05/14/2012

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division and Genetic Counselor Licensing Board are proposing these amendments to: 1) amend the amount of time that individuals may hold a temporary license; 2) define unprofessional conduct as violating any provision of a code of ethics accepted by the genetic counselor profession; and 3) make grammatical changes and renumber subsections.

**SUMMARY OF THE RULE OR CHANGE:** In Section R156-75-102, the proposed amendment adds a definition of "unprofessional conduct". In Section R156-75-302b, the amendments made with respect to temporary licenses that can be issued to genetic counselor applicants. Temporary licenses are currently issued for 15 months but are also required to expire 30 days after the licensee fails the next available exam; however, the applicant rarely notifies the Division after failing an exam. As a result, an applicant who failed the exam often holds the active temporary license for several months after the temporary license should have expired. The proposed amendments set the expiration date as December 31 immediately following the date of the next available American Board of Genetic Counseling (ABGC) certification exam date. This way the temporary license will always expire soon after the exam results are reported to the applicant. Under the proposed amendments, the Division will no longer need to rely on the applicant to report whether they passed the ABGC exam or not. In Section R156-75-502, the proposed amendment adds and defines unprofessional conduct as violating any provision of the Code of Ethics established by the National Society of Genetic Counselors (NSGC), revised January 2006, and incorporates the Code of Ethics by reference.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 58-1-106(1)(a) and Subsection 58-

1-202(1)(a) and Subsection 58-75-302(2) and Subsection 58-75-303(2)

#### MATERIALS INCORPORATED BY REFERENCES:

- ◆ Adds National Society of Genetic Counselors Code of Ethics, published by National Society of Genetic Counselors, 01/01/2006

#### ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$100 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
- ◆ **LOCAL GOVERNMENTS:** The proposed amendments only apply to licensed genetic counselors and applicants for licensure in that classification. As a result, the proposed amendments do not apply to local governments.
- ◆ **SMALL BUSINESSES:** The proposed amendments only apply to licensed genetic counselors and applicants for licensure in that classification. Small businesses that employ temporary genetic counselors may be impacted due to the automatic expiration of temporary licenses on December 31 after the next available ABGC certification exam date; however, the extent of any cost impact is insignificant.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only apply to licensed genetic counselors and applicants for licensure in that classification. Some temporary genetic counselors may experience some cost impact due to the automatic expiration of temporary licenses on December 31 after the next available ABGC certification exam date. If a temporary licensee wants to continue to practice after their first temporary license expires, the applicant must pay a \$50 application fee to obtain a second temporary license. The Division is not able to determine an aggregate amount because it is unable to determine how many applicants will be impacted by this change.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendments only apply to licensed genetic counselors and applicants for licensure in that classification. Some temporary genetic counselors may experience some cost impact due to the automatic expiration of temporary licenses on December 31 after the next available ABGC certification exam date. If a temporary licensee wants to continue to practice after their first temporary license expires, the applicant must pay a \$50 application fee to obtain a second temporary license. The Division is unable to determine how many applicants will be impacted by this change.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This filing's amendment of the temporary license provision and addition of a definition of unprofessional conduct to include violations of the professional code of ethics appear to be clarifying in nature. No fiscal impact to businesses is anticipated from these amendments.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Rich Oborn by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at roborn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON  
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO  
LATER THAN AT 5:00 PM ON 07/02/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC  
HEARING REGARDING THIS RULE:

♦ 06/06/2012 09:00 AM, Heber Wells Bldg, 160 E 300 S,  
Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Mark Steinagel, Director

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

**R156-75. Genetic Counselors Licensing Act Rule.**

**R156-75-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 75, as defined or used in this rule:

(1) "Active candidate status", as used in Subsection R156-75-302b(1), describes an individual who has been approved by the American Board of Genetic Counseling (ABGC) to sit for the certification exam in genetic counseling.

(2) "General supervision", as used in Subsection R156-75-302b(2), means the supervisor has the overall responsibility to assess the work of the supervisee including at least twice monthly face to face meetings with chart review and weekly case review. An annual supervision contract signed by the supervisor and supervisee must be on file with both parties.

(3) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 40, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-75-502.

(4) "Qualified continuing education", as used in this rule, means continuing education that meets the standards set forth in Section R156-75-304.

**R156-75-302b. Qualifications for Licensure - Temporary License.**

In accordance with Subsection 58-75-302(2), the requirements for temporary licensure are established as follows:

(1) An applicant shall meet all the qualifications for licensure as established in Subsection 58-75-302(1) with the exception of Subsection 58-75-302(1)(e), and have active candidate status conferred by the ABGC.

(2) An individual practicing under the authority of a temporary license must practice under the general supervision of a licensed genetic counselor or a licensed physician certified in clinical genetics by the American Board of Medical Genetics.

(3) [~~Before May 1, 2010, a temporary license may be issued for a period of up to 42 months. In accordance with Subsection 58-1-303(1)(a), the applicant must take the next available examination. If the applicant fails the first sitting of the ABGC certification exam, the applicant may reapply for a second temporary license.~~

(4) [~~Beginning May 1, 2010~~]In accordance with Subsection 58-1-303(1)(a), a temporary license shall expire on December 31 immediately following the next available ABGC certification exam date[~~may be issued for a period of up to 15 months. In accordance with Subsection 58-1-303(1)(a), the applicant must take the next available examination~~]. If the applicant fails the first sitting of the ABGC certification exam, the applicant may reapply for a second temporary license.

([5]4) A temporary license [will]shall not be issued if the applicant has failed the ABGC certification examination more than once.[

(6) A temporary license shall expire upon the earliest of one of the following:

- (a) issuance of full licensure;
- (b) 30 days after failing the certification exam; or
- (c) the date printed on the temporary license.]

**R156-75-502. Unprofessional Conduct.**

"Unprofessional conduct" includes violating any provision of the Code of Ethics established by the National Society of Genetic Counselors (NSGC), revised January 2006, which is hereby adopted and incorporated by reference.

**KEY: licensing, occupational licensing, genetic counselors**

**Date of Enactment or Last Substantive Amendment: [~~October 22, 2009~~]2012**

**Notice of Continuation: October 20, 2011**

**Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-75-302(2); 58-75-303(2)**

Education, Administration  
**R277-407-3**  
Classes and Activities During the  
Regular School Day

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36199

FILED: 05/15/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to incorporate amendments to Section 53A-12-102 under H.B. 62, Provisions Regarding School Supplies, 2012 Legislative General Session.

**SUMMARY OF THE RULE OR CHANGE:** The new language provides that an elementary school or elementary school teacher may provide a suggested list of supplies (using express language in the law) for use during the regular school day to a student's parent or guardian.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 53A-12-102(1)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. The new language provides procedures for elementary school teachers to follow when requesting classroom supplies from parents or guardians.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government. The new language provides procedures for elementary school teachers to follow when requesting classroom supplies from parents or guardians.
- ◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses. The amendments to this rule apply to public education and do not affect businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. In the past, elementary school teachers may have requested classroom supplies from parents and guardians. The new language now requires that a teacher use express language in the law if making a request.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. Elementary school teachers must use the express language in the law if requesting classroom supplies from parents or guardians.

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

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012**

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

**R277. Education, Administration.**

**R277-407. School Fees.**

**R277-407-3. Classes and Activities During the Regular School Day.**

A. No fee may be charged in kindergarten through sixth grades for materials, textbooks, supplies, or for any class or regular school day activity, including assemblies and field trips.

B. Textbook fees may only be charged in grades seven through twelve.

C. If a class is established or approved which requires payment of fees or purchase of materials, tickets to events, etc., in order for students to participate fully and to have the opportunity to acquire all skills and knowledge required for full credit and highest grades, the class shall be subject to the fee waiver provisions of R277-407-6.

D. Students of all grade levels may be required to provide materials for their optional projects, but a student may not be required to select an optional project as a condition for enrolling in or completing a course. Project-related courses must be based upon projects and experiences that are free to all students.

E. Schools shall provide school supplies for K-6 students. A student may, however, be required to replace supplies provided by the school which are lost, wasted, or damaged by the student through careless or irresponsible behavior.

F. An elementary school or teacher may provide to parents or guardians a suggested list of supplies. The suggested list shall contain the express language in Section 53A-12-102(2)(c).

[F]G. Secondary students may be required to provide their own student supplies, subject to the provisions of Section R277-407-6.

**KEY: education, school fees**

**Date of Enactment or Last Substantive Amendment:** ~~July 11, 2011~~ **2012**

**Notice of Continuation:** September 6, 2007

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53A-12-102; 53A-12-201; 53A-12-204; 53A-11-806(2); Doe v. Utah State Board of Education, Civil No. 920903376

**Education, Administration**

**R277-437-3**

**Local School Board and District Responsibilities**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36200

FILED: 05/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Section R277-437-3 is amended to emphasize adjusted open enrollment timelines required under H.B. 454, Open Enrollment Amendments, 2012 Legislative General Session.

**SUMMARY OF THE RULE OR CHANGE:** The new language provides for school districts to review and/or revise policies to provide for an extended early enrollment period if a school district is reconfiguring grades district-wide for its elementary, middle, junior, or senior high schools, and the grade reconfiguration will be implemented in the next school year.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53A-2-210 and Subsection 53A-1-402(1)(b)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. The new language applies to a school district requirement that allows greater flexibility.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government. School districts must adjust open enrollment timelines under certain circumstances which results in more flexibility, not a cost or savings.
- ◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses. This rule applies to public schools and does not affect businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, business, or local government entities. The new language in this rule applies to school districts.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance cost for affected persons. School districts must adjust open enrollment timelines under specific circumstances.

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

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012**

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

**R277. Education, Administration.****R277-437. Student Enrollment Options.****R277-437-3. Local School Board and District Responsibilities.**

A. Prior to September 30, 2008, a local board shall announce policies describing procedures for students to follow in applying to attend schools other than their respective schools of residence. Local school boards shall designate which schools and programs will be available for open enrollment during the coming school year consistent with the definitions and timelines of Section 53A-2-206.5 et seq.

B. The school district shall adjust timelines for open enrollment applications if the district is developing a district-wide reconfiguration of its schools consistent with Section 53A-2-206.5(1).

C. A school district may establish longer or broader timelines for enrollment than required by law.

[B]D. If construction, remodeling, or other circumstances beyond the control of the local board do not reasonably permit the local board to make sufficiently accurate enrollment projections for a given school to determine whether the school should be designated as available for open enrollment for the coming year, the local board shall designate delays and procedures consistent with Section 53A-2-207(4)(c).

[E]E. As required under Subsection 53A-2-210(2), a resident district shall pay to a nonresident district one-half of the resident district's residual per student expenditure for each resident student properly registered in the nonresident district.

[D]E. Each local board shall establish a procedure to consider appeals of any denial of initial or continued enrollment of a nonresident student under Subsection 53A-2-209(1).

[E]G. A local board of education may deny enrollment of nonresident students for reasons identified in R277-437-11.

[F]H. There shall be no presumption of eligibility for students to participate in activities governed by the Utah High School Activities Association (UHSAA) if students transfer under Section 53A-2-206.5.

**KEY: public education, enrollment options**

**Date of Enactment or Last Substantive Amendment:** [~~August 7, 2008~~]2012

**Notice of Continuation:** January 5, 2009

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53A-1-401(1)(b); 53A-2-210; 53A-2-206.5 et. seq.

**Education, Administration**  
**R277-491**  
**School Community Councils**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 36201  
 FILED: 05/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule was amended to reflect changes in the law from H.B. 128, School Community Council Revisions, 2012 Legislative General Session. The amendments also result from recommendations of the Legislative Audit, A Review of School Community Council Election Practices, released in January 2012.

**SUMMARY OF THE RULE OR CHANGE:** The amendments provide changes to school community council election procedures and membership.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 53A-1-401(3)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. The amendments to this rule apply to school community councils.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated costs or savings to local government. The changes to the rule provide clear direction regarding school community council election procedures and membership.
- ◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses. This rule applies to public education and does not affect businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. The amendments to this rule provide clear direction regarding school community council election procedures and membership.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. Schools/school districts and school community councils have clear guidance in this rule regarding school community council election procedures and membership.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 EDUCATION  
 ADMINISTRATION  
 250 E 500 S  
 SALT LAKE CITY, UT 84111-3272  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

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

**R277. Education, Administration.**  
**R277-491. School Community Councils.**  
**R277-491-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Candidate" means a parent or school employee who has filed for election to the school community council.
- C. "Contested race" means the election of members to a school community council when there are more candidates than open positions.
- D. "Days" means calendar days unless otherwise specifically designated.
- ~~E. "Develop school improvement plan and school trust program and other programs" means to participate actively in the creation of plans, including analysis of school assessment data, development of School LAND Trust budgets, and review of School LAND Trust expenditures under Section 53A-16-101.5(5)(a)(iv) and 53A-16-101.5(6)(b)(ii). This may include establishing subcommittees where needed or assigning work to individuals.~~
- E. "Educator" means a person who holds a current license and is employed by the school district where the person's child attends school.
- F. "Parent" means the parent or ~~legal~~ guardian of a student attending ~~[the non-charter]~~ a school district public school ~~[or of a student who will be enrolled at the school in the next school year].~~
- G. "Parent or guardian member":
  - (1) means a member of a school community council who is a parent or guardian of a student who is attending the school; will be enrolled at the school at any time during the parent's or guardian's initial term of office; or was enrolled at the school during the parent or guardian member's initial term of office;
  - (2) may not include an educator who ~~[was]~~is employed ~~[by]at the school[ -district in which the school is located unless the educator's employment does not exceed an average of six hours per~~

~~week. The parent/guardian member includes a parent/guardian who had or who will have a student attending the school during the parent or guardian's initial term of service].~~

H. "School administrator" means a school principal, school assistant principal or designee as specifically assigned by the school ~~administrator]~~district.

I. "School community" means the geographic area designated by the school district as the attendance area with reasonable inclusion of the parents or legal guardians of additional students who are attending the school.

J. "School community council" means the council ~~organized at each school district public school as established in Section 53A-1a-108 and R277-491. The council includes the principal or designee, school employee members and parent members. There shall be at least a two parent member majority.~~

~~[J]K.~~ "School employee member" means a member of a school community council who is a person employed at a school by the school or school district, including the principal.

~~[K]L.~~ "Secure ballot box" means a closed container prepared by the school for the deposit of secret ballots for the school community council elections.

~~[L]M.~~ "Student" means a child in public school grades kindergarten through twelve counted on the audited October 1 Fall Enrollment Report.

~~[M]N.~~ "Students attending the school" for purposes of this rule means students currently attending the school and those officially enrolled to attend the school in the next school year.

~~[N]O.~~ "USDB" means the Utah Schools for the Deaf and the Blind.

O. "USOE" means the Utah State Office of Education.

### **R277-491-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. Local boards of education for school districts and the State Charter School Board for state-sponsored charter schools are responsible for school community council operations, plans, oversight, and training.

C. The purpose of this rule is to:

(1) provide procedures and clarifying information to school community councils to assist them in fulfilling school community council responsibilities consistent with Section 53A-1a-108(3);

(2) provide direction to school districts and schools in establishing and maintaining school community councils whose primary focus is to develop, approve, and assist in implementing school improvement plans, and advise school/school district administrators consistent with Sections 53A-1a-108(3) and 53A-16-101.5;

(3) provide a framework and support for improved academic achievement of students that is locally driven from within individual schools, through critical review of testing results and other indicators of student success, by establishing meaningful, measurable goals and implementing research-based programs and processes to reach the goals;

(4) encourage increased participation of the parents, school employees and others that support the purposes of the school community councils; and

(5) encourage compliance with the law ~~[in the election of school community councils, in meeting reporting requirements, in complying with open and public meetings requirements].~~

### **R277-491-3. School Community Council Member Election Provisions.**

A. Notice of the school community council elections shall be provided at least ~~[2+]~~10 days prior to the elections. The notice shall include the dates and times of the election, the positions that are up for election and instructions about becoming a candidate.

B. Parents may stand for election as parent members of a school community council at a school consistent with the definition of parent member in R277-491-1G.

C. Parents may vote for the school community council parent members if their child(ren) are enrolled ~~[or will be attending the school in the next school year when elections are held in the spring, consistent with the intent to encourage the greatest participation possible of all available parents. If elections are held at the beginning of the school year, parents of students enrolled at the school may vote]at the school.~~

D. School community councils may establish procedures that allow for ballots to be clearly marked and mailed to the school in the case of geography or school distances that would otherwise discourage parent participation. Hand-delivered or mailed ballots shall meet the same timelines for voters voting in person.

E. Entire school districts or schools may allow parents to vote by electronic ballot. If school districts/schools allow voting by electronic means, the opportunity shall be clearly explained on the school district/school website including:

(1) directions for electronic voting;

(2) security provisions for electronic voting;

(3) statement to parents and community members that violations of a school district's/school's voting procedures may disqualify a parent's vote or invalidate a specific school election, or both[-];

(4) how a parent may vote by paper ballot, if preferred.

F. Ballots and voting are required only in the event of a school community council contested race. Ballots and the results of each election shall be maintained for three years.

G. School community councils are encouraged to establish clear and written:

(1) procedures that are consistent with state law, Board rules, and local board policies;

(2) procedures for the election of school community council chairs, co-chairs or vice chairs;

(3) timelines and procedures for school community council elections that may include receiving information from applicants in a timely manner; and

(4) additional clarification and procedures to assist in the efficient operation of school community councils consistent with the law.

H. Elections shall ~~begin~~ held no later than 30 days after the first day of school. Voting for parent/guardian members shall extend for at least three consecutive school days and be completed no later than 35 days after the first day of school.

~~\_\_\_\_\_ I. If an election is held in the spring, the council shall provide notice of the election defined in R277-491-3A to parents of incoming students and establish a process to ensure that parents who will no longer have children attending the school in the fall are not eligible to vote in the election.~~

~~\_\_\_\_\_ I. Following the election, if there are more parent members who are educators in the district than parents who are not educators in the district elected to the council, the parents on the council shall appoint additional parent members until the number of parent members who are not educators exceeds the number of parent educators in the district.~~

~~\_\_\_\_\_ J. Following the election, the principal shall enter and sign a Principal's Assurance Form that assures the school community council at the school was elected, and that vacancies were filled, as necessary, and that the school community council is properly constituted consistent with Section 53A-1a-108 and R277-477 and R277-491. The form shall be completed and uploaded to the School LAND Trust website.~~

~~[F]K. School community council members who were duly elected prior to [June 15, 2011]May 8, 2012 shall be allowed to complete the term for which they were elected. All school community council members shall satisfy requirements of Section 53A-1a-108 in subsequent terms.~~

**R277-491-4. School Community Council School/School Administrator Responsibilities.**

A. A school administrator may not serve as chair or co-chair of the school community council.

B. A school or school district administrator shall not prohibit or discourage a school community council from discussing any issue or concern not prohibited by law raised by any school community council member.

C. The school ~~[community council chair]~~principal shall provide the following information to the school community~~[-with assistance from the school administration]:~~

(1) Notice of dates~~[and]~~, times and location of school community council elections at least ~~[21]~~10 days before the elections are held~~[-]~~, including:

(~~[2]~~a) ~~[F]~~timely notice of school community council positions that are up for election;

(~~[3]~~b) ~~[F]~~instructions for applying to become a school community council member together with timelines for submitting information and applications~~[-]~~;

(~~[4]~~2) The school community council chair or designee shall ~~[P]~~post~~[ing]~~ the school community council meeting information (time, place and date of meeting; meeting agenda and previous meeting draft minutes) on the school's website at least one week prior to each meeting~~[-and on the access door(s) of the school on the day of the meeting].~~

D. The school community council chair, assisted by the school administrator, shall provide the following information on the school website and in at least one other direct delivery method ensuring that all parents are notified as provided in Section 53A-1a-108(~~(7)~~(a)):

~~\_\_\_\_\_ (1) Notice of the school community council meeting schedule, provided in the first 14 days of the school year;~~

~~\_\_\_\_\_ (1) Within the first six weeks of the school year, a list of the members of the school community council and each member's direct email or phone number, or both, and the school community council meeting schedule;~~

~~\_\_\_\_\_ (2) A summary of the school community council's actions and activities for the first half of the school year, provided mid-way through the school year;~~

~~\_\_\_\_\_ ([3]2) By November 15 of each year, [A]a summary of the annual~~[-expenditure]~~ report ~~[of all]~~required in Section 53A-16-108.5 about how the School LAND Trust Program funds were used to enhance or improve academic excellence at the school~~[provided to the school community and to the local board of education in the fall of the school year following the school year that the school plans were implemented; and~~~~

~~\_\_\_\_\_ (4) A list of the members of the school community council and each member's direct email and phone number, if available].~~

E. The school community council chair, assisted by the school administrator, shall act in compliance with ~~[the Utah Open and Public Meetings Act, Section 52-4-101 et seq.;~~]Section 53A-1a-108 including:

~~\_\_\_\_\_ (1) ensuring that council members receive annual training about the requirements of Sections 53A-1a-108, 53A-1a-108.1 and 53A-16-101.5;~~

~~\_\_\_\_\_ (1) posting upcoming agendas and meeting locations;~~

~~\_\_\_\_\_ (2) posting draft minutes of the most recent meeting on the school website at least one week prior to the next meeting;~~

~~\_\_\_\_\_ (3) posting the agenda and location of the upcoming meeting on the school's website at least one week prior to the meeting;~~

~~\_\_\_\_\_ (4) posting the agenda and location of the upcoming meeting on the school's access door on the day of the meeting;~~

~~\_\_\_\_\_ (5) providing timely written minutes of the meeting; and~~

~~\_\_\_\_\_ (6) recording the meeting, and other required or appropriate activities.~~

~~\_\_\_\_\_ (4) assuring that written minutes are kept consistent with Section 53A-1a-108.1(8);~~

~~\_\_\_\_\_ (5) assuring that written minutes are maintained, as approved, for three years as the official record of action taken at each meeting; and~~

~~\_\_\_\_\_ (6) adopting a set of rules of order and procedures that the council shall follow to conduct a meeting. The rules shall be followed in conducting meetings, be posted on the school website and available at each meeting, and other required or appropriate activities.~~

F. School community council responsibilities do not allow for closed meetings, consistent with ~~[the purposes of Section 52-4-205]~~Section 53A-1a-108.1.

~~\_\_\_\_\_ G. School community councils shall become familiar with and consider the following:~~

~~\_\_\_\_\_ (1) Satisfying the meeting recording process with sensitivity for parents and community members whose primary language is not English; and~~

~~\_\_\_\_\_ (2) The limitations of open and public meetings in secure or locked school settings and facilities.~~

~~\_\_\_\_\_ ]~~

**R277-491-5. Parent Rights and Responsibilities.**

A. Parents of students attending a school ~~and parents whose children will attend the school in the next school year (for spring community council elections)~~ shall receive notice of open school community council positions and of elections consistent with Section 53A-1a-108.

B. Parents of students attending a school shall have access to schedules, agendas, minutes and decisions consistent with Sections 53A-1a-108([7]4) and ([8]5).

C. School community council parent members shall participate fully in the development of various school plans described in Section 53A-1a-108(3) including, at a minimum:

- (1) School Improvement Plan;
- (2) School LAND Trust Plan;
- (3) Reading Achievement Plan (for elementary schools);
- (4) Professional Development Plan; and
- (5) Child Access Routing Plan.

D. Parents shall receive timely notice of school community council timelines and procedures that affect parent member elections, school community council meeting information and other parent rights or opportunities, consistent with state law, Board rules, and local board policy.

E. School websites shall fully communicate the opportunities provided to parents about serving on the school community council and how parents can directly influence the expenditure of the School LAND Trust funds. The website should include the dollar amount received each year through the program.

**R277-491-6. Additional School Community Council Information and Provisions.**

A. School community councils shall set the beginning terms for school community council members consistent with Section 53A-1a-108(5)(g).

B. Training for members of school community councils shall be provided under the direction of local boards of education, including providing applicable sections of the statutes and Board rules to council members.

C. School community councils shall report on plans, programs, and expenditures, including detailed descriptions of expenditures for professional development, at least annually to local boards of education and cooperate with the legislative and USOE monitoring, and audits.

D. School community councils may establish procedures and requirements for parent notification and election timelines that are not inconsistent with Sections 53A-1a-108, 53A-16-101.5, 52-4-101 et. seq., this rule, or local board policy.

E. Public schools that are secure facilities, juvenile detention facilities, hospital program schools, and other small special programs may receive all funds available to schools with school community councils if the schools demonstrate and document a good faith effort to recruit members, have meetings and publicize results as recognized and affirmed by local boards of education.

F. School community councils shall encourage greater participation on the school community council and may recruit potential applicants to apply for open positions on the council.

G. Local boards of education may ask school community councils to address local issues at the school community council level for discussion before bringing the issues to local boards of

education. School community councils may be asked for information to inform local board decisions.

H. Local boards of education shall provide copies of statutory information (Section 53A-1a-108, School community councils authorized -- Duties -- Composition -- Election procedures and selection of members; Section 53A-1a-108.1, School Community Councils - Open and public meeting requirements; Section 53A-1a-108.5, School improvement plan; Section 53A-16-101.5, School LAND Trust Program -- Purpose -- Distribution of funds -- School plans for use of funds) to school community council members.

I. Local boards of education, and the State Charter School Board for state-sponsored charter schools, shall report approval dates of required plans to the USOE. School community councils are encouraged to advise and inform elected local board members.

J. Local boards of education make decisions in governing school districts with superintendents and principals acting under the direction and in behalf of local board of education in all areas of governance, including implementing approved School Improvement and School LAND Trust Program plans.

**KEY: school community councils**

**Date of Enactment or Last Substantive Amendment:** ~~August 8, 2011~~ 2012

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

## Education, Administration R277-497-3 Board Responsibilities

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36202

FILED: 05/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The rule is amended to delay the implementation of the Grading Schools System until the 2012-2013 school year, as outlined in S.B. 175, School Grading Amendments, 2012 Legislative General Session.

**SUMMARY OF THE RULE OR CHANGE:** The amendments change implementation of the school grading system from 2011-2012 to 2012-2013.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53A-1-1113 and Subsection 53A-1-401(3)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. Delaying implementation of the Grading Schools System does not result in a cost or savings.

- ◆ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government. Delaying implementation of the Grading Schools System does not result in a cost or savings.
- ◆ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses. This rule applies to public education and does not affect businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. Delaying implementation of the Grading Schools System does not result in a cost or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Implementation of the Grading Schools System has been delayed one year.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
◆ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

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

**R277. Education, Administration.  
R277-497. School Grading System.  
R277-497-3. Board Responsibilities.**

- A. Beginning in the ~~[2011-2012]~~2012-2013 school year, the Board shall implement a school grading system. The school grading system shall include the following elements:
- (1) A report of school academic performance in language arts, writing, math, and science expressed in a grading system (A,B,C,D,F), for academic achievement including:
    - (a) student assessed proficiency, and
    - (b) student assessed growth.
  - (2) Academic achievement shall be based on:
    - (a) student performance on the Board-approved grade/subject level assessments, and

- (b) college and career readiness indicators, such as graduation rates.
- B. The Board shall use generally accepted standards of validity and reliability to determine the appropriate requirements for letter grades that combine to make up a school report through the school grading system.
- C. Beginning with the ~~[2011-2012]~~2012-2013 school year data, the Board shall:
  - (1) implement a school grading system that makes data and reports available to parents, educators and the public. The report shall include the elements described in R277-497-3A.
  - (2) School data and reports shall be available to parents, educators and the public through a public website that facilitates the comparison of public schools based on the school grading system and demographics.
- D. The Board-implemented school grading system shall include test scores for students with disabilities consistent with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401(3).
- E. After the ~~[2011-12]~~2012-2013 school year, the Board shall:
  - (1) seek and review evaluation information on the calculations and methodologies used to determine academic achievement reports and consider modifications to refine and improve the process and availability of the information.

**KEY: school reports, grading system**  
**Date of Enactment or Last Substantive Amendment: [~~April 10,~~ 2012**  
**Authorizing, and Implemented or Interpreted Law: Art X, Sec 3; 53A-1-1113; 53A-1-401(3)**

Education, Administration  
**R277-500**  
Educator Licensing Renewal,  
Timelines, and Required Fingerprint  
Background Checks (Effective  
Beginning July 1, 2012)

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR FILE NO.: 36203  
FILED: 05/15/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is amended in response to Utah State Board of Education Educator Evaluation Committee recommendations and Utah State Office of Education staff recommendations.

SUMMARY OF THE RULE OR CHANGE: The amendments add a new definition, change "professional development" to

"professional learning" throughout the rule, and provide clarification of timelines for educator license renewal.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-6-104 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There is no anticipated cost or savings to the state budget. The amendments provide changes in terminology and clarification to licensing renewal procedures which do not result in a cost or savings. The changes will make procedures more user-friendly.

◆ LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government. The amendments provide changes in terminology and clarification to licensing renewal procedures which do not result in a cost or savings.

◆ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses. This rule applies to public education employees and license-holders and does not affect businesses.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small business, businesses, or local government entities. The amendments provide changes in terminology and clarification to licensing renewal procedures which do not result in a cost or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The amendments provide changes in terminology and clarification to licensing renewal procedures which do not result in compliance costs.

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

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

EDUCATION  
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250 E 500 S  
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DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

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

**R277. Education, Administration.**

**R277-500. Educator Licensing Renewal, Timelines, and Required Fingerprint Background Checks| ~~(Effective Beginning July 1, 2012)~~.**

**R277-500-1. Definitions.**

A. "Acceptable alternative professional ~~[development]~~learning activities" means activities that may not fall within a specific category under R277-500-5 but are consistent with this rule.

B. "Accredited" means a teacher preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE) or the Teacher Education Accreditation Council (TEAC).

C. "Accredited school," for purposes of this rule, means a public or private school that has met standards considered to be essential for the operation of a quality school program and has received formal approval by the Northwest Accreditation Commission.

D. "Active educator," for purposes of this rule, means an individual holding a valid license issued by the Board who is employed by a Utah public LEA, accredited private school, or USOE, or who was employed by a Utah public LEA or accredited private school in a role covered by the license for at least three years in the individual's renewal period.

E. "Active educator license" means a license that is currently valid for employment in a position requiring an educator license.

F. "Board" means the Utah State Board of Education.

G. "College/university course" means a course taken through an institution approved under Section 53A-6-108.

H. "Course work successfully completed" for purposes of this rule means the student earns a grade C or better in approved university or university level course work or USOE professional ~~[development]~~learning credit.

I. "Documentation of professional ~~[development]~~learning activities" means:

(1) an original student transcript of university/college courses;

(2) a LEA or USOE-sponsored electronic record of professional ~~[development]~~learning activities;

(3) summary, explanation, or copy of the product of a professional ~~[development]~~learning activity signed by the educator's supervisor or a licensed administrator ;

(4) certificate of completion for an approved professional ~~[development]~~learning conference, workshop, institute, symposium, educational travel experience or staff development;

(5) an agenda or conference program demonstrating sessions and duration of professional ~~[development]~~learning activities.

J. "Educational research" means conducting research on education issues or investigating education innovations.

K. "Inactive educator" means an individual holding a valid license issued by the Board who is not currently employed by

a Utah public LEA or accredited private school ~~or~~and who was employed by a Utah public LEA or accredited private school in a role covered by the license for less than three years in the individual's renewal period.

L. "Inactive educator license" means a license issued by the Board, other than a suspended or revoked license, that is currently not valid due to the holder's failure to complete requirements for license renewal.

M. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or to an applicant that holds an educator license issued by another state or country that has also met all ancillary requirements established by law or rule.

N. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license and:

(1) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public LEA or accredited private school;

(2) at least three years of successful education experience in a Utah public LEA or accredited private school or one year of successful education experience in a Utah public LEA or accredited private school and at least three years of successful education experience in a public LEA or accredited private school outside of Utah;

(3) additional requirements established by law or rule.

O. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received National Board Certification or a doctorate in education or in a field related to a content area in a unit of the public education system or an accredited private school, or holds a Speech-Language Pathology area of concentration and has obtained American Speech-Language Hearing Association (ASHA) certification.

P. "License" means an authorization which permits the holder to serve in a professional capacity in a public LEA or accredited private school.

Q. "Licensed administrator" means an individual holding an active educator license that is valid for employment in a public school administrative position.

R. "License renewal points" means the points accumulated by a Utah license holder through activities approved under this rule for the purpose of satisfying requirements of Section 53A-6-104.

S. "National Board Certification" means the successful completion of the National Board for Professional Teaching Standards (NBPTS) process, a three-year process, that may include national content-area assessment, an extensive portfolio, and assessment of video-taped classroom teaching experience.

T. "Professional growth plan" means a plan created and reviewed annually by an active educator and the educator's direct supervisor that details the professional goals of the educator based on the Utah Effective Teaching and Educational Leadership Standards consistent with R277-520 and related to the educator's self-assessment and formal evaluation required under Section 53A-8a-301.

~~[F]~~U. "Professional ~~[development]~~learning" means engaging in activities that improve or enhance an educator's practice.

~~[H]~~V. "Professional ~~[growth]~~learning plan" means a document prepared by a Utah educator consistent with this rule.

~~[V]~~W. "University level course" means a course having the same academic rigor and requirements similar to a university/college course and taught by appropriately trained individuals. The final determination of a university level course is made by the USOE.

~~[Y]~~X. "UPPAC" means the Utah Professional Practices Advisory Commission under Section 53A-6-301 through 307.

~~[W]~~Y. "USOE" means the Utah State Office of Education.

~~[X]~~Z. "USOE professional ~~[development]~~learning credit" means courses, approved by the USOE under R277-519-3, in which educators may participate to renew a license, teach in another subject area, or teach at another grade level.

~~[Z]~~AA. "Verification of employment" means official documentation of employment as an educator listing the educator's assignment and years of service, signed by the supervising administrator.

#### **R277-500-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-6-104 which requires the Board to make rules requiring participation in professional ~~[development]~~learning activities in order for educators to retain Utah licensure, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions and requirements for an educator to renew a Utah educator license. This rule requires verification of employment, development of a professional ~~[growth]~~learning plan, and documentation of activities consistent with Title 53A, Chapter 6.

#### **R277-500-3. Educator License Renewal Requirements.**

A. Professional ~~[Growth]~~Learning Plan for Active Educators

(1) An active educator, in collaboration with his supervisor, shall develop and maintain a professional ~~[growth]~~learning plan as a subset of the educator's professional ~~[growth]~~ plan.

(2) The professional ~~[growth]~~learning plan shall outline the professional ~~[development]~~learning activities in which the educator will participate during the educator's current license renewal cycle;

(3) The professional ~~[growth]~~learning plan shall be developed by taking into account:

- (a) the educator's professional goals;
- (b) curriculum relevant to the educator's current or anticipated assignment;
- (c) goals and priorities of the LEA and school;
- (d) available student data relevant to the educator's current or anticipated assignment;

(e) feedback from the educator's yearly evaluation required under Section 53A-8a-301.

([e]f) the requirements under R277-522 if the educator is a Level 1 licensed educator.

(4) The professional learning plan for active educators shall include two hours of professional learning on youth suicide prevention consistent with Section 53A-1-603.

([4]5) The professional [growth]learning plan shall be reviewed and signed annually by the educator and supervisor and may be adjusted as appropriate.

([5]6) The educator is responsible for creation of the professional [growth]learning plan in collaboration with the designated supervisor.

([6]7) The educator is responsible for maintaining documentation associated with the plan and the annual review of the plan.

([7]8) The LEA may create tools or policies or both to assist educators in meeting this responsibility.

B. Professional [Growth]Learning Plan for Inactive Educators

(1) All inactive educators intending to renew an educator license shall, in collaboration with a licensed administrator, develop and maintain a professional [growth]learning plan.

(2) The professional [growth]learning plan shall outline the professional [development]learning activities in which the educator will participate during the educator's current license renewal cycle.

(3) The plan shall take into account:

(a) the educator's professional goals;

(b) current license areas of concentration and endorsements;

(c) current trends relevant to the educator's current license areas of concentration and endorsements;

(d) the Utah Core Curriculum relevant to the educator's current license areas of concentration and endorsements;

(4) The professional [growth]learning plan shall be reviewed and signed by the educator and a licensed administrator at the beginning of the [plan]license renewal cycle and again at the [completion of the plan]end of the license renewal cycle.

(5) The educator is responsible for developing the professional [growth]learning plan and maintaining documentation of the plan.

C. License Renewal Points

(1) To be valid for renewal, the professional [growth]learning plan shall document that the educator has earned the appropriate number of license renewal points as defined in R277-500-3.

(2) License holders may accrue license renewal points beginning with the date of each new license renewal.

(3) A Level 1 license holder shall earn at least 100 license renewal points in each three year period. A Level 1 license may only be renewed consistent with R277-504-3(D).

(4) A Level 2 license holder shall earn at least 200 license renewal points in each 5 year period.

(5) A Level 3 license holder shall earn at least 200 license renewal points in each 7 year period.

D. Documentation

(1) Each Utah license holder shall be responsible for maintaining documentation supporting completion of the professional [growth]learning plan.

(2) It is the educator's responsibility to retain documentation of professional [development]learning activities with appropriate signatures.

(3) All documentation relevant to the professional [growth]learning plan shall be retained by the educator for a minimum of two years from the designated renewal date.

E. Fingerprint Background Check and Educator Ethics Review

(1) A fingerprint background check shall be required for the renewal of any Utah educator license beginning July 1, 2009 consistent with Section 53A-6-401.

(2) No license may be renewed until the completion of the background check and receipt and review of the report by the USOE.

(3) The background check shall be completed within one calendar year prior to the date of license renewal.

(4) If an educator license holder's fingerprint background check is incomplete or under review by the Utah Professional Practices Advisory Commission (UPPAC), the educator license holder's CACTUS file will direct the reviewer of the file to the USOE for further information. An educator license cannot be renewed until the background check process is complete.

(5) Completion of the USOE Educator Ethics Review shall be required for the renewal of a Utah educator license beginning January 1, 2011.

(6) No license may be renewed prior to the completion of the USOE Educator Ethics Review.

(7) The Ethics Review shall be completed within one calendar year prior to license renewal.

#### **R277-500-4. Educator License Renewal Procedures.**

A. An active educator license holder shall satisfy the final review and obtain the appropriate signatures regarding completion of the professional [growth]learning plan between January 1 and June 30 of the educator's assigned renewal year.

(1) A Level 2 or 3 educator license holder who has completed all additional requirements for renewal shall complete the online renewal provided by USOE [at [www.utah.gov/teachers](http://www.utah.gov/teachers)]between January 1 and June 30 of the educator's assigned renewal year.

(2) A Level 1 educator license holder who has completed all additional requirements for renewal shall submit the Professional [Growth]Learning Plan Completion Form to the USOE between January 1 and June 30 of the educator's assigned renewal year. Forms that are not complete or do not bear original signatures shall not be processed.

(3) An educator's failure to complete the online process or submit the completion form consistent with deadlines in this rule shall result in beginning anew the administrative licensure process, including all attendant fees and criminal background checks.

B. An inactive educator license holder shall satisfy the final review and obtain the appropriate signatures regarding

completion of the professional ~~[growth]~~learning plan within one calendar year prior to the date on which the inactive educator license holder is directed/scheduled to renew the license.

(1) A Level 2 or 3 educator license holder who has completed all additional requirements for renewal shall complete the online renewal process provided by USOE ~~[at www.utah.gov/teachers]~~ between January 1 and June 30 of the educator's assigned renewal year.

(2) A Level 1 educator license holder who has completed all additional requirements for renewal shall submit the Professional ~~[Growth]~~Learning Plan Completion Form to the USOE between January 1 and June 30 of the educator's assigned renewal year. Forms that are not complete or do not bear original signatures shall not be processed.

(3) An educator's failure to complete the online process or submit the completion form consistent with deadlines shall result in beginning anew the licensure process, including all attendant fees and criminal background checks.

C. Educators seeking renewal from an inactive status or requesting level changes shall be charged a fee set by the USOE. Educators with active licenses shall be charged a renewal fee consistent with R277-502

D. The USOE shall audit a random sample of approximately ten percent of the annual online renewals. Educators selected for audit:

(1) shall submit the Professional ~~[Growth]~~Learning Plan Completion Form with the appropriate signatures to the USOE in a timely manner.

(2) shall receive a warning letter and may be referred to UPPAC if documentation is not submitted as requested.

(3) shall be referred to UPPAC for possible license discipline if the documentation reveals fraudulent or unprofessional actions.

E. The USOE may, at its own discretion, review or audit renewal transactions including the professional ~~[growth]~~learning plan, signatures, and documentation of professional ~~[development]~~learning activities.

#### **R277-500-5. Categories of Acceptable Activities for License Renewal.**

A. Active educators may earn licensure renewal points based on their employment in a position requiring a Utah educator license during their license cycle.

(1) Only years of employment with satisfactory performance evaluations may be counted for license renewal points.

(2) A Level 1 license holder may earn 25 license renewal points per year of employment to a maximum of 50 points per license cycle.

(3) A Level 2 or 3 license holder may earn 35 license renewal points per year of employment to a maximum of 105 points per license cycle.

B. A college/university course:

(1) shall be successfully completed with a C or better, or a pass.

(2) Each semester hour, as recorded on an official transcript, equals 18 license renewal points.

C. USOE professional ~~[development]~~learning credit:

(1) shall be State-approved under R277-519-3;

(2) shall be successfully completed through attendance and required project(s).

(3) Each semester credit hour equals 15 license renewal points.

(4) Approval may be requested from the USOE by LEAs through a request submitted through the USOE-sponsored online professional learning tracking system.~~[-~~

~~----- (a) a written request from a private provider on a form supplied by the USOE and received by the appropriate USOE subject specialist; or~~

~~----- (b) a request submitted through the USOE-sponsored online professional development tracking system.]~~

(5) Approval shall be requested from the USOE at least four weeks prior to the beginning date of the scheduled professional ~~[development]~~learning activity and may be denied if not approved in advance.

D. LEA-sponsored or approved professional ~~[development]~~learning activities:

(1) shall be approved by the LEA at least four weeks prior to the scheduled activity;

(2) may include LEA or school based professional ~~[development]~~learning such as:

(a) participating in professional learning communities;

(b) development of LEA or school curriculum;

(c) planning and implementation of a school improvement plan;

(d) mentoring a Level 1 teacher;

(e) engaging in instructional coaching;

(f) conducting action research;

(g) studying student work with colleagues to inform instruction.

(3) Each clock hour of scheduled professional ~~[development]~~learning activity time equals one license renewal point, not to exceed 25 points per activity per year.

E. Acceptable alternative professional ~~[development]~~learning activities:

(1) Acceptable activities are those that enhance or improve education, yet may not fall into a specific category.

(2) These activities shall be approved by the educator's supervisor, by a licensed administrator if the educator is an inactive educator, or with prior written approval by the USOE.

(3) Each clock hour of participation equals one license renewal point, not to exceed 25 points per activity.

F. Conferences, workshops, institutes, symposia, or staff-development programs:

(1) Acceptable workshops and programs shall be approved by the educator's supervisor, by a licensed administrator if the educator is an inactive educator, or with prior written approval by the USOE.

(2) Each clock hour of participation equals one license renewal point, not to exceed 25 points per activity.

G. Content and pedagogy testing:

(1) Acceptable tests include those approved by the Board.

(2) Each Board-approved test score report submitted, with a passing score, equals 25 license renewal points.

(3) Each test must be related to the educator's current or potential license area(s) or endorsement(s).

(4) No more than two test score reports may be submitted in a license cycle.

H. Utah university sponsored cooperating teachers:

(1) An educator working as a cooperating teacher with one or more student teachers may earn license renewal points.

(2) Each clock hour spent supervising, collaborating with, and mentoring assigned student teachers equals one license renewal point not to exceed 25 points per license renewal cycle.

I. Service in a leadership role in a national, state-wide, or LEA-recognized professional education organization:

(1) Acceptable service shall be approved by the educator's supervisor or by a licensed administrator if the educator is an inactive educator.

(2) Each clock hour of participation equals one license renewal point, not to exceed 10 points per year.

J. Educational research and innovation that results in a final, demonstrable product:

(1) Acceptable activities shall be approved by the educator's supervisor or by a licensed administrator if the educator is an inactive educator.

(2) The research activity shall be consistent with school and LEA policy.

(3) Each clock hour of participation equals one license renewal point, not to exceed 35 points per activity.

K. Substituting in a Utah public LEA or accredited private school:

(1) shall be considered an acceptable professional [development]learning activity only for inactive educators paid and authorized as substitutes.

(2) Two hours of documented substitute time equals one license renewal point, not to exceed 25 points per year or 50 points per license cycle.

(3) Verification of hours shall be documented on LEA or school letterhead, list dates of employment, and signed by the supervising administrator.

L. Paraprofessional or volunteer service in a Utah public LEA or accredited private school:

(1) shall be considered an acceptable professional [development]learning activity only for inactive educators.

(2) Three hours of documented paraprofessional or volunteer service equals one license renewal point, not to exceed 25 points per year or 50 points per license cycle.

(3) Verification of hours shall be documented on LEA or school letterhead, list dates of service, and signed by the supervising administrator.

M. Credit for LEA lane change or other purposes is determined by the LEA and is awarded at the LEA's discretion. USOE professional [development]learning credit should not be assumed to be credit for LEA purposes, such as salary or lane change credit.

**R277-500-6. Board Directive to Educator License Holders for Fingerprint Background Check.**

A. The USOE may direct a Utah educator license holder to have a criminal fingerprint background check under Section 53A-6-401 for good cause shown.

B. If an educator license holder fails to comply with the directive in a reasonable time, following reasonable notice, and adequate due process, the educator license holder's license may be

put into a pending status in the educator's CACTUS file subject to the educator license holder's compliance with the directive.

C. The Board or its designee may review an educator license holder's compliance with the directive prior to the final decision about the educator license holder's license status.

D. The provisions and requirements of this rule shall apply to educators seeking licensure renewal beginning July 1, 2012.

**R277-500-7. Exceptions or Waivers to this Rule.**

A. The USOE may make exceptions to the provisions of this rule for unique and compelling circumstances.

B. Exceptions may only be made consistent with the purposes of this rule and the authorizing statutes.

C. Requests for exceptions shall be made in writing at least 30 days prior to the license holder's renewal date to the Coordinator of Educator Licensing, USOE.

D. Approval or disapproval of the request shall be made in a timely manner and is not subject to administrative appeal.

[

**~~R277-500-8. Rule Effective Date.~~**

~~A. R277-500 will be effective beginning July 1, 2012.~~

~~B. R277-500 will replace R277-501 on July 1, 2012.~~]

**KEY:** educator license renewal, professional [development]learning, fingerprint background check  
**Date of Enactment or Last Substantive Amendment:** ~~July 11, 2011~~ 2012

**Authorizing, and Implemented or Interpreted Law:** 53A-6-104; 53A-1-401(3)

Education, Administration  
**R277-501**  
 Educator Licensing Renewal,  
 Timelines, and Required Fingerprint  
 Background Checks (Effective Through  
 June 30, 2012)

**NOTICE OF PROPOSED RULE**

(Repeal)

DAR FILE NO.: 36204

FILED: 05/15/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: R277-501 is repealed because Rule R277-500, Educator Licensing Renewal, Timelines, and Required Fingerprint Background Checks will replace this rule. (DAR NOTE: The proposed amendment to Rule R277-500 is under DAR No. 36203 in this issue, June 1, 2012, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: This rule is repealed in its entirety.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53A-6-104 and Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There is no anticipated cost or savings to the state budget. Language necessary in Rule R277-501 has been incorporated into Rule R277-500.
- ◆ LOCAL GOVERNMENTS: There is no anticipated costs or savings to local government. Language necessary in Rule R277-501 has been incorporated into Rule R277-500.
- ◆ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses. This rule applies to public education and does not affect businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. Language necessary in Rule R277-501 has been incorporated into Rule R277-500.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Rule R277-500 will replace this rule.

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

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

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

**R277. Education, Administration.**  
~~[R277-501. Educator Licensing Renewal, Timelines, and Required Fingerprint Background Checks (Effective Through June 30, 2012):~~

**R277-501-1. Definitions:**

- ~~\_\_\_\_\_ A. "Acceptable alternative professional development activities" means activities that do not fall within a specific category under R277-501-3 but are consistent with this rule.~~
- ~~\_\_\_\_\_ B. "Accredited" means a teacher preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC) or one of the major regional accrediting associations as defined under R277-503-1N.~~
- ~~\_\_\_\_\_ C. "Accredited school" for purposes of this rule means a public or private school that has met standards considered to be essential for the operation of a quality school program and has had formal approval by the Northwest Accreditation Commission.~~
- ~~\_\_\_\_\_ D. "Active educator" for purposes of this rule means an individual holding a valid license issued by the Board who is employed by a Utah public or accredited private school in a role covered by the license or an individual who has taught successfully for three of the five years in the educator's renewal cycle in a Utah public or accredited private school.~~
- ~~\_\_\_\_\_ E. "Active educator license" means a license that is currently valid for service in a position requiring a license.~~
- ~~\_\_\_\_\_ F. "Approved professional development" means training or courses, approved by the USOE under R277-519-3, in which current educators or individuals who have previously received a license may participate to renew a license, teach in another subject area or teach at another grade level.~~
- ~~\_\_\_\_\_ G. "Board" means the Utah State Board of Education.~~
- ~~\_\_\_\_\_ H. "College/university course" means a course taken through an institution approved under Section 53A-6-108. "University level course" means a course having the same academic rigor and requirements similar to a university/college course and taught by appropriately trained individuals.~~
- ~~\_\_\_\_\_ I. "Course work successfully completed" for purposes of this rule means the student earns a grade C or better.~~
- ~~\_\_\_\_\_ J. "Documentation of professional development activities" means:~~
  - ~~\_\_\_\_\_ (1) an original report card or student transcript for university/college courses;~~
  - ~~\_\_\_\_\_ (2) certificate of completion for an approved professional development, conference, workshop, institute, symposium, educational travel experience and staff development;~~
  - ~~\_\_\_\_\_ (3) summary, explanation, or copy of the product and supervisor's signature, if available, or complete documentation of professional development activities that support district and school policies and further academic pursuit or educational innovations of professional development activities. All agendas, work products, and certificates shall be maintained by the educator;~~
  - ~~\_\_\_\_\_ (4) an agenda or conference program demonstrating sessions and duration of professional development activities.~~
- ~~\_\_\_\_\_ K. "Educational research" means conducting educational research or investigating education innovations.~~
- ~~\_\_\_\_\_ L. "Inactive educator" means an individual holding a valid license issued by the Board who was employed by a Utah public or accredited private school in a role covered by the license for less than three years in the individual's renewal period.~~

M. "Inactive educator license" means a license, other than a surrendered, suspended or revoked license, that is currently not valid due to the holder's failure to complete requirements for license renewal.

N. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to applicants who have also met all ancillary requirements established by law or rule.

O. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license and:

(1) requirements established by law or rule;

(2) three years of successful education experience within a five-year period in a Utah public or accredited private school; and

(3) satisfaction of requirements under R277-522 for teachers whose employment as a Level 1 licensed educator began after January 1, 2003 in a Utah public or accredited private school.

P. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received National Board Certification or a doctorate in education or in a field related to a content area in a unit of the public education system.

Q. "License" means an authorization issued by the Board which permits the holder to serve in a professional capacity in a Utah school.

R. "NASDTEC" means the National Association of State Directors of Teacher Education and Certification. NASDTEC maintains an Educator Information Clearinghouse for its members regarding persons whose licenses have been suspended or revoked.

S. "National Board Certification" means the successful completion of the National Board for Professional Teaching Standards (NBPTS) process, a three-year process, that may include national content area assessment, an extensive portfolio, and assessment of video-taped classroom teaching experience.

T. "No Child Left Behind (NCLB) standards for highly qualified teachers" means that all teachers of Core academic subjects as defined under R277-510-1B, demonstrate adequate content knowledge of their teaching assignments as of July 1, 2006.

U. "Professional colleague" for purposes of this rule means a Utah Level 2 or 3 licensed educator who has adequate familiarity with the inactive educator's license area of concentration and endorsement(s).

V. "Professional development plan" means a document prepared by the educator consistent with this rule.

W. "Professional development points" means the points accumulated by a Utah license holder through activities approved under this rule for the purpose of satisfying requirements of Section 53A-6-104.

X. "USOE" means the Utah State Office of Education.

Y. "Verification of employment" means official documentation of employment as an educator.

#### **R277-501-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-6-104 which requires the Board to make rules requiring participation in professional development activities in order for educators to retain Utah

licensure, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide definitions and requirements for an educator to renew a Utah educator license. This rule requires verification of employment, development of a professional development plan and documentation of activities consistent with Section Title 53A, Chapter 6.

#### **R277-501-3. Categories of Acceptable Activities for a Licensed Educator.**

A. A college/university course:

(1) shall be successfully completed with a "C" or better, or a "pass."

(2) Each semester hour equals 18 license points; or

(3) Each quarter hour equals 12 license points.

B. Professional development:

(1) shall be state-approved under R277-519-3.

(2) may be requested from the USOE by:

(a) written request from a private provider on a form supplied by the USOE and received by the appropriate USOE subject specialist at least two weeks prior to the beginning date of the scheduled professional development, or

(b) a request submitted through the computerized professional development program connected to the USOE licensure system.

(i) The computerized process is available in most Utah school districts and area technology centers.

(ii) Such requests shall be made at least two weeks prior to the beginning of the scheduled professional development.

(3) Each clock hour of authorized professional development time equals one professional development point.

(4) The professional development shall be successfully completed through attendance and required project(s).

C. Conferences, workshops, institutes, symposia, educational travel experience or staff development programs:

(1) Acceptable workshops and programs include those with prior written approval by the USOE, recognized professional associations, district supervisors, or school supervisors regardless of the source of sponsorship or funding.

(2) One license point is awarded for each clock hour of educational participation; license points may be limited to specific educational activities under R277-501-3C.

D. Content and pedagogy testing:

(1) Acceptable tests include those approved by the Board.

(2) 25 license points shall be awarded for each Board-approved test score report submitted.

(3) No more than two test score reports may be submitted in a license cycle for a maximum of 50 points.

(4) Each score report submitted shall have a different test number and title.

(5) The license renewal applicant is responsible for reporting of score test results. This information should be used by renewal applicants to design ongoing professional development.

E. Service in professional activities in an educational institution:

(1) Acceptable service includes that in which the license holder contributes to improving achievement in a school, district, or other educational institution, including planning and implementation of an improvement plan.

~~\_\_\_\_\_ (2) One license point is awarded for each clock hour of participation.~~

~~\_\_\_\_\_ (3) An inactive educator may earn professional development points by service in professional activities under the supervision of an active administrator.~~

~~\_\_\_\_\_ F. Service in a leadership role in a national, state-wide or district recognized professional education organization:~~

~~\_\_\_\_\_ (1) Acceptable service includes that in which the license holder assumes a leadership role in a professional education organization.~~

~~\_\_\_\_\_ (2) One license point is awarded for each clock hour of participation with a maximum of 10 license points per year.~~

~~\_\_\_\_\_ G. Educational research and innovation that results in a final, demonstrable product:~~

~~\_\_\_\_\_ (1) Acceptable activities include conducting educational research or investigating educational innovations.~~

~~\_\_\_\_\_ (2) This research activity shall follow school and district policy.~~

~~\_\_\_\_\_ (3) An inactive educator may conduct research and receive professional development points on programs or issues approved by a practicing administrator.~~

~~\_\_\_\_\_ (4) One license point is awarded for each clock hour of participation.~~

~~\_\_\_\_\_ H. Acceptable alternative professional development activities:~~

~~\_\_\_\_\_ (1) Acceptable activities are those that enhance or improve education yet may not fall into a specific category.~~

~~\_\_\_\_\_ (2) These activities shall be approved by an educator's principal/supervisor or in the case of the inactive educator, a professional colleague, or a USOE or Utah school district specialist.~~

~~\_\_\_\_\_ (3) One license point is awarded for each clock hour of participation.~~

~~\_\_\_\_\_ I. Substituting in a Utah public or accredited private school may be an acceptable alternative professional development activity toward license renewal if the license holder is not an active educator as defined under R277-501-1D and is paid and authorized as a substitute. A substitute shall earn one point for every two hours of documented substitute time. Verification of hours shall be obtained from the employer or from the supervising principal. A license holder may earn up to 25 professional development points per year not to exceed a total of 50 points in a license cycle as a substitute.~~

~~\_\_\_\_\_ J. A license holder who instructs students in a professional or volunteer capacity in a Utah public or accredited private school may earn up to 25 professional development points per year not to exceed a total of 50 points in a license cycle. Paraprofessionals/volunteers may accrue one professional development point for every three hours of paraprofessional/volunteer service, as determined and verified by the building principal or supervisor.~~

~~\_\_\_\_\_ K. Up to 50 license points may be earned in any one or any combination of categories E, F and G above.~~

**R277-501-4. Required Renewal License Points for Designated License Holders.**

~~\_\_\_\_\_ A. Level 1, 2 and 3 license holders may accrue relicensure points beginning with the date of each new license renewal.~~

~~\_\_\_\_\_ B. Level 1 license holder with no licensed educator experience:~~

~~\_\_\_\_\_ (1) An educator desiring to retain active status shall earn at least 100 license points in each three year period.~~

~~\_\_\_\_\_ C. Level 1 license holder with one year licensed educator experience in a Utah public or accredited private school within a three year period:~~

~~\_\_\_\_\_ (1) An active educator shall earn at least 75 license points in each three year period; and~~

~~\_\_\_\_\_ (2) any years taught shall have satisfactory evaluation(s).~~

~~\_\_\_\_\_ D. Level 1 license holder with two years licensed educator experience in a Utah public or accredited private school within a three year period:~~

~~\_\_\_\_\_ (1) An active educator shall earn at least 50 license points in each three year period; and~~

~~\_\_\_\_\_ (2) Any years taught shall have satisfactory evaluation(s).~~

~~\_\_\_\_\_ E. Level 1 license holder with three years licensed educator experience in a Utah public or accredited private school within a three year period:~~

~~\_\_\_\_\_ (1) An active educator shall earn at least 25 professional development points in each three year period; and~~

~~\_\_\_\_\_ (2) Any years taught shall have satisfactory evaluation(s).~~

~~\_\_\_\_\_ F. An educator seeking a Level 2 license shall notify the USOE of completion of Level 2 license prerequisites consistent with R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers and R277-502, Educator Licensing and Data Retention.~~

~~\_\_\_\_\_ G. Level 2 license holder:~~

~~\_\_\_\_\_ (1) An active educator shall earn at least 95 license points within each five year period. License points shall be earned in activities defined under this rule that contribute to competence, performance, and effectiveness in the education profession.~~

~~\_\_\_\_\_ (2) An inactive educator shall earn at least 200 license points within a five year period to maintain an active educator license.~~

~~\_\_\_\_\_ (3) An inactive educator who works one year in a Utah public or accredited private school within a five year period shall earn 165 license points within a five year period to maintain an active educator license.~~

~~\_\_\_\_\_ (4) An inactive educator who works two years in a Utah public or accredited private school within a five year period shall earn 130 license points within a five year period to maintain an active educator license.~~

~~\_\_\_\_\_ (5) Credit for any year(s) taught requires satisfactory evaluation(s).~~

~~\_\_\_\_\_ H. Level 3 license holder:~~

~~\_\_\_\_\_ (1) A Level 3 license holder with National Board Certification shall meet the National Board for Professional Teaching Standards (NBPTS) requirements consistent with the NBPTS schedule available from the USOE Educator Licensure Section. A Level 3 license holder shall be responsible to provide verification of NBPTS status prior to the license holder's designated renewal date.~~

~~\_\_\_\_\_ (2) A Level 3 license holder with a doctorate degree from a regionally accredited college or university in education or in a field related to a content area in a unit of the public education system and shall meet the active or inactive educator Level 2 license holder requirements within a seven year period.~~

(3) An educator seeking a Level 3 license shall notify the USOE of completion of Level 3 license requirements. Level 3 license criteria apply to the license holder as of the license holder's renewal date following the notification to the USOE.

I. Teachers seeking license renewal who do not meet NCLB standards for highly qualified teachers under R277-510 shall focus 95 of the 200 required professional development points in teaching assignments in which the teacher does not hold an appropriate major, major equivalent, or other NCLB highly qualified criteria.

**R277-501-5. Renewal Timeline with Point Requirements for Educator Level 2 License Holders.**

A. A Level 2 active educator whose license expires June 30 shall earn 95 license points during the educator's five year renewal period and shall provide verification of employment.

B. A Level 2 inactive educator whose license expires June 30 shall earn 200 license points during the educator's five year renewal period.

**R277-501-6. Background Checks Required for Renewal.**

A. A background check shall be required for the renewal of any Utah educator license beginning July 1, 2009 consistent with Section 53A-6-401. No license may be renewed until the completion of the background check and receipt and review of the report by the USOE.

B. Beginning no later than July 1, 2009, applicants for Utah educator license renewal shall submit fingerprints to the Utah Department of Public Safety consistent with procedures and scheduling developed and disseminated by the USOE in consultation with the Utah Department of Public Safety.

C. No later than July 1, 2009, the USOE shall provide to the Utah Department of Public Safety a list of licensed Utah educators including dates of birth, social security numbers, and other necessary demographic information to be determined between the USOE and the Utah Department of Public Safety.

D. If an educator license holder's criminal background check is incomplete or under review by the Utah Professional Practices Advisory Commission (UPPAC), the educator license holder's license shall be in a pending status until the process is concluded. The educator license holder's CACTUS file will show a dialog box directing the reviewer of the file to the USOE for further information. An educator license in a pending status cannot be renewed until the background check process is complete.

**R277-501-7. Board Directive to Educator License Holders for Fingerprint Background Check.**

A. The USOE may direct a Utah educator license holder to have a criminal fingerprint background check under Section 53A-6-104 for good cause shown.

B. If an educator license holder fails to comply with the directive in a reasonable time, following reasonable notice and adequate due process, the educator license holder's license may be put into a pending status subject to the educator license holder's compliance with the Board's directive.

C. The Board or its designee may review an educator license holder's compliance with the directive prior to the final decision about the educator license holder's license status.

**R277-501-8. Miscellaneous Renewal Information.**

A. A licensed educator shall develop and maintain a professional development plan. The plan:

(1) shall be based on the educator's professional goals and current or anticipated assignment;

(2) shall take into account the goals and priorities of the school/district;

(3) shall be consistent with federal and state laws and district policies; and

(4) may be adjusted as circumstances change.

(5) shall be reviewed and signed by the educator's supervisor or a professional colleague designated by the building administrator.

B. If an educator is not employed in a Utah public or accredited private school at the renewal date, the educator shall review the plan and documentation with a professional colleague who may sign the professional development plan and USOE verification form. The verification form signed by the professional colleague shall be provided to the USOE between January 1 and June 30 of the renewal year.

C. Each Utah license holder shall be responsible for maintaining a professional development plan.

(1) It is the educator's responsibility to retain copies of complete documentation of professional development activities with appropriate signatures.

(2) The professional development documentation shall be retained by the educator for a minimum of two renewal cycles.

D. The "Verification for License Renewal" form shall be submitted to the USOE Licensing Section, 250 East 500 South, P.O. Box 144200, Salt Lake City, Utah 84114-4200 between January 1 and June 30 of the educator's assigned renewal year.

(1) Forms submitted by mail that are not complete or do not bear original signatures shall not be processed.

(2) Failure to submit the verification form consistent with deadlines shall result in beginning anew the administrative licensure process, including all attendant fees and criminal background checks.

(3) The USOE may, at its own discretion, review or audit verification for license renewal forms or educator license renewal folders or records.

E. License holders may begin to acquire professional development points under this rule on the date identified on the license as the date of licensure.

F. This rule does not explain criteria or provide credit standards for state approved professional development programs. That information is provided in R277-519.

G. Credit for district lane changes or other purposes is determined by a school district and is awarded at a school district's discretion. Professional development points should not be assumed to be credit for school district purposes, such as salary or lane change credit.

H. A renewal fee set by the USOE shall be charged to educators who seek renewal from an inactive status or to make level changes. Educators with active licenses shall be charged a renewal fee consistent with R277-502.

I. The USOE may make exceptions to the provisions of this rule for unique and compelling circumstances.

~~(1) Exceptions may only be made consistent with the purposes of this rule and the authorizing statutes.~~

~~(2) Requests for exceptions shall be made in writing at least 30 days prior to the license holder's renewal date to the Coordinator of Educator Licensing, USOE.~~

~~(3) Approval or disapproval shall be made in a timely manner.~~

~~J. Licenses awarded under R277-521, Professional Specialist Licensing, are subject to renewal requirements under this rule.~~

~~(1) Specialists shall be considered licensed as of September 15, 1999 or at their official employment date, whichever is later.~~

~~(2) All specialists shall be considered Level 1, 2 or 3 license holders consistent with R277-521-3, 4 and 5.~~

~~(3) Years of work experience beginning September 15, 1999 count toward levels of licensure.~~

~~K. Consistent with Section 53A-6-104(2) and (4), an educator may comply with the professional development requirements of this rule by:~~

~~(1) satisfactory completion of the educator's employing school district's district-specific professional development plan; and~~

~~(2) submission by the employing school district of the names of educators who completed district-specific professional development plans; and~~

~~(3) submission of professional development information in a timely manner consistent with the educator's license renewal cycle; failure of timely notification by districts to the USOE may result in expiration of licenses and additional time and costs for relicensure.~~

~~L. Completion of relicensure requirements by an educator under R277-501-4 or R277-501-6K, may not satisfy HOUSSE requirements for highly qualified status under No Child Left Behind, as defined in R277-520.~~

~~M. Educators are individually responsible for tracking their renewal cycles and completing professional development in a timely manner.~~

**R277-501-9. Rule Effective Date:**

~~A. R277-501 will be effective through June 30, 2012.~~

~~B. R277-500 will replace R277-501 on July 1, 2012.~~

~~**KEY:** educational program evaluations, educator license renewal~~

~~**Date of Enactment or Last Substantive Amendment:** July 11, 2011~~

~~**Notice of Continuation:** February 18, 2010~~

~~**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53A-6-104; 53A-1-401(3)]~~

Education, Administration  
**R277-524**  
 Paraprofessional Qualifications

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36205

FILED: 05/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to update language in response to S.B. 81, Paraeducator Funding, 2012 Legislative General Session.

**SUMMARY OF THE RULE OR CHANGE:** Changes include which Title I schools are eligible for funds to hire additional paraprofessionals, the allocation of those funds, and annual reporting requirements for schools that accept the funding.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 53A-1-401(3) and Subsection 53A-1-402(1)(a)(i)

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. Legislative funding is provided to qualified schools to hire paraeducators.

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government. Legislative funding is provided to qualified schools to hire paraeducators.

♦ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses. This rule applies to public education and does not affect businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. Legislative funding is provided to qualified public schools to hire paraeducators.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. Legislative funding is provided to qualified schools to hire paraeducators.

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

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

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

**R277. Education, Administration.**

**R277-524. Paraprofessional/Paraeducator Programs, Assignments, and Qualifications.**

**R277-524-1. Definitions.**

A. "Board" means the Utah State Board of Education.

[A]B. "Core academic subjects or areas" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB).

[B]C. "Direct supervision of a licensed teacher" means:

(1) the teacher prepares the lesson and plans the instruction support activities the paraprofessional carries out, and the teacher evaluates the achievement of the students with whom the paraprofessional works; and

(2) the paraprofessional works in close and frequent proximity with the teacher.

D. "Eligible school," for purposes of this rule and the Paraeducator Funding Program, means a Title I school that has not achieved adequate yearly progress, as defined by ESEA, in the same subject area for two consecutive years or is one of the state's lowest-performing Title I priority schools as defined by ESEA.

[E]E. "No Child Left Behind (NCLB)" means the federal law under the Elementary and Secondary Education Act, Title IX, Part A, 20 U.S.C. 7801.

F. "Paraeducator funding" means supplemental state funding provided under Section 53A-17a-167 to Title I schools identified as in need of improvement under the Elementary and Secondary Education Act (ESEA), Title IX, Part A, 20 U.S.C. 7801 to hire additional paraeducators to assist students in achieving academic success.

[F]G. "Paraprofessional" or "paraeducator" means an individual who works under the supervision of a teacher or other licensed/certificated professional who has identified responsibilities in the public school classroom.

**R277-524-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution, Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which gives the Board authority to adopt rules in accordance with its responsibilities, Section 53A-1-402(1)(a)(i) which requires the Board to establish rules and minimum standards for the public schools regarding the qualification and certification of educators and ancillary personnel who provide direct student services, and NCLB, P.L. 107-110, Title 1, Sec. 1119 which requires that each local education agency receiving assistance under this part shall ensure that all paraprofessionals shall be appropriately qualified.

B. The purpose of this rule is to designate appropriate assignments of paraprofessionals and qualifications for paraprofessionals hired before and after January 6, 2002 consistent with NCLB requirements.

C. This rule establishes the formula for distribution of Paraeducator funding under Section 53A-17a-167 to eligible schools. The rule provides minimum standards for use of funds and reporting requirements.

**R277-524-7. Board Responsibilities.**

A. The Board shall annually distribute funds provided under Section 53A-17a-167 to eligible Title I schools. The funds shall be divided equally among eligible schools.

B. The Board shall submit an annual report to the Public Education Appropriations Subcommittee on the implementation of this program.

**R277-524-8. Responsibilities of Eligible Schools Receiving Paraeducator Funding.**

A. Paraeducators hired with these funds shall meet the qualifications under R277-524-4.

B. Paraeducators hired with these funds shall provide additional aid in the classroom to assist students in achieving academic success as defined in R277-524-3A.

C. Schools that accept the Paraeducator Funding shall demonstrate, as required by USOE reporting, that funds are used to supplement other state and federal funds to provide paraeducator services.

D. Schools accepting these funds shall provide an annual report as directed by the USOE that includes the following:

(1) the number of paraeducators hired with program money;

(2) school funding, in addition to funds provided under this rule, the school used to supplement program money to hire paraeducators; and

(3) accountability measures, including student test scores and other student assessment elements for students served by the program.

**KEY: paraprofessional qualifications, NCLB**

**Date of Enactment or Last Substantive Amendment: [February 5, 2004]2012**

**Notice of Continuation: January 5, 2009**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-401(3); 53A-1-402(1)(a)(i); P.L. 107-110, Title 1, Sec. 1119**

Education, Administration  
**R277-800**  
Utah Schools for the Deaf and the Blind

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36206

FILED: 05/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to make the rule consistent with H.B. 230, Utah Schools for the Deaf and the Blind Amendments, 2012 Legislative General Session.

**SUMMARY OF THE RULE OR CHANGE:** Changes included revisions to qualifications and duties of the USDB superintendent, and the addition of data collection and annual reporting on the performance and progress of current and past students who have received services from USDB.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53A-25B-201 and Subsection 53A-1-401(3)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget. The qualifications and duties of the USDB Superintendent and USDB Advisory Council clarification do not result in a cost or savings.
- ◆ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government. The qualifications and duties of the USDB Superintendent and USDB Advisory Council clarifications do not result in a cost or savings to local education agencies.
- ◆ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses. This rule applies to public education and does not affect businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities. The qualifications and duties of the USDB Superintendent and USDB Advisory Council clarifications do not result in a cost or savings.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. The qualifications and duties of the USDB Superintendent and USDB Advisory Council clarification do not result in a cost or savings.

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

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012**

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

**R277. Education, Administration.**

**R277-800. Utah Schools for the Deaf and the Blind.**

**R277-800-1. Definitions.**

A. "Accessible media producer" means companies or agencies that create fully-accessible specialized, student-ready formats for curriculum materials, such as Braille, large print, audio, or digital books.

B. "Advisory Council" means the Advisory Council for the Utah Schools for the Deaf and the Blind with members, responsibilities, and other provisions under Section 53A-25b-203 and R277-800-4.

C. "Assessment" means the process of documenting, usually in measurable terms, knowledge, skills, attitudes and abilities pertaining to the fields of vision and hearing. These assessments may include the following areas of focus:

(1) valid, reliable and appropriate assessments given to determine eligibility for placement and services by a team of qualified professionals and the student's parent(s);

(2) functional assessments accomplished by observation and measurement of daily living skills and functional use of vision or hearing;

(3) academic evaluations as part of the Utah Performance Assessment System for Student (U-PASS), criterion reference tests (CRTs), or the Utah Alternative Assessment with appropriate accommodations as indicated on the individual education program (IEP).

D. "Board" means the Utah State Board of Education.

E. "Campus-Based Program" means a program provided by USDB that offers an alternative to an outreach program for students who are blind or visually impaired, deaf or hard of hearing, or deafblind (ages three to 22). Services are provided by qualified USDB staff at a USDB site.

~~[E]~~E. "The Chafee Amendment to the Copyright Act, 17 U.S.C. Section 121" (Chafee Amendment) is a federal law that allows an authorized entity to reproduce or distribute copyrighted materials in specialized formats for students who are blind or have other print disabilities without the need to obtain permission of the copyright owner. Authorized entities are governmental or nonprofit organizations that have a primary mission to provide copyrighted works in specialized formats for students who are blind or have other print disabilities.

~~[F]~~G. "Child Find" means activities and strategies designed to locate, evaluate and identify individuals eligible for services under the IDEA.

~~[G]~~H. "Consultation" means a meeting for discussion or the seeking of advice.

~~[H]~~I. "Designated LEA" means the local education agency assigned by a student's IEP or Section 504 team to have primary responsibility for ensuring that all rights and requirements

regarding individual student assessment, eligibility services and procedural safeguards are satisfied consistent with the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. 1400, Part B, or Section 504 of the Rehabilitation Act of 1973.

[F]J. "Deafblindness" or "deafblind" means written verification provided by a medical professional stating that an individual has concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or students with blindness. The definition of deafblindness also includes the provisions of 53A-25b-102 and 301.

[F]K. "Educational Resource Center" (ERC) is a center under the direction of the USDB that provides information, technology, and instructional materials to assist Utah children with sensory impairments in progressing in the curriculum. It is also the mission of the ERC to facilitate access to materials, information and training for teachers and parents of children with sensory impairments.

[K]L. "Hearing impairment/deafness" ('hard of hearing' for purposes of this rule) is defined as follows:

(1) Hearing impairment is an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deafness.

(2) Deafness is a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, and that adversely affects a student's educational performance.

[E]M. "Local education agency" (LEA) means an agency that has administrative control and direction for public education. School districts, charter schools, and the USDB are LEAs.

[M]N. "National Instructional Materials Access Center (NIMAC) is a central national repository that receives file sets in the NIMAS from publishers to maintain, catalogue and house for future reference file sets for states to use with students who have print disabilities and require accessible alternate formats.

[N]O. "National Instructional Materials Accessibility Standard" (NIMAS) means the electronic standard that enables all producers of alternate formats for students with print disabilities to work from one standard format available from publishers for this purpose.

[O]P. "Outreach program" is a program provided by the USDB that offers an alternative to a campus-based program for students who are blind or visually impaired, deaf or hard of hearing, or deafblind (ages three to 22). Services are provided at a student's resident school or at a designated school by a qualified teacher of the blind or visually impaired, deaf or hard of hearing, or deafblind.

[P]Q. "Related services" means those supportive services that are necessary for the appropriate implementation of the IEP. These may include but are not limited to speech pathology, audiology, low vision services, orientation and mobility, school counselor, transportation, school nurse, occupational therapy, or physical therapy.

[Q]R. "Section 504 accommodation plan" required by Section 504 of the Rehabilitation Act of 1973 means a plan designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

[R]S. "Technical assistance" means assistance to public education employees or licensed educators, and parents and families in significant areas of need by someone who has the expertise necessary to give council and training in designated areas.

[S]T. "USDB" means the Utah Schools for the Deaf and the Blind.

[F]U. "USOE" means the Utah State Office of Education.

[U]V. "Utah State Instructional Materials Access Center (USIMAC) is a center that receives NIMAS electronic file sets and produces them in the accessible alternate format required by students with print disabilities.

[V]W. Visual impairment (including blindness) is an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness that adversely affects a student's educational performance.

[W]X. "WPU" means weighted pupil unit, the basic unit used to calculate the amount of state funds for which a school district or charter school is eligible.

#### **R277-800-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-25B-201 which describes the authority of the Board regarding the USDB, Section 53A-25b-203 which directs the Board to appoint Advisory Council members and assign a USOE staff member as a liaison between the Board and the Advisory Council, Section 53A-25b-302 which directs the Board to establish entrance policies and procedures to be considered, consistent with IDEA, for student placement recommendations at the USDB, Section 53A-25b-501 to establish USIMAC and outline collaboration and operating procedures for USIMAC and USDB resources, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to provide standards and procedures for the operation of the USDB and the USDB outreach programs and services.

#### **R277-800-3. Board Authority Over and Support for USDB.**

A. Consistent with Section 53A-25b-201, The Board is the governing board of the USDB.

B. The USDB superintendent, appointed consistent with Section 53A-25b-201(2), is subject to the direction of the Board and its executive officer, the State Superintendent of Public Instruction.

C. The Board shall appoint the USDB superintendent on the basis of outstanding qualifications.

(1) The USDB superintendent's term of office is for two years and until a successor is appointed and qualified.

(2) The Board shall set the USDB superintendent's compensation for services.

(3) The USDB superintendent shall have, at a minimum, an annual evaluation, as directed by the Board.

(4) The USDB superintendent qualifications shall be established by the Board.

(5) The duties of the USDB superintendent shall be established by the Board.

D. The Board shall direct the USOE to support, provide assistance and work cooperatively with the USDB in providing services to designated Utah students.

E. The Board shall assign a liaison ~~[as provided in Section 53A-25b-203(8)]~~ to provide appropriate supervision to the USDB to ensure compliance with the law.

F. The Board and USOE staff, as assigned, shall assist the USDB and its superintendent and associate superintendents in adopting policies and preparing an annual budget that are consistent with the law.

(1) The Board shall approve the annual budget and expenditures of USDB.

(2) The USDB superintendent shall, subject to the approval of the Board, appoint an associate superintendent to administer the Utah School for the Deaf and an associate superintendent to administer the Utah School for the Blind. Qualifications of the associate superintendents shall be aligned with the requirements of Section 53A-25b-201.

~~[1]3~~ The USDB superintendent and associates may hire staff and teachers as needed for the USDB. Teachers and [staff]related service providers shall be appropriately licensed[-] and credentialed or both [trained-]for their specific assignments and support staff properly trained and supervised for their assignment.

~~[2]4~~ In employment practices and decisions, the USDB and the USDB superintendent shall maintain the accreditation of the USDB school and programs.

~~[3]5~~ The USDB superintendent and associates shall communicate regularly and effectively with the USOE and provide a written report to the Board at least annually in adequate time prior to the November legislative interim meeting or as requested by the Board.

(6) The USDB report shall contain:

(a) a financial report;

(b) a report on the activities of the superintendent and associate superintendents;

(c) a report on activities to involve parents and constituency, including school district and charter school personnel and advocacy groups, in the governance of the school and implementation of service delivery plans for students with sensory impairments; and

(d) a report on student achievement including student achievement data that provides longitudinal data for both current and previous students served by USDB, graduation rates, and students exiting USDB and their educational placements after exiting.

(7) USDB shall ensure that each child/student served by USDB is assigned a unique student identifier (SSID) to allow for annual data collection and reporting of achievement of current and past students.

(8) USDB shall provide the USOE with a listing of past and current children/students, including the assigned unique student identifier, served by USDB by September 1 of each year to facilitate the required data collection.

#### **R277-800-4. USDB Advisory Council.**

A. The Board shall establish the Advisory Council for USDB and appoint and support Advisory Council members as directed in Section [53A-25b-203]53A-25b-201. The purpose of the Advisory Council is to provide advice and recommendations to the Board and USDB administration regarding the instruction of students and the needs of children and students with sensory impairments served statewide by USDB.

B. The Advisory Council shall have not more than 11 Board-appointed voting members and shall include members as qualified under Section 53A-25b-201.

~~[B]C.~~ Advisory Council members shall be appointed for two year terms and may serve no more than three consecutive terms. Advisory Council members serve at the pleasure of the Board.

~~[C]D.~~ If an Advisory Council member resigns or is asked to resign, the Board shall appoint another member in a timely manner by seeking nominations[- from the representative group of the resigning member].

~~[D]E.~~ The Board shall assist the Advisory Council in developing and passing by-laws establishing procedures for nominating and recommending dismissal of Advisory Council members, and setting ethical standards for Advisory Council members.

(1) The bylaws shall include operating procedures for the Advisory Council; and

(2) the bylaws may allow for representation on the Advisory Council of constituencies within the USDB community.

~~[E]E.~~ Advisory Council membership and school community council membership:

(1) Members of the Advisory Council may serve as school community council members under Section 53A-1a-108(4) and R277-491.

(2) The USDB school community council and election process shall be consistent with Section 53A-1a-108 and R277-491.

(3) The USDB may implement electronic voting and consider encouraging school community council participation through electronic meetings and technology that facilitate participation of parents of USDB students in voting and school community council meetings.

#### **R277-800-5. USDB or Student's District of Residence/Charter School as Designated LEA.**

A. To be eligible to receive services from the USDB, a student must be a resident of Utah and meet requirements of Section 53A-25b-301.

B. A student's placement at USDB, in a school/school district or charter school shall be determined by the student's IEP under IDEA or Section 504 accommodation plan. USDB services for students who are school-age shall be limited to those on an IEP or Section 504 accommodation plan.

C. Consistent with Section 53A-25b-301(3)(c), an IEP team or Section 504 team shall determine the appropriate placement for each blind, deaf or deafblind student consistent with IDEA using the Blind/Visually Impaired Guidelines, Deaf/Hard of Hearing Guidelines, or Deafblind Guidelines, as guidance. The USDB Guidelines are hereby incorporated by reference and included with this rule.

D. It is the responsibility of the student's district of residence or charter school to conduct Child Find under R277-800-1F, and to convene the initial IEP or Section 504 team meeting in order to determine a student's placement.

(1) A representative from the student's district of residence or charter school and a representative from the USDB shall be invited to the student's initial IEP or Section 504 accommodation plan meeting.

(2) The parental preference shall be considered in the IEP or Section 504 accommodation plan process consistent with Section 53A-25b-301(3)(c). The final placement decision, as documented on the IEP or Section 504 accommodation plan, shall document a free appropriate public education (FAPE) for the student and shall not be determined solely by parent preference.

E. When USDB is the designated LEA, USDB has full responsibility for all services defined in the IEP/Section 504 accommodation plan. A representative from the district of residence or charter school remains a required member of the IEP or Section 504 accommodation team.

F. When the district of residence or charter school is the LEA designated to provide services to a student with an IEP or Section 504 accommodation plan, the district of residence or charter school has the responsibility for providing instruction and services for the student except that the USDB may be designated by the team as a related service provider. The USDB remains a required member of the student's IEP or 504 accommodation plan team.

G. The IEP or Section 504 accommodation plan shall clearly define what services are to be provided by the related service provider(s).

H. The IEP or Section 504 team shall determine the designated LEA for student placement.

I. Parent complaints regarding student placement at district of residence or USDB:

(1) If a parent is dissatisfied with a student's placement at USDB or district of residence or charter school, the parent may access dispute resolution procedures, consistent with Utah State Board of Education Special Education Rules, August 2007.

(2) If a student's IEP or Section 504 accommodation plan provides for services to be provided by both the USDB and district of residence, or for the USDB and district of residence to share responsibility for serving a student, the parent may access dispute resolution procedures consistent with Utah State Board of Education Special Education Rules, August 2007.

#### **R277-800-12. Utah State Instructional Materials Access Center (USIMAC).**

A. The Board authorizes the establishment of the USIMAC to produce core instructional materials in alternative formats to ensure that all students with print disabilities qualified under the Chafee Amendment receive their materials in a timely manner.

B. The USIMAC shall provide materials for all students with print disabilities who are qualified under the Chafee Amendment or otherwise eligible through an IEP or Section 504 accommodation plan.

C. The USOE shall oversee the operations of the USIMAC.

D. The USDB is the fiscal agent and operates the USIMAC to the extent of funds received annually from the Utah Legislature.

E. LEAs may purchase accessible instructional materials using their own funding or request the production of accessible instructional materials in alternate formats from the USIMAC in accordance with established procedures to ensure timely access for students with print disabilities.

F. For LEA textbook requests submitted by April 1 of the preceding school year, the USIMAC shall provide the textbook in the requested alternate format by the beginning of the following school year.

G. The USDB ERC shall serve as the repository and distribution center for the USIMAC.

#### H. Operation of the USIMAC

(1) Qualifying students: A student qualifies for accessible instructional materials from USIMAC (Braille, audio, large print, digital formats) following LEA determination that the student has a print disability in accordance with the Chafee Amendment, IDEA, or Section 504 of the Rehabilitation Act.

(2) Costs for developing core instructional materials:

(a) Textbooks for blind, vision impaired or deafblind students served by the USDB or LEAs shall be requested by the LEA consistent with the student's IEP or Section 504 accommodation plan.

(b) When an LEA requests a core instructional textbook that was published before August 2006, the USIMAC shall conduct a search for the textbook within existing resources and, if available, the textbook shall be sent to the ERC for distribution to the LEA.

(i) If the textbook is not available within existing resources, the USIMAC will conduct a search to determine if the textbook is available for purchase through another source.

(ii) If the textbook is available through the American Printing House for the Blind (APH) the textbook shall be ordered and sent to the ERC for distribution to the LEA.

(iii) If the textbook is not available from APH, but is available from another accessible media producer, the textbook shall be purchased and sent to the ERC for distribution to the LEA.

(iv) If the textbook is not available for purchase, the USIMAC will produce the textbook and send it to the ERC for distribution.

(A) The USIMAC shall purchase the LEA-requested textbook in accordance with copyright law. The cost of the student edition textbook shall be charged to the requesting LEA.

(B) The USIMAC shall produce the textbook in the LEA requested alternate format in accordance with the cost sharing outlined in the Interagency Agreement described in R277-800-6.

(c) The sharing of costs for purchases described in R277-800-12 shall be outlined in the Interagency Agreement described in R277-800-6. [~~The presumption is that the LEA shall pay 75 percent of the cost and USIMAC shall pay 25 percent of the cost.~~]

(d) For textbooks published since August 2006, the USIMAC shall follow the same procedures outlined in R277-800-12H(2)(b). If the USIMAC is unable to obtain the NIMAS file set in a timely manner as a result of publisher negligence, the Board shall authorize USIMAC to seek damages from publisher(s) as a result of the failure to meet contract provisions.

(3) Textbook publishers required to meet NIMAS requirements:

(a) All approved textbook contracts for the state of Utah for instructional materials published since August 2006 shall include a provision for making NIMAS file sets available through the NIMAC in accordance with IDEA and USOE Instructional Materials Contract timelines.

(b) If the USIMAC is unable to obtain the NIMAS file set from the NIMAC because the publisher fails to provide the NIMAS file set to the NIMAC in accordance with IDEA and USOE Instructional Materials Contract timelines, the USIMAC shall bill the textbook publisher the difference in the cost of producing the alternate format textbook without benefit of the NIMAS file set.

(c) The publisher shall be advised of the rule; the Utah Instructional Materials Commission under R277-469 shall not approve textbooks and materials from publishers that have a pattern of not providing materials and textbooks for students with disabilities in a timely manner, consistent with the law and Board rules.

(d) Requests for audio books shall be accessed through the USIMAC as appropriate or through [the Recording for the Blind and Dyslexic (RFB and D) and Bookshare]other sources. Membership[-is] required for [RFB and D and Bookshare and the request]other sources is the responsibility of the LEA designated as the responsible entity for serving the student in the IEP or Section 504 accommodation plan.

**KEY: educational administration**

**Date of Enactment or Last Substantive Amendment:**  
~~[December 8, 2009]~~2012

**Notice of Continuation:** July 23, 2009

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53A-25b-203; 53A-25b-302; 53A-25b-501; 53A-1-401(3)

**Environmental Quality, Air Quality**  
**R307-801**  
**Asbestos**

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)  
 DAR FILE NO.: 36176  
 FILED: 05/14/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Since the Air Quality Board last adopted the Utah Asbestos Rule on 02/08/2008, the Utah State Legislature has made changes to the asbestos provisions found in Section 19-2-104 by passing H.B. 285 (2011 General Session) and H.B. 189 (2012 General Session). The regulated public has also requested changes to the existing Utah Asbestos Rule.

**SUMMARY OF THE RULE OR CHANGE:** This rulemaking is being done as a repeal and reenactment because the proposed amendments to the current rule are so many that the resulting proposed rule could be difficult to understand by many people if the rulemaking was submitted as solely an amendment. Substantive changes in the proposed reenacted rule include the following: contractors performing renovation or demolition activities in or on residential facilities are subject to the requirements of Rule R307-801 when a tested sample contains greater than 1% asbestos. The following definitions were added to the rule: "AHERA Facility," "Asbestos

Abatement Project," "Asbestos Abatement Supervisor," "Asbestos Abatement Worker," "Asbestos-Containing Waste Material," "Asbestos Inspection Report," "Asbestos NESHAP," "Category I Non-Friable Asbestos-Containing Material," "Category II Non-Friable Asbestos-Containing Material," "Condominium," "General Building Remodeling Activities," "Government Official," "High-Efficiency Particulate Air (HEPA)," "Inspector," "NESHAP Facility," "Non-Friable Asbestos-Containing Material," "Open Top Catch Bag," "Phased Project," "Preformed RACM Pipe Insulation," "Project Designer," "Regulated Facilities," "Regulated Facility Component," "Renovation Project," "Renovator," "Residential Facility," "Suspect or Suspected Asbestos-Containing Material," "Training Hour," and "TSCA." The following definitions are being removed from the rule: "Asbestos Project," "Asbestos Waste," "Division," "Facility," "HEPA Filtration," "NESHAP," "Renovation," and "Structure." The rule adds language to clarify that prior to conducting regulated asbestos activities, all persons shall be properly certified. The Renovator discipline is created and training, certification, and work practice requirements are established for it. Residential structures of four units or less, built on or after 01/01/1981, are now only required to be inspected for sprayed-on acoustical ceiling material, asbestos cement siding, vinyl floor tile, thermal-system insulation or tape on duct or furnace, or vermiculite type insulation materials. Inspection reports of residential facilities are required to be submitted to the executive secretary. The information required to be included in notification forms submitted to the executive secretary is updated and clarified. Decontamination units are now required to be attached to containment prior to disturbing RACM or commencing a NESHAP-sized asbestos abatement project, and a more concise definition of specifications in which a decontamination unit shall be constructed is added. Drop cloths and the open top catch bag method are methods that are now allowed when RACM pipe insulation asbestos abatement project in a crawl space or pipe chase less than six feet high or less than three feet wide is conducted. New work practices and procedures for the disposal and handling of asbestos waste are added to the rule. The rule also adds new asbestos information distribution requirements.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** 40 CFR Part 61, Subpart M and 40 CFR Part 763, Subpart E and Subsection 19-2-104(1)(d) and Subsections 19-2-104(3)(r) through (t)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is a potential cost to the state budget as this rule creates a new "Renovator" discipline. Staff will be receiving, reviewing, and processing applications, and staff will also be conducting inspections on both the training providers and the Renovators. The cost or savings to the state budget is unknown, as we do not know how many individuals and companies will be applying for this certification, and we also anticipate the fees that the division receives from applicants will offset much, if not all, of the cost associated with this rule.

◆ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government, as this rule does not create any more requirements for local government.

◆ **SMALL BUSINESSES:** There is an anticipated cost to the small businesses who apply for the new renovator company certification. The Renovator certification application fee for a company certification is \$200, and companies are required to re-certify on a yearly basis. If a small business chooses to pay for the individual certification and re-certification fees for its employees, that cost will be \$100 per employee per year.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no anticipated costs or savings to persons other than small businesses, businesses, or local government entities, as this rule does not create any more requirements for them.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The compliance costs would be the same or less than existing requirements of this rule. Asbestos information distribution requirements are estimated to be \$10 to \$20 per project.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The fiscal impact this rule may have on business should be minimal as compliance costs would be the same or less than existing requirements, and the information distribution requirements are estimated to be \$10 to \$20 per project.

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

ENVIRONMENTAL QUALITY  
AIR QUALITY  
FOURTH FLOOR  
195 N 1950 W  
SALT LAKE CITY, UT 84116-3085  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Mark Berger by phone at 801-536-4000, by FAX at 801-536-0085, or by Internet E-mail at mberger@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/12/2012

AUTHORIZED BY: Bryce Bird, Director

### **R307. Environmental Quality, Air Quality.**

#### **~~R307-801. Asbestos.~~**

##### **~~R307-801-1. Purpose and Authority.~~**

~~Rule R307-801 establishes procedures and requirements for asbestos projects and training programs, procedures and requirements for the certification of persons engaged in asbestos activities, and work practice standards for performing such~~

~~activities. This rule is promulgated under the authority of 19-2-104(1)(d), (3)(r), (3)(s), (3)(t). Penalties are authorized by 19-2-115.~~

#### **~~R307-801-2. Applicability and General Provisions.~~**

~~(1) Applicability.~~

~~(a) The following persons are operators and are subject to the requirements of R307-801:~~

~~(i) Persons who contract for hire to conduct renovation of structures or facilities, or to conduct demolition of structures or facilities, except for residential outbuilding structures of less than 100 square feet;~~

~~(ii) Persons who conduct renovation or demolition in areas to which the general public has unrestrained access; or~~

~~(iii) Persons who conduct renovation or demolition in school buildings subject to AHERA or who conduct asbestos inspections in structures subject to TSCA Title II.~~

~~(b) The following persons are subject to certification requirements:~~

~~(i) Persons required by TSCA Title II to be accredited as inspectors, management planners, project designers, supervisors, or workers;~~

~~(ii) Persons who work on an asbestos project as workers, supervisors, inspectors, project designers, or management planners; and~~

~~(iii) Companies that conduct asbestos projects or inspections, create project designs, or prepare management plans in structures or facilities.~~

~~(2) All persons who are required by R307-801 to obtain an approval, certification, determination or notification from the executive secretary must obtain it in writing.~~

~~(3) Persons wishing to deviate from the certification, notification, work practice, or other requirements of R307-801 may do so only after requesting and obtaining the written approval of the executive secretary.~~

#### **~~R307-801-3. Definitions.~~**

~~The following definitions apply to R307-801:~~

~~"Adequately Wet" means sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.~~

~~"Amended Water" means a mixture of water and a chemical wetting agent that provides control of asbestos fiber release.~~

~~"AHERA" means the federal Asbestos Hazard Emergency Response Act of 1986 and the Environmental Protection Agency implementing regulations, 40 CFR Part 763, Subpart E - Asbestos-Containing Materials in Schools.~~

~~"Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite-tremolite.~~

~~"Asbestos-Containing Material (ACM)" means any material containing more than one percent (1%) asbestos by the method specified in Appendix A, Subpart F, 40 CFR Part 763-Section 1, Polarized Light Microscopy (PLM), or, if the asbestos content is less than 10%, the asbestos concentration must be determined by point counting using PLM procedure.~~

"Asbestos Inspection" means any activity undertaken to determine the presence or location, or to assess the condition, of asbestos-containing material or suspected asbestos-containing material, whether by visual or physical examination, or by taking samples of the material. This term includes re-inspections of the type described in AHERA, 40 CFR 763.85(b), of known or assumed asbestos-containing material which has been previously identified. The term does not include the following:

(a) Periodic surveillance of the type described in AHERA, 40 CFR 763.92(b), solely for the purpose of recording or reporting a change in the condition of known or assumed asbestos-containing material;

(b) Inspections performed by employees or agents of federal, state, or local government solely for the purpose of determining compliance with applicable statutes or regulations; or

(c) Visual inspections of the type described in AHERA, 40 CFR 763.90(i), solely for the purpose of determining completion of response actions.

"Asbestos Project" means any activity involving the removal, renovation, repair, demolition, salvage, disposal, cleanup, or other disturbance of regulated asbestos-containing material greater than small scale short duration.

"Asbestos Removal" means the stripping of friable asbestos-containing material from surfaces or components of a structure or taking out structural components that contain or are covered with friable ACM from a structure.

"Asbestos Survey Report" means a written report as specified in R307-801-10(6) describing an asbestos inspection performed by a certified asbestos inspector.

"Asbestos Waste" means any waste that contains asbestos. This term includes filters from control devices, friable asbestos-containing waste material, and bags or other similar packaging contaminated with asbestos. As applied to demolition and renovations, this term includes materials contaminated with asbestos including disposable equipment and clothing.

"Containerized" means sealed in a leak-tight and durable container.

"Debris" means asbestos-containing material that has been dislodged and has fallen from its original substrate and position or which has fallen while remaining attached to substrate sections or fragments, and is friable or regulated in its current condition.

"Demolition" means the wrecking, salvage, or removal of any load-supporting structural member of a structure together with any related handling operations, or the intentional burning of any structure. This includes the moving of an entire building.

"Disturb" means to disrupt the matrix of ACM or regulated asbestos-containing material, erumble or pulverize ACM or regulated asbestos-containing material, or generate visible debris from ACM or regulated asbestos-containing material.

"Division" means the Division of Air Quality.

"Emergency Renovation Operation" means any asbestos project which was not planned and results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden as determined by the Division. This term includes operations necessitated by non-routine failure of equipment and does not include situations caused by the lack of planning.

"Encapsulant" means a permanent coating applied to the surface of friable ACM for the purpose of preventing the release of asbestos fibers. The encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

"Facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building, including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential co-operative; any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to the NESHAP is not excluded, regardless of its current use or function. Public building and commercial building have the same meanings as they do in TSCA Title II.

"Friable Asbestos Containing Material (Friable ACM)" means any asbestos-containing material that, when dry, can be erumbled, pulverized, or reduced to powder by hand pressure.

"Glovebag" means an impervious plastic bag-like enclosure, not more than a 60 x 60 inches, affixed around an asbestos-containing material, with glove-like appendages through which material and tools may be handled.

"HEPA Filtration" means the high efficiency particulate air filtration found in respirators and vacuum systems capable of filtering particles greater than 0.3 micron in diameter with 99.97% efficiency, designed for use in asbestos-contaminated environments.

"Inaccessible" means in a physically restricted or obstructed area or covered in such a way that detection or removal is prevented or severely hampered.

"Management Plan" means a document that meets the requirements of AHERA for management plans for asbestos in schools.

"Management Planner" means a person who prepares a management plan for a school building subject to AHERA.

"Model Accreditation Plan (MAP)" means 40 CFR Part 763, Subpart E, Appendix C, Asbestos Model Accreditation Plan.

"NESHAP" means the National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, Subpart M, the National Emission Standard for Asbestos.

"NESHAP Amount" means combined amounts in a project that total:

(a) 260 linear feet (80 meters) of pipe covered with RACM;

(b) 160 square feet (15 square meters) of RACM used to cover or coat any duct, boiler, tank, reactor, turbine, equipment, structure, structural member, or structural component; or

(c) 35 cubic feet (one cubic meter) of RACM removed from structural members or components where the length and area could not be measured previously.

"NESHAP-Sized Asbestos Project" means any asbestos project that involves at least a NESHAP amount of ACM.

"Regulated Asbestos-Containing Material (RACM)" means friable ACM, Category I nonfriable ACM that has become friable, Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or Category II nonfriable ACM that has a high probability of becoming or has

become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations.

"Renovation" means the alteration in any way of one or more structural components, excluding demolition.

"Small-Scale, Short-Duration (SSSD) Asbestos Project" means an asbestos project that removes or disturbs less than 3 square feet or 3 linear feet of RACM in a facility or structure.

"Strip" means to take off ACM from any part of a structure or structural component.

"Structural Component" means any pipe, duct, boiler, tank, reactor, turbine, or furnace at or in a structure, or any structural member of the structure.

"Structural Member" means any load-supporting member of a structure, such as beams and load-supporting walls or any non-load-supporting member, such as ceilings and non-load-supporting walls.

"Structure" means, for the purposes of R307-801, any institutional, commercial, residential, or industrial building, equipment, building component, installation, or other construction.

"TSCA Accreditation" means successful completion of training as an inspector, management planner, project designer, contractor supervisor, or worker, as specified in the TSCA Title II.

"TSCA Title II" means 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response.

"Unrestrained Access" means without fences, closed doors, personnel, or any other method intended to restrict public entry.

"Waste Generator" means any owner or operator of an asbestos project covered by R307-801 whose act or process produces asbestos waste.

"Working Day" means Monday through Friday and includes holidays that fall on any of the days Monday through Friday.

#### **R307-801-4. Adoption and Incorporation of 40 CFR 763 Subpart E.**

(1) The provisions of 40 CFR 763 Subpart E, including appendices effective as of the date referenced in R307-101-3 are hereby adopted and incorporated by reference.

(2) Implementation of the provisions of 40 CFR Part 763, Subpart E, except for the Model Accreditation Plan, shall be limited to those provisions for which the EPA has waived its requirements in accordance with 40 CFR Subpart 763.98, Waiver, delegation to State, as published at 52 FR 41826, (October 30, 1987).

#### **R307-801-5. Company Certifications.**

(1) All persons must have an Asbestos Company Certification before contracting for hire to conduct asbestos inspections, create management plans, create project designs, monitor asbestos projects, or to remove or otherwise disturb more than the SSSD amount of asbestos.

(2) To obtain Utah Asbestos Company Certification, all persons shall submit a completed application for certification on a form provided by the executive secretary.

(3) Unless revoked or suspended, a company certification shall remain in effect until the end of the calendar year in which it was issued.

#### **R307-801-6. Individual Certification.**

(1) To obtain certification as a worker, supervisor, inspector, project designer, or management planner, each person shall first:

(a) Provide personal identifying information;

(b) Pay the appropriate fee;

(c) Fill out the appropriate form provided by the executive secretary;

(d) Provide certificates of initial and current training that demonstrate accreditation in the corresponding discipline. Any of the following TSCA accreditation courses is acceptable unless the executive secretary has determined that the course does not meet the requirements of TSCA accreditation training required by R307-801: courses approved by the executive secretary, approved in a state that has a Contractor Accreditation Program that meets the TSCA Title II Appendix C Model Plan, or approved by EPA under TSCA Title II.

(2) Duration and Renewal of Certification:

(a) Unless revoked or suspended, a certification shall remain in effect until the expiration date of the current certificate of TSCA accreditation for the specific discipline.

(b) To renew certification, the individual shall first:

(i) Submit a completed application for renewal on a form provided by the executive secretary; and

(ii) Submit a current certificate of TSCA accreditation for initial or refresher training in the appropriate discipline.

#### **R307-801-7. Denial and Cause for Suspension and Revocation of Company and Individual Certifications.**

(1) An application for certification may be denied if the individual, applicant company, or any principle officer of the applicant company has a documented history of noncompliance with the requirements, procedures, or standards established by R307-801, R307-214-1, which incorporates 40 CFR Part 61, Subpart M, the National Emission Standard for Asbestos, AHERA, or with the requirements of any other entity regulating asbestos activities and training programs.

(2) The executive secretary may revoke or suspend any certification based upon documented violations of any requirement of R307-801, AHERA, or 40 CFR Part 61, Subpart M, including but not limited to:

(a) Falsification of or knowing omission in any written submittal required by those regulations;

(b) Permitting the duplication or use of a certificate or TSCA accreditation for the purpose of preparing a falsified written submittal; or

(c) Repeated work practice violations.

#### **R307-801-8. Approval of Training Courses.**

(1) To obtain approval of a training course, the course provider shall first provide a written application to the executive secretary that includes:

(a) Name, address, phone number, and institutional affiliation of person sponsoring the course;

(b) The course curriculum;

(c) A letter that clearly indicates how the course meets the Model Accreditation Plan and R307-801 requirements for length of training in hours or days, amount and type of hands-on training;

examinations, including length, format, example of examination or questions, and passing scores, and topics covered in the course;

(d) A copy of all course materials, including student manuals, instructor notebooks, handouts, etc.;

(e) Names and qualifications of all course instructors, including all academic credentials and field experience in asbestos abatement; and

(f) Description and an example of numbered certificates issued to students who attend the course and pass the examination. The certificate shall include a unique certificate number, the name of the student and the course completed, the dates of the course and the examination, an expiration date one year from the date the student completed the course and examination, the name, address, and telephone number of the training provider that issued the certificate, and a statement that the person receiving the certificate has completed the requisite training for TSCA accreditation.

(2) To maintain approval of a training course, the course provider shall:

(a) Provide training that meets the requirements of R307-801 and the MAP;

(b) Provide the executive secretary with the names, social security numbers or government-issued picture identification card number, and certificate numbers of all persons successfully completing the course within 30 days of successful completion;

(c) Keep the records specified for training providers in the MAP for three years;

(d) Permit the executive secretary or authorized representative to attend, evaluate and monitor any training course without receiving advance notice from the executive secretary and without charge to the executive secretary; and

(e) Notify the executive secretary of any new course instructor 10 working days prior to the day the new instructor presents or teaches any course for TSCA Accreditation purposes. The notification shall include:

(i) Name and qualifications of each course instructors, including all academic credentials and field experience in asbestos abatement; and

(ii) A list of the courses or specific topics that will be taught by the instructor.

(3) All course providers that provide an AHERA training course or refresher course in the state of Utah shall:

(a) Notify the executive secretary of the location, date, and time of the course at least ten days before the first day of the course;

(b) Update the notification as soon as possible, and no later than the original course date, if the course is rescheduled or cancelled before the course is held; and

(c) Allow the executive secretary to conduct an audit of any course provided to determine whether the course provider meets the requirements of the MAP and of R307-801.

#### **R307-801-9. Renovation and Demolition: Requirement to Inspect.**

(1) Except as described in (2) below, the operator shall ensure that the structure or facility to be demolished or renovated is inspected for ACM by an inspector certified under the provisions of R307-801-6. An asbestos survey report shall be generated according to the provisions of R307-801-10. The operator shall make the asbestos survey report available on site to all persons who have

access to the site for the duration of the renovation or demolition activities, and to the executive secretary upon request.

(2) If the structure has been ordered to be demolished because it is found by a local jurisdiction to be structurally unsound and in danger of imminent collapse, the operator may demolish the structure without having the structure or facility inspected for asbestos. If no asbestos inspection is conducted, the operator shall ensure that all resulting demolition debris is disposed of as asbestos waste, according to R307-801-15. If the demolition debris cannot be containerized, the operator shall obtain approval for an alternative procedure from the executive secretary.

#### **R307-801-10. Renovation and Demolition: Asbestos Inspection Procedures.**

Asbestos inspectors shall use the following procedures when conducting an asbestos inspection of facilities to be demolished or renovated:

(1) Determine the scope of demolition or renovation activities:

(2) Inspect the affected facility or part of the facility where the demolition or renovation operation will occur.

(3) Identify all accessible suspect ACM building materials in the affected facility or part of the facility where the demolition or renovation operation will occur.

(4) Follow a sampling method approved by the executive secretary, to demonstrate that suspect ACM does not contain asbestos.

(5) Assume that unsampled suspect ACM contains asbestos and is ACM; and

(6) Complete an asbestos survey report containing all of the following information in a format approved by the executive secretary:

(a) A brief description of the affected area;

(b) A list of all suspect materials identified in the affected area. For each suspect material provide the following information:

(i) The amount of material in linear feet, square feet, or cubic yards;

(ii) A clear description of the distribution of the material in the affected area;

(iii) A statement of whether the material was assumed to contain asbestos, sampled and shown to contain asbestos, or sampled and demonstrated to not contain asbestos; and

(iv) A determination of whether the material is RACM or may become RACM when subjected to the proposed renovation or demolition activities.

(c) A list of samples collected from suspect materials in the affected area. For each sample provide the following information:

(i) Which suspect material, in the above list, the sample represents;

(ii) A clear description of the original location of the sample;

(iii) The types of analyses performed on the sample;

(iv) The amounts of each type of asbestos in the sample as indicated by the analytical results.

(d) A list of potential locations of suspect materials that were not accessible to inspection that may be part of the affected area.

~~(7) Floor plans or architectural drawings and similar representations may be used to aid in conveying the location of suspect materials or samples, but if so, they must be appended to the asbestos survey report.~~

~~**R307-801-11. Renovation and Demolition: Notification and Asbestos Removal Requirements.**~~

~~(1) Demolitions:~~

~~(a) If the amount of RACM in the structure is less than the SSSD amount, the operator shall submit a notification of demolition at least 10 working days before the start of demolition, and remove the RACM before commencing demolition.~~

~~(b) If the amount of RACM in the structure is greater than or equal to the SSSD amount but less than the NESHAP amount, the operator shall submit an asbestos notification at least 10 working days before the start of demolition and at least one working day before commencing removal, and shall remove the RACM according to the work practice provisions of R307-801 before demolition proceeds.~~

~~(c) If the amount of RACM in the structure is greater than or equal to the NESHAP amount, the operator shall submit an asbestos notification at least 10 working days before the asbestos removal begins. Demolition shall not proceed until after all RACM has been removed from the structure.~~

~~(d) If any structure is to be demolished by intentional burning, the operator, in addition to the notification specified in (a), (b) or (c), shall ensure that all ACM, including non friable ACM and RACM, is removed from the structure before burning.~~

~~(e) If the structure has been ordered to be demolished because it is found by a local jurisdiction to be structurally unsound and in danger of imminent collapse, the operator shall submit a notification of demolition as soon as possible, but no later than the next working day after demolition begins.~~

~~(2) Renovations:~~

~~(a) If the amount of RACM that would be disturbed or rendered inaccessible by renovation activities is less than the SSSD amount, the operator shall remove the RACM before commencing the renovation.~~

~~(b) If the amount of RACM that would be disturbed or rendered inaccessible by renovation activities is greater than the SSSD amount but smaller than NESHAP amount, the operator shall submit an asbestos notification at least one working day before asbestos removal begins, unless the removal was properly included in an annual asbestos notification submitted pursuant to (d) below, and shall remove RACM according to general work practices of R307-801 before performing renovation activities.~~

~~(c) If the amount of RACM that would be disturbed or rendered inaccessible by renovation activities is greater than or equal to the NESHAP amount, then the operator shall submit an asbestos notification as described below, and shall ensure that RACM that would be disturbed by renovation activities and non-friable ACM that may be rendered friable or regulated by renovation activities is removed according to the work practice and disposal requirements of R307-801. The operator shall not commence renovation activities until the asbestos removal process is completed.~~

~~(i) If the renovation is an emergency renovation operation, then the notification shall be submitted as soon as~~

~~possible before and no later than the next business day after asbestos removal begins.~~

~~(ii) If the renovation is not an emergency renovation operation, then the notification shall be submitted at least ten working days before asbestos removal begins.~~

~~(d) The operator shall submit an annual notification according to the requirements of 40 CFR 61.145(a)(4)(iii) no later than 10 working days before the first day of January of the year during which the work is to be performed in the following circumstances:~~

~~(i) The asbestos projects are unplanned operation and maintenance activities;~~

~~(ii) The asbestos projects are less than NESHAP-sized; and~~

~~(iii) The total amount of asbestos to be disturbed in a single facility during these asbestos projects is expected to exceed the NESHAP amount in a calendar year.~~

~~**R307-801-12. Renovation and Demolition: Notification Procedures and Contents.**~~

~~(1) All notifications required by R307-801 shall be submitted in writing on the appropriate form provided by the executive secretary and shall be postmarked or received by the Division by the date specified, or shall be submitted using the Division of Air Quality electronic notification system by the date specified. The type of notification and whether the notification is original or revised shall be indicated.~~

~~(2) If the notification is an original notification of demolition, an original asbestos notification for a NESHAP-sized asbestos project, or an original annual notification, the written notice shall be sent with an original signature by U.S. Postal Service, commercial delivery service, or hand delivery, or with an electronic signature if submitted using the Division of Air Quality electronic notification system. If the U.S. Postal Service is used, the submission date is the postmark date. If other service or hand delivery is used, the submission date is the date that the document is received at the Division. If the Division of Air Quality electronic notification system is used, the submission date is the date that the notification is received by the Division.~~

~~(3) An original asbestos notification for a less than NESHAP-sized asbestos project or any revised notification may be submitted by any of the methods in (2), or by facsimile, by the date specified in R307-801-11. The sender shall ensure that the fax is legible.~~

~~(4) All original notifications shall contain the following information:~~

~~(a) The name, address, and telephone number of the owner of the structure, and of any contractor working on the project;~~

~~(b) Whether the operation is a demolition or a renovation project;~~

~~(c) A description of the structure that includes the size in square feet or square meters, the number of floors, the age, and the present and prior uses of the structure;~~

~~(d) The procedures, including analytical methods, used to inspect for the presence of ACM;~~

~~(e) The location and address, including building number or name and floor or room number, street address, city, county, state, and zip code of the structure being demolished or renovated;~~

~~\_\_\_\_\_ (f) A description of procedures for handling the discovery of unexpected ACM or of nonfriable ACM that has become friable or regulated;~~

~~\_\_\_\_\_ (g) A description of planned demolition or renovation work, including the demolition and renovation techniques to be used and a description of the affected structural components.~~

~~\_\_\_\_\_ (5) In addition to the information in (4) above, an original demolition notification shall contain the following information:~~

~~\_\_\_\_\_ (a) An estimate of the amount of non-friable and non-regulated ACM that will not become regulated as a result of demolition activities and that will remain in the building during demolition;~~

~~\_\_\_\_\_ (b) The starting and ending dates of demolition activities; and~~

~~\_\_\_\_\_ (c) If the structure will be demolished under an order of a state or local government agency, the name, title, and authority of the government representative ordering the demolition, the date the order was issued, and the date the demolition was ordered to commence. A copy of the order shall be attached to the notification.~~

~~\_\_\_\_\_ (6) In addition to the information in (4) and (5) above, an original asbestos notification or an annual notification shall contain the following information:~~

~~\_\_\_\_\_ (a) An estimate of the approximate amount of ACM to be stripped, including which units of measure were used;~~

~~\_\_\_\_\_ (b) The scheduled starting and completion dates of asbestos removal work in a renovation or demolition;~~

~~\_\_\_\_\_ (c) The beginning and ending dates for preparation and asbestos removal, and of renovation activities if applicable;~~

~~\_\_\_\_\_ (d) If an emergency renovation operation will be performed, the date and hour the emergency occurred, a description of the event and an explanation of how the event has caused unsafe conditions or would cause equipment damage or unreasonable financial burden;~~

~~\_\_\_\_\_ (e) A description of work practices and engineering controls to be used to prevent emissions of asbestos at the demolition or renovation work site;~~

~~\_\_\_\_\_ (f) The name and location of the waste disposal site where the asbestos waste will be deposited, including the name and telephone number of the waste disposal site contact;~~

~~\_\_\_\_\_ (g) The name, address, contact person, and phone number of the waste transporters; and~~

~~\_\_\_\_\_ (h) The name, contact person, and phone number of the person receiving the waste shipment record as required by 40 CFR 61.150(d)(1).~~

~~\_\_\_\_\_ (7) A revised notification shall contain the following information:~~

~~\_\_\_\_\_ (a) The name, address, and telephone number of the owner of the structure, and any demolition or asbestos abatement contractor working on the project;~~

~~\_\_\_\_\_ (b) Whether the operation is a demolition or a renovation project;~~

~~\_\_\_\_\_ (c) The date that the original notification was submitted;~~

~~\_\_\_\_\_ (d) The applicable original start and stop dates for asbestos removal, renovation, or demolition;~~

~~\_\_\_\_\_ (e) Revised start and stop dates, if applicable, for asbestos removal or demolition activities;~~

~~\_\_\_\_\_ (f) Changes in amount of asbestos to be removed, if applicable; and~~

~~\_\_\_\_\_ (g) All other changes.~~

~~\_\_\_\_\_ (8) If a NESHAP-sized asbestos project that requires a notification under (4) above or a demolition project that requires a notification under (4) above will commence on a date other than the date submitted in the original written notification, the executive secretary shall be notified of the new starting date by the following deadlines:~~

~~\_\_\_\_\_ (a) If the new starting date is later than the original starting date, notice by telephone shall be given as soon as possible before the original starting date and a revised notice shall be submitted in accordance with R307-801-12(7) as soon as possible before, but no later than, the original starting date.~~

~~\_\_\_\_\_ (b) If the new starting date is earlier than the original starting date, submit a written notice in accordance with R307-801-12(7) at least ten working days before beginning the project.~~

~~\_\_\_\_\_ (c) In no event shall an asbestos project covered by this subsection begin on a date other than the new starting date submitted in the revised written notice.~~

**~~R307-801-13. Renovation and Demolition: Requirements for Certified Workers.~~**

~~\_\_\_\_\_ (1) A supervisor who has been certified under R307-801 shall be on site during asbestos project setup, asbestos removal, stripping, cleaning and dismantling of the project, and other handling of uncontainerized RACM.~~

~~\_\_\_\_\_ (2) All persons handling greater than the SSSD amount of uncontainerized RACM shall be workers or supervisors certified under R307-801.~~

**~~R307-801-14. Renovation and Demolition: Asbestos Work Practices.~~**

~~\_\_\_\_\_ (1) Persons performing any asbestos project shall follow the work practices in this subsection. Where the work practices in R307-801-14(1) and (2) are required, wrap and cut, open top catch bags, glove bags, and mini-enclosures may be used in combination with those work practices.~~

~~\_\_\_\_\_ (a) Adequately wet RACM with amended water before exposing or disturbing it.~~

~~\_\_\_\_\_ (b) Install barriers and post warning signs to prevent access to the work area. Warning signs shall conform to the specifications of 29 CFR 1926.1101(k)(7).~~

~~\_\_\_\_\_ (c) Keep RACM adequately wet until it is containerized and disposed of in accordance with R307-801-15.~~

~~\_\_\_\_\_ (d) Ensure that RACM that is stripped or removed is promptly containerized.~~

~~\_\_\_\_\_ (e) Prevent visible particulate matter and uncontainerized asbestos-containing debris and waste originating in the asbestos work area from being released outside of the negative pressure enclosure or designated work area.~~

~~\_\_\_\_\_ (f) Filter all waste water to 5 microns before discharging it to a sanitary sewer.~~

~~\_\_\_\_\_ (g) Decontaminate the outside of all persons, equipment and waste bags before they leave the work area.~~

~~\_\_\_\_\_ (h) Apply encapsulant to RACM that is exposed but not removed during stripping.~~

~~\_\_\_\_\_ (i) Clean the work area, drop cloths, and other interior surfaces of the enclosure using HEPA vacuum and wet cleaning techniques until there is no visible residue before dismantling barriers.~~

~~(j) After cleaning and before dismantling enclosure barriers, mist the space and surfaces inside of the enclosure with a penetrating encapsulant designed for that purpose.~~

~~(k) Handle and dispose of friable ACM or RACM according to the disposal provisions of R307-801.~~

~~(2) All operators of NESHAP-sized asbestos projects shall install a negative pressure enclosure using the following work practices:~~

~~(a) All openings to the work area shall be covered with at least one layer of 6 mil or thicker polyethylene sheeting sealed with duct tape or an equivalent barrier to air flow.~~

~~(b) If RACM debris is present, the site shall be prepared by removing the debris using the work practice and disposal requirements of R307-801. If the total amount of loose visible RACM debris throughout the entire work area is less than the SSSD amount, then site preparation may begin after notification and before the end of the ten working day waiting period.~~

~~(c) All persons shall enter and leave the negative pressure enclosure or work area only through the decontamination unit.~~

~~(d) All persons subject to R307-801 shall shower before entering the clean-room of the decontamination unit when exiting the enclosure.~~

~~(e) No materials may be removed from the enclosure or brought into the enclosure through any opening other than a waste load-out or a decontamination unit.~~

~~(f) The negative pressure enclosure of the work area shall be constructed with the following specifications:~~

~~(i) Apply at least two layers of 6 mil or thicker polyethylene sheeting or its equivalent to the floor extending at least one foot up every wall and seal in place with duct tape or its equivalent;~~

~~(ii) Apply at least 2 layers of 4 mil or thicker polyethylene sheeting or its equivalent to the walls without locating seams in wall or floor corners;~~

~~(iii) Seal all seams with duct tape or its equivalent; and~~

~~(iv) Maintain the integrity of all enclosure barriers.~~

~~(v) Where a wall or floor will be removed as part of the asbestos project, polyethylene sheeting need not be applied to that component.~~

~~(g) View ports shall be installed in the enclosure or barriers where feasible. View ports shall be:~~

~~(i) At least one foot tall and one foot wide;~~

~~(ii) Made of clear material that is impermeable to the passage of air, such as an acrylic sheet;~~

~~(iii) Positioned so as to maximize the view of the inside of the enclosure from a position outside the enclosure; and~~

~~(iv) Accessible to a person outside of the enclosure.~~

~~(h) A decontamination unit shall be constructed according to the following specifications:~~

~~(i) The unit shall be attached to the enclosure or work area;~~

~~(ii) The decontamination unit shall consist of at least 3 chambers as specified by 29 CFR 1926.1101(j)(1);~~

~~(iii) The clean room, which is the chamber that opens to the outside, shall be no less than 3 feet wide by 3 feet long;~~

~~(iv) The dirty room, which is the chamber that opens to the negative pressure enclosure or the designated work area, shall be no less than 3 feet wide by 3 feet long;~~

~~(v) The dirty room shall be provided with an accessible waste bag at any time that asbestos work is being done.~~

~~(i) A separate waste load-out following the specifications below may be attached to the enclosure for removal of decontaminated waste containers and decontaminated or wrapped tools from the enclosure.~~

~~(i) The waste load-out shall consist of at least one chamber constructed of 6 mil or thicker polyethylene walls and 6 mil or thicker polyethylene flaps or the equivalent on the outside and inside entrances;~~

~~(ii) The waste load-out chamber shall be at least 3 feet long, 3 feet high, and 3 feet wide; and~~

~~(iii) The waste load-out supplies shall be sufficient to decontaminate bags, and may include a water supply with filtered drain, clean rags and clean bags.~~

~~(j) Negative air pressure and flow shall be established and maintained within the enclosure by:~~

~~(i) Maintaining four air changes per hour in the enclosure;~~

~~(ii) Routing the exhaust from HEPA filtered ventilation units to the outside of the structure whenever possible;~~

~~(iii) Maintaining a minimum of 0.02 column inches of water pressure differential relative to outside pressure; and~~

~~(iv) Maintaining a monitoring device to measure the negative pressure in the enclosure.~~

~~(3) In lieu of two layers of polyethylene on the walls and the floors as required by R307-801-(2)(f)(i) and (ii), the following work practices and controls may be used only under the circumstances described below:~~

~~(a) If an asbestos project is conducted in a crawl space or pipe chase and the available space is less than 6 feet high or is less than 3 feet wide, then the following may be used:~~

~~(i) Drop cloths extending at least 6 feet around all RACM to be removed, or extended to a wall and attached with duct tape or equivalent; and~~

~~(ii) Either glovebags, wrap and cut, or the open top catch bag method must be used. The open top catch bag method may be used only if the material to be removed is pre-formed RACM pipe insulation.~~

~~(b) Scattered ACM. If the RACM is scattered in small patches, such as isolated pipe fittings, the following procedures may be used:~~

~~(i) Glovebags, mini-enclosures as described in R307-801-14(5), or wrap and cut methods with drop cloths large enough to capture all RACM fragments that fall from the work area may be used.~~

~~(ii) If all asbestos disturbance is limited to the inside of negative pressure glovebags or mini-enclosure, then openings need not be sealed and negative pressure need not be maintained outside of the glovebags or mini-enclosure during the asbestos removal operation.~~

~~(iii) A remote decontamination unit may be used as described in R307-801-14(5)(d) only if an attached decontamination unit is not feasible.~~

~~(4) During outdoor asbestos projects, the work practices of R307-801-14 shall be followed, with the following modifications:~~

~~(a) Negative pressure need not be maintained if there is not an enclosure;~~

~~(b) Six mil polyethylene or equivalent drop cloth large enough to capture all RACM fragments that fall from the work area shall be used; and~~

~~(c) A remote decontamination unit as described in R307-801-14(5)(d) may be used.~~

~~(5) Special work practices:~~

~~(a) If the wrap and cut method is used:~~

~~(i) The component shall be cut at least 6 inches from any RACM on that component;~~

~~(ii) If asbestos will be removed from the component to accommodate cutting, the asbestos removal shall be done using a single glove bag for each cut, and no RACM shall be disturbed outside of a glove bag;~~

~~(iii) The wrapping shall be leak tight and shall consist of two layers of 6 mil polyethylene, each individually sealed with duct tape, and all RACM between the cuts shall be sealed inside wrap; and~~

~~(iv) The wrapping shall remain intact and leak tight throughout the removal and disposal process.~~

~~(b) If the open top catch bag method is used:~~

~~(i) Asbestos waste bags that are leak tight and strong enough to hold contents securely shall be used;~~

~~(ii) The bag shall be placed underneath the stripping operation to minimize ACM falling onto the drop cloth;~~

~~(iii) All material stripped from the component shall be placed in the bag;~~

~~(iv) One worker shall hold the bag and another worker shall strip the ACM into the bag; and~~

~~(v) A drop cloth large enough to capture all RACM originating in the work area shall be used.~~

~~(c) If glove bags are used, they shall be negative pressure, and the procedures required by 29 CFR 1926.1101(g)(5) shall be followed.~~

~~(d) A remote decontamination unit may be used under the conditions set forth in R307-801-14(3)(b) or (4), or when approved by the executive secretary. The remote decontamination unit and procedures shall include:~~

~~(i) Outerwear shall be HEPA vacuumed or removed, and additional clean protective outerwear shall be put on;~~

~~(ii) Either polyethylene sheeting shall be placed on the path to the decontamination unit and the path shall be blocked or taped off to prevent public access, or workers shall be conveyed to the remote decontamination unit in a vehicle that has been lined with two layers of 6 mil or thicker polyethylene sheeting or its equivalent; and~~

~~(iii) The polyethylene path or vehicle liner shall be removed at the end of the project, and disposed of as asbestos waste.~~

~~(c) Mini-enclosures, when used under approved conditions, shall conform to the requirements of 29 CFR 1926.1101(g)(5)(vi).~~

#### **R307-801-15. Disposal and Handling of Asbestos Waste.**

~~(1) Containerize asbestos waste while adequately wet.~~

~~(2) Asbestos waste containers shall be leak tight and strong enough to hold contents securely.~~

~~(3) Containers shall be labeled with the waste generator's name, address, and phone number, and the contractor's name and address, before they are removed from the work area.~~

~~(4) Containerized RACM shall be disposed of at a landfill which complies with 40 CFR 61.150.~~

~~(5) The waste shipment record shall include a list of items and the amount of asbestos waste being shipped. The waste generator originates and signs this document.~~

#### **R307-801-16. Records.**

~~(1) Certified asbestos companies shall maintain records of all asbestos projects that they perform and shall make these records available to the executive secretary upon request. The records shall be retained for at least five years. Maintained records shall include the following:~~

~~(a) Names and state certification numbers of the asbestos workers and supervisors who performed the asbestos project;~~

~~(b) Location and description of the asbestos project and amount of Friable ACM removed;~~

~~(c) Starting and completion dates of the asbestos project;~~

~~(d) Summary of the procedures used to comply with applicable requirements including copies of all notifications; and~~

~~(e) Waste shipment records maintained in accordance with 40 CFR Part 61, Subpart M, NESHAP.~~

~~(f) Asbestos surveys associated with the asbestos project.~~

~~(2) All other persons subject to the inspection requirements of R307-801-9 shall maintain copies of asbestos survey reports for at least one year after renovation or demolition activities have ceased, and shall make these reports available to the executive secretary upon request.]~~

#### **R307-801. Utah Asbestos Rule.**

##### **R307-801-1. Purpose and Authority.**

This rule establishes procedures and requirements for asbestos abatement or renovation projects and training programs, procedures and requirements for the certification of persons and companies engaged in asbestos abatement or renovation projects, and work practice standards for performing such projects. This rule is promulgated under the authority of Utah Code Annotated 19-2-104(1)(d), (3)(r)(i) through (iii), (3)(s), (3)(t), and (6). Penalties are authorized by Utah Code Annotated 19-2-115. Fees are authorized by Utah Code Annotated 19-1-201(2)(i).

##### **R307-801-2. Applicability and General Provisions.**

(1) Applicability.

(a) The following persons are operators and are subject to the requirements of R307-801:

(i) Persons who contract for hire to conduct asbestos abatement, renovation, or demolition projects in regulated facilities;

(ii) Persons who conduct asbestos abatement, renovation, or demolition projects in areas where the general public has unrestrained access; or

(iii) Persons who conduct asbestos abatement, renovation, or demolition projects in school buildings subject to AHERA or who conduct asbestos inspections in facilities subject to TSCA Title II.

(b) The following persons are subject to certification requirements:

(i) Persons required by TSCA Title II or R307-801 to be accredited as inspectors, management planners, project designers, renovators, asbestos abatement supervisors, or asbestos abatement workers;

(ii) Persons who work on asbestos abatement projects as asbestos abatement workers, asbestos abatement supervisors, inspectors, project designers, or management planners; and

(iii) Companies that conduct asbestos abatement projects, renovation projects, inspections, create project designs, or prepare management plans in regulated facilities.

(c) Homeowners or condominium owners performing renovation or demolition activities in or on their own residential facilities not subject to the Asbestos NESHAP are not subject to the requirements of this rule, however, a condominium complex of more than four units may be subject to the Asbestos NESHAP and R307-801.

(d) Contractors performing renovation or demolition activities in or on regulated facilities are required to have inspections performed in accordance with the requirements of R307-801-9 and the procedures of R307-801-10. Contractors performing renovation or demolition activities in or on residential facilities are subject to the requirements of this rule when a tested sample contains greater than 1% asbestos.

(2) General Provisions.

(a) All persons who are required by R307-801 to obtain an approval, certification, determination, or notification from the executive secretary must obtain it in writing.

(b) Persons wishing to deviate from the certification, notification, work practices, or other requirements of R307-801 may do so only after requesting and obtaining the written approval of the executive secretary.

**R307-801-3. Definitions.**

The following definitions apply to R307-801:

"Adequately Wet" means to sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material is not adequately wet. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

"Amended Water" means a mixture of water and a chemical wetting agent that provides control of asbestos fiber release.

"AHERA" means the federal Asbestos Hazard Emergency Response Act of 1986 and the Environmental Protection Agency implementing regulations, 40 CFR Part 763, Subpart E - Asbestos-Containing Materials in Schools.

"AHERA Facility" means any structure subject to the federal AHERA requirements.

"Asbestos" means the asbestiform varieties of serpentine (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite-tremolite.

"Asbestos Abatement Project" means any activity involving the removal, repair, demolition, salvage, disposal, cleanup, or other disturbance of regulated asbestos-containing material greater than the small scale short duration (SSSD) amount.

"Asbestos Abatement Supervisor" means a person who is certified according to R307-801-6 and is responsible for ensuring work is conducted in accordance with the regulations and best work practices for asbestos abatement or renovation projects.

"Asbestos Abatement Worker" means a person who is certified according to R307-801-6 and performs asbestos abatement or renovation projects.

"Asbestos-Containing Material (ACM)" means any material containing more than 1% asbestos by the method specified in 40 CFR Part 763, Subpart E, Appendix E, Section 1, Polarized Light Microscopy (PLM), or, if the asbestos content is less than 10%, the asbestos concentration shall be determined by point counting using PLM or any other method acceptable to the executive secretary.

"Asbestos-Containing Waste Material (ACWM)" means any waste that contains any amount of asbestos. This term includes filters from control devices, friable asbestos-containing waste material, and bags or similar packaging contaminated with asbestos. As applied to demolition and renovation projects, this term includes materials contaminated with asbestos including disposable equipment and clothing.

"Asbestos Inspection" means any activity undertaken to identify the presence and location, or to assess the condition, of asbestos-containing material or suspected asbestos-containing material, by visual or physical examination, or by collecting samples of the material. This term includes re-inspections of the type described in AHERA, 40 CFR 763.85(b), of known or assumed asbestos-containing material which has been previously identified. The term does not include the following:

(a) Periodic surveillance of the type described in AHERA, 40 CFR 763.92(b), solely for the purpose of recording or reporting a change in the condition of known or assumed asbestos-containing material;

(b) Inspections performed by employees or agents of federal, state, or local government solely for the purpose of determining compliance with applicable statutes or regulations; or

(c) Visual inspections of the type described in AHERA, 40 CFR 763.90(i), solely for the purpose of determining completion of response actions.

"Asbestos Inspection Report" means a written report as specified in R307-801-10(6) describing an asbestos inspection performed by a certified asbestos inspector.

"Asbestos NESHAP" means the National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, Subpart M, the National Emission Standard for Asbestos.

"Asbestos Removal" means the stripping of friable ACM from regulated facility components or the removal of structural components that contain or are covered with friable ACM from a regulated facility.

"Category I Non-Friable Asbestos-Containing Material" means asbestos-containing packings, gaskets, resilient floor coverings, or asphalt roofing products containing more than 1% asbestos as determined by using the method specified in 40 CFR Part 763, Subpart E, Appendix E, Section 1, Polarized Light Microscopy (PLM).

"Category II Non-Friable Asbestos-Containing Material" means any material, excluding Category I non-friable ACM, containing more than 1% asbestos as determined by using the methods specified in 40 CFR Part 763, Subpart E, Appendix E, Section 1, Polarized Light Microscopy (PLM) that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

"Condominium" means a building or complex of buildings in which units of property are owned by individuals and common parts of the property, such as the grounds, common areas, and building structure, are owned jointly by the condominium unit owners.

"Containerized" means sealed in a leak-tight and durable container.

"Debris" means friable or regulated asbestos-containing material that has been dislodged and has fallen from its original substrate and position or which has fallen while remaining attached to substrate sections or fragments.

"Demolition Project" means the wrecking, salvage, or removal of any load-supporting structural member of a regulated facility together with any related handling operations, or the intentional burning of any regulated facility. This includes the moving of an entire building, but excludes the moving of structures, vehicles, or equipment with permanently attached axles, such as trailers, motor homes, and mobile homes that are specifically designed to be moved.

"Disturb" means to disrupt the matrix, crumble, pulverize, or generate visible debris from ACM or RACM.

"Emergency Abatement or Renovation Project" means any asbestos abatement or renovation project which was not planned and results from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden as determined by the executive secretary. This term includes operations necessitated by non-routine failure of equipment, natural disasters, fire, or flooding, but does not include situations caused by the lack of planning.

"Encapsulant" means a permanent coating applied to the surface of friable ACM for the purpose of preventing the release of asbestos fibers. The encapsulant creates a membrane over the surface (bridging encapsulant) or penetrates the material and binds its components together (penetrating encapsulant).

"Friable Asbestos-Containing Material (Friable ACM)" means any asbestos-containing material that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

"Glove bag" means an impervious plastic bag-like enclosure, not more than 60 x 60 inches, affixed around an asbestos-containing material, with glove-like appendages through which material and tools may be handled.

"General Building Remodeling Activities" means the alteration in any way of one or more regulated structure components, excluding asbestos abatement, renovation, and demolition projects.

"Government Official" means an engineer, building official, or health officer employed by a jurisdiction that has a responsibility for public safety or health.

"High-Efficiency Particulate Air (HEPA)" means a filtration system capable of trapping and retaining at least 99.97% of all mono-dispersed particles 0.3 micron in diameter.

"Inaccessible" means in a physically restricted or obstructed area, or covered in such a way that detection or removal is prevented or severely hampered.

"Inspector" means a person who is certified according to R307-801-6, conducts asbestos inspections, or oversees the preparation of asbestos inspection reports.

"Management Plan" means a document that meets the requirements of AHERA for management plans for asbestos in schools.

"Management Planner" means a person who is certified according to R307-801-6 and oversees the preparation of management plans for school buildings subject to AHERA.

"Model Accreditation Plan (MAP)" means 40 CFR Part 763, Subpart E, Appendix C, Asbestos Model Accreditation Plan.

"NESHAP Amount" means combined amounts in a project that total:

(a) 260 linear feet (80 meters) of pipe covered with RACM;

(b) 160 square feet (15 square meters) of RACM used to cover or coat any duct, boiler, tank, reactor, turbine, equipment, structural member, or regulated facility component; or

(c) 35 cubic feet (one cubic meter) of RACM removed from regulated facility structural members or components where the length and area could not be measured previously.

"NESHAP Facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building, (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential co-operative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation, or building that was previously subject to the Asbestos NESHAP is not excluded, regardless of its current use or function.

"NESHAP-Sized Project" means any project that involves at least the NESHAP amount of ACM.

"Non-Friable Asbestos-Containing Material" means any material containing more than 1% asbestos, as determined using the methods specified in 40 CFR Part 763, Subpart E, Appendix E, Section 1, Polarized Light Microscopy (PLM), that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

"Open Top Catch Bag" means either an asbestos waste bag or six mil polyethylene sheeting which is sealed at both ends and used by certified asbestos abatement workers, in a manner not to disturb the matrix of the asbestos-containing material, to collect preformed RACM pipe insulation in either a crawl space or pipe chase less than six feet high or less than three feet wide. "Phased Project" means either an asbestos abatement, renovation, or demolition project that contains multiple start and stop dates corresponding to separate operations or areas where the entire asbestos abatement, renovation, or demolition project cannot or will not be performed continuously.

"Preformed RACM Pipe Insulation" means prefabricated asbestos-containing thermal system insulation on pipes formed in sections that can be removed without disturbing the matrix of the asbestos-containing material.

"Project Designer" means a person who is certified according to R307-801-6 and prepares a design for an asbestos abatement project in school buildings subject to AHERA or prepares an asbestos clean-up plan in a regulated facility where an asbestos disturbance greater than the SSSD amount has occurred.

"Regulated Asbestos-Containing Material (RACM)" means friable ACM, Category I non-friable ACM that has become friable, Category I non-friable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or Category II non-friable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation project operations.

"Regulated Facilities" means AHERA, NESHAP, or residential facilities including residential property of four or fewer units when a sample has been collected and analyzed to contain greater than 1% asbestos.

"Regulated Facility Component" means any part of a regulated facility including equipment.

"Renovation Project" means any activity involving the removal, repair, salvage, disposal, cleanup, or other disturbance of greater than the SSSD amount of RACM, but less than the NESHAP amount of RACM, and the intent of the project is not asbestos abatement or demolition. Renovation Projects can be performed in NESHAP or residential facilities but cannot be performed in AHERA facilities.

"Renovator" means a person who is certified according to R307-801-6 and is responsible for ensuring work that is conducted on a renovation project is performed in accordance with the regulatory requirements and best work practices for a greater than the SSSD amount of RACM, but less than the NESHAP amount of RACM, where the intent of the project is to perform a renovation project and not to perform an asbestos abatement or demolition project. Renovation projects can be performed in NESHAP or residential facilities but cannot be performed in AHERA facilities.

"Residential Facility" means a building used primarily for residential purposes, has four or fewer units, and is not subject to the Asbestos NESHAP.

"Small-Scale, Short-Duration (SSSD)" means a project that removes or disturbs less than three square feet or three linear feet of RACM in a regulated facility.

"Strip" means to take off ACM from any part of a regulated facility or a regulated facility component.

"Structural Member" means any load-supporting member of a regulated facility, such as beams and load-supporting walls or any non-load supporting member, such as ceilings and non-load supporting walls.

"Suspect or Suspected Asbestos-Containing Material" means all building materials that have the potential to contain asbestos, except building materials made entirely of glass, fiberglass, wood, metal, or rubber.

"Training Hour" means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and hands-on experience.

"TSCA" means the Toxic Substances Control Act.

"TSCA Accreditation" means successful completion of training as an inspector, management planner, project designer, contractor-supervisor, or worker, as specified in the TSCA Title II.

"TSCA Title II" means 15 U.S.C. 2601 et seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response.

"Unrestrained Access" means without fences, closed doors, personnel, or any other method intended to restrict public entry.

"Waste Generator" means any owner or operator of an asbestos abatement or renovation project covered by R307-801 whose act or process produces ACWM.

"Working Day" means weekdays, Monday through Friday, including holidays.

#### **R307-801-4. Adoption and Incorporation of 40 CFR 763 Subpart E.**

(1) The provisions of 40 CFR 763 Subpart E, including appendices, effective as of the date referenced in R307-101-3, are hereby adopted and incorporated by reference.

(2) Implementation of the provisions of 40 CFR Part 763, Subpart E, except for the Model Accreditation Plan, shall be limited to those provisions for which the EPA has waived its requirements in accordance with 40 CFR 763.98, Waiver; delegation to State, as published at 52 FR 41826, (October 30, 1987).

#### **R307-801-5. Company Certification.**

(1) All persons shall operate under an asbestos company certification before contracting for hire to conduct asbestos inspections, create management plans, create project designs, or conduct asbestos abatement projects, and all persons shall operate under a renovation company certification before contracting for hire to conduct renovation projects.

(2) To obtain an asbestos or renovation company certification, all persons shall submit a properly completed application for certification on a form provided by the executive secretary and pay the appropriate fee (renovation company certification fee shall be \$200.00 per year).

(3) Unless revoked or suspended, an asbestos or renovation company certification shall remain in effect until the expiration date provided by the executive secretary.

#### **R307-801-6. Individual Certification.**

(1) All persons shall have an individual certification before conducting asbestos inspections, creating management plans, creating project designs, conducting renovation projects, or conducting asbestos abatement projects.

(2) To obtain certification as an asbestos abatement worker, asbestos abatement supervisor, inspector, project designer, renovator, or management planner, each person shall:

(a) Provide personal identifying information;

(b) Pay the appropriate fee (renovator certification fee shall be \$100.00 per year);

(c) Complete the appropriate form or forms provided by the executive secretary;

(d) Provide certificates of initial and current refresher training, if applicable, that demonstrate accreditation in the appropriate discipline. Certificates from courses approved by the executive secretary, courses approved in a state that has an accreditation program that meets the TSCA Title II Appendix C Model Accreditation Plan (MAP), or courses that are approved by EPA under TSCA Title II are acceptable unless the executive secretary has determined that the course does not meet the requirements of TSCA accreditation training required by R307-801; and

(e) Complete a new initial training course as required by the AHERA MAP, or for the renovator certification, R307-801, if there is a period of more than one year from the previous initial or refresher training certificate expiration date.

(3) Duration and Renewal of Certification.

(a) Unless revoked or suspended, a certification shall remain in effect until the expiration date of the current certificate of TSCA accreditation for the specific discipline.

(b) To renew certification, the individual shall:

(i) Submit a properly completed application for renewal on a form provided by the executive secretary.

(ii) Submit a current certificate of TSCA accreditation, or for the renovator certification, a training certificate from a renovator course accredited by the executive secretary, for initial or refresher training in the appropriate discipline; and

(iii) Pay the appropriate fee (renovator recertification fee shall be \$100.00 per year).

**R307-801-7. Denial and Cause for Suspension and Revocation of Company and Individual Certifications.**

(1) An application for certification may be denied if the individual, applicant company, or any principal officer of the applicant company has a documented history of non-compliance with the requirements, procedures, or standards established by R307-801, R307-214-1, which incorporates the Asbestos NESHAP, AHERA, or with the requirements of any other entity regulating asbestos activities and training programs.

(2) The executive secretary may revoke or suspend any certification based upon documented violations of any requirement of R307-801, AHERA, or the Asbestos NESHAP, including but not limited to:

(a) Falsifying or knowingly omitting information in any written submittal required by those regulations;

(b) Permitting the duplication or use of a certificate of TSCA accreditation for the purpose of preparing a falsified written submittal; or

(c) Repeated work practice violations.

**R307-801-8. Approval of Training Courses.**

(1) To obtain approval of a training course, the course provider shall provide a written application to the executive secretary that includes:

(a) The name, address, telephone number, and institutional affiliation of the person sponsoring the course;

(b) The course curriculum;

(c) A letter that clearly indicates how the course meets the Model Accreditation Plan (MAP) and R307-801 requirements for length of training in hours, amount and type of hands-on training, examinations (including length, format, example of examination or questions, and passing scores), and topics covered in the course;

(d) A copy of all course materials, including student manuals, instructor notebooks, handouts, etc.;

(e) The names and qualifications of all course instructors, including all academic credentials and field experience in asbestos abatement projects, inspections, project designs, management planning, or renovation projects;

(f) An example of numbered certificates issued to students who attend the course and pass the examination. The certificate shall include a unique certificate number; the name of the

student; the name of the course completed; the dates of the course and the examination; an expiration date one year from the date the student completed the course and examination, or for the purposes of the renovator course, a progressive lengthening of the refresher training schedule of one year after the initial training, three years after the first refresher training, and five years after the second refresher training and all subsequent refresher training courses; the name, address, and telephone number of the training provider that issued the certificate; and a statement that the person receiving the certificate has completed the requisite training for TSCA or executive secretary accreditation;

(g) A written commitment from the training provider to teach the submitted training course(s) in Utah on a regular basis; and

(h) Payment of the appropriate fee.

(2) To maintain approval of a training course, the course provider shall:

(a) Provide training that meets the requirements of R307-801 and the MAP;

(b) Provide the executive secretary with the names, government-issued picture identification card number, and certificate numbers of all persons successfully completing the course within 30 working days of successful completion;

(c) Keep the records specified for training providers in the MAP for three years;

(d) Permit the executive secretary or authorized representative to attend, evaluate, and monitor any training course without receiving advance notice from the executive secretary and without charge to the executive secretary; and

(e) Notify the executive secretary of any new course instructor ten working days prior to the day the new instructor presents or teaches any course for Renovator or TSCA Accreditation purposes. The training notification form shall include:

(i) The name and qualifications of each course instructor, including appropriate academic credentials and field experience in asbestos abatement projects, inspections, management plans, project designs, or renovations; and

(ii) A list of the course(s) or specific topics that will be taught by the instructor.

(3) All course providers that provide an AHERA or Renovator training course or refresher course in the state of Utah shall:

(a) Notify the executive secretary of the location, date, and time of the course at least ten working days before the first day of the course;

(b) Update the training notification form as soon as possible before, but no later than the original course date if the course is rescheduled or canceled before the course is held; and

(c) Allow the executive secretary or authorized representative to conduct an audit of any course provided to determine whether the course provider meets the requirements of the MAP and of R307-801.

(4) Renovator Certification Course. The renovator certification course shall be a minimum of eight training hours, with a minimum of two hours devoted to hands-on training activities, and shall include an examination of at least 25 questions that the student must pass with a 70% or greater proficiency rate. Instruction in the topics described in R307-801-8(4)(c), (d), and (e) shall be included in the hands-on portion of the course. The

minimum curriculum requirements for the renovator certification course shall adequately address the following topics:

(a) The physical characteristics of asbestos and asbestos-containing materials, including identification of asbestos, aerodynamic characteristics, typical uses, physical appearance, a review of hazard assessment considerations, and a summary of renovation project control options;

(b) Potential health effects related to asbestos exposure, including the nature of asbestos-related diseases, routes of exposure, dose-response relationships and the lack of a safe exposure level, synergism between cigarette smoking and asbestos exposure, and latency period for diseases;

(c) Personal protective equipment, including selection of respirator and personal protective clothing, and handling of non-disposable clothing;

(d) State-of-the-art work practices, including proper work practices for renovation projects, including descriptions of proper construction and maintenance of barriers and decontamination enclosure systems, positioning of warning signs, lock-out of electrical and ventilation systems, proper working techniques for minimizing fiber release, use of wet methods, use of negative pressure exhaust ventilation equipment, use of HEPA vacuums, and proper clean-up and disposal procedures and state-of-the-art work practices for removal, encapsulation, enclosure, and repair of ACM, emergency procedures for unplanned releases, potential exposure situations, transport and disposal procedures, and recommended and prohibited work practices. New renovation project techniques and methodologies may be discussed;

(e) Personal hygiene, including entry and exit procedures for the work area, methods of decontamination, avoidance of eating, drinking, smoking, and chewing (gum or tobacco) in the work area, and methods to limit exposures to family members;

(f) Medical monitoring, including OSHA requirements for physical examinations, including a pulmonary function test, chest x-rays, and a medical history for each employee;

(g) Relevant federal and state regulatory requirements, procedures, and standards, including:

(i) OSHA standards for permissible exposure to airborne concentrations of asbestos fibers and respiratory protection (29 CFR 1910.134);

(ii) OSHA Asbestos Construction Standard (29 CFR 1926.1101); and

(iii) UAC R307-801 Utah Asbestos Rule.

(h) Recordkeeping and notification requirements for renovation projects including records and project notifications required by state regulations and records recommended for legal and insurance purposes;

(i) Supervisory techniques for renovation projects, including supervisory practices to enforce and reinforce the required work practices and discourage unsafe work practices; and

(j) Course review, including a review of key aspects of the training course.

(5) Renovator Recertification Course. The renovator recertification course shall be a minimum of four hours, shall adequately address changes in the federal regulations, state administrative rules, state-of-the-art developments, appropriate work practices, employee personal protective equipment, recordkeeping, and notification requirements for renovation projects, and shall include a course review.

**R307-801-9. Asbestos Abatement, Renovation, and Demolition Projects: Requirement to Inspect.**

(1) Applicability. Owners of residential structures including condominium owners of four units or less not subject to the Asbestos NESHAP are not required to perform asbestos inspections. Owners of a condominium complex of more than four units may be subject to the Asbestos NESHAP and R307-801 and may be required to perform asbestos inspections. Contractors for hire working in a regulated facility are subject to the inspection requirements of R307-801-9.

(2) Except as described in R307-801-9(1) and 9(3), the owner and operator shall ensure that the regulated facility to be demolished, abated, or renovated is thoroughly inspected for asbestos-containing material by an inspector certified under the provisions of R307-801-6. An asbestos inspection report shall be generated according to the provisions of R307-801-10 and completed prior to the start of the asbestos abatement, renovation, or demolition project. The operator shall make the asbestos inspection report available on-site to all persons who have access to the site for the duration of the renovation, abatement, or demolition project, and to the executive secretary or authorized representative upon request.

(3) If the regulated facility has been ordered to be demolished because it is found by a government official to be structurally unsound and in danger of imminent collapse or a public health hazard, the operator may demolish the regulated facility without having the regulated facility inspected for asbestos. If no asbestos inspection is conducted, the operator shall:

(a) Ensure that all resulting demolition project debris is disposed of as asbestos-containing waste material (ACWM), according to R307-801-15. If the asbestos contaminated demolition project debris cannot be properly containerized, the operator shall:

(i) Obtain approval for an alternative work practice from the executive secretary prior to disposing of the ACWM; or

(ii) Segregate the ACWM from non-ACWM debris under the direction of an inspector certified according to R307-801-6 working for a company certified according to R307-801-5.

(b) Clean and encapsulate non-porous debris as non-ACWM by asbestos abatement supervisors or asbestos abatement workers who are certified according to R307-801-6 and working for a company certified according to R307-801-5.

(4) Asbestos inspections older than three years shall be reviewed and updated, as necessary, by an inspector who is certified according to R307-801-6 and working for a company certified according to R307-801-5, and if applicable, shall be reviewed and updated prior to an asbestos abatement, renovation, or demolition project. If the inspection report is still accurate, then the inspector shall provide a letter of review, or some other form of documentation, stating that the inspection report is still accurate.

**R307-801-10. Asbestos Abatement, Renovation, and Demolition Projects: Asbestos Inspection Procedures.**

Asbestos inspectors shall use the following procedures when conducting an asbestos inspection of regulated facilities to be abated, demolished, or renovated:

(1) Determine the scope of the abatement, demolition, or renovation project by identifying which parts and how the regulated facility will be abated, demolished, or renovated (e.g. conventional demolition methods, fire training, etc.).

(2) Inspect the affected regulated facility or part of the regulated facility where the abatement, demolition, or renovation project will occur.

(3) Identify all accessible suspect asbestos-containing material (ACM) in the affected regulated facility or part of the regulated facility where the abatement, demolition, or renovation project will occur. Residential structures of four units or less built on or after January 1, 1981, are only required to inspect for sprayed-on acoustical ceiling material, asbestos cement siding, vinyl floor tile, thermal-system insulation or tape on a duct or furnace, or vermiculite type insulation materials.

(4) Follow the sampling protocol in 40 CFR 763.86 (Asbestos-Containing Materials in Schools) or a sampling method approved by the executive secretary to demonstrate that suspect ACM does not contain asbestos.

(5) Assume that unsampled suspect ACM contains asbestos and is ACM; and

(6) Complete an asbestos inspection report containing all of the following information in a format approved by the executive secretary:

(a) A description of the affected area and a description of the scope of activities as described in R307-801-10(1);

(b) A list of all suspect ACM identified in the affected area. For each suspect material, provide the following information:

(i) The amount of suspect ACM in linear feet, square feet, or cubic feet;

(ii) A clear description of the distribution of the suspect ACM in the affected area;

(iii) A statement of whether the material was assumed to contain asbestos, sampled and demonstrated to contain asbestos, or sampled and demonstrated to not contain asbestos; and

(iv) A determination of whether the material is regulated asbestos-containing material (RACM), Category I non-friable ACM, or Category II non-friable ACM that may or will become friable when subjected to the proposed renovation or demolition project activities.

(c) A list of all asbestos bulk samples collected from suspect ACM in the affected area, including the following information for each sample:

(i) Which suspect ACM the sample represents;

(ii) A clear description of each sample location;

(iii) The types of analyses performed on the sample;

(iv) The amounts of each type of asbestos in the sample as indicated by the analytical results.

(d) A list of potential locations of suspect ACM that were not accessible to inspect and that may be part of the affected area; and

(e) A list of all the asbestos inspector names, company names, and certification numbers.

(7) Floor plans or architectural drawings and similar representations may be used to identify the location of suspect ACM or samples.

(8) Analysis of samples shall be performed by persons or laboratories certified by a nationally recognized testing program such as the National Voluntary Laboratory Accreditation Program (NVLAP), the National Institute for Standards and Technology (NIST), the round robin for bulk samples administered by the American Industrial Hygiene Association (AIHA), or an equivalent nationally-recognized round robin testing program.

(9) Inspection reports of residential facilities shall be submitted to the executive secretary.

**R307-801-11. Asbestos Abatement, Renovation, and Demolition Projects: Notification and Asbestos Removal Requirements.**

(1) Demolition Projects.

(a) If the amount of regulated asbestos-containing material (RACM) in the regulated facility is the small scale short duration (SSSD) amount, the operator shall submit a demolition project notification form at least ten working days before the start of a demolition project.

(b) If the amount of RACM in the regulated facility is greater than the SSSD amount but less than the NESHAP amount, the operator shall submit a demolition project notification form at least ten working days before the start of the demolition project and a less than NESHAP asbestos notification form at least one working day before commencing removal, and shall remove the RACM according to the work practice provisions of R307-801-14 and according to the certification requirements of R307-801-5 and 6 before the demolition project proceeds.

(c) If the amount of RACM in the regulated facility is greater than or equal to the NESHAP amount, the operator shall submit an asbestos abatement project notification form at least ten working days before the asbestos removal begins, and the demolition project shall not proceed until after all RACM has been removed from the regulated facility.

(d) If any regulated facility is to be demolished by intentional burning, the operator, in addition to the demolition notification form specified in R307-801-11(1)(a), (b), or (c), shall ensure that all ACM, including Category I non-friable asbestos-containing material (ACM), Category II non-friable ACM, and RACM is removed from the regulated facility before burning.

(e) If the regulated facility has been ordered to be demolished by a government official because it is found to be structurally unsound and in danger of imminent collapse or a public health hazard, the operator shall submit a demolition project notification form, with a copy of the order signed by the appropriate government official, as soon as possible before, but no later than, the next working day after the demolition project begins. An extension of up to five working days may be requested by the sender for the government ordered demolition documentation upon written request.

(2) Asbestos Abatement and Renovation Projects.

(a) If the amount of RACM that would be disturbed or rendered inaccessible by the asbestos abatement or renovation project is the SSSD amount, then no additional requirements are necessary prior to general building remodeling activities.

(b) If the amount of RACM that would be disturbed or rendered inaccessible by the asbestos abatement or renovation project is greater than the SSSD amount, but less than the NESHAP amount, then the operator shall:

(i) Submit an asbestos abatement project notification form at least one working day before asbestos removal begins as described in R307-801-12, unless the removal was properly included in an annual asbestos notification form submitted pursuant to R307-801-11(2)(e);

(ii) Remove RACM according to asbestos work practices of R307-801-14, the certification requirements of R307-801-5 and

6, and the disposal requirements of R307-801-15 before performing general building remodeling activities.

(c) If the amount of RACM that would be disturbed or rendered inaccessible by the asbestos abatement project is greater than or equal to the NESHAP amount, then the operator shall:

(i) Submit an asbestos abatement project notification form at least ten working days before asbestos removal begins as described in R307-801-12;

(ii) Remove RACM according to the asbestos work practices of R307-801-14, the certification requirements of R307-801-5 and 6, and the disposal requirements of R307-801-15 before performing general building remodeling activities.

(d) If the asbestos abatement or renovation project is an emergency asbestos abatement or renovation project, then the notification form shall be submitted as soon as possible before, but no later than the next working day after the emergency asbestos abatement or renovation project begins.

(e) The operator shall submit an annual asbestos notification form according to the requirements of 40 CFR 61.145(a)(4)(iii) no later than ten working days before the first day of January of the year during which the work is to be performed in the following circumstances:

(i) The asbestos abatement projects are unplanned operation and maintenance activities;

(ii) The asbestos abatement projects are less than NESHAP-sized; and

(iii) The total amount of asbestos to be disturbed in a single NESHAP facility during these asbestos abatement projects is expected to exceed the NESHAP amount in a calendar year.

(3) Owners and operators of general building remodeling activities are not required to submit an asbestos abatement project or renovation notification form to the executive secretary that do not disturb suspect asbestos containing materials, do not disturb building materials found to contain RACM by an inspector who is certified according to R307-801-6, or do not disturb materials that will become RACM as part of the general building remodeling activities.

(4) For notification purposes, asbestos abatement, renovation, or demolition projects shall be no longer than one year in duration.

**R307-801-12. Asbestos Abatement, Renovation, and Demolition Projects: Notification Procedures and Contents.**

(1) All notification forms required by R307-801-11 shall be submitted in writing on the appropriate form provided by the executive secretary and shall be postmarked or received by the executive secretary in accordance with R307-801-11, or shall be submitted using the Division of Air Quality electronic notification system and received by the executive secretary in accordance with R307-801-11. The type of notification and whether the notification is original or revised shall be indicated.

(2) If the notification is an original demolition project notification form, an original asbestos abatement project notification form for a NESHAP-sized asbestos abatement project, or an original asbestos annual notification form, the written notice shall be sent with an original signature by U.S. Postal Service, commercial delivery service, or hand delivery, or with an electronic signature if submitted using the Division of Air Quality electronic notification system. If the U.S. Postal Service is used, the

submission date is the postmark date. If other service or hand delivery is used, the submission date is the date that the document is received at the executive secretary. If the Division of Air Quality electronic notification system is used, the submission date is the date that the notification is received by the executive secretary.

(3) An original asbestos notification form for a less than NESHAP-sized asbestos abatement or renovation project or any revised notification may be submitted by any of the methods in R307-801-12(2), or by facsimile, by the date specified in R307-801-11. The sender shall ensure that the fax is legible.

(4) All original notification forms shall contain the following information:

(a) The name, address, and telephone number of the owner of the regulated facility and of any contractor working on the project;

(b) Whether the operation is an asbestos abatement, demolition, or a renovation project;

(c) A description of the regulated facility that includes the size in square feet, the number of floors, the age, and the present and prior uses of the regulated facility;

(d) The names and certification numbers of the inspectors and companies;

(e) The procedures, including analytical methods, used to inspect for the presence of asbestos-containing material (ACM);

(f) The location and address, including building number or name and floor or room number, street address, city, county, state, and zip code of each regulated facility being demolished or renovated;

(g) A description of procedures for handling the discovery of unexpected ACM, Category I non-friable ACM, or Category II non-friable ACM that has become friable or regulated;

(h) A description of planned asbestos abatement, demolition, or renovation project work, including the asbestos abatement, demolition, and renovation project techniques to be used and a description of the affected regulated facility components or structural members; and

(i) If the project has phases, then provide the date and times of each phase and the location and address of all regulated facilities to be abated, demolished, or renovated.

(5) In addition to the information in R307-801-12(4), an original demolition project notification form shall contain the following information:

(a) An estimate of the amount of Category I non-friable ACM and non-regulated ACM that will remain in the building during the demolition project;

(b) Disposal of Category I ACM that is left in place during demolition must comply with the waste shipment record and other requirements found in R307-801-15(4) and 29 CFR 1926.1101;

(c) The start and stop dates of the demolition project; and

(d) If the regulated facility will be demolished under an order of a government official, the name, title, government agency, and authority of the government official ordering the demolition project, the date the order was issued, and the date the demolition project was ordered to commence. A copy of the order shall be attached to the demolition project notification form.

(6) In addition to the information required in R307-801-12(4) and (5), an original demolition project notification form shall include:

(a) The start and stop dates for the entire project; and  
(b) The start and stop dates for each phase of the project, if applicable.

(7) In addition to the information required in R307-801-12(4), (5), and (6), an original asbestos abatement project notification form shall include:

(a) An estimate of the amount of ACM to be stripped, including which units of measure were used;

(b) The start and stop dates for asbestos abatement project preparation;

(c) The times of day for every day that asbestos abatement project will be conducted;

(d) A description of work practices and engineering controls to be used to prevent emissions of asbestos at the demolition or asbestos abatement project work site;

(e) The name and location of the waste disposal site where the ACWM will be disposed, including the name and telephone number of the waste disposal site contact;

(f) The name, address, contact person, and telephone number of the waste transporters; and

(g) The name, contact person, and telephone number of the waste generator.

(8) If an emergency asbestos abatement or renovation project will be performed, then the notification form shall include the date and hour the emergency occurred, a description of the event and an explanation of how the event has caused unsafe conditions or would cause equipment damage or unreasonable financial burden.

(9) In addition to the information in R307-801-12(4) and (5), an original asbestos abatement project annual notification form shall contain the following information:

(a) An estimate of the approximate amount of ACM to be stripped, including which units of measure were used, if known;

(b) The start and stop dates of asbestos abatement project work covered by the annual notification, if known;

(c) A description of work practices and engineering controls to be used to prevent emissions of asbestos at the asbestos abatement project work site;

(d) The name and location of the waste disposal site where the asbestos-containing waste material (ACWM) will be disposed, including the name and telephone number of the waste disposal site contact;

(e) The name, address, contact person, and telephone number of the waste transporters; and

(f) The name, contact person, and telephone number of the waste generator.

(10) A revised notification form shall contain the following information:

(a) The name, address, and telephone number of the owner of the regulated facility, and any demolition, renovation, or asbestos abatement project contractor working on the project;

(b) Whether the operation is an asbestos abatement, a demolition, or a renovation project;

(c) The date that the original notification form was submitted;

(d) The applicable original start and stop dates for asbestos abatement, renovation, or demolition project;

(e) The revised start and stop dates and working hours, if applicable, for asbestos abatement, renovation, or demolition projects, for the entire project or for any phase of the project;

(f) The changes in the amount of asbestos to be removed during the project if the asbestos removal amount increases or decreases by more than 20%; and

(g) Any other changes.

(11) If the asbestos removal amount is increased in the revised notification form, then the appropriate fee shall be paid to the Division of Air Quality.

(12) If any project phase or an entire NESHAP-sized asbestos abatement, renovation, or demolition project that requires a notification form under R307-801-12(4) will commence on a date or work times other than the date and work times submitted in the original or the most recently revised written notification form, the executive secretary shall be notified of the new start date and work times by the following deadlines:

(a) If the new start date and work times are later than the original start date and work times, then notice by telephone, fax, or electronic means shall be given as soon as possible and a revised notice shall be submitted in accordance with R307-801-12(9) as soon as possible before, but no later than, the original start date.

(b) If the new start date is earlier than the original start date, submit a written notice in accordance with R307-801-12(9) at least ten working days before beginning the project.

(c) In no event shall an asbestos abatement, renovation, or demolition project covered by R307-801-12 begin on a date other than the new start date submitted in the revised written notice.

**R307-801-13. Asbestos Abatement Project: Requirements for Certified Asbestos Abatement Supervisors and Abatement Workers.**

(1) An asbestos abatement supervisor who has been certified under R307-801-6 shall be on-site during asbestos abatement project setup, asbestos removal, stripping, cleaning and dismantling of the project, and other handling of uncontainerized regulated asbestos-containing material (RACM).

(2) All persons handling greater than the small scale short duration amount of uncontainerized RACM shall be asbestos abatement workers or asbestos abatement supervisors certified under R307-801-6.

**R307-801-14. Asbestos Abatement and Renovation Project: Work Practices.**

(1) Persons performing any asbestos abatement or renovation project shall follow the work practices in this subsection. Where the work practices in R307-801-14(1) and (2) are required, wrap and cut, open top catch bags, glove bags, and mini-enclosures may be used in combination with those work practices.

(a) Adequately wet regulated asbestos-containing material (RACM) with amended water before exposing or disturbing it, except when temperatures are continuously below freezing (32 degrees F.), and when all requirements in 40 CFR 61.145(c)(7) are met.

(b) Install barriers and post warning signs to prevent access to the work area. Warning signs shall conform to the specifications of 29 CFR 1926.1101(k)(7).

(c) Keep RACM adequately wet until it is containerized and disposed of in accordance with R307-801-15.

(d) Ensure that RACM that is stripped or removed is promptly containerized.

(e) Prevent visible particulate matter and uncontainerized asbestos-containing debris and waste originating in the work area from being released outside of the negative pressure enclosure or designated work area.

(f) Filter all waste water to five microns before discharging it to a sanitary sewer.

(g) Decontaminate the outside of all persons, equipment and waste bags so that no visible residue is observed before leaving the work area.

(h) Apply encapsulant to RACM that is exposed but not removed during stripping.

(i) Clean the work area, drop cloths, and other interior surfaces of the enclosure using a high-efficiency particulate air (HEPA) vacuum and wet cleaning techniques until there is no visible residue before dismantling barriers.

(j) After cleaning and before dismantling enclosure barriers, mist all surfaces inside of the enclosure with a penetrating encapsulant designed for that purpose.

(k) Handle and dispose of friable asbestos-containing material (ACM) and RACM according to the disposal provisions of R307-801-15.

(2) All operators of NESHAP-sized asbestos abatement projects shall install a negative pressure enclosure using the following work practices.

(a) All openings to the work area shall be covered with at least one layer of six mil or thicker polyethylene sheeting sealed with duct tape or an equivalent barrier to air flow.

(b) If RACM debris is present in the proposed work area prior to the start of a NESHAP-sized asbestos abatement project, the site shall be prepared by removing the debris using the work practice requirements of R307-801-14 and disposal requirements of R307-801-15. If the total amount of loose visible RACM debris throughout the entire work area is the SSSD amount, then site preparation may begin after the notification form has been submitted and before the end of the ten working day waiting period.

(c) A decontamination unit constructed to the specifications of R307-801-14(2)(h) shall be attached to the containment prior to disturbing RACM or commencing a NESHAP-sized asbestos abatement project, and all persons shall enter and leave the negative pressure enclosure or work area only through the decontamination unit.

(d) All persons subject to R307-801 shall shower before entering the clean-room of the decontamination unit when exiting the enclosure and shall follow all procedures required by 29 CFR 1926.1101(j)(1)(ii).

(e) No materials may be removed from the enclosure or brought into the enclosure through any opening other than a waste load-out or a decontamination unit.

(f) The negative pressure enclosure of the work area shall be constructed with the following specifications:

(i) Apply at least two layers of six mil or thicker polyethylene sheeting or its equivalent to the floor extending at least one foot up every wall and seal in place with duct tape or its equivalent;

(ii) Apply at least two layers of four mil or thicker polyethylene sheeting or its equivalent to the walls without locating seams in wall or floor corners;

(iii) Seal all seams with duct tape or its equivalent;

(iv) Maintain the integrity of all enclosure barriers; and

(v) Where a wall or floor will be removed as part of the NESHAP-sized asbestos abatement project, polyethylene sheeting need not be applied to that regulated facility component or structural member.

(g) View ports shall be installed in the enclosure or barriers where feasible, and view ports shall be:

(i) At least one foot square;

(ii) Made of clear material that is impermeable to the passage of air, such as an acrylic sheet;

(iii) Positioned so as to maximize the view of the inside of the enclosure from a position outside the enclosure; and

(iv) Accessible to a person outside of the enclosure.

(h) A decontamination unit shall be constructed according to the following specifications:

(i) The unit shall be attached to the enclosure or work area;

(ii) The decontamination unit shall consist of at least three chambers and meet all regulatory requirements of 29 CFR 1926.1101(j)(1)(i);

(iii) The clean room, which is the chamber that opens to the outside, shall be no less than three feet wide by three feet long by six feet high, when feasible;

(iv) The shower room, which is the chamber between the clean and dirty rooms, shall have hot and cold or warm running water and be no less than three feet wide by three feet long by six feet high, when feasible;

(v) The dirty room, which is the chamber that opens to the negative pressure enclosure or the designated work area, shall be no less than three feet wide by three feet long by six feet high, when feasible;

(vi) The dirty room shall be provided with an accessible waste bag at any time that asbestos abatement project is being performed.

(i) A separate waste load-out following the specifications below may be attached to the enclosure for removal of decontaminated waste containers and decontaminated or wrapped tools from the enclosure.

(i) The waste load-out shall consist of at least one chamber constructed of six mil or thicker polyethylene walls and six mil or thicker polyethylene flaps or the equivalent on the outside and inside entrances;

(ii) The waste load-out chamber shall be at least three feet long, three feet high, and three feet wide; and

(iii) The waste load-out supplies shall be sufficient to decontaminate bags, and shall include a water supply with a filtered drain, clean rags, disposable rags or wipes, and clean bags.

(j) Negative air pressure and flow shall be established and maintained within the enclosure by:

(i) Maintaining at least four air changes per hour in the enclosure;

(ii) Routing the exhaust from HEPA filtered ventilation units to the outside of the regulated facility whenever possible;

(iii) Maintaining a minimum of 0.02 column inches of water pressure differential relative to outside pressure; and

(iv) Maintaining a monitoring device to measure the negative pressure in the enclosure.

(3) In lieu of two layers of polyethylene on the walls and the floors as required by R307-801-14(2)(f)(i) and (ii), the following work practices and controls may be used only under the circumstances described below:

(a) When a pipe insulation removal asbestos abatement project is conducted the following may be used:

(i) Drop cloths extending a distance at least equivalent to the height of the RACM around all RACM to be removed, or extended to a wall and attached with duct tape or equivalent;

(ii) Either the glove bag or wrap and cut methods may be used; and

(iii) RACM shall be adequately wet before wrapping.

(b) When the RACM is scattered ACM and is found in small patches, such as isolated pipe fittings, the following procedures may be used:

(i) Glove bags, mini-enclosures as described in R307-801-14(5)(c), or wrap and cut methods with drop cloths large enough to capture all RACM fragments that fall from the work area may be used.

(ii) If all asbestos disturbance is limited to the inside of negative pressure glove bags or a mini-enclosure, then non-glove bag or non-mini-enclosure building openings need not be sealed and negative pressure need not be maintained in the space outside of the glove bags or mini-enclosure during the asbestos removal operation.

(iii) A remote decontamination unit may be used as described in R307-801-14(5)(d) only if an attached decontamination unit is not feasible.

(c) When a preformed RACM pipe insulation asbestos abatement project in a crawl space or pipe chase less than six feet high or less than three feet wide is conducted, the following may be used:

(i) Drop cloths extending a distance at least six feet around all preformed RACM pipe insulation to be removed or extended to a wall and attached with duct tape or equivalent; or

(ii) The open top catch bag method.

(4) During outdoor asbestos abatement projects, the work practices of R307-801-14 shall be followed with the following modifications:

(a) Negative pressure need not be maintained if there is not an enclosure;

(b) Six mil polyethylene drop cloth, or equivalent, large enough to capture all RACM fragments that fall from the work area shall be used; and

(c) A remote decontamination unit as described in R307-801-14(5)(d) may be used.

(5) Special work practices.

(a) If the wrap and cut method is used:

(i) The regulated facility component shall be cut at least six inches from any RACM on that component;

(ii) If asbestos will be removed from the regulated facility component to accommodate cutting, the asbestos removal shall be performed using a single glove bag for each cut, and no RACM shall be disturbed outside of a glove bag;

(iii) The wrapping shall be leak-tight and shall consist of two layers of six mil polyethylene sheeting, each individually sealed

with duct tape, and all RACM between the cuts shall be sealed inside wrap; and

(iv) The wrapping shall remain intact and leak-tight throughout the removal and disposal process.

(b) If the open top catch bag method is used:

(i) The material to be removed can only be preformed RACM pipe insulation, and it shall be located in a crawl space or a pipe chase less than six feet high or less than three feet wide;

(ii) Asbestos waste bags that are leak-tight and strong enough to hold contents securely shall be used;

(iii) The bag shall be placed underneath the stripping operation to minimize ACM falling onto the drop cloth;

(iv) All material stripped from the regulated facility component shall be placed in the bag;

(v) One asbestos abatement worker shall hold the bag and another asbestos abatement worker shall strip the ACM into the bag; and

(vi) A drop cloth extending a distance at least six feet around all preformed RACM pipe insulation to be removed, or extended to a wall and attached with duct tape or equivalent shall be used.

(c) If glove bags are used, they shall be under negative pressure, and the procedures required by 29 CFR 1926.1101(g)(5)(iii) shall be followed.

(d) A remote decontamination unit may be used under the conditions set forth in R307-801-14(3)(b) or (4), or when approved by the executive secretary. The remote decontamination unit shall meet all construction standards in R307-801-14(2)(h) and shall include:

(i) Outerwear shall be HEPA vacuumed or removed, and additional clean protective outerwear shall be put on;

(ii) Either polyethylene sheeting shall be placed on the path to the decontamination unit and the path shall be blocked or taped off to prevent public access, or asbestos abatement workers shall be conveyed to the remote decontamination unit in a vehicle that has been lined with two layers of six mil or thicker polyethylene sheeting or its equivalent; and

(iii) The polyethylene path or vehicle liner shall be removed at the end of the project, and disposed of as ACWM.

(e) Mini-enclosures, when used under approved conditions, shall conform to the requirements of 29 CFR 1926.1101(g)(5)(vi).

(6) For asbestos-containing mastic removal projects using mechanical means, such as a power buffer, to loosen or remove mastic from the floor, in lieu of two layers of polyethylene sheeting on the walls, splash guards of six mil or thicker polyethylene sheeting shall be placed from the floor level a minimum of three feet up the walls.

(7) Persons who improperly disturb more than the SSSD amount of asbestos-containing material and contaminate an area with friable asbestos shall:

(a) Have the emergency clean-up portion of the project, including any portions not contained within a regulated facility or in common use areas that cannot be isolated, performed as soon as possible by a company or companies certified according to R307-801-5, and, asbestos abatement supervisor(s), and asbestos abatement worker(s) certified according to R307-801-6.

(b) Have an asbestos clean-up plan designed by a Utah certified asbestos project designer for the non-emergency portion of

the project and have the asbestos clean-up plan submitted to the executive secretary for approval. An asbestos clean-up plan is not required when the disturbance results from a natural disaster, fire, or flooding.

(c) Submit the project notification form required by R307-801-11 and 12 to the executive secretary for acceptance no later than the next working day after the disturbance occurs or is discovered.

(d) Notify the executive secretary of project completion by telephone, fax, or electronic means by the day of completion and before leaving the site.

#### **R307-801-15. Disposal and Handling of Asbestos Waste.**

(1) Owners and operators subject to R307-801 shall containerize asbestos-containing waste material (ACWM) while adequately wet.

(2) ACWM containers shall be leak-tight and strong enough to hold contents securely.

(3) Containers shall be labeled with the waste generator's name, address, and telephone number, and the contractor's name and address, before they are removed from the work area.

(4) Containerized regulated asbestos-containing material (RACM) shall be disposed of at a landfill which complies with 40 CFR 61.150.

(5) The waste shipment record shall include a list of items and the amount of ACWM being shipped including Category I and Category II non-friable waste. The waste generator originates and signs this document.

(6) Owners and operators of regulated facilities where an asbestos abatement or renovation project has been performed shall report in writing to the executive secretary if a copy of the waste shipment record, signed by the owner or operator of the designated waste disposal site, is not received by the waste generator within 45 working days from the date the waste was accepted by the initial transporter. Include in the report the following information:

(a) A copy of the waste shipment record for which a confirmation of delivery was not received; and

(b) A cover letter signed by the waste generator explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

#### **R307-801-16. Records.**

(1) Certified asbestos or renovation companies shall maintain records of all asbestos abatement or renovation projects that they perform and shall make these records available to the executive secretary or authorized representative upon request. The records shall be retained for at least five years. Maintained records shall include the following:

(a) Names and certification numbers of the asbestos abatement workers, asbestos abatement supervisors, or renovators who performed the asbestos abatement or renovation project;

(b) Location and description of the asbestos abatement or renovation project and amount of friable asbestos-containing material (ACM) removed;

(c) Start and stop dates of the asbestos abatement or renovation project;

(d) Summary of the procedures used to comply with applicable requirements including copies of all notification forms;

(e) Waste shipment records maintained in accordance with 40 CFR Part 61, Subpart M; and

(f) Asbestos inspection reports associated with the asbestos abatement or renovation project.

(2) All persons subject to the inspection requirements of R307-801-9 shall maintain copies of asbestos inspection reports for at least one year after asbestos abatement, renovation, or demolition projects have ceased, and shall make these reports available to the executive secretary or authorized representative upon request.

#### **R307-801-17. Certified Renovator Work Practices.**

(1) Certified renovators are responsible for ensuring compliance with R307-801 at all renovation projects to which they are assigned.

(2) Certified renovators shall:

(a) Perform all of the tasks described in R307-801-14(1) and shall either perform or direct workers who perform all tasks described in R307-801-14(1);

(b) Provide training to workers on the work practices required by R307-801-14(1) that will be used when performing renovation projects;

(c) Be physically present at the work site when all work activities required by R307-801-14(1)(b) are posted, while the work area containment required by R307-801-14(1)(b) is being established, and while the work area cleaning required by R307-801-14(1)(i) is performed;

(d) Be on-site and direct work being performed by other individuals to ensure that the work practices required by R307-801-14(1) are being followed, including maintaining the integrity of the containment barriers and ensuring that dust or debris does not spread beyond the work area;

(e) Have with them at the work site their current Utah Renovator certification card; and

(f) Prepare the records required by R307-801-16.

#### **R307-801-18. Asbestos Information Distribution Requirements.**

(1) Utah Abatement/Renovation pamphlet. Utah asbestos abatement and renovation companies shall provide owners and occupants with the Utah Abatement/Renovation Pamphlet "Asbestos Hazards During Abatement and Renovation Activities."

(2) No more than 60 days before beginning an abatement or renovation project in a regulated facility, the company performing the abatement or renovation project shall:

(a) Provide the owner of the regulated residential facility with the pamphlet, and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(ii) Obtain a certificate of mailing at least seven working days prior to the abatement or renovation project; and

(b) If the owner does not occupy the regulated facility, provide an adult occupant of the regulated facility with the pamphlet, and comply with one of the following:

(i) Obtain, from the adult occupant, a written acknowledgment that the occupant has received the pamphlet, or certify in writing that a pamphlet has been delivered to the regulated facility and that the company performing the abatement or renovation project has been unsuccessful in obtaining a written acknowledgment from an adult occupant. Such certification shall

include the address of the unit undergoing abatement or renovation project, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of a representative of the company performing the abatement or renovation project, and the date of signature; or

(ii) Obtain a certificate of mailing at least seven working days prior to the abatement or renovation project.

(3) Abatement or renovation projects in common areas. No more than 60 working days before beginning abatement or renovation projects in common areas of a regulated facility, the company performing the abatement or renovation project shall:

(a) Provide the owner with the pamphlet and comply with one of the following:

(i) Obtain, from the owner, a written acknowledgment that the owner has received the pamphlet; or

(ii) Obtain a certificate of mailing at least seven working days prior to the abatement or renovation project;

(b) Comply with one of the following:

(i) Notify in writing, or ensure written notification of, each regulated facility and make the pamphlet available upon request prior to the start of abatement or renovation project. Such notification shall be accomplished by distributing written notice to each affected unit in the regulated facility. The notice shall describe the general nature and locations of the planned abatement or renovation project, the expected starting and ending dates, how the occupant can obtain the pamphlet and a copy of the required records at no cost to the occupants; or

(ii) Post informational signs describing the general nature and locations of the abatement or renovation project and the anticipated completion date while the abatement or renovation project is ongoing. These signs shall be posted in areas where they are likely to be seen by the occupants of all of the affected units in the regulated facility. The signs shall be accompanied by a posted copy of the pamphlet or information about how interested occupants can review a copy of the pamphlet or obtain a copy from the abatement or renovation company at no cost to occupants. The signs shall also include information about how interested occupants can review a copy of the required records from the abatement or renovation company at no cost to the occupants;

(c) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the regulated facility of the intended abatement or renovation project and to provide the pamphlet; and

(d) If the scope, locations, or expected starting and ending dates of the planned abatement or renovation project change after the initial notification, and the company provided written initial notification to each affected unit, the company performing the abatement or renovation project shall provide further written notification to the owners and occupants of the regulated facility of the revised information for the ongoing or planned activities. This subsequent notification shall be provided before the company performing the abatement or renovation project initiates work beyond that which was described in the original notice.

(4) Written acknowledgment. The written acknowledgments required by paragraphs R307-801-18(2)(a)(i), (2)(b)(i), and (3)(a)(i) shall:

(a) Include a statement recording the owner or occupant's name and acknowledging receipt of the pamphlet prior to the start of abatement or renovation project, the address of the regulated facility undergoing an abatement or renovation project, the signature of the owner or occupant as applicable, and the date of signature;

(b) Be either a separate sheet or part of any written contract or service agreement for the abatement or renovation project; and

(c) Be written in the same language as the text of the contract or agreement for the abatement or renovation project or, in the case of a non-owner occupied regulated facility, in the same language as the lease or rental agreement or the pamphlet.

**KEY: air pollution, asbestos, asbestos hazard emergency response, schools**

**Date of Enactment or Last Substantive Amendment: [February 8, 2008]2012**

**Notice of Continuation: February 8, 2008**

**Authorizing, and Implemented or Interpreted Law: 19-2-104(1)(d); 19-2-104(3)(r) through (t); 40 CFR Part 61, Subpart M; 40 CFR Part 763, Subpart E**

## Health, Health Care Financing, Coverage and Reimbursement Policy **R414-501-2** Definitions

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36186

FILED: 05/14/2012

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to update the definition of "Significant Change" in the rule text to reflect Medicaid policy on preadmission screening for nursing facility admission.

**SUMMARY OF THE RULE OR CHANGE:** This amendment updates the definition of "Significant Change" to include a provision for a mental illness or an intellectual disability or related condition.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** 42 U.S.C. 1396r and Section 26-1-5 and Section 26-18-3

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There is no impact to the state budget because this change only updates a definition in the rule text to reflect Medicaid policy on preadmission screening for nursing facility admission.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they neither evaluate residents for nursing facility admission nor provide nursing facility services to Medicaid recipients.

◆ **SMALL BUSINESSES:** There is no impact to small businesses because this change only updates a definition in the rule text to reflect Medicaid policy on preadmission screening for nursing facility admission.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to nursing facilities, providers and residents because this change only updates a definition in the rule text to reflect Medicaid policy on preadmission screening for nursing facility admission.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no impact to a single nursing facility, provider or resident because this change only updates a definition in the rule text to reflect Medicaid policy on preadmission screening for nursing facility admission.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Streamlining policy may have a positive fiscal impact on providers as reporting is simplified. Public comment will be carefully evaluated.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012**

**AUTHORIZED BY: David Patton, PhD, Executive Director**

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

**R414-501. Preadmission Authorization, Retroactive Authorization, and Continued Stay Review.**

**R414-501-2. Definitions.**

In addition to the definitions in Section R414-1-1, the following definitions apply to Rules R414-501 through R414-503:

(1) "Activities of daily living" are defined in 42 CFR 483.25(a)(1), and further includes adaptation to the use of assistive devices and prostheses intended to provide the greatest degree of independent functioning.

(2) "Categorical determination" means a determination made pursuant to 42 CFR 483.130 and ATTACHMENT 4.39-A of the State Plan.

(3) "Code of Federal Regulations (CFR)" means the most current edition unless otherwise noted.

(4) "Continued stay review" means a periodic, supplemental, or interim review of a resident performed by a Department health care professional either by telephone or on-site review.

(5) "Discharge planning" means planning that ensures that the resident has an individualized planned program of post-discharge continuing care that:

(a) states the medical, functional, behavioral and social levels necessary for the resident to be discharged to a less restrictive setting;

(b) includes the steps needed to move the resident to a less restrictive setting;

(c) establishes the feasibility of the resident's achieving the levels necessary for discharge; and

(d) states the anticipated time frame for that achievement.

(6) "Health care professional" means a duly licensed or certified physician, physician assistant, nurse practitioner, physical therapist, speech therapist, occupational therapist, registered professional nurse, licensed practical nurse, social worker, or qualified mental retardation professional.

(7) "Medicaid resident" means a resident who is a Medicaid recipient.

(8) "Medicaid admission date" means the date the nursing facility requests Medicaid reimbursement to begin.

(9) "Mental retardation" is defined in 42 CFR 483.102(b) (3) and includes "persons with related conditions" as defined in 42 CFR 435.1009.

(10) "Minimum Data Set (MDS)" means the standardized, primary screening and assessment tool of health status that forms the foundation of the comprehensive assessment for all residents in a Medicare or Medicaid certified long-term care facility.

(11) "Nursing facility" is defined in 42 USC 1396r(a), and also includes an intermediate care facility for people with mental retardation as defined in 42 USC 1396d(d).

(12) "Nursing facility applicant" is an individual for whom the nursing facility is seeking Medicaid payment.

(13) "Preadmission Screening and Resident Review (PASRR) Level I Screening" means the preadmission identification screening described in Section R414-503-3.

(14) "Preadmission Screening and Resident Review (PASRR) Level II Evaluation" means the preadmission evaluation and resident review for serious mental illness or mental retardation described in Section R414-503-4.

(15) "Physician Certification" is a written statement from the Medicaid resident's physician that certifies the individual requires nursing facility services.

(16) "Resident" means a person residing in a Medicaid-certified nursing facility.

(17) "Serious mental illness" is defined by the State Mental Health Authority.

(18) "Significant change" means a major change in the resident's physical, mental, or psychosocial status that is not self-[-] limiting, impacts on more than one area of the resident's health status, and requires interdisciplinary review, [ø-]revision of the care plan[-], or may require a referral to a preadmission screening resident review if a mental illness or intellectual disability or related condition is suspected or present.

(19) "Skilled care" means those services defined in 42 CFR 409.32.

(20) "Specialized rehabilitative services" means those services provided pursuant to 42 CFR 483.45 and Section R432-150-23.

(21) "Specialized services" means those services provided pursuant to 42 CFR 483.120 and ATTACHMENT 4.39 of the State Plan.

(22) "United States Code (USC)" means the most current edition unless otherwise noted.

(23) "Working days" means all work days as defined by the Utah Department of Human Resource Management.

**KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment:** [~~June 7, 2011~~]**2012**

**Notice of Continuation:** August 20, 2009

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

**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-503  
Preadmission Screening and Resident  
Review**

**NOTICE OF PROPOSED RULE**

(Repeal and Reenact)  
DAR FILE NO.: 36187  
FILED: 05/14/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this change is to update and clarify Medicaid policy for health care professionals who perform preadmission evaluations and screenings for nursing facility admission.

**SUMMARY OF THE RULE OR CHANGE:** All requirements of the repealed rule are reenacted in the proposed rule. In contrast to the repealed rule, this new rule updates and clarifies preadmission and screening policies, removes the administrative requirement for nursing facilities to perform an annual resident review, updates terminology to the more appropriate term of "intellectual disability" instead of "mental retardation," and removes other ambiguous language throughout the text.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** 42 U.S.C. 1396r and Section 26-1-5 and Section 26-18-3

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There is no impact to the state budget because this change only clarifies and updates preadmission and screening policies for health care professionals who evaluate and screen residents for nursing facility admission.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they neither evaluate residents for nursing facility admission nor provide nursing facility services to Medicaid recipients.

◆ **SMALL BUSINESSES:** There is no impact to small businesses because this change only clarifies and updates preadmission and screening policies for health care professionals who evaluate and screen residents for nursing facility admission.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no impact to nursing facilities, providers and residents because this change only clarifies and updates preadmission and screening policies for health care professionals who evaluate and screen residents for nursing facility admission.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no impact to a single nursing facility, provider or resident because this change only clarifies and updates preadmission and screening policies for health care professionals who evaluate and screen residents for nursing facility admission.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Streamlining policy may have a positive fiscal impact on providers as reporting is simplified. Public comment will be carefully evaluated.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012**

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

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

**[R414-503. Preadmission Screening and Annual Resident Review.**

**R414-503-1. Introduction and Authority.**

This rule implements 42 USC 1396r(b)(3) and (e)(7) that require preadmission screening and annual review of nursing facility residents with serious mental illness or mental retardation.

**R414-503-2. Definitions.**

The definitions in Sections R414-1-1 and R414-501-2 apply to this rule.

**R414-503-3. Preadmission Level I Screening for All Persons.**

The purpose of the preadmission Level I screening is to determine if a person seeking admission to a nursing facility has serious mental illness or mental retardation and is therefore subject to a Level II evaluation.

(1) A nursing facility may not admit a person unless a health care professional has completed a Level I screening. The department shall deny reimbursement for a resident if a nursing facility fails to assure that the resident's Level I screening is completed as required.

(2) A health care professional shall complete a Level I screening on a form supplied by the department and shall include the date of the screening and the signature of the health care professional completing the screening.

(3) If the Level I screening identifies a positive response to all of the following three criteria, then the screening shall conclude that the person may have a serious mental illness. The Level I screening criteria for serious mental illness are whether the person has:

(a) A diagnosis falling within the diagnostic groupings of serious mental illness, as described in the Diagnostic and Statistical Manual of Mental Disorders IV, Revised, 1994;

(b) Experienced a functional limitation in a major life activity within the last six months in that the person has serious difficulty on a continuing or intermittent basis in interpersonal functioning, concentration and persistence and pace, or adaptation to change, and which is due to the serious mental illness diagnosis;

(c) A treatment history indicating psychiatric treatment more intensive than outpatient care occurring more than once within the last two years; or experienced, within the last two years, significant disruption to his normal living situation to the degree that he required supportive services to maintain his current level of functioning at home or in a residential treatment environment; or required intervention by housing or law enforcement officials.

(4) If the Level I screening identifies at least one positive response to any of the following criteria then the screening shall conclude that the person may have mental retardation. The Level I screening criteria for mental retardation is whether the person has:

(a) A diagnosis of mental retardation;

(b) A current prescription for anti-convulsant medications for epilepsy with an onset prior to age 22;

(c) A history of mental retardation, or cognitive or behavioral indicators that the person has mental retardation; or

(d) Been referred by any agency specializing in the care of persons with mental retardation;

(5) If the screening does not indicate the person may have serious mental illness or mental retardation, or if the screening determines the person has a diagnosis of dementia (including Alzheimer's disease or an organic mental disorder) based on criteria in the Diagnostic and Statistical Manual of Mental Disorders IV, Revised, 1994, then no further evaluation is necessary.

(6) If the person is admitted to a nursing facility, the nursing facility shall submit a copy of the Level I screening to the department and shall retain a copy of the Level I screening in the resident's medical record.

(7) If the Level I screening indicates the person may have serious mental illness or mental retardation, then the Level I screener shall complete a notice of referral to the state authority that shall conduct the Level II evaluation. The notice shall be on a form provided by the department. The screener shall give the notice to the person, his legal representative, and the nursing facility.

**R414-503-4. Preadmission Level II Evaluation.**

(1) The purposes of the preadmission Level II evaluation are to determine whether a person with serious mental illness or mental retardation who seeks admission to a nursing facility requires the level of services provided by a nursing facility and whether the person requires specialized services.

(2) If a Level I screening indicates a Level II evaluation is required, then a nursing facility may not admit the person unless the Level II evaluation is completed and determines that it is appropriate to place the person in a nursing facility. The Level II evaluation is not required for a person who is any one of the following:

(a) A provisional admission in which the person has delirium where an accurate diagnosis cannot be made until the delirium clears, or in emergency situations where the nursing facility placement will not exceed seven days. However, if the placement exceeds seven days, the Level II evaluation shall be completed;

(b) Readmitted to a nursing facility after being transferred to a hospital, or for a person who is transferred from one nursing facility to another, with or without an intervening hospital stay; or

(c) Admitted to a nursing facility directly from a hospital where the person received acute inpatient care, and the person requires nursing facility services for the condition treated in the hospital, and the attending physician certifies before admission to the nursing facility that the person is likely to require a stay of less than 30 days. If a resident enters a nursing facility through such an exempted hospital discharge and then remains in the nursing facility for more than 30 days, then the resident shall be referred to the state mental health or mental retardation authority for an annual resident review within 40 calendar days of admission.

(3) The department shall deny reimbursement for a resident if the nursing facility fails to assure that the resident's Level II evaluation is completed as required.

(4) If the Level I screening indicates the person may have mental retardation, then the person shall be referred to the Department of Human Services Division of Services for People

with Disabilities for the Level II determination. If the Level I screening indicates the person may have a serious mental illness, then the person shall be referred to the Department of Human Services Division of Mental Health for the Level II determination. If the Level I screening indicates the person may have both a serious mental illness and mental retardation, then the person shall be referred to both divisions.

(5) The Level II evaluation shall be based on the criteria established pursuant to 42 USC 1396r(f)(8), and addressing the level of nursing services, specialized services, and specialized rehabilitative services needed. Based on those criteria, the Level II evaluation shall make one of the following seven determinations:

(a) The person does not need nursing facility services. This determination disqualifies the person for placement in a nursing facility and Medicaid reimbursement;

(b) The person does not need nursing facility services but needs specialized services. This determination disqualifies the person for placement in a nursing facility and Medicaid reimbursement;

(c) The person needs nursing facility services but does not need specialized services. This determination qualifies the person for placement in a nursing facility and Medicaid reimbursement;

(d) The person is not a danger to himself or others and is being released from an acute care setting and requires a medically prescribed period of convalescent care in a nursing facility. This determination qualifies the person for placement in a nursing facility and Medicaid reimbursement for a period not to exceed 120 days with a categorical Level II evaluation. However, if the placement exceeds 120 days, the Level II evaluation shall be completed;

(e) The person is not a danger to himself or others and is certified by a physician to be terminally ill (a medical prognosis of a life expectancy of less than six months) and requires continuous nursing care or medical supervision or treatment due to a physical condition. The nature and extent of the person's need for nursing care, medical supervision, and medical treatment shall be the determining factors, and the existence of a chronic mental or physical disability shall be incidental considerations. This determination qualifies the person for placement in a nursing facility and Medicaid reimbursement with a categorical Level II evaluation; or

(f) The person has a severe physical illness that results in a level of impairment so severe that the recipient could not be expected to benefit from specialized services, like a categorical determination such as coma, ventilator dependence, or functioning at brain stem level, or a diagnosis such as chronic obstructive pulmonary disease, Parkinson's disease, Huntington's disease, amyotrophic lateral sclerosis, or congestive heart failure. This determination qualifies the person for placement in a nursing facility and Medicaid reimbursement with a categorical Level II evaluation.

(g) The person has a 14 day or less stay to provide respite to in-home care givers to whom the individual with MI or MR is expected to return following the brief Nursing Facility stay.

(6) If at any time during the Level II evaluation the evaluator determines that the person does not have serious mental illness or mental retardation, or has a primary diagnosis of dementia

without mental retardation, then the Level II evaluation may be stopped:

(7) The person or agency doing the evaluation shall provide a copy of the Level II determination and findings to the person evaluated, his legal representative, his attending physician, the discharging hospital, the nursing facility for retention in the person's medical record, if admitted, and to the department prior to Medicaid reimbursement.

#### **R414-503-5. Annual Resident Review.**

(1) As long as a resident who requires a preadmission Level II evaluation continues to reside in a nursing facility, he shall have an annual resident review subject to the same requirements as the preadmission Level II evaluation. The Level II evaluator shall establish the annual review date at the time the preadmission Level II evaluation is completed. For administrative purposes, the annual review shall be defined as occurring within every fourth quarter after the previous preadmission screen or annual resident review. In order to avoid duplicative testing and effort, the annual resident review shall be coordinated with the routine resident assessments that are otherwise required.

(2) If a Level II evaluation determines a resident is no longer qualified for continued placement in a nursing facility, the nursing facility, in consultation with the resident and his legal representative, shall arrange for the safe and orderly discharge of the resident from the nursing facility, and prepare and orient the resident for the discharge.

#### **R414-503-6. Significant Change of Condition.**

(1) The Nursing Facility shall notify the State mental health authority or mental retardation/developmental disability authority, as applicable, after a significant change in the physical or mental condition of a resident who is mentally ill or mentally retarded when there is a significant change in a resident's health status which has a bearing on his or her active treatment needs.

(2) The State mental health or mental retardation authorities must complete a review and determination after the notification by the Nursing facility of a significant change in the resident's physical or mental condition which has a bearing on his or her active treatment needs.

#### **R414-503-7. Out-of-State Arrangements.**

The state in which the person is a resident (or would be a resident at the time he becomes eligible for Medicaid), as defined in 42 CFR 435.403, shall pay for the Level II evaluation in accordance with 42 CFR 431.52(b). ]

#### **R414-503. Preadmission Screening and Resident Review.**

##### **R414-503-1. Introduction and Authority.**

This rule implements 42 U.S.C. 1396r(b)(3) and (e)(7) and Pub. L. No. 104 315, which require preadmission screening and resident review (PASRR) of nursing facility residents with serious mental illness or intellectual disability. This rule applies to all Medicare and Medicaid-certified nursing facility admissions irrespective of the payment source of an individual's nursing facility services.

##### **R414-503-2. Definitions.**

In addition to the definitions in Sections R414-1-2 and R414-501-2, the following definitions apply:

(1) "Break in Stay" means an individual voluntarily leaves a Medicare and Medicaid-certified nursing facility or discharges from a hospital into a community placement.

(2) "Intellectual Disability" is the equivalent term for "Mental Retardation" in federal law.

**R414-503-3. Preadmission Level I Screening for All Persons.**

The purpose of a Preadmission Level I Screening is for a health care professional to identify any person with a serious mental illness, intellectual disability or other related condition so the professional may consider that person for admission to a Medicare and Medicaid-certified nursing facility. The health care professional who conducts the Level I Screening shall refer the person for a Level II Evaluation if the professional determines that the person has a serious mental illness, intellectual disability or other related condition.

(1) The health care professional shall complete a Level I Screening before any Medicare and Medicaid-certified nursing facility admission.

(2) The health care professional shall complete the Level I Screening on a form supplied by the Department.

(3) The health care professional shall sign and date the Level I Screening.

**R414-503-4. Level II Evaluation Criteria.**

(1) The Department requires a Level II Evaluation for serious mental illness if the person meets all of the following criteria:

(a) The person has a serious mental illness as defined by the State Mental Health Authority and identified by the Level I Screening;

(b) The diagnosis of mental illness falls within the diagnostic groupings as described in the current version of the Diagnostic and Statistical Manual;

(c) The person has experienced a functional limitation in a major life activity within the last six months that results in serious difficulty in interpersonal functioning, concentration or persistence, adaptation to change, and the serious mental illness is the cause of the limitation; and

(d) In addition to the criteria listed in Subsection R414-503-4(1)(a)(b)(c), the person meets any one of the following criteria:

(i) The person has undergone psychiatric treatment at least twice in the last two years that is more intensive than outpatient care;

(ii) Due to a significant disruption in the person's normal living situation, the person has required supportive services to maintain the current level of functioning at home or in a residential treatment center; or

(iii) The person has required intervention by housing or law enforcement officials.

(2) The Department requires a Level II Evaluation for a person who meets at least one of the following criteria:

(a) The person has received a diagnosis of an intellectual disability or related condition;

(b) The person has received a diagnosis of epilepsy or seizure disorder with onset before 22 years of age, and has a current prescription for anti-seizure medication for epilepsy;

(c) The person has a history of intellectual disability or related condition, or an indication of cognitive or behavioral patterns that indicate the person has an intellectual disability or related condition; or

(d) The person is referred by any agency that specializes in the care of persons with intellectual disabilities or related conditions.

(3) The nursing facility shall refer the person to a local mental health PASRR Evaluator for the Level II Evaluation if the Level I Screening indicates the person meets any of the criteria listed in Subsection R414-503-4(1). The nursing facility shall also provide the notice of referral to the person, his legal representative, and the prospective nursing facility.

(4) The nursing facility shall refer the person to the Intellectual Disability or Related Condition Authority for the Level II Evaluation if the Level I Screening indicates the person meets any of the criteria listed in Subsection R414-503-4(2). The nursing facility shall also provide the notice of referral to the person, his legal representative, and the prospective nursing facility.

(5) The nursing facility shall refer the person to both the local mental health PASRR Evaluator and the Intellectual Disability or Related Condition Authority if the person meets the criteria for Subsection R414-503-4(1) and (2).

(6) If the person does not meet the criteria in Subsection 414-503-4(1) or (2), the Department may not require a further PASRR Evaluation unless there is a significant change in condition.

(a) The nursing facility shall submit a copy of the Level I Screening to the Department upon the person's admission. The nursing facility shall also retain a copy of the Level I Screening in the person's medical record.

(b) The nursing facility shall initiate a new or revised Level I Screening if there is a significant change in the person's condition.

(7) The Department may not require further PASRR Screening if the health care professional who conducts the Level I Screening determines that the person has a primary diagnosis of dementia that includes Alzheimer's disease.

(a) The nursing facility shall submit a copy of the Level I Screening to the Department upon the person's admission. The nursing facility shall also retain a copy of the Level I Screening in the person's medical record.

(8) The Department shall require Level I Screening for all persons even if a person cannot cooperate or participate in Level I Screening due to delirium or other emergency circumstances. The health care professional shall complete the Level I Screening by using available medical information or other outside information.

**R414-503-5. Preadmission Level II Evaluation.**

The Department shall base Level II Evaluations on the criteria set forth in 42 CFR 483.130 and shall address the level of nursing services, specialized services, and specialized rehabilitative services needed.

(1) The purpose of a Level II Evaluation is:

(a) to avoid unnecessary or inappropriate institutionalization of persons with serious mental illness or intellectual disabilities or related conditions; and

(2) to ensure that persons with serious mental illness or intellectual disabilities or related conditions receive mental health treatment or are referred for specialized services.

(a) Specialized services shall include:

(i) acute inpatient psychiatric care for persons with mental illness; and

(ii) the provision of additional services to persons with intellectual disabilities or related conditions who are admitted to nursing facilities.

(3) The Department shall require a referral for a Level II Evaluation if a Level I Screening indicates the person may have a serious mental illness or an intellectual disability or related condition.

(4) The Department may not require a Level II Evaluation if:

(a) the person does not meet the criteria listed in Subsection R414-503-4 (1) or (2);

(b) the nursing facility admits the person due to delirium or an emergency situation and an accurate diagnosis cannot be made until the delirium clears; and

(c) the nursing facility placement does not exceed seven days.

(i) The nursing facility shall refer the person for a Level II Evaluation before midnight on the seventh day if the placement exceeds seven days.

(d) The Department may not require a Level II Evaluation if the person has a previous Level II Evaluation and the nursing facility readmits the person to the same or a different nursing facility following hospitalization for medical care without a break in stay. This provision, however, does not apply if the person is hospitalized for psychiatric care.

(i) Following readmission, the nursing facility shall review and update the PASRR Level I Screening to determine whether there is a significant change in condition that requires a Level II Evaluation.

(e) The Department may not require a Level II Evaluation if the person has a previous Level II Evaluation and the nursing facility transfers the person to another nursing facility with or without intervening hospitalization and without a break in stay. This provision, however, does not apply if the person is hospitalized for psychiatric care.

(i) Following transfer, the nursing facility shall review and update the Level I Screening to determine whether there is a significant change in condition that requires a Level II Re-Evaluation.

(f) The Department may not require a Level II Evaluation if the person is admitted to a nursing facility directly from a hospital and requires nursing facility services for the condition treated in the hospital (not psychiatric treatment), and the attending physician certifies in writing before the admission that the person is likely to be discharged in less than 30 days.

(i) The nursing facility shall refer the person for a Level II Evaluation before midnight on the 30th day.

(g) The Department may not require a Level II Evaluation if the person is admitted to a nursing facility for no more than 14 days to provide respite to in-home care givers and the person is expected to return to the in-home care givers after the respite period.

(i) The nursing facility shall refer the person for a Level II Evaluation before midnight on the fourteenth day if the placement exceeds 14 days.

(5) The Level II Evaluator shall evaluate the person and make one of the following determinations:

(a) The Level II Evaluator shall determine whether the person does not need nursing facility services. This determination disqualifies the person from nursing facility placement and the Department shall deny reimbursement from the date of the evaluator's finding.

(b) The Level II Evaluator shall determine whether the person does not need nursing facility services but does need specialized services as defined by the State Mental Health or Intellectual Disability or Related Condition Authority. This determination disqualifies the person from nursing facility placement, and the Department shall deny reimbursement from the date of the evaluator's finding.

(c) The Level II Evaluator shall determine whether the person needs nursing facility services but not specialized services. This determination qualifies the person nursing facility placement.

(d) The Level II Evaluator shall determine whether the person should be released from a hospital setting for a medically prescribed period of convalescent care in a nursing facility. This determination qualifies the person for nursing facility placement for a maximum period of 120 days.

(i) If the person is expected to remain in a nursing facility for more than 120 days, the nursing facility shall refer the person for another Level II Evaluation before midnight on the 120<sup>th</sup> day.

(e) The Level II Evaluator shall determine whether the person requires short-term, medically prescribed care in a nursing facility. This determination qualifies the person for nursing facility placement for the number of days specified by the State Mental Health Authority and cannot exceed 120 days.

(i) The nursing facility shall refer the person for another Level II Evaluation before the end of the number of days specified if the person is expected to remain in a nursing facility for more than the number of days specified by the State Mental Health Authority.

(f) The Level II Evaluator shall determine whether the person is certified by a physician to be terminally ill with a medical prognosis of less than six months to live, and shall also determine whether the person requires continuous nursing care or medical supervision or treatment due to a physical condition. The nature and extent of the person's need for nursing care, medical supervision, or treatment shall be the primary consideration. This determination qualifies the person for nursing facility placement and no further Level II Evaluation is needed unless there is a significant change of condition.

(g) The Level II Evaluator shall determine whether the person has a severe physical illness and as a result of the severe physical illness is not expected to benefit from mental health or intellectual disability or related condition services. This determination qualifies the person for nursing facility placement and no further Level II Evaluation is needed unless there is a significant change of condition.

(6) If at any time during the Level II Evaluation, the local PASRR Evaluator or the Intellectual Disability or Related Condition Authority determines that the person does not have a serious mental illness, an intellectual disability or related condition, or dementia, the evaluator may terminate the evaluation. The evaluator shall

document that the person does not have a serious mental illness, an intellectual disability or related condition, or dementia in accordance with State Mental Health and Intellectual Disabilities or Related Conditions Authority.

(7) The State Mental Health Authority or the Intellectual Disabilities or Related Conditions Authority shall provide a copy of the Level II Evaluation and findings to the following:

(a) The person evaluated;

(b) The person's legal representative, if any; and

(c) The nursing facility for retention in the person's medical record, if the person is admitted.

(8) Out-of-State Arrangement for Payment: The state in which the person is a resident (or would be a resident at the time he becomes eligible for Medicaid) as defined in 42 CFR 435.403 shall pay for the Level II Evaluation in accordance with 42 CFR 431.52(b).

(9) The nursing facility, in consultation with the person and his legal representative, shall arrange for a safe and orderly discharge from the nursing facility, and shall assist with linking the person to supportive services and preparing the person for discharge when a Level II Evaluation disqualifies a person or concludes that a person is no longer eligible for nursing facility placement.

#### **R414-503-6. Penalties.**

The Department shall deny reimbursement for each day that a person remains admitted in a nursing facility past the specified dates and times if the nursing facility fails to comply with the procedures and timelines set forth in Sections R414-503-3 through R414-503-5.

#### **KEY: Medicaid**

**Date of Enactment or Last Substantive Amendment:** ~~July 18, 2001~~ 2012

**Notice of Continuation:** August 20, 2009

**Authorizing, and Implemented or Interpreted Law:** 26-1-5; 26-18-3; 63G-3-304

## Health, Family Health and Preparedness, Emergency Medical Services

### **R426-16**

## Emergency Medical Services Ambulance Rates and Charges

#### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36182

FILED: 05/14/2012

#### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Department by order has authorized agencies to adjust rates according to the agency's fiscal data as reviewed by the Department. Currently, the published

ambulance rates in rule need to be adjusted. Rule R426-16 is revised to reflect the 07/01/2012 revised ambulance rates.

SUMMARY OF THE RULE OR CHANGE: Fiscal Reporting Guides (FRGs) are financial and statistical data collected from all EMS agencies statewide. The data collected showed EMS Rates need to be increased at 4.36% so agencies statewide will have revenues matching expenses. Rule R426-16 needs to be amended to reflect these ground ambulance transport changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-8a-403

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: State budget will not be impacted as this is a user fee.

◆ LOCAL GOVERNMENTS: Local government budgets will not be impacted significantly. The rates listed in the rule are increased 4.36%. The EMS agency billings increase by 4.36% which will offset declining collections, wage increases, and the increased fuel and equipment costs.

◆ SMALL BUSINESSES: Emergency Medical Service budgets will not be impacted. The ambulance transport rate increase is 4.36% from current ambulance rates to offset declining collections, wage increases, and the increased fuel and equipment costs.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Emergency Medical Service budgets will not be impacted. The ambulance transport rate increase is 4.36% from current ambulance rates to offset declining collections, wage increases, and the increased fuel and equipment costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: EMS agencies are allowed to bill the rates listed in the proposed rule and there are no costs to the agency for compliance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Based on accepted accounting measures, the proposed increase is needed to maintain the solvency of ambulance service within Utah. Increase is based on a careful analysis of the cost of doing business. Individuals that use this service will experience an added cost, some of which will be born by health insurers. Public comment will be carefully evaluated.

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

HEALTH

FAMILY HEALTH AND PREPAREDNESS,

EMERGENCY MEDICAL SERVICES

3760 S HIGHLAND DR

SALT LAKE CITY, UT 84106

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Allan Liu by phone at 801-273-6664, by FAX at 801-273-4165, or by Internet E-mail at [aliu@utah.gov](mailto:aliu@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

**R426. Health, Family Health and Preparedness, Emergency Medical Services.**

**R426-16. Emergency Medical Services Ambulance Rates and Charges.**

**R426-16-1. Authority and Purpose.**

(1) This rule is established under Title 26, Chapter 8a.

(2) The purpose of this rule is to provide for the establishment of maximum ambulance transportation and rates to be charged by licensed ambulance services in the State of Utah.

**R426-16-2. Ambulance Transportation Rates and Charges.**

(1) Licensed services operating under R426-15 shall not charge more than the rates described in this rule. In addition, the net income of licensed services, including subsidies of any type, shall not exceed the net income limit set by this rule.

(a) The net income limit shall be the greater of eight percent of gross revenue or 14 percent return on average assets.

(b) Licensed Services may change rates at their discretion after notifying the Department, provided that the rates do not exceed the maximums specified in this rule.

(c) An agency may not charge a transportation fee for patients who are not transported.

(2) The initial regulated rates established in this rule shall be adjusted annually on July 1, based on financial data as delineated by the department to be submitted as detailed under R426-16-2(9). This data shall then be used as the basis for the annual rate adjustment.

(3) Base Rates for ground transport to care facility -

(a) Ground Ambulance - [~~\$569.00~~]\$594.00 per transport.

(b) Intermediate / Intermediate Advance EMT Ground Ambulance - [~~\$752.00~~]\$785.00 per transport.

(c) Paramedic Ground Ambulance - [~~\$1,100.00~~]\$1,148.00 per transport.

(d) Ground Ambulance with Paramedic on-board - [~~\$1,100.00~~]\$1,148.00 per transport if:

(i) a dispatch agency dispatches a paramedic licensee to treat the individual;

(ii) the paramedic licensee has initiated advanced life support;

(iii) on-line medical control directs that a paramedic remain with the patient during transport; and

(iv) an ambulance service that interfaces with a paramedic rescue service and has an interlocal or equivalent agreement in place, dealing with reimbursing the paramedic agency for services provided up to a maximum of [~~\$234.71~~]\$244.94 per transport.

(4) Mileage Rate-

(a) \$31.65 per mile or fraction thereof.

(b) In all cases mileage shall be computed from the point of pickup to the point of delivery.

(c) A fuel fluctuation surcharge of \$0.25 per mile may be added when diesel fuel prices exceed \$5.10 per gallon or gasoline exceeds \$4.25 as invoiced.

(5) Surcharge-

(a) If the ambulance is required to travel for ten miles or more on unpaved roads, a surcharge of \$1.50 per mile may be assessed.

(6) Special Provisions -

(a) If more than one patient is transported from the same point of origin to the same point of delivery in the same ambulance, the charges to be assessed to each individual will be determined as follows:

(i) Each patient will be assessed the transportation rate.

(ii) The mileage rate will be computed as specified, the sum to be divided equally between the total number of patients.

(b) A round trip may be billed as two one-way trips.

(c) An ambulance shall provide 15 minutes of time at no charge at both point of pickup and point of delivery, and may charge \$22.05 per quarter hour or fraction thereof thereafter. On round trips, 30 minutes at no charge will be allowed from the time the ambulance reaches the point of delivery until starting the return trip. At the expiration of the 30 minutes, the ambulance service may charge \$22.05 per quarter hour or fraction thereof thereafter.

(7) Supplies and Medications -

(a) An ambulance licensee may charge for supplies and providing supplies, medications, and administering medications used on any response if:

(i) supplies shall be priced fairly and competitively with similar products in the local area;

(ii) the individual does not refuse services; and

(iii) the ambulance personnel assess or treats the individual.

(8) Uncontrollable Cost Escalation -

(a) In the event of a temporary escalation of costs, an ambulance service may petition the Department for permission to make a temporary service-specific surcharge. The petition shall specify the amount of the proposed surcharge, the reason for the surcharge, and provide sufficient financial data to clearly demonstrate the need for the proposed surcharge. Since this is intended to only provide temporary relief, the petition shall also include a recommended time limit.

(b) The Department will make a final decision on the proposed surcharge within 30 days of receipt of the petition.

(9) Operating report -

(a) The licensed service shall file with the Department within 90 days of the end of each licensed service's fiscal year, an operating report in accordance with the instructions, guidelines and review criteria as specified by the Department. The Department shall provide a summary of operating reports received during the previous state fiscal year to the EMS Committee in the October quarterly meeting.

(10) Fiscal audits -

(a) Upon receipt of licensed service fiscal reports, the Department shall review them for compliance to standards established.

(b) Where the Department determines that the audited service is not in compliance with this rule, the Department shall proceed in accordance with Section 26-8a-504.

**R426-16-3. Penalty for Violation of Rule.**

As required by Subsection 63G-3-201(5): Any person that violates any provisions of this rule may be assessed a civil money penalty as provided in Section 26-23-6.

**KEY:** emergency medical services, ambulance rates

**Date of Enactment or Last Substantive Amendment:** ~~July 26, 2011~~ **2012**

**Notice of Continuation:** July 28, 2009

**Authorizing, and Implemented or Interpreted Law:** 26-8a

Human Resource Management,  
Administration  
**R477-6**  
Compensation

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36211

FILED: 05/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** A qualification is added to the term "employee" under promotions. Some unnecessary language is removed. A phrase is removed for its impracticality.

**SUMMARY OF THE RULE OR CHANGE:** A phrase is added in Subsection R477-6-4(2)(a) to clarify "employee." A phrase is removed from Subsection R477-6-4(2)(c). Schedule AH is added to Subsection R477-6-4(4)(e). Subsection R477-6-6(2)(a) is removed because of its impracticality since it is not always possible due to federal laws that limit its application.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 63F-1-106 and Section 67-19-12 and Section 67-19-12.5 and Section 67-19-6 and Subsection 67-19-15.1(4)

**ANTICIPATED COST OR SAVINGS TO:**

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

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There is no direct compliance cost for these amendments.

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

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

HUMAN RESOURCE MANAGEMENT  
ADMINISTRATION

ROOM 2120 STATE OFFICE BLDG

450 N MAIN ST

SALT LAKE CITY, UT 84114-1201

or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at [jacker@utah.gov](mailto:jacker@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012**

**AUTHORIZED BY:** Jeff Herring, Executive Director

**R477. Human Resource Management, Administration.**

**R477-6. Compensation.**

**R477-6-1. Pay Plans.**

(1) With approval of the Governor, the Executive Director, DHRM, shall develop and adopt pay plans for each position in classified service. Positions exempt from classified service are identified in Subsection R477-3-1(1).

(a) Each job description shall include salary ranges with established minimum and maximum rates.

(b) A salary range includes ~~every~~ all pay rates from minimum to maximum.

(c) Pay rate increases within salary ranges shall be:

(i) at least 1/2%, or

(ii) to the maximum rate within the salary range, if the difference between the current salary rate and the range maximum rate is less than 1/2%.

(iii) This subsection does not apply to legislatively approved salary adjustments and longevity.

- (d) Pay rate decreases within salary ranges shall be:
- (i) at least 1/2%, or
  - (ii) to the minimum rate within the salary range, if the difference between the current salary rate and the range minimum rate is less than 1/2%.
  - (iii) This subsection does not apply to legislatively approved salary adjustments.

**R477-6-2. Allocation to the Pay Plans.**

- (1) Each job in classified service shall be assigned to a salary range.
- (2) Salary ranges can be adjusted through:
  - (a) an administrative adjustment determined appropriate by DHRM for administrative purposes that is not based on a change of duties and responsibilities, nor based on a comparison to salary ranges in the market; or
  - (b) a comparison of the state's benchmark job salary ranges to salary ranges for similar positions in the market through an annual compensation survey conducted by DHRM.
    - (i) Market comparability salary range adjustment recommendations shall be included in the annual compensation plan and shall be submitted to the Governor no later than October 31 of each year.
    - (ii) Market comparability salary range adjustments shall be legislatively approved.
    - (iii) If market comparability adjustments are approved for benchmark jobs, salary ranges for other jobs in the same job family shall be adjusted by relative ranking with the benchmark job.
- (3) Each job exempted from classified service shall have a salary range with a beginning and ending salary of any amount determined appropriate by the affected agency.

**R477-6-3. Appointments.**

- (1) All appointments shall be placed on the DHRM approved salary range for the job.
- (2) Reemployed veterans under USERRA shall be placed in their previous position or a similar position at their previous salary range. Reemployment shall include the same seniority status, salary, including any cost of living adjustments, reclassification of the veteran's preservice position, or market comparability adjustments that would have affected the veteran's preservice position during the time spent by the affected veteran in the uniformed services. Performance related salary increases are not included.

**R477-6-4. Salary.**

- (1) Merit increases. The following conditions apply if merit pay increases are authorized and funded by the legislature:
  - (a) Employees, classified in position schedule B, shall be eligible for the merit increase if the following conditions are met:
    - (i) Employee may not be in longevity.
    - (ii) Employee may not be paid at the maximum of their salary range.
    - (iii) Employee has received a minimum rating of successful on their most recent performance evaluation, which shall have been within the previous twelve months.
    - (iv) Employee has been in a paid status by the state for at least six months at the beginning of the new fiscal year.

(b) Employees designated as schedule AA, AQ and AU are not eligible for merit increases.

(c) All other position schedules will be reviewed by DHRM in consultation with the Governor's Office to determine if they are eligible for merit increases.

(2) Promotions.

(a) An employee, except for those designated schedule IN or TL, promoted to a position with a salary range maximum exceeding the employee's current salary range maximum shall receive a salary increase of at least 5%.

(b) An employee may not be placed higher than the maximum or lower than the minimum in the new salary range. Placement of an employee in longevity shall be consistent with Subsection R477-6-4(4).

(c) To be eligible for a promotion, an employee shall meet the requirements and skills specified in the job description and position specific criteria as determined by the agency for the position. ~~unless the promotion is to a career service exempt position.~~

(3) Reclassifications.

(a) At agency management's discretion, an employee reclassified to a position with a salary range maximum exceeding the employee's current salary range maximum may receive a pay rate increase of at least 1/2% or the salary range maximum rate.

(b) An employee may not be placed higher than the maximum or lower than the minimum in the new salary range. Placement of an employee in longevity shall be consistent with Subsection R477-6-4(4).

(c) An employee whose position is reclassified to a position with a lower salary range shall retain the current salary. The employee shall be placed in longevity at the employee's current salary if the salary exceeds the maximum of the new salary range.

(4) Longevity.

(a) An employee shall receive a longevity increase of 2.75% when:

(i) the employee has been in state service for eight years or more. The employee may accrue years of service in more than one agency and such service is not required to be continuous; and

(ii) the employee has been at the maximum of the current salary range for at least one year and received a performance appraisal rating of successful or higher within the 12-month period preceding the longevity increase.

(b) An employee in longevity shall be eligible for the same across the board pay plan adjustments authorized for all other employee pay plans.

(c) An employee in longevity shall only be eligible for an additional 2.75% increase every three years. To be eligible, an employee shall receive a performance appraisal rating of successful or higher within the 12-month period preceding the longevity increase.

(d) An employee in longevity who is reclassified to a position with a lower salary range shall retain the current actual wage.

(e) An employee in longevity who is promoted or reclassified to a position with a higher salary range shall only receive a salary increase if the current actual wage is less than the salary range maximum of the new position. The salary increase shall be at least 1/2% or the range maximum rate of the new position.

(f) Employees in Schedules AB, IN, AH, or TL are not eligible for the longevity program.

(5) Administrative Adjustment.

(a) An employee whose position has been allocated by DHRM from one job to another job or salary range for administrative purposes, may not receive an adjustment in the current actual wage.

(b) Implementation of new job descriptions as an administrative adjustment shall not result in an increase in the current actual wage unless the employee is below the minimum of the new range.

(c) An employee whose position is changed by administrative adjustment to a position with a lower salary range shall retain the current salary. The employee shall be placed in longevity at the employee's current salary if the salary exceeds the maximum of the new salary range.

(6) Reassignment.

An employee's current actual wage may not be lowered except when provided in federal or state law. Wage rate decreases shall be at least 1/2% or the minimum rate in the salary range.

(7) Transfer.

Management may decrease the current actual wage of an employee who transfers to another position. Wage rate decreases shall be at least 1/2% or the minimum rate in the salary range.

(8) Demotion.

An employee demoted consistent with Section R477-11-2 shall receive a reduction in the current actual wage of at least 1/2%, or the minimum rate of the new position's salary range as determined by the agency head or designee. The agency head or designee may move an employee to a position with a lower salary range concurrent with the reduction in the current actual wage.

(9) Administrative Salary Increase.

The agency head authorizes and approves administrative salary increases under the following parameters:

(a) An employee shall receive an increase of at least 1/2% or the maximum rate of the salary range.

(b) Administrative salary increases shall only be granted when the agency has sufficient funding within their annualized base budgets for the fiscal year in which the adjustment is given.

(c) Justifications for Administrative Salary Increases shall be:

(i) in writing;

(ii) approved by the agency head or designee;

(iii) supported by unique situations or considerations in the agency.

(d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary increase.

(e) Administrative salary increases may be given during the probationary period. Wage rate increases shall be at least 1/2% or the maximum rate of the salary range. These increases alone do not constitute successful completion of probation or the granting of career service status.

(f) An employee at the salary range maximum or in longevity may not be granted administrative salary increases.

(10) Administrative Salary Decrease.

The agency head authorizes and approves administrative salary decreases for nondisciplinary reasons according to the following:

(a) The final salary may not be less than the minimum of the salary range.

(b) Wage rate decreases shall be at least 1/2% or the minimum rate of the salary range.

(c) Justification for administrative salary decreases shall be:

(i) in writing;

(ii) approved by the agency head; and

(iii) supported by issues such as previous written agreements between the agency and the employee to include career mobility, reasonable accommodation, or other unique situations or considerations in the agency.

(d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

(11) Career Mobility.

(a) Agencies may offer an employee on a career mobility assignment a salary increase or salary decrease by any amount within the new salary range.

(b) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position and shall receive, at a minimum, the same salary rate and the same or higher salary range that the employee would have received without the career mobility assignment.

(12) Exceptions.

The Executive Director, DHRM, may authorize exceptions for wage rate increases or decreases.

**R477-6-5. Incentive Awards.**

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

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

(b) Individual awards may not exceed \$4,000 per pay period and \$8,000 in a fiscal year, except when approved by DHRM and the governor.

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

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

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

(2) Performance Based Incentive Awards.

(a) Cash Incentive Awards

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

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

(b) Noncash Incentive Awards

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

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

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

(3) Cost Savings Bonus

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

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

(4) Market Based Bonuses

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

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

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

(A) budget;

(B) recruitment difficulties;

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

(D) other market based reasons.

(b) Retention Bonus

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

(c) Recruitment or Signing Bonus

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

(d) Scarce Skills Bonus

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

(e) Relocation Bonus

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

(f) Referral Bonus

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

**R477-6-6. Employee Benefits.**

(1) An employee shall be eligible for benefits when:

(a) in a position designated by the agency as eligible for benefits; and

(b) in a position which normally requires working a minimum of 40 hours per pay period.

(2) An eligible employee has 60 days from the hire date to enroll in or decline a medical insurance plan.

(a) ~~[After 60 days the employee will be automatically enrolled in the state's high deductible health plan with single coverage.~~

~~\_\_\_\_\_~~(b) ]An employee shall only be permitted to change medical plans during the annual open enrollment period for all state employees.

~~(e)]~~(b) An employee with previous medical coverage shall provide a certificate of credible coverage to the state's health care provider which states dates of eligibility for the employee, and the employee's dependents in order to have a preexisting waiting period reduced or waived.

(i) An eligible employee or dependent under the age of 19 may not be required to meet any preexisting waiting period.

(3) An eligible employee has 60 days from the hire date to enroll in dental, vision, and a flexible spending account.

(4) An employee shall enroll in guaranteed issue life insurance within 60 days of the hire date to avoid having to provide proof of insurability.

(a) An employee may enroll in additional life insurance and accidental death and dismemberment insurance at any time and may be required to provide proof of insurability.

(5) An employee eligible for retirement benefits shall be electronically enrolled using the URS online certification process as follows:

(a) An employee with any service time with Utah Retirement Systems prior to July 1, 2011, from any URS eligible employer, shall be automatically enrolled in the Tier I defined benefit plan and the Tier I defined contribution plan.

(i) Eligibility for Tier I shall be determined by Utah Retirement Systems.

(ii) An employee eligible for Tier I shall remain in the Tier I system, even after a break in service.

(b) An employee with no previous service time with Utah Retirement Systems in Tier I shall be enrolled in the Tier II retirement system.

(i) An employee has 30 days from the date of eligibility to elect whether to participate in the Tier II hybrid retirement system or the Tier II defined contribution plan.

(A) If no election is made the employee shall be automatically enrolled in the Tier II hybrid retirement system.

(ii) An employee eligible for the Tier II system has one year from the date of eligibility to change the election or it is irrevocable.

(c) Changes in employee contributions, beneficiaries, and investment strategies shall be submitted electronically to URS through the URS website.

(6) A reemployed veteran under USERRA shall be entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

**R477-6-7. Employee Converting from Career Service to Schedule AC, AD, AR, or AS.**

(1) A career service employee in a position meeting the criteria for career service exempt schedule AC, AD, AR, or AS shall have 60 days from the date of offer to elect to convert from career service to career service exempt. As an incentive to convert, an employee shall be provided the following:

(a) an administrative salary increase of at least 1/2% or the maximum rate of the current salary range. An employee at the maximum of the current salary range or in longevity shall receive, in lieu of the salary adjustment, a one time bonus, as determined by the agency head or designee, not to exceed limits in Subsection R477-6-5(1)(b);

(b) state paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program, Public Employees Health Plan:

(i) Salaries less than \$50,000 shall receive \$125,000 of term life insurance;

(ii) Salaries between \$50,000 and \$60,000 shall receive \$150,000 of term life insurance;

(iii) Salaries more than \$60,000 shall receive \$200,000 of term life insurance.

(2) An employee electing to convert to career service exempt after the 60 day election period may not be eligible for the salary increase, but shall be entitled to apply for the insurance coverage through the Group Insurance Office.

(3) An employee electing not to convert to career service exemption shall retain career service status even though the position shall be designated as schedule AC, AD, AR or AS. When these career service employees vacate these positions, subsequent appointments shall be career service exempt.

(4) An agency head may reorganize so that a current career service exempt position no longer meets the criteria for exemption. In this case, the employee shall be designated as career service if he had previously earned career service. However, the employee may not be eligible for the severance package or the life insurance. In this situation, the agency and employee shall make arrangements through the Group Insurance Office to discontinue the coverage.

(5) A career service exempt employee without prior career service status shall remain exempt. When the employee leaves the position, subsequent appointments shall be consistent with R477-4.

(6) Agencies shall communicate to all impacted and future eligible employees the conditions and limitations of this incentive program.

#### **R477-6-8. State Paid Life Insurance.**

(1) A benefits eligible career service exempt employee on schedule AA, AB, AD, AR and AT shall be provided the following benefits if the employee is approved through underwriting:

(a) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program Public Employees Health Plan:

(i) Salaries less than \$50,000 shall receive \$125,000 of term life insurance;

(ii) Salaries between \$50,000 and \$60,000 shall receive \$150,000 of term life insurance;

(iii) Salaries more than \$60,000 shall receive \$200,000 of term life insurance.

(2) An employee on schedule AC or AS may be provided these benefits at the discretion of the appointing authority.

#### **R477-6-9. Severance Benefit.**

(1) A benefits eligible career service exempt employee on schedule AB, AD, AR or AT who is separated from state service through an action initiated by management, to include resignation in lieu of termination, shall receive at the time of severance a benefit equal to:

(a) one week of salary, up to a maximum of 12 weeks, for each year of consecutive exempt service in the executive branch; and

(b) if eligible for COBRA, one month of health insurance coverage, up to a maximum of six months, for each year of consecutive exempt service, at the level of coverage the employee has at the time of severance, to be paid in a lump sum payment to the state's health care provider.

(2) A severance benefit may not be paid to an employee:

(a) whose statutory term has expired without reappointment;

(b) who is retiring from state service; or

(c) who is dismissed for cause.

(3) A benefits eligible career service exempt employee on schedule AB, AD, AR or AT who accepts reassignment to a position with a lower salary range, without a break in service, shall receive a severance benefit equal to the difference between the current actual wage and the new actual wage multiplied by the number of accrued annual leave, converted sick leave, and excess hours on the date of reassignment.

(4) An employee on schedule AC or AS may be provided these same severance benefits at the discretion of the appointing authority.

#### **R477-6-10. Human Resource Transactions.**

The Executive Director, DHRM, shall publicize procedures for processing payroll and human resource transactions and documents.

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

**Date of Enactment or Last Substantive Amendment: ~~July 1, 2011~~ 2012**

**Notice of Continuation: June 9, 2007**

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

## Insurance, Administration **R590-162** Actuarial Opinion and Memorandum Rule

### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36215

FILED: 05/15/2012

### **RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being changed to more closely follow the National Association of Insurance Commissioners (NAIC) Model Regulation. This regulation has already been adopted by most states.

**SUMMARY OF THE RULE OR CHANGE:** This rule affects all life insurance companies and fraternal benefit societies doing business in Utah. The amendments: 1) require that all life insurance companies and fraternal benefit societies,

regardless of size, file an actuarial opinion based on an asset adequacy analysis; 2) require domestic life insurers to submit, by March 15th of each year, and all foreign licensed life insurers to complete and make available to the department upon request, the Regulatory Asset Adequacy Issues Summary (RAAIS), a confidential document, providing details regarding the asset adequacy analysis; and 3) provide a process for the foreign insurers to file actuarial opinions based on the laws of the state of their domicile. These proposed amendments are intended to improve the regulatory oversight and to help Utah comply with the accreditation standards of the NAIC.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-17-503

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The department is already asking domestic life insurers, of which there are 16, to provide the department with the Regulatory Asset Adequacy Issues Summary (RAAIS) document noted in 6 above. Once received the department would put it in the company's file. It would not require the department to hire additional employees or work overtime.

◆ **LOCAL GOVERNMENTS:** The changes to this rule will have no fiscal impact on local governments since they deal solely with the relationship between the department and its licensees.

◆ **SMALL BUSINESSES:** This rule will not affect small businesses. It will only affect life and fraternal life insurers doing business in Utah; all of which have over 50 employees.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The changes in this rule may affect at least four out of sixteen domestic life insurers that are not already complying with the requirements of the rule. Of the four that are not complying yet, one said it could comply without any problem or added expense, and three others could possibly ask to be exempted from the rule since they have very little or no insurance business outside of the state, or they could hire a consultant to file the form for two to three years until their in-house actuary is able to do it, or they could just hire it out every year to a consultant to do it for them. Consultants may charge as much as \$200 per hour.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The changes in this rule may affect at least four out of sixteen domestic life insurers that are not already complying with the requirements of the rule. Of the four that are not complying yet, one said it could comply without any problem or added expense, and three others could possibly ask to be exempted from the rule since they have very little or no insurance business outside of the state, or they could hire a consultant to file the form for two to three years until their in-house actuary is able to do it, or they could just hire it out every year to a consultant to do it for them. Consultants may charge as much as \$200 per hour.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The new requirements in this rule may financially impact one to three of our sixteen domestic life insurers. Two of these could ask to be exempted from the rule and not be impacted at all. It should be noted that the department has received no written comments from our domestic life insurers to the effect that the rule will have a negative impact on them or their business.

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

INSURANCE  
ADMINISTRATION  
ROOM 3110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [jwhitby@utah.gov](mailto:jwhitby@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Jilene Whitby, Information Specialist

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**R590. Insurance, Administration.**

**R590-162. Actuarial Opinion and Memorandum Rule.**

**R590-162-1. Purpose.**

The purpose of this rule is to prescribe:

A. ~~[Guidelines and standards]~~Requirements for statements of actuarial opinion which are to be submitted in accordance with Section 31A-17-503, and for memoranda in support thereof;

B. ~~[Guidelines and standards for statements of actuarial opinion which are to be submitted when a company is exempt from Subsection 31A-17-503(3)]~~Guidance as to the meaning of "adequacy of reserves;" and

C. Rules applicable to the appointment of an appointed actuary.

**R590-162-2. Authority.**

This rule is issued pursuant to the authority vested in the Commissioner of Insurance of the State of Utah under Section 31A-17 Part 5. This rule will take effect for annual statements for the year ~~[1993]~~2011.

**R590-162-3. Scope.**

This rule shall apply to all life insurance companies and fraternal benefit societies doing business in this State and to all life insurance companies and fraternal benefit societies which are

authorized to reinsure life insurance, annuities or disability insurance business in this State.

This rule shall be applied in a manner that allows the appointed actuary to utilize professional judgment in performing the asset adequacy analysis and developing the actuarial opinion and supporting memoranda, consistent with applicable actuarial standards of practice. However, the commissioner shall have the authority to specify the methods of actuarial analysis and actuarial assumptions when, in the commissioner's judgment, these specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items.

This rule shall be applicable to all annual statements filed with the office of the commissioner after the effective date of this rule. ~~[Except with respect to companies which are exempted pursuant to Section 6 of this rule, a]~~ statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with Section [8]6 of this rule, and a memorandum in support thereof in accordance with Section [9]7 of this rule, shall be required each year. ~~[Any company so exempted must file a statement of actuarial opinion pursuant to Section 7 of this rule.~~

~~Notwithstanding the foregoing, the commissioner may require any company otherwise exempt pursuant to this rule to submit a statement of actuarial opinion and to prepare a memorandum in support thereof in accordance with Sections 8 and 9 of this rule if, in the opinion of the commissioner, an asset adequacy analysis is necessary with respect to the company.]~~

#### **R590-162-4. Definitions.**

A. Actuarial Opinion means[:

~~(1) With respect to Section 8, 9 or 10 of this rule,] the opinion of an Appointed Actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy test in accordance with Section [8]6 of this rule and with [presently accepted] applicable Actuarial Standards of Practice[;~~

~~(2) With respect to Section 7 of this rule, the opinion of an Appointed Actuary regarding the calculation of reserves and related items, in accordance with Section 7 of this rule and with those presently accepted Actuarial Standards which specifically relate to this opinion].~~

B. "Actuarial Standards Board" is the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

C. "Annual Statement" means that statement required by Section 31A-4-113 to be filed by the company with the office of the commissioner annually.

D. "Appointed Actuary" means any individual who is appointed or retained in accordance with the requirements set forth in Section 5C of this rule to provide the actuarial opinion and supporting memorandum as required by 31A-17-503.

E. "Asset Adequacy Analysis" means an analysis that meets the standards and other requirements referred to in Section 5D of this rule. It may take many forms, including, but not limited to, cash flow testing, sensitivity testing or applications of risk theory.

F. "Commissioner" means the Insurance Commissioner of this State.

G. "Company" means a life insurance company, fraternal benefit society or reinsurer subject to the provisions of this rule.

~~[H. "Non-Investment Grade Bonds" are those designated as classes 3, 4, 5 or 6 by the NAIC Securities Valuation Office.]~~

I. "Qualified Actuary" means any individual who meets the requirements set forth in Section 5B of this rule.

#### **R590-162-5. General Requirements.**

A. Submission of Statement of Actuarial Opinion

(1) There is to be included on or attached to Page 1 of the annual statement for each year beginning with the year in which this rule becomes effective the statement of an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with Section [8]6 of this rule; ~~provided, however, that any company exempted pursuant to Section 6 of this rule from submitting a statement of actuarial opinion in accordance with Section 8 of this rule shall include on or attach to Page 1 of the annual statement a statement of actuarial opinion rendered by an appointed actuary in accordance with Section 7 of this rule.~~

~~(2) If in the previous year a company provided a statement of actuarial opinion in accordance with Section 7 of this rule, and in the current year fails the exemption criteria of Sections 6C(1), 6C(2) or 6C(5) of this rule, to again provide an actuarial opinion in accordance with Section 7 of this rule, the statement of actuarial opinion in accordance with Section 8 of this rule, shall not be required until August 1 following the date of the annual statement. In this instance, the company shall provide a statement of actuarial opinion in accordance with Section 7 of this rule, with appropriate qualification noting the intent to subsequently provide a statement of actuarial opinion in accordance with Section 8 of this rule.]~~

~~(3)2~~ In the case of a statement of actuarial opinion required to be submitted by a foreign or alien company, the commissioner may accept the statement of actuarial opinion filed by such company with the insurance supervisory regulator of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this State.

~~(4)3~~ Upon written request by the company, the commissioner may grant an extension of the date for submission of the statement of actuarial opinion.

B. Qualified Actuary

A "qualified actuary" is an individual who:

(1) Is a member in good standing of the American Academy of Actuaries; ~~and]~~

(2) Is qualified to sign statements of actuarial opinion for life and ~~disability]health~~ insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements; ~~and]~~

(3) Is familiar with the valuation requirements applicable to life and ~~disability]health~~ insurance companies; ~~and]~~

(4) Has not been found by the commissioner, or if so found has subsequently been reinstated as a qualified actuary, following appropriate notice and hearing to have:

(a) Violated any provision of, or any obligation imposed by, the Utah Code or other law in the course of his or her dealings as a qualified actuary; ~~or]~~

(b) Been found guilty of fraudulent or dishonest practices; ~~or]~~

(c) Demonstrated his or her incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary;~~[or]~~

(d) Submitted to the commissioner during the past five years, pursuant to this rule, an actuarial opinion or memorandum that the commissioner rejected because it did not meet the provisions of this rule including standards set by the Actuarial Standards Board; or

(e) Resigned or been removed as an actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; and

(5) Has not failed to notify the commissioner of any action taken by any commissioner of any other state similar to that under Paragraph (4) above.

C. Appointed Actuary

An "appointed actuary" is a qualified actuary who is appointed or retained to prepare the Statement of Actuarial Opinion required by this rule, either directly by or by the authority of the board of directors through an executive officer of the company other than the qualified actuary. The company shall give the commissioner timely written notice of the name, title, and, in the case of a consulting actuary, the name of the firm and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall state in such notice that the person meets the requirements set forth in Section 5B of this rule. Once notice is furnished, no further notice is required with respect to this person, provided that the company shall give the commissioner timely written notice in the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements set forth in Section 5B. If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give the reasons for replacement.

D. Standards for Asset Adequacy Analysis

The asset adequacy analysis required by this rule:

(1) Shall conform to the Standards of Practice as promulgated from time to time by the Actuarial Standards Board and on any additional standards under this rule, which standards are to form the basis of the statement of actuarial opinion in accordance with ~~[Section 8 of]~~ this rule; and

(2) Shall be based on methods of analysis as are deemed appropriate for such purposes by the Actuarial Standards Board.

E. Liabilities to be Covered

(1) Under authority of Section 31A-17-503, the statement of actuarial opinion shall apply to all in force business on the statement date, whether directly issued or assumed, regardless of when or where issued, e.g., reserves of Exhibits 8, 9 and 10, and claim liabilities in Exhibit 11, Part I and equivalent items in the separate account statement or statements.

(2) If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with methods set forth in Sections 31A-17-505(1), 31A-17-505(1)(a), 31A-17-511, 31A-17-512, and 31A-17-513, the company shall establish such additional reserve.

~~[(3) For years ending prior to December 31, 1995, the company may, in lieu of establishing the full amount of the additional reserve in the annual statement for that year, set up an additional reserve in an amount not less than the following:~~

~~December 31, 1993. The additional reserve divided by three.~~

~~December 31, 1994. Two times the additional reserve divided by three.~~

]  
 ([4]3) Additional reserves established under Paragraphs (2) ~~[or (3)]~~ above and deemed not necessary in subsequent years may be released. Any amounts released must be disclosed in the actuarial opinion for the applicable year. The release of such reserves would not be deemed an adoption of a lower standard of valuation.

**[R590-162-6. Required Opinions.**

~~A. General~~

~~In accordance with Section 31A-17-503, every company doing business in this State shall annually submit the opinion of an appointed actuary as provided for by this rule. The type of opinion submitted shall be determined by the provisions set forth in this Section 6 and shall be in accordance with the applicable provisions in this rule.~~

~~B. Company Categories~~

~~For purposes of this rule, companies shall be classified as follows based on the admitted assets as of the end of the calendar year for which the actuarial opinion is applicable:~~

~~(1) Category A shall consist of those companies whose admitted assets do not exceed \$20 million;~~

~~(2) Category B shall consist of those companies whose admitted assets exceed \$20 million but do not exceed \$100 million;~~

~~(3) Category C shall consist of those companies whose admitted assets exceed \$100 million but do not exceed \$500 million; and~~

~~(4) Category D shall consist of those companies whose admitted assets exceed \$500 million.~~

~~C. Exemption Eligibility Tests~~

~~(1) Any Category A company that, for any year beginning with the year in which this rule becomes effective, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion in accordance with Section 8 of this rule for the year in which these criteria are met. The ratios in (a), (b) and (c) below shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable:~~

~~(a) The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .10;~~

~~(b) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .30.~~

~~(c) The ratio of the book value of the non-investment-grade bonds to the sum of capital and surplus is less than .50.~~

~~(d) The Examiner Team for the National Association of Insurance Commissioners (NAIC) has not designated the company as a first priority company in any of the two calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of domicile and the commissioner has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office.~~

(2) Any Category B company that, for any year beginning with the year in which this rule becomes effective, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion in accordance with Section 8 of this rule for the year in which the criteria are met. The ratios in (a), (b) and (c) below shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable:

(a) The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .07.

(b) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .40.

(c) The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is less than .50.

(d) The Examiner Team for the National Association of Insurance Commissioners (NAIC) has not designated the company as a first priority company in any of the two calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of domicile and the commissioner has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office.

(3) Any Category A or Category B company that meets all of the criteria set forth in Paragraph (1) or (2) of this subsection; whichever is applicable, is exempted from submission of a statement of actuarial opinion in accordance with Section 8 of this rule unless the commissioner specifically indicates to the company that the exemption is not to be taken.

(4) Any Category A or Category B company that, for any year beginning with the year in which this rule becomes effective, is not exempted under Paragraph (3) of this subsection shall be required to submit a statement of actuarial opinion in accordance with Section 8 of this rule for the year for which it is not exempt.

(5) Any Category C company that, after submitting an opinion in accordance with Section 8 of this rule, meets all of the following criteria shall not be required, unless required in accordance with Paragraph (6) below, to submit a statement of actuarial opinion in accordance with Section 8 of this rule more frequently than every third year. Any Category C company which fails to meet all of the following criteria for any year shall submit a statement of actuarial opinion in accordance with Section 8 of this rule for that year. The ratios in (a), (b) and (c) below shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.

(a) The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .05.

(b) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .50.

(c) The ratio of the book value of the non-investment grade bonds to the sum of the capital and surplus is less than .50.

(d) The Examiner Team for the NAIC has not designated the company as a first priority company in any of the two calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of

domicile and the commissioner has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office.

(6) Any company which is not required by this Section 6 to submit a statement of actuarial opinion in accordance with Section 8 of this rule for any year shall submit a statement of actuarial opinion in accordance with Section 7 of this rule for that year unless as provided for by the second paragraph of Section 3 of this rule the commissioner requires a statement of actuarial opinion in accordance with Section 8 of this rule.

D. Large Companies

Every Category D company shall submit a statement of actuarial opinion in accordance with Section 8 of this rule for each year beginning with the year in which this rule becomes effective.

#### **R590-162-7. Statement of Actuarial Opinion Not Including an Asset Adequacy Analysis.**

A. General Description

The statement of actuarial opinion required by this section shall consist of a paragraph identifying the appointed actuary and his or her qualifications; a regulatory authority paragraph stating that the company is exempt pursuant to this rule from submitting a statement of actuarial opinion based on an asset adequacy analysis and that the opinion, which is not based on an asset adequacy analysis, is rendered in accordance with Section 7 of this rule; a scope paragraph identifying the subjects on which the opinion is to be expressed and describing the scope of the appointed actuary's work; and an opinion paragraph expressing the appointed actuary's opinion as required by Section 31A-17-503.

B. Recommended Language

The following language provided is that which in typical circumstances would be included in a statement of actuarial opinion in accordance with this section. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in Section 7 of this rule.

(1) The opening paragraph should indicate the appointed actuary's relationship to the company. For a company actuary, the opening paragraph of the actuarial opinion should read as follows:

"I, (name of actuary), am (title) of (name of company) and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the commissioner dated (insert date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and disability companies."

For a consulting actuary, the opening paragraph of the actuarial opinion should contain a sentence such as:

"I, (name and title of actuary), a member of the American Academy of Actuaries, am associated with the firm of (insert name of consulting firm). I have been appointed by, or by the authority of, the Board of Directors of (name of company) to render this opinion as stated in the letter to the commissioner dated (insert date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and disability insurance companies."

(2) The regulatory authority paragraph should include a statement such as the following: "Said company is exempt pursuant to Rule (insert designation) of the (name of state) Insurance Department from submitting a statement of actuarial opinion based on an asset adequacy analysis. This opinion, which is not based on an asset adequacy analysis, is rendered in accordance with Section 7 of the rule."

(3) The scope paragraph should contain a sentence such as the following: "I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, (-)."

The paragraph should list items and amounts with respect to which the appointed actuary is expressing an opinion. The list should include but not be necessarily limited to:

(a) Aggregate reserve and deposit funds for policies and contracts included in Exhibit 8;

(b) Aggregate reserve and deposit funds for policies and contracts included in Exhibit 9;

(c) Deposit funds, premiums, dividend and coupon accumulations and supplementary contracts not involving life contingencies included in Exhibit 10; and

(d) Policy and contract claims liability end of current year included in Exhibit 11, Part I.

(4) If the appointed actuary has examined the underlying records, the scope paragraph should also include the following:

"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic records and such tests of the actuarial calculations as I considered necessary."

(5) If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in force prepared by the company or a third party, the scope paragraph should include a sentence such as one of the following:

"I have relied upon listings and summaries of policies and contracts and other liabilities in force prepared by (name and title of company officer certifying in force records) as certified in the attached statement. (See accompanying affidavit by a company officer.) In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."

or

"I have relied upon (name of accounting firm) for the substantial accuracy of the in force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."

The statement of the person certifying shall follow the form indicated by Section 7B(10) of this rule.

(6) The opinion paragraph should include the following:

"In my opinion the amounts carried in the balance sheet on account of the actuarial items identified above:

(a) Are computed in accordance with those presently accepted actuarial standards which specifically relate to the opinion required under this section;

(b) Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision

as to reserve basis and method, and are in accordance with all other contract provisions;

(c) Meet the requirements of the Insurance Law and rules of the state of (state of domicile) and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed.

(d) Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year end with any exceptions as noted below; and

(e) Include provision for all actuarial reserves and related statement items which ought to be established.

The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Compliance Guidelines as promulgated by the Actuarial Standards Board, which guidelines form the basis of this statement of opinion."

(7) The concluding paragraph should document the eligibility for the company to provide an opinion as provided by this Section 7. It shall include the following:

"This opinion is provided in accordance with Section 7 of the NAIC Actuarial Opinion and Memorandum Rule. As such it does not include an opinion regarding the adequacy of reserves and related actuarial items when considered in light of the assets which support them.

Eligibility for Section 7 of this rule is confirmed as follows:

(a) The ratio of the sum of capital and surplus to the sum of cash and invested assets is (insert amount), which equals or exceeds the applicable criterion based on the admitted assets of the company specified in Section 6C of this rule.

(b) The ratio of the sum of the reserves and liabilities for annuities and deposits to the excess of the total admitted assets is (insert amount), which is less than the applicable criteria based on the admitted assets of the company specified in Section 6C of this rule.

(c) The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is (insert amount), which is less than the applicable criteria of .50.

(d) To my knowledge, the NAIC Examiner Team has not designated the company as a first priority company in any of the two calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two calendar years preceding the calendar year for which the actuarial opinion is applicable or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of domicile.

(e) To my knowledge there is not a specific request from any commissioner requiring an asset adequacy analysis opinion.

.....  
Signature of Appointed Actuary

.....  
Address of Appointed Actuary

.....  
Telephone Number of Appointed Actuary"

~~(8) If there has been any change in the actuarial assumptions from those previously employed, that change should be described in the annual statement or in a paragraph of the statement of actuarial opinion, and the reference in Section 7B(6)(d) above to consistency should read as follows:~~

~~"... with the exception of the change described on Page ( ) of the annual statement (or in the preceding paragraph)."~~

~~The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this paragraph.~~

~~(9) If the appointed actuary is unable to form an opinion, he or she shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, he or she shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for such opinion. This statement should follow the scope paragraph and precede the opinion paragraph.~~

~~(10) If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force, there should be attached to the opinion, the statement of a company officer or accounting firm who prepared such underlying data similar to the following:~~

~~"I (name of officer), (title) of (name and address of company or accounting firm), hereby affirm that the listings and summaries of policies and contracts in force as of December 31, ( ), prepared for and submitted to (name of appointed actuary), were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.~~

.....  
Signature of the Officer of the Company  
or Accounting Firm

.....  
Address of the Officer of the Company  
or Accounting Firm

.....  
Telephone Number of the Officer of the  
Company or Accounting Firm"

**[R590-162-]8[6. Statement of Actuarial Opinion Based On an Asset Adequacy Analysis.**

**A. General Description**

The statement of actuarial opinion submitted in accordance with this section shall consist of:

(1) A paragraph identifying the appointed actuary and his or her qualifications as specified in Section [8]6B(1) of this rule;

(2) A scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items which have been analyzed for asset adequacy and the method of analysis, as specified in Section [8]6B(2) of this rule, and identifying the reserves and related actuarial items covered by the opinion which have not been so analyzed;

(3) A reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions, e.g., anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios, as specified in Section [8]6B(3) of this rule, supported by a statement of each such expert in the form prescribed by Section [8]6E of this rule; and

(4) An opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities, as specified in Section [8]6B(6) of this rule.

(5) One or more additional paragraphs will be needed in individual company cases as follows:

(a) If the appointed actuary considers it necessary to state a qualification of [his or her]the opinion;

(b) If the appointed actuary must disclose the method of aggregation for reserves of different products or lines of business for asset adequacy analysis;

(c) If the appointed actuary must disclose reliance upon any portion of the assets supporting the Asset Valuation Reserve (AVR), Interest Maintenance Reserve (IMR) or other mandatory or voluntary statement of reserves for asset adequacy analysis.

(d) If the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion.

(e) If the appointed actuary must disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release.

(f) If the appointed actuary chooses to add a paragraph briefly describing the assumptions which form the basis for the actuarial opinion.

**B. Recommended Language**

The following paragraphs are to be included in the statement of actuarial opinion in accordance with this section. Language is that which in typical circumstances should be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in this section.

(1) The opening paragraph should generally indicate the appointed actuary's relationship to the company and his or her qualifications to sign the opinion. For a company actuary, the opening paragraph of the actuarial opinion should read as follows:

"I, (name), am (title) of (insurance company name) and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the commissioner dated (insert date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and [disability]health insurance companies."

For a consulting actuary, the opening paragraph should contain a sentence such as:

"I, (name), a member of the American Academy of Actuaries, am associated with the firm of (name of consulting firm).

I have been appointed by, or by the authority of, the Board of Directors of (name of company) to render this opinion as stated in the letter to the commissioner dated (insert date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and [disability]health insurance companies."

(2) The scope paragraph should include a statement such as the following:

"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, [19]20( ). Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis.

(3) If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph should include a statement such as the following:

"I have relied on (name), (title) for (e.g., anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios or certain critical aspects of the analysis performed in conjunction with forming my opinion) [and], as certified in the attached statement[;] I have reviewed the information relied upon for reasonableness. [:-]"

[-----or  
-----] "I have relied on personnel as cited in the supporting memorandum for certain critical aspects of the analysis in reference to the accompanying statement."

] Such a statement of reliance on other experts should be accompanied by a statement by each of such experts of the form prescribed by Section [8]6E of this rule.

(4) If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should also include the following:

"My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary. I also reconciled the underlying basic asset and liability records to (exhibits and schedules listed as applicable) of the company's current annual statement."

(5) If the appointed actuary has not examined the underlying records, but has relied upon data (e.g., listings and summaries of policies in force [and/or asset records] prepared by the company or a third party, the reliance paragraph should include a [sentence]statement such as:

"In forming my opinion on (specify types of reserves) I have relied upon data [listings and summaries (of policies and contracts, of asset records)] prepared by (name and title of company officer certifying in-force records or other data) as certified in the attached statement. I evaluated that data for reasonableness and consistency. I also reconciled that data to (exhibits and schedules to be listed as applicable) of the company's current annual statement. In other respects my examination included such review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary."

[-----or  
-----] "I have relied upon (name of accounting firm) for the substantial accuracy of the in-force records inventory and information concerning other liabilities, as certified in the attached

~~statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and tests of the actuarial calculations as I considered necessary."~~

] Such a statement of reliance[section] must be accompanied by a statement by each person relied upon of the form prescribed by Section [8]6E of this rule.

(6) The opinion paragraph should include the following:

"In my opinion the reserves and related actuarial values concerning the statement items identified above:

(a) Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;

(b) Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

(c) Meet the requirements of the Insurance Law and rule of the state of (state of domicile) and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed.

(d) Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below);

(e) Include provision for all actuarial reserves and related statement items which ought to be established.

The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company. (At the discretion of the commissioner, this language may be omitted for an opinion filed on behalf of a company doing business only in this State and in no other state.)

The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion.

This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion.

or

The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: (Describe the change or changes.)

The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis.

.....  
Signature of Appointed Actuary

.....  
Address of Appointed Actuary

.....  
Address of the Officer of the Company  
or Accounting Firm

.....  
Telephone Number of Appointed Actuary["]

.....  
Telephone Number of the Officer of the  
Company or Accounting Firm"

.....  
Date"

-----and/or  
-----"I, (name of officer), (title) of (name of company,  
accounting firm, or security analyst), hereby affirm that the listings,  
summaries and analyses relating to data prepared for and submitted  
to (name of appointed actuary) in support of the asset-oriented  
aspects of the opinion were prepared under my direction and, to the  
best of my knowledge and belief, are substantially accurate and  
complete.

C. Assumptions for New Issues

The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this Section [8]6.

D. Adverse Opinions

If the appointed actuary is unable to form an opinion, then [he or she]the actuary shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, then [he or she]the actuary shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for such opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

E. Reliance on Data Furnished by Other Persons

If the appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion should so indicate the persons the actuary is relying upon and a precise identification of the items subject to the reliance.

In addition, the persons on whom the appointed actuary relies shall provide a certification that precisely identifies the items on which the person is providing information and a statement as to the accuracy, completeness or reasonableness, as applicable, of the items. This certification shall include the signature, title, company, address and telephone number of the person rendering the certification, as well as the date on which it is signed.~~[does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force and/or asset-oriented information, there shall be attached to the opinion the statement of a company officer or accounting firm who prepared such underlying data similar to the following:~~

~~-----"I (name of officer), (title), of (name of company or accounting firm), hereby affirm that the listings and summaries of policies and contracts in force as of December 31, 19(-), and other liabilities prepared for and submitted to (name of appointed actuary) were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.~~

.....  
Signature of the Officer of the Company  
or Accounting Firm

.....  
Signature of the Officer of the Company,  
Accounting Firm or the Security Analyst

.....  
Address of the Officer of the Company,  
Accounting Firm or the Security Analyst

.....  
Telephone Number of the Officer of the  
Company, Accounting Firm or  
the Security Analyst"]

F. Alternate Option

(1) As an alternative to the requirements of Subsection B(6)(c) of this rule, the appointed actuary may state that the reserves and related actuarial values "meet the requirements of the Insurance Law and rule of the State of (state of domicile) and I have verified that the company's request to file an opinion based on the laws of the state of domicile has been approved by the commissioner and that any conditions required by the commissioner for approval of that request have been met."

(2) To use this alternative, the company shall file a request to do so, along with the justification for its use, no later than April 30 of the year of the opinion to be filed. The request shall be deemed approved on October 1 of that year if the commissioner has not denied the request by that date.

(3) Notwithstanding the above, the commissioner may reject an opinion based on the laws of the state of domicile and require an opinion based on the laws of this State. If a company is unable to provide the opinion within sixty days of the request or such other period of time determined by the commissioner after consultation with the company, the commissioner may contract an independent actuary at the company's expense to prepare and file the opinion.

**R590-162-[9]7. Description of Actuarial Memorandum Including an Asset Adequacy Analysis.**

**A. General**

(1) In accordance with Section 31A-17-503, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of ~~[his or her]~~the opinion regarding the reserves~~[under a Section 8 opinion]~~. The memorandum shall be made available for examination by the commissioner upon ~~[his or her]~~request but shall be returned to the company after such examination and shall not be considered a record of the insurance department or subject to automatic filing with the commissioner.

(2) In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of Section 5B of this rule, with respect to the areas covered in such memoranda, and so state in their memoranda.

(3) If the commissioner requests a memorandum and no such memorandum exists or if the commissioner finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this rule, the commissioner may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the commissioner.

(4) The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the commissioner; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the commissioner and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the commissioner pursuant to the statute governing this rule. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this rule for any one of the current year or the preceding three years.

(5)(a) In accordance with Section 31A-17-503, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the content of which are specified in Subsection C.

(b) Every company domiciled in this state shall submit the regulatory asset adequacy issues summary no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required.

(c) Every foreign company is required to make the regulatory asset adequacy issues summary available to the commissioner upon request.

(d) The regulatory asset adequacy issues summary shall be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

**B. Details of the Memorandum Section Documenting Asset Adequacy Analysis~~[of Section 8 of this rule]~~.**

When an actuarial opinion ~~[under Section 8 of this rule]~~ is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy

referred to in Section 5D of this rule and any additional standards under this rule. It shall specify:

(1) For reserves:

(a) Product descriptions including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant;

(b) Source of liability in force;

(c) Reserve method and basis;

(d) Investment reserves;

(e) Reinsurance arrangements~~[-]~~;

(f) Identification of any explicit or implied guarantees made the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis; and

(g) Documentation of assumptions to test reserves for the following:

(i) Lapse rates (both base and excess);

(ii) Interest crediting strategy;

(iii) Mortality;

(iv) Policyholder dividend strategy;

(v) Competitor or market interest rate;

(vi) Annuitization rates;

(vii) Commissions and expenses; and

(viii) Morbidity.

(2) For assets:

(a) Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets;

(b) Investment and disinvestment assumptions;

(c) Source of asset data;

(d) Asset valuation bases~~[-]~~; and

(e) Documentation of assumptions made for:

(i) Default costs;

(ii) Bond call function;

(iii) Mortgage prepayment function;

(iv) Determining market value for assets sold due to disinvestment strategy; and

(v) Determining yield on assets acquired through the investment strategy.

(3) For the ~~[A]~~analysis basis:

(a) Methodology;

(b) Rationale for inclusion/exclusion of different blocks of business and how pertinent risks were analyzed;

(c) Rationale for degree of rigor in analyzing different blocks of business (include in the rationale the level of "materiality" that was used in determining how rigorously to analyze different blocks of business);

(d) Criteria for determining asset adequacy (include in the criteria the precise basis for determining if assets are adequate to cover reserves under "moderately adverse conditions" or other conditions as specified in relevant actuarial standards of practice); and

(e) Effect of federal income taxes, reinsurance and other relevant factors.

(4) Summary of material changes in methods, procedures, or assumptions from prior year's asset adequacy analysis;

([4]5) Summary of Results; and

([5]6) Conclusions~~[-]~~;

C. ~~[Conformity to Standards of Practice]~~Details of the Regulatory Asset Adequacy Summary

(1) The regulatory asset adequacy issues summary shall include:

(a) Descriptions of the scenarios tested (including whether those scenarios are stochastic or deterministic) and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force;

(b) The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different than the assumptions used in the previous asset adequacy analysis;

(c) The amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion;

(d) Comments on any interim results that may be of significant concern to the appointed actuary. For example, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserve during one or more interim periods;

(e) The methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each scenario tested; and

(f) Whether the actuary has been satisfied that all options, whether explicit or embedded, in any asset or liability (including but not limited to those affecting cash flows embedded in fixed income securities) and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.

(2) The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion.

~~\_\_\_\_\_~~ The memorandum shall include a statement:

~~\_\_\_\_\_~~ "Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."

**R590-162-10. Additional Considerations for Analysis.**

~~\_\_\_\_\_~~ A. Aggregation

~~\_\_\_\_\_~~ For the asset adequacy analysis for the statement of actuarial opinion provided in accordance with Section 8 of this rule, reserves and assets may be aggregated by either of the following methods:

~~\_\_\_\_\_~~ (1) Aggregate the reserves and related actuarial items, and the supporting assets, for different products or lines of business, before analyzing the adequacy of the combined assets to mature the combined liabilities. The appointed actuary must be satisfied that the assets held in support of the reserves and related actuarial items so aggregated are managed in such a manner that the cash flows

~~from the aggregated assets are available to help mature the liabilities from the blocks of business that have been aggregated.~~

~~\_\_\_\_\_~~ (2) Aggregate the results of asset adequacy analysis of one or more products or lines of business, the reserves for which prove through analysis to be redundant, with the results of one or more products or lines of business, the reserves for which prove through analysis to be deficient. The appointed actuary must be satisfied that the asset adequacy results for the various products or lines of business for which the results are so aggregated:

~~\_\_\_\_\_~~ (a) Are developed using consistent economic scenarios, or

~~\_\_\_\_\_~~ (b) Are subject to mutually independent risks, i.e., the likelihood of events impacting the adequacy of the assets supporting the redundant reserves is completely unrelated to the likelihood of events impacting the adequacy of the assets supporting the deficient reserves. In the event of any aggregation, the actuary must disclose in his or her opinion that such reserves were aggregated on the basis of method (1), (2)(a) or (2)(b) above, whichever is applicable, and describe the aggregation in the supporting memorandum.

~~\_\_\_\_\_~~ B. Selection of Assets for Analysis

~~\_\_\_\_\_~~ The appointed actuary shall analyze only those assets held in support of the reserves which are the subject for specific analysis, hereafter called "specified reserves." A particular asset or portion thereof supporting a group of specified reserves cannot support any other group of specified reserves. An asset may be allocated over several groups of specified reserves. The annual statement value of the assets held in support of the reserves shall not exceed the annual statement value of the specified reserves, except as provided in Subsection C below. If the method of asset allocation is not consistent from year to year, the extent of its inconsistency should be described in the supporting memorandum.

~~\_\_\_\_\_~~ C. Use of Assets Supporting the Interest Maintenance Reserve and the Asset Valuation Reserve:

~~\_\_\_\_\_~~ An appropriate allocation of assets in the amount of the Interest Maintenance Reserve (IMR), whether positive or negative, must be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the Asset Valuation Reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support. The amount of the assets used for the AVR must be disclosed in the Table of Reserves and Liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets must be disclosed in the memorandum.

~~\_\_\_\_\_~~ D. Required Interest Scenarios

~~\_\_\_\_\_~~ For the purpose of performing the asset adequacy analysis required by this rule, the qualified actuary is expected to follow standards adopted by the Actuarial Standards Board; nevertheless, the appointed actuary must consider in the analysis the effect of at least the following interest rate scenarios:

~~\_\_\_\_\_~~ (1) Level with no deviation;

~~\_\_\_\_\_~~ (2) Uniformly increasing over ten years at a half percent per year and then level;

~~\_\_\_\_\_~~ (3) Uniformly increasing at one percent per year over five years and then uniformly decreasing at one percent per year to the original level at the end of ten years and then level;

~~\_\_\_\_\_~~ (4) An immediate increase of 3% and then level;

~~\_\_\_\_\_ (5) Uniformly decreasing over ten years at a half percent per year and then level;~~

~~\_\_\_\_\_ (6) Uniformly decreasing at one percent per year over five years and then uniformly increasing at one percent per year to the original level at the end of ten years and then level; and~~

~~\_\_\_\_\_ (7) An immediate decrease of 3% and then level.~~

~~\_\_\_\_\_ For these and other scenarios which may be used, projected interest rates for a five year Treasury Note need not be reduced beyond the point where the five year Treasury Note yield would be at 50% of its initial level.~~

~~\_\_\_\_\_ The beginning interest rates may be based on interest rates for new investments as of the valuation date similar to recent investments allocated to support the product being tested or be based on an outside index, such as Treasury yields, of assets of the appropriate length on a date close to the valuation date.~~

~~\_\_\_\_\_ Whatever method is used to determine the beginning yield curve and associated interest rates should be specifically defined. The beginning yield curve and associated interest rates should be consistent for all interest rate scenarios.~~

~~\_\_\_\_\_ E)D. Documentation~~

The appointed actuary shall retain on file, for at least seven years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained. The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.

**KEY: insurance**

**Date of Enactment or Last Substantive Amendment:**  
**[1994]2012**

**Notice of Continuation: October 30, 2008**

**Authorizing, Implemented or Interpreted Law: 31A-17-503**

**Insurance, Administration**  
**R590-264**  
**Property and Casualty Actuarial**  
**Opinion Rule**

**NOTICE OF PROPOSED RULE**  
(New Rule)

DAR FILE NO.: 36222  
FILED: 05/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of the rule is to: 1) require all property and casualty insurance companies doing business in Utah to prepare annually an Actuarial Opinion Summary providing details of the analysis performed by the appointed actuary; 2) require all property and casualty insurance companies domiciled in Utah to file the Actuarial Opinion Summary with the Utah Insurance Commissioner; and 3) allow property and casualty insurance companies doing business in Utah the ability to request confidentiality for the

Actuarial Opinion Summary. The rule is intended to improve the regulatory oversight and to help Utah comply with the accreditation standards of the NAIC.

**SUMMARY OF THE RULE OR CHANGE:** The rule: 1) requires all property and casualty insurance companies doing business in Utah to prepare annually an Actuarial Opinion Summary providing details of the analysis performed by the appointed actuary; 2) requires all property and casualty insurance companies domiciled in Utah to file the Actuarial Opinion Summary with the Utah Insurance Commissioner; and 3) allows property and casualty insurance companies doing business in Utah the ability to request confidentiality for the Actuarial Opinion Summary. The rule is intended to improve regulatory oversight and to help Utah comply with the accreditation standards of the NAIC.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 31A-2-201 and Section 31A-4-113

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** Domestic property and casualty insurers are already filing the actuarial opinion summary with the department. As a result there will be no additional cost or savings. It is being put into this rule to comply with the National Association of Insurance Commissioners' Accreditation Standards.

♦ **LOCAL GOVERNMENTS:** This rule will have no fiscal impact on local governments since it deals solely with the relationship between the department and its licensees.

♦ **SMALL BUSINESSES:** This rule requires all property and casualty insurers licensed to do business in Utah to file an actuarial opinion summary with the department. All are already filing the form with the department. Most insurers are large employers. Seven of our twelve domestic property and casualty insurers are considered small employers. The form requires disclosure of information related to reserve ranges and risks related to it. No additional analysis is required to complete the form. It should be noted that Utah is one of the last states to put this law into effect. This rule will create no additional cost or savings for property and casualty insurers doing business in Utah.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule requires all property and casualty insurers licensed to do business in Utah to file an actuarial opinion summary with the department. All are already filing the form with the department. The form requires disclosure of information related to reserve ranges and risks related to it. No additional analysis is required to complete the form. This rule will create no additional cost or savings for property and casualty insurers doing business in Utah.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This rule requires all property and casualty insurers licensed to do business in Utah to file an actuarial opinion summary with the department. All are already filing the form with the department. The form requires disclosure of information related to reserve ranges and risks related to it. No additional

analysis is required to complete the form. This rule will create no additional cost or savings for property and casualty insurers doing business in Utah.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will create no additional cost or savings to property and casualty insurers doing business in Utah since they are already complying with the rule.

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

INSURANCE  
ADMINISTRATION  
ROOM 3110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at [jwhitby@utah.gov](mailto:jwhitby@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Jilene Whitby, Information Specialist

**R590. Insurance, Administration.**

**R590-264. Property and Casualty Actuarial Opinion Rule.**

**R590-264-1. Authority.**

This rule is promulgated pursuant to the general rulemaking authority vested in the commissioner by Section 31A-2-201, and pursuant to the specific authority of Section 31A-4-113.

**R590-264-2. Scope.**

This rule applies to all property and casualty insurance companies doing business in this state.

**R590-264-3. Purpose.**

The purpose of this rule is:

1. Require all property and casualty companies doing business in Utah to prepare annually an Actuarial Opinion Summary providing details of the analysis performed by the Appointed Actuary.

2. Require all property and casualty companies domiciled in Utah to file the Actuarial Opinion Summary with the Utah Insurance commissioner.

3. Allow property and casualty companies doing business in Utah the ability to request confidentiality for the Actuarial Opinion Summary.

**R590-264-4. Definitions.**

In addition to the definitions in 31A-1-301 the following definitions shall apply for the purposes of this rule.

(1) "Appointed Actuary" means a qualified actuary appointed by the insurance company's board of directors or its equivalent, or by a committee of the board, to provide actuarial opinion to be filed with the company's annual statement.

(2) "Qualified Actuary" means:

(a) a member of the Casualty Actuarial Society; or

(b) a member of the American Academy of Actuaries who has been approved as qualified for signing casualty loss reserves opinions by the Casualty Practice Council of the American Academy of Actuaries.

(3) "Statement of the Actuarial Opinion" means a statement prepared by the Appointed Actuary

(a) setting forth the actuary's opinion relating to the company's reserves; and

(b) prepared in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions.

**R590-264-5. Actuarial Opinion Summary.**

(1) Every property and casualty insurance company domiciled in this state that is required to submit a Statement of Actuarial Opinion shall annually file with the commissioner an Actuarial Opinion Summary, prepared and signed by the company's Appointed Actuary.

(2) This Actuarial Opinion Summary shall be prepared in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions and shall be considered as a document supporting the Actuarial Opinion.

(3) A property and casualty insurance company licensed but not domiciled in this state shall provide the Actuarial Opinion Summary upon request.

**R590-264-6. Actuarial Report.**

(1) Each Statement of Actuarial Opinion submitted annually by a property and casualty insurance company shall be supported by an Actuarial Report prepared and signed by the company's Appointed Actuary.

(2) The Actuarial Report required by R590-264-5(1) shall be:

(a) prepared in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions; and

(b) be available to the commissioner upon request.

(3) The commissioner may engage a qualified actuary at the expense of the company to review the Actuarial Opinion and the basis for the opinion, and prepare, if requested, the supporting Actuarial Report or work papers if:

(a) the insurance company fails to provide an Actuarial Report upon request of the commissioner; or

(b) the commissioner determines that the Actuarial Report provided by the company is otherwise unacceptable to the commissioner.

**R590-264-7. Confidentiality.**

(1) A property and casualty insurance company filing an Actuarial Opinion Summary with the commissioner shall, at the time of the filing, request that all or a part of the Actuarial Opinion Summary it deems confidential be classified as a protected record under Section 63G-2-305(1) or 63G-2-305(2).

(2) A company making a confidentiality claim under R590-264-6(1) shall provide the commissioner with the filing information specified in Section 63G-2-309.

**R590-264-8. Penalties.**

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

**R590-264-9. Enforcement Date.**

The commissioner will begin enforcing this rule on the effective date of this rule.

**R590-264-10. Severability.**

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**KEY: property casualty insurance**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing and Implemented or Interpreted Law: 31A-2-201; 31A-4-113**

**Natural Resources, Wildlife Resources  
R657-5**

**Taking Big Game**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36158

FILED: 05/09/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the big game rule.

**SUMMARY OF THE RULE OR CHANGE:** The proposed revision to the above listed rule amends the requirement for smokeless powder in muzzleloaders, allows for the use of a blood tracking dog to track and locate wounded big game, and adds antlerless elk to the list of permits eligible to take wildlife during a second permits season.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 23-14-18 and Section 23-14-19

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** This amendment adds additional opportunity to harvest an antlerless elk, as well as provides sportsmen with additional options for smokeless powder and aid in the retrieval of wounded big game animals. It does not increase workload for the agency therefore, the Division of

Wildlife Resources (DWR) determines that this amendment does not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

♦ **LOCAL GOVERNMENTS:** This amendment only adds additional opportunity to harvest an antlerless elk, as well as provides sportsmen with additional options for smokeless powder and aid in the retrieval of wounded big game animals. It does not place additional requirements on individual hunters or the local governments. The division finds that this filing does not create any direct cost or savings impact to local governments. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

♦ **SMALL BUSINESSES:** This amendment increases opportunity to harvest an antlerless elk, as well as provides sportsmen with additional options for smokeless powder and aid in the retrieval of wounded big game animals. It does not have the potential to generate a cost or savings impact to small businesses.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amendment increases opportunity to harvest an antlerless elk, as well as provides sportsmen with additional options for smokeless powder and aid in the retrieval of wounded big game animals. It does not have the potential to generate a cost or savings impact to sportsmen or other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This amendment increases opportunity to harvest an antlerless elk, as well as provides sportsmen with additional options for smokeless powder and aid in the retrieval of wounded big game animals. DWR determines that this amendment will not create additional costs for those who participate in wildlife-related activities in Utah.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The amendments to this rule do not have a potential to create an impact on businesses.

**THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:**  
NATURAL RESOURCES  
WILDLIFE RESOURCES  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012**

AUTHORIZED BY: James Karpowitz, Director

## **R657. Natural Resources, Wildlife Resources.**

### **R657-5. Taking Big Game.**

#### **R657-5-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for taking deer, elk, pronghorn, moose, bison, bighorn sheep, and Rocky Mountain goat.

(2) Specific dates, areas, methods of take, requirements, and other administrative details which may change annually are published in the guidebook of the Wildlife Board for taking big game.

#### **R657-5-10. Muzzleloaders.**

(1) A muzzleloader may be used during any big game hunt, except an archery hunt, provided the muzzleloader:

- (a) can be loaded only from the muzzle;
- (b) has open sights, peep sights, or a fixed non-magnifying 1x scope;
- (c) has a single barrel;
- (d) has a minimum barrel length of 18 inches;
- (e) is capable of being fired only once without reloading;
- (f) powder and bullet, or powder, sabot and bullet are not bonded together as one unit for loading;
- (g) is loaded with black powder or black powder substitute, which must not contain [~~nitrocellulose-based~~] smokeless powder.

(2)(a) A lead or expanding bullet or projectile of at least 40 caliber must be used to hunt big game.

(b) A bullet 130 grains or heavier, or a sabot 170 grains or heavier must be used for taking deer and pronghorn.

(c) A 210 grain or heavier bullet must be used for taking elk, moose, bison, bighorn sheep, and Rocky Mountain goat, except sabot bullets used for taking these species must be a minimum of 240 grains.

(3)(a) A person who has obtained a muzzleloader permit may:

- (i) use only muzzleloader equipment authorized in this Section to take the species authorized in the permit; and
- (ii) not possess or be in control of a rifle or shotgun while in the field during the muzzleloader hunt.

(A) "Field" for purposes of this section, means a location where the permitted species of wildlife is likely to be found. "Field" does not include a hunter's established campsite or the interior of a fully enclosed automobile or truck.

(b) The provisions of Subsection (a) do not apply to:

(i) a person licensed to hunt upland game or waterfowl provided the person complies with Rules R657-6 and R657-9 and the Upland Game Guidebook and Waterfowl Guidebook, respectively, and possessing only legal weapons to take upland game or waterfowl;

(ii) a person licensed to hunt big game species during hunts that coincide with the muzzleloader hunt;

(iii) livestock owners protecting their livestock; or

(iv) a person licensed to carry a concealed weapon in accordance with Title 53, Chapter 5, Part 7 of the Utah Code, provided the person is not utilizing the concealed firearm to hunt or take protected wildlife.

#### **R657-5-15. Party Hunting and Use of Dogs.**

(1) A person may not take big game for another person, except as provided in Section 23-19-1 and Rule R657-12.

(2) A person may not use the aid of a dog to take, chase, harm or harass big game. The use of one blood-trailing dog controlled by leash during lawful hunting hours within 72 hours of shooting a big game animal is allowed to track wounded animals and aid in recovery.

#### **R657-5-33. Antlerless Elk Hunts.**

(1) To hunt an antlerless elk, a hunter must obtain an antlerless elk permit.

(2)(a) An antlerless elk permit allows a person to take one antlerless elk using any legal weapon within the area and season as specified on the permit and in the Antlerless guidebook of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless elk permit for a cooperative wildlife management unit as specified on the permit.

(3)(a) A person may obtain two elk permits each year, provided one or both of the elk permits is an antlerless elk permit.

(b) For the purposes of obtaining two elk permits, a hunter's choice elk permit may not be considered an antlerless elk permit.

(4)(a) A person who obtains an antlerless elk permit and any of the permits listed in Subsection (b) may use the antlerless elk permit during the established season for the antlerless elk permit and during the established season for the permits listed in Subsection (b) provided:

- (i) the permits are both valid for the same area;
  - (ii) the appropriate archery equipment is used if hunting with an archery permit;
  - (iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.
- (b)(i) General buck deer for archery, muzzleloader or any legal weapon;
- (ii) general bull elk for archery, muzzleloader or any legal weapon;
- (iii) limited entry buck deer for archery, muzzleloader or any legal weapon; ~~or~~
- (iv) ~~limited~~ Limited entry bull elk for archery, muzzleloader or any legal weapon ~~or~~; or
- (v) antlerless elk.

#### **KEY: wildlife, game laws, big game seasons**

**Date of Enactment or Last Substantive Amendment:** ~~February 7,~~ **2012**

**Notice of Continuation: November 1, 2010**

**Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19; 23-16-5; 23-16-6**

## Natural Resources, Wildlife Resources **R657-62** Drawing Application Procedures

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36159

FILED: 05/09/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being amended pursuant to Wildlife Board meetings conducted for taking public input and reviewing the division's drawing application process.

**SUMMARY OF THE RULE OR CHANGE:** This rule is being amended to remove Section R657-62-9 "Bonus Point Forfeiture".

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 23-14-18 and Section 23-14-19

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This rule amendment removes criteria requiring sportsmen to apply every three years in order to keep bonus points; removing this requirement does not create a cost or savings to the division. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments will not create any cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** Since this amendment simplifies existing criteria that have already been set by rule, this filing does not create any direct cost or savings impact to local governments since they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** This amended rule will stop penalizing those who do not choose to apply in the big game draw every three years. Because there are no additional requirements being added, it will not generate a cost or saving impact to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This amended rule will stop penalizing those who do not choose to apply in the big game draw every three years. There are no additional requirements being added and it will not generate a cost or saving impact to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This amended rule will stop penalizing those who do not choose to apply in the big game draw every three years. Because there are no additional requirements being added, it will not generate a cost or saving impact. DWR determines that this amendment will not create a cost or savings impact to individuals who participate in hunting in Utah.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES  
WILDLIFE RESOURCES  
1594 W NORTH TEMPLE  
SALT LAKE CITY, UT 84116-3154

or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012**

**AUTHORIZED BY:** James Karpowitz, Director

**R657. Natural Resources, Wildlife Resources.****R657-62. Drawing Application Procedures.****R657-62-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for drawing applications and procedures.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the respective guidebooks of the Wildlife Board.

**R657-62-9. ~~Bonus Point Forfeiture.~~**

~~(1) All bonus points accumulated for big game species shall be automatically forfeited upon failing to apply in three consecutive years for any big game permit or bonus point for which the applicant is eligible to receive.~~

~~(a) "Big game permit" means for purpose of this subsection any big game hunting permit that a bonus point may be awarded upon unsuccessful application or in lieu of a permit.~~

~~(b) Forfeiture may be imposed no sooner than March 1, 2012 after three consecutive years of failing to apply for a big game permit or bonus point.~~

**R657-62-10. Preference Points.**

(1) Preference points are used in the applicable drawings to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.

(2)(a) A preference point is awarded for:

(i) each valid, unsuccessful application of the first-choice hunt when applying for a general buck deer permit; or

(ii) each valid unsuccessful application when applying for an antlerless deer, antlerless elk, doe pronghorn, Sandhill Crane, Sharp-tailed grouse, sage grouse or Swan permit; or

(iii) each valid application when applying only for a preference point in the applicable drawings.

(b) Preference points are awarded by species for:

(i) general buck deer;

(ii) antlerless deer;

- (iii) antlerless elk;
- (iv) doe pronghorn;
- (v) Sandhill Crane;
- (vi) Sharp-tailed Grouse;
- (vii) sage grouse; and
- (viii) Swan.

(3)(a) A person may not apply in the drawing for both a preference point and a permit for the species listed in (2)(b).

(b) A person may not apply for a preference point if that person is ineligible to apply for a permit.

(c) Preference points shall not be used when obtaining remaining permits.

(4) Preference points are forfeited if:

(a) a person obtains a first-choice hunt general buck deer permit through the drawing;

(b) a person obtains an antlerless deer, antlerless elk, doe pronghorn, Sandhill Crane, Sharp-tailed grouse, sage grouse or Swan permit through the drawing;

(5) Preference points are not transferable.

(6) Preference points are averaged and rounded down when two or more applicants apply together on a group application.

(7)(a) Preference points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain copies of electronic applications from 2000 to the current applicable drawings for the purpose of researching preference point records.

(c) Any requests for researching an applicant's preference point records must be submitted within the time frames provided in Subsection (b).

(d) Any preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may eliminate any preference point obtained by fraud, deceit, misrepresentation, or in violation of law.

**R657-62-[11]-10. Dedicated Hunter Preference Points.**

(1) Preference points are used in the dedicated hunter certificate of registration drawing to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.

(2) A preference point is awarded for:

(a) each valid unsuccessful application;

(b) each valid application when applying only for a preference point in the dedicated hunter drawing.

(3)(a) A person may not apply in the drawing for both a preference point and a certificate of registration.

(b) A person may not apply for a preference point if that person is ineligible to apply for a certificate of registration.

(4) Preference points are forfeited if a person obtains a certificate of registration through the drawing.

(5)(a) Preference points are not transferable.

(b) Preference points shall only be applied to the Dedicated Hunter drawing.

(6) Preference points are averaged and rounded down to the nearest whole point when two or more applicants apply together on a group application.

(7)(a) Preference points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain copies of electronic applications from 2011 to the current applicable drawing for the purpose of researching preference point records.

(c) Any requests for researching an applicant's preference point records must be requested within the time frames provided in Subsection (b).

(d) Any preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may eliminate any preference points earned that are obtained by fraud, deceit or misrepresentation.

**R657-62-[12]-11. Corrections, Withdrawals and Resubmitting Applications.**

(1)(a) If an error is found on the application, the applicant may be contacted for correction.

(b) The division reserves the right to correct or reject applications.

(2)(a) An applicant may withdraw their application from the permit or certificate of registration drawing by the date published in the respective guidebook of the Wildlife Board.

(b) An applicant may resubmit their application, after withdrawing a previous application, for the permit or certificate of registration drawing by the date published in the respective guidebook of the Wildlife Board.

(c) Handling fees, hunting or combination license fees and donations will not be refunded. Resubmitted applications will incur a handling fee.

(3) To withdraw an entire group application, all applicants must withdraw their individual applications.

**R657-62-[13]-12. Drawing Results.**

Drawing results will be made available by the date prescribed in the respective guidebook of the Wildlife Board.

**R657-62-[14]-13. License, Permit, Certificate of Registration and Handling Fees.**

(1) Unsuccessful applicants will not be charged for a permit or certificate of registration.

(2) The handling fees and hunting or combination license fees are nonrefundable.

(3) All license, permit, certificate of registration and handling fees must be paid with a valid debit or credit card.

**R657-62-[15]-14. Permits Remaining After the Drawing.**

(1) Any permits remaining after the drawing are available on the date published in the respective guidebook of the Wildlife Board on a first-come, first-served basis from division offices, participating license agents and through the division's internet site.

**R657-62-[16]-15. Waiting Periods for Permits Obtained After the Drawing.**

(1) Waiting periods do not apply to the purchase of remaining permits sold over the counter except as provided in Section 2.

(2) Waiting periods are incurred as a result of purchasing remaining permits after the drawing. If a remaining permit is purchased in the current year, waiting periods will be in effect when applying in the drawing in following years.

**R657-62-[17-]16. Dedicated Hunter Certificates of Registration.**

(1)(a) Applicants for a dedicated hunter certificate of registration must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Rule R657-38.

(b) Each prospective participant must complete Dedicated Hunter program orientation course annually before submitting an application.

(2) Group applications are accepted. Up to four applicants may apply as a group.

**R657-62-[18-]17. Lifetime License Permits.**

(1) Lifetime License permits shall be issued pursuant to Rule R657-17.

**R657-62-[19-]18. Big Game.****(1) Permit Applications**

(a) Limited entry, Cooperative Wildlife Management Unit, Once-in-a-Lifetime, Management Bull Elk, Management Buck Deer, General Buck Deer, and Youth General Any Bull Elk permit applications.

(i) A person must possess or obtain a valid hunting or combination license to apply for or obtain a big game permit.

(ii) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Rule R657-5.

(iii) A person may obtain only one permit per species of big game, including limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and permits as provided in Rule R657-42.

(b) A resident may apply in the big game drawing for the following permits:

(i) only one of the following:

(A) buck deer - limited entry and cooperative wildlife management unit;

(B) bull elk - limited entry and cooperative wildlife management unit; or

(C) buck pronghorn - limited entry and cooperative wildlife management unit; and

(ii) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits.

(c) A nonresident may apply in the big game drawing for the following permits:

(i) all of the following:

(A) buck deer -limited entry;

(B) bull elk - limited entry;

(C) buck pronghorn - limited entry; and

(D) all once-in-a-lifetime species.

(ii) Nonresidents may not apply for cooperative management units through the big game drawing.

(d) A resident or nonresident may apply in the big game drawing by unit for:

(i) a statewide general archery buck deer permit; or

(ii) for general any weapon buck deer; or

(iii) for general muzzleloader buck deer; or

(iv) a dedicated hunter certificate of registration.

(2) Youth

(a) For purposes of this section "youth" means any person 18 years of age or younger on the opening day of the general archery buck deer season.

(b) Youth applicants who apply for a general buck deer permit

(i) will automatically be considered in the youth drawing based upon their birth date.

(ii) 20% of general buck deer permits in each unit are reserved for youth hunters.

(iii) Up to four youth may apply together for youth general deer permits.

(iv) Preference points shall be used when applying.

(c) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the general buck deer drawing.

**(3) Drawing Order**

(a) Permits for the big game drawing shall be drawn in the following order:

(i) limited entry, cooperative wildlife management unit and management buck deer;

(ii) limited entry, cooperative wildlife management unit and management bull elk;

(iii) limited entry and cooperative wildlife management unit buck pronghorn;

(iv) once-in-a-lifetime;

(v) dedicated hunter certificate of registration;

(vi) youth general buck deer;

(vii) general buck deer and general buck/bull combo;

(viii) youth general any bull elk.

(b) Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:

(i) limited entry, Cooperative Wildlife Management unit or management buck deer;

(ii) limited entry, Cooperative Wildlife Management unit or management bull elk; or

(iii) a limited entry or Cooperative Wildlife Management unit buck pronghorn.

(c) If any permits listed in Subsection (a)(i) through (a) (iii) remain after the big game drawing after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

**(4) Groups****(a) Limited Entry**

(i) Up to four people may apply together for limited entry deer, elk or pronghorn; or resident cooperative wildlife management unit permits.

(b) Group applications are not accepted for management buck deer or bull elk permits.

(c) Group applications are not accepted for Once-in-a-lifetime permits.

**(d) General season**

(i) Up to four people may apply together for general deer permits.

(ii) Up to two youth may apply together for youth general any bull elk permits.

(iii) Up to four youth may apply together for youth general deer permits.

## (5) Waiting Periods

## (a) Deer waiting period.

(i) Any person who draws or obtains a limited entry, management or cooperative wildlife management unit buck deer permit through the big game drawing process may not apply for or receive any of these permits again for a period of two seasons.

## (ii) A waiting period does not apply to:

(A) general archery, general any weapon, general muzzleloader, conservation, sportsman, poaching-reported reward permits; or

(B) cooperative wildlife management unit or limited entry landowner buck deer permits obtained through the landowner.

## (b) Elk waiting period.

(i) Any person who draws or obtains a limited entry, management or cooperative wildlife management unit bull elk permit through the big game drawing process may not apply for or receive any of these permits for a period of five seasons.

## (ii) A waiting period does not apply to:

(A) general archery, general any weapon, general muzzleloader, conservation, sportsman, poaching-reported reward permits; or

(B) cooperative wildlife management unit or limited entry landowner bull elk permits obtained through the landowner.

## (c) Pronghorn waiting period.

(i) Any person who draws or obtains a buck pronghorn or cooperative wildlife management unit buck pronghorn permit through the big game drawing may not apply for or receive any of these permits thereafter for a period of two seasons.

## (ii) A waiting period does not apply to:

(A) conservation, sportsman, poaching-reported reward permits; or

(B) cooperative wildlife management unit or limited entry landowner buck pronghorn permits obtained through the landowner.

## (d) Once-in-a-lifetime species waiting period.

(i) Any person who draws or obtains a permit for any bull moose, bison, Rocky Mountain bighorn sheep, desert bighorn sheep or Rocky Mountain goat may not apply for or receive an once-in-a-lifetime permit for the same species in the big game drawing or sportsman permit drawing.

(ii) A person who has been convicted of unlawfully taking a once-in-a-lifetime species may not apply for or obtain a permit for that species.

(e) Cooperative Wildlife Management Unit and landowner permits.

(i) Waiting periods and once-in-a-lifetime restrictions do not apply to purchasing limited entry landowner or cooperative wildlife management unit permits obtained through a landowner, except as provided in Subsection (ii).

(ii) Waiting periods are incurred and applied for the purpose of applying in the big game drawing as a result of obtaining a cooperative wildlife management unit bull moose permit through a landowner.

**R657-62-[20]-19. Black Bear.**

## (1) Permit and Pursuit Applications.

(a) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain a limited entry bear permit or bear pursuit permit.

(b) A person may not apply for or obtain more than one bear permit within the same calendar year, except as provided in Subsection R657-33-26(4).

(c) Limited entry bear permits are valid only for the hunt unit and for the specified

season designated on the permit.

(d)(i) Applicants may select up to three hunt unit choices when applying for limited entry bear permits. Hunt unit choices must be listed in order of preference.

(ii) Applicants must specify in the application whether they want a limited entry bear permit or a limited entry bear archery permit and/or bear pursuit permit.

(e) Any person obtaining a limited entry bear archery permit must also obtain a certificate of registration if intending to use bait as provided in Section R657-33-14.

(f) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Sections 23-19-22.5, 23-19-11 and 23-20-20.

(2) Group applications are not accepted.

(3) Waiting periods.

(a) Any person who draws or purchases a limited entry bear permit valid for the current year, may not apply for a permit thereafter for a period of two years.

**R657-62-[21]-20. Antlerless Species.**

## (1) Permit Applications.

(a) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain an antlerless permit.

(b) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Rule R657-5.

(c) A person may apply in the drawing for and draw the following permits, except as provided in Subsection (d):

(i) antlerless deer;

(ii) antlerless elk;

(iii) doe pronghorn; and

(iv) antlerless moose, if available.

(d) Any person who has obtained a buck pronghorn permit or a bull moose permit may not apply in the same year for a doe pronghorn permit or antlerless moose permit, respectively, except for permits remaining after the drawing as provided in R657-62-15.

(e) Applicants may select up to five hunt choices when applying for antlerless deer, antlerless elk and antlerless pronghorn.

(f) Applicants may select up to two hunt choices when applying for antlerless moose.

(g) Hunt unit choices must be listed in order of preference.

(h) A person may not submit more than one application in the antlerless drawing per species.

(2) Youth applications.

(a) For purposes of this section, "youth" means any person 18 years of age or younger on the opening day of the general archery buck deer season.

(b) Twenty percent of the antlerless deer, elk and doe pronghorn permits are reserved for youth hunters.

(c) Youth applicants who apply for an antlerless deer, elk, or doe pronghorn permit as provided in this Subsection, will

automatically be considered in the youth drawing based upon their birth date.

(3) Drawing Order

(a) Permits are drawn in the order listed in the guidebook of the Wildlife Board for taking big game.

(b) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the antlerless drawing.

(c) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(4) Group Applications

(a) Up to four hunters can apply together for antlerless deer, antlerless elk and doe pronghorn

(b) Group applications are not accepted for antlerless moose.

(c) Youth hunters who wish to participate in the youth drawing must not apply as a group.

(5) Waiting Periods

(a) Antlerless moose waiting period.

(i) Any person who draws or obtains an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process, may not apply for or receive an antlerless moose permit thereafter for a period of five seasons.

(ii) A waiting period does not apply to cooperative wildlife management unit antlerless moose permits obtained through the landowner.

**R657-62-~~22~~-21. Sandhill Crane, Sharp-Tailed and Sage Grouse.**

(1) Permit applications.

(a) A person may obtain only one Sandhill Crane permit each year.

(b) A hunting or combination license is required when taking Sandhill Crane, Sharp-Tailed and Sage Grouse and may be purchased when applying for the permit.

(c) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(d) Applicants may select up to four hunt choices. Hunt unit choices must be listed in order of preference.

(2) Youth applications.

(a) For purposes of this section, "youth" means any person 15 years of age or younger on the opening day of a particular upland game hunt as posted in the guidebook of the Wildlife Board for taking upland game and turkey.

(b) Fifteen percent of the Sandhill Crane, Sharp-tailed grouse and sage grouse permits are reserved for youth hunters.

(c) Youth applicants who apply for a Sandhill Crane, Sharp-tailed grouse or sage grouse permit as provided in this Subsection, will automatically be considered in the youth drawing based upon their birth date.

(3) Group applications.

(a) Up to four people may apply together.

(b) Youth hunters who wish to participate in the youth drawing must not apply as a group.

(4) Waiting Periods do not apply.

**R657-62-~~23~~-22. Swan.**

(1) Permit applications.

(a) A person may obtain only one swan permit each year.

(i) A person may not apply more than once annually.

(b) A Utah hunting or combination license is required when hunting Swan and may be purchased when applying for the permit.

(c) The division shall issue no more than the number of swan permits authorized by the U.S. Fish and Wildlife Service each year.

(i) 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.

(ii) Division errors may be corrected using the withheld swan permits in accordance with the Division Error Remedy Rule R657-50.

(iii) 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.

(iv) 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.

(d) A person must complete a one-time orientation course before applying for a swan permit, except as provided under Subsection R657-9-6(3)(b).

(i) Remaining swan permits available for sale shall be issued only to persons having previously completed the orientation course.

(e) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(2) Youth applications.

(a) For purposes of this section, "youth" means any person 15 years of age or younger on the opening day of the swan hunt as posted in the guidebook of the Wildlife Board for taking waterfowl.

(b) Fifteen percent of the Swan permits are reserved for youth hunters.

(c) Youth who apply for a turkey permit will automatically be considered in the youth permit drawing based on their birth date.

(3) Group applications.

(a) Up to four people may apply together in a Group Application.

(b) Youth hunters who wish to participate in the youth drawing must not apply as a group.

(4) Waiting period does not apply.

**R657-62-~~24~~-23. Cougar.**

(1) Permit Applications

(a) A person must possess or obtain a valid hunting or combination license to apply for or obtain a cougar limited entry permit.

(b) A person may not apply for or obtain more than one cougar permit for the same year.

(c) Limited entry cougar permits are valid only for the limited entry management unit and for the specified season provided in the hunt tables of the proclamation of the Wildlife Board for taking cougar.

(d) Applicants may select up to three management unit choices when applying for limited entry cougar permits. Management unit choices must be listed in order of preference.

(e) 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.

(f) Any limited entry cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(g) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-22.5, 23-19-11 and 23-20-20.

(2) Group applications are not accepted.

(3) Waiting periods.

(a) Any person who draws or purchases a limited entry cougar permit valid for the current season may not apply for a permit thereafter for a period of three seasons.

(b) Waiting periods are not incurred as a result of purchasing cougar harvest objective permits.

**R657-62-~~25~~24. Sportsman.**

(1) Permit applications.

(a) One sportsman permit is offered to residents for each of the following species:

(i) desert bighorn (ram);

(ii) bison (hunter's choice);

(iii) buck deer;

(iv) bull elk;

(v) Rocky Mountain bighorn (ram);

(vi) Rocky Mountain goat (hunter's choice);

(vii) bull moose;

(viii) buck pronghorn;

(ix) black bear;

(x) cougar; and

(xi) wild turkey.

(b) Bonus points shall not be awarded or utilized when applying for or obtaining sportsman permits.

(2) Group applications are not accepted.

(3) Waiting Periods.

(a) Any person who applies for or obtains a Sportsman Permit is subject to all waiting periods and exceptions as applicable to the species pursuant to Rule R657-41.

(b) Once-in-lifetime waiting periods.

(i) If you have obtained a once-in-a-lifetime permit through the sportsman drawing you are ineligible to apply for that once-in-a-lifetime species through the big game drawing.

(ii) If you have obtained a once-in-a-lifetime permit through the big game drawing you are ineligible to apply for that once-in-a-lifetime species through the sportsman drawing.

(c) Limited Entry waiting periods.

(i) Waiting periods do not apply to Sportsman deer, elk, pronghorn, bear or cougar.

(ii) Waiting period will not be incurred for receipt of a Sportsman deer, elk, pronghorn, bear or cougar.

**R657-62-~~26~~25. Turkey.**

(1) Permit applications.

(a) A person must possess a valid hunting or combination license in order to apply for or obtain a wild turkey permit.

(b) A person may obtain only one wild turkey permit each year, except a person may obtain wild turkey conservation permits in addition to obtaining one limited entry or remaining wild turkey permit.

(c) Applicants may select up to five hunt choices when applying for limited entry turkey permits. Hunt unit choices must be listed in order of preference.

(d) A turkey permit allows a person, using any legal weapon as provided in Section R657-54-7, to take one bearded turkey within the area and season specified on the permit.

(2) Group Applications are not accepted.

(3) Waiting period does not apply.

(4) Youth permits

(a) Up to 15 percent of the limited entry permits are available to youth hunters.

(b) For purposes of this section "youth" means any person who is 15 years of age or younger on the posting date of the wild turkey drawing.

(c) Youth who apply for a turkey permit will automatically be considered in the youth permit drawing based on their birth date.

(d) Bonus points shall be used when applying for youth turkey permits.

(5) Landowner turkey permits shall be issued pursuant to rule R657-54.

**KEY: wildlife, permits**

**Date of Enactment or Last Substantive Amendment:** ~~January 10,~~ **2012**

**Authorizing, and Implemented or Interpreted Law:** **23-14-18; 23-14-19**

**Public Safety, Fire Marshal  
R710-7-2  
Definitions**

**NOTICE OF PROPOSED RULE  
(Amendment)**

DAR FILE NO.: 36188

FILED: 05/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Utah Fire Prevention Board met on 05/08/2012, in a regularly scheduled Board meeting and adopted by motion and vote to amend Subsection R710-7-2(2.12) to redefine the definition of "Service". This action was with regard to the concern of the Kitchen/Exhaust Inspection and Cleaning Industry that the fire suppression system is adequately maintained during and after cleaning.

**SUMMARY OF THE RULE OR CHANGE:** A summary of the rule amendment is as follows: in Subsection R710-7-2(2.12), the Board proposes to modify the definition of the term "Service". There was a concern of the industry that while

cleaning and servicing the fire suppression hood system, during the maintenance and after the system was cleaned, the system would be properly maintained and able to function appropriately.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There would be no aggregate anticipated cost or savings to the state budget because any increase of time to complete certification would be completed by existing staff with no additional cost.

◆ LOCAL GOVERNMENTS: There would be no aggregate anticipated cost or savings to local government as this has no impact or bearing on local government functions.

◆ SMALL BUSINESSES: There would be an aggregate cost to small businesses of \$300 per business for the license and \$40 for each individual certification. If the company was already licensed and certified to do portable fire extinguishers, the above costs would then be \$150 for the license and \$10 for the certifications. It is impossible to make an informed competent aggregate estimate due to the unknown number of licenses which could be purchased and the unknown number of individual employees each business would want to become certified.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There would be an aggregate cost to an individual of \$300 for the license and \$40 for their own certification. If the individual was already licensed and certified to do portable fire extinguishers, the above costs would then be \$150 for the license and \$10 for the certifications.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is a cost for certification of individuals in the amount of \$40. If an individual is currently certified to service portable fire extinguishers, then the cost is reduced to \$10.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be a \$150 to \$300 charge for licensing businesses and a \$10 to \$40 fee for individual certification. The Kitchen/Exhaust Inspection and Cleaning Industry requested that the rule be amended to assist them with the National Fire Protection Association (NFPA) adopted requirement that they be certified to work on and/or clean automatic fire suppression hood systems.

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

PUBLIC SAFETY  
 FIRE MARSHAL  
 ROOM 302  
 5272 S COLLEGE DR  
 MURRAY, UT 84123-2611  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Coy Porter by phone at 801-284-6358, by FAX at 801-284-6351, or by Internet E-mail at coyporter@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Brent Halladay, State Fire Marshal

**R710. Public Safety, Fire Marshal.**

**R710-7. Concerns Servicing Automatic Fire Suppression Systems.**

**R710-7-2. Definitions.**

- 2.1 "Annual" means a period of one year or 365 days.
- 2.2 "Board" means Utah Fire Prevention Board.
- 2.3 "Branch Office" means any location, other than the primary business location, where business license, telephone, advertising and servicing equipment is utilized.
- 2.4 "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.
- 2.5 "Concern" means a person, firm, corporation, partnership, or association, licensed by the SFM.
- 2.6 "Employee" means those persons who work for a licensed concern which may include but are not limited to assigned agents and others who work on a contractual basis with a licensee using service tags of the licensed concern.
- 2.7 "Hydrostatic Test" means subjecting any cylinders requiring periodic pressure testing procedures specified in these rules.
- 2.8 "Inspection Authority" means the local fire authority, or the SFM, and their authorized representatives.
- 2.9 "License" means a written document issued by the SFM authorizing a concern to engage in the business of servicing automatic fire suppression systems.
- 2.10 "N.F.P.A." means National Fire Protection Association.
- 2.11 "Recognized Testing Laboratory" means a State Fire Marshal list of acceptable labs.
- 2.12 "Service" means a complete check inspection of an automatic fire suppression system ~~[which includes the required service procedures set forth by a manufacturer of an approved system or the minimum service requirements as provided]~~ to include maintenance, repair, modification, testing, or cleaning, as set forth in the adopted N.F.P.A. standards.
- 2.13 "System" means an Automatic Fire Suppression System.
- 2.14 "SFM" means Utah State Fire Marshal or authorized deputy.
- 2.15 "UCA" means Utah State Code Annotated, 1953 as amended.

**KEY:** fire prevention, systems

**Date of Enactment or Last Substantive Amendment:** [~~May 23, 2008~~ July 9, 2012]

**Notice of Continuation:** May 31, 2007

**Authorizing, and Implemented or Interpreted Law:** 53-7-204

**Public Service Commission,  
Administration  
R746-100  
Practice and Procedures Governing  
Formal Hearings**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36195

FILED: 05/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** In Subsection R746-100-3(C), the rule change is in response to comments made by two public utilities who make frequent filings with the Commission and who desire to file PDF format documents in some instances. The new language was developed in cooperation with these parties. It will facilitate the utilities' preparation of voluminous documents that draw from a variety of different data sources. The utilities find PDF format to be more efficient in this context than other formats. The rule change also provides for the original data sources to be filed, to facilitate commission analysis that is not feasible in PDF format. In Section R746-100-8, the rule change is nonsubstantive and simply corrects an inaccurate reference to the pertinent Utah Rule of Civil Procedure.

**SUMMARY OF THE RULE OR CHANGE:** In Subsection R746-100-3(C), the rule change removes the restriction on filing documents with the Commission in PDF format, while providing that any such documents for which PDF is not the original format be accompanied by the source document in original format with a footnoted cross-reference. In Section R746-100-8, the current reference to "Rule 26(b)(4)" is corrected to "Rule 26(a)(4)."

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

**ANTICIPATED COST OR SAVINGS TO:**

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

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

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

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

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed changes do not generate compliance costs. Any compliance costs associated with these rules are not adversely affected by the proposed changes in the existing rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** In Subsection R746-100-3(C), because the change simplifies the preparation of some complex documents utilities prepare for commission filing, it may in some unquantified way reduce their costs of complying with the rule. As noted above under "Purpose of the rule", the new language was developed in cooperation with the two utilities who recommended the rule change. In Section R746-100-8, the proposed change is a nonsubstantive correction and does not have a fiscal impact.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ David Clark by phone at 801-530-6708, by FAX at 801-530-6796, or by Internet E-mail at [drexclark@utah.gov](mailto:drexclark@utah.gov)  
◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at [sbintz@utah.gov](mailto:sbintz@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012**

**AUTHORIZED BY:** David Clark, Legal Counsel



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

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

I. Content of Pleadings --

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

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

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

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

d. the specific authorization or relief sought;

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

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

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

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

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

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

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

K. Responsive Pleadings --

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

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

**R746-100-8. Discovery.**

A. Informal discovery -- The Commission encourages parties to exchange information informally. Informational queries termed "data requests" which have been typically used by parties practicing before the Commission may include written interrogatories and requests for production as those terms are used in the Utah Rules of Civil Procedure. Informal discovery is appropriate particularly with respect to the clarification of pre-filed testimony and exhibits before hearing so as to avoid unnecessary on-the-record cross-examination. The Commission may require an informal exchange of information as it judges appropriate. The Commission, on its own motion or the motion of a party, may require the parties to participate in an informal meeting to exchange information informally and otherwise simplify issues and expedite the proceeding.

B. Formal Discovery -- Discovery shall be made in accordance with Rules 26 through 37, Utah Rules of Civil Procedure, with the following exceptions and modifications.

C. Exceptions and Modifications --

1. If no responsive pleading is required in a proceeding, parties may begin discovery immediately upon the filing and service of an initiatory pleading. If a responsive pleading is required, discovery shall not begin until ten days after the time limit for filing the responsive pleading.

2. Rule 26(a)(b)(4), Utah Rules of Civil Procedure, restricting discovery shall not apply, and the opinions, conclusions, and data developed by experts engaged by parties shall be freely discoverable.

3. At any stage of a proceeding, the Commission may, on its own motion or that of a party, convene a conference of the parties to establish times for completion of discovery, the scope of, necessity for, and terms of, protective orders, and other matters related to discovery.

4. Formal discovery shall be initiated by an appropriate discovery request served on the party or person from whom discovery is sought. Discovery requests, regardless of how denominated, discovery responses, and transcripts of depositions shall not be filed with the Commission unless the Commission orders otherwise.

5. In the applicable Rules of Civil Procedure, reference to "the court" shall be considered reference to the Commission.

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

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

**Notice of Continuation: December 3, 2007**

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

Public Service Commission,  
Administration  
**R746-313**  
Electric Service Reliability

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 36214

FILED: 05/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This purpose of this rule is to establish requirements for each electric corporation and distribution electrical cooperative that is also a public utility to have a program to ensure reliable electric service is provided to each electric service customer in accordance with Section 54-3-1.

**SUMMARY OF THE RULE OR CHANGE:** This rule requires each electric corporation and distribution electrical cooperative that is also a public utility as defined in Subsection 54-2-1(16) to have a written electric service reliability program approved by its governing authority to ensure reliable electric service is provided to each electric service customer in accordance with Section 54-3-1. The rule requires these entities to provide annual reports on electric service reliability and major event reports to the commission and/or the board of directors of the distribution electrical cooperative. This rule also identifies the standards (The Institute of Electrical and Electronics Engineers (IEEE), Inc., Standard IEEE 1366 -- 2003 Guide for Electric Power Distribution Reliability Indices and/or the United States Department of Agriculture Rural Utilities Service (RUS) Bulletin 1730A-119 Interruption Reporting and Service Continuity Objectives for Electric Distribution Systems) for which electric service reliability indices will be calculated and provides requirements for addressing inquiries about electric service reliability.

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

**MATERIALS INCORPORATED BY REFERENCES:**

- ◆ Adds Bulletin 1730A-119 Interruption Reporting and Service Continuity Objectives for Electric Distribution Systems, published by States Department of Agriculture Rural Utilities Service, 03/24/2009
- ◆ Adds 1366TM IEEE Guide for Electric Power Distribution Reliability Indices, published by The Institute of Electrical and Electronics Engineers (IEEE), Inc., 05/14/2004

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** This rule will have no cost effect on the state budget, however, to the extent electric service reliability is improved or does not degrade below that which is already provided, or adverse electric service reliability impacts are avoided, the rule benefits the State and the State budget in general.
- ◆ **LOCAL GOVERNMENTS:** This rule will have no cost effect on local governments who operate their own municipal electric utility systems. This rule will have no cost effect on

local governments who are supplied electricity via a rural electric cooperative or an investor-owned utility, however, to the extent electric service reliability is improved or does not degrade below that which is already provided, or adverse electric service reliability impacts are avoided, the rule benefits local governments and their constituents.

◆ **SMALL BUSINESSES:** This rule will have no direct cost effect on small businesses. Small businesses benefit to the extent electric service reliability is improved or does not degrade below that which is already provided, or adverse electric service reliability impacts are avoided.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Other than rural electric cooperatives and investor-owned electric utilities, this rule will have no direct cost effect on persons other than small businesses, businesses, or local government entities. Persons other than rural electric cooperatives and investor-owned electric utilities benefit to the extent electric service reliability is improved or does not degrade below that which is already provided, or adverse electric service reliability impacts are avoided. This rule formalizes the practices, commitments and standards related to evaluating, tracking and measuring electric service reliability, which generally are currently being utilized by electric corporations and distribution electrical cooperatives which are also public utilities. Electric corporations could incur costs associated with penalties for violation of approved standards or electric service reliability program elements.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** This rule formalizes the practices, commitments and standards related to evaluating, tracking and measuring electric service reliability, which generally are currently being utilized by electric corporations and distribution electrical cooperatives which are also public utilities. Electric corporations could incur costs associated with penalties for violation of approved standards or electric service reliability program elements.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule is important to ensure electric customers are provided electric service which is adequate, efficient, just and reasonable as required by Section 54-3-1. This rule will have no fiscal impact on businesses and may provide a benefit in the form of electric service reliability. This rule benefits businesses in general as reliable electric service is one of the cornerstones for reliable business operations. Previously, commitments to electric service reliability by electric corporations were parts of voluntary merger commitments. This rule will ensure lasting requirements for electric service reliability which benefits businesses and the State of Utah in general.

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

PUBLIC SERVICE COMMISSION  
ADMINISTRATION  
HEBER M. WELLS BLDG  
160 E 300 S

SALT LAKE CITY,  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

◆ David Clark by phone at 801-530-6708, by FAX at 801-530-6796, or by Internet E-mail at [drexclark@utah.gov](mailto:drexclark@utah.gov)  
◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at [sbintz@utah.gov](mailto:sbintz@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: David Clark, Legal Counsel

**R746. Public Service Commission, Administration**

**R746-313. Electrical Service Reliability**

**R746-313-1. Authority.**

(1) This rule establishes electric service reliability and continuity requirements as provided for in Utah Code Sections 54-3-1, 54-4-2 and 54-4-7.

**R746-313-2. Definitions.**

(1) "Customer average interruption duration index" ("CAIDI") has the same meaning as in IEEE 1366 or RUS 1730A-119, as applicable.

(2) "Customer" means, when used for reliability indices calculations, a metered electrical service point for which an active bill account is established at a specific location.

(3) "Day" means a 24-hour period beginning at midnight.

(4) "Electric company" means an electrical corporation or a distribution electrical cooperative that is also a public utility, as defined in Utah Code 54-2-1(16).

(5) "Form 7 - Information on Service Interruptions" means:

(a) Part G of the United States Department of Agriculture Rural Utilities Service Form 7 Financial and Statistical Report.

(b) Part H of the National Rural Utilities Cooperative Finance Corporation Form 7 Financial and Statistical Report, or

(c) their equivalents.

(6) "Governing Authority" means:

(a) for a distribution electrical cooperative as defined in Utah Code 54-2-1(6), its board of directors; and

(b) for an electrical corporation as defined in Utah Code 54-2-1(7), the Public Service Commission of Utah, otherwise referred to as the commission.

(7) "The Institute of Electrical and Electronics Engineers Standard 1366" ("IEEE 1366") means the 2003 edition of the IEEE Guide for Electric Power Distribution Reliability Indices.

(8) "Interruption" means the loss of electrical service to one or more customers connected to the distribution portion of the system. It is the result of one or more component outages, depending on system configuration.

(9) "Loss of power supply"

(a) "Loss of power supply - Distribution Substation" means the loss of the electrical power supply system due to an outage/failure of a distribution substation component.

(b) "Loss of power supply - Generation/Transmission" means the loss of the electrical power supply from the electric company's own electric generator or transmission system, including transmission lines and transmission substations, or from another electric company or electric corporation.

(10) "Momentary average interruption frequency index" ("MAIFI") has the same meaning as in IEEE 1366 or RUS 1730A-119, as applicable.

(11) "Major Event" means a designation given to an event that exceeds the reasonable design and or operational limits of the electric power system. As applicable to this rule, a major event includes at least one Major Event Day.

(12) "Major Event Day" or "med" means a day in which the daily system SAIDI exceeds a threshold value,  $T_{MED}$ .

(13) "Major event day identification threshold value" (" $T_{MED}$ ") has the same meaning as in IEEE 1366 or RUS 1730A-119.

(14) "Operating area" means a geographic subdivision of an electric company's Utah service territory that functions under the direction of an electric company office and as a separate entity used for reliability reporting within the electric company. An operating area may also be referred to as regions, divisions, or districts and may also be a reliability reporting area.

(15) "Person" means an individual, a corporation, a partnership, an association, a trust, a company or a regulatory agency.

(16) "Reliability" means the degree to which electric service is supplied without interruptions.

(17) "Reliability indices" means the electric service interruption indices identified in IEEE 1366 or RUS 1730A-119, as applicable.

(18) "Reliability program" means a written electric service reliability program approved by the electric company's governing authority.

(19) "Reliability reporting area" means a grouping of one or more operating areas, for which the electric company calculates major event thresholds.

(20) "Reporting Period" means the 12-month period, based on the previous 365 days, or 366 days for leap years, for which an electric company is tracking and reporting reliability performance.

(21) "Rules" means the Electric Service Reliability Rules R746-313-1 through 9.

(22) "RUS 1730A-119" means the United States Department of Agriculture Rural Utilities Service Bulletin 1730A-119 entitled "Interruption Reporting and Service Continuity Objectives for Electric Distribution Systems," dated March 24, 2009.

(23) "System average interruption duration index" ("SAIDI") has the same meaning as in IEEE 1366 or RUS 1730A-119, as applicable.

(24) "System average interruption frequency index" ("SAIFI") has the same meaning as in IEEE 1366 or RUS 1730A-119, as applicable.

(25) "Step restoration" means the process of restoring all interrupted customers in stages over time.

(26) "Sustained interruption" means an interruption lasting more than five minutes.

(27) "System-wide" means pertaining to and limited to the electric company's customers in Utah.

**R746-313-3. Purpose, Scope, Applicability and Exceptions.**

(1) This rule establishes requirements for each electric company to have a program to ensure reliable electric service is provided to each electric service customer in accordance with the requirements of Utah Code 54-3-1.

(2) An electric company whose governing authority is the commission shall:

(a) follow the provisions of IEEE 1366 in the collection and analysis of interruption data and in the calculation and reporting of reliability indices as required by these rules. If there is a conflict between any provision in IEEE 1366 and the rules, the rules govern; and

(b) include both "distribution system" interruptions and "interruptions caused by events outside of the distribution system," as defined in IEEE 1366, in the electric company's record keeping, calculations, reporting, and filing as required by R746-313-4 through R746-313-9.

(3) An electric company whose governing authority is not the commission shall:

(a) follow the provisions of either IEEE 1366 or the RUS Bulletin 1730A-119 in the collection and analysis of interruption data and in the calculation and reporting of reliability indices as required by these rules. If a conflict exists between any provision in IEEE 1366 or RUS 1730A-119 and the rules, the rules govern; and

(b) include both "distribution system" interruptions and interruptions caused by events outside of the distribution system in the electric company's record keeping, calculations, reporting, and filing as required by the Electric Service Reliability Rules R746-313-4 through R746-313-9.

(4) The commission may, upon written request and for good cause shown, waive or modify any provision of these rules in accordance with R746-100-15, Deviation from Rules.

**R746-313-4. Electric Service Reliability Program.**

(1) An electric company must use reasonable means in design, operations, and maintenance to ensure the reliability of electric service provided to each customer in accordance with Utah Code 54-3-1. Such means include, but are not be limited to, programs to minimize service interruptions.

(2) When an interruption occurs, an electric company must reestablish service in a manner which minimizes the interruption duration consistent with the safety of its employees, its customers, and the public.

(3) An electric company must have recordkeeping systems in place to determine, and track interruptions, facilitate interruption restoration, and collect and analyze interruption data.

(4) By December 31, 2012, an electric company whose governing authority is not the commission shall have a written electric service reliability program, approved by its governing authority, to ensure service reliability to each customer and to minimize service interruptions.

(5) By November 1, 2012, an electric company whose governing authority is the commission shall file a written electric service reliability program for approval by the commission.

(a) The reliability program must:

(i) be based upon an evaluation of historic electric service reliability information and reliability indices, and service quality commitments; and

(ii) include both reliability program components as specified in R746-313-4(5)(b) and reliability program supporting information as specified in R746-313-4(5)(d).

(b) Reliability program components are those items and associated programs which establish the levels of electric service reliability to be achieved by the public utility. Reliability program components include but are not limited to:

(i) Service reliability performance objectives in the form of network reliability indices, customer guarantees, commitments, and the public utility's programs necessary for maintaining and/or achieving appropriate electric service and reliability (e.g., vegetation management program, improvement of worst performing circuits program, preventive maintenance programs);

(ii) identification and description of the electric company's internal processes, procedures, and/or efforts which support the achievement of performance objectives (e.g., vegetation management, capital investment, and maintenance spending targets; maintenance procedures and schedules; other such programs);

(iii) a plan of action to be implemented and penalties to be assessed in the event a service reliability performance objective or commitment is not met or achieved;

(iv) reporting and meeting commitments and schedules (e.g., semi-annual reports filed with the commission within 120 days after the end of the reporting period, meetings to discuss draft report with the commission within 90 days after the end of the reporting period with draft report to be provided to the commission 10 days before meeting, notification to the commission within 30 days of exceeding any reliability indices or commitments);

(v) a commitment by the electric company to discuss during a scheduled meeting:

(A) reporting period reliability performance, including the results of benchmarking studies in which the public utility has participated;

(B) changes to the reliability program components or supporting information; and

(C) other relevant electric service reliability topics as appropriate.

(vi) other commitments and/or program components an electric company determines appropriate.

(c) Modifications to reliability program components. All modifications to reliability program components must be approved by the commission prior to implementation.

(d) Reliability program supporting information consists of policies, procedures, methods, systems, and budgets which support the public utility's reliability program components. Reliability program supporting information includes but is not limited to:

(i) an explanation of the process or processes by which the electric company identifies and, where appropriate, corrects underperforming circuits or local areas of performance concerns;

(ii) general reporting formats and definitions of terms not addressed by these rules or IEEE 1366;

(iii) an explanation of how the electric company collects, maintains and verifies the data and determines the specific values used in the calculation of the reliability indices;

(iv) the method for determining the customer count as defined in IEEE 1366; and

(v) other information an electric company determines appropriate.

(e) Modifications to reliability program supporting information. An electric company must notify the Commission in writing of any modification to its reliability program supporting information identified in R746-313-4(5)(d) which would affect the consistency of the data being reported under the provisions of the rule at the next scheduled reporting period. The notification must explain the change, the reason for the change, and the effect the change will have on the data. All other modifications to reliability program supporting information must be reported in the electric service reliability report required in R746-313-8.

(f) All reliability indices identified in the electric company's reliability program shall be:

(i) calculated with all interruptions included and separately with major event interruptions excluded;

(ii) based upon and calculated on a 365-day rolling average (or 366-day in the event of a leap year);

(iii) reported on a system-wide basis and for each reliability reporting area, with the exception that associated circuit- and T<sub>MED</sub>-related data shall be provided upon request.

#### **R746-313-5. Electric Service Interruption Records.**

(1) Except as provided in subsection (3) of this Section:

(a) An electric company using predominantly non-automated methods for identifying outages and tracking reliability shall keep an accurate record of each sustained interruption of service that affects one or more customers.

(b) An electric company using an electronic outage management system for identifying electric service interruptions and/or tracking outages shall keep an accurate record of each interruption of service that affects one or more customers.

(2) Each record shall contain at least the following information:

(a) the operating area where the interruption occurred;

(b) the reference identification of the substation involved;

(c) the reference identification of the circuit involved;

(d) the date and time the interruption started or was reported. If the exact time is unknown, the beginning of an interruption is recorded as the earlier of an automatic alarm or the reported initiation time;

(e) the date and time service was restored;

(f) the duration of the interruption;

(g) the number of metering points affected by the interruption;

(h) the cause of the interruption;

(i) whether the interruption was planned or unplanned;

(j) the interrupting device that made the interruption, if known; and

(k) the component involved (e.g., transmission line, substation, overhead primary main, underground primary main, transformer, etc.).

(3) For interruptions where customers are not simultaneously restored, an electric company shall keep records that document the step-restoration operations.

(4) For major events where an electric company is unable to obtain accurate data, the electric company shall make reasonable estimates and explain these estimates in any report filed with its governing authority.

(5) An electric company shall retain the records associated with this rule in accordance with R746-310-10 Preservation of Records.

#### **R746-313-6. Electric Service Reliability Calculations.**

(1) Using records collected in accordance with R746-313-5, each electric company must perform reliability index calculations required by its reliability program in conformance with IEEE 1366 or RUS1730A-119, as applicable.

(2) Each electric company must report the results of any required reliability index calculations for the reporting period in the electric company's report on electric service reliability as set forth in R746-313-8, and for each major event in the electric company's major event filings as set forth in R746-313-9.

(3) Data included in the above calculations shall include all interruptions associated with or related to high voltage components (above 600 volts).

#### **R746-313-7. Inquiries about Electric Service Reliability.**

(1) A customer may request a report from its electric company about the reliability of the electric service provided to the customer's own meter which the electric company must provide at no cost within 20 business days of the request. If a customer requests one or more additional reliability reports for the same meter within one year of the date of the first request, the electric company may charge the customer the cost of preparing the report(s).

(2) For an electric company whose governing authority is the commission, the report to the customer must include:

(a) The name of the customer;

(b) The date of the request;

(c) The address where the meter is installed;

(d) The meter identification number;

(e) The general identification of the equipment serving the customer; and

(f) A chronological listing of interruptions to the customer including all associated interruption data required by R746-313-5.(2) covering at least the 36 months preceding the date of the request, if available. If 36 months of data are not available, the chronological listing must include all available data.

(3) For an electric company whose governing authority is not the commission, the report to the customer must include:

(a) The name of the customer;

(b) The date of the request;

(c) The address where the meter is installed;

(d) The meter identification number;

\_\_\_\_\_ (e) The general identification of the equipment serving the customer; and

\_\_\_\_\_ (f) A chronological listing of interruptions on the feeder serving the customer's meter including all interruption data required by R746-313-5(3) covering at least the 12 months preceding the date of the request, and. If 12 months of data are not available, the chronological listing must include all available data.

\_\_\_\_\_ (4) Other than those inquiries specified in R746-313-7(1) through (3), each electric company must have a written policy in its reliability program for consistent treatment of all other inquiries pertaining to electric reliability. At a minimum, the electric company must provide to the inquiring party, by electronic means, the electric company's most-recently filed Annual Report on Electric Reliability required by R764-313-8.

**R746-313-8. Report on Electric Service Reliability.**

\_\_\_\_\_ (1) By May 1 of each year, an electric company shall file with the commission a report on electric service reliability for the reporting period representing the previous calendar year. The electric company must make electronic copies of the report available to the public upon request and may charge a reasonable cost for requested paper copies.

\_\_\_\_\_ (2) For an electric company whose governing authority is the commission, the report on electric service reliability must contain at a minimum:

\_\_\_\_\_ (a) an executive summary including a summary of the electric service reliability program;

\_\_\_\_\_ (b) sections addressing the status of all electric reliability performance objectives and supporting programs identified in the electric company's reliability program;

\_\_\_\_\_ (c) the calculated reliability indices required by the electric company's reliability program. At a minimum, the electric company must report this information on a system-wide basis compared with the previous four years' performance and on an operating area compared with the previous four years' performance;

\_\_\_\_\_ (d) a summary of the system-wide and reliability reporting area sustained interruption causes compared to the previous four-year performance. At a minimum, outages must be categorized using the following cause categories:

\_\_\_\_\_ (i) Loss of Supply - Generation/Transmission;

\_\_\_\_\_ (ii) Loss of Supply - Distribution Substation;

\_\_\_\_\_ (iii) Distribution - Environment (e.g., unpreventable contamination, corrosion, airborne deposits, flooding, fire/smoke not related to faults or lightning);

\_\_\_\_\_ (iv) Distribution - Equipment Failure;

\_\_\_\_\_ (v) Distribution - Lightning;

\_\_\_\_\_ (vi) Distribution - Operational;

\_\_\_\_\_ (vii) Distribution - Planned Outages;

\_\_\_\_\_ (viii) Distribution - Public;

\_\_\_\_\_ (ix) Distribution - Vegetation;

\_\_\_\_\_ (x) Distribution - Weather (other than lightning);

\_\_\_\_\_ (xi) Distribution - Wildlife;

\_\_\_\_\_ (xii) Distribution - Unknown; and

\_\_\_\_\_ (xiii) Distribution - Other.

\_\_\_\_\_ (e) a listing of the major events experienced during the reporting period and a listing of significant events as defined by the electric company, their cause, and their effect on reliability performance during the reporting period;

\_\_\_\_\_ (f) comparisons of planned and achieved maintenance spending, maintenance activities, capital spending, vegetation management spending and vegetation management activities including identification of areas of greatest concern and a table summarizing new electrical connections;

\_\_\_\_\_ (g) a listing of the T<sub>MED</sub> values that will be used for each reliability reporting area for the forthcoming annual reporting period.

\_\_\_\_\_ (h) a summary of the data collection systems and estimation methodologies covered by R746-313-5 for the collection of interruption data, calculation of reliability information, and facilitation of interruption restoration and mitigation;

\_\_\_\_\_ (i) a section addressing changes the electric company has made or will make in the collection of data and the calculation, estimation, and reporting of reliability information. The electric company must explain why the changes occurred and explain how the change affects the comparison of newer and older information;

\_\_\_\_\_ (j) a map showing the reliability reporting areas and/or operating areas;

\_\_\_\_\_ (k) a listing of circuits by reliability reporting area and substation, indicating circuit voltage and number of customers connected;

\_\_\_\_\_ (l) a list of annual reliability-related goals and/or targets set by the electric company for the reporting period addressed by the annual report and for the calendar year in which the report is being submitted;

\_\_\_\_\_ (m) an explanation of any factors used in calculating reliability indices presented in the electric company's annual report and their justification;

\_\_\_\_\_ (n) a table showing the number of customers by reliability reporting area and operating area, and an explanation of the method used in determining this number; and

\_\_\_\_\_ (o) any other information required to be filed by the electric company's reliability program.

\_\_\_\_\_ (3) For an electric company whose governing authority is not the commission, the report on electric service reliability must contain, at a minimum:

\_\_\_\_\_ (a) The reliability indices listed in Form 7 - Information on Service Interruptions based upon the cause codes listed in RUS1730A-119 ; and

\_\_\_\_\_ (b) A summary of any estimation methods and/or an explanation of any factors used in calculating reliability indices presented in the electric company's report on electric service reliability.

**R746-313-9. Major Event Reporting by Electric Utilities.**

\_\_\_\_\_ (1) Major event reporting for an electric company whose governing authority is the commission. Within 30 business days after the conclusion of each event which an electric company determines satisfies the criteria for major event classification in accordance with IEEE 1366, the electric company shall file a major event report with the commission for its consideration. The major event report must include, at a minimum:

\_\_\_\_\_ (a) a description of the major event, the interruption causes, and a summary of restoration efforts and factors that affected restoration of service;

\_\_\_\_\_ (b) identification of reliability reporting area and geographic area affected;

(c) the total number of customers affected, and the number of customers without service at periodic intervals;

(d) the calculated SAIDI, SAIFI, MAIFI and CAIDI impacts (i.e., Event SAIDI, SAIFI, MAIFI, and CAIDI) associated with the major event to customers for each reliability reporting area and system-wide;

(e) restoration of service information including resources used and cost; and

(f) any other information required to be filed by the electric company as specified in its reliability program.

(2) Major event reporting for electric company whose governing authority is not the commission. Within a timely period after each event which an electric company determines satisfies the criteria for major event classification in accordance with IEEE 1366 or RUS 1730A-119, as applicable, the electric company shall provide a major event analysis to its governing authority.

**KEY: reliability, IEEE 1366, SAIDI / SAIFI, major event**  
**Date of Enactment or Last Substantive Amendment: 2012**  
**Authorizing and Implemented or Interpreted Law: 54-3-1; 54-4-2; 54-4-7**

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

**NOTICE OF PROPOSED RULE  
 (Amendment)**

DAR FILE NO.: 36208  
 FILED: 05/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule change is in response to comments made by two public utilities who make frequent filings with the Commission and who have expressed concern about the feasibility of filing electronic versions of documents that are "exact copies" of the paper versions. The utilities state computer software differences between the document originator's system and the commission's system may cause the paper copy format to vary from the electronic format on the commission's system. The new language eliminates the requirement for an "exact copy" and substitutes a requirement for electronic and paper versions that are "substantially the same." This new language was developed in cooperation with the two utilities who requested this rule change.

**SUMMARY OF THE RULE OR CHANGE:** The requirement for an electronic document that is an "exact copy" of the filed paper copy is deleted in favor of a requirement for an electronic document that is "substantially the same as" the filed paper copy.

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

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** No effect to state budget, only a change regarding filing requirements of electronic documents.
- ◆ **LOCAL GOVERNMENTS:** No effect to local government, only a change regarding filing requirements of electronic documents.
- ◆ **SMALL BUSINESSES:** No effect to small businesses, only a change regarding filing requirements of electronic documents.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No effect to small businesses, businesses or local government entities, only a change regarding filing requirements of electronic documents.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed changes do not generate compliance costs. Any compliance costs associated with these rules are not adversely affected by the proposed changes in the existing rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule change makes compliance easier and more certain, and assures software differences between the systems of those filing documents and the commission will not adversely affect compliance. Any fiscal impact of this change would be positive.

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

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

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ David Clark by phone at 801-530-6708, by FAX at 801-530-6796, or by Internet E-mail at [drexclark@utah.gov](mailto:drexclark@utah.gov)
- ◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at [sbintz@utah.gov](mailto:sbintz@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012**

**AUTHORIZED BY: David Clark, Legal Counsel**

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

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

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

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

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

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

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

**B. Tariff Books--**

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

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

**C. Construction of Tariffs for Filing--**

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

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

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

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

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

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

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

**D. Submission of Tariff Sheets and Advice Letters--**

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

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

**3. Advice letters shall include the following:**

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

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

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

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

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

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

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

**E. Approval of Filed Tariff Sheets--**

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

2. New tariff sheets covering a service or commodity not previously furnished or supplied, or revised tariff sheets, not increasing, or increasing pursuant to Commission order, a rate, toll, rental or charge, may be filed by the advice letter. Tariff sheets, unless otherwise authorized by the Commission either on complaint or on its own motion, shall become effective after not less than 30 calendar days after the filed date.

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

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

**F. Public Inspection of Tariffs--**

1. Utilities shall maintain, open for public inspection at their main office, a copy of the complete tariff and advice letters filed with the Commission. Utilities shall maintain, open for public

inspection, copies of their effective tariffs applicable within the territories served by the offices.

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

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

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

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

**Date of Enactment or Last Substantive Amendment: [~~May 7,~~ 2012**

**Notice of Continuation: April 1, 2008**

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

## Regents (Board of), Administration

### R765-604

#### New Century Scholarship

#### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36165

FILED: 05/10/2012

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to clarify academic progress requirements of remediation when a scholarship recipient does not attain the required grade point average of 3.0 for a single semester. This amendment allows a semester of academic probation to allow the scholarship recipient to achieve the required grade point average in order to retain the scholarship.

**SUMMARY OF THE RULE OR CHANGE:** If a scholarship recipient fails to maintain a 3.0 grade point average, or higher, in a single semester the recipient will be placed on probation the following semester to allow the recipient to earn the required GPA while still receiving the scholarship for that probationary semester. If the necessary GPA is not achieved during the probationary semester, the scholarship will be revoked.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53B-8-105

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There is no associated cost nor savings to the state budget associated with this amendment.
- ◆ **LOCAL GOVERNMENTS:** This amendment does not affect any local government budget and therefore will not present a cost nor a savings to local governments.
- ◆ **SMALL BUSINESSES:** This rule, and this proposed amendment has no affect on small business and therefore does not present a cost nor savings to small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This entire rule pertains to students who qualify for scholarship funds. This amendment does not provide additional costs or savings to such recipients since it merely clarifies the timeframe when a scholarship will be revoked if the recipient does not maintain the required academic grade point average as has been outlined in the rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs associated with this rule or this amendment for affected persons.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There are no fiscal impacts on businesses from this rule or this amendment.

**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 by phone at 801-321-7291, by FAX at 801-321-7299, or by Internet E-mail at [rcrossley@utahsbr.edu](mailto:rcrossley@utahsbr.edu)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012**

**AUTHORIZED BY:** William Sederburg, Commissioner

**R765. Regents (Board of), Administration.****R765-604. New Century Scholarship.****R765-604-1. Purpose.**

To provide policy and procedures for the administration of the New Century Scholarship which was established to encourage students to accelerate their education by earning an associate's degree in high school from an institution within the Utah System of Higher Education.

**R765-604-2. References.**

- 2.1. 53B-8-105, Utah Code Annotated 1953

**R765-604-3. Definitions.**

3.1. "Applicant" means a student who is in their last term in high school and on track to complete the high school graduation requirements of a public school established by the State Board of Education and the student's school district or charter school or a private high school in the state that is accredited by a regional accrediting body approved by the Utah State Board of Regents, or a home-school student.

3.2. "Associate's Degree" means an Associate of Arts, Associate of Science, or Associate of Applied Science degree received from, or verified by, a regionally accredited institution within the Utah System of Higher Education. If the institution does not offer the above listed degrees, equivalent academic requirements will suffice under subsection 3.4.2. of this rule.

3.3. "Awards" means New Century Scholarship funds.

3.4. "Board" means the Utah State Board of Regents.

3.5. "Completes the requirements for an associate's degree" means that an applicant completes either of the following:

3.5.1. all the required courses for an associate's degree from an institution within the Utah System of Higher Education that offers associate's degrees; and applies for the associate's degree from the institution; or

3.5.2. all the required courses for an equivalency to the associate's degree from a higher education institution within the Utah System of Higher Education that offers baccalaureate degrees but does not offer associate's degrees.

3.6. "Full-time" means a minimum of twelve credit hours.

3.7. "High school" means a public high school established by the Utah State Board of Education or a private high school within the boundaries of the State of Utah. If a private high school, it shall be accredited by a regional accrediting body approved by the Board.

3.8. "High school graduation date" means the day on which the recipient's class graduates from high school. For home-schooled students refer to subsection 4.2.1 of this rule.

3.9. "Home-schooled" refers to a student who has not graduated from a Utah high school and received a high school grade point average.

3.10. "Math and science curriculum" means the rigorous math and science curriculum developed and approved by the Board which, if completed, qualifies a high school student for an award. Curriculum requirements can be found at the Web site of the Utah System of Higher Education.

3.11. "New Century Scholarship" means a renewable scholarship to be awarded to applicants who complete the eligibility requirements of Section 4 of this rule.

3.12. "Reasonable progress" means enrolling and completing at least twelve credit hours during fall and spring semesters and earning a 3.0 grade point average or higher each semester. If applicable, applicants attending summer must enroll full-time according to their institution and or program policy regarding full-time status.

3.13. "Recipient" means an applicant who receives an award under the requirements set forth in this rule.

3.14. "Renewal Documents" means a college transcript demonstrating that the recipient has met the required semester grade point average and a detailed schedule providing proof of full-time enrollment for the semester which the recipient is seeking award payment.

3.15. "Scholarship Review Committee" means the committee to review New Century Scholarship applications and make final decisions regarding awards.

3.16. "Two years of full-time equivalent enrollment" means the equivalent of four semesters of full-time enrollment (minimum of twelve credit hours per semester).

3.17. "The Utah System of Higher Education" means the institutions that comprise Utah's public higher education institutions including the University of Utah, Utah State University, Weber State University, Southern Utah University, Utah Valley University, Dixie State College of Utah, Salt Lake Community College, and Snow College.

#### **R765-604-4. Recipient Requirements.**

4.1. General Academic Requirements: Unless an exception applies, to qualify as a recipient a student shall:

4.1.1. complete the requirements for an associate's degree or the math and science curriculum at a regionally accredited institution within the Utah System of Higher Education

4.1.1.1. with at least a 3.0 grade point average

4.1.1.2. by applicant's high school graduation date; and

4.1.2. complete the high school graduation requirements of a Utah high school with at least a 3.5 cumulative grade point average.

4.2. Utah Home-schooled Applicants: For Utah home-schooled applicants the following requirement applies:

4.2.1. If a home-schooled applicant would have completed high school in 2011 or after, the high school graduation date (under subsection 4.1.1.2.) is June 15 of the year the applicant would have completed high school.

4.2.2. ACT Composite Score Requirement: A composite ACT score of 26 or higher is required in place of the high school grade point average requirement (under subsection 4.1.2).

4.3. Mandatory Fall Term Enrollment: A recipient shall enroll full-time at an eligible institution by Fall semester immediately following the student's high school graduation date or receive an approved deferral or leave of absence from the Board under subsection 8.7 of this rule.

4.4. Citizenship Requirement: A recipient shall be a citizen of the United States or a noncitizen who is eligible to receive federal student aid.

4.5. No Criminal Record Requirement: A recipient shall not have a criminal record, with the exception of a misdemeanor traffic citation.

4.6. Regents' Scholarship: A recipient shall not receive both an award and the Regents' Scholarship established in Utah Code Section 53B-8-108.

#### **R765-604-5. Application Procedures.**

5.1. Application Contact: Qualifying students shall apply for the award through the Board.

5.2. General procedure: An application for an award shall contain the following:

5.2.1. Application Form: the official application will become available on the New Century Web site each November prior to the February 1 deadline; and

5.2.2. College Transcript: an official college transcript showing college courses, Advanced Placement and transfer work an applicant has completed to meet the requirements for the associate's degree and verification of the date the award was earned; and

5.2.3. High School Transcript: an official high school transcript with high school graduation dated posted (if applicable).

5.2.4. ACT Score: a copy of the student's verified ACT score (if applicable).

5.3. Registrar Verification: If an applicant is enrolled at an institution which does not offer an associate's degree or an institution that will not award the associate's degree until the academic on-campus residency requirement has been met, the registrar must verify that the applicant has completed the equivalent academic requirements under 4.1.1.

5.4. Application Deadline: Applicants shall meet the following deadlines to qualify for an award:

5.4.1. Application Submission: Applicants must submit a scholarship application to the Scholarship Review Committee no later than February 1 of the year of their high school graduation date or the year they would have graduated from high school.

5.4.2. Support Documentation Submission: All necessary support documentation shall be submitted on or before September 1 following the applicant's high school graduation date. In some cases exceptions may be made as Advanced Placement and transfer work verification may be delayed at an institutional level and no fault of the applicant. Scholarship awards may be denied if all documentation is not complete and submitted by the specified deadlines. If any documentation demonstrates that the applicant did not satisfactorily fulfill all coursework and GPA requirements or if any information, including the attestation of criminal record and citizenship status, proves to be falsified, awards may be denied.

5.4.3. Priority Deadline: A priority deadline may be established each year. Applicants who meet the priority deadline may be given first priority of consideration for awards.

5.5. Incomplete Documentation: Applications or other submissions that have missing information or missing documents are considered incomplete, will not be considered, and may result in failure to meet a deadline.

#### **R765-604-6. Awards.**

6.1. Value of the Award: The award is up to the amount provided by the law and determined each Spring by the Board based on legislative funding and number of applicants. The total value may change in accordance with subsection 6.2. The award shall be disbursed semester-by-semester over the shortest of the following time periods:

6.1.1. Four semesters of full-time enrollment (minimum of twelve credit hours per semester).

6.1.2. Sixty credit hours.

6.1.3. Until the student meets the requirements for a baccalaureate degree.

6.2. The Board May Decrease Award: If the appropriation from the Utah Legislature for the scholarship is insufficient to cover the costs associated with the scholarship, the Board may reduce or limit the award.

6.3. Eligible Institutions: An award may be used at either

6.3.1. Public Institution: a four-year institution within the Utah System of Higher Education that offers baccalaureate programs; or

6.3.2. Private Nonprofit Institution: a private not-for-profit higher education four-year institution in the state of Utah accredited by the Northwest Association of Schools and Colleges that offers baccalaureate programs.

6.4. Enrollment at Multiple Institutions: The award may be used at more than one of the eligible institutions within the same semester for the academic year 2010-11. Starting in 2011 when the award goes to a flat rate the award may only be used at the institution from which the student is earning a baccalaureate degree.

6.5. Student Transfer: The award may be transferred to a different eligible institution upon request of the recipient.

6.6. Financial Aid and other Scholarships: With the exception of the Regents' Scholarship (as detailed in subsection 4.6 of this policy) tuition waivers, financial aid, or other scholarships will not affect a recipient's total award amount.

#### **R765-604-7. Disbursement of Award.**

7.1. Disbursement Schedule of Award: The award shall be disbursed semester-by-semester over the shortest of the following time periods:

7.1.1. Four semesters of full-time enrollment;

7.1.2. Sixty credit hours; or

7.1.3. Until the recipient meets the requirements for a baccalaureate degree.

7.2. Enrollment Documentation: The recipient shall submit to the Scholarship Review Committee a copy of a class schedule verifying that the recipient is enrolled full-time (twelve or more credit hours) at an eligible institution. Documentation must include the student's name, the semester the recipient will attend, institution that they are attending and the number of credits for which the recipient is enrolled.

7.3. Award Payable to Institution: The award will be made payable to the institution. The institution shall pay over to the recipient any excess award funds not required for tuition payments. Award funds should be used for higher education expenses including tuition, fees, books, supplies, and equipment required for courses of instruction.

7.4. Dropped Hours After Award: If a recipient drops credit hours after having received the award which results in enrollment below full-time the scholarship will be revoked (see 8.1) unless the student needs fewer than twelve hours for completion of a degree.

#### **R765-604-8. Continuing Eligibility.**

8.1. Reasonable Progress Toward Degree Completion: The Board may cancel a recipient's scholarship if the student fails to :

8.1.1. Maintain 3.0 GPA: to maintain a 3.0 grade point average or higher for each semester for which the student has received awards. If the recipient fails to maintain a 3.0 GPA, or higher, in a single semester the recipient is placed on probation and shall earn a 3.0 GPA, or better, the following semester to maintain eligibility; or

8.1.2. Reasonable Progress: to make reasonable progress (twelve credit hours) toward the completion of a baccalaureate

degree and submit the documentation by the deadline as described in subsection 8.2. A recipient must apply and receive an approved deferral or leave of absence under subsection 8.7 if he or she will not enroll full-time in continuous fall and spring semesters.

8.2. Duty of Student to Report Reasonable Progress: Each semester, the recipient must submit to the Board a copy of his or her grades for verification of grade point average and completion of the required minimum of twelve semester credit hours. Recipients will not be paid for the coming semester until the requested documentation has been received. If the recipient at any time fails to maintain a 3.0 grade point average or higher following probation~~[for two consecutive semesters]~~ or fails to enroll and complete twelve credit hours, the scholarship will be revoked. These documents must be submitted by the following dates:

8.2.1. Proof of enrollment for Fall Semester and proof of completion of the previous semester must be submitted by September 30.

8.2.2. Proof of enrollment for Spring Semester and proof of completion of the previous semester must be submitted by February 15.

8.2.3. Proof of enrollment for Summer Semester and proof of completion of the previous semester must be submitted by June 30.

8.2.4. Proof of enrollment if you are attending Brigham Young University during Winter Semester and proof of completion of the previous semester must be submitted by February 15.

8.2.5. Proof of enrollment if you are attending Brigham Young University during Spring Term and proof of completion of the previous semester must be submitted by May 30.

8.2.6. Proof of enrollment if you are attending Brigham Young University during Summer Term and proof of completion of the previous semester or term must be submitted by July 30.

8.3. Probation: If a recipient earns less than a 3.0 grade point average in any single semester, the recipient must earn a 3.0 grade point average or better the following semester to maintain eligibility for the scholarship. If the recipient again at anytime earns less than a 3.0 grade point average the scholarship will be revoked.

8.4. Final Semester: A recipient will not be required to enroll full-time if the recipient can complete the degree program with fewer credits.

8.5. No Awards After Five Years: The Board will not make an award to a recipient for an academic term that begins more than five years after the recipient's high school graduation date.

8.6. No Guarantee of Degree Completion: An award does not guarantee that the recipient will complete his or her baccalaureate program within the recipient's scholarship eligibility period.

8.7. Deferral or Leave of Absence.

8.7.1. A recipient shall apply to the Board for a deferral of award or a leave of absence if they do not continuously enroll full-time.

8.7.2. A deferral or leave of absence will not extend the time limits of the scholarship under subsection 8.5.

8.7.3. Deferrals or leaves of absence may be granted, at the discretion of the Board, for military service, humanitarian/religious service, documented medical reasons, and other exigent reasons.

**R765-604-9. Appeals.**

9.1. Scholarship Determinations: Submission of a scholarship application does not guarantee a scholarship award. Individual scholarship applications will be reviewed, and award decisions made, at the discretion of a Scholarship Review Committee. Awards are based on available funding, applicant pool, and applicants' completion of scholarship criteria. Each applicant will receive a letter informing the applicant of the decision on his/her application.

9.2. Appeals: Applicants and recipients have the right to appeal an adverse decision.

9.2.1. Appeals shall be postmarked within 30 days of date of notification by submitting a completed Appeal Application found on the program Web site.

9.2.2. An appeal filed before the applicant/recipient receives official notification from the Scholarship Review Committee regarding their application, will not be considered.

9.2.3. The appeal shall provide evidence that an adverse decision was made in error, such as that in fact, the applicant/recipient met all scholarship requirements and submitted all requested documentation by the deadline.

9.2.4. Appeals are not accepted for late document submission.

9.2.5. A submission of an appeal does not guarantee a reversal of the original decision.

9.2.6. It is the applicant/recipient's responsibility to file the appeal, including all supplementary documentation. All documents shall be mailed to the New Century Scholarship address.

9.2.7. Appeals will be reviewed and decided by an appeals committee appointed by the commissioner of higher education.

**KEY:** higher education, secondary education, scholarships

**Date of Enactment or Last Substantive Amendment:** [~~June 22, 2011~~]**2012**

**Notice of Continuation:** December 21, 2009

**Authorizing, and Implemented or Interpreted Law:** 53B-8-105

Science Technology and Research  
Governing Authority (USTAR),  
Administration  
**R856-1**  
Formation and Funding of Utah  
Science Technology and Research  
Innovation Teams

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 36156

FILED: 05/08/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is issued pursuant to Subsection 63-38g-302(f).

**SUMMARY OF THE RULE OR CHANGE:** This rule relates to all funds allocated to Utah Science Technology and Research innovation teams by the Utah Science Technology and Research Governing Authority.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Subsection 63-38g-302(f)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There will be no anticipated cost to the state budget as this is an instruction detailing when and how the Utah Science Technology and Research Governing Authority allocates money appropriated to it by the Legislature. Additionally, there will be no savings as this is a new process that will likely have no cost associated with it.

◆ **LOCAL GOVERNMENTS:** There will be no anticipated cost to local government as this is an instruction detailing when and how the Utah Science Technology and Research Governing Authority allocates money appropriated to it by the Legislature. Additionally, there will be no savings as this is a new process that will likely have no cost associated with it.

◆ **SMALL BUSINESSES:** There will be no anticipated cost to small businesses as this is an instruction detailing when and how the Utah Science Technology and Research Governing Authority allocates money appropriated to it by the Legislature. Additionally, there will be no savings as this is a new process that will likely have no cost associated with it.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no anticipated cost to other persons as this is an instruction detailing when and how the Utah Science Technology and Research Governing Authority allocates money appropriated to it by the Legislature. Additionally, there will be no savings as this is a new process that will likely have no cost associated with it.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be no compliance cost to any affected persons as this is an instruction detailing when and how the Utah Science Technology and Research Governing Authority allocates money appropriated to it by the Legislature. Additionally, there will be no savings as this is a new process that will likely have no cost associated with it.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** As there will be no aggregate anticipated costs or savings to the state budget, local government, or other persons, and no compliance costs for affected persons, the department anticipates no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 SCIENCE TECHNOLOGY AND RESEARCH GOVERNING AUTHORITY (USTAR) ADMINISTRATION  
 60 E SOUTH TEMPLE  
 THIRD FLOOR  
 SALT LAKE CITY, UT 84111  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Ronda Robbins Jones by phone at 801-538-8622, by FAX at 801-538-8881, or by Internet E-mail at [rljones@utah.gov](mailto:rljones@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Ted McAleer, Executive Director

**R856. Science Technology and Research Governing Authority (USTAR), Administration.**

**R856-1. Formation and Funding of Utah Science Technology and Research Innovation Teams.**

**R856-1-1. Authority.**

This rule is issued pursuant to Title 63-38g-302(f).

**R856-1-2. Scope of Rule.**

This rule relates to all funds allocated to Utah Science Technology and Research innovation teams by the Utah Science Technology and Research Governing Authority.

**R856-1-3. Definitions.**

(A) "Capital equipment" means an article of non-expendable tangible personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit.

(B) "Core operating support" means telephone administrative support and equipment, consumables, and other recurring support of Utah Science Technology and Research innovation team hire.

(C) "Executive director" means the person appointed by the governing authority under Section 63-38g-301.

(D) "Governing authority" means the Utah Science Technology and Research Governing Authority created in Section 63-38g-301.

(E) "Program budget" means the budget proposed by each Utah Science Technology and Research innovation team and approved by the Utah Science Technology and Research Governing Authority.

(F) "Start-up funds" means Utah Science Technology and Research money allocated to pay for Utah Science Technology and Research innovation team hire's recruiting, moving, capital equipment, laboratory and office space build-out, and other expenses necessary for Utah Science Technology and Research project.

(G) "Utah Science Technology and Research Project" means the buildings and activities described in Title 63-38g Part 2, Utah Science Technology and Research Project.

(H) "Utah Science Technology and Research innovation team" means the research teams recruited and hired through the Utah Science Technology and Research initiative to conduct science and technology research within the framework set forward by the Utah Science Technology and Research Governing Authority.

(I) "Utah Science Technology and Research innovation team hire" means the researchers recruited and hired directly through the Utah Science Technology and Research initiative to conduct science and technology research within the framework set forward by the Utah Science Technology and Research Governing Authority.

**R856-1-4. Initial Allocation of Funds to Utah Science Technology and Research Innovation Team.**

(A) 10% of program money is released for Utah Science Technology and Research innovation team when initial position is considered necessary and approved for by the governing authority.

(1) Total amount of program money is determined by pro forma program budget approved by the governing authority.

**R856-1-5. Secondary Allocation of Funds to Utah Science Technology and Research Innovation Team.**

(A) The remaining 90% of program money is eligible for release to Utah Science Technology and Research innovation team when a memorandum of understanding of first team hire is presented to the governing authority and the detailed program budget is deemed to be within the guidelines of the governing authority.

(B) Utah Science Technology and Research innovation team hire and the appropriate university representatives such as department head, dean, provost, or vice president for research will agree upon and enter into a memorandum of understanding detailing:

- (1) capital equipment and other start-up requirements;
- (2) salary and benefits requirements;
- (3) core operating support requirements;
- (4) how the expected Utah Science Technology and Research innovation team will be organized;
- (5) Utah Science Technology and Research innovation team requirements and expectations;
- (6) other points important to Utah Science Technology and Research innovation team hire and university.

**R856-1-6. Ongoing Funding for Utah Science Technology and Research Innovation Team.**

(A) Innovation team funding will have non-lapsing status based on the previous years funding, until:

- (1) the governing authority cancels the Utah Science Technology and Research innovation team; or
- (2) the governing authority approves a motion to reduce innovation team budget; or
- (3) program changes are mutually proposed by the authorized university representative and the executive director and approved by the governing authority.

**R856-1-7. Unused Funds for Utah Science Technology and Research Innovation Team.**

(A) Utah Science Technology and Research innovation team funds allocated as start-up funds according to memorandum of understanding will have non-lapsing status between fiscal years for the first 3 fiscal years based on the date of the memorandum of understanding.

(1) Start-up funds unused after the first 3 fiscal years will revert back to the Utah Science Technology and Research General Fund.

(B) Core operating support and salary and benefit funds unused by the end of the fiscal year will have a threshold 10% automatic carry over into the subsequent fiscal year.

(1) Institutions may request carry forward of the unused funds over the 10% threshold subject to executive director approval.

**KEY: USTAR, technology funding, research funding**  
**Date of Enactment or Last Substantive Amendment: 2012**  
**Authorizing, and Implemented or Interpreted Law: 63-38g-302(f)**

Science Technology and Research  
 Governing Authority (USTAR),  
 Administration  
**R856-2**  
 Distribution of Utah Science  
 Technology and Research  
 Commercialization Revenues

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 36155

FILED: 05/08/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is issued pursuant to Subsection 63-38g-302(f).

SUMMARY OF THE RULE OR CHANGE: This rule relates to all revenues generated through the Utah Science Technology and Research Project.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63-38g-302(f)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There will be no anticipated cost to the state budget as this is an instruction detailing when and how the Utah Science Technology and Research Governing Authority allocates money earned through any innovation team technology commercialization process. Additionally,

there will be no savings as this is a new process that will likely have no cost associated with it.

◆ LOCAL GOVERNMENTS: There will be no anticipated cost to local government as this is an instruction detailing when and how the Utah Science Technology and Research Governing Authority allocates money earned through any innovation team technology commercialization process. Additionally, there will be no savings as this is a new process that will likely have no cost associated with it.

◆ SMALL BUSINESSES: There will be no anticipated cost to small businesses as this is an instruction detailing when and how the Utah Science Technology and Research Governing Authority allocates money earned through any innovation team technology commercialization process. Additionally, there will be no savings as this is a new process that will likely have no cost associated with it.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no anticipated cost to other persons as this is an instruction detailing when and how the Utah Science Technology and Research Governing Authority allocates money earned through any innovation team technology commercialization process. Additionally, there will be no savings as this is a new process that will likely have no cost associated with it.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance cost to any affected persons as this is an instruction detailing when and how the Utah Science Technology and Research Governing Authority allocates money earned through any innovation team technology commercialization process. Additionally, there will be no savings as this is a new process that will likely have no cost associated with it.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As there will be no aggregate anticipated costs or savings to the state budget, local government, or other persons, and no compliance costs for affected persons, we anticipate no fiscal impact on businesses.

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

SCIENCE TECHNOLOGY AND RESEARCH  
 GOVERNING AUTHORITY (USTAR)  
 ADMINISTRATION  
 60 E SOUTH TEMPLE  
 THIRD FLOOR  
 SALT LAKE CITY, UT 84111  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Ronda Robbins Jones by phone at 801-538-8622, by FAX at 801-538-8881, or by Internet E-mail at [rljones@utah.gov](mailto:rljones@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Ted McAleer, Executive Director

**R856. Science Technology and Research Governing Authority (USTAR), Administration.**

**R856-2. Distribution of Utah Science Technology and Research Commercialization Revenues.**

**R856-2-1. Authority.**

This rule is issued pursuant to Title 63-38g-302(f).

**R856-2-2. Scope of Rule.**

This rule relates to all revenues generated through the Utah Science Technology and Research Project.

**R856-2-3. Definitions.**

(A) "Commercialization revenues" means dividends, realized capital gains, license fees, royalty fees, and other revenues received by a university as a result of commercial applications developed from the project, less:

(1) the portion of those revenues allocated to the inventor; and

(2) expenditures incurred by the university to legally protect the intellectual property beyond that paid out of the outreach program.

(B) "Executive director" means the person appointed by the governing authority under Section 63-38g-301.

(C) "Governing authority" means the Utah Science Technology and Research Governing Authority created in Section 63-38g-301.

(D) "Utah Science Technology and Research Project" means the buildings and activities described in Title 63-38g Part 2, Utah Science Technology and Research Project.

**R856-2-4. Collection and Allocation of Initial Commercialization Revenues Generated Through the University of Utah and Utah State University.**

(A) The University of Utah and Utah State University will collect commercialization revenues generated through the Utah Science Technology and Research project conducted at each respective university.

(B) The University of Utah and Utah State University will report commercialization revenues to the executive director on an annual basis 45 days after the end of the fiscal year.

(1) Annually, the money will be distributed 2/3 to Utah State University and the University of Utah, with the monies distributed proportionately based upon which university conducted the research that generated the license fees and royalty fees; and 1/3 to the Centers of Excellence program created by Chapter 38f, Part 7, Centers of Excellence Act.

(C) The University of Utah and Utah State University will continue to report commercialization revenues until the total reaches \$15,000,000; at which point the allocation described in R856-2-5 will be commenced:

**R856-2-5. Collection and Allocation of Subsequent Commercialization Revenues Generated Through the University of Utah and Utah State University.**

(A) Subsequent to the initial \$15,000,000 of commercialization revenues received, the University of Utah and Utah State University will collect commercialization revenues generated through the Utah Science Technology and Research project conducted at each respective university, and will report commercialization revenues to the executive director on an annual basis.

(1) Annually, the money will be distributed 50% to Utah State University and the University of Utah with the monies distributed proportionately based upon which university conducted the research that generated the commercialization revenues; and 50% to the governing authority or other entity designated by the state to be used for:

(i) the Centers of Excellence program created by Chapter 38f, Part 7, Centers of Excellence Act;

(ii) replacement or maintenance of equipment in the research buildings;

(iii) recruiting and paying additional research teams;

(iv) construction of additional research buildings; and

(v) other activities approved by the governing authority.

(2) the University of Utah and Utah State University will collect revenues generated through the Utah Science Technology and Research project conducted at each respective university.

(3) the University of Utah and Utah State University will report commercialization revenues to the executive director on an annual basis.

(4) the University of Utah and Utah State University will deposit the commercialization revenues at their discretion until:

(i) commercialization revenues are allocated according to the schedule set by the governing authority.

**KEY: USTAR, commercialization revenues, distribution of revenues**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 63-38g-302(f)**

**Tax Commission, Administration**

**R861-1A-20**

Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-2-1007, 59-7-517, 59-10-532, 59-10-533, 59-10-535, 59-12-114, 59-13-210, 63G-4-201, 63G-4-401, 68-3-7, and 68-3-8.5

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36172

FILED: 05/11/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed amendment clarifies the time in which a person may appeal an action of the Motor Vehicle Division or the Motor Vehicle Enforcement Division.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendment clarifies that Motor Vehicle Division and Motor Vehicle Enforcement Division actions must be appealed within 30 days of the date of a notice that creates the right to appeal, and indicates when an appeal is deemed to be timely filed.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-1-301 and Section 59-1-501 and Section 59-10-532 and Section 59-10-533 and Section 59-10-535 and Section 59-12-114 and Section 59-13-210 and Section 59-2-1007 and Section 59-7-517 and Section 63G-4-201 and Section 63G-4-401 and Section 68-3-7 and Section 68-3-8.5

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** None--The proposed amendment matches long-standing agency practice.
- ◆ **LOCAL GOVERNMENTS:** None--The proposed amendment matches long-standing agency practice.
- ◆ **SMALL BUSINESSES:** None--The proposed amendment matches long-standing agency practice.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--The proposed amendment matches long-standing agency practice.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--The proposed amendment mirrors the direction the Motor Vehicle Division and Motor Vehicle Enforcement Division have included on notices of action. There is no change in practice.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This amendment conforms the rule to agency practice this creating no fiscal impact.

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

TAX COMMISSION  
ADMINISTRATION  
210 N 1950 W  
SALT LAKE CITY, UT 84134-0002  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

- ◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at [cj@utah.gov](mailto:cj@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON:** 07/09/2012

**AUTHORIZED BY:** Michael Cragun, Tax Commissioner

**R861. Tax Commission, Administration.****R861-1A. Administrative Procedures.**

**R861-1A-20. Time of Appeal Pursuant to Utah Code Ann. Sections 59-1-301, 59-1-501, 59-2-1007, 59-7-517, 59-10-532, 59-10-533, 59-10-535, 59-12-114, 59-13-210, 63G-4-201, 63G-4-401, 68-3-7, and 68-3-8.5.**

(1) A request for a hearing to correct a centrally assessed property tax assessment pursuant to Section 59-2-1007 must be in writing. The request is deemed to be timely if:

(a) it is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(b) the date of the postmark on the envelope or cover indicates that the request was mailed on or before June 1.

(c) A request for a hearing that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(2) Except as provided in Subsection (3), a petition for redetermination of a deficiency must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal. The petition is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the 30-day period; or

(ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day period; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day period.

(c) A petition for redetermination that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(3) A petition for redetermination of a claim for refund filed in accordance with Sections 59-10-532 or 59-10-533 is deemed to be timely if:

(a) in the case of mailed or hand-delivered documents:

(i) the petition is received in the commission offices on or before the close of business of the last day of the time frame provided by statute; or

(ii) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the time frame provided by statute; or

(b) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the time frame provided by statute.

(c) A petition for redetermination of a claim for refund that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(4)(a) An appeal of an action taken by the Motor Vehicle Division under Title 41, Chapter 1a, or the Motor Vehicle

Enforcement Division under Title 41, Chapter 3, must be received in the commission offices no later than 30 days from the date of a notice that creates the right to appeal.

(b) An appeal under Subsection (4)(a) is deemed to be timely if:

(i) in the case of mailed or hand-delivered documents:

(A) the petition is received in the commission offices on or before the close of business of the last day of the 30-day time period; or

(B) the date of the postmark on the envelope or cover indicates that the request was mailed on or before the last day of the 30-day time period; or

(ii) in the case of electronically-filed documents, the petition is received no later than midnight of the last day of the 30-day time period.

(c) An appeal of an action that is mailed but not received in the commission offices shall be considered timely filed if the sender complies with the provisions of Subsection 68-3-8.5(2)(b) and (c).

(4)(5) Any party adversely affected by an order of the commission may seek judicial review within the time frame provided by statute. Copies of the appeal shall be served upon the commission and upon the Office of the Attorney General.

**KEY:** developmental disabilities, grievance procedures, taxation, disclosure requirements

**Date of Enactment or Last Substantive Amendment:** [April 12, 2012

**Notice of Continuation:** January 3, 2012

**Authorizing, and Implemented or Interpreted Law:** 10-1-405; 41-1a-209; 52-4-207; 59-1-205; 59-1-207; 59-1-210; 59-1-301; 59-1-302.1; 59-1-304; 59-1-401; 59-1-403; 59-1-404; 59-1-405; 59-1-501; 59-1-502.5; 59-1-602; 59-1-611; 59-1-705; 59-1-706; 59-1-1004; 59-1-1404; 59-7-505; 59-10-512; 59-10-532; 59-10-533; 59-10-535; 59-12-107; 59-12-114; 59-12-118; 59-13-206; 59-13-210; 59-13-307; 59-10-544; 59-14-404; 59-2-212; 59-2-701; 59-2-705; 59-2-1003; 59-2-1004; 59-2-1006; 59-2-1007; 59-2-704; 59-2-924; 59-7-517; 63G-3-301; 63G-4-102; 76-8-502; 76-8-503; 59-2-701; 63G-4-201; 63G-4-202; 63G-4-203; 63G-4-204; 63G-4-205 through 63G-4-209; 63G-4-302; 63G-4-401; 63G-4-503; 63G-3-201(2); 68-3-7; 68-3-8.5; 69-2-5; 42 USC 12201; 28 CFR 25.107 1992 Edition

**Tax Commission, Auditing  
R865-6F-6**

**Application of Corporation Franchise or  
Income Tax Acts to Qualified  
Corporations and to Nonqualified  
Foreign Corporations Pursuant to Utah  
Code Ann. Section 59-7-104**

**NOTICE OF PROPOSED RULE  
(Amendment)**

**DAR FILE NO.: 36170  
FILED: 05/11/2012**

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed amendment deletes language to conform with case law and Multistate Tax Commission model rule changes.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendment deletes language providing that delivery of goods in a seller's own vehicle, if above a de minimis level, creates nexus for corporation income, and franchise tax purposes. This change reflects current agency practice and results from case law and amendments to the corresponding Multistate Tax Commission model rule.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-7-104

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** None--The proposed amendment amends the rule to match long-standing agency practice.
- ◆ **LOCAL GOVERNMENTS:** None--The proposed amendment amends the rule to match long-standing agency practice.
- ◆ **SMALL BUSINESSES:** None--The proposed amendment amends the rule to match long-standing agency practice.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--The proposed amendment amends the rule to match long-standing agency practice.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--The proposed amendment amends the rule to match long-standing agency practice.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This change conforms the rule with law and practice thus creating no fiscal impact.

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

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY, UT 84134  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at [cj@utah.gov](mailto:cj@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Michael Cragun, Tax Commissioner

**R865. Tax Commission, Auditing.**

**R865-6F. Franchise Tax.**

**R865-6F-6. Application of Corporation Franchise or Income Tax Acts to Qualified Corporations and to Nonqualified Foreign Corporations Pursuant to Utah Code Ann. Section 59-7-104.**

~~[A-]~~(1) Definitions.

~~[1-]~~(a) "Ancillary activities" means those activities that serve no independent business function for the seller apart from their connection to the solicitation of orders.

~~[2-]~~(b) "De minimis activities" means those activities that, when taken together, establish only a trivial connection with the taxing state. An activity conducted within Utah on a regular or systematic basis or pursuant to a company policy, whether or not in writing, shall not normally be considered trivial.

~~[3-]~~(c) "In-home office" means an office or place of business located within the residence of the employee or representative of a company that satisfies the following conditions:

~~[a-]~~(i) The office may not be publicly attributed to the company, or to the employee or representative of the company in an employee or representative capacity.

~~[b-]~~(ii) The use of the office shall be limited to soliciting and receiving orders from customers; transmitting orders outside the state for acceptance or rejection by the company; or for other activities that are protected under Public Law 86-272, 15 U.S.C. 381-384 (hereafter P.L. 86-272) and this rule.

~~[e-]~~(iii) Neither the company nor the employee or representative shall maintain a telephone listing or other public listing for the company within the state, nor use advertising or business literature indicating that the company or its employee or representative can be contacted at a specific address within the state. However, the normal distribution and use of business cards and stationery identifying the employee's or representative's name, address, telephone, and fax numbers and affiliation with the company shall not, by itself, be considered as advertising or otherwise publicly attributing an office to the company or its employee or representative.

~~[4-]~~(d) "Solicitation" means:

~~[a-]~~(i) speech or conduct that explicitly or implicitly invites an order; and

~~[b-]~~(ii) activities that neither explicitly nor implicitly invite an order, but are entirely ancillary to requests for an order.

~~[B-]~~(2) Every corporation doing business in Utah whether qualified or not, and every corporation incorporated or qualified in Utah whether or not doing business therein is subject to the Utah corporation franchise tax, unless exempted under the provisions of Section 59-7-102. If liability for the tax exists, the tax must be computed under the provisions of Section 59-7-104, at the rate provided by statute, but in no case shall the tax be less than the minimum tax prescribed.

~~[C-]~~(3) Foreign corporations not qualified in Utah which ship goods to customers in this state from points outside this state, pursuant to orders solicited but not accepted by agents or employees in this state, and which are not doing business in Utah are not taxable under the Utah Corporation Franchise Tax Act if:

~~[1-]~~(a) they maintain no office nor stocks of goods in Utah, and

~~[2-]~~(b) they engage in no other activities in Utah.

~~[D-]~~(4) Foreign corporations not qualified in Utah that make deliveries from stocks of goods located in this state are doing business in this state and are taxable under the Corporation Franchise Tax Act, even though they have no office or regular place of business in this state.

~~[E-]~~(5) Foreign corporations not qualified in Utah are subject to the franchise tax if performing the necessary duties to fulfill contracts or subcontracts in Utah, whether through their own employees or by furnishing of supervisory personnel.

~~[F-]~~(6) Corporations that own real property within this state and rent or lease such properties to others are subject to the franchise tax whether or not qualified under the laws of this state. This also applies to corporations deriving royalty, lease, or rental income from properties located within this state, whether or not such properties are owned by the corporation.

~~[G-]~~(7) Foreign corporations not qualified in Utah are subject to the franchise or income tax if they derive income from revenue-producing properties located in Utah or moving through Utah or from services performed by personnel in this state. This includes, but is not limited to, freight and transportation operations, sales of real property having a Utah situs, leasing or sales of franchises, sporting or entertaining events, etc.

~~[H-]~~(8) Corporations that participate in joint ventures or working and operating agreements which are performed in this state are subject to the franchise tax whether qualified or not.

~~[I-]~~(9) Foreign corporations qualified in Utah are subject to the franchise tax even though engaged solely in interstate commerce.

~~[J-]~~(10) P.L. 86-272 restricts a state from imposing a net income tax on income derived within its borders from interstate commerce if the only business activity of the company within the state consists of the solicitation of orders for sales of tangible personal property, which orders are sent outside the state for acceptance or rejection, and, if accepted, are filled by shipment or delivery from a point outside the state. The term "net income tax" includes a franchise tax measured by net income. If any sales of tangible personal property are made from Utah into a state which is precluded by P.L. 86-272 from taxing the income of the seller, such sales remain subject to throwback to Utah pursuant to ~~[Section]~~Subsection 59-7-318(2). Similarly, a sale into Utah from another state would not subject a corporation to the Utah tax if the corporation's activities do not exceed those allowed under P.L. 86-272.

~~[1-]~~(a) Only the solicitation to sell personal property is afforded immunity under P.L. 86-272; therefore, the leasing, renting, licensing or other disposition of tangible personal property, or transactions involving intangibles such as franchises, patents, copyrights, trade marks, service marks and the like, or any other type of property are not protected activities under P. L. 86-272. The

sale or delivery and the solicitation for the sale or delivery of any type of service that is not either (1) ancillary to solicitation, or (2) otherwise set forth as a protected activity below is also not protected under P.L. 86-272 or this rule.

[2-](b) For the in-state activity to be a protected activity under P.L. 86-272, it must be limited solely to solicitation, except for de minimis activities and activities conducted by independent contractors as described below.

[K-](11) The following in-state activities, assuming they are not of a de minimis level, will constitute doing business in Utah under P.L. 86-272 and will subject the corporation to the Utah corporation franchise tax:

[4-](a) making repairs or providing maintenance or service to the property sold or to be sold;

[2-](b) collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise;

[3-](c) investigating credit worthiness;

[4-](d) installation or supervision of installation at or after shipment or delivery;

[5-](e) conducting training courses, seminars, or lectures for personnel other than personnel involved only in solicitation;

[6-](f) providing any kind of technical assistance or service including engineering assistance or design service, when one of the purposes thereof is other than the facilitation of the solicitation of orders;

[7-](g) investigating, handling, or otherwise assisting in resolving customer complaints, other than mediating direct customer complaints when the sole purpose of such mediation is to ingratiate the sales personnel with the customer;

[8-](h) approving or accepting orders;

[9-](i) repossessing property;

[10-](j) securing deposits on sales;

[11-](k) picking up or replacing damaged or returned property;

[12-](l) hiring, training, or supervising personnel, other than personnel involved only in solicitation;

[13-](m) using agency stock checks or any other instrument or process by which sales are made within this state by sales personnel;

[14-](n) maintaining a sample or display room in excess of two weeks (14 days) at any one location within the state during the tax year;

[15-](o) carrying samples for sale, exchange or distribution in any manner for consideration or other value;

[16-](p) owning, leasing, using, or maintaining any of the following facilities or property in-state:

[A-](i) repair shop;

[B-](ii) parts department;

[C-](iii) any kind of office other than an in-home office;

[D-](iv) warehouse;

[E-](v) meeting place for directors, officers, or employees;

[F-](vi) stock of goods other than samples for sales personnel or that are used entirely ancillary to solicitation;

[G-](vii) telephone answering service that is publicly attributed to the company or to employees or agents of the company in their representative status;

[H-](viii) mobile stores, i.e., vehicles with drivers who are sales personnel making sales from the vehicles;

[I-](ix) real property or fixtures to real property of any kind[-];

[17-](q) consigning stocks of goods or other tangible personal property to any person, including an independent contractor, for sale;

[18-](r) maintaining, by either an in-state or an out-of-state resident employee, an office or place of business (in-home or otherwise) of any kind other than an in-home office;

[19-](s) [The]the maintenance of any office or other place of business in this state that does not strictly qualify as an in-home office under this subsection shall, by itself cause the loss of protection under this rule[-];

[20-](t) [For]for purposes of this subsection it is not relevant whether the company pays directly, indirectly, or not at all for the cost of maintaining the in-home office[-];

[21-](u) entering into franchising or licensing agreements; selling or otherwise disposing of franchises and licenses; or selling or otherwise transferring tangible personal property pursuant to such franchise or license by the franchisor or licensor to its franchisee or licensee within the state;

[22-](v) ~~shipping or delivering of goods into this state by means of private vehicle, rail, water, air or other carrier, irrespective of whether a shipment or delivery fee or other charge is imposed, directly or indirectly, upon the purchaser;~~

[23-](w) conducting any activity not listed as a protected activity below which is not entirely ancillary to requests for orders, even if such activity helps to increase purchases.

[24-](12) The following in-state activities will not cause the loss of protection for otherwise protected sales;

[1-](a) soliciting orders for sales by any type of advertising;

[2-](b) soliciting of orders by an in-state resident employee or representative of the company, so long as such person does not maintain or use any office or other place of business in the state other than an in-home office;

[3-](c) carrying samples and promotional materials only for display or distribution without charge or other consideration;

[4-](d) furnishing and setting up display racks and advising customers on the display of the company's products without charge or other consideration;

[5-](e) providing automobiles to sales personnel for their use in conducting protected activities;

[6-](f) passing orders, inquiries and complaints on to the home office;

[7-](g) missionary sales activities, i.e. the solicitation of indirect customers for the company's goods. For example, a manufacturer's solicitation of retailers to buy the manufacturer's goods from the manufacturer's wholesale customers would be protected if such solicitation activities are otherwise immune;

[8-](h) coordinating shipment or delivery without payment or other consideration and providing information relating thereto either prior or subsequent to the placement of an order;

[9-](i) checking of customer's inventories without a charge therefore if performed for reorder, but not for other purposes such as a quality control;

[10-](j) maintaining a sample or display room for two weeks (14 days) or less at any one location within the state during the tax year;

[H-](k) recruiting, training or evaluating sales personnel, including occasionally using homes, hotels or similar places for meetings with sales personnel;

[I-](l) mediating direct customer complaints when the purpose thereof is solely for ingratiating the sales personnel with the customer and facilitating requests for orders;

[J-](m) owning, leasing, using or maintaining personal property for use in the employee or representative's in-home office or automobile that is solely limited to the conducting of protected activities. Therefore, the use of personal property such as a cellular telephone, facsimile machine, duplicating equipment, personal computer and computer software that is limited to the carrying on of protected solicitation and activity entirely ancillary to such solicitation or permitted by the provisions of this rule shall not, by itself, remove the protection of P.L. 86-272.

[K-](13) P.L. 86-272 provides protection to certain in-state activities if conducted by an independent contractor that would not be afforded if performed by the company or its employees or other representatives.

[L-](a) Independent contractors may engage in the following limited activities in the state without the company's loss of immunity;

[a-](i) soliciting sales;

[b-](ii) making sales;

[c-](iii) maintaining an office.

[M-](b) Sales representatives who represent a single principal are not considered to be independent contractors and are subject to the same limitations as those provided under P.L. 86-272 and this rule.

[N-](c) Maintenance of stock of goods in the state by the independent contractor under consignment or any other type of arrangement with the company, except for purposes of display and solicitation, shall remove the protection.

[O-](14) The Tax Commission will apply the provisions of P.L. 86-272 and of this rule to business activities conducted in foreign commerce. Therefore, whether business activities are conducted by (i) a foreign or domestic company selling tangible personal property into a county outside of the United States from a point within this state or by (ii) either company selling such property into this state from a point outside of the United States, the principles under this rule apply equally to determine whether the sales transactions are protected and the company immune from taxation in either this state or in the foreign county, as the case might be, and whether, if applicable, the throwback provisions of [Section] Subsection 59-7-318(2) will apply.

[P-](15) The protection afforded by P.L. 86-272 and the provisions of this rule do not apply to any corporation that is incorporated or domiciled in this state.

[Q-](16) A company that registers or otherwise formally qualifies to do business within this state does not, by that fact alone, lose its protection under P.L. 86-272. Where, separate from or ancillary to such registration or qualification, the company receives and seeks to use or protect any additional benefit or protection from this state through activity not otherwise protected under P.L. 86-272 or this rule, such protection shall be removed.

[R-](17) The protection afforded under P.L. 86-272 and the provisions of this rule shall be determined on a year by year tax basis. Therefore, if at any time during a tax year the company conducts activities that are not protected under P.L. 86-272 or this

rule, no sales in this state or income earned by the company attributed to this state during any part of said tax year shall be protected from taxation for purposes of the corporate franchise tax.

**KEY: taxation, franchises, historic preservation, trucking industries**

**Date of Enactment or Last Substantive Amendment:** ~~December 22, 2011~~ 2012

**Notice of Continuation:** January 3, 2012

**Authorizing, and Implemented or Interpreted Law:** 9-2-401 through 9-2-415; 16-10a-1501 through 16-10a-1533; 53B-8a-112; 59-1-1301 through 59-1-1309; 59-6-102; 59-7; 59-7-101; 59-7-102; 59-7-104 through 59-7-106; 59-7-108; 59-7-109; 59-7-110; 59-7-112; 59-7-302 through 59-7-321; 59-7-402; 59-7-403; 59-7-501; 59-7-502; 59-7-505; 59-7-601 through 59-7-614; 59-7-608; 59-7-701; 59-7-703; 59-10-603; 59-13-202; 59-13-301; 63M-1; 63M-1-401 through 63M-1-416

## Tax Commission, Auditing

### R865-91-49

## Higher Education Savings Incentive Program Administration Pursuant to Utah Code Ann. Sections 53B-8a-112, 59-10-114, and 59-10-1017

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36173

FILED: 05/11/2012

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed amendment allows the Utah Educational Savings Incentive Plan Trust extra time to file information with the Tax Commission.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendment revises the date by which the trustee of the Utah Educational Savings Plan Trust must file information with the Tax Commission concerning amounts contributed to or disbursed from the trust from January 31 to March 31. This change is made at the request of the Utah Educational Savings Plan management.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53B-8a-112 and Section 59-10-1017 and Section 59-10-114

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** None--The proposed amendment delays the time for filing a report with the Tax Commission.

♦ **LOCAL GOVERNMENTS:** None--The proposed amendment delays the time for filing a report with the Tax Commission.

♦ **SMALL BUSINESSES:** None--The proposed amendment delays the time for filing a report with the Tax Commission.  
 ♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--The proposed amendment delays the time for filing a report with the Tax Commission.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--The proposed amendment delays the time for filing a report with the Tax Commission and results from a request from the one entity that files the report.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The delayed report deadline should have no fiscal impact.

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

TAX COMMISSION  
 AUDITING  
 210 N 1950 W  
 SALT LAKE CITY, UT 84134  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
 ♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at [cj@utah.gov](mailto:cj@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Michael Cragun, Tax Commissioner

**R865. Tax Commission, Auditing.**  
**R865-91. Income Tax.**  
**R865-91-49. Higher Education Savings Incentive Program Administration Pursuant to Utah Code Ann. Sections 53B-8a-112, 59-10-114, and 59-10-1017.**

- (1) "Trust" means the Utah Educational Savings Plan Trust created pursuant to Section 53B-8a-103.
- (2) The trustee of the trust shall file a form TC-675H, Statement of Account with the Utah Educational Savings Plan Trust, with the commission, for each trust account owner. The TC-675H shall contain the following information for the calendar year:
  - (a) the amount contributed to the trust by the account owner; and
  - (b) the amount disbursed to the account owner pursuant to Section 53B-8a-109.
- (3) The trustee of the trust shall file form TC-675H with the commission on or before ~~January~~ March 31 of the year following the calendar year on which the forms are based.
- (4) The trustee of the trust shall provide each trust account owner with a copy of the form TC-675H on or before January 31 of the year following the calendar year on which the TC-675H is based.

(5) The trustee of the trust shall maintain original records supporting the amounts listed on the TC-675H for the current year filing and the three previous year filings.

**KEY:** historic preservation, income tax, tax returns, enterprise zones  
**Date of Enactment or Last Substantive Amendment:** ~~December 22, 2011~~ 2012  
**Notice of Continuation:** January 3, 2012  
**Authorizing, and Implemented or Interpreted Law:** 31A-32A-106; 53B-8a-112; 59-1-1301 through 59-1-1309; 59-2-1201 through 59-2-1220; 59-6-102; 59-7-3; 59-10; 59-10-103; 59-10-108 through 59-10-122; 59-10-108.5; 59-10-114; 59-10-124; 59-10-127; 59-10-128; 59-10-129; 59-10-130; 59-10-207; 59-10-210; 59-10-303; 59-10-401 through 59-10-403; 59-10-405.5; 59-10-406 through 59-10-408; 59-10-501; 59-10-503; 59-10-504; 59-10-507; 59-10-512; 58-10-514; 59-10-516; 59-10-517; 59-10-522; 59-10-533; 59-10-536; 59-10-602; 59-10-603; 59-10-1003; 59-10-1006; 59-10-1014; 59-10-1017; 59-10-1021; 59-10-1023; 59-10-1106; 59-10-1403; 59-10-1403.2; 59-10-1405; 59-13-202; 59-13-301; 59-13-302; 63M-1; 63M-1-401 through 63M-1-414

Tax Commission, Auditing  
**R865-12L-14**  
 Local Sales and Use Tax Distributions  
 and Redistributions Pursuant to Utah  
 Code Ann. Sections 59-12-210 and 59-  
 12-210.1

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 36171  
 FILED: 05/11/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed rule is necessary to implement H.B. 476 (2012 General Session).

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendment updates the current rule on sales tax redistributions to reflect that under H.B. 476 (2012), telecommunications charges may only be redistributed in certain circumstances.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-12-210 and Section 59-12-210.1 and Section 69-2-5.8

**ANTICIPATED COST OR SAVINGS TO:**  
 ♦ **THE STATE BUDGET:** None--Any fiscal impact would have been considered in H.B. 476 (2012).  
 ♦ **LOCAL GOVERNMENTS:** None--Any fiscal impact would have been considered in H.B. 476 (2012).

◆ **SMALL BUSINESSES:** None--Any fiscal impact would have been considered in H.B. 476 (2012).

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Any fiscal impact would have been considered in H.B. 476 (2012).

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--The proposed amendment indicates the instances in which the Tax Commission may redistribute telecommunications charges. Telecommunications charges will now be redistributed under the same circumstances as sales taxes.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule change reflects a statutory change thus creates no independent fiscal impact.

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

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY, UT 84134  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at cj@utah.gov

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON:** 07/09/2012

**AUTHORIZED BY:** Michael Cragun, Tax Commissioner

**R865. Tax Commission, Auditing.**  
**R865-12L. Local Sales and Use Tax.**  
**R865-12L-14. ~~Local~~Qualifying Sales and Use Tax and Telecommunications Charge Distributions and Redistributions Pursuant to Utah Code Ann. Sections 59-12-210, ~~and~~ 59-12-210.1, and 69-2-5.8.**

(1) For purposes of making a redistribution of ~~sales and use tax~~ revenues under ~~Section~~Sections 59-12-210.1 and 69-2-5.8:

- (a) "de minimis" means less than \$1,000; and
- (b) "extraordinary circumstances" means the following circumstances that the commission becomes aware of:

(i) an error in the commission's tax systems or procedures that increases or decreases the overall distribution of ~~sales and use tax~~qualifying sales and use tax revenues and qualifying telecommunications charge revenues to a county, city, or town by \$10,000 or more; or

(ii) an error in the calculation, collection, or reporting of a ~~locally imposed~~qualifying sales and use tax or qualifying

telecommunications charge by a significant segment of an industry if the error increases or decreases the overall distribution of ~~sales and use tax~~qualifying sales and use tax revenues and qualifying telecommunications charge revenues to a county, city, or town by \$10,000 or more.

(2) The commission shall, on a monthly basis, furnish each county, city, and town with the listings of ~~local~~qualifying sales and use taxes and qualifying telecommunications charges remitted for transactions located within the county, city, or town.

(a) After receiving each listing, the county, city, or town shall advise the commission within 90 days:

- (i) if the listing is incorrect; and
- (ii) make corrections regarding firms omitted from the list or firms listed but not doing business in their taxing jurisdiction.

(b) The commission shall make subsequent distributions based on the notification the commission receives from a county, city, or town under Subsection (2)(a).

(3) If a redistribution is required by ~~Section~~Sections 59-12-210.1 or 69-2-5.8, the commission shall provide the notice of redistribution described in ~~Subsection~~Subsections 59-12-210.1(2) and 69-2-5.8(2) to each original and secondary recipient political subdivision that is impacted by the redistribution in an amount that exceeds the de minimis amount.

**KEY: taxation, sales tax, restaurants, collections**  
**Date of Enactment or Last Substantive Amendment:** ~~October 13, 2011~~2012

**Notice of Continuation:** January 3, 2012  
**Authorizing, and Implemented or Interpreted Law:** 59-12-118; 59-12-205; 59-12-207; 59-12-210; 59-12-210.1; 59-12-301; 59-12-355; 59-12-501; 59-12-502; 59-12-602; 59-12-603; 59-12-703; 59-12-802; 59-12-804

**Tax Commission, Auditing**  
**R865-19S-123**  
**Specie Legal Tender Pursuant to Utah**  
**Code Ann. Section 59-12-107**

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR FILE NO.: 36175  
FILED: 05/11/2012

**RULE ANALYSIS**  
**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed section is necessary to implement H.B. 157 (2012 General Session).

**SUMMARY OF THE RULE OR CHANGE:** The proposed section indicates the London fixing price that a seller shall use to determine the amount of sales tax due in specie legal tender and in dollars when the London fixing price is not available for the day on which a purchase is made in specie legal tender.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-107

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--Any fiscal impact would have been considered in H.B. 157 (2012).
- ◆ LOCAL GOVERNMENTS: None--Any fiscal impact would have been considered in H.B. 157 (2012).
- ◆ SMALL BUSINESSES: None--Any fiscal impact would have been considered in H.B. 157 (2012).
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Any fiscal impact would have been considered in H.B. 157 (2012).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The proposed rule indicates to use the latest available London fixing price to determine the tax on a transaction conducted in specie legal tender if there is no London fixing price available for the day on which the transaction occurs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This proposal adopts the same standard as the amendments made to statute by H.B. 157 (2012), therefore, there is no fiscal impact.

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

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY, UT 84134  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at [cj@utah.gov](mailto:cj@utah.gov)

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THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Michael Cragun, Tax Commissioner

**R865. Tax Commission, Auditing.**

**R865-19S. Sales and Use Tax.**

**R865-19S-123. Specie Legal Tender Pursuant to Utah Code Ann. Section 59-12-107.**

For purposes of determining the amount of sales tax due in specie legal tender and in dollars for a purchase made in specie legal tender, if the London fixing price is not available for a day on which a purchase is made in specie legal tender, a seller shall use the latest available London fixing price for the specie legal tender the purchaser paid that precedes the date of the purchase.

**KEY: charities, tax exemptions, religious activities, sales tax**  
**Date of Enactment or Last Substantive Amendment: [February 9,]2012**

**Notice of Continuation: January 3, 2012**

**Authorizing, and Implemented or Interpreted Law: 9-2-1702; 9-2-1703; 10-1-303; 10-1-306; 10-1-307; 10-1-405; 19-6-808; 26-32a-101 through 26-32a-113; 59-1-210; 59-12; 59-12-102; 59-12-103; 59-12-104; 59-12-105; 59-12-106; 59-12-107; 59-12-108; 59-12-118; 59-12-301; 59-12-352; 59-12-353**

## Tax Commission, Collections **R867-2B-2**

Jeopardy Assessment Pursuant to Utah  
Code Ann. Sections 59-1-701 and 59-  
1-702

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36168

FILED: 05/11/2012

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The section removal is necessary to implement S.B. 243 (2012 General Session).

SUMMARY OF THE RULE OR CHANGE: The section is removed since the statute that authorizes it has been repealed in S.B. 243 (2012).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-1-701 and Section 59-1-702

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: None--Any fiscal impact would have been considered in S.B. 243 (2012).
- ◆ LOCAL GOVERNMENTS: None--Any fiscal impact would have been considered in S.B. 243 (2012).
- ◆ SMALL BUSINESSES: None--Any fiscal impact would have been considered in S.B. 243 (2012).
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Any fiscal impact would have been considered in S.B. 243 (2012).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This section is removed since the statutes authorizing it have been repealed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment is necessary due to a statutory change made by S.B. 243 (2012), thus creating no new fiscal impact.

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

TAX COMMISSION  
COLLECTIONS  
210 N 1950 W  
SALT LAKE CITY, UT 84134  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at [cj@utah.gov](mailto:cj@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON  
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO  
LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Michael Cragun, Tax Commissioner

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**R867. Tax Commission, Collections.**

**R867-2B. Delinquent Tax Collection.**

~~[R867-2B-2. Jeopardy Assessment Pursuant to Utah Code Ann. Sections 59-1-701 and 59-1-702.~~

~~A. Assessments made pursuant to Title 59, Chapter 19, Illegal Drug Stamp Act, shall meet the grounds for the jeopardy provisions under Sections 59-1-701 and 59-1-702 due to the nature of the tax and the likelihood that assets may be seized and sold by other creditors.~~

]KEY: taxation, controlled substances, seizure of property, drug stamps

Date of Enactment or Last Substantive Amendment: ~~[October 13, 2011]~~2012

Notice of Continuation: October 28, 2010

Authorizing, and Implemented or Interpreted Law: 59-1-302; 59-1-706; 59-1-701; 59-1-702; 59-1-703; 59-1-707; 59-19-104; 59-19-105; 59-19-107

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**Tax Commission, Collections**

**R867-2B-4**

**Uniform Affixing and Displaying of Drug  
Stamps Pursuant to Utah Code Ann.  
Section 59-19-104**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36169

FILED: 05/11/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The section removal is necessary to implement S.B. 243 (2012 General Session).

SUMMARY OF THE RULE OR CHANGE: The section is removed since the statute that authorizes it has been repealed in S.B. 243 (2012).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-19-104

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: None--Any fiscal impact would have been considered in S.B. 243 (2012).

♦ LOCAL GOVERNMENTS: None--Any fiscal impact would have been considered in S.B. 243 (2012).

♦ SMALL BUSINESSES: None--Any fiscal impact would have been considered in S.B. 243 (2012).

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Any fiscal impact would have been considered in S.B. 243 (2012).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Any fiscal impact would have been considered in S.B. 243 (2012).

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment is necessary due to a statutory change made by S.B. 243 (2012), thus creating no new fiscal impact.

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

TAX COMMISSION  
COLLECTIONS  
210 N 1950 W  
SALT LAKE CITY, UT 84134  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at [cj@utah.gov](mailto:cj@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON  
THIS RULE BY SUBMITTING WRITTEN COMMENTS NO  
LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Michael Cragun, Tax Commissioner

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**R867. Tax Commission, Collections.**

**R867-2B. Delinquent Tax Collection.**

**~~[R867-2B-4. Uniform Affixing and Displaying of Drug Stamps Pursuant to Utah Code Ann. Section 59-19-104.~~**

~~\_\_\_\_\_ A. Drug stamps issued as evidence of payment of the tax imposed on marihuana and controlled substances shall be affixed and displayed in a reasonably prominent position on the container of the marihuana or controlled substance for which they were issued.~~

~~\_\_\_\_\_ 1. For purposes of this rule, "container" means any substance or material that encloses or encircles, but is not consumed with, the marihuana or controlled substance.~~

~~\_\_\_\_\_ 2. If more than one container encloses or encircles the marihuana or controlled substance, the stamps shall be affixed to and displayed on the container closest to the marihuana or controlled substance.~~

~~\_\_\_\_\_ B. If the marihuana or controlled substance is not encircled or enclosed in a container, the drug stamp shall be kept in reasonable proximity to the marihuana or controlled substance for which it was issued.~~

**]KEY: taxation, controlled substances, seizure of property, drug stamps**

**Date of Enactment or Last Substantive Amendment: ~~[October 13, 2011]~~2012**

**Notice of Continuation: October 28, 2010**

**Authorizing, and Implemented or Interpreted Law: 59-1-302; 59-1-706; 59-1-701; 59-1-702; 59-1-703; 59-1-707; 59-19-104; 59-19-105; 59-19-107**

**Tax Commission, Property Tax  
R884-24P-66  
County Board of Equalization  
Procedures and Appeals Pursuant to  
Utah Code Ann. Section 59-2-1004**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36174

FILED: 05/11/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed amendment indicates the information a property owner must provide a county board of equalization (BOE) when appealing the valuation of property for property tax purposes. This amendment comes at the request of county assessors.

**SUMMARY OF THE RULE OR CHANGE:** The proposed amendment modifies the information a property owner must supply a county BOE at the time the property owner is applying to appeal the valuation of property for property tax

purposes. The amendment requires the property owner provide, at the time of application, evidence or documentation that supports the property owner's claim for relief. This differs from the current language that requires simply a statement indicating the evidence the property owner will present to the BOE and returns to language that was in place prior to 04/12/2012.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 59-2-1004

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** None--Property tax revenues are local revenues.

◆ **LOCAL GOVERNMENTS:** None--The proposed amendment requires a person appealing property tax to provide evidence supporting a claim for relief at the time of application as opposed to at the hearing. This matches language in place up to 04/12/2012.

◆ **SMALL BUSINESSES:** None--The proposed amendment requires a person appealing property tax to provide evidence supporting a claim for relief at the time of application as opposed to at the hearing. This matches language in place up to 04/12/2012.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--The proposed amendment requires a person appealing property tax to provide evidence supporting a claim for relief at the time of application as opposed to at the hearing. This matches language in place up to 04/12/2012.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--The proposed amendment requires a person appealing property tax to provide evidence supporting a claim for relief at the time of application as opposed to at the hearing. This matches language in place up to 04/12/2012.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This change returns to the practice in place prior to 04/12/2012 so there should be no fiscal impact.

**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:**

◆ Christa Johnson by phone at 801-297-3901, by FAX at 801-297-3907, or by Internet E-mail at [cj@utah.gov](mailto:cj@utah.gov)

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012**

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Michael Cragun, Tax Commissioner

**R884. Tax Commission, Property Tax.**

**R884-24P. Property Tax.**

**R884-24P-66. County Board of Equalization Procedures and Appeals Pursuant to Utah Code Ann. Section 59-2-1004.**

(1)(a) "Factual error" means an error that is:

- (i) objectively verifiable without the exercise of discretion, opinion, or judgment;
- (ii) demonstrated by clear and convincing evidence; and
- (iii) agreed upon by the taxpayer and the assessor.

(b) Factual error includes:

- (i) a mistake in the description of the size, use, or ownership of a property;
- (ii) a clerical or typographical error in reporting or entering the data used to establish valuation or equalization;
- (iii) an error in the classification of a property that is eligible for a property tax exemption under:
  - (A) Section 59-2-103; or
  - (B) Title 59, Chapter 2, Part 11;
- (iv) an error in the classification of a property that is eligible for assessment under Title 59, Chapter 2, Part 5;
- (v) valuation of a property that is not in existence on the lien date; and
- (vi) a valuation of a property assessed more than once, or by the wrong assessing authority.

(c) Factual error does not include:

- (i) an alternative approach to value;
- (ii) a change in a factor or variable used in an approach to value; or
- (iii) any other adjustment to a valuation methodology.

(2) If the county has not formally adopted board of equalization rules and procedures under Section 59-2-1001 that have been approved by the commission, the procedures contained in this rule must be followed.

(3) To achieve standing with the county board of equalization and have a decision rendered on the merits of the case, the taxpayer shall provide the following minimum information to the county board of equalization:

- (a) the name and address of the property owner;
- (b) the identification number, location, and description of the property;
- (c) the value placed on the property by the assessor;
- (d) the taxpayer's estimate of the fair market value of the property; ~~and~~
- (e) evidence or documentation that supports the taxpayer's claim for relief; and
- (~~e~~)(f) [a signed statement indicating the evidence or documentation that the taxpayer will present to the county board of equalization]the taxpayer's signature.

(4) If the ~~[signed statement]~~evidence or documentation required under Subsection (3)(e) is not attached, the county will notify the taxpayer of the defect in the claim and permit at least ten calendar days to cure the defect before dismissing the matter for lack of sufficient evidence to support the claim for relief.

(5) If the taxpayer appears before the county board of equalization and fails to produce the evidence or documentation described under Subsection (3)(e) and the county has notified the taxpayer under Subsection (4), the county may dismiss the matter for lack of evidence to support a claim for relief.

(6) If the ~~[minimum]~~information required under Subsection (3) is supplied ~~and the taxpayer produces the evidence or documentation described in the taxpayer's signed statement under Subsection (3)(e)]~~, the county board of equalization shall render a decision on the merits of the case.

(7) The county board of equalization may dismiss an appeal for lack of jurisdiction when the claimant limits arguments to issues not under the jurisdiction of the county board of equalization.

(8) The county board of equalization shall prepare and maintain a record of the appeal.

(a) For appeals concerning property value, the record shall include:

- (i) the name and address of the property owner;
- (ii) the identification number, location, and description of the property;
- (iii) the value placed on the property by the assessor;
- (iv) the basis for appeal stated in the taxpayer's appeal;
- (v) facts and issues raised in the hearing before the county board that are not clearly evident from the assessor's records; and

- (vi) the decision of the county board of equalization and the reasons for the decision.

(b) The record may be included in the minutes of the hearing before the county board of equalization.

(9)(a) The county board of equalization shall notify the taxpayer in writing of its decision.

(b) The notice required under Subsection (9)(a) shall include:

- (i) the name and address of the property owner;
- (ii) the identification number of the property;
- (iii) the date the notice was sent;
- (iv) a notice of appeal rights to the commission; and
- (v) a statement of the decision of the county board of equalization; or
- (vi) a copy of the decision of the county board of equalization.

(10) A county shall maintain a copy of a notice sent to a taxpayer under Subsection (9).

(11) If a decision affects the exempt status of a property, the county board of equalization shall prepare its decision in writing, stating the reasons and statutory basis for the decision.

(12) Decisions by the county board of equalization are final orders on the merits.

(13) Except as provided in Subsection (15), a county board of equalization shall accept an application to appeal the valuation or equalization of a property owner's real property that is filed after the time period prescribed by Section 59-2-1004(2)(a) if any of the following conditions apply:

(a) During the period prescribed by Section 59-2-1004(2)(a), the property owner was incapable of filing an appeal as a result of a medical emergency to the property owner or an immediate family member of the property owner, and no co-owner of the property was capable of filing an appeal.

(b) During the period prescribed by Section 59-2-1004(2)(a), the property owner or an immediate family member of the property owner died, and no co-owner of the property was capable of filing an appeal.

(c) The county did not comply with the notification requirements of Section 59-2-919.1.

(d) A factual error is discovered in the county records pertaining to the subject property.

(e) The property owner was unable to file an appeal within the time period prescribed by Section 59-2-1004(2)(a) because of extraordinary and unanticipated circumstances that occurred during the period prescribed by Section 59-2-1004(2)(a), and no co-owner of the property was capable of filing an appeal.

(14) Appeals accepted under Subsection (13)(d) shall be limited to correction of the factual error and any resulting changes to the property's valuation.

(15) The provisions of Subsection (13) apply only to appeals filed for a tax year for which the treasurer has not made a final annual settlement under Section 59-2-1365.

(16) The provisions of this rule apply only to appeals to the county board of equalization. For information regarding appeals of county board of equalization decisions to the Commission, please see Section 59-2-1006 and R861-1A-9.

**KEY: taxation, personal property, property tax, appraisals**  
**Date of Enactment or Last Substantive Amendment: [February 9, 2012]**

**Notice of Continuation: January 3, 2012**

**Authorizing, and Implemented or Interpreted Law: Art. XIII, Sec 2; 9-2-201; 11-13-302; 41-1a-202; 41-1a-301; 59-1-210; 59-2-102; 59-2-103; 59-2-103.5; 59-2-104; 59-2-201; 59-2-210; 59-2-211; 59-2-301; 59-2-301.3; 59-2-302; 59-2-303; 59-2-303.1; 59-2-305; 59-2-306; 59-2-401; 59-2-402; 59-2-404; 59-2-405; 59-2-405.1; 59-2-406; 59-2-508; 59-2-514; 59-2-515; 59-2-701; 59-2-702; 59-2-703; 59-2-704; 59-2-704.5; 59-2-705; 59-2-801; 59-2-918 through 59-2-924; 59-2-1002; 59-2-1004; 59-2-1005; 59-2-1006; 59-2-1101; 59-2-1102; 59-2-1104; 59-2-1106; 59-2-1107 through 59-2-1109; 59-2-1113; 59-2-1115; 59-2-1202; 59-2-1202(5); 59-2-1302; 59-2-1303; 59-2-1308.5; 59-2-1317; 59-2-1328; 59-2-1330; 59-2-1347; 59-2-1351; 59-2-1365**

**Transportation, Administration**  
**R907-68**  
**Prioritization of New Transportation**  
**Capacity Projects**

**NOTICE OF PROPOSED RULE**  
 (Amendment)

DAR FILE NO.: 36178  
 FILED: 05/14/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this rule change is to bring the rule

into alignment with the Department of Transportation's strategic initiatives by changing "capacity" to "mobility," to renumber it to place it in Title R940 Transportation Commission, Administration, and to make other technical and stylistic corrections.

**SUMMARY OF THE RULE OR CHANGE:** The change replaces "capacity" with "mobility," renumbers the rule to fall under Title R940 Transportation Commission, Administration," and makes other technical and stylistic changes.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 72-1-201 and Section 72-1-304

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There is no anticipated cost or savings to the state budget because the change only aligns the language of the rule with the department's strategic initiatives.

♦ **LOCAL GOVERNMENTS:** There is no anticipated cost or savings to local government because the change only aligns the language of the rule with the department's strategic initiatives.

♦ **SMALL BUSINESSES:** There is no anticipated cost or savings to small businesses because the change only aligns the language of the rule with the department's strategic initiatives.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the change only aligns the language of the rule with the department's strategic initiatives.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no anticipated compliance costs for affected persons because the change only aligns the language of the rule with the department's strategic initiatives.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** There is no anticipated fiscal impact on businesses because the change only aligns the language of the rule with the department's strategic initiatives.

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

TRANSPORTATION  
 ADMINISTRATION  
 CALVIN L RAMPTON COMPLEX  
 4501 S 2700 W  
 SALT LAKE CITY, UT 84119-5998  
 or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

♦ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at [cwnewman@utah.gov](mailto:cwnewman@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: John Njord, Executive Director

**R9[07]40. Transportation, Administration.**

**R9[07-68]40-6. Prioritization of New Transportation Capacity Projects.**

**R9[07-68]40-6-1. Definitions.**

(1) "ADT" means [A]average [D]daily [F]traffic, which is the volume of traffic on a road, annualized to a daily average.

(2) "Capacity" means the maximum hourly rate at which vehicles reasonably can be expected to traverse a point or a uniform section of a lane or roadway during a given time period under prevailing roadway, traffic, and control conditions.

(3) "Commission" means the Transportation Commission, which is created in [Utah Code Ann.]Section 72-1-301.

(4) "Economic Development" may include such things as employment growth, employment retention, retail sales, tourism growth, freight movements, tax base increase, and traveler or user cost savings in relation to construction costs.

(5) "Functional Classification" means the description of the road as one of the following:

- (a) Rural Interstate;
- (b) Rural Other Principal Arterial;
- (c) Rural Minor Arterial;
- (d) Rural Major Collector;
- (e) Urban Interstate;
- (f) Urban Other Freeway and Expressway;
- (g) Urban Other Principal Arterial;
- (h) Urban Minor Arterial; or
- (i) Urban Collector[;].

(6) "Major New Capacity Project" means a transportation project that costs more than \$5,000,000 and accomplishes any of the following:

- (a) Add new roads and interchanges;
- (b) Add new lanes; or
- (c) Modify existing interchange(s) for capacity or economic development purpose.

(7) "Mobility" means the movement of people and goods.

(8) "MPO" as used in this section means metropolitan planning organization as defined in [Utah Code Ann.]Section 72-1-208.5.

([8]2) "Safety" means an analysis of the current safety conditions of a transportation facility. It includes an analysis of crash rates and crash severity.

([9]10) "Strategic Goals" means the Utah Department of Transportation [S]strategic [G]goals.

(1[0]1) "Strategic Initiatives" means the implementation strategies the [D]department will use to achieve the ["S]strategic [G]goals["].

(1[+]2) "Transportation Efficiency" is the roadway attributes such as ADT, [F]truck ADT, [V]volume to [C]capacity [R]ratio, roadway [F]functional [C]classification, and [F]transportation [G]growth.

(1[2]3) "Transportation Growth" means the projected percentage of average annual increase in ADT.

(1[3]4) "Truck ADT" means the ADT of truck traffic on a road, annualized to a daily average.

(1[4]5) "Volume to Capacity Ratio" means the ratio of hourly volume of traffic to capacity for a transportation facility (measure of congestion).

**R9[07-68]40-6-2. Authority and Purpose.**

[Utah Code Ann.]Section 72-1-304, as enacted by Senate Bill 25, 2005 General Session, directs the [C]commission, in consultation with the [D]department and the [M]metropolitan [P]planning [O]organizations in the [S]state, to [issue]make rules that establish a prioritization process for new transportation projects that meet the [D]department's strategic goals. This rule fulfills that directive.

**R9[07-68]40-6-3. Application of Strategic Initiatives to Projects.**

The [D]department will use the [S]strategic [G]goals to guide the process:

(1) The [D]department will first seek to preserve current infrastructure and to optimize the [capacity of]mobility provided by the existing highway infrastructure before applying funds to increase [capacity]mobility by adding new lanes.

(2) The [D]department will address means to improve the [capacity of]mobility provided by the existing system through technology like intelligent transportation systems, access management, transportation demand management, and others.

(3) The [D]department will assess safety through projects addressed in paragraph (1) and (2) above. The [D]department will also target specific highway locations for safety improvements.

(4) Adding new capacity projects will be recommended after considering items in paragraph (1), (2) and (3).

(5) All recommendations will be forwarded to the Transportation Commission for its review/action.

**R9[07-68]40-6-4. Prioritization of Major New Capacity Projects List.**

(1) Major [N]new [C]capacity [P]projects will be compiled from the State of Utah Long Range Transportation Plan.

(2) The list will be first prioritized based upon [F]transportation [E]efficiency [F]factors, and [S]safety [F]factors. Each criterion of these factors will be given a specific weight.

(3) The [M]major [N]new [C]capacity [P]projects will be ranked from highest to lowest with priority being assigned to the projects with highest overall rankings.

(4) The [C]commission will further evaluate the projects with highest rankings considering contributing components that include other factors such as [E]economic [D]development.

(5) For each [M]major [N]new [C]capacity [P]project, the [D]department will provide a description of how completing that project will fulfill the [D]department's strategic goals.

(6) In the final selection process, the [C]commission may consider other factors not listed above. Its decision will be made in a public meeting forum.

**R9[07-68]40-6-5. Commission Discretion.**

The [C]commission, in consultation with the department and with MPOs, may establish additional criteria or use other

considerations in prioritizing [M]major [N]new [C]capacity [P]projects. If the [C]commission prioritizes a project over another project that has a higher rank under the criteria set forth in R9[07-68]40-6-4, the [C]commission shall identify the change and the reasons for it, and accept public comment at one of the public hearings held pursuant to R9[07-68]40-6-7.

**R9[07-68]40-6-6. Need for Local Government Participation for Interchanges.**

New interchanges for [E]economic [D]development purposes on existing roads will not be included on the [M]major [N]new [C]capacity [P]project list unless the local government with geographical jurisdiction over the interchange location contributes at least 50% of the cost of the interchange from private, local, or other non-UDOT, funds.

**R9[07-68]40-6-7. Public Hearings.**

Before deciding the final prioritization list and funding levels, the [C]commission shall hold public hearings at locations around the state to accept public comments on the prioritization process and on the merits of the projects.

**KEY:** transportation commission, transportation, roads, capacity

**Date of Enactment or Last Substantive Amendment:** ~~June 1, 2006~~2012

**Notice of Continuation:** December 2, 2010

**Authorizing, and Implemented or Interpreted Law:** 72-1-201; 72-1-304

**Workforce Services, Administration  
R982-401**

**Energy Assistance: General Provisions**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 36193

FILED: 05/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** H.B. 139 which was passed in the 2012 General Session moved the Division of Housing and Community Development, Home Energy Assistance Target (HEAT) from what was known as the Department of Community and Culture (DCC) to the Department of Workforce Service (DWS). This proposed new rule simply changes the rule numbering and moves it to DWS.

**SUMMARY OF THE RULE OR CHANGE:** This new rule text is the same as the old rule. The old rule number was R195-1 and will now be R982-401. The statutory references have been changed to reflect the new code provisions. The old department and division names were also changed to reflect the changes in H.B. 139. No other changes were made.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 35A-8-1403

**ANTICIPATED COST OR SAVINGS TO:**

♦ **THE STATE BUDGET:** There will be no costs or savings to the state budget by this new rule because the rule already existed and any costs or savings were as a result of H.B. 139 and not this new rule.

♦ **LOCAL GOVERNMENTS:** There will be no costs or savings to any local government's budget by this new rule because the rule already existed and any costs or savings were as a result of H.B. 139 and not this new rule.

♦ **SMALL BUSINESSES:** There will be no costs or savings to any small business by this new rule because the rule already existed and any costs or savings were as a result of H.B. 139 and not this new rule.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs or savings to any persons other than small businesses, businesses or local government entities by this new rule because the rule already existed and any costs or savings were as a result of H.B. 139 and not this new rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be costs or savings to any affected persons by this new rule because the rule already existed and any costs or savings were as a result of H.B. 139 and not this new rule.

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

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

WORKFORCE SERVICES  
ADMINISTRATION  
140 E BROADWAY  
SALT LAKE CITY, UT 84111-2333  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

**INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012**

**THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012**

**AUTHORIZED BY:** Kristen Cox, Executive Director

**R982. Workforce Services, Administration.****R982-401. Energy Assistance: General Provisions.****R982-401-1. Purpose.**

The Home Energy Assistance Target (HEAT) program serves to provide assistance in meeting home energy costs for certain low-income families and individuals.

**R982-401-2. Authority.**

These rules are authorized by Section 35A-8-1403.

**R982-401-3. Definitions.**

1. The following definitions apply to R982-401-1 through R982-401-8:

a. "Applicant" means any person requesting assistance under the program discussed.

b. "Assistance" means payments made to individuals under the program discussed.

c. "Assistance unit" or "household" means any individual or group of individuals who are living together as one economic unit and for whom residential heating is customarily purchased in common or who make payments for heat in the form of rent.

d. "Department" means the Department of Workforce Services.

e. "Recipient" or "client" means any individual receiving assistance under the program discussed.

f. "Confidential information" means information that has limited access as provided in Chapter 63G-2.

g. "HEAT" means Home Energy Assistance Target program.

h. "IRS" means Internal Revenue Service.

i. "Moratorium" means a period of time in which involuntary termination for nonpayment by residential customers of essential utility bills is prohibited.

j. "Vulnerability" means having to pay a home heating cost.

**R982-401-4. Client Rights and Responsibilities.**

1. Any client may apply or reapply at any time for the HEAT program by completing and signing an application and turning it in at the correct office.

2. If the client needs help to apply, help will be given by the local HEAT office staff.

3. HEAT workers will identify themselves.

4. The client will be treated with courtesy, dignity and respect.

5. Verification and information will be requested clearly and courteously.

6. If the client must be visited after working hours, an appointment will be made.

7. The client's home will not be entered without permission.

8. Clients may have an agency conference to talk about their case.

9. Clients may look at information concerning their case except confidential information.

10. Anyone may look at a copy of the program manuals located at any local HEAT office or the State energy Assistance Lifeline web site.

11. The client must give complete and correct information and verification.

12. The client must immediately report any address change while under the protection of the moratorium.

13. The client is responsible for repaying any overpayments of assistance.

**R982-401-5. Information.**

The department shall require compliance with Chapter 63G-2.

1. Client may review and copy anything in their case record unless it is confidential.

a. The Client requests for release of information shall be in writing and include:

i. the date;

ii. the name of the person receiving the information;

iii. the time period covered by the information.

b. Information classified as confidential shall not be used in a hearing.

c. Information classified as confidential shall not be used to close, deny or reduce benefits.

d. Clients may copy information from their file. Up to ten pages are free. If the client wants more than ten copies, the client must pay the cost of making the extra copies.

e. The client cannot take the case record from the office.

2. Releasing information to sources other than the client.

a. Information will not be released when it is to be used for a commercial or political purpose.

b. The client's permission will be obtained before sharing any information regarding their case record.

i. Information may be released without the client's permission if the outside source making the request has comparable rules for safeguarding information.

ii. Information may be released in an emergency. The director or designee will decide what constitutes an emergency.

3. Information released without the client's permission.

a. Information, with the exception of confidential information, may be released without the clients permission when that information is to be used in:

i. The administration of any federal or state means-tested program.

ii. Any audit or review of expenditures in connection with the HEAT or Moratorium program.

iii. Any investigation, prosecution, criminal or civil proceeding connected with the administration of the HEAT or Moratorium programs.

4. If a case file is subpoenaed by an outside source, the State HEAT Program Manager is contacted immediately. The State Program manager will consult with the legal counsel for the Housing and Community Development Division (HCD).

**R982-401-6. Complaints and Conciliation.**

1. Complaints

a. The client may make a complaint in person, by phone, or in writing to the local HEAT office.

b. Complaints shall be resolved as quickly as possible.

c. Responses to complaints shall be made in person, by phone or in writing.

2. Conciliation

a. The agency conference will be the conciliation mechanism.

b. Some or all of the following steps may be involved in the agency conference:

i. Contacting the client to identify the issue and barriers which may be preventing client progress.

ii. Reviewing and explaining rules which apply to the issues. These include rules about client rights and responsibilities.

iii. Exploring any alternative actions which may resolve the issues.

c. If the client fails to respond, or chooses not to cooperate in this process, documentation in the case file of attempts made to follow these steps will be considered as compliance with the requirement to attempt conciliation.

**R982-401-7. Hearings.**

The department shall require compliance with Chapter 63G-4.

1. Current HCD practices:

a. HEAT conducts hearings informally.

b. Hearings are held before a state agency.

c. Hearings may be conducted by telephone when the applicant or recipient agrees to the procedure.

d. Requests for a hearing must be in writing. Only a clear expression by the claimant to the effect that they want an opportunity to present their case is required.

e. The applicant or recipient has the option of appealing a hearing decision to either the director of the Department, his or her designee or to the District Court.

f. Final administrative action shall be taken within 90 days from the request for the hearing unless the client asks for a postponement of a scheduled hearing. The period of postponement can be added to the 90 days.

**KEY: client rights, hearings, confidentiality of information**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 9-12-10; 35A-8-1403**

**Workforce Services, Administration  
R982-402  
Energy Assistance Programs  
Standards.**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 36194

FILED: 05/15/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 139 which was passed in the 2012 General Session moved the Division of Housing and Community Development, Home Energy Assistance Target (HEAT) from

what was known as the Department of Community and Culture (DCC) to the Department of Workforce Service (DWS). This proposed new rule simply changes the rule numbering and moves it to DWS.

SUMMARY OF THE RULE OR CHANGE: This new rule text is the same as the old rule. The old rule number was R195-2 and will now be R982-402. The statutory references have been changed to reflect the new code provisions. The old department and division names were also changed to reflect the changes in H.B. 139. No other changes were made.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-8-1403

ANTICIPATED COST OR SAVINGS TO:

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THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Kristen Cox, Executive Director

**R982. Workforce Services, Administration.**

**R982-402. Energy Assistance Programs Standards.**

**R982-402-1. Opening and Closing Dates for HEAT Program.**

1. Each November 1, or the first working day thereafter, the HEAT Program opens for the general population.

2. The HEAT Program closes the following April 30, or the last business day of the month, or when federal LIHEAP funds are exhausted, whichever comes first. If federal LIHEAP funds are yet available, the program may be extended beyond April 30 and through to September 30 with the approval of the State HEAT Program Manager. Applications taken on or before the program closing date may be processed after the program closing date. If funds are exhausted before all applications are processed, notice of non-payment will be sent to the remaining unprocessed applications.

**R982-402-2. U.S. Residence.**

1. To be eligible for HEAT assistance, a person must meet at least one of the criteria for US residence listed below:

a. Be a US born or naturalized citizen as evidenced by any document verifying the individual was born in the US or naturalization papers.

b. Be lawfully admitted into the US for permanent residence as evidenced by an Immigration and Naturalization Service (INS) form I-151 or I-551.

c. Be lawfully admitted into the US as a Refugee as evidenced by an INS form I-94 stamped "Admitted under the Refugee Act of 1980".

d. Be lawfully admitted into the US as a conditional entrant as evidenced by an INS form I-94 stamped "Conditional Entrant".

e. Be lawfully admitted into the US as a special agricultural worker as evidenced by a green colored INS form I-688 stamped PL 99-603 Sec. 210.

2. Persons not eligible to participate in the HEAT program are:

a. Persons who hold INS I-94 who are admitted as temporary entrants.

b. Persons who hold an INS I-688 Sec. 210A (RAWS).

c. Persons who hold an INS I-688 Sec. 245A (AMNESTY).

d. Persons who hold an INS I-688A Sec. 210, 210A, or 245A (SAWS, RAWS, and AMNESTY).

e. Persons who have no registration card.

**R982-402-3. Utah Residence.**

There is no length of residency requirement. Individuals must be living in Utah voluntarily and not for a temporary purpose.

**R982-402-4. Local Residence.**

1. A household's completed HEAT application must be maintained in the office in the area where they reside.

2. Native American Residents of Daggett, Duchesne, and Uintah Counties who are enrolled in any federally recognized Indian Tribe have a choice of applying for utility assistance through the state HEAT program or through the Ute Tribal LIHEAP Program. Clients cannot receive assistance from both programs in the same program year.

3. Native American Residents of Washington, Iron, Millard, and Sevier Counties have a choice of receiving utility assistance through the state HEAT program or through the Paiute Tribal LIHEAP Program. Clients cannot receive assistance from both programs in the same program year.

4. Residents living on the Navajo Indian Reservation in San Juan county may apply for utility assistance through the Navajo Tribe or through the State HEAT Program. They cannot receive assistance through both programs in the same program year.

**R982-402-5. Vulnerability.**

1. An eligible household must be vulnerable to home heating costs.

a. The following households are considered responsible for home heating costs:

i. Households who are presently paying heating costs directly to energy suppliers on currently active accounts.

ii. Households who are currently paying energy costs indirectly through rent.

2. Residents in the following households are not considered responsible for home heating costs and are not eligible for HEAT assistance:

a. Nursing homes;

b. Hospitals;

c. Prisons and jails;

d. Institutions;

e. Alcoholism and drug treatment centers;

f. Group homes administered under a contract with a government agency or administered by a government agency;

g. Households not connected to a heat source;

h. Households whose utility bills are paid regularly by an outside party;

**R982-402-6. Subsidized Housing - Roomers And Boarders.**

Eligibility for HEAT assistance: a household living in a federal, state, or local subsidized housing or anyone renting a room in a private house or apartment must pay an identifiable surcharge for heat in addition to their rent or they must pay a utility bill for heating costs directly to a utility provider.

**R982-402-7. Social Security Numbers.**

1. Adults who apply for HEAT assistance must provide verification of their Social Security Numbers (SSN) or apply for SSN cards. Verification of Social Security Numbers are required for all household members.

a. There are four ways to provide a correct SSN. The client can submit one of these three documents.

i. An official SSN card

ii. Official documents from Social Security Administration including award letters, benefit checks or a Medicare card

iii. An SSA receipt form 5028 or 2880.

iv. Official document from another government agency.

**R982-402-8. Eligible HEAT Household.**

1. Household members need not be related.

2. Multiple dwellings including duplexes and apartment buildings, are considered separate households.

**R982-402-9. Age and Emancipation.**

Household members 18 years of age or older or emancipated are considered adults. A child can be emancipated by age, marriage or court order.

**R982-402-10. Weatherization Referrals.**

Participation in the weatherization program is not a condition of eligibility for HEAT.

**R982-402-11. Energy Crisis Intervention.**

1. A crisis is any weather-related emergency, any supply shortage emergency, or any other household energy-related emergency as approved by the region or state office.

a. Examples of household energy-related emergencies may include energy costs above 25% of the client's gross income, arrearages when the client has demonstrated a good faith attempt to resolve the problem or repairs to prevent loss of energy from a dwelling.

b. Examples of household energy-related non-emergencies may include payments that will create a credit balance on a utility account, payments on utility accounts previously sent to a collection agency or capital improvements to rental property.

2. To be eligible for energy crisis intervention, a household must be eligible for HEAT during the same HEAT program year.

a. If the local office determines that a household is eligible to receive energy crisis intervention benefits and is in a life threatening situation, energy crisis intervention benefits will be provided within 18 hours. Regular energy crisis intervention benefits will be provided within 48 hours of eligibility determination.

b. The director or HEAT supervisor must approve all crisis intervention expenditures.

c. HEAT payments are issued to the vendor. In emergencies a check may be issued to the client.

d. Energy crisis intervention payments are limited to a maximum of \$500 per household per utility (e.g. gas and electric) per HEAT program year unless prior approval for an amount larger than \$500 per utility is obtained from the supervisor or state office.

**R982-2-12. Supplemental Programs.**

Household who qualify for HEAT assistance may also receive supplemental payments from other utility programs, such as "Reach", "Lend-A-Hand", and Catholic Community Services utility fund.

**R982-402-13. Security Deposits.**

1. Public Service Commission (PSC) Regulated Utilities

a. A PSC regulated utility is required to waive the security deposit requirement for all Heat and Moratorium clients during the period of the Moratorium.

b. Monies received by a regulated utility from third-party sources, including monies provided by HEAT, REACH, CONCERN or similar programs, shall not be applied to the security deposit.

2. Non Regulated Utilities

a. If the company has signed a HEAT contract, the company has agreed not to charge a security deposit to a HEAT client from November 15th through March 15th. This does not apply to the service initiation fees that are routinely charged as a condition of service.

**R982-402-14. Consumer Complaints.**

1. Public Service Commission (PSC) Regulated Utilities

a. Consumer complaints against a PSC regulated utility should be referred to the Public Service Commission.

2. Non Regulated Utilities

a. Consumer complaints against a non regulated utility should be referred directly to the individual utility company.

**R982-402-15. Credit Balances on Utility Accounts.**

1. If the household discontinues service with their utility supplier, and the household so elects, the disconnecting supplier will forward any HEAT credit balance remaining on the account to the household's new utility company. The new utility company must operate in Utah. The household must furnish, to the disconnecting utility supplier, the name and address of the new utility company within 30 days after termination of service.

2. If the household elects to have the HEAT credit balance refunded directly to them, the disconnecting utility supplier will do so if the household still resides in Utah. The household must furnish, to the disconnecting utility supplier, their new address within 30 days after termination of service. Otherwise, the credit balance shall be refunded to the HEAT Program.

3. In no case shall HEAT credit balances be forwarded to utility companies not operating in Utah or to clients no longer residing in Utah.

4. If the client fails to give the disconnecting utility company the information for either option one or option two listed above, the utility company can hold the credit balance for an additional 30 days. If reconnection with the same utility has not occurred, any remaining credit balance must be refunded to the HEAT program.

5. Once credit balances are refunded to the HEAT program they become part of the general HEAT budget and are redistributed in the form of benefits to additional eligible households.

**KEY: energy assistance, residency requirements, opening and closing dates, HEAT**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 9-12-10**

**Workforce Services, Administration**  
**R982-403**  
**Energy Assistance Income Standards,**  
**Income Eligibility, and Payment**  
**Determination**

**NOTICE OF PROPOSED RULE**

(New Rule)  
 DAR FILE NO.: 36196  
 FILED: 05/15/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 139 which was passed in the 2012 General Session moved the Division of Housing and Community Development, Home Energy Assistance Target (HEAT) from what was known as the Department of Community and Culture (DCC) to the Department of Workforce Service (DWS). This proposed new rule simply changes the rule numbering and moves it to DWS.

SUMMARY OF THE RULE OR CHANGE: This new rule text is the same as the old rule. The old rule number was R195-3 and will now be R982-403. The statutory references have been changed to reflect the new code provisions. The old department and division names were also changed to reflect the changes in H.B. 139. No other changes were made.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-8-1403

ANTICIPATED COST OR SAVINGS TO:

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- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no costs or savings to any persons other than small businesses, businesses or local government entities by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

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THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Kristen Cox, Executive Director

**R982. Workforce Services, Administration.**  
**R982-403. Energy Assistance Income Standards, Income Eligibility, and Payment Determination.**  
**R195-403-1. Energy Assistance Income Standards.**

For HEAT assistance cases, the local HEAT office shall determine the countable income of the household.

**R982-403-2. Countable Income.**

Countable income is gross income minus exclusions, disregards, and deductions.

**R982-403-3. Unearned Income.**

1. Countable unearned income is cash received by an individual for which no service is performed.
2. Sources of unearned income include the following:
  - a. Pensions and annuities including Railroad Retirement, Social Security, Supplemental Security Income, Veteran's benefits and Civil Service retirement benefits;
  - b. Disability benefits including Industrial Compensation, sick pay, mortgage insurance and paycheck insurance;
  - c. Unemployment Compensation;
  - d. Strike or union benefits;
  - e. Veteran's benefits;
  - f. Child support and alimony;
  - g. Veteran's Educational Assistance intended for family members;
  - h. Trust payments;
  - i. Tribal fund gratuities unless excluded by law.
  - j. Money from sales contracts and mortgages;
  - k. Personal injury settlements;

l. Financial payments made by the Department of Workforce Services;

m. Income from Rental Property. If the client also manages the property, the income is earned.

n. Temporary Assistance to Needy Families (TANF)

o. Emergency Work Program (EWP)

p. Work allowances, included WHAT

q. Foster Care Payments

r. Severance pay paid out weekly.

**R982-403-4. Earned Income.**

1. Earned income is income in cash or in kind received by an individual for which a service is performed.

2. Sources of earned income include the following:

a. Wages, including military base pay;

b. Salaries;

c. Commissions;

d. Rent amount, when client works in return for rent;

e. Monies from self-employment including baby-sitting;

f. Tips;

g. Sale of livestock and poultry;

h. Work Study;

i. University Year for Action;

j. Military payments to cover Basic Allowance for Quarters and Basic Allowance for Substance;

k. Money the employee chooses to have withheld for benefit plans including Flex Plans and Cafeteria Plans.

**R982-403-5. Income Exclusions.**

1. The following definitions apply to this section:

a. "Bona fide loan" means a loan which has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment.

b. "JTPA" means Jobs Training Partnership Act.

2. The income listed below is not counted:

a. Earned income of an unemancipated household member.

b. Cash over which the household has no control.

c. Reimbursements for expenses directly related to employment, training, schooling, and volunteer activities.

d. Reimbursements for incurred medical expenses.

e. Bona fide loans.

f. Compensation paid to individual volunteers under the Retired Senior Volunteers Program, Green Thumb and the Foster Grandparent Program.

g. Incentive and training expenses paid by the HEAT Self Sufficiency program.

h. Earned Income Tax Credit.

i. Financial payments from JTPA.

j. Value of Food Stamp Coupons, Food Stamp Cash Out checks, and surplus commodities donated by the U.S. Department of Agriculture.

k. Educational loans, grants, scholarships or college work study with the exception of Veterans Educational Assistance intended for the family members of the student. The student's portion is exempt.

l. Interest or Dividend Income.

m. Compensation or reimbursement paid to Volunteers In Service To America, Senior Health Aides, Senior Core of Retired Executives, Senior Companions and ACE.

n. Church cash assistance and voluntary cash contributions by others unless received on a regular basis.

o. Rental subsidies and relocation assistance.

p. Utility subsidies.

q. Any funds, payments, or tribal benefits required by Public Law 98-64, Public Law 93-134(7), Public Law 92-254, Public Law 94-540, Public Law 94-114 and Public Law 96-240(9).

r. Payments required by Public Law 92-203.

s. Payments required by Public Law 101-201 or Public Law 101-239(10405).

t. Payments required by Public Law 100-383.

u. Payments required by Public Law 101-426.

v. Payments required by Public Law 100-707.

**R982-403-6. Income Disregard.**

1. The following definition applies to this section:

a. "Disregard" means a portion of income that is not counted.

2. 20% of earned income, including self-employment earned income, will be disregarded.

3. For self-employed households the cost of doing business will be deducted. The 20% disregard will be applied to the remainder.

**R982-403-7. Income Deductions.**

1. Medical

A deduction for payments on uncompensated medical bills will be allowed when those payments are actually made by a member of the household during the same time period as the income being counted.

a. The client must verify the payment was made directly to a medical provider in the month prior to the month of application and that they will not be reimbursed by a third party.

b. Health and accident insurance payments, dental insurance payments, and Medical Assistance Only (MAO) payments are considered medical expenses.

2. Child Support and Alimony

a. A deduction for child support and alimony payments will be allowed when those payments were actually made by a member of the household during the same time period as the income being counted.

b. The client must verify the payment was actually made directly to the custodial adult or through the court.

c. Payments in lieu of child support and alimony, including car payments or mortgage payments, are deductible.

**R982-403-8. Self-Employment Income.**

1. A self-employed person actively earns income directly from their own business, trade, or profession.

2. Self-employment income will be determined by using the previous year's tax return or as follows:

a. All gross self-employment income is counted.

i. Capital gains will be included.

ii. The proceeds from the sale of capital goods or equipment will be calculated in the same way as a capital gain for

Federal income tax purposes. Even if only part of the proceeds from the sale of capital goods or equipment is taxed, the full amount of the capital gain will be counted as income for HEAT program purposes.

b. The cost of doing business will be deducted.

i. Allowable business costs include:

A. labor;

B. stock;

C. raw materials;

D. seed and fertilizer;

E. interest paid toward the purchase of income producing property;

F. insurance premiums;

G. taxes paid on income producing property;

ii. Transportation costs will be allowed only if the person must move from place to place in the course of business.

iii. The following items will not be allowed as business expenses:

A. Payments on the principal of the purchase price of income producing real estate and capital assets, equipment, machinery and other durable goods.

B. Net losses from previous periods.

C. Federal, state and local income taxes, money set aside for retirement purposes, and other work related personal expenses.

D. Depreciation.

**R982-403-9. HEAT Financial Eligibility and Payment Determination.**

1. All countable income received in the previous calendar month for the current applicant household will be used to determine eligibility. Terminated income received in the previous calendar month or the month of application is exempt if no new source of income is identified. Failure to provide verification of income will result in the HEAT application being denied.

Verification of countable income includes preceding or current month's SSI or SSA checks, divorce decrees, award letters, or current check stubs if the income is stable and the amount is the same as the actual income received in the previous calendar month.

**KEY: energy assistance, self-employment income, income eligibility, payment determination**

**Date of Enactment or Last Substantive Amendment: 2012 Authorizing, and Implemented or Interpreted Law: 9-12-10; 35A-8-1403**

**Workforce Services, Administration**  
**R982-404**  
**Energy Assistance: Asset Standards**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 36197

FILED: 05/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** H.B. 139 which was passed in the 2012 General Session moved the Division of Housing and Community Development, Home Energy Assistance Target (HEAT) from what was known as the Department of Community and Culture (DCC) to the Department of Workforce Service (DWS). This proposed new rule simply changes the rule numbering and moves it to DWS.

**SUMMARY OF THE RULE OR CHANGE:** This new rule text is the same as the old rule. The old rule number was R195-4 and will now be R982-404. The statutory references have been changed to reflect the new code provisions. The old department and division names were also changed to reflect the changes in H.B. 139. No other changes were made.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 35A-8-1403

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** There will be no costs or savings to the state budget by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

◆ **LOCAL GOVERNMENTS:** There will be no costs or savings to any local government's budget by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

◆ **SMALL BUSINESSES:** There will be no costs or savings to any small business by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs or savings to any persons other than small businesses, businesses or local government entities by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be no costs or savings to any affected persons by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

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

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

**WORKFORCE SERVICES  
 ADMINISTRATION  
 140 E BROADWAY**

SALT LAKE CITY, UT 84111-2333  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Kristen Cox, Executive Director

**R982. Workforce Services, Administration.**  
**R982-404. Energy Assistance: Asset Standards.**  
**R982-404-1. Resource Limits.**

The value of any household assets, either real or personal property, will not be counted when determining eligibility for the HEAT program.

**KEY: energy assistance, financial disclosures**  
**Date of Enactment or Last Substantive Amendment: 2012**  
**Authorizing, and Implemented or Interpreted Law: 9-12-10; 35A-8-1403**

**Workforce Services, Administration**  
**R982-405**  
**Energy Assistance: Program Benefits**

**NOTICE OF PROPOSED RULE**  
 (New Rule)  
 DAR FILE NO.: 36207  
 FILED: 05/15/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 139 which was passed in the 2012 General Session moved the Division of Housing and Community Development, Home Energy Assistance Target (HEAT) from what was known as the Department of Community and Culture (DCC) to the Department of Workforce Service (DWS). This proposed new rule simply changes the rule numbering and moves it to DWS.

SUMMARY OF THE RULE OR CHANGE: This new rule text is the same as the old rule. The old rule number was R195-5 and will now be R982-405. The statutory references have been changed to reflect the new code provisions. The old department and division names were also changed to reflect the changes in H.B. 139. No other changes were made.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-8-1403

ANTICIPATED COST OR SAVINGS TO:

- ♦ THE STATE BUDGET: There will be no costs or savings to the state budget by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.
- ♦ LOCAL GOVERNMENTS: There will be no costs or savings to any local government's budget by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.
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COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no costs or savings to any affected persons by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

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

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 SALT LAKE CITY, UT 84111-2333  
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THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Kristen Cox, Executive Director

**R982. Workforce Services, Administration.**  
**R982-405. Energy Assistance: Program Benefits.**  
**R982-405-1. Program Benefits.**

Each household may apply for HEAT Crisis assistance up to a maximum of \$500 per utility (two separate utilities) per program year - October 1 through September 30. Any amount that

adds up over \$500, whether it is made through a combination of HEAT Crisis payments, or one crisis payment throughout the year must get prior approval from the State.

**R982-405-2. Standard Payment Levels.**

The energy assistance benefit payment level is based on a household's income and energy burden (energy burden is the proportion of a household's income used to pay for home heating). For example, households with the lowest income and the highest energy burden will receive the highest energy assistance benefit payment available. Households with children under age six years, the elderly (age 60 plus years), and/or disabled people may receive an additional energy assistance benefit amount.

**R982-405-3. Benefit Payments.**

1. Direct client payments will be made only when a contract with the primary heat source cannot be obtained or if the primary heat source is the landlord.

**R982-405-4. Split Payments.**

1. If the primary heat source's payment account is current, up to 50% of the HEAT payment may be made to the client. Payment disbursements may be split only in the percentages listed below:

- a. 100%
- b. 50%/50%
- c. 75%/25%

**KEY: energy assistance, benefits**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 9-12-10: 35A-8-1403**

**Workforce Services, Administration**  
**R982-406**  
**Energy Assistance: Eligibility**  
**Determination**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 36209

FILED: 05/15/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 139 which was passed in the 2012 General Session moved the Division of Housing and Community Development, Home Energy Assistance Target (HEAT) from what was known as the Department of Community and Culture (DCC) to the Department of Workforce Service (DWS). This proposed new rule simply changes the rule numbering and moves it to DWS.

SUMMARY OF THE RULE OR CHANGE: This new rule text is the same as the old rule. The old rule number was R195-6 and will now be R982-406. The statutory references have been changed to reflect the new code provisions. The old department and division names were also changed to reflect the changes in H.B. 139. No other changes were made.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-8-1403

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There will be no costs or savings to the state budget by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.
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COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no costs or savings to any affected persons by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

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

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 ADMINISTRATION  
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 SALT LAKE CITY, UT 84111-2333  
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THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Kristen Cox, Executive Director

**R982. Workforce Services, Administration.**

**R982-406. Energy Assistance: Eligibility Determination.**

**R982-406-1. Eligibility Determination.**

The local HEAT Office shall determine a household's eligibility for HEAT by applying the program and income standards to the household's circumstances, and by establishing the validity and accuracy of the information given by the applicant household.

**R982-406-2. Acceptable Verification.**

1. All factors of eligibility must be verified.
2. It is the applicant's responsibility to obtain acceptable verification.
3. If the household refuses to obtain the required verification and refuses to assist the HEAT Office in obtaining the verification, the application will be denied.

**R982-406-3. Determination of The Primary Fuel Type.**

The primary fuel type is the type of fuel for which the house is designed. If the household is actually using a less expensive fuel type as the primary heat source, the fuel type is the type of heat the household is actually using.

**R982-406-4. Date of Application.**

The date of application is the date the application is accepted at the correct HEAT office.

**R982-406-5. Date of Approval or Denial.**

The date of approval or denial is the action date of the application including applications forwarded by Outreach workers.

**R982-406-6. Date of Payment.**

The payment date is the date the HEAT check is actually issued.

**KEY: energy assistance**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 9-12-10; 35A-8-1403**

Workforce Services, Administration  
**R982-407**  
 Energy Assistance: Records and  
 Benefit Management

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 36210

FILED: 05/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** H.B. 139 which was passed in the 2012 General Session moved the Division of Housing and Community Development, Home Energy Assistance Target (HEAT) from what was known as the Department of Community and Culture (DCC) to the Department of Workforce Service (DWS). This proposed new rule simply changes the rule numbering and moves it to DWS.

**SUMMARY OF THE RULE OR CHANGE:** This new rule text is the same as the old rule. The old rule number was R195-1 and will now be R982-401. The statutory references have been changed to reflect the new code provisions. The old department and division names were also changed to reflect the changes in H.B. 139. No other changes were made.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 35A-8-1403

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There will be no costs or savings to the state budget by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.
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SALT LAKE CITY, UT 84111-2333  
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THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Kristen Cox, Executive Director

**R982. Workforce Services, Administration.**

**R982-407. Energy Assistance: Records and Benefit Management.**

**R982-407-1. Records Management.**

1. Documentation of the eligibility decision and amount of HEAT assistance is kept in the household's HEAT folder in the local HEAT office. Every person who completes an application shall have a case record.

2. HEAT case records shall not be removed from the local HEAT Office except by subpoena or request of the State HEAT Office (SHO) or in accordance with the Archives Schedule.

**R982-407-2. Notification.**

1. The local HEAT office shall provide all HEAT applicants with a written notice of any action that affects the amount, form, or requirements of the assistance.

2. Written notice shall include an explanation of the action, the reason for the action, and the effective date of the action. The notice shall also include an explanation of the applicant's hearing rights and how to file a hearing if the applicant is not satisfied with the decision on the case.

**R982-407-3. Checks.**

1. All HEAT payments to clients or vendors are issued by check.

2. If the payee dies before endorsing the check, the local Heat Office director or designee may authorize another person to endorse the check to use it on behalf of the payee or other person in the case.

3. Lost or stolen HEAT checks.

a. The client must report a lost or stolen check within 29 days of the issuance date. A check that is reported lost or stolen 30 days or more after the issuance date will not be replaced.

b. The client may report this by telephone or in person.

c. When a report is received, the HEAT worker or supervisor should review all office information (payroll, energy screens, case file, etc) to verify the information.

d. A replacement HEAT check which is lost or stolen after the payee receives it will not be issued.

**KEY: energy assistance, benefits, government documents, state HEAT office records**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 9-12-10;35A-8-1403**

**Workforce Services, Administration**  
**R982-408**  
**Energy Assistance: Special State Programs**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 36212

FILED: 05/15/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 139 which was passed in the 2012 General Session moved the Division of Housing and Community Development, Home Energy Assistance Target (HEAT) from what was known as the Department of Community and Culture (DCC) to the Department of Workforce Service (DWS). This proposed new rule simply changes the rule numbering and moves it to DWS.

SUMMARY OF THE RULE OR CHANGE: This new rule text is the same as the old rule. The old rule number was R195-8 and will now be R982-408. The statutory references have been changed to reflect the new code provisions. The old department and division names were also changed to reflect the changes in H.B. 139. No other changes were made.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-8-1403

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There will be no costs or savings to the state budget by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

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

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140 E BROADWAY  
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THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Kristen Cox, Executive Director

**R982. Workforce Services, Administration.**  
**R982-408. Energy Assistance: Special State Programs.**  
**R982-408-1. Moratorium.**

The department shall require compliance with Section 35A-8-1501.

1. The moratorium program protects eligible persons from winter utility shut offs.

2. A household can apply for moratorium protection only one time per utility per program year.

3. The protection of the Moratorium lasts from November 15 through the following March 15.

The Department has the option of beginning The Moratorium program earlier or extending it later when severe weather conditions warrant such action.

4. The moratorium applicant must:

a. Be the adult residential account holder, or the adult resident applying for service. A residential utility customer is any adult person who has an account with a utility or any adult who is applying for residential utility service;

b. Be living at the address where Moratorium protection is needed;

c. Have a termination notice from the utility company or have been refused service if the utility is not active;

d. Have applied for HEAT

e. Have applied for assistance through the American Red Cross

f. Have made a good faith effort to pay their utility bill on a consistent basis during the moratorium

5. In addition they must indicate that the client meets at least one of the following criteria:

A. Gross household income in the month of or the month prior to the month of the moratorium application must be less than 125% of the federal poverty limit.

B. have suffered a medical or other emergency in either the month of application or the month prior to the month of application.

C. loss of employment in either the month of application or the month prior to the month of application.

D. 50% drop in income in either the month of application or the month prior to the month of application.

5. Required Verification

a. All factors of eligibility must be verified.

b. It is the applicant's responsibility to obtain acceptable verification.

c. If the household refuses to obtain the required verification and refuses to assist the local HEAT office in obtaining the verification, the moratorium application will be denied.

6. Good Faith Payment Effort

a. Each month during the moratorium the household must pay the utility company at least 5% of the gross income received in the month prior to the month of the moratorium application, unless the home is heated by electricity.

b. If the home is heated by electricity the household must pay the utility company at least 10% of the gross income received in the month prior to the month of application.

c. The minimum allowed monthly payment is \$5.00 even if the client has no income in the month prior to the month of application.

7. In order to activate the moratorium, including the restoration of service to those households which are shut off, the first good faith payment is due at the time of application. Payments for subsequent months are due on or before the last day of each month.

8. For clients who defaulted during a previous Moratorium season the default payment is due before the client is eligible for protection under the current moratorium.

a. When a client defaults on a moratorium application, the client is not eligible for moratorium protection on that particular utility for the remainder of that moratorium season.

b. The client must pay the amount of any previous defaulted payment before they are eligible for the moratorium.

c. When a utility company notifies the HEAT office of a client default, the HEAT office will notify the client that of the default.

9. Regulated companies operating in Utah are subject to the Moratorium with the exception of the Mexican Hat Association.

**KEY: energy assistance, energy industries**  
**Date of Enactment or Last Substantive Amendment: 2012**  
**Authorizing, and Implemented or Interpreted Law: 9-12-10:35A-8-1403**

Workforce Services, Administration  
**R982-501**  
 Olene Walker Housing Loan Fund  
 (OWHLF)

**NOTICE OF PROPOSED RULE**

(New Rule)  
 DAR FILE NO.: 36213  
 FILED: 05/15/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 139 which was passed in the 2012 General Session moved the Olene Walker Housing Loan Fund from what was known as the Department of Community and Culture (DCC) to the Department of Workforce Service (DWS). This proposed new rule simply changes the rule numbering and moves it to DWS.

SUMMARY OF THE RULE OR CHANGE: This new rule text is the same as the old rule. The old rule number was R235-1 and will now be R982-501. The statutory references have been changed to reflect the new code provisions. The old department and division names were also changed to reflect the changes in H.B. 139. No other changes were made.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-8-504

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There will be no costs or savings to the state budget by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.
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DIRECT QUESTIONS REGARDING THIS RULE TO:

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THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Kristen Cox, Executive Director

**R982. Workforce Services, Administration.**  
**R982-501. Olene Walker Housing Loan Fund (OWHLF).**  
**R982-501-1. Authority.**

(1) Pursuant to Section 35A-8-501 et seq., Utah Code, the Olene Walker Housing Loan Fund Board (OWHLF) determines how federal and state monies deposited to the fund shall be allocated and distributed.

(2) The Program Guidance and Rules govern the allocation and distribution of funds. The Program Guidance and Rules may be amended from time to time as new guidelines and regulations are issued or as the Board deems necessary to carry out the goals of the OWHLF.

**R982-501-2. Purpose.**

(1) Pursuant to Subsection 35A-8-502(1)(a), the Housing and Community Development Division (HCD) shall administer the OWHLF as the designee of the executive director of the Department of Workforce Services (DWS).

(2) The objective of the OWHLF is to rehabilitate or develop housing that is affordable to very low, low and moderate-income persons through a fair and competitive process.

(3) In administering this fund, this rule incorporates by reference 24 CFR 84-85 as authorized under Utah Code Annotated Section 35A-8-503 through 508.

**R982-501-3. Definitions.**

In addition to terms defined in Section 35A-8-501:

- (1) "Application" means the form provided and required by HCD to be submitted to request funds from the OWHLF.
- (2) "Board" means the Olene Walker Housing Loan Fund Board.
- (3) "BRC" means a Board Review Committee(s), consisting of members selected by the Board.
- (4) "Consolidated Plan" means a plan of up to five years in length that describes community needs, resources, priorities and proposed activities to be undertaken under certain HUD programs, including Community Development Block Grant (CDBG), HOME, Emergency Shelter Grant Housing Opportunities for Persons with AIDS (HOPWA), and other partner funding sources.
- (5) "Subsidy-layering" means an evaluation of the project conducted by HCD staff to ensure that the lowest amount of HOME and other funds necessary to provide affordable housing are invested in the project.
- (6) "HOME, CDBG, or HOPWA" means HUD programs that provide funds for housing and community needs.
- (7) "Affordable Housing" means assisting persons at or below 80% of area median income (as defined by HUD) to find decent, and safe housing at a reasonable cost.
- (8) "Loan" means funds provided with the requirement of repayment of principal and interest over a fixed period of time.
- (9) "Grant" means funds provided with no requirement or expectation of repayment.
- (10) "Local Agency" means public housing authorities, counties, cities, towns, and association of governments.
- (11) "Funding Cycle" means period of time in which OWHLF funds are allocated.
- (12) "Allocation Plan" means an annual plan that describes housing needs, priorities, funding sources, and the process and policies to request funds from the OWHLF.
- (13) "Other Funding Sources" means funds from other federal programs and community partners (including CRA funds).

**R982-501-4. Applicant and Project Eligibility.**

- (1) The Board shall consider for funding, only those applications submitted by an eligible applicant as defined in Section 35A-8-506, Utah Code.
- (2) The Board shall consider for funding only those eligible projects as defined in Section 35A-8-505, Utah Code and meet one or more of the following priorities established by the Board:
  - (a) Efficiently utilize funds, through cost containment and resource leveraging.
  - (b) Provide that largest numbers of units shall charge the lowest monthly rental amount at levels that are attainable over the longest periods of time.
  - (c) Provide the most equitable geographic distribution of resources.
  - (d) Provide housing for special-needs populations including: (i) transitional housing, (ii) elderly and frail elderly housing, and (iii) housing for physically and mentally disabled persons.
  - (e) Strengthen and expand the abilities of local governments, non-profits organizations and for-profit organizations to provide and preserve affordable housing.

(f) Assist various Community Housing Development Organizations (CHDO) in designing and implementing strategies to create affordable housing, and

(g) Promote partnerships among local government, non-profit and for-profit organizations, and CHDO.

(h) Meet the goals of the Utah Consolidated Plan and any local area plans regarding affordable housing.

**R982-501-5. Application Requirements.**

(1) OWHLF funds shall be distributed in accordance with an application process defined in this rule. Funds shall be issued during a scheduled funding cycle. The Board conducts four cycles during a calendar year.

(2) An applicant seeking to obtain funds shall submit a completed application form furnished by the HCD prior to the cycle's deadline.

(3) All completed applications will be reviewed by staff, which will present the application to the Board Review Committee (BRC) during the cycle in which the application is received. Applications will be ranked and scored according to how completely each application meets the criteria established by the Board.

(4) Applicants submitting incomplete applications will be notified of deficiencies. Each incomplete request(s) will be held in a file, pending submission of all required information by the applicant.

(5) A decision on each application will generally be made no later than the award notification date for each cycle. The Board may delay final decisions in order to accommodate scheduling and processing problems peculiar to each cycle.

(6) The Board may modify a given cycle and change submission deadlines to dates other than those previously scheduled. In doing so, the Board will make reasonable efforts to inform interested parties of such modifications.

(7) For Single-Family Program applicants, the Board may delegate responsibilities to local agencies for application intake, loan underwriting, processing, approval, project development, construction and weatherization oversight, and management. Local agencies will be governed by policies and procedures approved by the Board.

**R982-501-6. Project Selection Process.**

(1) The BRC shall select applications for funding according to the following process and requirements as outlined in the Allocation Plan:

- (a) Project underwriting and threshold review.
- (b) Scoring and documentation review.
- (c) Market study and project reasonableness review.
- (d) Calculation of OWHLF subsidy amount.

**R982-501-7. Funding Approval.**

(1) After each application has been processed and the funding amount has been determined for a given cycle, staff will present projects to the BRC at its next regularly scheduled meeting. The BRC shall hear comments from applicants at the committee meeting and obtain sufficient information to inform the full board about the project, its financial structure, and related general information.

(2) A copy of the BRC recommendation, including all conditional requirements imposed by the BRC and staff, shall become a part of the permanent record and placed in the applicant's file. Recommendations will be presented at the next regularly scheduled quarterly Board meetings. The board will approve, deny, or delay the application.

(3) An applicant may request a change in the terms as outlined in the original motion of the board by reapplying to HCD, with all updated, applicable financial information included, in subsequent funding rounds.

**R982-501-8. Project Reporting.**

(1) All projects receiving funding approval will be required to provide status reports at a scheduled frequency, in a format prescribed by the staff, and approved by the Board.

(2) Projects that have not begun construction within one year from the date of approval for funding must submit to staff a summary of significant progress made to date and an explanation of why the project is behind schedule. Staff will present this information to the BRC.

(3) The BRC may choose to extend the period of the project, to rescind the approval, or require the project to re-apply in accordance with current parameters.

**R982-501-9. Compliance Monitoring.**

(1) Monitoring of the project by HCD staff will be completed to ensure program compliance. Program non-compliance or lack of response to inquiries from staff will be reported to the HCD administration, the Board, HUD, and the Attorney General's Office as deemed necessary.

**R982-501-10. Administration Fees.**

(1) The local agencies listed below may use previously designated funds for project administration costs as approved by the Board. Such projects are still subject to on-site administrative supervision, staff oversight, or monitoring by HDC. The agencies include:

- (a) Public Housing Authorities.
- (b) Counties, cities and towns.
- (c) Associations of Governments.

(2) The agencies shall be expected to demonstrate a significant level of business management and administrative experience and ability in order to receive administrative funds. They shall also demonstrate an acceptable level of background and experience to perform housing rehabilitation/reconstruction and implementation functions.

**R982-501-11. Financial Subsidy Review.**

(1) HCD staff shall conduct "subsidy layering" reviews on projects that directly or indirectly receive financial assistance from the U.S. Department of Agriculture Rural Development Service ("RD or RDS"), the U.S. Department of Housing and Urban Development ("HUD") exclusive of HOME, CDBG, or HOPWA assistance, (i.e., the "Subsidy Layering Review") and other federal agencies.

(2) Subsidy Layering Reviews shall be conducted in accordance with guidelines established by the cognizant federal agency with respect to the review of any financial assistance

provided by or through these agencies to the project and shall include a review of:

(a) The amount of equity capital contributed to a project by investors.

(b) The project costs including developer fees, and

(c) The contractor's profit, syndication costs and rates.

(3) In the course of conducting the review, the staff may disclose or provide a copy of the application to the cognizant federal agency for its review and comments and shall take any other action deemed necessary to satisfy its obligations under the respective review requirements. HCD staff will consider the results of any review completed by Utah Housing Corporation (UHC).

**R982-501-12. Sharing of Information.**

(1) Application information may be shared with participating lenders, IRS and UHC.

(2) In administering this program, the HCD staff shall conduct all functions in accordance with the provisions of the state GRAMA statute and the federal Freedom of Information Act.

**R982-501-13. Portfolio Management.**

(1) HCD staff will track the status of the OWHLF portfolio to assess any problem loans needing special loan servicing. Staff will make recommendations to the BRC regarding loan review, changes, and approvals.

(2) HCD staff will work with the board and the Attorney General's office to develop policies and procedures to govern special portfolio management issues such as loan restructuring, bankruptcies, and asset disposal.

**KEY: Olene Walker Housing Loan Fund, affordable housing, housing development**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 9-4-704(5)(a);35A-8-504**

Workforce Services, Housing and  
Community Development  
**R990-8**  
Permanent Community Impact Fund  
Board Review and Approval of  
Applications for Funding Assistance

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 36216

FILED: 05/15/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 139 which was passed in the 2012 General Session moved the Division of Housing and Community Development from what was known as the Department of

Community and Culture (DCC) to the Department of Workforce Service (DWS). This proposed new rule simply changes the rule numbering and moves it to DWS.

**SUMMARY OF THE RULE OR CHANGE:** This new rule text is the same as the old rule. The old rule number was R199-8 and will now be R990-8. The statutory references have been changed to reflect the new code provisions. The old department and division names were also changed to reflect the changes in H.B. 139. No other changes were made.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 35A-8-306

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** There will be no costs or savings to the state budget by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.
- ◆ **LOCAL GOVERNMENTS:** There will be no costs or savings to any local government's budget by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.
- ◆ **SMALL BUSINESSES:** There will be no costs or savings to any small business by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs or savings to any persons other than small businesses, businesses or local government entities by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will be no costs or savings to any affected persons by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

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

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

WORKFORCE SERVICES  
HOUSING AND COMMUNITY DEVELOPMENT  
140 E BROADWAY  
SALT LAKE CITY, UT 84111-2333  
or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Kristen Cox, Executive Director

**R990. Workforce Services, Housing and Community Development.**

**R990-8. Permanent Community Impact Fund Board Review and Approval of Applications for Funding Assistance.**

**R990-8-1. Purpose.**

The Permanent Community Impact Fund Board (the Board) provides loans and/or grants to State agencies and subdivisions of the State which are or may be socially or economically impacted, directly or indirectly, by mineral resource development. Authorization for the Board is contained in Section 35A-8-301 et seq.

**R990-8-2. Eligibility.**

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

Eligible projects include: a) planning; b) the construction and maintenance of public facilities; and c) the provision of public services. "Public Facilities and Services" means public infrastructure or services traditionally provided by local governmental entities.

Eligible applicants include state agencies and subdivisions of the state and Interlocal agencies as defined in Subsection 35A-8-302, which are or may be socially or economically impacted, directly or indirectly, by mineral resource development.

**R990-8-3. Application Requirements.**

A. Applicants shall submit their funding requests on the Board's most current application form, furnished by the Housing and Community Development Division (HCD). Applicants submitting incomplete applications will be notified of deficiencies and their request for funding assistance will be held by the Board's staff pending submission of the required information by the applicant.

Complete applications which have been accepted for processing will be placed one of the Trimester's upcoming "Application Review Meeting" agendas.

B. Additional general information not specifically covered by the application form should also be furnished to the Board and its staff when such information would be helpful to the Board in appraising the merits of the project.

C. For proposed drinking water and sewer projects, sufficient technical information must be provided to the Utah Department of Environmental Quality (DEQ) to permit their review. The Board will not act on any drinking water or sewer project unless they receive such review from DEQ.

D. Planning grants and studies normally require a fifty percent cash contribution by the applicant.

E. The Board requires all applicants to have a vigorous public participation effort. All applicants shall hold at least one formal public hearing to solicit comment concerning the size, scope and nature of any funding request prior to its submission to the Board. In that public hearing, the public shall be advised the financing may be in the form of a loan, even if the application requests a grant.

Complete and detailed information shall be given to the public regarding the proposed project and its financing. The information shall include the expected financial impact including potential repayment terms and the costs to the public as user fees, special assessments, or property taxes if the financing is in the form of a loan. The Board may require additional public hearings if determines the applicant did not adequately disclose to the public the impact of the financial assistance during the initial public hearing.

When the Board offers the applicant a financial package that is substantially different in the amounts, terms or conditions initially requested by an applicant, the Board may require additional public hearings to solicit public comment on the modified funding package.

A copy of the public notice and transcript or minutes of the hearing shall be attached to the funding request. Public opinion polls may be submitted in addition to the transcript or minutes.

F. Letters of comment outlining specific benefits (or problems) to the community and State may be submitted with the application.

G. All applicants are required to notify in writing the applicable Association of Governments of their intention to submit a funding request to the Board. A copy of any comments made by the Association of Governments shall be attached to the funding request. It is the intent of the Board to encourage regional review and prioritization of funding requests to help ensure the timely consideration of all worthwhile projects.

H. Section 9-8-404 requires all state agencies before they expend any state funds or approves any undertaking to take into account the effect of the undertaking on any district, site, building structure or specimen that is included in or eligible for inclusion in the National Register of Historic Places or the State Register and to allow the state historic preservation officer (SHPO) a reasonable opportunity to comment on the undertaking or expenditure. In order to comply with that duty, the Board requires all applicants provide the Board's staff with a detailed description of the proposed project attached to the application. The Board's staff will provide SHPO with descriptions of applications which may have potential historic preservation concerns for SHPO's review and comment in compliance with the CIB/SHPO Programmatic Agreement. SHPO comments on individual applications will be provided to the Board as part of the review process outline in R990-8-4. Additionally the Board requires that if during the construction of the project the applicant discovers any cultural/paleontological resources, the applicant shall cease project activities which may affect or impact the cultural/paleontological resource, notify the Board and SHPO of the discovery, allow the Board to take into account the effects of the project on cultural/paleontological resources, and not proceed until further approval is given by the Board.

I. All applicants must provide evidence and arguments to the Board as to how the proposed funding assistance provides for

planning, the construction and maintenance of public facilities or the provision of public services.

J. All applicants must demonstrate that the facilities or services provided will be available and open to the general public and that the proposed funding assistance is not merely a device to pass along low interest government financing to the private sector.

K. All applicants must demonstrate that any arrangement with a lessee of the proposed project will constitute a true lease, and not a disguised financing arrangement. The lessee must be required to pay a reasonable market rental for the use of the facility. In addition, the applicant shall have no arrangement with the lessee to sell the facility to the lessee, unless fair market value is received.

L. Each applicant must submit evidence and legal opinion that it has the authority to construct, own and lease the proposed project. In the case of a request for an interest bearing loan, the applicant must provide an opinion of nationally-recognized bond counsel that the interest will not be subject to federal income taxes.

M. All applicants shall certify to the Board that they will comply with the provisions of Titles VI and VII of the Civil Rights Act of 1964 (42 USC 2000e), as amended, which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agree to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90, as amended, which prohibits discrimination on the basis of age; Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 and 28 CFR 35, as amended, which prohibit discrimination on the basis of disabilities; Utah Anti-Discrimination Act, Section 34A-5-101 et seq., which prohibits discrimination against any employee or applicant for employment because of race, color, sex, age, religion, national origin, or handicap, and to certify compliance with the ADA to the Board on an annual basis and upon completion of the project.

#### **R990-8-4. Board Review Procedures.**

A. The Board will review applications and authorize funding assistance on a "Trimester" basis. The initial meetings of each "Trimester" are "Project Review Meetings". The final meeting of each "Trimester" is the "Project Funding Meeting". Board meetings shall be held monthly on the 1st Thursday of each month, unless rescheduled or cancelled by the chairman or by formal motion of the board. The Trimesters shall be as follows:

1. 1st Trimester: application deadline, June 1st; Project Review Meetings, July, August, September; Project Funding Meeting October.

2. 2nd Trimester: application deadline, October 1st; Project Review Meetings, November, December, January; Project Funding Meeting, February.

3. 3rd Trimester: application deadline, February 1st; Project Review Meetings, March April, May; Project Funding Meeting, June.

B. The process for review of new applications for funding assistance shall be as follows:

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

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

3. Complete applications accepted for processing will be placed on one of the Trimester's upcoming "Project Review Meeting" agendas.

4. At the "Project Review Meeting" the Board may either:

a. deny the application;

b. place the application on the "Pending List" for consideration at a future "Project Review Meeting" after additional review, options analysis and funding coordination by the applicant and the Board's staff;

c. place the application on the "Priority List" for consideration at the next "Project Funding Meeting".

C. Applicants and their representatives shall be informed of any "Project Review Meeting" at which their applications will be considered. Applicants shall make formal presentations to the Board and respond to the Board's questions during the "Project Review Meetings". If an applicant or its representatives are not present to make a presentation, the board may either:

1. deny the application;

2. place the application on the "Pending List" for consideration at a future "Project Review Meeting".

D. No funds shall be committed by the Board at the "Project Review Meetings", with the exception of circumstances described in Subsection F.

E. Applications for funding assistance which have been placed on the "Priority List" will be considered at the "Project Funding Meeting" for that Trimester. At the "Project Funding Meeting" the Board may either:

1. deny the application;

2. place the application on the "Pending List" for consideration at a future "Project Review Meeting".

3. authorize funding the application in the amount and terms as determined by the Board.

F. In instances of bona fide public safety or health emergencies or for other compelling reasons, the Board may suspend the provisions of this section and accept, process, review and authorize funding of an application on an expedited basis.

#### **R990-8-5. Local Capital Improvement Lists.**

A. A consolidated list of the anticipated capital needs for eligible entities shall be submitted from each county area, or in the case of state agencies, from HCD. This list shall be produced as a cooperative venture of all the eligible entities within each county area.

B. The list shall contain a short term (one year) and a medium term (five year) component.

C. The list shall contain the following items: jurisdiction, summary description, project time frame, anticipated time of submission to the Board, projected overall cost of project, anticipated funding sources, the individual applicant's priority for their own projects, and the county area priority for each project. The county area priority for each project shall be developed as a cooperative venture of all eligible entities within a county area.

D. Projects not identified in a county area's or HCD's list, will not be funded by the Board, unless they address a bona fide public safety or health emergency or for other compelling reasons.

E. An up-dated list shall be submitted to the Board no later than April 1st of each year. The up- dated list shall be submitted in the uniform format required by the Board.

F. If the consolidated list from a county area does not contain the information required in R990-8-5-C, or is not in the uniform format required in R990-8-5-E, all applications from the affected county area will be held by the Board's staff until a future Trimester pending submission of the required information in the uniform format.

G. The Board has authorized its staff to hold any application that does not appear on the applicable local capital improvement list. Such applications will be held until a future Trimester to allow the applicant time to pursue amending the local capital improvement list.

H. The amendment to include an additional project must follow the process used for the original list, and it must contain the required information and be submitted in the uniform format, particularly the applicant and county area prioritization.

I. The regional Association of Governments are the compilers of the capital improvement lists. The AOG cannot simply add additional applications to any given list without the applicant meeting the process requirements outlined in Subsection C.

J. Notwithstanding Subsection I, allowing an applicant to add a project to the capital improvement list just prior to the application deadline subverts the intent of the capital improvement list process. Such applications will be held by the Board's staff until the next Trimester.

#### **R990-8-6. Modification or Alteration of Approved Projects.**

A. A recipient of PCIFB grant funds may not, for a period of ten years from the approval of funding by the Board, change or alter the use, intended use, ownership or scope of a project without the prior approval of the Board. A recipient of PCIFB loan funds may not, for the term of the loan, change or alter the use, intended use, ownership or scope of a project without the prior approval of the Board. The recipient shall submit a written request for such approval and provide such information as requested by the Board or its staff, including at a minimum a description of the modified project sufficient for the Board to determine whether the modified project is an eligible use of PCIFB funds.

The Board may place such conditions on the proposed modifications or modified project as it deems appropriate, including but not limited to modifying or changing the financial terms, requiring additional project actions or participants, or requiring purchase or other satisfaction of all or a portion of the Board's interests in the approved project. Approval shall only be granted if the modified project, use or ownership is also an eligible use of PCIFB funds, unless the recipient purchases or otherwise satisfies in full the Board's interest in the previously approved or the proposed project.

#### **R990-8-7. Procedures for Electronic Meetings.**

A. These provisions govern any meeting at which one or more members of the Board or one or more applicant agencies appear telephonically or electronically pursuant to Section 52-4-7.8.

B. If one or more members of the Board or one or more applicant agencies may participate electronically or telephonically,

public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the CIB not participating electronically or telephonically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

C. Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be provided to at least one newspaper of general circulation within the state and to a local media correspondent. These notices shall be provided at least 24 hours before the meetings.

D. Notice of the possibility of an electronic meeting shall be given to the members of the Board and applicant agencies at least 24 hours before the meeting. In addition, the notice shall describe how the members of the Board and applicant agencies may participate in the meeting electronically or telephonically.

E. When notice is given of the possibility of a member of the Board appearing electronically or telephonically, any member of the Board may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the Board. At the commencement of the meeting, or at such time as any member of the Board initially appears electronically or telephonically, the Chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the Board who are not at the physical location of the meeting shall be confirmed by the Chair.

F. The anchor location shall be designated in the notice. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location has space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

**KEY: grants**

**Date of Enactment or Last Substantive Amendment: 2012**  
**Authorizing, and Implemented or Interpreted Law: 9-4-305;**  
**35A-8-306**

## Workforce Services, Housing and Community Development

### **R990-9**

## Policy Concerning Enforceability and Taxability of Bonds Purchased

### **NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 36217

FILED: 05/15/2012

### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 139 which was passed in the 2012 General Session moved the Division of Housing and Community Development from what was known as the Department of

Community and Culture (DCC) to the Department of Workforce Service (DWS). This proposed new rule simply changes the rule numbering and moves it to DWS.

SUMMARY OF THE RULE OR CHANGE: This new rule text is the same as the old rule. The old rule number was R199-9 and will now be R990-9. The statutory references have been changed to reflect the new code provisions. The old department and division names were also changed to reflect the changes in H.B. 139. No other changes were made.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-8-1004

### ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There will be no costs or savings to the state budget by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

♦ LOCAL GOVERNMENTS: There will be no costs or savings to any local government's budget by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

♦ SMALL BUSINESSES: There will be no costs or savings to any small business by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no costs or savings to any persons other than small businesses, businesses or local government entities by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no costs or savings to any affected persons by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

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

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

WORKFORCE SERVICES  
HOUSING AND COMMUNITY DEVELOPMENT  
140 E BROADWAY  
SALT LAKE CITY, UT 84111-2333  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Kristen Cox, Executive Director

**R990. Workforce Services, Housing and Community Development.**

**R990-9. Policy Concerning Enforceability and Taxability of Bonds Purchased.**

**R990-9-1. Enforceability.**

In providing any financial assistance in the form of a loan, the (Board/Committee) representing the State of Utah (the "State") may purchase Bonds or other legal obligations (the "Bonds") of various political subdivisions (interchangeably, as appropriate, the "Issuer" or "Sponsor") of the State only if the Bonds are accompanied by a legal opinion of recognized municipal bond counsel to the effect that the Bonds are legal and binding under applicable Utah law.

**R990-9-2. Tax-Exempt Bonds.**

In providing any financial assistance in the form of a loan, the (Board/Committee) may purchase either taxable or tax-exempt Bonds; provided that it shall be the general policy of the (Board/Committee) to purchase Bonds of the Issuer only if the Bonds are tax-exempt and are accompanied by a legal opinion of recognized municipal bond counsel to the effect that interest on the Bonds is exempt from federal income taxation. This does not apply for Bonds carrying a zero percent interest taxation. This tax opinion must be provided by the Issuer in the following circumstances:

a. When Bonds are issued and sold to the State to finance a project which will also be financed in part at any time by the proceeds of other Bonds, the interest on which is exempt from federal income taxation.

b. When (i) Bonds are issued which are no subject to the arbitrage rebate provision or Section 148 of the Internal Revenue Code of 1986 (or any successor provisions of similar intent) (the "Code"), including, without limitation, Bonds covered by the "small governmental units" exemption contained in Section 148 (f) (4) (c) of the Code, and (ii) when Bonds are issued which are not subject to arbitrage rebate because the gross proceeds from the loan will be completely expended within six months after the issuance of the Bonds.

Notwithstanding the above, the (Board/Committee) may purchase taxable Bonds if it determines, after evaluating all relevant circumstances including the Issuer's ability to pay, that the purchase of the taxable Bonds is in the best interests of the State and the Issuer.

**R990-9-3. Parity Bonds.**

In addition to the policy stated above, it is the general policy of the (Board/Committee) that Bonds purchased by the (Board/Committee) shall be full parity Bonds with other outstanding Bonds of the Issuer. Exceptions to this parity requirement may be authorized by the (Board/Committee) if the (Board/Committee) makes a determination that:

(i) the revenues or other resources pledged as security for the repayment of the Bonds are adequate (in excess of 100% coverage) to secure all future payments on the Bonds and all debt having a lien superior to that of the Bonds and

(ii) the Issuer has covenanted not to issue additional Bonds having a lien superior to the Bonds owned by the (Board/Committee) without the prior written consent of the (Board/Committee), and

(iii) requiring the Issuer to issue parity bonds would cause undue stress on the financial feasibility of the project.

**KEY: grants**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 9-4-305; 35A-8-1004**

**Workforce Services, Housing and  
Community Development  
R990-10  
Procedures in Case of Inability to  
Formulate Contract for Alleviation of  
Impact**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 36218

FILED: 05/15/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 139 which was passed in the 2012 General Session moved the Division of Housing and Community Development from what was known as the Department of Community and Culture (DCC) to the Department of Workforce Service (DWS). This proposed new rule simply changes the rule numbering and moves it to DWS.

SUMMARY OF THE RULE OR CHANGE: This new rule text is the same as the old rule. The old rule number was R199-10 and will now be R990-10. The statutory references have been changed to reflect the new code provisions. The old department and division names were also changed to reflect the changes in H.B. 139. No other changes were made.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-8-1004 and Section 35A-8-306

ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: There will be no costs or savings to the state budget by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

◆ LOCAL GOVERNMENTS: There will be no costs or savings to any local government's budget by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

◆ SMALL BUSINESSES: There will be no costs or savings to any small business by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no costs or savings to any persons other than small businesses, businesses or local government entities by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no costs or savings to any affected persons by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Kristen Cox, Executive Director

**R990. Workforce Services, Housing and Community Development.**

**R990-10. Procedures in Case of Inability to Formulate Contract for Alleviation of Impact.**

**R990-10-1. Purpose.**

A. The following procedures are promulgated and adopted by the Permanent Community Impact Fund Board ("Board") of the Department of Workforce Services of the State of Utah pursuant to Section 35A-8-306(4), UCA 1953 as amended.

B. In the event a project entity or a candidate ("Complainant") submits a request for determination to the Board

under Section 11-13-306, UCA 1953 as amended, the Board shall hold a hearing on the questions presented. These proceedings shall be conducted informally, in accordance with the requirements of the Utah Administrative Procedure Act ("Act"), Section 63G-4-202(1), UCA 1953 as amended, unless the Board at its discretion converts the proceeding to a formal proceeding, in accordance with Section 63G-4-202(3) UCA 1953 as amended, if such action is deemed to be in the public interest and does not unfairly prejudice the rights of any party.

C. The only grounds available for relief are those set forth in Section 11-13-306, UCA 1953 as amended, or those reasonably inferred therefrom.

**R990-10-2. Commencement of the Procedure Requesting a Determination.**

A. Commencement of the procedure to request a determination from the Board shall be conducted in conformity with Section 63G-4-201(3).

1. A complainant requesting a determination from the Board must submit such a request:

a. In writing;

b. Signed by the person invoking the jurisdiction of the Board or by that person's representative; and

c. Including the following information:

1. The names and addresses of all parties to whom a copy of the request for a hearing is being sent;

2. The Board's file number or other reference number;

3. The name of the adjudicative proceeding, if known;

4. The date the request for the hearing was mailed;

5. A statement of the legal authority and jurisdiction under which action by the Board is requested;

6. A statement of relief sought from the Board; and

7. A statement of facts and reasons forming the basis for relief.

B. The Complainant shall file the request for a determination with the Board and at the same time, shall serve a copy of the request upon the party complained against (the "Respondent"). The Complainant shall also mail a copy of the request to each person known to have a direct interest in the request for a determination by the Board.

C. The Respondent shall serve a response within fifteen (15) days after the request is served upon the Respondent. The Respondent may admit, deny or explain the point of view of Respondent as to each allegation in the request. Not to respond to any allegation is to admit that allegation. The Respondent may pose a counteroffer to Complainant's request for relief. Any counteroffer must be supported by reasons. Requests and responses may be directed at multiple parties.

**R990-10-3. Notification of Parties.**

A. The Board shall promptly give notice by mail to all parties that the hearing will be held, stating the following:

1. The Board's file number or other reference number;

2. The name of the proceedings;

3. Designate that the proceeding is to be conducted informally according to the provisions or rules enacted under Section 63G-4-202 and Section 63G-4-202, UCA 1953 as amended, with citation to Section 63G-4-202 authorizing the designation;

4. State the time and place of the scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate may be held in default; and

5. Give the name, title, mailing address and telephone number of the presiding officer for the hearing.

B. At any time twenty (20) or more days before the hearing begins, either party may serve upon the adverse party an offer to agree to specific terms and payments. If, within ten (10) days after the service of the offer, the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service thereof, and the Board shall enter a corresponding order. An offer not accepted shall be deemed withdrawn and evidence concerning it is not admissible except in a proceeding to determine costs. If the order finally obtained from the offeree is not more favorable than the offer, the offeree shall pay the costs incurred after the making of the offer, including a reasonable attorney's fee. The fact that an offer is made but not accepted does not preclude a subsequent offer.

#### **R990-10-4. Informal Hearing Procedures.**

A. Within forty (40) days after receiving a request for determination, the Board shall hold a public hearing on the questions at issue.

B. The Board may appoint an administrative law judge to preside in its stead at the hearing and to hear such preliminary motions and manage such ancillary matters as the Board deems necessary and appropriate.

C. In the hearing, the parties named in the request for determination shall be permitted to testify, present evidence, comment on the issues and bring forth witnesses who may be examined and cross-examined. The hearing may be adjourned from time to time in the interest of a full and fair investigation of the facts and the law.

D. Discovery is prohibited, and the Board may not issue subpoenas or other discovery orders.

E. All parties shall have access to information contained in the Board's files and to all materials and information gathered by any investigation to the extent permitted by the law.

F. Any intervention is prohibited.

G. All hearings shall be open to all parties.

H. Within twenty (20) days after the close of the hearing, the Board or the administrative law judge shall issue a signed order in writing that states:

1. The decision;

2. The reasons for the decision;

3. A notice of any right for administrative or judicial review available to the parties; and

4. The time limits for filing a request for reconsideration or judicial review.

I. The order issued by the Board or by the administrative law judge shall be based on the facts appearing in the Board's files, and on the facts presented in evidence at the hearing.

J. Any determination order issued by the Board or by the administrative law judge shall specify:

1. The direct impacts, if any, or methods determining the direct impacts to be covered; and

2. The amounts, or methods of computing the amounts, of the alleviation payments, if any, or the means to provide for impact

alleviation, provisions assuring the timely completion of the facilities and the furnishing of the service, if any; and

3. Other pertinent matters.

K. A copy of the Board's or the administrative law judge's order shall be promptly sent to all parties.

L. All hearings shall be recorded at the Board's expense. Any party, at his own expense, may have a reporter approved by the Board prepare a transcript from the Board's record of the hearing.

#### **R990-10-5. Formal Hearing Procedures.**

A. At any time prior to issuance of the final order, the Board at its discretion may convert the informal adjudicative hearing into a formal adjudicative hearing, as allowed in Section 63G-4-202(3). The procedures to be followed in such a formal adjudicative hearing are given below.

B. The Board may appoint an administrative law judge to preside in its stead at the hearing and to hear such preliminary motions and manage such ancillary matters as the Board deems necessary and appropriate.

C. A party may be represented by an officer or the party or by legal counsel.

D. In the hearing, the parties named in the request for determination shall be permitted to testify, present evidence, comment on the issues and bring forth witnesses who may be examined and cross-examined. The hearing may be adjourned from time to time in the interest of a full and fair investigation of the facts and the law.

E. Utah Rules of Evidence shall be in effect; however,

1. Copies of original documents may be introduced into evidence unless objected to for reasons of illegibility or tampering.

2. Hearsay will be considered for its weight but will not be conclusive in and of itself as to any matter subject to proof.

F. Discovery in formal proceedings shall be limited. Because negotiation between the parties shall have been proceeding prior to a request for determination being submitted, the Board or the administrative law judge shall assume that discovery is complete when a request is submitted. However, upon motion and sufficient cause shown, the Board or the administrative law judge may extend the period of discovery.

G. All parties shall have access to information contained in the Board's files and to all materials and information gathered by any investigation to the extent permitted by the law.

H. The Board or the administrative law judge may give a person not a party to the proceeding the opportunity to present oral or written statements at the hearing.

I. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

J. All hearings shall be open to all parties.

K. Intervention into the formal hearing will be allowed on the following basis:

1. Any person not a party may file a signed, written petition to intervene in a formal adjudicative hearing with the Board. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

a. The Board's file number or other reference number;

b. The name of the proceeding;

c. A statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative hearing, or that the petitioner qualifies as an intervenor under any provision of law; and

d. A statement of the relief the petitioner seeks from the Board.

2. The Board or the administrative law judge shall grant a petition for intervention if it determines that:

a. The petitioner's legal interests may be substantially affected by the formal adjudicative hearing; and

b. The interests of justice and the orderly and prompt conduct of the adjudicative hearing will not be materially impaired by allowing the intervention.

3. Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

4. An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative hearing that are necessary for a just, orderly, and prompt conduct of that hearing. Such conditions may be imposed by the Board or the administrative law judge at any time after the intervention.

L. Within twenty (20) days after the close of the hearing, the Board or the administrative law judge shall issue a signed order in writing that states:

1. The decision based upon findings of fact and conclusions of law;

2. The reasons for the decision;

3. A notice of any right for administrative or judicial review available to the parties; and

4. The time limits for filing a request for reconsideration or judicial review.

M. The order issued by the Board or by the administrative law judge shall be based on the facts appearing in the Board's files and on the facts presented in evidence at the hearing.

N. Any determination order issued by the Board or by the administrative law judge shall specify:

1. The direct impacts, if any, or methods determining the direct impacts to be covered; and

2. The amounts, or methods of computing the amounts, of the alleviation payments, if any, or the means to provide for impact alleviation, provisions assuring the timely completion of the facilities and the furnishing of the service, if any; and

3. Other pertinent matters.

O. A copy of the Board's or the administrative law judge's order shall be promptly sent to all parties.

P. All hearings shall be recorded at the Board's expense. Any party, at his own expense, may have a reporter approved by the Board prepare a transcript from the Board's record of the hearing.

**R990-10-6. Default.**

A. The Board or the administrative law judge may enter an order of default against a party if that party fails to participate in the adjudicative proceedings.

B. The order shall include a statement of the grounds for default and shall be mailed to all parties.

C. A defaulted party may seek to have the Board set aside the default order according to procedures outlined in the Utah Rules of Civil Procedure.

D. After issuing the order of default, the Board or the administrative law judge shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulted party.

**R990-10-7. Reconsideration by the Board.**

Within ten (10) days after the date that a final order is issued by the Board or the administrative law judge, any party may file a written request for reconsideration in accordance with the provisions of Section 63G-4-302, UCA 1953 as amended. Upon receipt of the request, the disposition by the Board of that written request shall be in accordance with Section 63G-4-302(3), UCA 1953 as amended. With the exception of reconsideration, all orders issued by the Board or the administrative law judge shall be final. There shall be no other review except for judicial review as provided below.

**R990-10-8. Judicial Review.**

An aggrieved party may also obtain judicial review of final orders issued by the Board or by the administrative law judge by filing a petition for judicial review of that order in compliance with the provisions and requirements of Section 63G-4-401 and Section 63G-4-402, UCA 1953 as amended.

**KEY: impacted area programs**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 9-4-305; 11-13-29; 35A-8-306; 35A-8-1004**

Workforce Services, Housing and  
Community Development  
**R990-11**  
Community Development Block Grants  
(CDBG)

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 36219

FILED: 05/15/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 139 which was passed in the 2012 General Session moved the Division of Housing and Community Development from what was known as the Department of Community and Culture (DCC) to the Department of Workforce Service (DWS). This proposed new rule simply changes the rule numbering and moves it to DWS.

SUMMARY OF THE RULE OR CHANGE: This new rule text is the same as the old rule. The old rule number was R199-11 and will now be R990-11. The statutory references have been changed to reflect the new code provisions. The old department and division names were also changed to reflect the changes in H.B. 139. No other changes were made.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-8-202

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There will be no costs or savings to the state budget by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.
- ◆ LOCAL GOVERNMENTS: There will be no costs or savings to any local government's budget by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.
- ◆ SMALL BUSINESSES: There will be no costs or savings to any small business by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no costs or savings to any persons other than small businesses, businesses or local government entities by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no costs or savings to any affected persons by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ◆ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Kristen Cox, Executive Director

**R990. Workforce Services, Housing and Community Development.**

**R990-11. Community Development Block Grants (CDBG).**

**R990-11-1. Purpose and Authority.**

This rule incorporates by reference 24 CFR 570 (1996) as authorized by Section 35A-8-202.

**R990-11-2. State and Regional Funding Processes.**

(1) CDBG funds are to be distributed based on regional prioritization of projects by utilizing a rating and ranking system developed and applied by the regional review committees (RRC). The role of each RRC is to receive, review and to prioritize the CDBG applications in its region.

(2) The RRC shall develop a rating and ranking system prior to the receipt of grant application. Upon completion of the rating and ranking process, each RRC shall present to the state a list of:

- (a) all projects submitted to them for ranking.
  - (b) copies of ranking result sheets.
  - (c) the rationale for not ranking any submitted projects.
- and
- (d) a summary of all final ranking results.

**R990-11-3. Eligible Grant Applicants, National Objectives and Eligible Projects.**

(1) Eligible applicants for the State CDBG Program are:

- (a) incorporated cities and towns with populations of less than 50,000, except Clearfield and jurisdictions located in Salt Lake County;
- (b) all of Utah's counties except Salt Lake County;
- (c) units of local government recognized by the Secretary of The Department of Housing and Urban Development (HUD).

(2) National Objective Compliance Pursuant to 24 CFR 570.208.

(a) The national objective may be met in three possible ways:

- (i) activities that benefit low and moderate income individuals, families and communities.
- (ii) activities aiding in the prevention or elimination of slums or blight.
- (iii) activities that address urgent health and welfare needs.

(3) Inclusive Federal Compliance Requirements.

(a) applicants shall comply with all regulations in 24 CFR part 570 and all applicable federal and state regulations, laws and overlay statutes.

(b) additional federal overlay statutes and regulations may apply to the state program if directed by HUD and Congress.

(4) Eligible activities are those defined by Section 105 of the Housing and Community Development Act of 1974, as amended.

**R990-11-4. Responsibilities of Grantee, Regions and State.**(1) Grantee Responsibilities

(a) Grantees are allowed to take up to 10% of the contract amount for administration purposes. Administrative cost must be broken out from the rest of the project costs when the application and contract budget are prepared.

(b) The formal contract with the state must include an environmental review, federal labor standards and civil rights.

(2) Regional Responsibilities.

(a) Prioritization - Each RRC shall rate and rank all applications based on a set of criteria available to the public for comment.

(b) Public participation - Each RRC is required to hold at least one public hearing yearly to assist applicants and obtain comments and suggestions regarding the CDBG process.

(c) Application completion - Each RRC has the responsibility to assure that applications are completed in full prior to submission to the state.

(d) Administrative Capacity - The RRC will assess the ability of each applicant to administer a CDBG grant.

(3) State Responsibilities.

(a) Public Participation - The state is required to hold at least one public hearing yearly to notify the public, explain the community development program and to receive comments.

(b) Review of Applications - Upon receipt of the CDBG prioritized applications from the regions, the state staff shall begin a review process.

(c) Timely Distribution of Funds - The state is required by HUD to ensure that CDBG funds are allocated and distributed in a timely manner.

(i) Application - Each applicant shall make their final application decision prior to submitting it to the RRC.

(A) Contracts will be sent out in April and Grantees will have until June 1, to sign and return all copies of the contract to the Housing and Community Development Division (HCD) of the Department of Workforce Services.

(B) On a case by case basis, RRCs may allow a one month extension to grantees experiencing unavoidable delays. Grantees must notify their RRC prior to the deadline;

(C) Funds from all contracts not returned to HCD by July 1, will be returned to the appropriate RRC for reallocation;

(D) Any funds not reallocated by the RRC by August 1, will be returned to the State. The State will reallocate the funds to an approved project;

Grantees may not delay the processing of the current application based on the possibility of receiving an allocation in the following year.

(d) Five Percent Withholding - The state reserves the right to withhold five percent of the CDBG grant amount pending a satisfactory final programmatic financial monitoring review of all projects.

(e) Cost Overruns - The state may authorize the funding of project cost overruns requested by the RRC.

(f) Fund Leveraging - One of the state's roles in the CDBG funding process is to provide assistance to grantees in leveraging other available financial resources.

(g) Program Monitoring - During the course of each CDBG contract the state must monitor all grantees.

(h) Grant Close Out - A grant close out packet will be submitted to the state at the completion of each CDBG-funded activity.

**R990-11-5. Threshold Requirements.**

Minimum threshold requirements are those defined by Section 105(e) of the Housing and Community Development Act of 1974, as amended and as stipulated in section 4 of the State CDBG Application Guide available from HCD.

(1) The determination of eligibility for recipients and activities shall be made by the RRC and State CDBG staff under state and federal criteria and regulations contained in 24 CFR part 500 and the State CDBG Application Guide available by contacting HCD at 140 E 300 S, Salt Lake City, UT 84111.

(2) Each grant application must clearly demonstrate that the project will meet one of the three National Objectives identified in R990-1-3.

(3) Each grant applicant must demonstrate consistency with the Consolidated Plan, available from HCD at 140 E 300 S, Salt Lake City, UT 84111.

(4) Each grant application may contain more than one activity addressing identified needs; however, these activities must be interrelated.

(5) All costs incorporated with the grant must be realistic given the nature and type of activities to be performed.

(6) Program income generated as a result of CDBG activities may be retained by the grantee when income is applied to continue the activity from which the income was derived, or when used for other community development projects eligible under Section 105 of the Housing and Community Development Act of 1974, as amended, and after the preparation of a plan, approved by the state, specifying the proposed activity and stating the method that will be employed for its use.

**R990-11-6. Length of Contract and Type of Grants.**

(1) All grantees shall have 18 months depending upon contract execution, or until October 31, of the following year to complete their project.

(2) There are two types of grants: Single year and multi-year.

**R990-11-7. Adjudicative Proceedings to Appeal Decisions of RRC.**

(1) Classification of Actions. Adjudicative proceeding to appeal decisions of RRC by CDBG applicant agencies shall be conducted in accordance with section 63G-4-203.

(2) Commencement of Appeals Procedure. An applicant agency requesting an appeal hearing from HCD, shall submit a request:

(a) in writing;

(b) signed by the chief elected official; and

(c) include the following information:

(i) the names and addresses of all persons to whom a copy of the request for a hearing is being sent;

(ii) the RRC file number;

(iii) the name of the adjudicative proceeding;

(iv) the date the request for an appeals hearing was mailed;

(v) a statement of the legal authority and jurisdiction under which CDBG action is requested;

(vi) a statement of relief sought from HCD; and

(vii) a statement of facts and reasons forming the basis for relief.

(d) The request for an appeals hearing must be submitted within ten days following the notice of decision by the RRC. At this point it shall be necessary for HCD to place a hold on processing any contracts from the region in which the dispute has occurred until the matter is settled.

(3) Notification of interested parties.

(a) The CDBG applicant agency that requests an appeals hearing shall file the request with the Director of HCD and shall send a copy by mail to each person known to have a direct interest in the requested hearing.

(b) The Director of HCD, or a hearing officer appointed by the Director of HCD, will within five working days after the appeals request, set the time and date for an appeals hearing. The Director of HCD or the hearing officer shall promptly give notice, by mail to all parties, stating the following:

(i) HCD and RRC file number;

(ii) the name of the proceeding;

(iii) a statement indicating that the proceeding is to be conducted informally and according to the provisions of rules enacted under Sections 63G-4-203 authorizing informal proceedings.

(iv) the time and place of the scheduled appeals hearing, the purpose of the hearing, and that a party may be held in default if failing to attend or participate in the hearing.

(v) the name, title, mailing address and telephone number of the director of HCD or the hearing officer.

(vi) Hearing Procedures

(a) hearing shall be held only after notice to interested parties is given in conformance with R990-7-1C;

(b) no answer or other pleading responsive to the request for a hearing need be filed.

(c) the following issues shall be reviewed at the appeals hearing:

(i) whether reasonable and equitable criteria are established for reviewing CDBG applications by the RRC

(ii) whether the priority ranking process is fair to all applicants;

(iii) whether the criteria and process were applied equitably and consistently to all applicants.

(d) in the appeals hearing, the parties named in the request for a hearing shall be permitted to testify, present evidence, and comment on the issues.

(e) discovery is prohibited, and HCD may not issue subpoenas or other discovery orders.

(f) all parties shall have access to information contained in HCD's files and to all materials and information gathered by any investigation to the extent permitted by law.

(g) any intervention is prohibited.

(h) all hearings shall be open to all parties.

(i) within 21 days after the close of the hearing, the Director of HCD shall issue a signed order in writing that states:

(i) the decision;

(ii) the reason for the decision;

(iii) a notice of any right for administrative or judicial review available to the parties; and

(iv) the time limits for filing a request for reconsideration or judicial review.

(j) the Director of HCD's order shall be based on the facts appearing in HCD's files and on the facts presented in evidence at the appeals hearing.

(k) a copy of the Director of HCD's order shall be promptly mailed to the parties.

(l) all hearings shall be recorded at the expense of HCD. Any party, at his own expense, may have a reporter approved by HCD prepare a transcript from HCD's record of the hearing.

(5) Default

(a) the Director of HCD may enter an order of default against a party if a party fails to participate in the adjudicative proceeding.

(b) the order shall include a statement of the grounds of default and shall be mailed to all parties.

(c) a defaulted party may seek to have HCD set aside the default order according to procedures outlined in the Utah Rules of Civil Procedure.

(d) after issuing the order of default, the Director of HCD will conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and will determine all issues in the adjudicative proceeding, including those affecting the defaulted party.

(6) Reconsideration by HCD. Within ten days after the date that a final order is issued by the Director of HCD, any party may file a written request for reconsideration in accordance with the provisions of the Administrative Procedures Act, Section 63G-4-302. Upon receipt of the request, the disposition by the Director of HCD of that written request shall be in accordance with Section 63G-4-302. With the exception of reconsideration, all orders issued by the Director of HCD shall be final. There shall be no other review except for judicial review as provided below.

(7) Judicial Review. An aggrieved party may also obtain judicial review of final HCD orders by filing a petition for judicial review of that order in compliance with the provisions and requirements of the Utah Administrative Procedures Act, Sections 63G-4-401 and 63G-4-402.

**KEY: community development, grants**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 9-4-202(2) et seq.; 35A-8-202**

**Workforce Services, Housing and  
Community Development  
R990-100  
Community Services Block Grant Rules**

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 36221

FILED: 05/15/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 139 which was passed in the 2012 General Session moved the Division of Housing and Community Development, Community Services from what was known as the Department of Community and Culture (DCC) to the Department of Workforce Service (DWS). This proposed new rule simply changes the rule numbering and moves it to DWS.

SUMMARY OF THE RULE OR CHANGE: This new rule text is the same as the old rule. The old rule number was R202-100 and will now be R990-100. The statutory references have been changed to reflect the new code provisions. The old department and division names were also changed to reflect the changes in H.B. 139. No other changes were made.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-8-1004

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: There will be no costs or savings to the state budget by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.
- ◆ LOCAL GOVERNMENTS: There will be no costs or savings to any local government's budget by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.
- ◆ SMALL BUSINESSES: There will be no costs or savings to any small business by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no costs or savings to any persons other than small businesses, businesses or local government entities by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no costs or savings to any affected persons by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

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

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 WORKFORCE SERVICES  
 HOUSING AND COMMUNITY DEVELOPMENT  
 140 E BROADWAY  
 SALT LAKE CITY, UT 84111-2333

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Kristen Cox, Executive Director

**R990. Workforce Services, Housing and Community Development.**

**R900-100. Community Services Block Grant Rules.**

**R900-100-1. Authority.**

This rule is authorized under Section 35A-8-1004, U.C.A. 1953, which allows the Housing and Community Development Division (HCD) to receive funds for and to administer federal aid programs.

**R900-100-2. Purpose.**

The purpose of this rule is to establish standards and procedures for the Community Services Block Grant (CSBG) authorized under the Omnibus Reconciliation Act of 1981 (Title XVII, Chapter 2, Sections 671 through 683), contracted to eligible entities (counties or combinations of counties and Community Action Programs) to provide a range of services and activities having a measurable and potentially major impact on causes of poverty in the local communities.

**R900-100-3. Eligible Grantees for CSBG Programs and Projects.**

A. Utah shall distribute at least 90 percent of available funds as pass-through grants to eligible entities (hereinafter referred to as local grantees) for them to administer directly or, at their option, to sub-contract (hereinafter referred to as local sub-grantees) for the performance of eligible activities. Eligibility for the 5 percent discretionary funds will be established by the state plan each fiscal year.

B. Whenever a public grantee chooses to sub-contract all program operations to a private entity rather than administer them directly, the private entity must be a non-profit organization directed by a board whose composition complies with Section 675 (c)(3) of the Community Services Block Grant Act.

**R900-100-4. Assurances Required by CSBG Act.**

All grantees shall be required to submit a certification of assurances based on CSBG programmatic, administrative and financial requirements of the Act as outlined by Community Services Block Grant Program Directives prepared by the State Community Services Office (SCSO).

**R900-100-5. Compliance.**

Local grantees must maintain their eligibility to receive CSBG funds by being in compliance with applicable laws,

regulations, and contractual agreements. The state reserves the right to examine all aspects of CSBG funded activities to ensure that this is the case.

**R900-100-6. Qualifications.**

Local grantees must demonstrate that they have in place, or shall have in place prior to undertaking CSBG funded program activities, management systems adequate to ensure that CSBG funds shall be spent efficiently and effectively. When activities are sub-contracted, the local grantee must have in place a system and assume the responsibility for monitoring and evaluating sub-contracts. Files must be retained containing such monitoring and evaluation results. In no case shall the state provide funds to a grantee if available evidence suggests that the grantee cannot fulfill its obligations under the terms of the assurances required by the CSBG Act and the state plan for the use of CSBG funds.

**R900-100-7. Program Participant Eligibility.**

Income eligibility for program participation shall be based on the Office of Management and Budget official poverty guidelines as described in Section 673 of the CSBG Act.

**R900-100-8. Funds Allocation.**

A. CSBG funds shall be allocated on the basis of federal fiscal years beginning October 1 to local agencies by the following formula:

(1) All agencies selected for funding shall be awarded an equal, minimum base amount.

(2) The amount remaining after subtraction of the sum of the minimum base amount shall be allocated among the local grantees based on the census counts (or updates) of low-income residents and other related criteria such as long-term unemployment.

**R900-100-9. Approval Process.**

Criteria shall be used to review applications for CSBG funds and shall be distributed to eligible grantees as a SCSO Community Services Block Grant Program Directives. A panel will screen and give a numerical rating to every application submitted by an eligible grantee based on the criteria outlined. The Community Services Office will compile these ratings and will make a final determination as to proposals that will receive funding and as to the level of funding that will be provided. Proposals must score a minimum number of points to be considered eligible. Prospective CSBG grantees shall be notified of application status 60 days or less after the closing date of application submissions. Any application found to be incomplete or inadequate will be returned to the local grantee for appropriate changes. The Community Services Office will provide technical assistance to any eligible agency scoring below the minimum.

**R900-100-10. Award Procedures.**

The state shall enter into a contract with local grantees October 1 contingent upon Federal authorization and appropriation for CSBG. Once signed, this contract shall be binding on both parties.

**R900-100-11. Fiscal Operations Procedures.**

A. Each local grantee shall have an acceptable procedure describing functions of its fiscal office and including at a minimum:

- (1) Purchasing procedure
- (2) System of cash control
- (3) Payroll system
- (4) Internal and external reporting systems

B. Fiscal procedures shall be in compliance with applicable state and federal regulations and conform with generally accepted accounting procedures.

**R900-100-12. Financial Reports and Reimbursements.**

Financial reports (Form CSBG 611-D) are to be submitted on a monthly basis, no later than twenty (20) days following the end of each month. Local grantees shall receive reimbursement based on a monthly financial status report and certification of work program activities. All reports must have an authorized signature, i.e., the contract signatory or someone designated by the signatory, with a letter of designation filed with the state.

**R900-100-13. Administrative Cost.**

Administrative costs include allowable expenditures incurred to administer the CSBG through an indirect cost plan approved by a cognizant Federal Agency or a cost allocation plan approved by the SCSO. Such costs should not exceed 10%.

**R900-100-14. Travel and Per Diem.**

Travel, per diem and allowances for staff and board members shall be determined by approved local agency guidelines which establish rates of reimbursement.

**R900-100-15. Purchasing, Receiving and Accounts Payable.**

A. Grantee agencies shall develop and have approved procedures for handling purchasing, receiving, and accounts payable. (In the absence of a local procedure, the state procedure shall be followed.) These procedures should include:

- (1) Pre-numbered purchase orders and/or vouchers for all items of cost and expense.
- (2) Procedures to insure procurement at competitive prices.
- (3) Receiving reports to control the receipt of merchandise.
- (4) Effective review following prescribed procedures for program coding, pricing and extending vendors' invoices.
- (5) Invoices matched with purchase orders and receiving reports.
- (6) The local grantee must have adequate controls, such as checklists for statement - closing procedures to insure that open invoices and uninvolved amounts for goods and services are properly accrued or recorded in the books or controlled through worksheet entries.
- (7) Adequate segregation of duties in that different individuals are responsible for:
  - (a) Purchase;
  - (b) Receipt of merchandise or services; and
  - (c) Voucher approval

B. A list of anticipated equipment purchases must accompany the application for funding. Purchases over \$1,000 must receive written state approval.

**R900-100-16. Property and Equipment.**

A. Each local grantee shall develop procedures for control of property and equipment. These procedures should include; but are not limited to:

(1) An effective system of authorization and approval of equipment purchase;

(2) Accounting practices for recording assets;

(3) Detailed records of individual assets which are maintained and periodically balanced with the general ledger accounts;

(4) Effective procedures for authorizing and accounting for equipment disposal; and

(5) Secure storage of property and equipment.

**R900-100-17. Purchase or Improvement of Land or Buildings.**

Funds shall not be used for purchase or improvement of land, or the purchase, construction, or permanent improvement (other than low-cost residential weatherization or other energy related home repairs) of any building or other facility except as this prohibition may be waived under conditions described in Section 680 (b) of the CSBG act.

**R900-100-18. Personnel Policies.**

A. Each local grantee shall maintain written personnel policies, available for review, which should include:

(1) Classification and pay plan;

(2) Policies governing selection and appointment;

(3) Conditions of employment and employee performance;

(4) Employee benefits;

(5) Employee-management relations including procedures for filing and handling grievances, complaints and rights of appeal;

(6) Personnel records and payroll procedures;

(7) Job description for all positions;

(8) Drug Free Work Place Policy.

**R900-100-19. Civil Rights.**

A. All CSBG funded programs shall comply with the nondiscrimination provisions contained in Section 677 of the Community Services Act.

B. Local grantees shall be required to have on file an affirmative action plan that describes what they will do to ensure that current and prospective employees and program participants are treated in a non-discriminatory manner. This plan shall also include a grievance procedure to deal with allegations of discrimination on the part of prospective and current staff members or program participants.

C. The provisions of this section shall apply to any and all grantees and sub-grantees, except where special conditions apply, i.e., Indians, migrants, or seasonal farm workers.

**R900-100-20. Prohibition of Political Activities.**

Each CSBG grantee shall be responsible for assuring adherence to political activity prohibitions contained in Sec. 675 (c)

(7) of the CSBG Act. Monitoring of sub-grantees shall be required as a part of administrative responsibilities. A description of this process is to be available for state review during monitoring visits or upon request. Violations of the prohibitions are to be reported to the state CSO immediately along with reports of measures taken by the grantee to restore compliance.

**R900-100-21. Audits and Inspection.**

Each local grantee shall have performed by an independent certified public accounting firm an annual audit that conforms with the provisions and requirements of OMB Circular A-128, A-122 and A-133. The audit shall be due no later than one year following the end of the grantee's fiscal year.

**R900-100-22. Suspension or Termination of Funds.**

A. HCD may suspend funding to a local grantee if monitoring reports or independent audit reports indicate continuing, substantial non-compliance with contract requirements, accounting procedures, or fiscal control requirements. If problems identified are not corrected within a reasonable length of time, but not to exceed 60 days, HCD may terminate its contract with local grantee and make the remaining funds available to other eligible entities. Action to suspend or terminate funding will not be taken, however, unless timely and reasonable communication with the local grantee fails to produce corrective action to HCD's satisfaction. The local grantee shall not be relieved of liability to the state for funds expended for improper purpose or federal audit exceptions sustained by the state by virtue of any breach of the contract by the agency, and the state may withhold or recover any payments to the grantee for the purpose of setoff until such time as the exact amount of damage due the state from the grantee is determined.

B. Pursuant to the provisions of the contract between the state and local grantee, delegation of funds and activities to others may not be made without prior approval of HCD, SCSO.

**R900-100-23. Transfer of Funds.**

Because of the limited funds anticipated to be made available, HCD shall not transfer any of the CSBG to eligible entities under the Older Americans Act of 1965, Head Start, or Low-income Home Energy Assistance, nor consider a grantee in compliance if such transfers are made locally.

**R900-100-24. Amendments/Waivers.**

A. Prior approval for budget changes is required in the following instances:

(1) The dollar amount of transfers among budget categories exceeds or is expected to exceed \$10,000 or five percent of the grant budget, whichever is greater, for grants of \$100,000 or larger.

(2) For grants under \$100,000, approval is required if transfers exceed or are expected to exceed five percent of the grant budget.

(3) Limited flexibility in budget adjustments will be allowed as follows (submit informational copies of adjusted CSBG forms to SCSO):

(a) Rebudgeted funds within the Personnel Services portion of their CSBG budget;

(b) Rebudgeted funds within the Supportive Services portion of their CSBG budget;

(c) On a one-time basis, allowable transfers from the Personnel Services budget to Supportive Services;

(d) On a one-time basis, allowable transfers from the Supportive Services budget to Personnel Services;

B. Program goals may be amended by submitting changes for approval on appropriate CSBG forms. At any point during the program year it appears that a goal may be achieved at less than 90%, a program and budget amendment must be submitted for approval.

C. Grantees may also request contract period end dates be extended for up to sixty (60) days in order to spend program or project carryover funds amounting to less than ten (10) percent, or an amount approved by the state, of the total contract amount.

#### **R900-100-25. Project Monitoring and Evaluations.**

A. Monitoring will be accomplished through review of the fiscal and progress reports and on-site. On-site visits shall automatically be initiated in response to a written complaint of financial or programmatic non-compliance.

B. Evaluation of CSBG funded programs shall be conducted either by the state or by the local CSBG grantees and shall be distinct from both compliance monitoring and the state's examination of CSBG grantees to ensure that they are eligible to receive CSBG funds and that they are in compliance with all CSBG related obligations. Monitoring will relate to grantee compliance with federal assurances and state requirements in program management and operation. Evaluation will involve an attempt to measure program performance project results, and to determine the impact a grantee's efforts have had on the causes of a problem being addressed and on the problem itself.

C. For the most part, CSBG evaluations will be a joint state/local effort, but the state does reserve the right to conduct evaluations of CSBG programs at any time for purposes it deems appropriate. In such cases, reasonable efforts will be made to accommodate the concerns of any local grantee that is involved.

#### **R900-100-26. Program Reporting Requirements.**

Local grantees shall be required to maintain client profile sheets on individual clients, households or groups of clients, if appropriate. A compiled report of the number and characteristics of clients served, by category, shall be submitted to SCSO on the prescribed CSBG Form thirty (30) days after the end of each quarter of the program period. The program progress report is also due at the same time.

#### **R900-100-27. Appeals Procedure.**

A. Grantees identified in the state plan as eligible to receive funding from the Community Services Block Grant can use the following procedure to appeal decisions made by the State Community Services Office in regards to program and funding.

B. Any substantive decision of SCSO which a local grantee believes to be unfair or unreasonable and having a major adverse impact on the local program, may be appealed by the grantee. The appeal process is as follows:

(1) Within fifteen (15) days of receipt of a SCSO decision that is believed to be unfair or unreasonable, the grantee believing itself to be aggrieved must submit a letter to the executive director of DWS or designee, approved and signed by its elected officials, setting forth:

(a) The decision that is being questioned;

(b) The date on which the grantee received notice of the decision;

(c) The rationale of the grantee for considering the decision to be substantial and unfair or unreasonable to the grantee;

(d) A request for a hearing, including a statement as to the desired outcome of such a hearing.

(2) Within ten (10) working days of the receipt of the grantee's request for a hearing, the executive director shall name a hearing officer, who shall schedule a hearing date no later than two (2) weeks after being so named and will notify the appellant grantee. The hearing officer will be independent of HCD.

(3) Prior to the scheduled hearing, the SCSO staff shall contact the Board of Directors of the appellant grantee:

(a) To obtain additional information pertinent to the issue;

(b) To clarify any misunderstanding of fact or policy;

(c) To explore possible alternatives that would eliminate the necessity for a hearing;

(d) To obtain a written withdrawal of the request for a hearing if the issue is resolved through negotiation.

(4) The hearing, should there be one, shall be conducted by the hearing officer. The appellant grantee may be represented by whomever it chooses at the hearing, but must notify HCD at least five (5) working days prior to the hearing who that person will be.

(5) The hearing officer shall review all testimony and evidence presented at the hearing and recommend a decision to the DWS Executive Director or designee. The DWS Executive Director or designee shall issue a written decision on the appeal within 10 working days after receipt of the hearing officer's recommendations.

(6) The decision resulting from the hearing shall be final. Any necessary hearings shall be held in Salt Lake City or at a site more convenient to the appellant agency, at the discretion of the Executive Director of DWS.

#### **R900-100-28. Citizen Participation.**

A. The state requires citizen participation and supports maximum participation of all interested persons and groups in the development and implementation of the CSBG programs at the state and local level, in advisory or administering capacity.

1. Tripartite boards are required for governing boards of private, non-profit organizations and for the administering/advisory boards of public agencies and shall conform to the requirements outlined in Sec. 675 (c) (3).

a. A minimum of one third of the board is to represent low income. A description of the democratic selection process for representatives of the poor is to be available for review.

b. One third of the members of the board are to be elected public officials, currently holding office, or their representatives, except if not enough public officials are willing or available, appointed public officials may serve. Minutes of meetings or letters of appointment must be on file for review.

c. The remainder of the members are to be officials or members of business, industry, labor, religious, welfare, education or other major groups in the community. A description of the process used for selection of private sector representatives is to be available for review. The description should include a process for interested private sector groups to petition for membership and how the petition will be considered.

B. As a part of the problem assessment portion of the planning phase (conducted every three years), each local agency shall conduct public forums for low-income residents of the areas. These forums are to allow a discussion and listing of problems as viewed by the low-income and their suggestions for solutions.

**R900-100-29. Federal Program Regulations.**

The CSBG is subject to regulations periodically published in the Federal Register.

**R900-100-30. Required Documentation and Forms.**

The required application, budget and reporting forms shall be designated through SCSO Community Services Block Grant Program Directives.

**R900-100-31. Application Process and Submission Timetable.**

A. The grant application phase of CSBG for local grantees involves:

(1) A local poverty problem identification process developed under prescribed criteria outlined in a Community Services Block Grant Program Directives, problem analysis, resource analysis, service delivery system description, prioritization process and coordination policy process with appropriate documentation submitted to SCSO by May 15 every three (3) years, starting in 1998;

(2) The development of a work program for addressing problems identified and prioritized includes:

(a) Community review of draft work program;

(b) Approval of final plan by local boards or by local officials;

(c) Submission to state office by June 30 of each year.

(3) As part of the application package, the applicant must submit an administrative budget separate from the program operation budget.

**R900-100-32. Budget Estimate.**

By May 1, the state shall make available to eligible applicants, an estimate of funding amounts for each geographical area, based on the formula contained in the State Plan.

**R900-100-33. Public Review and Comment.**

A. After the work program has been prepared, but before Board approval, the applicant must provide ample opportunity for its' review by low-income residents, the community as a whole, and relevant community organizations and agencies. Notice of the availability of the application for citizen review and comment shall also be given by providing written notice to organizations and agencies, to the local media, and posting of notice in public places convenient to low-income residents. The grantee must submit all of the comments of persons and organizations choosing to respond with the application to the State Office of Community Services.

**R900-100-34. Senate Bill 50 - Sales Tax Refund on Donated Food.**

A. The State Community Services Office shall:

(1) Provide definitions for certification and de-certification of eligible agencies to receive the sales tax refund;

(2) Provide criteria for an organization to apply for recognition as a qualified emergency food agency;

(3) Provide procedures to be used in the certifying and de-certifying of agencies for Rules and Procedure infractions;

(4) Provide standards for determining and verifying the amount of the donated food;

(5) Certify organizations to receive the Sales Tax Refund to the State Tax Commission;

(6) Provide monitoring to insure certified agencies maintain required weighing capabilities and inventory records;

(7) Develop other procedures necessary to implement Senate Bill 50 in consultation with the State Tax Commission.

**KEY: antipoverty programs, grants, community action programs, food sales tax refunds**

**Date of Enactment or Last Substantive Amendment: 2012**

**Authorizing, and Implemented or Interpreted Law: 9-4-900; 35A-8-1004**

Workforce Services, Housing and  
Community Development  
**R990-101**  
Qualified Emergency Food Agencies  
Fund (QEFAP)

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 36220

FILED: 05/15/2012

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 139 which was passed in the 2012 General Session moved the Division of Housing and Community Development, Community Services from what was known as the Department of Community and Culture (DCC) to the Department of Workforce Service (DWS). This proposed new rule simply changes the rule numbering and moves it to DWS.

SUMMARY OF THE RULE OR CHANGE: This new rule text is the same as the old rule. The old rule number was R202-101 and will now be R990-101. The statutory references have been changed to reflect the new code provisions. The old department and division names were also changed to reflect the changes in H.B. 139. No other changes were made.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-8-1004

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There will be no costs or savings to the state budget by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

◆ LOCAL GOVERNMENTS: There will be no costs or savings to any local government's budget by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

◆ SMALL BUSINESSES: There will be no costs or savings to any small business by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There will be no costs or savings to any persons other than small businesses, businesses or local government entities by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no costs or savings to any affected persons by this new rule because the rule already existed and any costs or savings are as a result of H.B. 139 and not this new rule.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Kristen Cox, Executive Director

**R990. Workforce Services, Housing and Community Development.**

**R990-101. Qualified Emergency Food Agencies Fund (QEFAF).**  
**R990-101-1. Designation as a Qualified Emergency Food Fund Agency.**

A. A qualified emergency food agency is an organization that is: a) exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code; or b) an association of governments which, as part of its activities operates a program that has as the program's primary purpose to i) warehouse and distribute food to other agencies and organizations providing food and food

ingredients to low-income persons; or ii) provide food and food ingredients directly to low-income persons. For initial designation, an organization shall file an application with the State Community Services Office (SCSO) and must be approved as a qualified emergency food agency before receiving distributions under Utah Code Section 9-4-1409. The application form and instructions are available on the SCSO Website at <http://housing.utah.gov/scso/gefaf.html>

B. After initial designation as a qualified emergency food agency, a non-profit 501(c)(3) organization must maintain a current Charitable Solicitations Permit issued by the Utah Department of Commerce, Division of Consumer Protection per Utah Code Section 13-22-6 or be exempt under Utah Code Section 13-22-8. An association of governments must continue to operate a program which has, as the program's primary purpose to i) warehouse and distribute food to other agencies and organizations providing food and food ingredients to low-income persons; or ii) provide food and food ingredients directly to low-income persons.

C. All organizations shall submit a current Board Roster and contact information for the individual primarily responsible for maintaining the organization's financial records. This information should be submitted with the signed copies of the Memorandum of Understanding each year.

**R990-101-2. Use of Funds.**

Funds received from the Qualified Emergency Food Agency Fund must be expended by the Qualified Agency only for purposes related to: a) warehousing and distributing food and food ingredients to other agencies and organizations providing food and food ingredients to low-income persons; or b) providing food and food ingredients directly to low-income persons.

**R990-101-3. Allowable Expenditures.**

A. Warehousing - Expenditures directly related to receiving, sorting, weighing, handling, and storing of food and food ingredients, including direct staff costs for warehousing activities, scales, fork lifts, pallet jacks, shelving, refrigeration equipment, supplies for food storage, and space costs associated with the warehousing activity such as utilities, insurance, cleaning supplies, pest control, and minor repairs and maintenance.

B. Distributing - Expenditures directly related to packaging and transporting food and food ingredients to other agencies and organizations which provide food and food ingredients to qualified low-income individuals and households, including direct staff costs, transportation equipment costs such as refrigeration units, insurance on vehicles used exclusively to pick up and drop off food and food ingredients, fuel, licensing, repairs and maintenance.

C. Providing - Expenditures directly related to providing food and food ingredients directly to low-income individuals and households, including direct staff costs for client intake, case management, meal preparation and/or delivery of meals to home-bound clients or congregate meal sites; operational expenditures, including telephones, computer systems used to track client eligibility, food intake and distribution; staff and volunteer training costs such as food safety training; food handler's permits; and other direct costs which are reasonable and necessary.

D. Direct staff costs - is defined as salaries and wages, employer's payroll taxes, and fringe benefits for staff directly

involved in collecting, transporting, receiving, weighing, sorting, handling, and packaging food and food ingredients; dispensing food and food ingredients directly to eligible clients; preparing, serving and/or delivering meals to eligible clients; and providing case management services directly to eligible food bank clients. Personnel costs for staff who also work in non-OEFAF supported activities must be supported by time and activity reports.

E. Food and food ingredients - reasonable and necessary purchases of food and food ingredients that are warehoused, distributed, and/or provided directly to eligible low-income individuals and households is allowable.

F. Administrative Expenditures - OEFAF funds expended for administrative costs shall not exceed 5% of the total distributions received under the OEFAF program for any fiscal year. Any OEFAF funds unexpended as of the end of Qualifying Agency's fiscal year should be clearly identified and treated as temporarily restricted funds.

**R990-101-4. Non-Allowable Expenditures.**

Expenditures that do not directly pertain to warehousing, distributing, or providing food and food ingredients to low-income persons, other than the maximum 5% administrative costs mentioned above, are not allowed. Specifically, expenditures associated with soliciting or promoting cash or food donations, recognizing donors and volunteers, and transportation costs other than picking up and delivering food and food ingredients are not allowed. Any other expenditure not specifically listed under the sections above not allowed.

**R990-101-5. Submission of Claims.**

A. Claims shall be submitted no more frequent than monthly. Claims must be submitted by the Qualified Agency online using the Web Grants system at the following website address: <http://www.webgrants.community.utah.gov>

B. Claims shall be based on the eligible pounds of food donated to Qualified Agency during the fiscal year beginning July 1, 2009 and ending June 30, 2010 valued at the rate of \$0.12 per pound.

**R990-101-6. Limited Funds Available.**

Funds available under the Qualified Emergency Food Agency Fund are limited. In the event funds deposited into the Qualified Emergency Food Agency Fund are insufficient to meet the claims for distribution received, the State Community Services Office (SCSO) shall make distributions to Qualified Agencies in the order that SCSO receives the claims. The time submitted as recorded in the Web Grants system shall be used to determine the order in which claims are received by SCSO.

**R990-101-7. Eligible Pounds.**

Eligible pounds shall mean the aggregate number of pounds of food and food ingredients, as defined in Utah Code, Section 59-12-102 that are a) donated to Qualified Agency on or after July 1, 2009; and b) for which Utah sales or use tax was paid by the person donating the food or food ingredients.

**R990-101-8. Recordkeeping Requirements.**

A. Qualified Agency agrees to maintain receipts and other original records for donations of food and food ingredients,

including schedules and work papers supporting claims made under the Qualified Emergency Food Agency Fund program. Such records must be maintained for a period of three years following the date of the last refund for fiscal year ending June 30, 2010.

B. Qualified Agency agrees to maintain a financial management system that provides accurate, current, and complete disclosure of the receipt and disbursements of all OEFAF funds, including accounting records that are supported by source documentation sufficient to determine that OEFAF funds were expended only for purposes as stated in Utah Code 35A-8-1009 and the Use of Funds section above.

C. Qualified Agency agrees to maintain effective control and accountability for all OEFAF funds and all property, equipment, and other assets acquired with OEFAF funds. Qualified Agency agrees to adequately safeguard all such assets and assure they are used solely for authorized purposes. Such records must be maintained by Qualified Agency for a period of five years following the date of the last refund for fiscal year ending June 30, 2010.

**R990-101-9. Monitoring.**

SCSO will monitor Qualified Agency's claims and may conduct one or more site visits to inspect records supporting the pounds of food and food ingredients claimed. SCSO may also review financial records to determine that distributions received are expended in accordance with Utah Code Section 35A-8-1009(8). Qualified Agency agrees to provide all information needed by SCSO in performing this monitoring responsibility and will make such records available, upon reasonable notice, for said monitoring.

**R990-101-10. Overpayment Recoupment.**

A. Amounts claimed by Qualified Agency under this agreement that are determined by audit to be ineligible for reimbursement because a) such claims were based on ineligible food or food ingredient donations; or b) lack of adequate documentation to support the total poundage of food or food ingredient donations claimed shall be immediately returned to the State.

B. Expenditures of OEFAF funds determined by audit to be unallowable because 1) funds were used for purposes not specified above under Use of Funds; or 2) expenditures not supported by adequate source documentation shall be a) immediately returned to the State; or b) properly segregated in the Qualified Agency's accounting records and identified as temporarily restricted until such time as those funds are used for the purposed specified under Use of Funds above.

**R990-101-11. Training and Technical Assistance.**

SCSO agrees to provide training and technical assistance to Qualified Agency in regards to accessing and submitting a claim online using the Web Grants system. Qualified Agency is responsible for ensuring that its staff receives such training and assistance.

**KEY: Qualified Emergency Food Agencies Fund, OEFAF, antipoverty programs, community action programs**  
**Date of Enactment or Last Substantive Amendment: 2012**  
**Authorizing, and Implemented or Interpreted Law: 9-4-140; 935A-8-1004**

**Workforce Services, Unemployment  
Insurance  
R994-403  
Claim for Benefits**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 36223

FILED: 05/15/2012

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to clarify some language and make four job contacts mandatory.

**SUMMARY OF THE RULE OR CHANGE:** The current rule allows claimants some time before they are required to make four new job contacts per week. This amendment will only allow one week, the waiting week, after which a claimant will be denied benefits if he or she does not contact four new employers per week. This proposed amendment also changes some language to make the rule more clear and moves some subsections to a different section for clarity. Additionally, the definition of suitable work has been taken out of this rule but left in Rule R994-405 to avoid duplicity. (DAR NOTE: The proposed amendment to Rule R994-405 is under DAR No. 36224 in this issue, June 1, 2012, of the Bulletin.)

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 35A-1-104 and Subsection 35A-1-104(4) and Subsection 35A-4-403(1) and Subsection 35A-4-502(1)(b)

**ANTICIPATED COST OR SAVINGS TO:**

- ◆ **THE STATE BUDGET:** This is a federally-funded program so there are no costs or savings to the state budget.
- ◆ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs or savings to local government.
- ◆ **SMALL BUSINESSES:** There are no costs or savings to small businesses as there are no fees associated with this program and it is federally funded.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or savings to persons other than small businesses, businesses, or local governmental entities as there are no fees associated with this program and it is federally funded.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact any employer's contribution rate.

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

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

WORKFORCE SERVICES  
UNEMPLOYMENT INSURANCE  
140 E 300 S  
SALT LAKE CITY, UT 84111-2333  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Kristen Cox, Executive Director

**R994. Workforce Services, Unemployment Insurance.**

**R994-403. Claim for Benefits.**

**R994-403-101a. Filing a New Claim.**

(1) A new claim for unemployment benefits is made by filing with the Department of Workforce Services Claims Center. A new claim can be filed by telephone, completing an application at the Department's web site, or as otherwise instructed by the Department.

(2) The effective date of a new claim for benefits is the Sunday [~~immediately preceding the date~~] of the week in which the claim is filed, provided the claimant did not work full-time during that week, or is not entitled to earnings equal to or in excess of the WBA for that week. A claim for benefits can only be made effective for a prior week if the claimant can establish good cause for late filing in accordance with R994-403-106a.

(3) When a claimant files a new claim during the last week of a quarter and has worked less than full-time for that week, the Department will make the claim effective that week if it is advantageous to the claimant, even if the claimant has earnings for that week that are equal to or in excess of the WBA.

(4) Wages used to establish eligibility for a claim cannot be used on a subsequent claim.

**R994-403-103a. Reopening a Claim.**

(1) A claim for benefits is considered "closed" when a claimant reports four consecutive weeks of earnings equal to or in excess of the WBA or does not file a weekly claim within 27 days from the last week filed. In those circumstances, the claimant must reopen the claim before benefits can be paid.

(2) A claimant may reopen the claim any time during the 52-week period after first filing by contacting the Claims Center. The effective date of the reopened claim will be the Sunday ~~[immediately preceding the date]~~ of the week in which the claimant requests reopening unless good cause is established for failure to request reopening during a prior week in accordance with R994-403-106a.

**R994-403-108b. Deferral of Work Registration and Work Search.**

(1) The Department may elect to defer the work registration and work search requirements. A claimant placed in a deferred status is not required to actively seek work but must meet all other availability requirements of the act. Deferrals are generally limited to the following circumstances:

(a) Labor Disputes.

A claimant who is unemployed due to a labor dispute may be deferred while an eligibility determination under Subsection 35A-4-405(4) is pending. If benefits are allowed, the claimant must register for work immediately.

(b) Union Attachment.

(i) A claimant who is a union member in good standing, is on the out-of-work list, or is otherwise eligible for a job referral by the union, and has earned at least half of his or her base period earnings through the union, may be eligible for a deferral. If a deferral is granted to a union member, it shall not be extended beyond the mid-point of the claim unless the claimant can demonstrate a reasonable expectation of obtaining employment through the union.

(ii) If the claimant is not in deferred status because the claimant did not earn at least 50 percent of his or her base period wage credits in employment as a union member, or the deferral has ended, the claimant must meet the requirements of an active, good faith work search by contacting employers in addition to contacts with the union. This work search is required even though unions may have regulations and rules which penalize members for making independent contacts to try to find work or for accepting nonunion employment.

(c) Employer Attachment.

A claimant who has an attachment to a prior employer and a date of recall to full-time employment within ten weeks of filing or reopening a claim may have the work registration requirement deferred to the expected date of recall. The deferral should not extend longer than ten weeks.

(d) Three Week Deferral.

A claimant who accepts a definite offer of full-time work to begin within three weeks, shall be deferred for that period.

(e) Seasonal.

A claimant may be deferred when, due to seasonal factors, work is not available in the claimant's primary base period occupation and other suitable work is not available in the area.

(f) Department approval.

If Department approval is granted under the elements of R994-403-202, the claimant will be placed in deferred status once the training begins and will not be required to register for work or to seek and accept work. The deferral also applies to break periods between successive terms as long as the break period is four weeks or less. A claimant must make a work search prior to the onset of

training, even if the claimant has been advised that the training has been approved.

(2) Deferrals cannot be granted if prohibited by state or federal law for certain benefit programs.

**R994-403-112c. Available.**

(1) General Requirement.

The claimant must be available for full-time work. Any restrictions on availability, such as lack of transportation, domestic problems, school attendance, military obligations, church or civic activities, whether self-imposed or beyond the control of the claimant, lessen the claimant's opportunities to obtain suitable full-time work.

(2) Activities Which Affect Availability.

It is not the intent of the act to subsidize activities which interfere with immediate reemployment. A claimant is not considered available for work if the claimant is involved in any activity which cannot be immediately abandoned or interrupted so that the claimant can seek and accept full-time work.

(a) Activities Which May Result in a Denial of Benefits.

For purposes of establishing weekly eligibility for benefits, a claimant who is engaged in an activity for more than half the normal workweek that would prevent the claimant from working, is presumed to be unavailable and therefore ineligible for benefits. The normal workweek means the normal workweek in the claimant's occupation. This presumption can be overcome by a showing that the activity did not preclude the immediate acceptance of full-time work, referrals to work, contacts from the Department, or an active search for work. When a claimant is away from his or her residence but has made arrangements to be contacted and can return quickly enough to respond to any opportunity for work, the presumption of unavailability may be overcome. The conclusion of unavailability can also be overcome in the following circumstances:

(i) Travel Which is Necessary to Seek Work.

(A) Benefits will not be denied if the claimant is required to travel to seek, apply for, or accept work within the United States or in a foreign country where the claimant has authorization to work and where there is a reciprocal agreement. The trip itself must be for the purpose of obtaining work. There is a rebuttable presumption that the claimant is not available for work when the trip is extended to accommodate the claimant's personal needs or interests, and the extension is for more than one-half of the workweek.

(B) Unemployment benefits cannot be paid to a claimant located in a foreign country unless the claimant has authorization to work there and there is a reciprocal agreement concerning the payment of unemployment benefits with that foreign country.

(C) Unemployment benefits are intended, in part, to stimulate the economy of Utah and the United States and thus are expected to be spent in this country. A claimant who travels to a foreign country must report to the Department that he or she is out of the country, even if it is for a temporary purpose and regardless of whether the claimant intends to return to the United States if work becomes available. Failure to inform the Department will result in a fraud overpayment for the weeks benefits were paid while the claimant was in a foreign country. The claimant may be eligible if the travel is to Canada but must notify the Department of that travel. Canada is the only country with which Utah has a

reciprocal agreement. If the claimant travels to, but is not eligible to work in, Canada and fails to notify the Department of the travel, it will result in a fraud overpayment for the weeks benefits were paid while the claimant was in Canada.

(ii) Definite Offer of Work or Recall.

If the claimant has accepted a definite offer of full-time employment or has a date of recall to begin within three weeks, the claimant does not have to demonstrate further availability except as provided in subparagraphs (B) and (C) of this section and is not required to seek other work. Because the statute requires that a claimant be able to work, if a claimant is unable to work for more than one-half of any week due to illness or hospitalization, benefits will be denied.

(iii) Jury Duty or Court Attendance.

Jury duty or court attendance is a public duty required by law and a claimant will not be denied benefits if he or she is unavailable because of a lawfully issued summons to appear as a witness or to serve on a jury unless the claimant:

(A) is a party to the action;

(B) had employment which he or she was unable to continue or accept because of the court service; or

(C) refused or delayed an offer of suitable employment because of the court service.

The time spent in court service is not a personal service performed under a contract of hire and therefore is not considered employment.

(b) Activities Which Will Result in a Denial of Benefits.

(i) Refusal of Work.

When a claimant refuses any suitable work, the claimant is considered unavailable. Even though the claimant had valid reasons for not accepting the work, benefits will not be allowed for the week or weeks in which the work was available. Benefits are also denied when a claimant fails to be available for job referrals or a call to return to work under reasonable conditions consistent with a previously established work relationship. This includes referral attempts from a temporary employment service, a school district for substitute teaching, or any other employer for which work is "on-call."

(ii) Failure to Perform All Work During the Week of Separation.

(A) Benefits will be denied for the week in which separation from employment occurs if the claimant's unemployment was caused because the claimant was not able or available to do his or her work. In this circumstance, there is a presumption of continued inability or unavailability and an indefinite disqualification will be assessed until there is proof of a change in the conditions or circumstances.

(B) If the claimant was absent from work during the last week of employment and the claimant was not paid for the day or days of absence, benefits will be denied for that week. The claimant will be denied benefits under this section regardless of the length of the absence.

(3) Hours of Availability.

(a) Full-Time.

Except as provided in R994-403-111c(5), in order to meet the availability requirement, a claimant must be ready and willing to immediately accept full-time work. Full-time work generally means 40 hours a week but may vary due to customary practices in an occupation. If the claimant was last employed less than full-

time, there is a rebuttable presumption that the claimant continues to be available for only part-time work.

(b) Other Than Normal Work Hours.

If the claimant worked other than normal work hours and the work schedule was adjusted to accommodate the claimant, the claimant cannot continue to limit his or her hours of availability even if the claimant was working 40 hours or more. The claimant must be available for full-time work during normal work hours as is customary for the industry.

(4) Type of Work and Wage Restrictions.

~~(a) The claimant must be available for work that is considered suitable based on the length of time he or she has been unemployed as provided in R994-405-306.~~ Wage Restrictions:

~~(a) No claimant will be expected, as a condition of eligibility, to accept a wage that is less than the state or federal minimum wage, whichever is applicable, or a wage that is substantially less favorable to the claimant than prevailing wages for similar work in the locality. Benefits cannot be allowed if the claimant is restricting himself or herself to a wage that is not available.~~

~~(b) A claimant must be given a reasonable time to seek work that will preserve his or her earning potential. At the time of filing an initial claim, or at the time of reopening a claim following a period of employment, the claimant may restrict his or her wage requirement to the highest wage earned during or subsequent to the base period and prior to filing the claim or the highest wage available in the locality for the claimant's occupation, whichever is lower, but only if there is a reasonable expectation that work can be obtained at that wage.~~

~~(i) After a claimant has received 1/3 of the maximum benefit amount (MBA) for his or her regular claim, the claimant must accept any wage that is equal to or greater than the lowest wage earned during the base period, as long as that wage is consistent with the prevailing wage standard.~~

~~(ii) After a claimant has received 2/3 of the MBA for his or her regular claim, the claimant must be willing to accept the prevailing wage in the locality for work in any base period occupation.~~

~~(c) Exception for Deferred Claimants:~~

~~The provisions of this section do not apply to those claimants who qualify for deferrals under Subsection 35A-4-403(1)(b) and R994-403-202 during the period of deferral.~~

~~(5) Type of Work:~~

~~(a) One of the purposes of the unemployment insurance program is to help a claimant preserve his or her highest skill by providing unemployment benefits so the claimant can find work similar to what the claimant had prior to becoming unemployed. A skill is defined as a marketable ability developed over an extended period of time by training or experience which could be lost if not used. It is not the intent of the program to subsidize individuals who are limiting their availability because of a desire to improve their employment status.~~

~~(i) At the time of filing an initial claim or reopening a claim following a period of employment, a claimant may restrict availability to the highest skilled employment performed during or subsequent to the base period provided the claimant has a reasonable expectation of obtaining that type of work. A claimant who is not willing to accept employment consistent with work performed during or subsequent to the base period must show a~~

~~compelling reason for that restriction in order to be considered available for work.~~

~~(ii) After the claimant has received 1/3 of the MBA for his or her regular claim, the claimant must be willing to accept work in any of the occupations in which the claimant worked during the base period.~~

~~(iii) After the claimant has received 2/3 of the MBA for his or her regular claim, the claimant must be willing to accept any work that he or she can reasonably perform consistent with the claimant's past experience, training, and skills.]~~

(b) Contract Obligation.

If a claimant is restricted due to a contractual obligation from competing with a former employer or accepting employment in the claimant's regular occupation, the claimant is not eligible for benefits unless the claimant can show that he or she:

(i) is actively seeking work outside the restrictions of the noncompetitive contract;

(ii) has the skills and/or training necessary to obtain that work; and

(iii) can reasonably expect to obtain that employment.

([6]5) Employer/Occupational Requirements.

If the claimant does not have the license or special equipment required for the type of work the claimant wants to obtain, the claimant cannot be considered available for work unless the claimant is actively seeking other types of work and has a reasonable expectation of obtaining that work.

([7]6) Temporary Availability.

When an individual is limited to temporary work because of anticipated military service, school attendance, travel, church service, relocation, a reasonable expectation of recall to a former employer for which the claimant is not in deferral status, or any other anticipated restriction on the claimant's future availability, availability is only established if the claimant is willing to accept and is actively seeking temporary work. The claimant must also show there is a realistic expectation that there is temporary work in the claimant's occupation, otherwise the claimant may be required to accept temporary work in another occupation. Evidence of a genuine desire to obtain temporary work may be shown by registration with and willingness to accept work with temporary employment services.

([8]7) Distance to Work.

(a) Customary Commuting Patterns.

A claimant must show reasonable access to public or private transportation, and a willingness to commute within customary commuting patterns for the occupation and community.

(b) Removal to a Locality of Limited Work Opportunities.

A claimant who moves from an area where there are substantial work opportunities to an area of limited work opportunities must demonstrate that the new locale has work for which the claimant is qualified and which the claimant is willing to perform. If the work is so limited in the new locale that there is little expectation the claimant will become reemployed, the continued unemployment is the result of the move and not the failure of the labor market to provide employment opportunities. In that case, the claimant is considered to have removed himself or herself from the labor market and is no longer eligible for benefits.

([9]8) School.

(a) A claimant attending school who has not been granted Department approval for a deferral must still meet all requirements of being able and available for work and be actively seeking work. Areas that need to be examined when making an eligibility determination with respect to a student include reviewing a claimant's work history while attending school, coupled with his or her efforts to secure full-time work. If the hours of school attendance conflict with the claimant's established work schedule or with the customary work schedule for the occupation in which the claimant is seeking work, a rebuttable presumption is established that the claimant is not available for full-time work and benefits will generally be denied. An announced willingness on the part of a claimant to discontinue school attendance or change his or her school schedule, if necessary, to accept work must be weighed against the time already spent in school as well as the financial loss the claimant may incur if he or she were to withdraw.

(b) A presumption of unavailability may also be raised if a claimant moves, for the purpose of attending school, from an area with substantial labor market to a labor market with more limited opportunities. In order to overcome this presumption, the claimant must demonstrate there is full-time work available in the new area which the claimant could reasonably expect to obtain.

([10]9) Employment of Youth.

Title 34, Chapter 23 of the Utah Code imposes limitations on the number of hours youth under the age of 16 may work. The following limitations do not apply if the individual has received a high school diploma or is married. Claimants under the age of 16 who do not provide proof of meeting one of these exceptions are under the following limitations whether or not in student status because they have a legal obligation to attend school. Youth under the age of 16 may not work:

(a) during school hours except as authorized by the proper school authorities;

(b) before or after school in excess of 4 hours a day;

(c) before 5:00 a.m. or after 9:30 p.m. on days preceding school days;

(d) in excess of 8 hours in any 24-hour period; or

(e) more than 40 hours in any week.

([11]10) Domestic Obligations.

When a claimant has an obligation to care for children or other dependents, the claimant must show that arrangements for the care of those individuals have been made for all hours that are normally worked in the claimant's occupation and must show a good faith, active work search effort.

**R994-403-113c. Work Search.**

(1) General Requirements.

Unless the claimant qualifies for a work search deferral pursuant to R994-403-108b, [A]a claimant must make an active, good faith effort to secure employment each and every week for which benefits are claimed. Efforts to find work must be judged by the standards of the occupation and the community.

(2) Active.

An active effort to look for work [is generally interpreted to mean that each week a claimant should contact a minimum of four employers not previously contacted] means that the claimant

~~must make a minimum of four new job contacts each week unless the claimant is otherwise directed by [the Department]the unemployment division. Those contacts should be made with employers that hire people in the claimant's occupation or occupations for which the claimant has work experience or would otherwise be qualified and willing to accept employment. [Failure of a claimant to make at least the minimum number of contacts creates a rebuttable presumption that the claimant is not making an active work search. The claimant may overcome this presumption by showing that he or she has pursued a job development plan likely to result in employment. A claimant's job development activities for a specific week should be considered in relation to the claimant's overall work search efforts and the length of the claimant's unemployment. Creating a job development plan and/or writing resumes may be reasonable and acceptable activities during the first few weeks of a claim, but may be insufficient after the claimant has been unemployed for several weeks.]If the claimant fails to make four new job contacts during the first week filed, involvement in job development activities that are likely to result in employment will be accepted as reasonable, active job search efforts.~~

(3) Good Faith.

Good faith efforts are defined as those methods which a reasonable person, anxious to return to work, would make if desirous of obtaining employment. A good faith effort ~~[is not necessarily established]~~extends beyond simply~~[-by]~~ making a specific number of contacts to satisfy the Department requirement.

~~[(4) Union Attachment.~~

~~(a) Union attachment is sufficient to meet the requirements of an active work search if the claimant is eligible for a deferral as established under Subsection 35A-4-403(1)(b).~~

~~(b) If the claimant is not in deferred status because the claimant did not earn at least 50 percent of his or her base period wage credits in employment as a union member, or the deferral has ended, the claimant must meet the requirements of an active, good faith work search by contacting employers in addition to contacts with the union. This work search is required even though unions may have regulations and rules which penalize members for making independent contacts to try to find work or for accepting nonunion employment.~~

**R994-403-114c. Claimant's Obligation to Prove Weekly Eligibility.**

The claimant:

(1) has the burden of proving that he or she is able, available, and actively seeking full-time work;

(2) must report any information that might affect eligibility;

(3) must provide any information requested by the Department which is required to establish eligibility;

~~[(5)]4~~ must immediately notify the Department if the claimant is incarcerated~~[-]; and~~

~~[(4)]5~~ must keep a detailed record of ~~[the employers contacted, as well as other activities that are likely to result in employment for each week benefits are claimed; and]~~his or her weekly job contacts so that the Department can verify the contact at any time for an audit or eligibility review. A detailed record includes the following information:

(a) the date of the contact.

~~(b) the name of the employer or other identifying information such as a job reference number.~~

~~(c) employer contact information such as the employer's mailing address, phone number, email address, or website address, and name of the person contacted if available.~~

~~(d) details of the position for which the claimant applied.~~

~~(e) method of contact, and~~

~~(f) results of the contact.~~

**R994-403-204. Availability Requirements When Approval is Granted.**

~~(1) The work search and registration requirements for a claimant who is granted Department approval are found in R994-403-108b(1)(f). [If Department approval is granted, the claimant will be placed in deferred status once the training begins and will not be required to register for work or to seek and accept work. The deferral also applies to break periods between successive terms as long as the break period is four weeks or less. A claimant must make a work search prior to the onset of training, even if the claimant has been advised that the training has been approved.] Once the claimant is actually in training, [B]benefits will not be denied when work is refused as satisfactory attendance and progress in school serves as a substitute for the availability requirements of the act.~~

(2) Absences from school will not necessarily result in a denial of benefits during those weeks the claimant can demonstrate he or she is making up any missed school work and is still making satisfactory progress in school. Satisfactory progress is defined as passing all classes with a grade level sufficient to qualify for graduation, licensing, or certification, as appropriate.

(3) A disqualification will be effective with the week the claimant knew or should have known he or she was not going to receive a passing grade in any of his or her classes or was otherwise not making satisfactory progress in school. It is the claimant's responsibility to immediately report any information that may indicate a failure to maintain satisfactory progress.

(4) The claimant must attend school full-time as defined by the educational institution. If a claimant discontinues school attendance, drops or changes any classes before the end of the term, Department approval may be terminated immediately. However, discontinuing a class that does not reduce the school credits below full-time status will not result in the termination of Department approval. Department approval may be reinstated during any week a claimant demonstrates, through appropriate verification, the claimant is again attending class regularly and making satisfactory progress.

(5) Notwithstanding any other provisions of this section, if the claimant was absent from school for more than one-half of the workweek due to illness or hospitalization, the claimant is considered to be unable to work and unemployment benefits will be denied for that week. A claimant has the responsibility to report any sickness, injury, or other circumstances that prevented him or her from attending school.

(6) A claimant is ineligible for Department approval if the claimant is retaking a class that was originally taken while receiving benefits under Department approval. However, if Department approval was denied during the time the course was originally in progress, approval may be reinstated to cover that portion of the

course not previously subsidized if the claimant can demonstrate satisfactory progress.

**KEY:** filing deadlines, registration, student eligibility, unemployment compensation

**Date of Enactment or Last Substantive Amendment:** [January 17,]2012

**Notice of Continuation:** June 26, 2007

**Authorizing, and Implemented or Interpreted Law:** 35A-4-403(1)

## Workforce Services, Unemployment Insurance R994-405 Ineligibility for Benefits

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36224

FILED: 05/15/2012

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to insure that claimants return to work as quickly as possible by changes to the suitable work rule.

**SUMMARY OF THE RULE OR CHANGE:** The current rule provides that work is not suitable during the first one-third of the claim unless that work pays the highest wage earned during the base period and uses the highest skill level of any work during the base period. This proposed amendment would require a claimant to take a job if the pay and skill level are equal to the average skill level and wages used or earned during the base period. It also changes the current rule to provide this would be suitable work during the first half of the regular claim, not just the first one-third.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 35A-4-104 and Section 35A-4-405 and Subsection 35A-4-104(4) and Subsection 35A-4-502(1)(b)

**ANTICIPATED COST OR SAVINGS TO:**

◆ **THE STATE BUDGET:** This is a federally-funded program so there are no costs or savings to the state budget. It is anticipated that claimants may return to work sooner which would result in a decrease in benefit costs for employers including the state.

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

◆ **SMALL BUSINESSES:** There are no costs or savings to small businesses as there are no fees associated with this program and it is federally funded.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or savings to persons other than small businesses, businesses, or local governmental entities as there are no fees associated with this program and it is federally funded.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These changes will not impact any employers contribution rate.

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

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

WORKFORCE SERVICES

UNEMPLOYMENT INSURANCE

140 E 300 S

SALT LAKE CITY, UT 84111-2333

or at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 07/02/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/09/2012

AUTHORIZED BY: Kristen Cox, Executive Director

**R994. Workforce Services, Unemployment Insurance.**

**R994-405. Ineligibility for Benefits.**

**R994-405-305. Suitability of Work.**

[~~\_\_\_\_\_ (1) A claimant must be allowed time to seek work comparable to the most advantageous base period employment if there is a reasonable expectation of obtaining that type of work.~~

] ([2]1) The unemployment compensation system is not intended to exert downward pressure on existing labor standards, nor is it intended to allow claimants to restrict availability to jobs with increased wages or improved working conditions.

([3]2) Workers should not feel compelled, through a threatened or potential denial of benefits, to accept work under less favorable conditions than those generally available in the area for similar work. The phrase "similar work" does not mean "identical work." Similar work is work in the same occupation or a different occupation which requires essentially the same skills.

(3) Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) If the position offered is vacant due to a strike, lockout, or other labor dispute;

(b) If the wages, hours, or other conditions of work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(c) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

#### **R994-405-306. Elements to Consider in Determining Suitability.**

A claimant is not required to accept an offer of new work unless the work is suitable. Whether a job is suitable depends on the length of time the claimant has been unemployed. As the length of unemployment increases, the claimant's demands with respect to earnings, working conditions, job duties, and the use of prior training must be systematically reduced unless the claimant has immediate prospects of reemployment. The following elements must be considered in determining the suitability of employment:

##### (1) Prior Earnings.

Work is not suitable if the wage is less than the state or federal minimum wage, whichever is applicable, ~~or the wage is substantially less favorable to the claimant than prevailing wages for similar work in the locality.~~

The claimant's prior earnings, length of unemployment and prospects of obtaining work are the primary factors in determining whether the wage is suitable. If a claimant's former wage was earned in another geographical area, the prevailing wage is determined by the new area.

(a) [During the first one-third of the claim, work paying at least the highest wage earned during or subsequent to the base period, or the highest wage available in the locality for the claimant's occupation, whichever is lower is suitable, but only if there is a reasonable expectation that work can be obtained at that wage.] Until the claimant has received 50% of the maximum benefit amount (MBA) for his or her regular claim, work paying at least the customary wage earned during the base period is suitable. Customary wage is defined as the wage earned during the majority of the base period.

(b) After a claimant has received ~~one-third~~ 50% of the MBA for his or her regular claim, any work paying a wage that is ~~[equal to or greater than the]~~ at least 75% of the customary ~~[lowest]~~ wage earned during the base period is suitable ~~as long as that wage is consistent with the prevailing wage standard.~~

~~[(c) After a claimant has received two-thirds of the MBA for his or her regular claim, any work paying the prevailing wage in the locality for work in any base period occupation is suitable.]~~

##### (2) Prior Experience.

~~[If an initial claim or the reopening of a claim is filed following employment at the claimant's highest skill level, work that is not expected to utilize the claimant's highest skill level is not suitable.] A [worker] claimant must be given a reasonable time to seek work that will preserve his or her ~~[highest] customary skills [and earning potential]. Customary skills or skill level, as used in this subsection, is defined as skills used during a majority of~~~~

the base period. However, if a claimant has no realistic expectation of obtaining employment in an occupation utilizing his or her ~~[highest] customary skill level~~, work in related occupations becomes suitable.

~~[(a) After the claimant has received one-third of the MBA for his or her regular claim, work in any of the occupations in which the claimant worked during the base period is considered suitable.]~~

~~[(b) ]~~ After the claimant has received ~~[two-thirds]~~ 50% of the MBA for his or her regular claim, any work that he or she can reasonably perform consistent with the claimant's past work experience, training and skills is considered suitable.

##### (3) Working Conditions.

"Working conditions" refers to the provisions of the employment agreement whether express or implied as well as the physical conditions of the work. ~~[If the working conditions are substantially less favorable than those prevailing for similar work in the area, the work is not suitable.]~~ Working conditions include the following:

##### (a) Hours of Work.

Claimants are expected to make themselves available for work during the usual hours for similar work in the area provided they are not ~~[If work periods are]~~ in violation of the law ~~or if the hours are substantially less favorable than those prevailing for similar work in the area, the employment is not suitable.~~ However, the hours the claimant worked during his or her base period are generally considered suitable. A claimant's preference for certain hours or shifts based on mere convenience is not good cause for failure to accept otherwise suitable employment.

##### (b) Fringe Benefits.

Working conditions include fringe benefits such as health insurance, pensions, and retirement provisions. ~~[Benefits in Addition to Wages:~~

~~Work is not suitable if "fringe benefits" such as life and group health insurance; paid sick, vacation, and annual leave; provisions for leaves of absence and holiday leave; pensions, annuities, and retirement provisions; or severance pay are substantially less favorable than benefits received by the claimant during the base period or than those prevailing for similar work in the area, whichever is lower.]~~

##### (c) Labor Disputes or Law Violations.

Work is not suitable if the working conditions are in violation of any state or federal law, or the job opening is due to a strike, lockout, or labor dispute. If a claimant was laid off or furloughed prior to the labor dispute, and the former employer makes an offer of employment after the dispute begins, it is considered an offer of new work. The vacancy must be presumed to be the result of the labor dispute unless the claimant had a definite date of recall, or recall has historically occurred at a similar time.

##### (4) Prior Training.

The type of work performed during the claimant's base period is suitable unless there is a compelling circumstance that would prevent returning to work in that occupation. If a claimant has training that would now meet the qualifications for a new occupation, work in that occupation may also be suitable, particularly if the training was obtained, at least in part, while the claimant was receiving unemployment benefits under Department approval, or the training was subsidized by another government program.

## (5) Risk to Health and Safety.

Work is not suitable if it presents a risk to a claimant's physical or mental health greater than the usual risks associated with the occupation. If a claimant would be required, as a condition of employment, to perform tasks that would cause or substantially aggravate health problems, the work is not suitable.

## (6) Physical Fitness.

The claimant must be physically capable of performing the work. Employment beyond the claimant's physical capacity is not suitable.

## (7) Distance of the Available Work from the Claimant's Residence.

To be considered suitable, the work must be within customary commuting patterns as they apply to the occupation and area. A claimant's failure to provide his or her own transportation within the normal or customary commuting pattern in the area, or failure to utilize alternative sources of transportation when available, does not establish good cause for failing to apply for or accept suitable work. Work is not suitable if accepting the employment would require a move from the current area of residence unless that is a usual practice in the occupation.

## (8) Religious or Moral Convictions.

The work must conflict with sincerely held religious or moral convictions before a conscientious objection could support a conclusion that the work was not suitable. This does not mean all

personal beliefs are entitled to protection. However, beliefs need not be acceptable, logical, consistent, or comprehensible to others, or shared with members of a religious or other organized group in order to show the conviction is held in good faith.

## (9) Part-time or Temporary Work.

Part-time or temporary work may be suitable depending on the claimant's work history. If the major portion of a claimant's base period work history consists of part-time or temporary work, then any work which is otherwise suitable would be considered suitable even if the work is part-time or temporary. If the claimant has no recent history of temporary or part-time work, the work may still be considered suitable, particularly if the claimant has been unemployed for an extended period and does not have an immediate prospect of full-time work.

**KEY: unemployment compensation, employment, employee's rights, employee termination**

**Date of Enactment or Last Substantive Amendment:**  
**~~December 3, 2008~~ 2012**

**Notice of Continuation: June 26, 2007**

**Authorizing, and Implemented or Interpreted Law: 35A-4-502(1)(b); 35A-1-104(4); 35A-4-405**

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**End of the Notices of 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 (Subsection 63G-3-304(1)).

As with a **PROPOSED RULE**, a **120-DAY RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **120-DAY RULE** including the name of a contact person, justification for filing a **120-DAY RULE**, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (. . . . .) indicates that unaffected text was removed to conserve space.

A **120-DAY RULE** is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A **120-DAY RULE** is effective for 120 days or until it is superseded by a permanent rule.

Because **120-DAY RULES** are effective immediately, the law does not require a public comment period. However, when an agency files a **120-DAY RULE**, it usually files a **PROPOSED RULE** at the same time, to make the requirements permanent. Comments may be made on the **PROPOSED RULE**. Emergency or **120-DAY RULES** are governed by Section 63G-3-304; and Section R15-4-8.

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### Agriculture and Food, Animal Industry **R58-3** Brucellosis Vaccination Requirements

#### NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 36143  
FILED: 05/03/2012

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of the rule is to outline the brucellosis vaccination requirements of cattle and bison in Utah.

**SUMMARY OF THE RULE OR CHANGE:** Brucellosis vaccination requirements for cattle were found in Section 4-31-16.5 which was repealed and the Department was given rulemaking authority for the control of bovine brucellosis in Utah during the 2012 legislative session. This change was initiated by actions by H.B. 505.

**STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** H.B. 505 and Section 4-31-109 and Subsection 4-2-2(1)(c)(i) and Subsection 4-2-2(1)(j)

**EMERGENCY RULE REASON AND JUSTIFICATION:**  
**REGULAR RULEMAKING PROCEDURES WOULD** cause an imminent peril to the public health, safety, or welfare.  
**JUSTIFICATION:** The repeal of Section 4-31-16.5 requires the Department to create a rule that outlines the requirements for brucellosis vaccination of cattle and bison. The

vaccination of beef cattle for *Brucella abortus* places a barrier between wild elk and bison and the public.

#### ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This rule is being enacted as a result of repealing Section 4-31-16.5 in the recent legislative session and does not result in any increased cost to state government.

♦ **LOCAL GOVERNMENTS:** The vaccination of cattle and bison has no local government input. If Utah had a brucellosis outbreak in its cattle population, local health Departments would be required to investigate human brucellosis cases.

♦ **SMALL BUSINESSES:** Beef cattle producers have been vaccinating their replacement heifers for a number of years so this has become a routine herd health cost. The vaccination of replacement heifers has an added value when it comes to selling heifers. If Utah was to have brucellosis in the beef cattle population, a large cost for the disease would be borne by producers.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The general public enjoys brucellosis-free meat and milk because of the continued disease-free status of Utah beef and dairy cattle which is the result of required brucellosis vaccination.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Beef cattle and bison producers will bear the burden of the costs associated with the vaccination of their animals. It has been an on-going cost of production, so this rule change will not result in any increase.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Utah Cattlemen's Association, as well as individual beef cattle producers are requesting that this rule be enacted to replace the repealed statute. A brucellosis-free cattle production in the State of Utah is good for the public and the cattle producers. This rule was reviewed and approved by the Agriculture Advisory Board on 05/01/2012.

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

AGRICULTURE AND FOOD  
ANIMAL INDUSTRY  
350 N REDWOOD RD  
SALT LAKE CITY, UT 84116-3034  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Bruce King by phone at 801-538-7162, by FAX at 801-538-7169, or by Internet E-mail at [bking@utah.gov](mailto:bking@utah.gov)  
◆ Kathleen Mathews by phone at 801-538-7103, by FAX at 801-538-7126, or by Internet E-mail at [kmathews@utah.gov](mailto:kmathews@utah.gov)  
◆ Kyle Stephens by phone at 801-538-7102, by FAX at 801-538-7126, or by Internet E-mail at [kylestephens@utah.gov](mailto:kylestephens@utah.gov)  
◆ Wyatt Frampton by phone at 801-538-7165, by FAX at 801-538-7169, or by Internet E-mail at [wframpton@utah.gov](mailto:wframpton@utah.gov)

EFFECTIVE: 05/08/2012

AUTHORIZED BY: Leonard Blackham, Commissioner

**R58. Agriculture and Food, Animal Industry.**

**R58-3. Brucellosis Vaccination Requirements.**

**R58-3-1. Authority.**

**(1) Promulgated under the authority of section 4-31-109 and Subsections 4-2-2(1)(c)(i), 4-2-2(1)(j).**

**(2) It is the intent of this rule to state the brucellosis vaccination requirements for cattle and bison within Utah.**

**R58-3-2. Definitions.**

**(1) "Accredited Veterinarian" means a veterinarian approved by the Deputy Administrator of Veterinary Services (VS), Animal and Plant Health Inspection Services (APHIS), United States Department of Agriculture (USDA), in accordance with the provisions of 9 CFR 161 to perform functions required by cooperative State-Federal disease control and eradication programs.**

**(2) "Bison" means a bovine-like animal (genus Bison) commonly referred to as American buffalo or buffalo.**

**(3) "Cattle" means all domestic bovine (genus Bos).**

**(4) "Official USDA vaccination tag" means a metal identification eartag that provides unique identification for each individual animal by conforming to the nine (9)-character alphanumeric national uniform eartagging system or any other unique identification device approved by the United States Department of Agriculture.**

**(5) "RFID" means a radio frequency identification device used as individual identification of livestock.**

**R58-3-3. Utah Cattle and Bison Vaccination Requirements.**

**(1) All Utah beef cattle and bison heifers intended for replacement breeding animals must be vaccinated against Brucella abortus.**

**(2) Vaccination of beef cattle and bison heifer calves shall be administered by an accredited veterinarian or by a brucellosis technician.**

**(3) All beef cattle and bison heifers shall be vaccinated with strain RB-51 administered between 4 and 12 months of age. These heifers shall be properly identified by official tattoos and ear tag (either official USDA vaccination tag or RFID of approved design) and shall be reported on an official vaccination certificate (VS Form 4-24) within 30 days to the State Veterinarian.**

**(4) Beef cattle and bison heifers not intended for replacement breeding are exempt from the vaccination requirement in subsection R58-3-3(2).**

**KEY: brucellosis, vaccination, bison, cattle**

**Date of Enactment or Last Substantive Amendment: May 8, 2012**

**Authorizing, and Implemented or Interpreted Law: 4-31-109; 4-2-2(1)(j); 4-2-2(1)(c)(i)**

## Transportation, Preconstruction, Right-of-way Acquisition

### R933-2

## Control of Outdoor Advertising Signs

### NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 36180

FILED: 05/14/2012

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this emergency rule is to clarify the Department of Transportation's authority to maintain "effective control" of outdoor advertising as required by the Federal Highway Beautification Act.

SUMMARY OF THE RULE OR CHANGE: This rule change defines the word "contiguous," defines the concept of a "unified commercial development," and specifies what constitutes completed roadway construction for purposes of issuing outdoor advertising permits. These changes will prevent the department from being pressured into making permitting decisions before the final highway configuration is in place, and clarify the legal distinction between what constitutes on-premise verses off-premise advertising. These changes will help the department maintain operational effectiveness of its outdoor advertising control program and help ensure compliance with the Federal Highway Beautification Act so that eligibility for federal funding is not jeopardized.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-1-201 and Sections 72-7-501 through 72-7-516

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent budget reduction because of budget restraints or federal requirements; and place the agency in violation of federal or state law.

JUSTIFICATION: The rule change is needed immediately to enable the department to maintain effective control of outdoor advertising and prevent a cut in federal funding for failing to meet requirements of the Federal Highway Beautification Act.

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: Failing to maintain "effective control" of outdoor advertising can trigger a ten percent reduction in total federal highway monies received by the state. This is currently estimated to be in the tens of millions of dollars. Additionally, litigation costs are unknown, but expected to be substantial in order to defend against applicants claiming inverse condemnation for takings arising out of the department not issuing outdoor advertising permits in locations where highway construction is considered incomplete. Enacting this rule change will help prevent these costs.

◆ LOCAL GOVERNMENTS: There are no anticipated cost or savings to local government because the rule only applies to outdoor advertising regulated by the state.

◆ SMALL BUSINESSES: There is no anticipated cost or savings to small businesses because the rule change only clarifies terms used in the rule to help the department comply with the Federal Highway Beautification Act.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: There is no anticipated cost or savings to persons other than small businesses, businesses, or local government entities because the rule change only clarifies terms used in the rule to help the department comply with the Federal Highway Beautification Act.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated costs for affected persons except those associated with a possible delay in advertising revenue for persons seeking an outdoor advertising permit along a highway construction project until construction of the project is completed and a permit can be issued.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts on businesses except those associated with a possible delay in advertising revenue for businesses seeking an outdoor advertising permit along a highway construction project until construction of the project is completed and a permit can be issued.

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

TRANSPORTATION  
PRECONSTRUCTION, RIGHT-OF-WAY  
ACQUISITION  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W  
SALT LAKE CITY, UT 84119-5998  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Christine Newman by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at [cwnewman@utah.gov](mailto:cwnewman@utah.gov)

EFFECTIVE: 05/14/2012

AUTHORIZED BY: John Njord, Executive Director

**R933. Transportation, Preconstruction, Right-of-Way Acquisition.**

**R933-2. Control of Outdoor Advertising Signs.**

**R933-2-1. Purpose.**

The purpose of these rules is to implement the Utah Outdoor Advertising Act Section 72-7-501 et seq. Nothing in these rules shall be construed to permit outdoor advertising that would disqualify the State for Federal participation of funds under the Federal standards applicable. The Transportation Commission and the Utah Department of Transportation shall, through designated personnel, control outdoor advertising on interstate and primary highway systems.

**R933-2-2. Federal Regulations.**

The federal regulations governing outdoor advertising contained in 23 CFR 750.101 through 750.713, April 1, 1994 are adopted and incorporated by this reference.

**R933-2-3. Definitions.**

All references in these Rules to Title 72, Chapter 7, Part 5, are to those sections of the Utah Code known as the Utah Outdoor Advertising Act. In addition to the definitions in that part, the following definitions are supplied:

(1) "Abandoned Sign" means any controlled sign, the sign facing of which has been partially obliterated, has been painted out, has remained blank or has obsolete advertising matter for a continuous period of 12 months or more.

(2) "Acceleration and deceleration lanes" means speed change lanes created for the purpose of enabling a vehicle to increase or decrease its speed to merge into, or out of, traffic on the main-traveled way. As used in the Act, an acceleration or deceleration lane begins and ends at a point no closer than 500 feet from the nearest point of the beginning or ending of pavement widening at the exit from or entrance to the main-traveled way. On-ramps and off-ramps are part of the interchange and shall not be considered an acceleration or deceleration lane under the Act or these rules.

(3) "Act" means the Utah Outdoor Advertising Act.

(4) "Advertising" means any message, whether in words, symbols, pictures or any combination thereof, painted or otherwise applied to the face of an outdoor advertising structure, which message is designed, intended, or used to advertise or inform, and which message is visible from any place on the main travel-way of the interstate or primary highway system.

(5) "Areas zoned for the primary purpose of outdoor advertising" as used in the Act is defined to include areas in which the primary activity is outdoor advertising.

(6) "Commercial or industrial zone" as defined in of the Act is further defined to mean, with regard to those areas outside the boundaries of urbanized counties and outside the boundaries of cities and towns referred to in that subsection, those areas not within 8,420 feet of an interstate highway exit-ramp or entrance-ramp as measured from the nearest point of the beginning or ending of the pavement widening at the exit from or entrance to the main traveled way that are reserved for business, commerce, or trade under enabling state legislation or comprehensive local zoning ordinances or regulations, and are actually used for commercial or industrial purposes, including the land along both sides of a controlled highway for 600 feet immediately abutting the area of use, measurements under this subsection being made from the outer edge of regularly used buildings, parking lots, gate-houses, entrance gates, or storage or processing areas.

(7) "Conforming Sign" means an off-premise sign maintained in a location that conforms to the size, lighting, spacing, zoning and usage requirements as provided by law and these rules.

(8) "Contiguous" means a property that shares a common property line with another property.

(1[8]9) "Controlled Sign" means any off-premise sign that is designed, intended, or used to advertise or inform any part of the advertising or informative contents of which is visible from any place on the main traveled way of any interstate or federal-aid primary highway in this State.

(1[9]10) "Destroyed Sign" means a sign damaged by natural elements wherein the costs of re-erection exceeds 30% of the depreciated value of the sign as established by departmental appraisal methods.

(1[0]1) "Feeder systems" are secondary roads that bring traffic to the main-traveled way.

(1[1]2) "Freeway" means a divided highway for through traffic with full control access.

(1[2]3) "Grandfather Status" refers to any off-premise controlled sign erected in zoned or unzoned commercial or industrial areas, prior to May 9, 1967, even if the sign does not comply with the size, lighting, or spacing of the Act and these Rules. Signs only, and not sign sites, may qualify for Grandfather Status.

(1[3]4) "H-1" means highway service zone as defined in the Act.

(1[4]5) "Lease or Consent" means any written agreement by which possession of land, or permission to use land for the purpose of erecting or maintaining a sign, or both, is granted by the owner to another person for a specified period of time.

(1[5]6) "Legal copy" means the advertising copy on the sign that occupies at least 50% of the sign size.

(1[6]7) "Nonconforming Sign" means a sign that was lawfully erected, but that does not conform to State law or rules passed or made at a later date or that later fails to comply with State legislation or rules because of changed conditions. The term "illegally erected" or "illegally maintained" is not synonymous with the term, "nonconforming sign", nor is a sign with "grandfather" status synonymous with the term, "nonconforming sign."

(1[7]8) "Off-Premise Sign" means also, in supplement to the definition stated in the Act, an outdoor advertising sign that advertises an activity, service or product and that is located on premises other than the premises at which activity or service occurs or product is sold or manufactured.

(1[8]9) "On-Premise Sign", in supplement to the definition stated in the Act, does not include a sign that advertises a product or service that is only incidental to the principal activity or that brings rental income to the property owner or occupant.

(1[9]20) "Parkland" means any publicly owned land that is designed or used as a public park, recreation area, wildlife or waterfowl refuge, or historical site.

(2[0]1) "Point of the Gore" means the point of the area delineated by two solid white lines that is between a permanently constructed continuing lane of a through-roadway and a permanently constructed lane used to enter or exit the continuing lane, including similar areas between merging or splitting highways. The point of gore does not include solid white lines on one or more temporary lanes during a road construction project. The point of gore is not permanently constructed until the Department determines that all construction on the road surface is completed and the final gore striping is in-place.

(2[1]2) "Property" as used in the definition of "On-Premise Sign" includes those areas from which the general public is serviced and which are directly connected with and are involved in assembling, manufacturing, servicing, repairing, or storing of products used in the business activity. This property does not include the site of any auxiliary facilities that are not essential to and customarily used in the conduct of business, nor does it include property not contiguous to the property on which the sign is situated.

(2[2]3) "Sale or Lease Sign" means any sign situated on the subject property that advertises that the property is for "sale" or "lease". This sign may not advertise any product or service unrelated to the business of selling or leasing the land upon which it is located, nor may it advertise a projected use of the land or a financing service available or being utilized in its development.

(2[3]4) "Scenic Area" as used in the Act includes a scenic byway.

(2[4]5) "Transient or Temporary Activity" means any industrial or commercial activity, not otherwise herein excluded, that does not have a prior continuous history for a period of six months.

(26) "Unified Commercial Development" means a multiple parcel commercial development that will be considered contiguous for purposes of on-premise advertising in accordance with the Outdoor Advertising Act if all of the following requirements are met.

a. There is a common development and ownership plan that includes common and/or limited common areas such as

sidewalks, roadways, gardens, parking, storage and service areas, to which all constituent businesses have irrevocable shared ownership and use rights, and for which they have irrevocable shared obligations.

b. The unified commercial development operates through an underlying common association or other entity, actively managed and maintained, through which all owners have irrevocable rights and obligations with respect to the unified commercial development and its common areas or limited common areas.

c. The contiguity requirement is met because no part of the development is separated from the other parcel(s) by a controlled route as defined in Section 72-7-501. All parts of the unified commercial development are on the same side of a controlled route and are contiguous except for roadways or driveways that provide access to the development and these roadways are not controlled routes.

d. The common areas or limited common areas of the unified development have necessary and true value to the constituent businesses' regular operations. The common areas or limited common areas are not created solely for the purpose of establishing eligibility for on-premise advertising or other non-operational purposes.

e. A development that mainly involves reciprocal easements or use agreements among individual properties does not meet these requirements. Based upon the requirements above, the unified commercial development satisfies the contiguous criteria for on-premise advertising in the Outdoor Advertising Act. If the owners in a unified commercial development subdivide or change the use to one that does not meet these requirements, the advertising may be considered outdoor advertising rather than on-premise advertising.

2[5]7) "Un-zoned Area" in supplement to the definition stated in the Act, means an area in which no zoning is in effect. It does not include areas within comprehensive zoning or master plans adopted by local zoning authorities.

2[6]8) "V-Type Sign" means any sign, the center pole of which is nearest the traveled portion of the highway and is a common pole to the two sign faces, or when a common pole is not used, a sign with the sign faces no further than 36 inches apart at the angle of the sign closest to the traveled portion of the highway, and the structure poles at the point nearest the traveled portion of the highway no further apart than 48 inches. Existing V-type signs now controlled and permitted are excluded from this definition.

2[7]9) "Visible" means capable of being seen whether or not readable, without visual aid, by a person of normal visual acuity.

#### **R933-2-4. Permits.**

(1) All controlled outdoor advertising signs legally in existence prior to the effective date of the 1967 Act, or that are legally created thereafter, must have a permit. This includes off-premise signs located on the side of or on top of any fixed object or building and visible from the main traveled way of an interstate or federal-aid primary highway.

(2) Anyone preparing to erect a controlled sign shall apply for the permit before beginning construction of the sign. The applicant must submit a completed application as determined by the Department. Until the application is considered complete by the Department, the Department cannot process the application. An application is not considered complete until the point of gore can be

determined as described in R933-2-3(21). Permits shall be issued in the manner prescribed in the Act. Permits may be issued only for signs that are to be erected in commercial or industrial zones or in unzoned commercial or industrial areas, as defined by the Act. Inasmuch as a sign cannot lawfully be constructed or maintained unless there is legal access to the property on which the sign is proposed to be located, a permit may not be issued if the applicant does not have legal access to that property.

(3) Permits may be issued only for signs already lawfully erected or to be lawfully erected within 90 days from the date of the issuance of the permit. Within 30 days from the date of issuance, the permit must be affixed to the completed sign for which the permit was issued as provided in Subsection R933-2-4(5).

(4) A permit affixed to a sign other than the sign for which it was issued is unlawful, and remedial action shall be taken by the permittee by the proper affixing of the permit to the correct sign within 30 days of notice to the permittee.

(5) Permits shall be permanently attached to the sign in a position to be readily visible from the nearest highway in the direction of travel to the sign faces. If the sign is a single-face cross-highway reader, then the permit must be attached to the sign in a position readily visible from the nearest traveled portion of the highway. The permittee is responsible for the proper placement of the permit on the sign.

(6) Sign permits that have been lost or destroyed must be replaced, and new permits for signs otherwise lawful shall be issued upon the payment of a \$25 fee for each sign and the completion of a new permit application.

(7) Permits shall be issued on a one year fiscal basis, and shall be renewed on or before the first day of July of each year.

(8) The fee for a new permit is \$100 for the one-year fiscal period or any part thereof. The permit expires June 30 of the fiscal year. The fee for permit renewal is \$25 for the one-year fiscal period or any part thereof. Notwithstanding the specification in Subsections R933-2-4(8),(12), and (13)(a) of a \$100 fee for a sign permit, the fee for the sign permit for a non-profit public service sign shall be \$25, and the fee for renewal of the permit for that non-profit public service sign shall be \$10.

(9) The fee for permits issued within a one-year fiscal period shall not be prorated.

(10) One-year permit renewals shall be made on renewal forms prepared by the Department. Completion of the renewal application and obtaining of the renewal permit prior to the expiration of the existing permit shall be the sole responsibility of the owner. The renewal may be applied for no sooner than 60 days prior to July 1 of the year in which the permit is to be renewed.

(11) Written proof of lease or consent from site owner to erect or maintain an outdoor advertising sign must be furnished by the applicant at the time of application for an original permit. This proof may consist of an affidavit showing the landowner's name and address, the sign owner's name, and the sign location by route, milepost, address, and county. On renewal of the permit the applicant must certify that the sign site is still under valid lease to the applicant.

(12) If a one-year permit on a conforming sign is not renewed on or before July 1 of the year of its term, a new permit application shall be required for a new permit, along with a fee of \$100.

(13) A permit is non transferable, and the permittee shall be liable for any violation of the law regarding the permitted sign. No new permit may be issued for a sign for which a permit has already been issued, except as follows:

(a) Transfer of ownership of a permitted sign shall require the holder of the valid permit to release, in writing, his rights to continue to maintain his sign or use his location for outdoor advertising. The new owner applicant shall then submit to the Utah Department of Transportation the written release and proof of having obtained sign ownership, and a valid lease or consent for the remainder of the permit term. A \$100 fee shall accompany the application and both application and fee must be received within 30 days of the ownership transfer.

(b) A conforming sign that is unlawful and forfeited by the permittee may be acquired and permitted, providing the new sign applicant submits the completed permit application and proof of possession of a valid land lease or consent to maintain a sign at the described location and providing the new application and the sign are otherwise lawful.

(14) A supplemental application fee of \$100 shall be charged to cover administrative and inspection costs for every sign that was erected without a sign permit, Form R-299, or altered without prior written approval of the department, Form R-407. This supplemental fee is in addition to the regular \$100 permit fee.

(15) Each application for a new permit must be accompanied by the approved building permit of the local governing authority or a written statement from that authority that building permits are not required under its ordinances.

(16) Where local authority has issued a building permit for construction of a sign, but construction is contrary to the Utah Outdoor Advertising Act, the action of the local authority does not require the State to issue a permit.

(17) Federal agencies, State agencies, counties, cities and towns that use outdoor advertising signs along the interstate or primary highway systems shall have a permit for each controlled sign as provided in the Act and these rules.

#### **R933-2-5. Sign Changes, Repairs, and Maintenance.**

(1) Sign changes or repairs, including those for signs in a commercial or industrial zone, are subject to the following requirements:

(a) The face of a controlled sign may be removed for maintenance and renovation or change of advertising copy using basically the same face material. The shape and size of advertising space may not be changed except as provided in these rules. Replacement of the sign face must be accomplished within a 60 day period from the date of its removal.

(b) A nonconforming sign with "Grandfather Status" may not be relocated, structurally altered, nor repositioned, including reversing the direction of the sign face.

(c) A conforming sign may be reshaped or modified as to height or size, or relocated upon proper written request, Form R-407, provided the change is in compliance with the Act and these rules. Any change shall be completed within 60 calendar days from the date of the approval of the request. A fee of \$100 shall accompany the R-407 application to change the sign, in addition to any applicable fee under Subsection R933-2-4(14).

(d) A conforming sign that is damaged by vandals, storms, wind, or acts of nature can be re-erected or changed, or both, upon proper written request and approval on Form R-407.

(e) A nonconforming sign that is damaged but not destroyed by vandals or acts of nature may be repaired to the same size or shape upon proper written application and approval. Normal maintenance may be included in the repair, but no structural changes affecting the sign's value may be allowed. The sign may be purchased by the State if agreement is reached by the State and the sign owner. The compensation to the sign owner shall be the depreciated value of the sign immediately before damage, less cost of re-erection or repair.

(f) Repairs and ordinary maintenance may be made on conforming and nonconforming signs so long as repairs do not alter the basic advertising space or illumination, or change the material of the sign structure.

(g) Nonconforming signs destroyed by natural disaster are not eligible for compensation, unless at the time of destruction they have been appraised and committed for removal and the State has approved a purchase agreement.

(2) The following provisions govern maintenance:

(a) A legally permitted nonconforming sign may remain standing subject to the provisions of the Act and these rules so long as it is not changed, except for advertising copy, and is not purchased or condemned pursuant to law.

(b) Signs shall be properly maintained. Improper maintenance is considered:

- (i) Paint faded or peeling extensively;
- (ii) Message not visible or illegible;
- (iii) Sheets or panels loose or sagging;
- (iv) Structural supports leaning;
- (v) Abandoned.

(c) A sign with any of the deficiencies listed in Subsection R933-2-5(2)(b) is not in a reasonable state of repair, is in violation of the law, and is subject to removal.

(d) The crossing of a right-of-way line of any State highway at other than an established access approach to erect or maintain a sign without the written permission of the Department, is unlawful.

#### **R933-2-6. Commercial and Industrial Usage: Limitations in Zoned or Unzoned Areas.**

(1) Controlled signs in zoned or unzoned industrial or commercial areas are subject to the following zoning and usage requirements:

(a) Commercial or industrial usage must be visible from a traveled portion of the highway and must be situated within 600 feet of the sign site, measured from the outer edge of the regularly used buildings, parking lot, storage or processing area of the activity.

(b) The sign site must be zoned commercial or industrial or be in an unzoned commercial or industrial area.

(2) Airport runways or parking or aircraft tie down areas are not zoned or unzoned commercial or industrial areas.

(3) Mining operations and related activities, including gravel pits are not zoned or unzoned commercial or industrial areas unless they are:

(a) Where the final and concentrated processing of mined or extracted minerals is effected; or

(b) Where the mined material which has been processed is regularly stored or held for sale or shipment.

(4) Farming or ranching areas or related dairy farm facilities, of whatever nature, are not zoned or unzoned commercial or industrial areas.

(5) Municipal or private golf courses or cemeteries are not zoned or unzoned commercial or industrial areas.

(6) A trailer or mobile home park, court, or facility does not qualify under Subsection 72-7-504(1)(d) or (e) regardless of the local zoning. An RV Park does not qualify under either of those subsections unless at least 3/4 of the total available trailer parking spaces are not occupied or reserved for rental on a month-to-month basis.

(7) Where an occupied residence is located along the highway right of way within 600 feet of a commercial or industrial activity, no controlled sign may be erected closer than 100 feet of the residence unless the owner of the residence expressly waives in writing the foregoing restriction. The waiver must be submitted with the permit application prior to the erection of a new sign.

(8) Where the width of the right of way in a commercial or industrial area is more than 300 feet, and there is commercial activity on only one side of the highway, that activity does not qualify the opposite side of the highway as commercial or industrial usage for the purpose of erecting new outdoor advertising signs.

#### **R933-2-7. Spacing For Permitted Signs.**

(1) Spacing of permitted signs shall be as follows:

(a) Signs in unincorporated areas may not be spaced less than 500 feet apart on the interstate and federal-aid primary system, as measured parallel to the highway right of way. Any sign allowed to be erected in a highway service zone H-1 may not be less than 500 feet from an existing controlled sign adjacent to an interstate highway or primary highway except that signs may be erected less than 500 feet from each other if the sign faces on the same side of the interstate highway or limited access primary highway are not simultaneously visible.

(b) No sign may be erected more than 100 feet on the perpendicular from the edge of the right of way of an interstate or primary highway except where a non-controlled highway or railroad right of way runs contiguous and adjacent to the edge of the controlled highway. The 100-foot corridor shall then be measured from a point on the perpendicular not to exceed 200 feet from the edge of the right of way of the interstate or primary highway. In no case may the outer edge of the corridor exceed 350 feet from the controlled right of way.

(c) Any sign located within the controlled area of both the interstate system and a primary system must meet the spacing requirements of both highway systems.

(d) If a sign message may be read from two or more routes, one or more of which is a controlled route, the more stringent of applicable control requirements applies.

(2) Height Above Highway:

No new structure, including the sign face, may be more than 50 feet in height above the elevation of the edge of the traveled surface of the highway. Where local zoning requirements or ordinances are in effect, the stricter of any applicable zoning requirements or ordinances apply.

#### **R933-2-8. Removal of Illegal Signs.**

(1) Removal Costs: The cost for the removal by the Utah Department of Transportation of an illegal or abandoned sign shall be assessed jointly and severally against the sign owner, landowner, occupant of the land or other responsible person, or any combination thereof, in accordance with Section 72-7-508.

(2) Storage Charges: Illegal or abandoned signs that have been removed by the Department after proper notice to the sign and site owner or occupant of the land shall be stored at the nearest department shed. There shall be a charge of \$25 per month levied as the storage charges. The storage charges shall be in addition to the costs of the removal of the illegal or abandoned sign.

(3) Redemption and Disposal: If the illegal or abandoned sign has not been claimed and redeemed within 30 days from the date of removal, notice to the sign owner, site owner, and occupant of the land shall be given. If the sign is not redeemed within 30 days thereafter, a designated Department official in the area in which the sign is stored shall proceed to dispose of the stored illegal or abandoned sign by either utilizing the material contained therein for Utah Department of Transportation maintenance purposes or destroying the sign. A statement of the sign disposal shall be made and filed with a designated person at the Department.

#### **R933-2-9. Termination of Non-Conforming Use Status.**

(1) The non-conforming use status of a controlled sign shall terminate under the following conditions:

(a) Failure of the sign owner to apply for a renewal permit on or before the date on which the permit expires;

(b) Structural alteration or change of the sign as to height, size, location or direction of sign face not constituting ordinary maintenance or a change of advertising matter;

(c) Destruction by storm, wind, act of nature, fire or vandalism;

(d) Abandonment;

(e) Failure to correct after receiving proper notice pursuant to Section 72-7-508, or failure to ask for a hearing after receiving proper notice pursuant to Section 72-7-508, or failure to file a written response as required by law, or failure to appeal from an adverse decision of the Department, or exhaustion of all legal remedies under Section 72-7-508.

(f) Purchase by the Department under Section 72-7-510.

(g) Acquisition at any time by the Department for highway construction.

#### **R933-2-10. Conforming Sign Becoming Nonconforming -- Removal.**

(1) Any legal conforming sign that becomes nonconforming after May 9, 1967, by reason of law or route classification, may not be required to be removed under the Utah Advertising Act until after the end of the fifth year after it had become nonconforming, except as otherwise provided for by law or contract.

#### **R933-2-11. On-Premise Signs -- Illegal Status - Removal.**

An on-premise sign loses its on-premise status when the business or activity it advertises has ceased to exist for a period of at least 12 months at the site of the sign, the sign is located within

1,000 feet of a controlled highway, and the message thereon is visible to the traveling public from that controlled highway. This sign may be removed at the expense of the sign owner or land owner or both without compensation to the sign or site owner as provided in Section 72-7-508 of the Act.

#### **R933-2-12. Directional Signs.**

(1) Directional signs shall conform to federal standards concerning the lighting, size, number, and spacing of the signs. There are no zoning or usage requirements for directional signs.

(2) The following standards apply only to directional signs that are erected and maintained adjacent to the interstate and federal-aid primary highway system, and that are visible from the main traveled way.

(a) A directional sign allowed under Sections 72-7-502 and 72-7-504 is subject to the following restrictions:

(i) No sign may exceed the following limits where all dimensions include border and trim, but exclude supports:

- (A) Maximum area - 150 square feet;
- (B) Maximum height - 20 feet;
- (C) Maximum length - 20 feet.

(ii) A sign may be illuminated, subject to the following:

(A) Signs that are not effectively shielded so as to prevent light from being directed at any portion of the traveled way of an interstate or primary highway, or that cause glare or impair the vision of the driver of any motor vehicle, or that otherwise interfere with any driver's operation of a motor vehicle, are prohibited.

(B) No sign may be so illuminated as to obscure or interfere with the effectiveness of an official traffic sign, device, or signal.

(iii) Each location of a directional sign must be approved by the Department and is subject to the following restrictions:

(A) No directional sign may be located within 2,000 feet of an interchange or intersection at grade within the interstate system or other freeways or the primary system, measured from the nearest point of pavement widening at the exit from or entrance to the main traveled way.

(B) No directional sign may be located within 2,000 feet of a rest area, parkland, or scenic areas.

(C) Directional signs facing the same direction of travel shall be spaced no less than one mile apart.

(D) No more than one directional sign per activity facing the same direction of travel may be erected along a single route approaching the activity.

(E) Signs adjacent to the interstate or primary system shall be located within 15 air miles of the activity they advertise.

(iv) Any area of historical interest shall be approved by the Utah Historical Society before consideration for approval as an area for a directional sign.

(b) The following directional signs are prohibited:

(i) Signs advertising activities that are illegal under Federal or State law in effect at the location of those signs or activities;

(ii) Signs positioned in any manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or to obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic;

(iii) Signs erected or maintained upon trees or painted or drawn upon rocks, or other natural features;

(iv) Obsolete signs;

(v) Signs that are structurally unsafe or in disrepair;

(vi) Signs that contain or are illuminated by any flashing or moving light or animated by moving parts;

(vii) Signs located in rest areas, parklands, or scenic areas.

(3) Any directional sign erected or maintained under the Act and these rules may at any time be removed for cause upon order of the Department after notice and hearing, if requested and timely pursued, under Section 72-7-508.

#### **R933-2-13. Official Signs.**

(1) Prerequisites for erection and maintenance:

(a) Prior to erection of an official sign the public agency shall submit to the Department in the Region where the sign is to be located, a completed permit application form R-299 along with:

(i) Facsimile of the sign message to be erected;

(ii) Statement of the official duty or responsibility being performed;

(iii) Certified copy of the statute, resolution, or ordinance from the public body showing official action authorizing erection and maintenance of the sign.

(b) The sign must be erected off the highway right-of-way, owned and maintained by the public agency, and located within the zoning jurisdiction of the public agency.

(c) Standards, Criteria and Restrictions:

(i) Only information of general interest to the traveling public may be placed on an official sign. Commercial advertising of a particular service, product or facility is prohibited.

(ii) The sign must be within the zoning jurisdiction of the city, town, or other public agency designated by the sign.

(iii) No city, town or other subdivision of the State may erect or maintain more than one sign at each approach to the off-ramp, facing oncoming traffic at the nearest point of turn off to a city, town or other subdivision and in no event may more than two official signs, one for each direction of travel upon the controlled highway, be erected and maintained by or for the purpose of designating a city or town or other subdivision.

(iv) No official sign may be located within 2,000 feet of an interchange or intersection at grade along the interstate or primary highway system, measured from the nearest point of pavement widening at the exit from the main traveled way.

(v) No official sign may be so illuminated as to interfere with the effectiveness of, or obscure, an official traffic sign, device, or signal.

(vi) Signs that are not effectively shielded so as to prevent light from being directed at any portion of the traveled way of an interstate or primary highway, or that cause glare or impair the vision of the driver of any motor vehicle, or that otherwise interfere with any driver's operation of a motor vehicle, are prohibited.

(vii) No sign may be located within 500 feet of a rest area, parkland, cemetery, or scenic area or other official sign.

(viii) No sign may be erected at a site prohibited under local zoning. The stricter commercial and industrial zoning and usage requirements applicable to controlled outdoor advertising signs do not apply to official signs, though all other relevant rules apply.

(ix) No sign message may be altered without prior written approval by the department.

(x) Any official sign erected or maintained under the Act and these Rules may at any time be removed for cause and without compensation after notice and hearing, if required. The owner of any official sign shall remove the sign at its own cost and expense.

**R933-2-14. Department Hearings.**

Any hearing regarding the legality of a sign shall be held in the region where the sign is located, and shall be held in accordance with the Act, and in accordance with the Utah Administrative Procedures Act and Rule R907-1 unless specifically stated otherwise in a governing statute.

**KEY: signs**

**Date of Enactment or Last Substantive Amendment: May 14, 2012**

**Notice of Continuation: November 14, 2011**

**Authorizing, and Implemented or Interpreted Law: Title 72, Chapter 7, Part 5; 72-1-201**

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**End of the Notices of 120-Day (Emergency) Rules Section**



# 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 agency is required to review the rule. This review is intended to remove obsolete rules from the Utah Administrative Code. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **NOTICE**. By filing a Notice, the agency indicates that the rule is still necessary.

**NOTICES** are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. **NOTICES** are effective upon filing.

**NOTICES** are governed by Section 63G-3-305.

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## Administrative Services, Facilities Construction and Management **R23-1** Procurement of Construction

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

DAR FILE NO.: 36145  
FILED: 05/03/2012

### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The statutory provisions governing the procurement of construction by the Division are contained in Section 63G-6-208, Rules and Regulations of Policy Board and Building Board, and Title 63A, Chapter 5.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received either opposing or supporting the rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes procedures for the procurement of construction by the Division. This rule needs to be extended in order to assure the appropriate rules for the procurement of construction exist. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
ADMINISTRATIVE SERVICES  
FACILITIES CONSTRUCTION AND MANAGEMENT  
ROOM 4110 STATE OFFICE BLDG  
450 N STATE ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

### DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at [abachman@utah.gov](mailto:abachman@utah.gov)  
♦ Cecilia Niederhauser by phone at 801-538-3261, by FAX at 801-538-9694, or by Internet E-mail at [cniederhauser@utah.gov](mailto:cniederhauser@utah.gov)  
♦ Chiarina Glead by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at [cgleed@utah.gov](mailto:cgleed@utah.gov)  
♦ Priscilla Anderson by phone at 801-538-9595, by FAX at 801-538-3378, or by Internet E-mail at [phanderson@utah.gov](mailto:phanderson@utah.gov)

AUTHORIZED BY: D. Gregg Buxton, Director

EFFECTIVE: 05/03/2012

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## Administrative Services, Facilities Construction and Management **R23-19** Facility Use Rules

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

DAR FILE NO.: 36146  
FILED: 05/03/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Sections 63A-5-103 and 63A-5-204. The purpose of this rule is to regulate the use of state facilities and grounds, providing rules regarding political signs, as well as authorizing written policies to be created pursuant to this rule.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is needed in order to continue to regulate the use of state facilities and grounds. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ADMINISTRATIVE SERVICES  
 FACILITIES CONSTRUCTION AND MANAGEMENT  
 ROOM 4110 STATE OFFICE BLDG  
 450 N STATE ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov  
 ♦ Cecilia Niederhauser by phone at 801-538-3261, by FAX at 801-538-9694, or by Internet E-mail at cniederhauser@utah.gov  
 ♦ Chiarina Gleed by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov  
 ♦ Priscilla Anderson by phone at 801-538-9595, by FAX at 801-538-3378, or by Internet E-mail at phanderson@utah.gov

AUTHORIZED BY: D. Gregg Buxton, Director

EFFECTIVE: 05/03/2012

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**Administrative Services, Facilities  
 Construction and Management  
 R23-20  
 Free Speech Activities**

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

DAR FILE NO.: 36148  
 FILED: 05/03/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is adopted pursuant to the authority granted to the Board under Sections 63A-5-103 and 63A-5-204. The purpose of this rule is to facilitate constitutionally protected free speech and assembly at state facilities and grounds and to preserve the right of every person to exercise free speech and freedom of assembly as protected by the constitutions of the State of Utah and the United States.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule needs to be continued in order to assure the proper allowance and rules regarding free speech activities. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ADMINISTRATIVE SERVICES  
 FACILITIES CONSTRUCTION AND MANAGEMENT  
 ROOM 4110 STATE OFFICE BLDG  
 450 N STATE ST  
 SALT LAKE CITY, UT 84114-1201  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Alan Bachman by phone at 801-538-3105, by FAX at 801-538-3313, or by Internet E-mail at abachman@utah.gov  
 ♦ Cecilia Niederhauser by phone at 801-538-3261, by FAX at 801-538-9694, or by Internet E-mail at cniederhauser@utah.gov  
 ♦ Chiarina Gleed by phone at 801-538-3240, by FAX at 801-538-3313, or by Internet E-mail at cgleed@utah.gov  
 ♦ Priscilla Anderson by phone at 801-538-9595, by FAX at 801-538-3378, or by Internet E-mail at phanderson@utah.gov

AUTHORIZED BY: D. Gregg Buxton, Director

EFFECTIVE: 05/03/2012

Education, Administration  
**R277-612**  
 Foreign Exchange Students

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

DAR FILE NO.: 36153  
 FILED: 05/07/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-2-206(2) directs the Utah State Board of Education (Board) to make rules to administer the cap on the number of foreign exchange students for purposes of apportioning state monies for the students, and Subsection 53A-1-401(3) allows the Board to adopt rules in accordance with its responsibilities.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: State law continues to provide provisions for the Board to make rules to administer the cap on the number of foreign exchange students for purposes of apportioning state monies for the students. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Carol Lear by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at [carol.lear@schools.utah.gov](mailto:carol.lear@schools.utah.gov)

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

EFFECTIVE: 05/07/2012

Environmental Quality, Water Quality  
**R317-3**  
 Design Requirements for Wastewater  
 Collection, Treatment and Disposal  
 Systems

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

DAR FILE NO.: 36190  
 FILED: 05/15/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-5-104(1)(h) authorizes the Water Quality Board to review plans, specifications, or other data relative to wastewater disposal systems or any part of disposal systems, and issue construction permits for the installation or modification of treatment works or any parts of them. Subsection 19-5-104(1)(f) authorizes the Board to make rules which implement or effectuate the powers and duties of the Board.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets design requirements for construction of wastewater collection, treatment, and disposal systems. The Water Quality Board is charged with review and approval of these systems. The rule is required to meet this charge, and should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at [jetherington@utah.gov](mailto:jetherington@utah.gov)

AUTHORIZED BY: Walter Baker, Director

EFFECTIVE: 05/15/2012

**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-100  
Medicaid Primary Care Network  
Services**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 36184  
FILED: 05/14/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department to implement Medicaid policy through administrative rules, which allow the Department to administer the Primary Care Network (PCN) program. In addition, Section 26-1-5 authorizes the Department to adopt rules that provide services to PCN recipients. Section 1115 of the Social Security Act also authorizes services to PCN recipients under a waiver of federal Medicaid requirements.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because it spells out services available to PCN recipients and lists their cost sharing responsibilities. Therefore, this rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 05/14/2012

**Health, Health Care Financing,  
Coverage and Reimbursement Policy  
R414-200  
Non-Traditional Medicaid Health Plan  
Services**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
OF CONTINUATION**  
DAR FILE NO.: 36185  
FILED: 05/14/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department to implement Medicaid policy through administrative rules, which allow the Department to administer the Non-Traditional Medicaid (NTM) program. In addition, Section 26-1-5 authorizes the Department to adopt rules that provide services to NTM recipients. Section 1115 of the Social Security Act also authorizes services to NTM recipients under a waiver of federal Medicaid requirements.

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

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because it spells out services available to NTM recipients and lists their cost sharing responsibilities. Therefore, this rule should be continued.

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

HEALTH  
HEALTH CARE FINANCING,

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 05/14/2012

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**Insurance, Administration**  
**R590-238**  
**Captive Insurance Companies**

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

DAR FILE NO.: 36142  
FILED: 05/02/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 31A-2-201(3)(a) gives the Commissioner authority to write rules to implement Title 31A. Section 31A-37-106 authorizes the commissioner to write rules to determine circumstances under which a branch captive insurance company is not required to be a pure captive insurance company; require statement, document, or information to be provided to the commissioner to obtain a certificate of authority; prescribe one or more capital requirements for a captive, in addition to those required in Section 31A-37-204; establish capital and surplus requirements or maintenance of free surplus requirements; waive or modify requirement for public notice and hearing for a merger, consolidation, conversion, mutualization or redomestication; approve the use of one or more reliable methods of valuation and rating for different types of captives or industrial insured groups; prohibit or limit investments that threaten solvency or liquidity; determine the financial reports that a sponsored captive shall file annually; prescribe the required forms and reports under Section 31A-37-501; and establish standards to ensure that certain entities are able to exercise control of risk management functions of a controlled unaffiliated insured business.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not received

any written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets forth the financial, reporting, record-keeping, and other requirements necessary for the regulation of captive insurance companies as required under the Captive Insurance Companies Act, which is Title 31 A, Chapter 37. Therefore, this rule should be continued.

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

INSURANCE  
ADMINISTRATION  
ROOM 3110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY, UT 84114-1201  
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ Jilene Whitby by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 05/02/2012

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**Natural Resources, Wildlife Resources**  
**R657-2**  
**Adjudicative Proceedings**

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

DAR FILE NO.: 36149  
FILED: 05/04/2012

**NOTICE OF REVIEW AND STATEMENT OF  
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under Sections 23-13-2 and 63G-4-103, this rule sets forth the standards and procedures governing all adjudicative proceedings before the Wildlife Board and the division.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments supporting or opposing Rule R657-2 have been received since 05/15/2002, when the rule was first enacted.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-2 sets forth the standards and procedures governing all adjudicative proceedings before the Wildlife Board and the division specifically governing the requests for agency action, declaratory orders brought pursuant to Section 63G-4-503, requests for species reclassification under Rule R657-3, post issuance requests for a variance or amendment to a license, permit, tag or certification of registration. Rule R657-2 sets the standard procedure for filing timelines, pre-hearing procedures, Decisions and Orders and Judicial Review, this rule helps to govern the legal proceedings for the division. It is imperative that this rule be in order. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 NATURAL RESOURCES  
 WILDLIFE RESOURCES  
 1594 W NORTH TEMPLE  
 SALT LAKE CITY, UT 84116-3154  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: James Karpowitz, Director

EFFECTIVE: 05/04/2012

**Natural Resources, Wildlife Resources  
 R657-22  
 Commercial Hunting Areas**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 36150  
 FILED: 05/04/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Under Section 23-17-6, the Wildlife Board is authorized to make rules and regulations concerning the operation of commercial hunting areas.

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

opposing Rule R657-22 have been received since 06/03/2007, when the rule was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R657-22 provides the procedures and requirements for establishing, maintaining, and operating a commercial hunting area. The procedures adopted in this rule have provided an effective and efficient process. Continuation of this rule is necessary for continued success of the commercial hunting area program.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 NATURAL RESOURCES  
 WILDLIFE RESOURCES  
 1594 W NORTH TEMPLE  
 SALT LAKE CITY, UT 84116-3154  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 ♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: James Karpowitz, Director

EFFECTIVE: 05/04/2012

**Natural Resources, Wildlife Resources  
 R657-30**

**Fishing License for the Terminally Ill**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT  
 OF CONTINUATION**  
 DAR FILE NO.: 36152  
 FILED: 05/04/2012

**NOTICE OF REVIEW AND STATEMENT OF  
 CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 23-19-36 authorizes a resident who is terminally ill, and has less than five years to live, to receive a free fishing license. Rule R657-30 provides the procedures for a terminally ill person to obtain a free fishing license.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments supporting or opposing Rule R657-30 have been received since 05/07/2007, when the rule was last reviewed.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of Rule R657-30 is necessary to provide an effective and efficient process for issuing free fishing licenses to persons who are terminally ill.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 NATURAL RESOURCES  
 WILDLIFE RESOURCES  
 1594 W NORTH TEMPLE  
 SALT LAKE CITY, UT 84116-3154  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: James Karpowitz, Director

EFFECTIVE: 05/04/2012

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**Public Safety, Fire Marshal**  
**R710-1**  
**Concerns Servicing Portable Fire Extinguishers**

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

DAR FILE NO.: 36198  
 FILED: 05/15/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: The statutory oversight of those technicians that sell and service portable fire extinguishers and complete hydrostatic testing has been in effect in the State of Utah since the early 1970's. Sections 53-7-216 through 53-7-219 are the specific statutory sections that authorize this oversight. Section 53-7-204 is the statute that authorizes the Utah Fire Prevention Board to regulate the sale and servicing of portable fire extinguishers in the interest of safeguarding lives and property.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: At the 11/10/2009 Fire Prevention Board Meeting, the Board considered the possibility of allowing a technician to be certified to conduct yearly

maintenance inspections only for the company or district that the person worked for, without having to purchase all of the required service equipment. The Board directed staff that all the involved portable fire extinguisher companies be polled seeking their response to this possible rule amendment. The Board received a number of responses from the portable fire extinguisher industry stating that this was a very poor idea and would create nothing more than a group of "rag and taggers" as it is known in the industry. At the 01/12/2010 Board meeting, the Board accepted these written comments and listened to other comments on this same issue. At the conclusion of all the written and verbal comments, which were all against this proposed rule amendment, the Board decided to not go forward with the proposed rule amendment and left the rule as it was currently enacted.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The sales and servicing of portable fire extinguishers has been regulated in the State of Utah for the last 40 years and should continue for the next five years. A portable fire extinguisher is the first line of defense to suppress a fire when the fire is in its incipient stage. The need for a portable fire extinguisher to work correctly is paramount to the early suppression of a fire and stopping of the possibility of a conflagration. If portable fire extinguishers are not serviced at all or not serviced correctly, they will not function in the event of a fire. The agency does not disagree with the comments received about the non-allowance of "rag and taggers" and agreed with the Board's decision to not continue with the administrative rule amendment.

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

PUBLIC SAFETY  
 FIRE MARSHAL  
 ROOM 302  
 5272 S COLLEGE DR  
 MURRAY, UT 84123-2611  
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Brent Halladay by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

AUTHORIZED BY: Brent Halladay, State Fire Marshal

EFFECTIVE: 05/15/2012

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**Public Service Commission,**  
**Administration**  
**R746-420**  
**Requests for Approval of a Solicitation Process**

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

DAR FILE NO.: 36166  
FILED: 05/10/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 54-17-202 requires the commission to establish the requirements for solicitation process by which an affected utility constructs or acquires acquisition of a significant energy resource pursuant to the Utah Energy Resource Procurement Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received since the rule was proposed and made effective in 2007.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R746-420 establishes the procedural and informational requirements for a solicitation process by which an affected utility constructs or acquires a significant energy resource pursuant to the Utah Energy Resource Procurement Act. Rule R746-420 continues to be necessary because Section 54-17-200 remains in force. Therefore, the rule should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ David Clark by phone at 801-530-6708, by FAX at 801-530-6796, or by Internet E-mail at [drexclark@utah.gov](mailto:drexclark@utah.gov)  
◆ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at [sbintz@utah.gov](mailto:sbintz@utah.gov)

AUTHORIZED BY: David Clark, Legal Counsel

EFFECTIVE: 05/10/2012

Public Service Commission,  
Administration

**R746-430**

Procedural and Informational  
Requirements for Action Plans, for an  
Approval of a Significant Energy  
Resource, for Determination of  
Whether to Proceed, and for Waivers of  
a Solicitation Process or of an Approval  
of a Significant Energy Resource

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

DAR FILE NO.: 36167  
FILED: 05/10/2012

**NOTICE OF REVIEW AND STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 54-17-301 through 54-17-304 require the commission to establish the procedural and informational requirements for review of a utility's action plan for approval of a significant energy resource decision and when seeking an order to proceed with an approved significant energy resource decision pursuant to the Energy Resource Procurement Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received since the rule was proposed and made effective in 2007.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R746-430 establishes the procedural and informational requirements for review of a utility's action plan for approval of significant energy resource decision, and when seeking an order to proceed with an approved significant energy resource decision pursuant to the Energy Resource Procurement Act. Rule R746-430 continues to be necessary because Sections 54-17-301 through 54-17-304 remain in force. Therefore, the rule should be continued.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:  
♦ David Clark by phone at 801-530-6708, by FAX at 801-530-6796, or by Internet E-mail at [drexclark@utah.gov](mailto:drexclark@utah.gov)  
♦ Sheri Bintz by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at [sbintz@utah.gov](mailto:sbintz@utah.gov)

AUTHORIZED BY: David Clark, Legal Counsel

EFFECTIVE: 05/10/2012

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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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State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a Notice of Effective Date within 120 days from the publication of a Proposed Rule or a related Change in Proposed Rule the rule lapses and the agency must start the rulemaking process over.

Notices of Effective Date are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

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### Abbreviations

AMD = Amendment

CPR = Change in Proposed Rule

NEW = New Rule

R&R = Repeal & Reenact

REP = Repeal

### Education

#### Administration

No. 35932 (AMD): R277-107-6. Public Education

Employees

Published: 04/01/2012

Effective: 05/08/2012

No. 35905 (AMD): R277-419-5. Student Membership

Published: 04/01/2012

Effective: 05/08/2012

No. 35933 (AMD): R277-454. Construction Management of School Building Projects

Published: 04/01/2012

Effective: 05/08/2012

No. 35935 (NEW): R277-479. Charter School Special Education Student Funding Formula

Published: 04/01/2012

Effective: 05/08/2012

No. 35936 (AMD): R277-485. Loss of Enrollment

Published: 04/01/2012

Effective: 05/08/2012

No. 35937 (AMD): R277-720. Child Nutrition Programs

Published: 04/01/2012

Effective: 05/08/2012

No. 35938 (AMD): R277-916. Technology, Life, and Careers, and Work-Based Learning Programs

Published: 04/01/2012

Effective: 05/08/2012

### Environmental Quality

#### Air Quality

No. 35857 (AMD): R307-840. Lead-Based Paint Program Purpose, Applicability, and Definitions

Published: 03/01/2012

Effective: 05/03/2012

No. 35858 (AMD): R307-841. Residential Property and Child-Occupied Facility Renovation

Published: 03/01/2012

Effective: 05/03/2012

No. 35859 (AMD): R307-842. Lead-Based Paint Activities

Published: 03/01/2012

Effective: 05/03/2012

### Health

Center for Health Data, Health Care Statistics

No. 35870 (AMD): R428-10. Health Data Authority Hospital Inpatient Reporting Rule

Published: 03/01/2012

Effective: 05/31/2012

### Public Safety

Peace Officer Standards and Training

No. 35568 (REP): R728-408. POST Academy and the Emergency Vehicle Operations Range are Secure Facilities

Published: 01/15/2012

Effective: 05/14/2012

### Public Service Commission

Administration

No. 35900 (AMD): R746-100. Practice and Procedures Governing Formal Hearings

Published: 03/15/2012

Effective: 05/07/2012

No. 35896 (AMD): R746-405-2. Format and Construction of Tariffs

Published: 03/15/2012

Effective: 05/07/2012



**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, 2012 through May 15, 2012. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

**DAR NOTE:** Due to space constraints, only the Agency Index is included in this Bulletin.

Questions regarding the index and the information it contains should be addressed to Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

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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>Archives</u>					
R17-9	Electronic Participation at Meetings	35304	NEW	01/30/2012	2011-20/6
<u>Child Welfare Parental Defense (Office of)</u>					
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