# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT Filed January 1, 2009, 12:00 a.m. through January 15, 2009, 11:59 p.m.

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Kimberly K. Hood, Executive Director Kenneth A. Hansen, Director Nancy L. Lancaster, Editor

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Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114, telephone (801) 538-3218, FAX (801) 538-1773. To view rules information, and on-line versions of the division's publications, visit: http://www.rules.utah.gov/

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

Division of Administrative Rules, Salt Lake City 84114

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### TABLE OF CONTENTS

### 1. NOTICES OF PROPOSED RULES

Administrative Services	
Fleet Operations	
No. 32292 (Amendment): R27-7. Safety and Loss Prevention	
of State Vehicles	2
No. 20201 (Amondment): D27.10. Identification Mark for State	
No. 32291 (Amendment): R27-10. Identification Mark for State Motor Vehicles	1
Orman Ormitan Daview David	
Career Service Review Board Administration	
No. 32287 (Amendment): R137-1-2. Definitions	5
No. 32290 (Amendment): R137-1-22. The Board's Appellate/	
Step 6 Procedures	7
Community and Culture	
Library	
No. 32296 (Amendment): R223-2. Public Library Online Access for Eligibility to Receive Public Funds	٩
	0
Education	
Education Administration	
No. 32310 (Amendment): R277-473. Testing Procedures	10
No. 32311 (Amendment): R277-509. Certification of Student Teachers	
and Interns	12
No. 20242 (Amondment), D277 540. Educator Licensing, Lliphy Qualified	
No. 32312 (Amendment): R277-510. Educator Licensing - Highly Qualified Assignment	1/
No. 32313 (Amendment): R277-700. The Elementary and Secondary School	
Core Curriculum	17
No. 32314 (Amendment): R277-705. Secondary School Completion and Diplomas	20
No. 32315 (Amendment): R277-733. Adult Education Programs	23
Health Epidemiology and Laboratory Services, Environmental Services	
No. 32318 (Repeal and Reenact): R392-600. Illegal Drug Operations	
Decontamination Standards	30
Insurance	
Administration	
No. 32272 (Amendment): R590-126-4. Prohibited Policy Provisions	45
No. 32316 (Amendment): R590-136 (Changed to R592-11). Title Insurance Agents' Annual Reports	17
Ayerite Allinal Repute	41
No. 32317 (Amendment): R590-187 (Changed to R592-10). Assessment of	
Title Insurance Agencies and Title Insurers for Costs Related to Regulation of Title Insurance	49

### TABLE OF CONTENTS

-	ommission	
		- 4
	No. 32276 (Amendment): R602-2-2. Guidelines for Utilization of Medical Panel	51
	No. 32277 (New Rule): R602-7. Adjudication of Discrimination Claims	52
	No. 32278 (New Rule): R602-8. Adjudication of Utah Occupational Safety and Health Citation Claims	57
-	<u>Resources</u> dlife Resources	
	No. 32300 (Amendment): R657-17-4. General Deer Permits and Tags	61
		01
	No. 32309 (Amendment): R657-38. Dedicated Hunter Program	62
	No. 32299 (Amendment): R657-44-3. Damage to Cultivated Crops, Fences,	00
	or Irrigation Equipment by Big Game Animals	69
	No. 32297 (Amendment): R657-55-4. Obtaining Authority to Distribute Wildlife	
	Convention Permit Series	71
	No. 32298 (Amendment): R657-60-2. Definitions	72
Public Sa	Safety	
Fire	Marshal	

### 

### 2. NOTICES OF 120-DAY (EMERGENCY) RULES

Career Service Review Board		
Administration		
No. 32286: R137-1-2. Definitions		
No. 32288: R137-1-22. The Board's A	Appellate/Step 6 Procedures	79
Human Services Services for People with Disabilities		

### 

### 3. FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Agriculture and Food Regulatory Services No. 32289: R70-630.	Water Vending Machine	83
Education Administration		
	Student Enrollment Options	83
No. 32266: R277-486	Professional Staff Cost Program	84
No. 32267: R277-524	. Paraprofessional Qualifications	84

### TABLE OF CONTENTS

5. RULES INDEX	
4. NOTICES OF RULE EFFECTIVE DATES	91
Transportation Motor Carrier No. 32274: R909-3. Standards for Utah School Buses	
Regents (Board Of) University of Utah, Museum of Natural History (Utah) No. 32284: R807-1. Curation of Collections from State Lands	
No. 32283: R746-365. Intercarrier Service Quality	88
Public Service Commission Administration No. 32306: R746-350. Application to Discontinue Telecommunications Service	
Natural Resources Parks and Recreation No. 32301: R651-411. OHV Use in State Parks	
Environmental Quality Air Quality No. 32275: R307-121. General Requirements: Clean Air and Efficient Vehicle Tax Credit	
No. 32271: R280-202. USOE Procedures for Individuals with the Most Severe Disabilities	
Rehabilitation No. 32270: R280-201. USOR ADA Complaint Procedure	86
No. 32269: R277-735. Corrections Education Programs	85
No. 32268: R277-724. Criteria for Sponsors Recruiting Day Care Facilities in the Child and Adult Care Food Program	

### NOTICES OF PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between <u>January 1, 2009, 12:00 a.m.</u>, and <u>January 15, 2009, 11:59 p.m.</u> are included in this, the <u>February 1, 2009</u>, 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., <u>example</u>). Deletions made to existing rules are struck out with brackets surrounding them (e.g., <u>example</u>). Rules being repealed are completely struck out. A row of dots in the text between paragraphs ( $\cdots \cdots$ ) 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 <u>March 3, 2009</u>. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63G-3-302 requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through June 1, 2009, 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 or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing lapses and the agency must start the process over.

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

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

The Proposed Rules Begin on the Following Page.

### Administrative Services, Fleet Operations **R27-7**

Safety and Loss Prevention of State Vehicles

### NOTICE OF PROPOSED RULE

(Amendment) DAR FILE NO.: 32292 FILED: 01/08/2009, 12:07

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment updates driver eligibility restrictions and corrects a spelling mistake.

SUMMARY OF THE RULE OR CHANGE: This amendment updates the language of the Utah American Association of Motor Vehicles Administrators Code Dictionary (ACD) codes referenced for driver eligibility. It also changes wording ("shall" changed to "may") to give the Driver Eligibility Board more power. There are also two spelling changes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63A-9-101(1)(d)(iii)

ANTICIPATED COST OR SAVINGS TO:

 THE STATE BUDGET: These updates are for clarification purposes and will have no cost to the state budget.
 LOCAL GOVERNMENTS: These updates are for clarification purposes and will have no cost to local government.
 SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: These updates are for clarification purposes and will have no cost to small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance cost for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on businesses. Kimberly Hood, Executive Director

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

ADMINISTRATIVE SERVICES FLEET OPERATIONS Room 4120 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:

Brian Fay at the above address, by phone at 801-538-3502, by FAX at 801-538-1773, or by Internet E-mail at bfay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2009

AUTHORIZED BY: Margaret Chambers, Director

# R27. Administrative Services, Fleet Operations.R27-7. Safety and Loss Prevention of State Vehicles.R27-7-3. Driver Eligibility to Operate a State Vehicle.

(1) The authority to operate a state vehicle is subject to withdrawal, suspension or revocation.

(2) The authority to operate a state vehicle shall be automatically withdrawn, suspended or revoked in the event that an authorized driver's license is not in a valid status.

(a) The authority to operate a state vehicle shall, at a minimum, be withdrawn, suspended or revoked for the period of denial, cancellation, disqualification, suspension or revocation of the authorized driver's license.

(b) The authority to operate a state vehicle shall not be reinstated until such time as the individual provides proof that his or her driver license has been reinstated or DFO verifies the license has been reinstated.

(3) The authority to operate a state vehicle <u>may[shall]</u> be suspended or revoked for up to three years by the Driver Eligibility Board for any of the following reasons:

(a) The authorized driver, while acting within the scope of employment, has been involved in 3 or more preventable accidents during a three (3) year period; or

(b) The authorized driver has 4 or more moving violations within a 12 month period; or

(c) The authorized driver[7] has been convicted of any of the following Utah "ACD" codes:

(i) <u>A22 - Driving under the influence of drugs</u>[A33 Violation of controlled substance laws]; or

(ii) B23 - Driving while denied; or

(iii) B25 - Driving on revocation; or

(iv) B26 - Driving while suspended; or

(v) M84 - Reckless driving ; or

(vi) S95 - Speed contest (racing) on road open to traffic prior to 5/1/2006; or

(vii) S95 - Speed contest (racing) (1st 60 days-2ndw/I 3 yrs 90 days); or

(viii) U01 - Fleeing or evading police or roadblock; or

(ix) U05 - Using a motor vehicle to aid and abet a felon; or

(x) U31 - Violation resulting in fatal accident; or

(xi) MEC - Driving under the influence of drugs metabolite (MEC) ; or

(xii) <u>A21 - Driving under the influence of alcohol</u>[A35-Possession of open alcohol container - send as A type record if

amended from DUI - otherwise FTA/FTC only]; or

(xiii) B02 - Hit and run/fatal; or

(xiv) B03 - Hit and run - injury; or

(xv) B04 - Hit and run - property damage/regular operator; or

(xvi) ARD - Alcohol Restricted Driver; or

(xvii) A08 - DUI of alcohol with BAC at or over .08; or

(xviii) A08 - Driving under the influence alcohol and drugs; or

(xix) A08 - Driving under the influence w/impaired; or

(xx) A08 - Driving under the influence w/personal injury; or

(xxi) A08 - Driving under the influence w/minor in vehicle; or

(xxii) A08 - Driving under the influence in a CMV; or

(xxiii) A25 - Impaired Driving; or

(xxiv) A41 - Any Violation of ignition interlock device under 41-6a-518; or

(xxv) A50 - Motor vehicle used in the commission of a felony involving the manufacturing, distributing or dispensing a controlled substance; or

(xxvi) ACL - Violation alcohol conditional license; or

(xxvii) B01 - Hit and Run/failure to stop render aid/property dmg/comm only; or

(xxviii) B14 - Failure to reveal identity after fatal accident - commercial only; or

(xxix) B23 - Driving while denied[/CMV]; or

(xxx) B24 - Driving CMV while disqualified[/CMV]; or

(xxxi) B25 - Driving on revocation[/CMV]; or

(xxxii) B26 - Driving while suspended[/CMV]; or

(xxxiii) IID - Ignition interlock device violation - (result in 1 yr revocation); or

(xxxiv) M8A - Alcohol related reckless driving; or

 $(xxxv) \ U03$  - Felony with a vehicle (joy riding) criminal class required; or

(xxxvi) U07 - Vehicular homicide/ regular or CMV; or

(xxxvii) U08 - Vehicular manslaughter[/CMV]; or

(xxxviii) USV - Shooting gun from a vehicle/Criminal class required (<u>felony[felonly</u>] only); or

(xxxix) U09 - Negligent homicide while operating a CMV; or

(xl) UIV - Throwing incendiary device [f]from/vehicle/criminal class required; or

(xli) U10 - Causing a fatality through the negligent operation of a CMV  $\,$ 

#### 

]  $(\underline{d})[(\underline{e})]$  The unauthorized use, misuse, abuse or neglect of a state vehicle as validated by the <u>driver's agency</u>[Agency]; or

 $(\underline{e})[(\underline{f})]$  On the basis of citizen complaints validated by the agency, the authorized driver, while acting within the scope of employment has been found, pursuant to 63A-9-501, to have misused or illegally operated a vehicle three (3) times during a three (3) year period.

(4) The withdrawal of authority to operate a state vehicle imposed by the Driver Eligibility Board shall be in addition to agency-imposed discipline, corrective or remedial action, if any.

(5) Drivers declared ineligible to operate a state vehicle by the Driver Eligibility Board may appeal to the Director of the Department of Administrative Services (DAS) or his/her designee. Any appeal to the Executive Director of DAS or his/her designee must be made in writing within 30 days from the date the Driver Eligibility Board declared a state driver ineligible to operate a vehicle.

(6) Effective Date

(a) Phase in - current state employees shall be subjected to R27-7-3(3) as of the effective date of the rules as published by the Division of Administrative Rules.

(b) State employees hired after the effective date of this administrative rule will be subject to the Driver Eligibility standards in R27-7-3(3) for three years previous to the hire date.

### R27-7-5. Accident Review Committee Guidelines.

(1) The ARC shall have no less than three (3) voting members. The members shall be from different areas in the agency.

(2) An accident shall be classified as preventable if any of the following factors are involved:

(a) Driving too fast for conditions;

(b) Failure to observe clearance;

(c) Failure to yield;

(d) Failure to properly lock the vehicle;

- (e) Following too closely;
- (f) Improper care of the vehicle;
- (g) Improper backing;
- (h) Improper parking;
- (i) Improper turn or lane change;

(j) Reckless Driving as defined in Utah Code <u>41-6a-528[41-6-45]</u>;

(k) Unsafe driving practices, including but not limited to: the use of electronic equipment or cellular phone while driving, smoking while driving, personal grooming, u-turn, driving with an animal(s) loose in the vehicle.

(3) An accident shall be classified as non-preventable when:

(a) The state vehicle is struck while properly parked;

(b) The state vehicle is vandalized while parked at an authorized location;

(c) The state vehicle is an emergency vehicle, and

(i) At the time of the accident the operator was in the line of duty and operating the vehicle in accordance with their respective agency's applicable policies, guidelines or regulations; and

(ii) Damage to the vehicle occurred during the chase or apprehension of people engaged in or potentially engaged in unlawful activities; or

(iii) Damage to the vehicle occurred in the course of responding to an emergency in order to save or protect the lives, property, health, welfare and safety of the public.

### R27-7-6. Effects of ARC Accident Classification.

(1) In the event that an accident is determined by the ARC to be preventable, the ARC shall impose and enforce the following:

(a) The authorized driver shall be required to attend a Division of Risk Management-approved driver safety program after being involved in the first preventable accident;

(b) The driver shall be required to attend, at their own expense, a state certified or nationally recognized defensive driving course after being involved in a second preventable accident.

### KEY: accidents, incidents, tickets, ARC

# Date of Enactment or Last Substantive Amendment: [November 11, 2008]2009

Notice of Continuation: January 20, 2006

Authorizing, and Implemented or Interpreted Law: 63A-9-401(1)(d)(iii)

\_\_\_\_\_ **♦** 

### Administrative Services, Fleet Operations **R27-10**

Identification Mark for State Motor Vehicles

### NOTICE OF PROPOSED RULE

(Amendment) DAR FILE No.: 32291 FILED: 01/08/2009, 12:07

### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment updates a rule reference and strikes obsolete language.

SUMMARY OF THE RULE OR CHANGE: Language has been struck that refers to the central motor pool and a definition that is no longer in use. Also, a reference has been updated to point to the proper rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 41-1a-407 and 63A-9-401, and Subsection 63A-9-601(1)(c)

ANTICIPATED COST OR SAVINGS TO:

✤ THE STATE BUDGET: This amendment strikes obsolete language and updates a reference to another rule. There is no anticipated cost or savings to the state budget.

✤ LOCAL GOVERNMENTS: This amendment strikes obsolete language and updates a reference to another rule. There is no anticipated cost or savings to the local government.

✤ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This amendment strikes obsolete language and updates a reference to another rule. There is no anticipated cost or savings to small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This change only strikes obsolete language. There will be no compliance cost.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will have no fiscal impact on businesses. Kimberly Hood, Executive Director

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

ADMINISTRATIVE SERVICES FLEET OPERATIONS Room 4120 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: Brian Fay at the above address, by phone at 801-538-3502,

by FAX at 801-538-1773, or by Internet E-mail at bfay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2009

AUTHORIZED BY: Margaret Chambers, Director

#### **R27.** Administrative Services, Fleet Operations. **R27-10.** Identification Mark for State Motor Vehicles. **R27-10-2.** Identification Mark.

(1) The identification mark shall be a likeness of the Great Seal of the State of Utah.

(a) Light/Heavy duty trucks, service vehicles and off-road equipment shall be clearly marked, on each front door, with an eightinch seal. At the option of the entity operating the motor vehicle, the identification mark may include a banner not more than four inches high which may bear the entity's logo and such name of department or division. All identification markings must be approved by the Division of Fleet Operations prior to use.

(b) Non-law enforcement passenger vehicles shall be marked with a translucent identification sticker, four inches in diameter on the furthest rearward window in the lower most rearward corner, on each side of the of the vehicle.

(2) An identification mark shall be placed on both sides of the motor vehicle. The required portion of the identification mark (State Seal) shall be placed on in a visible location on each side of the vehicle.

(3) The requirement for the display of the identification mark is not intended to preclude other markings to identify special purpose vehicles.

(4) Vehicles used for law enforcement purposes may, at the discretion of the operating agency, display a likeness of the Great Seal of the State of Utah[, worked in the same colors as the identification mark described in Subsection R27-1-2(1),] in the center of a gold star for identification purposes. Other emergency response vehicles are not precluded from displaying additional appropriate markings. At the option of the agency, this seal may be placed on the front door above any molding and, where practicable, below the window at least four inches. The optional banner portion of the identification mark shall be placed immediately below the State Seal portion.

(5) It is the intent of these rules that these identification marks clearly identify the vehicles as being the property of the State of Utah. Additional markings should be applied discriminately so as not to detract from that intent.

### R27-10-3. License Plates.

(1) Every vehicle owned and operated or leased for the exclusive use of the state shall have placed on it a registration plate displaying the letters "EX."[-At the option of the Division of Fleet operations, a plate signifying that the vehicle is assigned to the central motor pool may be allowed.]

(2) Plates issued to Utah Highway Patrol vehicles may bear the capital letters "UHP," a beehive logo, and the call number of the vehicle for which the plate is issued. In lieu of the identification mark herein described, the Utah Highway Patrol may use a substitute identification mark of its own specification.

### R27-10-4. Exceptions.

(1) Neither the "EX" license plates nor the identification marks need be displayed on state-owned motor vehicles if:

(a) the motor vehicle is in the direct service of the Governor, Lieutenant Governor, Attorney General, State Auditor or State Treasurer of Utah;

(b) the motor vehicle is used in official investigative work where secrecy is essential;

(c) the motor vehicle is provided to an official as part of a compensation package allowing unlimited personal use of that vehicle; or

(d) the personal security of the occupants of the vehicle would be jeopardized if the identification mark were in place.

(2) State vehicles which meet the criteria described in Subsection R27-10-4(1)[R27-1-4 (1)] may be excused from these rules to display the identification mark and "EX" license plates. Exceptions shall be requested in writing from the Executive Director of the Department of Administrative Services and shall continue in force only so long as the use of the vehicle continues.

(3) Exceptions shall expire when vehicles are replaced. New exceptions shall be requested when new vehicles are placed in use.

(4) No motor vehicle required to display "EX" license plates shall be exempt from displaying the identification mark.

### **KEY:** motor vehicles

Date of Enactment or Last Substantive Amendment: [June 1, 2000]2009

Notice of Continuation: May 14, 2007

Authorizing, and Implemented or Interpreted Law: 41-1a-407; 63A-9-401; 63A-9-601(1)(c)

Career Service Review Board, Administration **R137-1-2** Definitions

### NOTICE OF PROPOSED RULE

(Amendment) DAR FILE NO.: 32287 FILED: 01/07/2009, 13:29

### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to comply with the State's four 10-hour day work schedule.

SUMMARY OF THE RULE OR CHANGE: This change eliminates Fridays as a defined work day. (DAR NOTE: A corresponding 120-day (emergency) rule that is effective as of 01/08/2009 is under DAR No. 32286 in this issue, February 1, 2009, of the Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19a-203

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: None--Changing the days during the week that Career Service Review Board (CSRB) filings can be made and when decisions will be issued will have no fiscal impact whatsoever on operating costs.

✤ LOCAL GOVERNMENTS: None--The CSRB has no interaction with local governments.

✤ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Employees will simply be unable to file on Fridays. This will generate no costs for them, and will in fact result in an actual extension of time for them to file with the CSRB.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Employees will simply be unable to file on Fridays. This will generate no costs for them, and will in fact result in an actual extension of time for them to file with the CSRB.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will have no impact on the CSRB's operations. As stated, it simply sets forth the days that filings can be made and when decisions will be issued. Robert W. Thompson, Administrator

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

CAREER SERVICE REVIEW BOARD ADMINISTRATION Room 1120 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: Robert W. Thompson at the above address, by phone at 801-538-3047, by FAX at 801-538-3139, or by Internet E-mail at bthompson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN  $5:00 \ PM$  on 03/03/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2009

AUTHORIZED BY: Robert W. Thompson, Administrator

### R137. Career Service Review Board, Administration. R137-1. Grievance Procedure Rules. R137-1-2. Definitions.

Terms defined in Section  $63\underline{G}$ -4[ $\underline{6b}$ ]-[ $\underline{2}$ ]103 of the Utah Administrative Procedures Act (UAPA) are incorporated by reference within this rule. In addition, other terms which are used in this rule are defined below:

"Abandonment of Grievance" means either the voluntary withdrawal of a grievance or the failure by an employee to properly pursue a grievance through these grievance procedures.

"Administrative Review of the File" means an informal adjudicative proceeding according to Subsection 67-19a-403(2)(b)(ii).

"Administrator" means the incumbent in the position defined at Section 67-19a-101(1).

"Affidavit" means a signed and sworn statement offered for consideration in connection with a grievance proceeding.

"Appeal" means a formal request to a higher level of review of an unacceptable lower level decision.

"Appellant" means the party that is advancing an evidentiary level grievance decision to the appellate level before the board at Step 6.

"Appointing Authority" means the officer, board, commission, person or group of persons authorized to make appointments on personnel/human resource management matters in their respective agency.

"Board" means the entity defined at Section 67-19a-101(2), and refers to the five-member, gubernatorial-appointed entity at Sections 67-19a-201 and 67-19a-202.

"Burden of Moving Forward" means a party's obligation to present evidence on a particular issue at a particular time. The burden of moving forward may shift back and forth between the parties based on certain legal principles.

"Burden of Proof" means the obligation to prove affirmatively a fact or set of facts at issue between two parties. If proven, the opposing party then has a burden of proving any affirmative defense.

"CSRB" and "CSRB Office" mean the agency of state government that statutorily administers these grievance procedures according to Sections 67-19a-101 through 67-19a-408.

"Closing Statement" means a party's final summation of evidence and argument, which is presented at the conclusion of the hearing.

"Consolidation" means the combining of two or more grievances involving the same controversy for purposes of holding a joint hearing, proceeding, or administrative review.

"Continuance" means an authorized postponement or adjournment of a hearing until a later date, whether the date is specified or not.

"Declaratory Order" means a ruling that is explanatory in purpose; it is designed to clarify what before was uncertain or doubtful. A declaratory order constitutes a declaration of rights between parties to a dispute and is binding as to both present and future rights. It is an administrative interpretation or explanation of a right, statute, order or other legal matter under a statute, rule, or an order.

"Default" means an omission of or untimely failure to take or perform a required act in the processing of a grievance. It is the failure to discharge an obligation which results in a forfeiture.

"Deposition" means a form of discovery in which testimony of a witness is given under oath, subject to cross-examination, and recorded in writing, prior to the hearing.

"Discovery" means the prehearing process whereby one party may obtain from the opposing party, or from other individuals or entities, information regarding the witnesses to be called, the documents and exhibits to be used at the hearing, and the facts and information about the case.

"Evidentiary Hearing" means a proceeding of relative formality, though much less formal than a trial, in which witnesses are heard and evidence is presented and considered. Specific issues of fact and of law are tried. Afterwards, ultimate conclusions of fact and of law are set forth in a written decision or order.

"Excusable Neglect" means the exercise of due diligence by a reasonably prudent person and constitutes a failure to take proper steps at the proper time, not in consequence of the person's own carelessness, inattention, or willful disregard in the processing of a grievance, but in consequence of some unexpected or unavoidable hindrance or accident.

"File" means to submit a document, grievance, petition, or other paper to the CSRB Office as prescribed by these rules. The term "file" includes faxing and E-mailing.

"Filing Date" means the day that a document, grievance, petition, or other paper is recorded as having been received by the CSRB Office.

"Grievance Procedures" mean the grievance and appeal procedures codified at Sections 67-19a-101 through 67-19a-408 and promulgated through this rule.

"Grievant" means the person or party advancing one or more issues as a petitioner through these grievance procedures to the evidentiary/step 5 level. However, at the appellate/step 6 level one party is designated as the appellant, the other as respondent.

"Group Grievance" means a grievance submitted and signed by two or more aggrieved employees. The term does not include "class action."

"Hearing" means the opportunity to be heard in an administrative proceeding.

"Hearing Officer" means an impartial trier of facts appointed by the CSRB administrator and assigned to hear a particular grievance case at the evidentiary/step 5 level.

"Hearsay Evidence" means evidence not based upon a witness's personal knowledge as a direct observer of an event. Rather, hearsay evidence stems from the repetition of what a witness heard another person say. Hearsay's value rests upon the credibility of the declarant. Hearsay is a statement made outside of the hearing that is offered as evidence of the truth of matters asserted in the hearing.

"Issuance" means the date on which a decision, order or ruling is signed and dated; it is not the date of mailing, or the date of the mailing certificate, nor the postal date. Date of issuance is the date specified according to Subsection  $63\underline{G}-4[\underline{6b}]-[\underline{14}]\underline{401}(3)(a)$ , of the UAPA.

"Joint Hearing" means the uniting of two or more grievances involving the same, similar, or related circumstances or issues to conduct a single hearing; also see "Consolidation."

"Jurisdiction" means the legal right and authority to hear and decide issues and controversies.

"Jurisdictional Hearing" means a hearing conducted by the administrator (or hearing officer who sits by designation to represent the administrator in these hearings) to determine timeliness, standing, jurisdiction, direct harm, and eligibility to advance a grievance issue to the evidentiary/step 5 level.

"Management Representative" means a person of managerial or supervisory status who is not subject to exclusion. Legal counsel is not included within the meaning of the term.

"Motion" means a request offered verbally or in writing for a ruling or to take some action.

"Notice" and "Notification" mean a proper written notice to the parties involved in a grievance procedural hearing or conference, setting forth date, time, location, and the issue to be considered.

"Pleadings" mean the formal written allegations of the parties that set forth their respective claims and defenses.

"Pro Se" means in one's own behalf. A person is represented pro se in an administrative proceeding when acting without legal counsel or other representation.

"Quash" means to cancel, annul, or vacate a subpoena.

"Relevant" means directly applying to the matter in question; pertinent, germane. It is evidence that tends to make the existence

of any facts more probable or certain than they would be without the evidence; and tending to prove the precise fact at issue.

"Remand" means to send back, as for further deliberation and judgment, to the presiding official or other tribunal from which a case was appealed.

"Respondent" means the party against whom an appeal is made at the appellate/step 6 level.

"Standard of Proof" means the evidentiary standard, which in CSRB adjudications is the substantial evidence standard.

"Stay" means a temporary suspension of a case or of some designated proceeding within the case.

"Submit" means to commit to the discretion of another; to present for determination.

"Subpoena" means a formal legal document issued under authority to compel the appearance of a witness at an administrative proceeding, the disobedience of which may be punishable as a contempt of court.

"Subpoena Duces Tecum" means a formal legal document issued under authority to compel specific documents, books, writings, papers, or other items.

"Substantial Evidence" means evidence possessing something of substance and relevant consequence, and which furnishes substantial basis of fact from which issues tendered can be reasonable resolved. It is evidence that a reasonable mind might accept as adequate to support a conclusion, but is less than a preponderance.

"Summary Judgment" means a ruling made upon motion by a party or the presiding official when there is no dispute as to either material fact or inferences to be drawn from undisputed facts, or if only a question of law is involved. The motion may be directed toward all or part of a claim or defense.

"Transcript" means an official verbatim written record of an adjudicative proceeding or any part thereof, which has been recorded and subsequently transcribed by a certified court reporter.

"UAPA" means the Utah Administrative Procedures Act found at Sections  $63\underline{G}-4[\underline{6b}]-1\underline{02}$  through  $63\underline{G}-4[\underline{6b}]-[\underline{21}]\underline{503}$ .

"Withdraw" means to recall or retract a grievance from further consideration under these grievance procedures.

"Witness Fee" means an appearance fee and may also include a mileage rate established by statutory provision pursuant to Section 21-5-4.

"Working Days" means for purposes of the time periods for filing a grievance, advancing an appeal or responding to an employee's grievance or appeal, all days except [for]Fridays. Saturdays, Sundays and recognized State holidays.

### **KEY:** grievance procedures

# Date of Enactment or Last Substantive Amendment: [December 16, 1997]2009

Notice of Continuation: August 4, 2006

Authorizing, and Implemented or Interpreted Law: 34A-5-106: 67-19-30; 67-19-31; 67-19-32; 67-19a et seq.; 63<u>G</u>-4[<del>6b</del>] et seq.

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### Career Service Review Board, Administration

### R137-1-22

### The Board's Appellate/Step 6 Procedures

### NOTICE OF PROPOSED RULE

(Amendment) DAR FILE NO.: 32290 FILED: 01/08/2009, 11:54

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment establishes party responsible for transcription production costs.

SUMMARY OF THE RULE OR CHANGE: This amendment requires appellants to be responsible for entire transcription production costs. (DAR NOTE: A corresponding 120-day (emergency) rule that is effective as of 01/08/2009 is under DAR No. 32288 in this issue, February 1, 2009, of the Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19a-203 and Subsection 67-19a-407(1)

ANTICIPATED COST OR SAVINGS TO:

THE STATE BUDGET: This amendment will produce a \$3,000
 \$4,000 annual saving for the Career Service Review Board (CSRB).

✤ LOCAL GOVERNMENTS: None--The CSRB has no interaction with local governments.

✤ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Individuals or State Departments appealing evidentiary/Step 5 decisions will now be required to pay all transcription production costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Individuals or State Departments appealing evidentiary/Step 5 decisions will now be required to pay all transcription production costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As set forth above, this amendment will result in a cost saving to the CSRB of \$3,000 to \$4,000 annually. It is necessitated by legislative budgetary cuts imposed during the fiscal year 2009 interim session. Robert W. Thompson, Administrator

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

CAREER SERVICE REVIEW BOARD ADMINISTRATION Room 1120 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:

Robert W. Thompson at the above address, by phone at 801-538-3047, by FAX at 801-538-3139, or by Internet E-mail at bthompson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2009

AUTHORIZED BY: Robert W. Thompson, Administrator

### R137. Career Service Review Board, Administration. R137-1. Grievance Procedure Rules.

R137-1-22. The Board's Appellate/Step 6 Procedures.

(1) Transcript Production. The party appealing the CSRB hearing officer's evidentiary/step 5 decision to the board at the appellate/step 6 level shall order transcription of the evidentiary/step 5 hearing from the court reporting firm within ten working days upon receipt of acknowledgment of the appeal from the administrator.

(a) [The a]Appellants shall <u>be responsible for all transcription</u> production costs[share an equal fee payment with the CSRB Office to the court reporting firm. Transcript production cost sharing applies equally only to the appellant and to the CSRB Office]. The CSRB Office receives the transcript original; the appellant receives a transcript copy.

(b) The respondent may inquire of the CSRB Office about obtaining a transcript copy, or may directly purchase a copy from the court reporting firm.

(2) Briefs. An appeal hearing before the board at step 6 is based upon the evidentiary record previously established by the CSRB hearing officer during the evidentiary/step 5 hearing. No additional or new evidence is permitted unless compelled by the board.

(a) The appellant in an appellate/step 6 proceeding must obtain the transcript of the evidentiary/step 5 hearing. After receipt of the transcript, the appellant has 30 calendar days to file an original and six copies of a brief with the administrator. Additionally, the respondent must be provided with a copy of the appellant's brief.

(b) After receiving a copy of the appellant's brief, the respondent then has 30 calendar days to file an original and six copies of a brief with the administrator. The appellant may file an original and six copies of a reply brief which addresses the respondent's brief.

(c) After receiving both parties' briefs, the administrator distributes the briefs and the CSRB hearing officer's evidentiary/step 5 decision to the board members.

(d) Each party is responsible for filing its original and six copies with the CSRB Office and for exchanging a copy with the opposing party.

(e) Briefs shall be date-stamped upon their receipt in the CSRB Office.

(f) The time frame for receiving briefs shall be modified or waived only for good cause as determined by the CSRB chair or vice-chair, or the administrator.

(3) Rules of Procedure. The following rules are applicable to appeal hearings before the board at the appellate/step 6 level:

(a) Dismissal of Appeal. Upon a motion by either party or upon its own motion, the board may dismiss any appeal prior to holding a formal appeal hearing if the appeal is clearly moot, without merit, improperly filed, untimely filed, or outside the scope of the board's authority.

(b) Notice. The board shall distribute written notice of the date, time, place, and issues for hearing to the aggrieved employee, to the employee's counsel or representative, to the appropriate agency official, to the agency's counsel or representative, and to the agency's management representative, at least five working days before the date set for the hearing.

(c) Compelling Evidence. The board may compel evidence in the conduct of its appeal hearings, according to Subsection 67-19a-202(3).

(d) Oral Argument/Time Limitation. The board grants up to 20 to 25 minutes to each party for oral argument. The board may grant additional time when deemed appropriate.

(e) Oral Argument Set Aside. If the board determines that oral argument is unnecessary, the parties shall be notified. However, the parties' representatives may be expected to appear before the board at the date, time, and place noticed to answer any questions raised by the board members.

(f) Argument or Memoranda. The board may require the parties to offer oral argument or submit written memoranda of law.

(4) The Board's Standards of Review. The board's standards of review based upon the following criteria:

(a) The board shall first make a determination of whether the factual findings of the CSRB hearing officer are reasonable and rational according to the substantial evidence standard. When the board determines that the factual findings of the CSRB hearing officer are not reasonable and rational based on the evidentiary/step 5 record as a whole, then the board may, in its discretion, correct the factual findings, and also make new or additional factual findings.

(b) Once the board has either determined that the factual findings of the CSRB hearing officer are reasonable and rational or has corrected the factual findings based upon the evidentiary/step 5 record as a whole, the board must then determine whether the CSRB hearing officer has correctly applied the relevant policies, rules, and statutes according to the correctness standard, with no deference being granted to the evidentiary/step 5 decision of the CSRB hearing officer.

(c) Finally, the board must determine whether the decision of the CSRB hearing officer, including the totality of the sanctions imposed by the agency, is reasonable and rational based upon the ultimate factual findings and correct application of relevant policies, rules, and statutes determined according to the above provisions.

(5) Appeal Hearing Record. The proceeding before the board shall be recorded by a certified court reporter, or in exceptional circumstances by a recording machine.

(6) Appellate Review. Upon a party's application for review of the CSRB hearing officer's evidentiary/step 5 decision, the board's appellate/step 6 decision is based upon a review of the record, including briefs and oral arguments presented at step 6, and no further evidentiary hearing will be held unless otherwise ordered by the board. Section  $63\underline{G}-4[\underline{6b}]-[\underline{10}]\underline{208}$  of the UAPA is incorporated by reference.

(7) Remand. Until the board's decision is final, the board may remand the case to the original CSRB hearing officer to take additional evidence or to resolve any further evidentiary issues of fact or law with instructions or may make any other appropriate disposition of the appeal. (8) Distribution of Appellate Decisions. The board's decision and order is issued on the date that it is signed and dated by the CSRB chair, vice-chair or another board member. After the board's appellate/step 6 decision is issued, it is distributed according to R137-1-8(3).

(a) The board's appellate decision shall be distributed to the aggrieved employee, the employee's counsel or representative, the appropriate agency official, the agency's counsel or representative, and to the agency's management representative. The board's appellate decision shall be final in terms of administrative review under these grievance procedures. The board may, at its discretion, release to the parties its determination orally prior to issuance of its official written decision.

(b) The board's appellate decision is binding on the agency that is a party to the appeal unless its decision and ruling is overturned, vacated, or modified resulting from an appeal to the Utah Court of Appeals.

(c) The board may affirm, reverse, adopt, modify, supplement, amend, or vacate the CSRB hearing officer's decision, either in whole or in part.

(9) Rehearings. The board does not permit rehearings.

(10) Reconsideration.

(a) Reconsideration requests of the board's appellate/step 6 decisions will be conducted pursuant to the provisions of Section 63G-4[6b]-[13]302.

(b) Any request for reconsideration of a previously issued decision by the board is subject to the following conditions:

(i) Reconsideration requests must contain specific reasons why a reconsideration is warranted with respect to the board's factual findings and legal conclusions.

(ii) The board has discretion to decide whether it may reconsider any previously adjudicated matter.

(iii) The board only grants a reconsideration if appropriate justification is offered.

(iv) When the board agrees to the petitioner's request, the board's reconsideration response is in writing, with no further hearing or proceeding on the record, unless the board reopens the record or remands the case to the evidentiary/step 5 level.

(v) Any appeal from a board-issued reconsideration to the Utah Court of Appeals must be filed according to Section  $63\underline{G}$ -4[ $\underline{6b}$ ]-[ $\underline{14}$ ]401(3)(a)of the UAPA.

(11) An Appeal to the Utah Court of Appeals.

To appeal to the Utah Court of Appeals, a party must file with the court within 30 calendar days from the date of issuance of the board's decision and final agency action according to Sections  $63\underline{G}$ - $4[\underline{6b}]$ - $[\underline{143}]\underline{401}$  and  $63\underline{G}$ - $4[\underline{6b}]$ - $[\underline{163}]\underline{403}$  of the UAPA, which are incorporated by reference. The dates of mailing, postmarking and receipt are not applicable to filing with the court.

(12) Transcript Fee. The party petitioning the Utah Court of Appeals for a review must bear all costs of transcript production for the appellate/step 6 proceeding. The CSRB Office may not share any cost for a transcript or transcription of the appeal hearing. The petitioning party should provide a copy of the appeal hearing's transcript to the responding party when an appellate/step 6 proceeding is transcribed.

### **KEY:** grievance procedures

Date of Enactment or last Substantive Amendment: [December 16, 1997]2009

Notice of Continuation: August 4, 2006 Authorizing, and Implemented or Interpreted Law:34A-5-106; 67-19-30; 67-19-31; 67-19-32; 67-19a et seq.; 63<u>G</u>-4[6<del>b</del>] et seq.

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### Community and Culture, Library R223-2

Public Library Online Access for Eligibility to Receive Public Funds

### NOTICE OF PROPOSED RULE

(Amendment) DAR FILE NO.: 32296 FILED: 01/12/2009, 10:44

### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is necessary to clarify the manner in which the State Library Division will implement its responsibility under Section 9-7-213, Rulemaking ("(4) standards for the public library online access policy required in Section 9-7-215"). This change will also simplify the manner in which public libraries may satisfy their requirements under the applicable statute to State Library Division's satisfaction in accordance with Section 9-7-217, Reporting ("The division shall make a report to the Workforce Services and Community and Economic Development Interim Committee at least once every three years regarding the compliance of library boards with Section 9-7-215").

SUMMARY OF THE RULE OR CHANGE: Language changes are made to simplify the reporting procedure for local agencies to comply with the rule. In response to H.B. 63 from the 2008 General Session, the agency is required to change the code citations to match the recodification of Title 63. (DAR NOTE: H.B. 63 (2008) is found at Chapter 382, Laws of Utah 2008, and was effective 05/05/2008.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 9-7-213, 9-7-215, 9-7-216, and 9-7-217

#### ANTICIPATED COST OR SAVINGS TO:

✤ THE STATE BUDGET: State Library Division: potential savings may approximate 150 man hours, or approximately \$4,500.

✤ LOCAL GOVERNMENTS: Local Library Staff: potential savings may approximate 10 man hours per agency, or approximately \$300. Local Legal Representative: potential costs may approximate 5 man hours, or approximately \$1,000.

SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Small Business or Other Agencies: there is no anticipated cost or saving to small businesses or other agencies because this rule is not applicable to them, nor does it affect them. COMPLIANCE COSTS FOR AFFECTED PERSONS: State Library Division: potential cost may approximate 25 man hours, or approximately \$750. Local Library Staff: potential cost may approximate 5 man hours per agency, or approximately \$150. Small Business or Other Agencies: Local legal representative (i.e., city or county attorney) potential cost may approximate 5 man hours per agency, or approximately \$1,000.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: To the best of our knowledge, there is no impact of any kind on private businesses resulting from this rule. Palmer DePaulis, Executive Director

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

COMMUNITY AND CULTURE LIBRARY Room A 250 N 1950 W SALT LAKE CITY UT 84116-7901, or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Stephen A Matthews at the above address, by phone at 801-715-6722, by FAX at 801-715-6767, or by Internet E-mail at smatthews@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/18/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/25/2009

AUTHORIZED BY: Donna J Morris, Director

#### R223. Community and Culture, Library.

**R223-2.** Public Library Online Access for Eligibility to Receive Public Funds.

### R223-2-1. Authority and Policy.

(1) The Utah State Library Division, Department of Community and Culture, State of Utah, hereby adopts this rule in accordance with Sections [63 46a 1]63G-3-101 et seq., and 9-7-213, 9-7-215, [and-]9-7-216, and 9-7-217, UCA, for the purpose of determining public library eligibility to receive state funds.

(2) For a public library that offers public access to the Internet to <u>qualify and</u> retain eligibility to receive state funds, the Library Board shall adopt and enforce a Policy that meets the process and content standards defined in <u>Section</u> 9-7-216, <u>UCA</u>.

### R223-2-3. Reporting.

(1) Each Library Board shall submit a copy of its Policy to the Director of the State Library Division no later than July 1, <u>beginning</u> 2001, <u>and every three years thereafter</u>, accompanied by a letter signed by the Library Director and Library Board Chair affirming that [the Policy was adopted in an open meeting, that notice of the Policy's availability has been posted in a conspicuous place within the library, and that-]the Policy is intended to meet the provisions of [this rule and ]Section[s 9-7-213 and] 9-7-215, UCA.

(2) All documents submitted shall be classified as public records in accordance with the Government Records Access and Management Act (Title 63<u>G</u>, Chapter 2).

#### R223-2-4. State Library Administrative Procedures.

(1) The State Library Division shall review all public library policies received by July 1, <u>beginning</u> 2001, for compliance with this rule.

(2) The Director of the State Library Division shall issue notices of compliance or non-compliance within 30 days following the receipt of the policy and accompanying letter affirming its compliance with <u>Section 9-7-215, UCA</u>. Any library not submitting a policy and accompanying letter shall receive a notice of non-compliance.

(3) Appeals to [the]a notice of non-compliance shall be submitted in writing, within 30 days of the date of the notice, to the Executive Director of the Department of Community and [Economie Development]Culture, who shall respond within 30 days.

(4) A public library receiving a notice of non-compliance shall not be eligible to receive state funds until the condition(s) upon which the notice of non-compliance is based are corrected and a notice of compliance is received.

(5) A public library in compliance shall be eligible to receive state funds in state fiscal year <u>beginning</u> 2002 and subsequent years, as long as a current Policy <u>and accompanying letter</u> is resubmitted to the State Library Division no later than July 1, 2004, and every three years thereafter.

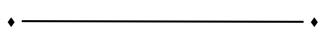
(6) A public library otherwise in compliance with the provisions of this rule shall not lose eligibility to receive state funds unless a complaint [submitted to the Library Board ]under its Policy results in a ruling from a court of law that a [minor has accessed obscene material]violation of applicable State Statute occurred expressly due to insufficient enforcement of or deficient language in the Policy[-by the local library].

KEY: libraries, public library, Internet access

# Date of Enactment or Last Substantive Amendment: [September 8, 2004]2009

Notice of Continuation: November 7, 2005

Authorizing, and Implemented or Interpreted Law: 9-7-213; 9-7-215; 9-7-216; 20 U.S.C. Sec. 9101



Education, Administration **R277-473** 

**Testing Procedures** 

### NOTICE OF PROPOSED RULE (Amendment) DAR FILE NO.: 32310

FILED: 01/15/2009, 14:18

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to provide language allowing for designated school districts and charter schools to be exempted from U-PASS testing requirements consistent with Subsection 53A-1-603(5) for participation in an online assessment pilot program.

SUMMARY OF THE RULE OR CHANGE: Changes include adding exemption language to Subsections R277-473-1(R) and R277-473-3(A).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-603(3)

#### ANTICIPATED COST OR SAVINGS TO:

THE STATE BUDGET: There may be some minimal savings to the state (USOE) budget by exempting three small school districts from certain required state tests. Combined assessment costs are difficult to determine for individual school districts.

 LOCAL GOVERNMENTS: There may be some minimal savings to local government. Participating school districts will be exempted from certain state assessments. Combined assessment costs are difficult to determine for individual school districts. The state will bear the cost of the online assessment pilot program within the existing USOE budget.
 SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no anticipated costs or savings to small businesses AND persons other than businesses by the amendments in this rule. The amendments apply to designated public schools only.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. It does not cost school districts, schools, or individuals to be exempted from certain state testing or to participate in an online assessment pilot program.

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. Patti Harrington, State Superintendent of Public Instruction

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 at the above address, 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 TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2009.

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

### R277. Education, Administration. R277-473. Testing Procedures. R277-473-1. Definitions.

A. "Advanced English Language Learner student" means the student understands and speaks conversational and academic English language. The student demonstrates reading comprehension and writing skills but may need continued support when engaged in complex academic tasks that require increasingly academic language. The student is identified at the A level on the UALPA but not proficiency on the English Language Arts (ELA) CRT.

B. "Basic skills course" means those courses specified in Utah law for which CRT testing is required.

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

D. "Criterion Reference Test (CRT)" means a test to measure performance against a specific standard. The meaning of the scores is not tied to the performance of other students.

E. "CS" means the USOE Computer Services section.

F. "Days" for purposes of this rule means calendar days unless specifically designated otherwise in this rule.

G. "Direct Writing Assessment (DWA)" means a USOEdesignated test to measure writing performance for students in grades six and nine.

H. "Emergent English Language Learner student" means the student understands and responds to basic social conventions, simple questions, simple directions, and appropriate level text. In general, the student speaks, reads, and writes using single phrases or sentences with support. The student may begin to use minimal academic vocabulary with support and participates in classroom routines. The student is identified at the E level on the UALPA.

I. "Intermediate English Language Learner student" means the student understands and speaks conversational and academic English with decreasing hesitancy and difficulty. The student is developing reading comprehension and writing skills, with support. The student's English literacy skills allow for demonstration of academic knowledge. The student reads and writes independently for personal and academic purposes, with some persistent errors. The student is identified at the I level on the UALPA.

J. "Last day of school" means the last day classes are held in each school district/charter school.

K. "Norm-reference Test (NRT)" means a test where the scores are based on comparisons with a nationally representative group of students in the same grade. The meaning of the scores is tied specifically to student performance relative to the performance of the students in the norm group under very specific testing conditions.

L. "Pre-Emergent English Language Learner student" means the student has limited or no understanding of oral or written English, therefore will be participating by listening. The student may demonstrate comprehension by using a few isolated words or expressions of speech. The student typically draws, copies, or responds verbally in his native language to simple commands, statements and questions. The student may begin to understand language in the realm of basic communication. Reading and writing is significantly below grade level. The student is identified at the P level on the UALPA.

M. "Protected test materials" means consumable and nonconsumable test booklets, test questions (items), directions for administering the assessments and supplementary assessment materials (e.g., videotapes) designated as protected test materials by the USOE. Protected test materials shall be used for testing only and shall be secured where they can be accessed by authorized personnel only.

N. "Raw test results" means number correct out of number possible, without scores being equated and scaled.

O. "Standardized tests" means tests required, consistent with Sections 53A-1-601 through 53A-1-611, to be administered to all students in identified subjects at the specified grade levels.

P. "Utah Academic Proficiency Assessment (UALPA)" means a USOE-designated test to determine the academic proficiency and progress of English Language Learner students.

Q. "Utah Alternative Assessment (UAA)" means a USOEdesignated test to measure students with disabilities with severe cognitive disabilities.

R. "Utah Basic Skills Competency Test (UBSCT)" means a USOE-designated test to be administered to Utah students beginning in the tenth grade to include components in reading, writing, and mathematics. Utah students shall satisfy the requirements of the UBSCT, in addition to state and school district/charter school graduation requirements, prior to receiving a high school diploma that indicates a passing score on all UBSCT subtests<u>unless</u> exempted consistent with R277-705-11.

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

### **R277-473-3.** Time Periods for Administering and Returning Materials.

A. School districts/charter schools shall administer assessments required under Section 53A-1-603<u>unless exempted</u> consistent with Section 53A-1-603(5) and R277-705-11 and [according to]consistent with the following schedule:

(1) All CRTs and UAAs (elementary and secondary, English language arts, math, science) shall be given in a six week window beginning six weeks before the last Monday of the end of the course.

(2) The Utah Basic Skills Competency Test shall be given Tuesday, Wednesday, and Thursday of the first week of February and Tuesday, Wednesday, and Thursday of the third week of October.

(3) Sixth and ninth grade Direct Writing Assessment shall be given in a three week window beginning at least 14 weeks prior to the last day of school.

(4) The UALPA shall be administered to all English Language Learner students identified as Pre-Emergent, Emergent, Intermediate and Advanced, or enrolled for the first time in the school district at any time during the school year. The test shall be administered once a year to show progress. The testing window is the school year.

B. School districts shall require that all schools within the school district or charter schools administer NRTs within the time period specified by the USOE and the publisher of the test.

C. School districts/charter schools shall submit all answer sheets for the CRT and NRT tests to the CS Section of the USOE for scanning and scoring as follows:

(1) School districts/charter schools shall return CRT, UAA and DWA answer sheets to the USOE no later than five working days after the last day of the testing window.

(2) School districts/charter schools shall return NRT answer sheets to the USOE no later than five working days after the last day of the testing time period specified by the publisher of the test.

(3) School districts/charter schools shall return UBSCT answer sheets to the USOE no later than three days after the final make-up day.

(4) School districts/charter schools shall return UALPA answer sheets to the USOE no later than May 15 for traditional schedule schools and June 15 for year-round schedule schools beginning with the 2007-08 school year.

D. When determining the date of testing, schools on trimester schedules shall schedule the testing at the point in the course where students have had approximately the same amount of instructional time as students on a regular schedule and provide the schedule to the USOE. Basic skills courses ending in the first trimester of the year shall be assessed with the previous year's form of the CRTs.

E. Makeup opportunities shall be provided to students for the Utah Basic Skills Competency Test according to the following:

(1) Students shall be allowed to participate in makeup tests if they did not participate to any degree in the Utah Basic Skills Competency Test or subtest(s) of the Utah Basic Skills Competency Test.

(2) School districts/charter schools shall determine acceptable reasons for student makeup eligibility which may include absence due to serious illness, absence due to family emergency, or absence due to death of family member or close friend.

(3) School districts/charter schools shall provide a makeup window not to exceed five days immediately following the last day of each administration of the Utah Basic Skills Competency Test.

(4) School districts/charter schools shall determine and notify parents in an appropriate and timely manner of dates, times, and sites of makeup opportunities for the Utah Basic Skills Competency Test.

### **KEY:** educational testing

Date of Enactment or Last Substantive Amendment: [November 7, 2007]2009

### Notice of Continuation: May 9, 2005

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-603(3); 53A-1-401(3)

Education, Administration R277-509

Certification of Student Teachers and Interns

### NOTICE OF PROPOSED RULE

(Amendment) DAR FILE NO.: 32311 FILED: 01/15/2009, 14:19

#### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide for online licensing of student teachers and interns consistent with other Utah State Board of Education educator licensing procedures. SUMMARY OF THE RULE OR CHANGE: The changes in this rule now require student teachers and interns to pay for and receive online licenses.

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

#### ANTICIPATED COST OR SAVINGS TO:

THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The online licensing process has been in place for several years and these amendments add two small groups to the process.

LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. All costs are borne by the USOE or individual applicants for licensing.

✤ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no costs to to small businesses. Individual licensing applicants seeking intern licenses or student teacher licenses will now pay a one-time \$25 fee.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are compliance costs for license applicants. Student teacher and intern license applicants will be charged a one time \$25 fee to receive their student teacher or intern license.

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. Patti Harrington, State Superintendent of Public Instruction

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 at the above address, 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 TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2009

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

#### **R277.** Education, Administration.

R277-509. [Certification]Licensure of Student Teachers and Interns.

R277-509-1. Definitions.

[Đ]<u>A</u>. "Board" means the Utah State Board of Education. [C]<u>B</u>. "Cooperating teacher" means a [regularly certified]licensed teacher employed by a school district<u>or charter</u> school who is qualified to directly supervise a student teacher or intern during the period the student teacher or intern is assigned to the district.

[B]C. "Intern" means a teacher education student, who, in an advanced stage of preparation, usually as a culminating experience, may be employed in a school setting for a period of up to one year and receive salary proportionate to the service rendered. An intern is supervised primarily by the school system but with a continuing relationship with college personnel and following a planned program designed to produce a demonstrably competent professional.

[A]D. "Student teacher" means a college student preparing to teach who is assigned a period of guided teaching during which the student assumes increasing responsibility for directing the learning of a group or groups of students over a period of time.

#### R277-509-2. Authority and Purpose.

A. This rule is authorized under Article X, Section 3 of the Utah Constitution which vests general authority and supervision of public education in the Board, Sections 53A-6-[<del>101(1)</del> and (2), U.C.A. <u>1953</u>,]<u>104(1)</u> which permit the Board to issue [certificates]licenses [to persons engaged in student teaching]for educators, and Section 53A-1-401(3)[, U.C.A. <u>1953</u>,] which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify the procedure under which the Board issues [eertificates]licenses to student teachers and interns.

#### R277-509-3. Issuing [Certificates]Licenses.

A. [A teacher preparation institution may]<u>The Board shall</u> issue [s]<u>S</u>tudent [t]<u>T</u>eacher or [i]<u>I</u>ntern [certificates]<u>licenses</u> to students [in its]<u>enrolled in approved teacher preparation</u> programs.[ -Each institution shall designate a person to administer the issuance of the certificates and to coordinate activities in accordance with Board standards.]

B. A [certificate]license is issued only to student teachers or interns assigned to elementary, middle, or secondary schools under cooperating teachers for part of their [professional training]preparation program. A supervising administrator must be permanently assigned to the building to which an intern is assigned.

C. A [eertificate]Student Teacher or Intern license is valid only in the school district<u>or charter school</u> specified and for the period of time indicated on the [eertificate, not to exceed one year]license.[

D. A list of student teachers and interns to whom certificates have been issued must be furnished to the State Office of Education by the preparing institution not later than two weeks following the date on which the students are assigned.]

### R277-509-4. School District and Charter School Requirements.

A. A school district or charter school may not [independently]accept or assign student teachers or interns who do not possess a Utah Student Teacher or Intern license. The service of persons so assigned is not recognized by the Board as fulfilling an intern or student teaching requirement for [certification]licensure.

B. [The superintendent of a school district to which an administrative intern is assigned shall submit to the State Office of Education at the beginning of each assignment period a list of those assigned, the nature of the assignment, and the institution through which each student is certificated as an administrative intern]It is the responsibility of the school district or charter school to verify that potential student teachers or interns are appropriately licensed.

KEY: <u>student teachers</u>, interns[<u>hips</u>, <u>professional education</u>, <u>training programs</u>], <u>teacher preparation programs</u> Date of Enactment or Last Substantive Amendment: [<u>1987]2009</u> Notice of Continuation: October 5, 2007 Authorizing, and Implemented or Interpreted Law: Art X Sec

3; 53A-6-[<del>101(2)</del>]<u>104(1);</u> 53A-1-401(3)

### Education, Administration **R277-510** Educator Licensing - Highly Qualified Assignment

### NOTICE OF PROPOSED RULE

(Amendment) DAR FILE No.: 32312 FILED: 01/15/2009, 14:19

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to make educator licensing standards and state highly qualified standards consistent with the federal No Child Left Behind Act (NCLB).

SUMMARY OF THE RULE OR CHANGE: The amended rule provides changes in procedure and terminology to make the rule consistent with NCLB.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 53A-1-401(1)(a) and 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:

THE STATE BUDGET: There are no anticipated costs or savings to the state budget. The changes merely make highly qualified requirements for educators consistent with federal law.

✤ LOCAL GOVERNMENTS: There are no anticipated costs or savings to local government. The USOE, individual schools, and school districts have provided professional development in past years to help all veteran and less experienced educators become highly qualified under NCLB. The costs to make all educators, including veteran educators, highly qualified are minimal at this time.

✤ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no anticipated costs or savings to small businesses. There may be minimal professional development costs to individual veteran teachers to help them reach highly qualified status. However, all significant professional development costs are borne by school districts and charter schools for all educators.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be minimal professional development costs to individual veteran teachers to help them reach highly qualified status. However, all significant professional development costs are borne by school districts and charter schools for all educators. 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. Patti Harrington, State Superintendent of Public Instruction

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 at the above address, 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 TO THE ADDRESS ABOVE NO LATER THAN  $5:00 \ PM$  on 03/03/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2009

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

#### **R277.** Education, Administration.

R277-510. Educator Licensing - Highly Qualified Assignment. R277-510-1. Definitions.

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

B. "Core academic subjects" 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), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11).

C. "Date of hire" means the date on which the initial employment contract is signed between educator and employer for a position requiring a professional educator license.

D. "Endorsement" means a qualification based on content area mastery obtained through a higher education major or minor or through a state-approved endorsement program, consistent with R277-503-1[-]E and R277-503-5.

E. "Highly qualified" means a teacher has met the specific requirements of ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23) or 34 CFR 200.56.

F. "IDEA" means the Individuals with Disabilities Education Act, Title 1, Part A, Section 602.

G. "Multiple subject teacher" means a teacher in a necessarily existent small school as defined under R277-445 or as a special education teacher [defined under R277-510H]consistent with IDEA. Title 1, Part A, Section 602, or in a Youth in Custody program as defined under R277-709 or a board-designated alternative school whose size meets necessarily existent small school criteria as defined under R277-445, who teaches two or more Core academic subjects defined under R277-510-1B or under R277-700.

H. "NCLB" means the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), 20 U.S.C. 7801.

I. "Restricted endorsement" means an endorsement available and limited to teachers in necessarily existent small schools as determined under R277-445, teachers in alternative schools [who]that meet the size criteria of R277-445, and teachers in youth in custody programs or to special educators seeking highly qualified status in mathematics, language arts, or science. Teacher qualifications shall include at least nine semester hours of USOEapproved university-level courses in each course taught by the teacher holding a restricted endorsement.

J. "Teacher of record" for the purposes of this rule means the teacher to whom students are assigned for purposes of reporting for USOE data submissions.

K. "USOE" means the Utah State Office of Education.[

L. "Veteran Teacher" means a teacher whose date of hire in a Utah public school was prior to July 1, 2005, and who held a level 1, 2, or 3 license at that time.]

### **R277-510-3.** NCLB Highly Qualified Assignments - Early Childhood Teachers K-3.

A. For a teacher assignment to be designated as NCLB highly qualified, the teacher's qualifications shall match the NCLB requirements of content expertise for the assignment. A special educator assigned in an elementary school as the classroom teacher of record shall meet the NCLB requirements for the assignment. The teacher shall have:

(1) a bachelor's degree; and

(2) an educator license with an early childhood area of concentration; and

(3) [at least one of the following:

(a) ]a passing score at the level designated by the USOE on a Board-approved subject area test[; or].

[(b) a Level 2 license with documentation of satisfaction of the veteran teacher requirements for the assignment as described in R277-510-8.

# **R277-510-4.** NCLB Highly Qualified Assignments - Elementary Teachers 1-8.

A. For a teacher assignment to be designated as NCLB highly qualified, the teacher's qualifications shall match the NCLB requirements of content expertise for the assignment. A special educator assigned in an elementary school as the classroom teacher of record shall meet the NCLB requirements for the assignment. The teacher shall have:

(1) a bachelor's degree; and

(2) an educator license with an elementary area of concentration; and

### (3) [at least one of the following:

(a)-]a passing score at the level designated by the USOE on a Board-approved subject area test[; or].

[(b) a Level 2 license with documentation of satisfaction of veteran teacher requirements for the assignment as described in R277-510-8.

<u>—</u>]B. A teacher holding a license with an elementary area of concentration assigned to teach an NCLB core academic subject in a secondary school shall meet the requirements of R277-510-3([B]A).

## R277-510-5. NCLB Highly Qualified Assignments - Secondary Teachers 6-12.

A. For a teacher assignment to be designated as NCLB highly qualified, the teacher's qualifications shall match the NCLB requirements of content expertise for the assignment. The teacher shall have:

(1) a bachelor's degree; and

(2) an educator license with a secondary area of concentration and endorsement in the content area assigned; and

(3) at least one of the following in the assignment content area:

(a) a university major degree, masters degree, doctoral degree, or National Board Certification in a related NCLB core academic content area; or

(b) a course work equivalent of a major degree (30 semester or 45 quarter hours) in a related NCLB core academic content area; or

(c) a passing score at the level designated by the USOE on a Board-approved subject area test; if no Board-approved test is available, an endorsement is sufficient for highly qualified status[;or
 (d) documentation of satisfaction of the veteran teacher

### requirements for the assignment as described in R277-510-8].

B. An assignment in grades 7 or 8 given to a teacher holding an elementary area of concentration may be designated as NCLB highly qualified if the teacher holds an endorsement in the content area and meets one of the requirements of R277-510-5A(3) above.

C. These requirements are only applicable to NCLB core academic subject assignments.

D. Each NCLB core academic course assignment is subject to the above standards.

# **R277-510-6.** NCLB Highly Qualified Assignments - Special Education Teachers.

A. For a special education teacher assignment in grades K-8[ $_{\tau}$  or K-12 teaching students who are assessed using the Utah Alternative Assessment,] to be designated as NCLB highly qualified, the teacher's qualifications shall match the NCLB requirements of content expertise for the assignment. A special educator assigned as the classroom teacher of record for a NCLB core academic subject shall have:

(1) a bachelor's degree; and

(2) an educator license with a special education area of concentration; and

(3) any one of the following in the assignment content area:

(a) a passing score on a Board-approved elementary content test; or[

(b) documentation of satisfaction of the veteran teacher requirements for the assignment as described in R277-510-8; or]

([e]b) a university major degree, masters degree, doctoral degree, or National Board Certification and an endorsement in the content area; or

 $([\underline{4}]\underline{c})$  a course work equivalent of a major degree (30 semester or 45 quarter hours) and an endorsement in the content area; or

 $([\bullet]\underline{d})$  a passing score at the level designated by the USOE on a Board-approved subject area test and an endorsement in the content area.

(4) A special educator who would be NCLB highly qualified as a teacher of record in an elementary/early childhood regular education assignment is also NCLB highly qualified as a teacher of record in a special education assignment.

B. For a special education teacher assignment in grades [9]<u>7</u>-12 to be designated as NCLB highly qualified, the teacher's qualifications shall match the NCLB requirements of content expertise for the assignment. A special educator assigned as the classroom teacher of record for a NCLB core academic subject shall have:

(1) a bachelor's degree; and

(2) an educator license with a special education area of concentration; and

(3) any one of the following in the assignment content area:

 $([e]\underline{a})$  a passing score at the level designated by the USOE on a Board-approved subject area test.

([a]b) a passing score on a Board-approved [fundamental multi-subject]content test; or

([b]c) documentation of [satisfaction of the veteran teacher requirements for the assignment as described in R277-510-8]satisfactory professional development and experience as approved by the USOE; or

([e]d) a university major degree, masters degree, doctoral degree, or National Board Certification; or

([d]e) a course work equivalent of a major degree (30 semester or 45 quarter hours)[; or].

C. IDEA may contain requirements for teacher qualifications in addition to the requirements of NCLB and this rule. R277-510 does not replace, supercede, or nullify any of those requirements.

### **R277-510-7.** NCLB Highly Qualified Assignments - Small Schools Multiple Subject Teachers 7 - 12.

A. For a small school multiple subject teacher assignment to be designated as NCLB highly qualified, the teacher's qualifications shall match the NCLB requirements of content expertise for the assignment. The teacher shall have:

(1) a bachelor's degree; and

(2) an educator license with a secondary area of concentration; and

(3) an endorsement[<u>or a restricted endorsement</u>] in the assignment content area; and

(4) at least one of the following in the assignment content area:

(a) a university major degree, masters degree, doctoral degree, or National Board Certification; or

(b) a course work equivalent of a major degree (30 semester or 45 quarter hours); or

(c) a passing score at the level designated by the USOE on a Board-approved subject area test[<del>; or</del>

(d) documentation of satisfaction of the veteran teacher requirements for the assignment as described in R277-510-8; or
 (e) a passing score on a Board approved fundamental multi-

subject test].

B. The Director of Educator Quality [Services] and Licensing at the [Utah State Office of Education]USOE shall annually publish a list of qualifying small schools, consistent with R277-445.

# [R277-510-8. Highly Qualified Requirements for Assignment of Veteran Teachers.

A. Veteran teachers in Early Childhood and Elementary assignments who hold Early Childhood or Elementary areas of concentration may meet highly qualified requirements by:

 (1) completion of an elementary or early childhood major or both from an accredited university; or

(2) a review of college and university transcripts that identify that credits have been earned in the following areas with academic grades of C or better:

(a) Nine semester hours of language arts/ reading or the equivalent as approved by the USOE; and

(b) six semester hours of physical/biological science or the equivalent as approved by the USOE; and

 (c) nine semester hours of social sciences or the equivalent as approved by the USOE; and

(d) nine semester hours of college level mathematics or the equivalent as approved by the USOE; and

(e) three semester hours of arts or the equivalent as approved by the USOE.

B. Veteran teachers in secondary NCLB core subject assignments who hold a secondary area of concentration may meet highly qualified requirements by having:

(1) an endorsement in a subject area directly related to the teacher's academic major; or

(2) a current endorsement for the assignment and completion of 200 professional development points, accrued after the endorsement was approved by the USOE, directly related to the area of assignment. No more than 100 points may be earned for successful teaching in the related areas.

### ]R277-510-[9]8. LEA Highly Qualified Plans.

A. Each <u>school</u> district and charter school shall submit a plan to the USOE describing strategies for progressing toward and maintaining the highly qualified status of all educator assignments to which this rule applies. Each plan shall be updated annually.

B. The USOE shall review <u>school</u> district and charter school plans and provide technical support to districts and charter schools to assist them in carrying out their plans to the extent of staff/resources available.

C. The USOE shall set timelines for submission and review of <u>school</u> district and charter school plans.

#### [R277-510-10. Highly Qualified Time Lines.

— A. NCLB requires that all NCLB core subject assignments meet highly qualified standards as of July 1, 2006. Utah school districts and charter schools shall work toward and have plans in place to ensure progress toward this requirement.

B. Documented determinations of highly qualified status under previously enacted Board rules shall remain in effect notwithstanding any subsequent changes in highly qualified requirements.

# ]R277-510-[44]<u>9</u>. Highly Qualified <u>Timelines and</u> Rules in Relation to Other Board Rules.

<u>A. Documented determinations of highly qualified status under</u> previously enacted Board rules shall remain in effect notwithstanding any subsequent changes in highly qualified requirements.

<u>B.</u> Other Board rules may include requirements related to licensure or educator assignment that do not specifically apply to NCLB highly qualified assignment status. R277-510 does not supercede, replace, or nullify any of these requirements.

### KEY: educators, highly qualified

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# Date of Enactment or Last Substantive Amendment: [August 7, 2007]2009

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

# Education, Administration **R277-700**

The Elementary and Secondary School Core Curriculum

### NOTICE OF PROPOSED RULE

(Amendment) DAR FILE NO.: 32313 FILED: 01/15/2009, 14:19

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to provide language allowing for designated school districts and charter schools to be exempted from U-PASS testing requirements consistent with Subsection 53A-1-603(5) for participation in an online pilot program, and to remove Applied Math I and Applied Math II courses from required courses as those courses no longer exist.

SUMMARY OF THE RULE OR CHANGE: Changes include adding exemption language to Subsections R277-700-1(U) and to R277-700-8(G) and (H), and removing Applied Mathematics I and Applied Mathematics II from Subsection R277-700-7(C)(2).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 53A-1-402(1)(b) and (c)

### ANTICIPATED COST OR SAVINGS TO:

THE STATE BUDGET: There may be some minimal savings to the state (USOE) budget by exempting three small school districts from certain required state tests. Combined assessment costs are difficult to determine for individual school districts.

 LOCAL GOVERNMENTS: There may be some minimal savings to local government. Participating school districts will be exempted from certain state assessments. Combined assessment costs are difficult to determine for individual school districts. The state will bear the cost of the online assessment pilot program within the existing USOE budget.
 SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no anticipated costs or savings to small businesses AND persons other than businesses by the amendments in this rule. The amendments apply to designated public schools only.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. It does not cost school districts, schools, or individuals to be exempted from certain state testing or to participate in an online assessment pilot program.

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. Patti Harrington, State Superintendent of Public Instruction 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 at the above address, 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 TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2009

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

### **R277.** Education, Administration.

# **R277-700.** The Elementary and Secondary School Core Curriculum.

R277-700-1. Definitions.

A. "Accredited" means evaluated and approved under the Standards for Accreditation of the Northwest Association of Schools and Colleges or the accreditation standards of the Board, available from the USOE Accreditation Specialist.

B. "Applied courses" means public school courses or classes that apply the concepts of Core subjects. Courses may be offered through Career and Technical Education or other areas of the curriculum.

C. "Basic skills course" means a subject which requires mastery of specific functions, including skills that prepare students for the future, and was identified as a course to be assessed under Section 53A-1-602.

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

E. "Career and Technical Education(CTE)" means organized educational programs or courses which directly or indirectly prepare students for employment, or for additional preparation leading to employment, in occupations, where entry requirements generally do not require a baccalaureate or advanced degree.

F. "Core Curriculum content standard" means a broad statement of what students enrolled in public schools are expected to know and be able to do at specific grade levels or following completion of identified courses.

G. "Core Curriculum criterion-referenced test (CRTs)" means a test to measure performance against a specific standard. The meaning of the scores is not tied to the performance of other students.

H. "Core Curriculum objective" means a focused description of what students enrolled in public schools are expected to know and do at the completion of instruction.

I. "Core subjects" means courses for which there is a declared set of Core curriculum objectives as approved by the Board.

J. "Demonstrated competence" means subject mastery as determined by school district standards and review. School district review may include such methods and documentation as: tests, interviews, peer evaluations, writing samples, reports or portfolios.

K. "Elementary school" for purposes of this rule means grades K-6 in whatever kind of school the grade levels exist.

L. "High school" for purposes of this rule means grades 9-12 in whatever kind of school the grade levels exist.

M. "Individualized Education Program (IEP)" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with the Utah Special Education Rules and Part B of the Individuals with Disabilities Education Act (IDEA).

N. "Life Skills document" means a companion document to the Core curriculum that describes the knowledge, skills, and dispositions essential for all students; the life skills training helps students transfer academic learning into a comprehensive education.

O. "Middle school" for purposes of this rule means grades 7-8 in whatever kind of school the grade levels exist.

P. "Norm-referenced test" means a test where the scores are based on comparisons with a nationally representative group of students in the same grade. The meaning of the scores is tied specifically to student performance relative to the performance of the students in the norm group under very specific testing conditions.

Q. "SEOP" means student education occupation plan. An SEOP shall include:

(1) a student's education occupation plans (grades 7-12) including job placement when appropriate;

(2) all Board and local board graduation requirements;

(3) evidence of parent, student, and school representative involvement annually;

(4) attainment of approved workplace skill competencies; and(5) identification of post secondary goals and approved

sequence of courses.

R. "State Core Curriculum (Core Curriculum)" means those standards of learning that are essential for all Utah students, as well as the ideas, concepts, and skills that provide a foundation on which subsequent learning may be built, as established by the Board.

S. "Supplemental courses" means public school courses that provide students with the skills to succeed in Core subject areas.

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

U. "Utah Basic Skills Competency Test (UBSCT)" means a test to be administered to Utah students beginning in the tenth grade to include, at a minimum, components on English, language arts, reading and mathematics. Utah students shall satisfy the requirements of the UBSCT in addition to school or district graduation requirements prior to receiving a basic high school diploma <u>unless exempted consistent with Section 53A-1-603(5) and R277-705-11</u>.

### **R277-700-6.** High School Requirements (Effective for Students Graduating Through the 2009-2010 School Year).

A. The Board shall establish a Core Curriculum for students in grades 9-12.

B. Students in grades 9-12 shall earn a minimum of 15 Boardspecified units of credit through course completion or through competency assessment consistent with R277-705.

C. Grades 9-12 Core Curriculum as specified:

- (1) Language Arts (3.0 units of credit);
- (2) Mathematics (2.0 units of credit):

(a) minimally, Elementary Algebra or Applied Mathematics I;

and

(b) Geometry or Applied Mathematics II; or

(c) any Advanced Mathematics courses in sequence beyond (a) and (b);

(d) high school mathematics credit may not be earned for courses in sequence below (a).

(3) Science (2.0 units of credit from two of the four science areas):

- (a) Earth Systems Science (1.0 units of credit);
- (b) Biological Science (1.0 units of credit);
- (c) Chemistry (1.0 units of credit);
- (d) Physics (1.0 units of credit).
- (4) Social Studies (2.5 units of credit):
- (a) Geography for Life (0.5 units of credit);
- (b) World Civilizations (0.5 units of credit);
- (c) U.S. History (1.0 units of credit);
- (d) U.S. Government and Citizenship (0.5 units of credit).

(5) The Arts (1.5 units of credit from any of the following performance areas):

- (a) Visual Arts;
- (b) Music;
- (c) Dance;
- (d) Theatre;
- (6) Physical and Health Education (2.0 units of credit):
- (a) Health (0.5 units of credit);
- (b) Participation Skills (0.5 units of credit);
- (c) Fitness for Life (0.5 units of credit);

(d) Individualized Lifetime Activities (0.5 units of credit) or team sport/athletic participation (maximum of 0.5 units of credit with school approval).

- (7) Career and Technical Education (1.0 units of credit);
- (a) Agriculture;
- (b) Business;
- (c) Family and Consumer Sciences;
- (d) Health Science and Technology;
- (e) Information Technology;
- (f) Marketing;
- (g) Technology and Engineering Education;
- (h) Trade and Technical Education.
- (8) Educational Technology:

(a) Computer Technology (0.5 units of credit for the class by this specific name only); or

(b) successful completion of Board-approved competency examination (credit may be awarded at the discretion of the school or school district).

(9) General Financial Literacy (0.5 units of credit).

(10) Library Media Skills (integrated into the subject areas).

(11) Board-approved CRT's shall be used to assess student mastery of the following subjects:

(a) reading;

- (b) language arts through grade 11;
- (c) mathematics as defined under R277-700-[6D]7C(2);
- (d) science as defined under R277-700-[6D]7C(3); and
- (e) effectiveness of written expression in grade 9.

D. Local boards shall require students to earn a minimum of 24 units of credit in grades 9-12 for high school graduation.

(1) If a local board requires students to register for more than 24 units in grades 9-12, one-third of those credits above 24 shall be in one or more of the academic areas of math, language arts, world

languages, science, or social studies, as determined by the local board.

(2) Local boards may require students to earn credits for graduation that exceed minimum Board requirements.

E. Students with disabilities served by special education programs may have changes made to graduation requirements through individual IEPs to meet unique educational needs. A student's IEP shall document the nature and extent of modifications, substitutions or exemptions made to accommodate a student with disabilities.

# **R277-700-7.** High School Requirements (Effective for Graduating Students Beginning with the 2010-2011 School Year).

A. The Board shall establish a Core Curriculum for students in grades 9-12.

B. Beginning with the graduating class of 2011, students in grades 9-12 shall earn a minimum of 18 Board-specified units of credit through course completion or through competency assessment consistent with R277-705.

C. Grades 9-12 Core Curriculum, as specified:

- (1) Language Arts (4.0 units of credit):
- (a) Ninth grade level (1.0 unit of credit);
- (b) Tenth grade level (1.0 unit of credit);
- (c) Eleventh grade level (1.0 unit of credit); and

(d) Applied or advanced language arts credit (1.0 unit of credit) from the list of courses, determined by the local board and approved by USOE, using the following criteria and consistent with the student's SEOP:

(i) courses are within the field/discipline of language arts with a significant portion of instruction aligned to language arts content, principles, knowledge, and skills; and

(ii) courses provide instruction that leads to student understanding of the nature and disposition of language arts; and

(iii) courses apply the fundamental concepts and skills of language arts; and

(iv) courses provide developmentally appropriate content; and

(v) courses develop skills in reading, writing, listening, speaking, and presentation;

(2) Mathematics (3.0 units of credit) met minimally through successful completion of three units of credit of mathematics including Elementary Algebra [or Applied Mathematics I-]and Geometry[or Applied Mathematics II]; and mathematics in grades 9-12 selected from the Core courses or applied or supplemental courses from the list of courses determined by the local board and approved by USOE using the following criteria and consistent with the student's SEOP:

(i) courses are within the field/discipline of mathematics with a significant portion of instruction aligned to mathematics content, principles, knowledge, and skills; and

(ii) courses provide instruction that leads to student understanding of the nature and disposition of mathematics; and

(iii) courses apply the fundamental concepts and skills of mathematics; and

(iv) courses provide developmentally appropriate content; and

(v) courses include the five process skills of mathematics: problem solving, reasoning, communication, connections, and representation.

(3) Science (3.0 units of credit):

(a) at a minimum, two courses from the four science foundation areas:

(i) Earth Systems Science (1.0 units of credit);

- (ii) Biological Science (1.0 units of credit);
- (iii) Chemistry (1.0 units of credit);
- (iv) Physics (1.0 units of credit); and

(b) one additional unit of credit from the foundation courses or the applied or advanced science list determined by the local board and approved by USOE using the following criteria and consistent with the student's SEOP:

(i) courses are within the field/discipline of science with a significant portion of instruction aligned to science content, principles, knowledge, and skills; and

(ii) courses provide instruction that leads to student understanding of the nature and disposition of science; and

(iii) courses apply the fundamental concepts and skills of science; and

(iv) courses provide developmentally appropriate content; and

(v) courses include the areas of physical, natural, or applied sciences; and

(vi) courses develop students' skills in scientific inquiry.

(4) Social Studies (2.5 units of credit):

(a) Geography for Life (0.5 units of credit);

(b) World Civilizations (0.5 units of credit);

(c) U.S. History (1.0 units of credit);

(d) U.S. Government and Citizenship (0.5 units of credit).

(5) The Arts (1.5 units of credit from any of the following performance areas):

(a) Visual Arts;

(b) Music;

- (c) Dance;
- (d) Theatre:

(6) Physical and Health Education (2.0 units of credit):

(a) Health (0.5 units of credit);

(b) Participation Skills (0.5 units of credit);

(c) Fitness for Life (0.5 units of credit);

(d) Individualized Lifetime Activities (0.5 units of credit) or team sport/athletic participation (maximum of 0.5 units of credit with school approval).

(7) Career and Technical Education (1.0 units of credit):

(a) Agriculture;

(b) Business;

(c) Family and Consumer Sciences;

(d) Health Science and Technology;

(e) Information Technology;

(f) Marketing;

(g) Technology and Engineering Education;

(h) Trade and Technical Education.

(8) Educational Technology (0.5 units of credit):

(a) Computer Technology (0.5 units of credit for the class by this specific name only); or

(b) successful completion of Board-approved competency examination (credit may be awarded at the discretion of the school or school district).

(9) General Financial Literacy (0.5 units of credit).

(10) Library Media Skills (integrated into the subject areas).

D. Board-approved CRT's shall be used to assess student

mastery of the following subjects:

(1) reading;

(2) language arts through grade 11;

(3) mathematics as defined under R277-700-[6D]7C(2);

(4) science as defined under R277-700-[6D]7C(3); and

(5) effectiveness of written expression in grade 9.

E. Local boards shall require students to earn a minimum of 24 units of credit in grades 9-12 for high school graduation.

F. Local boards may require students to earn credits for graduation that exceed minimum Board requirements.

G. Elective courses offerings may be established and offered at the discretion of the local board.

H. Students with disabilities served by special education programs may have changes made to graduation requirements through individual IEPs to meet unique educational needs. A student's IEP shall document the nature and extent of modifications, substitutions or exemptions made to accommodate a student with disabilities.

I. The Board and USOE may review local boards' lists of approved courses for compliance with this rule.

J. Graduation requirements may be modified for individual students to achieve an appropriate route to student success when such modifications:

(1) are consistent with the student's IEP or SEOP or both;

(2) are maintained in the student's file and include the parent's/guardian's signature; and

(3) maintain the integrity and rigor expected for high school graduation, as determined by the Board.

## **R277-700-8.** Student Mastery and Assessment of Core Curriculum Standards and Objectives.

A. Student mastery of the Core Curriculum at all levels is the responsibility of local boards of education.

B. Provisions for remediation of secondary students who do not achieve mastery is the responsibility of local boards of education under Section 53A-13-104.

C. Students who are found to be deficient in basic skills through U-PASS shall receive remedial assistance according to provisions of Section 53A-1-606(1).

D. If parents object to portions of courses or courses in their entirety under provisions of law (Section 53A-13-101.2) and rule (R277-105), students and parents shall be responsible for the mastery of Core objectives to the satisfaction of the school prior to promotion to the next course or grade level.

E. Students with Disabilities:

(1) All students with disabilities served by special education programs shall demonstrate mastery of the Core Curriculum.

(2) If a student's disabling condition precludes the successful demonstration of mastery, the student's IEP team, on a case-by-case basis, may provide accommodations for or modify the mastery demonstration to accommodate the student's disability.

F. Students may demonstrate competency to satisfy course requirements consistent with R277-705-3.

G. All Utah public school students shall participate in statemandated assessments, as required by law<u>unless specifically</u> <u>exempted consistent with R277-705-11</u>.

H. Utah public school students shall participate in the Utah Basic Skills Competency Test, as defined under R277-700-1[T]U unless specifically exempted consistent with R277-705-11.

I. School and school districts are ultimately responsible for and shall submit all required student assessments irrespective of allegations of intentional or unintentional violations of testing security or protocol.

### KEY: curricula

# Date of Enactment or Last Substantive Amendment: [October 24, 2006]2009

Notice of Continuation: January 8, 2008 Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(b); 53A-1-402.6; 53A-1-401(3)

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### Education, Administration **R277-705** Secondary School Completion and Diplomas

### NOTICE OF PROPOSED RULE

(Amendment) DAR FILE NO.: 32314 FILED: 01/15/2009, 14:20

### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to provide language allowing for designated school districts and charter schools to be exempted from certain U-PASS testing requirements consistent with Subaection 53A-1-603(5) for participation in an online pilot program. The amendments also explain student requirements when students move between exempt and nonexempt school districts or schools.

SUMMARY OF THE RULE OR CHANGE: Changes include adding a new Section R277-705-11 regarding student achievement testing exceptions which provide required assessments for exempt school districts and charter schools and requirements for students moving between school districts and charter schools.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 53A-1-402(1)(b) and (c)

### ANTICIPATED COST OR SAVINGS TO:

THE STATE BUDGET: There will be some state costs for online classroom-based assessments as three school districts participate in online assessments and are exempt from other state assessment requirements. The Utah State Office of Education (USOE) budget will absorb all costs to the school districts that are participating in the online assessments.

✤ LOCAL GOVERNMENTS: There will be no costs to participating school districts. The USOE will absorb all costs for the pilot program within the USOE's existing budget.

SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no anticipated costs or savings to small businesses AND persons other than businesses by the amendments in this rule. The amendments apply to designated public schools only.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. It does not cost school districts, schools, or individuals to be exempted from certain state testing or to participate in an online assessment pilot program.

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. Patti Harrington, State Superintendent of Public Instruction

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 at the above address, 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 TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2009

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

#### **R277.** Education, Administration.

**R277-705.** Secondary School Completion and Diplomas. **R277-705-1.** Definitions.

In addition to terms defined in Section 53A-1-602:

A. "Accredited" means evaluated and approved under the Standards for Accreditation of the Northwest Association of Accredited Schools or the accreditation standards of the Board, available from the Utah State Office of Education Accreditation Specialist.

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

C. "Criterion-referenced test (CRT)" means a test to measure performance against a specific standard. The meaning of the scores is not tied to the performance of other students.

D. "Cut score" means the minimum score a student must attain for each subtest to pass the UBSCT.

E. "Demonstrated competence" means subject mastery as determined by school district standards and review. School district review may include such methods and documentation as: tests, interviews, peer evaluations, writing samples, reports or portfolios.

F. "Diploma" means an official document awarded by a public school district or high school consistent with state and district graduation requirements and the provisions of this rule.

G. "Individualized Education Program (IEP)" means a written statement for a student with a disability that is developed, reviewed, and revised in accordance with the Utah Special Education Rules and Part B of the Individuals with Disabilities Education Act (IDEA).

H. "Secondary school" means grades 7-12 in whatever kind of school the grade levels exist.

I. "Section 504 Plan" means a written statement of reasonable accommodations for a student with a qualifying disability that is

developed, reviewed, and revised in accordance with Section 504 of the Rehabilitation Act of 1973.

J. "Special purpose schools" means schools designated by regional accrediting agencies, such as Northwest. These schools typically serve a specific population such as students with disabilities, youth in custody, or schools with specific curricular emphasis. Their courses and curricula are designed to serve their specific populations and may be modified from traditional programs.

K. "Supplemental education provider" means a private school or educational service provider which may or may not be accredited, that provides courses or services similar to public school courses/classes.

L. "Transcript" means an official document or record(s) generated by one or several schools which includes, at a minimum: the courses in which a secondary student was enrolled, grades and units of credit earned, UBSCT scores and dates of testing, citizenship and attendance records. The transcript is usually one part of the student's permanent or cumulative file which also may include birth certificate, immunization records and other information as determined by the school in possession of the record.

M. "Utah Performance Assessment System for Students (U-PASS)" means:

(1) systematic norm-referenced achievement testing of all students in grades 3, 5, and 8[, and 11] required by this part in all schools within each school district by means of tests designated by the Board;

(2) criterion-referenced achievement testing of students in all grade levels in basic skills courses;

(3) direct writing assessments in grades 6 and 9;

(4) beginning with the 2003-2004 school year, a tenth grade basic skills competency test as detailed in Section 53A-1-611; and

(5) beginning with the 2002-2003 school year, the use of student behavior indicators in assessing student performance.

N. "Unit of credit" means credit awarded for courses taken consistent with this rule or upon school district/school authorization or for mastery demonstrated by approved methods.

O. "Utah Alternative Assessment (UAA)" means an assessment instrument for students in special education with disabilities so severe they are not able to participate in the components of U-PASS even with testing accommodations or modifications. The UAA measures progress on instructional goals and objectives in the student's individual education program (IEP).

P. "Utah Basic Skills Competency Test (UBSCT)" means a test to be administered to Utah students beginning in the tenth grade to include at a minimum components on English, language arts, reading and mathematics. Utah students shall satisfy the requirements of the UBSCT in addition to state and district graduation requirements prior to receiving a high school diploma indicating a passing score on all UBSCT subtests.

Q. "UBSCT Advisory Committee" means a committee that is advisory to the Board with membership appointed by the Board, including appropriate representation of special populations from the following:

(1) parents;

(2) high school principal(s);

(3) high school teacher(s);

(4) district superintendent(s);

(5) Coalition of Minorities Advisory Committee;

(6) Utah State Office of Education staff;

(7) local school board(s);

(8) higher education.

# **R277-705-7.** Utah Basic Skills Competency Testing Requirements and Procedures.

A. All Utah public school students shall participate in Utah Basic Skills Competency testing, <u>unless exempted consistent with R277-705-11</u>, and <u>unless</u> alternate assessment is designated in accordance with federal law or regulations or state law.

B. Timeline:

(1) Beginning with students in the graduating class of 2006, UBSCT requirements shall apply.

(2) No student may take any subtest of the UBSCT before the tenth grade year.

(3) Tenth graders should first take the test in the second half of their tenth grade year.

(4) Exceptions may be made to this timeline with documentation of compelling circumstances and upon review by the school principal and [USOE]Utah State Office of Education assessment staff.

C. UBSCT components, scoring and consequences:

(1) UBSCT consists of subtests in reading, writing and mathematics.

(2) Students who reach the established cut score for any subtest in any administration of the assessment have passed that subtest.

(3) Students shall pass all subtests to qualify for a high school diploma indicating a passing score on all UBSCT subtests unless they qualify under one of the exceptions of state law or this rule such as R277-705-7D.

(4) Students who do not reach the established cut score for any subtest shall have multiple additional opportunities to retake the subtest.

(5) Students who have not passed all subtests of the UBSCT by the end of their senior year may receive a diploma indicating that a student did not receive a passing score on all UBSCT subtests or a certificate of completion.

(6) Specific testing dates shall be calendared and published at least two years in advance by the Board.

D. Reciprocity and new seniors:

(1) Students who transfer from out of state to a Utah high school after the tenth grade year may be granted reciprocity for high school graduation exams taken and passed in other states or countries based on criteria set by the Board and applied by the local board.

(2) Students for whom reciprocity is not granted and students from other states or countries that do not have high school graduation exams shall be required to pass the UBSCT before receiving a high school diploma indicating a passing score on all UBSCT subtests if they enter the system before the final administration of the test in the student's senior year.

(3) The UBSCT Advisory Committee following review of applicable documentation shall recommend to the Board the type of diploma that a student entering a Utah high school in the student's senior year after the final administration of the UBSCT may receive.

E. Testing eligibility:

(1) Building principals shall certify that all students taking the test in any administration are qualified to be tested.

(2) Students are qualified if they:

(a) are enrolled in tenth grade, eleventh, or twelfth grade (or equivalent designation in adult education) in a Utah public school program; or

(b) are enrolled in a Utah private/parochial school (with documentation) and are least 15 years old or enrolled at the appropriate grade level; or

(c) are home schooled (with documentation required under Section 53A-11-102) and are at least 15 years old; and

(3) Students eligible for accommodations, assistive devices, or other special conditions during testing shall submit appropriate documentation at the test site.

F. Testing procedures:

(1) Three subtests make up the UBSCT: reading, writing, and mathematics. Each subtest may be given on a separate day.

(2) The same subtest shall be given to all students on the same day, as established by the Board.

(3) All sections of a subtest shall be completed in a single day.

(4) Subtests are not timed. Students shall be given the time necessary within the designated test day to attempt to answer every question on each section of the subtest.

(5) Makeup opportunities shall be provided to students for the UBSCT according to the following:

(a) Students shall be allowed to participate in makeup tests if they were not present for the entire UBSCT or subtest(s) of the UBSCT.

(b) School districts shall determine acceptable reasons for student makeup eligibility which may include absence due to illness, absence due to family emergency, or absence due to death of family member or close friend.

(c) School districts shall provide a makeup window not to exceed five school days immediately following the last day of each administration of the UBSCT.

(d) School districts shall determine and notify parents in an appropriate and timely manner of dates, times, and sites of makeup opportunities for the UBSCT.

(6) Arrangements for extraordinary circumstances or exceptions to R277-705-5 shall be reviewed and decided by the UBSCT Advisory Committee on a case-by-case basis consistent with the purposes of this rule and enabling legislation.

# **R277-705-9.** Designation of Differentiated Diplomas and Certificates of Completion.

A. As provided under Section 53A-1-611(2)(d), districts or schools shall designate in express language at least the following types of diplomas or certificates:

(1) High School Diploma indicating a passing score on all UBSCT subtests.

(2) High School Diploma indicating that a student did not receive a passing score on all UBSCT subtests.

(3) Certificate of Completion.

(4) High school diploma indicating student achievement on assessments for school districts and charter schools exempted from UBSCT consistent with R277-705-11.

B. The designation shall be made on the face of the diploma or certificate of completion provided to students.

### R277-705-11. Student Achievement Testing Exceptions.

A. The Board may exempt a school district or charter school from U-PASS testing requirements if a school district or charter school pilots an assessment system that incorporates:

(1) online classroom-based assessment that utilizes adaptive testing in all grades;

(2) online writing assessment in grades 4 through 12;

(3) assessments administered in grades 8, 10, and 11;

(4) college placement assessments in grades 11 to provide information for 12th grade high school course selections; and

(5) is subject to an accountability plan and high school graduation standards that are based on the assessment system described in R277-705-11A(1), (2), (3), and (4) above and developed and adopted by the Board.

<u>B.</u> Exemptions may not exceed three rural school districts, two urban school districts, and five charter schools.

C. Exemptions may not continue beyond July 1, 2010.

D. Students moving from an exempted school district or charter school to a nonexempted school district or charter school, or students moving from a nonexempted school district or charter school to an exempted school district or charter school during their 11th or 12th grade year may receive a diploma based on the requirements of their previous or new school district as determined by the parents and school administrators of the school they attend at the time of graduation.

### **KEY:** curricula

### Date of Enactment or Last Substantive Amendment: [December 11, 2006]2009

Notice of Continuation: February 2, 2007

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-1-402(1)(b); 53A-1-603 through 53A-1-611; 53A-1-401(3)

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# Education, Administration **R277-733**

Adult Education Programs

### NOTICE OF PROPOSED RULE

(Amendment) DAR FILE NO.: 32315 FILED: 01/15/2009, 14:20

### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to provide updated terminology and provide for a Utah High School Completion Diploma under very limited circumstances for students who successfully pass the GED Tests.

SUMMARY OF THE RULE OR CHANGE: The amendments include adding new and changing existing definitions; adding a new section on adult education program student eligibility; and changing language throughout the rule to update terminology for adult education programs and funding.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 53A-1-401(3) and 53A-1-402(1)

### ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: There may be some costs or savings to the state budget as a result of this amended rule. At this time, the number of students who may seek a Utah High School Completion Diploma through adult education, by taking the GED is speculative. Any costs associated with program changes or revised curriculum will be absorbed within existing budgets.

✤ LOCAL GOVERNMENTS: There may be some costs or savings to local government as a result of this amended rule. School districts will be partially responsible for any increased adult education program costs due to changes in student eligibility. At this time, increases in student enrollment, GED Test taking, and increased costs are unknown.

✤ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are no anticipated costs or savings to small businesses. This rule affects school districts, charter schools and public education students and does not involve businesses. Individual students would be responsible for the costs of taking the GED Tests. There is currently no information about an increased number of students that may take the GED Tests.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. Student who choose to take the GED Tests will be responsible for the cost.

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. Patti Harrington, State Superintendent of Public Instruction

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: Kathy Akin at the above address, by phone at 801-538-7830, by FAX at 801-538-7768, or by Internet E-mail at kathy.akin@schools.utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2009

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

### R277. Education, Administration. R277-733. Adult Education Programs. R277-733-1. Definitions.

A. "Adult" means an [person]individual 18 years of age or over.

B. "Adult education" means organized educational programs <u>below the collegiate/postsecondary level</u>, other than regular full-time [and summer education and]<u>K-12</u> secondary [schools/programs/courses]education programs, provided by school districts or nonprofit organizations affording opportunities for individuals having demonstrated both presence and intent to reside

within the state of Utah who are out-of-school youth (16 years of age and older) [and]or adults who have or have not graduated from high school, to improve their literacy levels and to further their high school level education.

C. "Adult Basic Education (ABE)" means a program of instruction below the 9.0 academic grade level for adults who lack competency in reading, writing, speaking, problem solving or computation at a level that substantially impairs their ability to find or retain adequate employment that will allow them to become employable, contributing members of society and preparing them for advanced education and training. The instruction is designed to help adults by:

(1) increasing their independence;

(2) improving their ability to benefit from occupational training:

(3) increasing opportunities for more productive and profitable employment; and

(4) making them better able to meet adult responsibilities.

D. "Adult Education and Family Literacy Act (AEFLA)" means Title II of the Workforce Investment Act (WIA) of 1998 which provides the principle source of federal support for adult basic and literacy education programs for adults who lack basic skills, an [a]Adult [e]Education [s]Secondary [school \_d]Diploma\_or\_its equivalency, or proficiency in English.

E. "Adult High School Completion (AHSC)" means a program of academic instruction at the 9.0 grade level or above in Board-approved subjects for eligible adult education students who are seeking[:

 $\frac{(1)}{(1)} \text{ an } [\underline{a}]\underline{A} \text{dult } [\underline{e}]\underline{E} \text{ducation } [\underline{s}]\underline{S} \text{econdary } [\underline{e} \text{ducation } \overline{d}]\underline{D} \text{iploma from an adult education } \text{program}[; \underline{or}]$ 

(2) a certificate of GED].

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

G. "Certificate of GED" means a certificate <u>diploma</u> issued by the USOE to an individual who has successfully passed all five subject areas of the GED based on Utah passing standards; measuring the major and lasting outcomes and concepts associated with a traditional four-year high school education. <u>This definition is</u> <u>effective until July 1, 2009.</u>

H. "Community-Based Organization (CBO)" means a nonprofit organization:

(1) eligible for and accepting federal AEFLA funds; and

(2) for the sole purpose of providing adult education services to qualified adult education learners.

(3) All rules and laws that apply to schools/school districts shall also apply to CBOs that receive adult education funding.

(4) CBOs:

(a) apply to the USOE;

(b) receive adult education funding through a competitive process; and

(c) receive USOE funding on a reimbursement basis only.

I. "Consumable items" means student workbooks, student packets, computer disks, pencils, papers, notebooks, and other similar personal items for which a student retains ownership during the course of study.

J. "Desk monitoring" means the review of UTopia data to ensure program integrity.

K. "Eligible adult education student" means an [person]individual [making]who provides documentation that his primary and permanent [home]residency is in Utah, and:

(1) is 17 years of age or older, and whose high school class has graduated; or

(2) is under 18 years of age and is married; or

(3) has been adjudicated as an adult; or

(4) is an out-of-school youth 16 years of age or older who has not graduated from high school.

L. "Enrollee" means an adult student who has 12 or more contact hours in an adult education program during a fiscal/program year, an academic assessment establishing an Entering Functioning Level, has an adult education Student Education Occupation Plan (SEOP) with an established goal, and a defined funding code. Enrollee status is based on the last date that all of the above items are entered into UTopia.

M. "English for Speakers of Other Languages (ESOL)" is an instructional program provided for non-native language speakers.

N. "Fee" means any charge, deposit, rental, or other mandatory payment, however designated, whether in the form of money or goods. Admission fees, transportation charges, and similar payments to third parties are fees if the charges are made in connection with an activity or function sponsored by or through an adult education program. All fees are subject to approval by the local school board of education or local board of trustees.

O. "General Educational Development (GED) preparation" means a program [intended to]that provides instruction in five specific subject areas [which may lead to a certificate of GED]for eligible adult education students who seek a Utah High School Completion Diploma by successfully passing all five GED Tests. This definition is effective on July 1, 2009.

P. "General Educational Development (GED) [**‡**]<u>T</u>esting" means the test required under R277-702.

Q. "Latest official census data" means the most current statistical information available used to determine the number of adults who need adult education services, and determined by:

(1) individuals 16 years of age and older; or

(2) individuals 16 years of age and older whose primary language is other than English; or

(3) individuals 16 years of age and older without a high school diploma or its equivalency - ungraduated adults.

R. "Measurable outcomes" means indicators of student achievement in adult education programs [resulting in]used for state funding purposes. These outcomes are described in R277-733-9.

S. "Other eligible adult education student" means an [person]individual 16 to [18]19 years of age whose high school class has not graduated and is counted in the regular school program. The funds generated, weighted pupil unit (WPU) or collected fees or both, are credited to the adult education program for attendance in an adult education program.

T. "Out-of-school youth" means a student 16 years of age or older who has not graduated from high school and is no longer enrolled in a K-12 program of instruction.

U. "Participant" means an adult education student who [generates less than twelve contact hours in a fiseal/program year and ]does not meet the qualifications of an adult education enrollee.

V. "Teach[<u>ing]ers</u> of English to Speakers of Other Languages (TESOL)" means a credential for teachers of ESOL.

W. "Tuition" means the base cost of an adult education program <u>that provid[ing]es</u> services to[<u>the</u>] adult education students.
 X. "USOE" means the Utah State Office of Education.

A. USOE means the Utan State Office of Education.

Y. "Utah High School Completion Diploma" is a diploma issued by the Board and distributed by the GED Testing Centers as agents of the Board to an individual who passes all five subject areas of the GED Tests at a Utah GED Testing Center based on Utah passing standards; measuring the major and lasting outcomes and concepts associated with a traditional four-year high school experience. This definition is effective on July 1, 2009.

[¥]Z. "UTopia" means Utah Online Performance Indicators for Adult Education statewide database.

[Z]<u>AA</u>. "Waiver release form" means a form signed at least annually by an adult education student allowing for release of the student's personal data and student education occupation plan, including social security number and GED scores, for data matching purposes with agencies such as the Department of Workforce Services, higher education, Utah State Office of Rehabilitation and GED Scoring Services. Signed waiver release allows a student's education records to be shared with other adult education programs or interested agencies for the purpose of skill development, job training or career planning, or other purposes.

#### R277-733-3. Federal Adult Education.

The Board adopts the Adult Education and Family Literacy Act (<u>AEFLA</u>), Title II of the Workforce Investment Act (WIA), Public Law 105-220, 20 U.S.C. 1201 et seq., hereby incorporated by reference, and the related current state plan required under that statute, as the standards and procedures governing [the]both federal[ly funded portion] and state funding of[-its] adult education programs, [available\_from]administered by the USOE[-Adult Education Section].

### R277-733-4. Program Standards.

A. Local Utah adult education programs shall comply with state and federal requirements and Board rules and follow procedures as defined in the Utah Adult Education Policy and Procedures Guide published, updated, and available from the USOE.

B. Local Utah adult education programs shall make reasonable efforts to <u>market and</u> inform prospective students within their geographic areas of the availability of the programs and provide enrollment information.

C. Utah adult education services may be offered to qualifying individuals whose primary residence is located in a community closely bordering Utah not conducive to commuting to the bordering state's closest adult education program. These individuals if approved by the adult education program in the school district providing the services, shall not be charged out-of-state Adult Education tuition.

[G]D. Adult education programs/courses may also be made available to Utah residents who are between the ages of 16 and 18, as determined necessary by local adult education programs.

 $[\textcircled{D}]\underline{E}$ . Local adult education programs shall make reasonable efforts to schedule classes at local community sites and times that meet the needs of adult education students.

[ $\pm$ ]<u>F</u>. Each eligible adult education student shall have a written [ $\pm$ ]<u>S</u>tudent [ $\pm$ ]<u>E</u>ducation[ $\pm$ ]<u>[ $\pm$ ]O</u>ccupation[ $\pm$ ][ $\pm$ ]<u>P</u>lan (SEOP) defining the student's goal(s) based upon a complete academic assessment, prior academic achievement, work experience and an established Entering Functioning Level. Annually, the plan shall be reviewed by the student and a designated program official and maintained in the student's file along with a signed data matching/agency sharing waiver release form.

[F]G. Only courses identified in R277-733-7 qualify for adult education funds.

[G]<u>H</u>. Local adult education programs shall establish and maintain a local adult education advisory committee consisting of representation from the<u>Utah</u> Department of Workforce Services, Vocational Office of Rehabilitation, higher education and other interested community members with the responsibility to advocate for exemplary adult education programs through collaboration and partnerships with businesses and other community agencies.

[H]I. The USOE shall evaluate local programs through triannual site monitoring visits, <u>annual</u> desk monitoring, and as needed, additional site visits or both, to assure compliance.

[4]J. Education staff, including program administrators, assigned to provide education services shall be qualified and appropriate for their assignments.

[J]K. The teaching certificate and endorsement held by a staff member of a school district or community-based program shall be important in evaluating the appropriateness of the teacher's assignment, but not controlling. For instance, elementary teachers may teach secondary age students who are performing academically at an elementary level in certain subjects. [Persons]Individuals teaching an adult education high school completion class shall hold a valid Utah elementary or secondary education license and may issue adult education high school completion credits in multiple subjects. Non-licensed individuals providing instruction in ESOL, ABE, GED Test preparation or AHSC classes shall instruct under the supervision of a licensed program employee.

[K]L. [Persons]Individuals with post-secondary degrees [in adult education but are\_]not in possession of a Utah teaching [certificate]licenses may be considered for employment solely in an adult education program teaching adult students following the completion of a student teaching field experience in an accredited adult education program.

[L]M. [Persons]Individuals with TESOL or ESOL credentials may be considered for employment solely in an adult education program teaching adult students following the completion of a student teaching experience in an accredited adult education program.

### R277-733-5. Fiscal Procedures.

A. State funds appropriated for adult education are allocated in accordance with Section 53A-17a-119.

B. No eligible school district shall receive less than its portion of a seven percent base amount of the state appropriation if:

(1) instructional services approved by the USOE have been provided to eligible adult students during the preceding fiscal year; or

(2) the school district is preparing to offer such services--such a preparation period may not exceed two years.

C. Lapsing and nonlapsing funds

(1) Funds appropriated for adult education programs shall be subject to Board accounting, auditing, and budgeting rules.

(2) State adult education funds which are allocated to school district adult education programs and are not expended in a fiscal year may be carried over to the next fiscal year with written approval by the USOE. These funds may be considered in determining the school district's allocation for the next fiscal year. Carried over funds shall be expended within the next fiscal year. If funds are not expended, they shall be recaptured by the USOE on February 1 of each program year, and reallocated to other school district adult education programs based on need and effort as determined by the Board consistent with Section 53A-17a-119(3).

D. The USOE shall develop uniform forms, deadlines, program reporting and accounting procedures, and guidelines to govern the state (legislative) and federal AEFLA adult education <u>funded</u> programs. The Utah Adult Education Policy and Procedures

Guide[, July, 2006] (updated annually) including forms, procedures and guidelines is available on the USOE adult education website.

### R277-733-6. Adult Education Program Student Eligibility.

A. An individual is eligible to be a Utah adult education student if

(1) the prospective adult education student is at least 16 years of age and the student's class has not graduated; or

(2) a prospective adult education student who is otherwise eligible provides one of the following to establish Utah residency:

(a) valid state of Utah driver license;

(b) valid state of Utah driver privilege card;

(c) valid state of Utah identification card; or

(d) valid state of Utah resident fishing or hunting license.

(3) a prospective adult education student provides one of the following in the prospective student's name with the home mailing address (no post office boxes); documentation shall have been received no more than 12 months prior to the individual's registration request:

(a) mail from an in-state or out-of-state business;

(b) utility bill or work order;

(c) cell phone or telephone bill;

(d) employee pay stub;

(e) written statement on an employer's letterhead defining a job commitment;

(f) current year automobile registration;

(g) Utah state government agency form letter;

(h) Utah public library card;

(i) rent or mortgage payment statement;

(j) Utah voter registration card;

(k) Utah high school/college transcript or report card;

tribal correspondence;

(m) approved or denied free or reduced lunch application from the individual's children's school that includes the individual's name on the application;

(n) daycare or nursery school record of the individual's children that includes the individual's name on the record;

(o) K-12 registration demographic card of children enrolled in a Utah school that includes the individual's name on the card.

<u>B. The following does not establish residency for purposes of adult education programs:</u>

(1) mail addressed to occupant or resident;

(2) letters from friends or relatives;

(3) power of attorney documents;

(4) personal correspondence addressed to a post office box.

C. To be eligible for participation in an adult education program, a Utah resident shall be:

(1) an individual 17 years of age or older whose high school class/cohort has graduated; or

(2) an individual emancipated under Section 78-3a-1005; or (3) an individual emancipated by marriage; or

(4) an individual who is at least 16 years of age who has not graduated from high school and who is no longer enrolled in a K-12 program of instruction; or

(5) a student 16 to 19 years of age whose class has not graduated and who is attending adult education classes as an alternative to a traditional public education program.

D. Non-Utah residents from states bordering Utah seeking enrollment into an adult education program in Utah shall be considered resident Utah students consistent with individual agreements between the Utah Adult Education Program and the individual states bordering Utah.

### R277-733-[6]7. Adult Education Pupil Accounting.

A. [A student who is at least 16 years of age but less than 19 years of age, who has not graduated from high school, who is a resident of a Utah school district, and who is enrolled in a K-12 program, may, with approval under the state administered Adult Education Program, also enroll in an adult education program. The regular state WPUs at the rate of 990 clock hours of membership per one weighted pupil unit per year, 1 FTE on a yearly basis, shall follow the student. The clock hours of students enrolled part time shall be prorated within/by the school district.]A Utah administered adult education program shall receive WPU funding for a student at the rate of 990 clock hours of membership per one weighted pupil (with part-time enrollment pro-rated by the school district) for a student who is a resident of a Utah school district who meets the following criteria:

(1) is at least 16 years of age but less than 19 years of age;

(2) who has not received a high school diploma or a Utah High School Completion Diploma;

(3) who intends to graduate from a K-12 high school; and

(4) who attends an SEOP meeting with his school counselor, school administrator/designee, parent/legal guardian to discuss the appropriateness of the student's participation in adult education.

B. A student 17 years of age or older, without a high school diploma but whose high school class has graduated, who is a Utah resident, and who intends to graduate from a K-12 high school, may, with parental/guardian consultation and written approval from all parties (if applicable), enroll in the [S]state administered [A]adult [High School Completion]education [P]program upon proof of Utah residency. Student attendance up to 990 clock hours of membership is equivalent to 1 FTE per year.

(1) The clock hours of students enrolled part-time shall be prorated.

(2) As an alternative, equivalent [weighted pupil units]WPUs may be generated for competencies mastered on the basis of prior authorization of a school district plan by the USOE.

[D]C. For purposes of funding [the regular basic]in an adult education program, a student can only be a pupil in average daily membership once on any day. If the student's day is part-time in the regular school program and part-time in the adult education program, the student's membership shall be reported on a prorated basis for each program. A student may not be funded for more than one regular WPU for any school year.

[C]D. An out-of-school youth (minimum age of 16) who has not graduated from high school, may, with parental/guardian written approval (if applicable).[-and] school district administrative written approval and proof of Utah residency, enroll in an adult education program:

(1) The WPU shall not be generated by the student's participation in an adult education program.

(2) This student shall be eligible for adult education state funding.

(3) This student <u>shall be presented with information prior to or</u> at the time of enrollment in an adult education program that defines the consequences of the student's decision including the following:

(a) The student may[-only] receive an [#]Adult [#]Education Secondary [4]Diploma\_upon completion of the minimum required Carnegie units of credit as defined by the local adult education program; or (b) The student may earn a Utah High School Completion Diploma upon successful passing of all five GED Tests; or

(c) The student may, at the discretion of the school district, return to his regular high school prior to the time his class graduates with the understanding and expectation that all necessary requirements for the traditional K-12 diploma shall be completed, provided that the student:

(i) is released from the adult education program; and

(ii) has not completed the requirements necessary for an Adult Education Secondary Diploma; or

(iii) has not successfully passed all five GED Tests and received a Utah High School Completion Diploma.

(4) An out-of-school youth of school age who has received an Adult Education Secondary Diploma or a Utah High School Completion Diploma is not eligible to return to a K-12 high school.

(5) An out-of-school youth of school age who has successfully completed an Adult Education Secondary Diploma or a Utah High School Completion Diploma shall be reported as a graduate for K-12 graduation (AYP) outcomes.

(6) An out-of-school youth of school age may be considered eligible to take the GED Test if all requirements as stated in R277-702, Procedures for Utah General Educational Development Certificate, are followed.

# R277-733-[7]8. Program, Curriculum, Outcomes and Student Mastery.

A. The Utah Adult Education Program shall offer courses consistent with the <u>Utah</u> Core curriculum under R277-700.

B. The <u>Utah</u> Core curriculum and teaching strategies may be modified or adjusted to meet the individual needs of the adult education student.

C. Written course descriptions for AHSC required and elective courses shall be developed by school district adult education programs for all classes taught, consistent with the Utah Core curriculum and Utah adult education curriculum standards, as provided by the USOE.

D. Written course descriptions for <u>GED Test preparation</u>, ESOL and ABE courses shall be developed cooperatively by school districts, CBOs and the USOE based on Utah Core curriculum standards, modified for adult learners.

E. Course descriptions shall contain adult education mastery criteria and shall stress mastery of adult life skill [course]material consistent with Core objective standards and the Core curriculum.

F. Course content mastery shall be stressed rather than completion of predetermined seat time in a classroom.

G. Adult high school completion education is determined by the following prerequisite courses:

(1) ESOL competency <u>AEFLA</u> levels one through six;

(2) ABE competency <u>AEFLA</u> levels one through four.

H. [Beginning January 1, 2008, ]AHSC courses for students seeking an Adult Education Secondary Diploma [shall satisfy]should meet federal\_AEFLA AHSC Levels I and II competency requirements with a minimum completion of 24 credits under the direction of a Utah licensed teacher as provided below:

(1) Adult High School Core Courses, as offered consistent with Utah Core objectives:

(a) 24.0 units of credit required through satisfaction of a course of study by demonstrated course competency or school district approved competency examination in correlation with the student's SEOP career focus; (b) awarded adult education credit options including continuous professional employment training required for a professional license; or

(c) documented achievement of a trade or skill, basic or advanced military training;

(d) apprenticeship, union or registered work credentials;

(e) successfully [completion of the]passing all five GED [exam]Tests; academic credit for successfully passing [the]all five GED [exam]Tests may only be applied toward an [a]Adult [e]Education\_Secondary [d]Diploma\_if the proposed awarded units of credit are entered into UTopia by June 30, 2009;

(f) transcripted college or university courses as they align to the following Core instructional areas:

(i) Language Arts: 3.0;

(ii) mathematics: 2.0, individualized mathematics courses to meet the life needs of adult learners;

(iii) science: 2.0, from the four science areas of chemistry, biological science, earth science, or physics;

(iv) social studies: 2.50, 1.0 in United States history, .50 in United States government and civics, .50 in geography; and .50 in world civilizations;

(v) arts: 1.50;

(vi) healthy lifestyles: 2.0, individualized courses meeting the life needs of adult learners that include: .25 - 1.50 health education, .25 - 1.50 individualized fitness for life courses;

(vii) career and technical education (CTE): 1.00;

(viii) general financial literacy: .50;

(ix) education technology: .50 computer technology courses or successful completion of school district approved competency examination;

(x) electives: 9.0 units of credit.

I. The USOE Adult Education Section and local education programs shall disseminate clear information regarding revised adult education graduation requirements.

J. Adult education students receiving education services in a state prison or jail education program may graduate with an  $[\underline{a}]\underline{A}$ dult  $[\underline{e}]\underline{E}$ ducation  $[\underline{s}]\underline{S}$ econdary  $[\underline{4}]\underline{D}$ iploma upon completion of the state required 24.0 units of credit required under R277-700 and satisfied through completed credits or demonstrated course competency or a Utah High School Completion Diploma upon successful passing all five of the GED Tests consistent with students' SEOP career focus.

K. <u>Adult Education Secondary Diploma</u> [G]graduation requirements may be changed or modified, or both, for adult students with documented disabilities through Individual Education Plans (IEPs) from age 16 up until their 22nd birthday or an adult education SEOP, or both to meet unique educational needs.

L. A student's IEP or adult education SEOP shall document the nature and extent of modifications, substitutions, or exemptions made to accommodate the student's disability(ies).

M. Modified graduation requirements for individual students shall:

(1) be consistent with the student's IEP or SEOP, or both;

(2) be maintained in the student's files;

(3) maintain the integrity and rigor expected for AHSC graduation.

N. School districts shall establish policies:

(1) allowing or disallowing adult education students participation in graduation activities or ceremonies; and

(2) allowing or disallowing adult education students from participating in the Utah Basic Skills Competency Test (UBSCT).

O. An adult education <u>high school completion</u> student may only receive an Adult Education Secondary [4]<u>D</u>iploma earned through a designated Utah adult education program.

P. Adult education programs shall accept credits and grades awarded to students from other state recognized adult education programs, schools accredited by the Northwest Association of Accredited Schools or schools or programs approved by the Board without alteration.

Q. Adult education programs may establish reasonable timelines and may require adequate and timely documentation of authenticity for credits and grades submitted from schools or private providers.

R. A school district/adult education program is the final decision-making authority for the awarding of credit and grades from non-accredited sources.

S. Adult education shall provide a program that allows students to transition between sites in a seamless manner.

T. An adult education student seeking a Utah High School Completion Diploma shall be offered a course of academic instruction designed to prepare the student to take the GED Tests.

U. A Utah High School Completion Diploma shall be issued by the Board and distributed by the GED testing centers as agents of the Board or directly by the USOE GED administrator.

V. Upon completion of requirements for a Utah Adult Education Secondary Diploma, or a Utah High School Completion Diploma, adult education students may only continue in an adult education program to improve their basic literacy skills if:

(1) their academic skills are less than 12.9 grade level in an academic area of reading, math or English; and

(2) they lack sufficient mastery of basic educational skills to enable them to function effectively in society. The focus of instruction shall be solely literacy and is limited specifically to reading, math or English.

#### R277-733-[8]9. Adult Education Programs--Tuition and Fees.

A. Any adult may enroll in an adult education class consistent with Section 53A-15-404.

B. Tuition and fees shall be charged for ABE, <u>GED</u> preparation, AHSC, or ESOL courses in an amount not to exceed \$100 annually per student based on the student's ability to pay as determined by federal free and reduced lunch guidelines, under the Richard B. Russell National School Lunch Act, 42 USC 1751, et seq. The appropriate student fees and tuition shall be determined by the local school board or CBO board of trustees.

C. Adults who are or may attend adult education programs shall be given adequate notice of program tuition and fees through public posting. Any charged tuition or fees shall be set and reviewed annually.

D. Adult education tuition and fees shall be waived or students shall be offered appropriate work in lieu of waivers for students who are younger than 18, qualify for fee waivers under R277-407, and their class has not graduated.

E. Tuition may be charged for courses that satisfy requirements outlined in R277-733-8B, when adequate state or local funds are not available.

F. Fees may be charged for consumable and nonconsumable items necessary for adult high school courses that satisfy requirements outlined in R277-733-8B, consistent with the definitions under R277-733-1E and R277-733-1I.

G. Fees and tuition charged and collected by adult education programs shall be reasonable and necessary as determined by the local boards of education or boards or trustees.

H. Collected fees and tuition shall be used specifically to provide additional adult education and literacy services that the program would otherwise be unable to provide.

I. The local program superintendent/chief executive officer and business administrator shall acknowledge by signature as part of the program's grant plan (state or federal, or both) submission and program assurances that all fees and tuition collected and submitted for accounting purposes are:

(1) returned/delegated with the exception of indirect costs to the local adult education program;

(2) used solely and specifically for adult education programming;

(3) not withheld and maintained in a general maintenance and operation fund.

J. All collected fees and tuition generated from the previous fiscal year shall be spent in the adult education program in the ensuing program year.

K. Collected fees and tuition may not be counted toward meeting federal matching, cost sharing or maintenance of effort requirements related to the local program's award.

L. Annually, local programs shall report to the school district or community-based organization all fees and tuition collected from students associated with each funding source.

M. Fees and tuition collected from adult education students shall not be commingled or reported with community education funds or any other public education fund.

#### R277-733-[9]10. Allocation of Adult Education Funds.

Adult education state funds shall be distributed to school districts offering adult education programs consistent with the following:

A. Base amount distributed equally to each participating school district with a Board-approved adult education plan and budget - 7 percent of appropriation.

B. Enrollees (not participants) as defined in R277-733-1L - 25 percent of appropriation.

C. Contact hours (instructional and non-instructional) for both enrollee[s] status students and participants - 16 percent of appropriation.

D. Measurable outcomes, outlined below, based upon state funds, shall be distributed to school districts - 50 percent of appropriation as follows:

(1) number of enrollee <u>status student</u> [a]<u>A</u>dult [e]<u>E</u>ducation [s]<u>S</u>econdary [d]<u>D</u>iplomas awarded - 30 percent of the 50 percent available;

(2) number of enrollee certificates of GED awarded - 25 percent of the 50 percent available; <u>Effective July 1, 2009, programs</u> <u>shall be funded based on the first obtained student outcomes; either a</u> <u>Utah High School Completion Diploma or Adult Education</u> <u>Secondary Diploma.</u>

(3) number of enrollee level gains: ESOL competency levels 1-6, ABE competency levels 1-4, and AHSC competency levels 1-2 -30 percent of the 50 percent available;

(4) number of enrollee adult education completed secondary credits - 15 percent of the 50 percent available.

E. Supplemental support, to be distributed to school districts for special program needs or professional development, as determined by written request and USOE evaluation of need and approval - 2 percent or balance of appropriation, whichever is smaller.

(1) Any school district with pre-approved carryover adult education funds from the previous fiscal year [is ineligible]may negotiate a request for supplemental funding as needed.

(2) For the first quarter of the fiscal year (July through September) priority of supplemental funding shall be given to school districts whose initial adult education allocation is less than 1 percent of the state allotted total, as indicated on the state allocation table.

(3) Any balance of supplemental funds after the first quarter of the fiscal year may be applied for by all remaining eligible school districts.

F. Funds, state (flow through) or federal (reimbursement) or both, may be withheld<u>or terminated</u> for noncompliance with state policy and procedures and associated reporting timelines as defined by the USOE.

#### R277-733-1[0]1. Adult Education Records and Audits.

A. Official [R]records kept in perpetuity: To validate student outcomes, local programs shall maintain records for each program site in perpetuity which clearly and accurately show for each student:

(1) [complete\_student\_intake(s)]documentation of Utah residency; the student's initial managing program shall maintain documentation of Utah residency in the student's file in perpetuity; documentation of such proof shall be entered in the student's UTopia data record;

(2) [signed data matching/agency sharing waiver(s) of release as defined under R277-733-4E.

(a) transcripted grade data including previous report cards, transcripts, work verification, military training, professional licenses, union or registered work credentials[-]:

(b) GED [certificates]Test Score Report showing successful passing of all five areas of the GED [exam]Test;

(c) completed Core followup surveys;

(d) releases of information requesting student record information and releases of student information to other requesting agencies;

(e) special education IEPs for students under the age of 22; and (f) outside psychological, psychiatric or medical documentation used in determining education programming accommodations; and records of accommodations.

B. To validate student outcomes annually, the student's managing program shall maintain records for each program site which clearly and accurately show for each student:

(1) signed or refusal to sign waiver of release forms;

(2) all assessment protocol sheets (pre- and post-tests) used to determine student's EFL and level gains; and

(3) contact hours (both noninstructional and instructional) documentation.

[**B**]<u>C</u>. Audits:

(1) To ensure valid and accurate student data, all programs accepting either state or federal adult education funds, or both, shall[ be] enter[ed] and maintain[ed] required student data in the UTopia data system. (2) Annually, an independent auditor shall be retained by each school district and CBO to audit student accounting records to verify UTopia data entries.

(3) Reports of accuracy shall be completed and submitted to the school districts' boards of education, the CBOs boards' of trustees, as appropriate, the local adult education program director, and the USOE.

(4) The USOE shall receive the final auditor report by September 15 annually.

(5) Local programs shall prepare and submit to the USOE a written corrective action plan for each audit finding by October 15 annually.

(6) USOE adult education staff members are responsible to monitor and assist programs in the resolution of corrective action plans.

(7) A program's failure to resolve audit findings may result in the termination of state and federal funding, or both.

([5]8) Independent audit reporting dates, forms, and procedures are available in the state of Utah Legal Compliance Audit Guide provided to the school districts and CBOs by the USOE in cooperation with the State Auditors' Office and published under the heading of APPC-5.

([6]9) USOE Adult Education Services program staff shall conduct tri-annual program reviews of each program to ensure accuracy of program data and program compliance. Desk monitoring shall be completed during years when tri-annual reviews are not performed. Additional informal monitoring or reviews or site visits may be conducted as necessary and as follows.

(10) As needed, monitored programs shall prepare and submit to the USOE a written corrective action plan for each monitoring finding as requested by the USOE.

(11) USOE adult education staff are responsible to monitor and assist programs in the resolution of corrective action plans.

(12) A program's failure to resolve audit findings may result in the termination of state or federal funding or both.

 $([7]\underline{13})$  The USOE shall review for cause school district or CBO records and practices for compliance with the law and this rule.

#### R277-733-1[1]2. Advisory Council.

A. The State Superintendent of Public Instruction or designee shall represent Adult Education programs on the Department of Workforce Services State Council as a voting member.

B. Adult education programs shall participate on or establish and maintain a local interagency advisory council consisting at a minimum of partner agencies including the Department of Workforce Services, the State Office of Rehabilitation, higher education, the Utah College of Applied Technology, industry and community representation, and other appropriate agencies with the purpose of supporting the mission of adult education in Utah.

### **KEY:** adult education

### Date of Enactment or Last Substantive Amendment: [October 8, 2008]2009

Notice of Continuation: October 5, 2007

Authorizing, Implemented, or Interpreted Law: Art X Sec 3; 53A-15-401; 53A-1-402(1); 53A-1-401(3); 53A-1-403.5; 53A-17a-119; 53A-15-404

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### Health, Epidemiology and Laboratory Services, Environmental Services

### R392-600

Illegal Drug Operations Decontamination Standards

### NOTICE OF PROPOSED RULE

(Repeal and Reenact) DAR FILE No.: 32318 FILED: 01/15/2009, 16:51

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Department of Health was charged by S.B. 209 (2008 General Session) to conduct and review current research and adjust the methamphetamine decontamination standard accordingly. The proposed 10 fold increase in the decontamination standard (from 0.1 mcg/100 cm2 to 1.0 mcg/100 cm2) comes after serious and critical evaluation of the research conducted by the Office of Environmental Health Hazards Assessment in California, and Colorado's Department of Public Health. Each agency independently found the proposed standard to be below the calculated threshold limit where health effects begin to occur. Thus, the public's health is still protected at the higher limit.

Additionally, other decontamination procedural changes reflecting results from scientific research are incorporated in the rule. (DAR NOTE: S.B. 209 (2008) is found at Chapter 38, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: The significant changes in 1) raising the methamphetamine the new rule are: decontamination standard from 0.1 mcg/100 cm2 to 1.0 mcg/ 100 cm2; 2) allowing chemical denaturing/ decontamination (provided Federal Toxic Substance Control Act requirements are met and Material Safety Data Sheets are provided for all chemicals being used) in addition to (or replacing) the current requirement for detergent washing; and 3) confirmation sampling allows for either four discrete or a composite of four similar surfaces. Clarification in the new rule: 1) role of the local health department; 2) items a certified decontamination specialist or owner of record needs to include in a work plan; 3) decontamination Procedures (which materials can be decontaminated, porous vs. nonporous, Heating Ventilation, Air Conditioning (HVAC) decontamination); 4) confirmation sampling procedures (which solvents, media, methods, and labs are allowed); and 5) information a certified decontamination specialist or owner of record needs to include in the final report.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-49-201

### ANTICIPATED COST OR SAVINGS TO:

✤ THE STATE BUDGET: There is no anticipated cost or savings to the Utah Department of Health; rulemaking costs are absorbed by existing programs. There will be an initial cost increase to the Department of Environmental Quality to ♦ LOCAL GOVERNMENTS: Local health departments are anticipated to experience an overall savings as fewer properties will be required to be on the contaminated properties list and under local authority. The change will affect anywhere from 25-38% of properties that are now required to be decontaminated. Theoretically, workload and savings to the health departments would parallel these percentages. However, the change will likely raise questions among the general public, which will be answered by the local health departments. These anticipated increases in workload will likely be absorbed by existing programs. The cost in helping to assist with the rulemaking process has also been absorbed by existing programs.

✤ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Decontamination specialists: The proposed change will likely result in a decrease in business. Although there are 26 decontamination specialists that are certified and able to decontaminate, only 3 or 4 are actively decontaminating properties. The loss of business would be spread over these active decontamination specialists. For a 2,000 sq ft home, the average cost of decontamination is approximately \$5,000. (Note: This is a rough estimate. Actual prices depend on many variables including amount of debris in home, level of contamination, number of rooms, square footage, materials in home, location of home, and others. Actual bids for this size of home have ranged from \$3,000 - \$13,500). A sample of three local health departments (Bear River Health Department, Salt Lake Valley Health Department, Utah County Health Department) indicates that approximately 410 tests have exceeded the standard over the past 3 years. Of those tests, 155 were at 1.0 or lower, which is about 38% of the tests. If this percentage is applied statewide, 38% of properties that are required to be decontaminated at the current standard, would not be required at the higher standard. Over three years, for the counties sampled, this would have resulted in an estimated aggregate business loss of \$775,000. Realtors: Realtors are expected to have an increase in business because there will be fewer homes that will be placed on the contaminated properties list, thus increasing the number of properties available to see and rent. Landlords: Landlords are anticipated to experience a cost savings because 38% fewer properties will need to be decontaminated. This savings will be spread out over the more than 50,000 rental units that are currently being managed by landlords throughout Utah.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Homeowners: For a 2,000 sq ft home, the average cost of decontamination is approximately \$5,000. (NOTE: This is a rough estimate. Actual prices depend on many variables including amount of debris in home, level of contamination, number of rooms, square footage, materials in home, location of home, and others. Actual bids for this size of home have ranged from \$3,000 - \$13,500). A sample of three local health departments (Bear River Health Department, Salt Lake Valley Health Department, Utah County Health Department) indicates that approximately 410 tests have exceeded the standard over the past 3 years. Of those tests, 155 were at 1.0 or lower, which is about 38% of the tests. If this percentage is applied statewide, 38% of homeowners who are required to clean their homes at the current standard, would not be required at the higher standard. Over three years, for the counties sampled, this would have resulted in an estimated aggregate savings of \$755,000. An individual homeowner can be expected to save the costs of the decontamination process and confirmation sampling. Costs associated with any preliminary sampling will still remain. Because of the change in requirements for sampling, cost could either increase or decrease significantly. Discrete or composite sampling will be allowed. If the homeowner chooses to use discrete sampling, an additional \$300 per room cost would be added to the sampling costs (four discrete samples are required and cost an average of \$100/sample). While using the 4-part composite sample might decrease initial sampling costs (only 1 test per room is required, averaging \$100/sample), the test results combine all the sample locations, and cannot be divided by the number of areas sampled. Therefore, the combined test is more stringent than the discrete samples and may require additional decontamination activities. Depending on the contract used for decontamination, additional decontamination costs could be increased. However, with the simultaneous raising of the decontamination level, potentially few homes will need to have additional decontamination activities performed. The homeowner is encouraged to make an informed decision in their best interest regarding which sampling methodology should be performed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The cost to the public of decontaminating properties where methamphetamine has been present is significant. However, the health impact of exposure to this decontamination is also significant. This rule change proposes a ten fold increase in the decontamination standard (from 0.1 mcg/100 cm2 to 1.0 mcg/100 cm2) and comes after serious and critical evaluation of the research conducted by the Office of Environmental Health Hazards Assessment in California, and Colorado's Department of Public Health. Each agency independently found the proposed standard to be below the calculated threshold limit where health effects begin to occur. Thus, the public's health is still protected at this higher limit. This new standard will save landlords from unnecessary decontamination and still protect the public. David N. Sundwall, MD, Executive Director

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

HEALTH EPIDEMIOLOGY AND LABORATORY SERVICES, ENVIRONMENTAL SERVICES CANNON HEALTH BLDG 288 N 1460 W SALT LAKE CITY UT 84116-3231, or at the Division of Administrative Rules.

#### DIRECT QUESTIONS REGARDING THIS RULE TO:

Ronald Marsden at the above address, by phone at 801-538-6191, by FAX at 801-538-6564, or by Internet E-mail at rmarsden@utah.gov INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN  $5:00 \ PM$  on 03/03/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 06/01/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

## **R392.** Health, Epidemiology and Laboratory Services, Environmental Services.

[R392-600. Illegal Drug Operations Decontamination Standards.

**R392-600-1.** Authority and Purpose.

(1) This rule is authorized under Section 19-6-906.

(2) This rule sets decontamination and sampling standards and best management practices for the inspection and decontamination of property contaminated by illegal drug operations.

#### R392-600-2. Definitions.

The following definitions apply in this rule:

(1) "Background concentration" means the level of a contaminant in soil, groundwater or other media up gradient from a facility, practice or activity that has not been affected by the facility, practice or activity; or other facility, practice or activity.

(2) "Decontamination specialist" means an individual who has met the standards for certification as a decontamination specialist and has a currently valid certificate issued by the Solid and Hazardous Waste Control Board, as defined under Utah Code Subsection 19-6-906(2).

(3) "Chain of custody protocol" means a procedure used to document each person that has had custody or control of an environmental sample from its source to the analytical laboratory, and the time of possession of each person.

(4) "Characterize" means to determine the quality or properties of a material by sampling and testing to determine the concentration of contaminants, or specific properties of the material such as flammability or corrosiveness.

(5) "Combustible" means vapor concentration from a liquid that has a flash point greater than 100 degrees F.

(6) "Confirmation sampling" means collecting samples during a preliminary assessment or upon completion of decontamination activities to confirm that contamination is below the decontamination standards outlined in this rule.

(7) "Contaminant" means a hazardous material.

(8) "Contamination" or "contaminated" means polluted by hazardous materials that cause property to be unfit for human habitation or use due to immediate or long term health hazards.

(9) "Corrosive" means a material such as acetic acid, acetic anhydride, acetyl chloride, ammonia (anhydrous), ammonium hydroxide, benzyl chloride, dimethylsulfate, formaldehyde, formic acid, hydrogen chloride/hydrochloric acid, hydrobromic acid, hydriodic acid, hydroxylamine, methylamine, methylene chloride (dichloromethane, methylene dichloride), methyl methacrylate, nitroethane, oxalylchloride,perchloric acid, phenylmagnesium bromide, phosphine, phosphorus oxychloride, phosphorus pentoxide, sodium amide (sodamide), sodium metal, sodium hydroxide, sulfur trioxide, sulfuric acid, tetrahydrofuran, thionyl chloride or any other substance that increases or decreases the pH of a material and may eause degradation of the material.  (10) "Decontamination" means treatment or removal of contamination by a decontamination specialist or owner of record to reduce concentrations of contaminants below the decontamination standards.

(11) "Decontamination standards" means the levels or concentrations of contaminants that must be met to demonstrate that contamination is not present or that decontamination has successfully removed the contamination.

— (12) "Delineate" means to determine the nature and extent of contamination by sampling, testing, or investigating.

(13) "Easily cleanable" means an object and its surface that can be cleaned by detergent solution applied to its surface in a way that would reasonably be expected to remove dirt from the object when rinsed and to be able to do so without damaging the object or its surface finish.

— (14) "Ecstasy" means 3,4 methylenedioxy-methamphetamine (MDMA).

(15) "EPA" means the United States Environmental Protection Agency.

(16) "EPA Method 8015B" means the EPA approved method for determining the concentration of various non-halogenated volatile organic compounds and semi-volatile organic compounds by gas chromatography/flame ionization detector.

 (17) "EPA Method 6010B" means the EPA approved method for determining the concentration of various heavy metals by inductively coupled plasma.

(18) "EPA Method 8260B" means the EPA approved method for determining the concentration of various volatile organic compounds by gas chromatograph/mass spectrometer.

(19) "FID" means flame ionization detector.

(20) "Flammable" means vapor concentration from a liquid that has a flash point less than 100 degree F.

(21) "Grab Sample" means one sample collected from a single, defined area or media at a given time and location.

(22) "Hazardous materials" has the same meaning as "hazardous or dangerous materials" as defined in Section 58-37d-3; and includes any illegally manufactured controlled substances.

 — (23) "Hazardous waste" means toxic materials to be discarded as directed in 40 CFR 261.3.

(24) "HEPA" means high efficiency particulate air and indicates the efficiency of an air filter or air filtration system.

(25) "Highly suggestive of contamination" means the presence of visible or olfactory signs indicative of contamination, locations in and around where illegal drug production occurred, where hazardous materials were stored or suspected of being used to manufacture illegal drugs, or areas that tested positive for contamination or other portions of the property that may be linked to processing and storage areas by way of the ventilation system or other activity that may cause contamination to be distributed across the property.

(26) "Impacted groundwater" means water present beneath ground surface that contains concentrations of a contaminant above the UGWQS.

(27) "Impacted soil" means soil that contains concentrations of a contaminant above background or EPA residential Risk Based Screening Concentrations as contained in the document listed in R392 600 8.

(28) "LEL/O2" means lower explosive limit/oxygen.

(29) "Negative pressure enclosure" means an air tight enclosure using a local exhaust and HEPA filtration system to maintain a lower air pressure in the work area than in any adjacent area and to generate a constant flow of air from the adjacent areas into the work area.

(30) "Non-porous" means resistant to penetration of liquids, gases, powders and includes non-permeable substance or materials, that are sealed such as, concrete floors, wood floors, ceramic tile floors, vinyl tile floors, sheet vinyl floors, painted drywall or sheet rock walls or ceilings, doors, appliances, bathtubs, toilets, mirrors, windows, counter-tops, sinks, sealed wood, metal, glass, plastic, and pipes.

(31) "Not Highly Suggestive of Contamination" means areas outside of the main locations(s) where illegal drugs were produced and hazardous materials were stored or suspected of being used that do not reveal obvious visual or olfactory signs of contamination, but may, however, be contaminated by residue from the manufacture or storage of illegal drugs or hazardous materials.

(32) "Owner of record" means (a) The owner of property as shown on the records of the county recorder in the county where the property is located; and (b) may include an individual, financial institution, company, corporation, or other entity.

(33) "Personal protective equipment" means various types of clothing such as suits, gloves, hats, and boots, or apparatus such as facemasks or respirators designed to prevent inhalation, skin contact, or ingestion of hazardous chemicals.

(34) "PID" means photo ionization detector.

(35) "Porous" means material easily penetrated or permeated by gases, liquids, or powders such as carpets, draperies, bedding, mattresses, fabric covered furniture, pillows, drop ceiling or other fiber-board ceiling panels, cork paneling, blankets, towels, clothing, and cardboard or any other material that is worn or not properly sealed.

(36) "Preliminary assessment" means an evaluation of a property to define all areas that are highly suggestive of contamination and delineate the extent of contamination. The preliminary assessment consists of an on-site evaluation conducted by the decontamination specialist or owner of record to gather information to demonstrate that contamination is not present above the decontamination standards or to enable development of a workplan outlining the most appropriate method to decontaminate the property.

— (37) "Properly disposed" means to diseard at a licensed facility in accordance with all applicable laws and not reused or sold.

(38) "Property" means: (a) any property, site, structure, part of a structure, or the grounds, surrounding a structure; and (b) includes single family residences, outbuildings, garages, units of multiplexes, condominiums, apartment buildings, warehouses, hotels, motels, boats, motor vehicles, trailers, manufactured housing, shops, or booths.

(39) "Return air housing" means the main portion of an air ventilation system where air from the livable space returns to the air handling unit for heating or cooling.

(40) "Sample location" means the actual place where an environmental sample was obtained, including designation of the room, the surface (wall, ceiling, appliance, etc), and the direction and distance from a specified fixed point (corner, door, light switch, etc).

(41) "Services" means the activities performed by decontamination specialist in the course of decontaminating residual contamination from the manufacturing of illegal drugs or from the storage of chemicals used in manufacturing illegal drugs and includes not only the removal of any contaminants but inspections and sampling. (42) "Toxic" means hazardous materials in sufficient concentrations that they can cause local or systemic detrimental effects to people.

(43) "UGWQS" means the Utah Ground Water Quality Standards established in R317-6-2.

(44) "VOA" means volatile organic analyte.

(45) "VOCs" means volatile organic compounds or organic chemicals that can evaporate at ambient temperatures used in the manufacture illegal drugs such as acetone, acetonitrile, aniline, benzene, benzaldehyde, benzyl chloride, carbon tetrachloride, chloroform, cyclohexanone, dioxane, ethanol, ethyl acetate, ethyl ether, Freon 11, hexane, isopropanol, methanol, methyl alcohol, methylene chloride, naphtha, nitroethane, petroleum ether, petroleum distillates, pyridine, toluene, o toluidine, and any other volatile organic chemical that may be used to manufacture illegal drugs.

(46) "Waste" means refuse, garbage, or other discarded material, either solid or liquid.

#### R392-600-3. Preliminary Assessment Procedures.

(1) The decontamination specialist or owner of record shall determine the nature and extent of damage and contamination of the property from illegal drug operations by performing a preliminary assessment prior to decontamination activities. Contamination may be removed prior to approval of the work plan as necessary to abate an imminent threat to human health or the environment. If there was a fire or an explosion in the contaminated portion of the property that appears to have compromised its structural integrity, the decontamination specialist or owner of record shall obtain a structural assessment of the contaminated portion of the property prior to initiating the preliminary assessment.

 To conduct the preliminary assessment, the decontamination specialist or owner of record shall:

 (a) request and review copies of any law enforcement, state agency or other report regarding illegal drug activity or suspected illegal drug activity at the property;

 (b) evaluate all information obtained regarding the nature and extent of damage and contamination;

(c) determine the method of illegal drug manufacturing used;
 (d) determine the chemicals involved in the illegal drug operation;

 (e) determine specific locations where processing and illegal drug activity took place or was suspected and where hazardous materials were stored and disposed;

 (f) use all available information to delineate areas highly suggestive of contamination;

 (g) develop procedures to safely enter the property in order to eonduct a preliminary assessment;

 (h) wear appropriate personal protective equipment for the conditions assessed;

(i) visually inspect all portions of the property, including areas outside of any impacted structure to document where stained materials or surfaces are visible, drug production took place, hazardous materials were stored, and burn pits or illegal drug operation trash piles may have been or are currently present;

 (j) determine whether the property contains a septic system onsite and if there has been a release to the system as a result of the illegal drug operations;

(k) determine the locations of the ventilation system components in the areas highly suggestive of contamination;

(1) conduct and document appropriate testing for corrosive, flammable, combustible, and toxic atmospheres during the initial entry in the contaminated portion of the property using instruments such as a LEL/O2 meter, pH paper, PID, FID, or equivalent equipment; and

(m) if decontamination is not anticipated due to the lack of supporting evidence of decontamination, collect confirmation samples to demonstrate compliance with the decontamination standards using the methodology specified in this rule.

(3) If the preliminary assessment does not reveal the presence of contamination above the decontamination standards specified in this rule, the decontamination specialist or owner of record may request that the property be removed from the list of contaminated properties as specified in 19-6 903 provided that:

 (a) a final report documenting the preliminary assessment is submitted to the local health department by the owner of record and decontamination specialist if one was involved in conducting the preliminary assessment; and

(b) the local health department concurs with the recommendations contained in the report specified in (a).

(4) If the preliminary assessment reveals the presence of contamination, the decontamination specialist or owner of record shall proceed according to R392-600-4 through R392-600-7. The contaminated portions of the property shall be kept secure against un authorized access until the work plan has been submitted, any required permit is issued, and the property has been decontaminated to the standards established in this rule.

#### R392-600-4. Work Plan.

(1) Prior to performing decontamination of the property, the decontamination specialist or owner of record shall prepare a written work plan that contains:

(a) complete identifying information of the property, such as street address, mailing address, owner of record, legal description, county tax or parcel identification number, or vehicle identification number if a mobile home, trailer or boat;

(b) if applicable, the certification number of the decontamination specialist who will be performing decontamination services on the contaminated portion of the property;

 (c) copies of the decontamination specialist's current certification:

(d) photographs of the property;

(e) a description of the areas highly suggestive of contamination, and areas that are considered not highly suggestive of contamination, including any information that may be available regarding locations where illegal drug processing was performed, hazardous materials were stored and stained materials and surfaces were observed;

(f) a description of contaminants that may be present on the property:

(g) results of any testing conducted for corrosive, flammable, combustible, and toxic atmospheres during the initial entry in the contaminated portion of the property, such as by a LEL/O2 meter, pH paper, PID, FID, or equivalent equipment;

 (h) a description of the personal protective equipment to be used while in or on the contaminated portion of the property;

 (i) the health and safety procedures that will be followed in performing the decontamination of the contaminated portion of the property;  (j) a detailed summary of the decontamination to be performed based on the findings and conclusions of the Preliminary Assessment, which summary shall include:

(i) all surfaces, materials or articles to be removed;

(ii) all surfaces, materials and articles to be cleaned on site;
 (iii) all procedures to be employed to remove or clean the contamination, including both areas highly suggestive of contamination as well as those areas that are not highly suggestive of contamination;

(iv) all locations where decontamination will commence;

(v) all containment and negative pressure enclosure plans; and
 (vi) personnel decontamination procedures to be employed to
 prevent the spread of contamination;

(k) the shoring plan, if an assessment of the structural integrity was conducted and it was determined that shoring was necessary, including a written description or drawing that shows the structural supports required to safely occupy the building during decontamination;

 a complete description of the proposed postdecontamination confirmation sampling locations, parameters, techniques and quality assurance requirements;

(m) the names of all individuals who gathered samples, the analytical laboratory performing the testing, and a copy of the standard operating procedures for the analytical method used by the analytical laboratory;

 (n) a description of disposal procedures and the anticipated disposal facility;

(o) a schedule outlining time frames to complete the decontamination process; and

 (p) all available information relating to the contamination and the property based on the findings and conclusions of the preliminary assessment.

(2) Prior to implementing the work plan, it must first be:

 (a) approved in writing by the owner of record and, if one is involved, the decontamination specialist who will execute the work plan; and

(b) submitted to the local health department with jurisdiction over the county in which the property is located.

(3) The owner of record, and any decontamination specialist involved in executing the work plan shall retain the work plan for a minimum of three years after completion of the work plan and the removal of the property from the contaminated properties list.

(4) All information required to be included in the work plan shall be keyed to or contain a reference to the appropriate subsection of this rule.

#### R392-600-5. Decontamination Procedures.

(1) The decontamination specialists, and owner of record shall comply with all applicable federal, state, municipal, and local laws, rules, ordinances, and regulations in decontaminating the property.
 (2) The decontamination specialist or owner of record shall be present on the property during all decontamination activities.

(3) The decontamination specialist or owner of record shall conduct the removal of the contamination from the property, except for porous materials from areas not highly suggestive of contamination that may be cleaned as outlined in sub-section R392-600-5(12).

(4) The decontamination specialist or owner of record shall see that doors or other openings from areas requiring decontamination shall be partitioned from all other areas with at least 4-mil plastic sheeting or equivalent before beginning decontamination to prevent contamination of portions of the property that have not been impacted by illegal drug operations.

(5) Ventilation Cleaning Procedures.

(a) Air registers shall be removed and cleaned as outlined in subsection R392-600-5(12).

(b) All air register openings shall be covered by temporary filter media.

(c) A fan powered HEPA filter collection machine shall be connected to the ductwork to develop negative air pressure in the ductwork.

(d) Air lances, mechanical agitators, or rotary brushes shall be inserted into the ducts through the air register openings to loosen all dirt, dust and other materials.

(e) The air handler units, including the return air housing, coils, fans, systems, and drip pan shall be cleaned as required in subsection R392-600-5(12).

 (f) All porous linings or filters in the ventilation system shall be removed and properly disposed.

(g) The ventilation system shall be sealed off at all openings with at least 4 mil plastic sheeting, or other barrier of equivalent strength and effectiveness, to prevent recontamination until the contaminated portion of the property meets the decontamination standards in R392-600-6(2) and(3).

(6) Procedures for Areas Highly Suggestive of Contamination.
 (a) All porous materials shall be removed and properly disposed. On site cleaning of this material is not allowed.

(b) All stained materials from the illegal drug operations shall be removed and properly disposed, unless the decontamination specialist or owner of record determines that cleaning and testing can be performed and can demonstrate based on results of confirmation sampling and testing that the materials meet the decontamination standards contained in subsections R392 600 6(2) and (3). Only smooth and easily cleanable drug operation material surfaces may be decontaminated on site and only in accordance with R392-600-5(12).

(c) All non-porous surfaces may be cleaned to the point of stain removal and left in place or removed and properly disposed. Only smooth and easily cleanable surfaces may be decontaminated on site and only in accordance subsection R392 600 5(12). After on site cleaning, the decontamination specialist or owner of record shall test all surfaces to verify compliance with the decontamination standards contained in R392 600 6(2) and (3).

(d) All exposed concrete surfaces shall be thoroughly cleaned as outlined in R392 600 5(12) and tested to meet the decontamination standards contained in R392 600 6(2) and (3) or may be removed and properly disposed.

(e) All appliances shall be removed and properly disposed, unless the decontamination specialist or owner of record determines that cleaning and testing can be performed and can demonstrate based on results of confirmation sampling and testing that the materials meet the decontamination standards contained in subsections R392 600 6(2) and (3). Only smooth and easily cleanable surfaces may be decontaminated on site and only in accordance subsection R392 600 5(12). After on site cleaning, the decontamination specialist or owner of record shall test all surfaces to verify compliance with the decontamination standards contained in R392 600 6(2) and (3). For appliances such as ovens that have insulation, a 100 square centimeter portion of the insulation shall also be tested. If the insulation does not meet the decontamination standards contained in R392 600 6(2) and R392 600 6(3), the insulated appliances shall be removed and properly disposed. (7) Structural Integrity and Security Procedures.

If, as a result of the decontamination, the structural integrity or security of the property is compromised, the decontamination specialist or owner of record shall take measures to remedy the structural integrity and security of the property.

(8) Procedures for Plumbing, Septic, Sewer, and Soil. (a) All plumbing inlets to the septic or sewer system, including sinks, floor drains, bathtubs, showers, and toilets, shall be visually assessed for any staining or other observable residual contamination. -All plumbing traps shall be assessed for VOC concentrations with a PID or FID in accordance with Section R392-600-6(7). All plumbing traps shall be assessed for mercury vapors in accordance with Section R392-600-6(10) by using a mercury vapor analyzer unless the results of the preliminary assessment indicate that contamination was unlikely to have occurred. If VOC concentrations or mercury vapor concentrations exceed the decontamination standards contained in R392-600-6(2) and (3), the accessible plumbing and traps where the excess levels are found shall be removed and properly disposed, or shall be cleaned and tested to meet the decontamination standards contained in R392-600-6(2) and (3).

(b) The decontamination specialist or owner of record shall obtain documentation from the local health department or the local waste water company describing the sewer disposal system for the dwelling and include it in the final report. If the dwelling is connected to an on-site septic system, a sample of the septic tank liquids shall be obtained and tested for VOC concentrations unless the results of the preliminary assessment indicate that contamination was unlikely to have occurred.

(c) If VOCs are not found in the septic tank sample or are found at concentrations less than UGWQS and less than 700 micrograms per liter for acetone, no additional work is required in the septic system area, unless requested by the owner of the property.

(d) If VOCs are found in the septic tank at concentrations exceeding the UGWQS or exceeding 700 micrograms per liter for acetone the following applies:

(i) The decontamination specialist or owner of record shall investigate the septic system discharge area for VOCs, lead, and mercury unless there is clear evidence that mercury or lead was not used in the manufacturing of illegal drugs at the illegal drug operation;

(ii) The horizontal and vertical extent of any VOCs, mercury, and lead detected in the soil samples shall be delineated relative to background or EPA residential risk based screening concentrations contained in the document listed in R392-600-8.

(iii) If any of the VOCs, mercury, and lead used in the illegal drug operations migrated down to groundwater level, the decontamination specialist or owner of record shall delineate the vertical and horizontal extent of the groundwater contamination.

(iv) After complete characterization of the release, the decontamination specialist or owner of record shall remediate the impacted soils to concentrations below background or EPA residential risk based screening concentrations as contained in the document listed in R392-600-8 and any impacted groundwater to concentrations below the UGWQS and below 700 micrograms per liter for acetone.

 (v) The contents of the septic tank shall be removed and properly disposed.

(e) The decontamination specialist or owner of record shall also notify the Utah Department of Environmental Quality, Division of Water Quality, if a release has occurred as a result of illegal drug operations to a single family septic system or a multiple family system serving less than 20 people.

 (f) All sampling and testing pursuant to this section shall be performed in accordance with EPA sampling and testing protocol.
 (9) Procedures for burn areas, trash piles and bulk wastes.

(a) The decontamination specialist or owner of record shall characterize, remove, and properly dispose of all bulk wastes remaining from the activities of the illegal drug operations or other wastes impacted by compounds used by the illegal drug operations.
 (b) The decontamination specialist or owner of record shall examine the property for evidence of burn areas, burn or trash pits, debris piles, and stained areas suggestive of contamination. The decontamination specialist or owner of record shall test any burn areas, burn or trash pits, debris piles or stained areas with appropriate soil sampling and testing equipment, such as a LEL/O2 meter, pH paper, PID, FID, mercury vapor analyzer, or equivalent equipment to determine if the area is contaminated.

(c) If the burn areas, burn or trash pits, debris piles, or stained areas are not in a part of the property that has otherwise been determined to be highly suggestive of contamination, the decontamination specialist shall recommend to the owner of the property that these areas be investigated.

(d) If the burn areas, burn or trash pits, debris piles or stained areas are part of the contaminated portion of the property, the decontamination specialist or owner of record shall investigate and remediate these areas.

(e) The decontamination specialist or owner of record shall investigate burn areas, burn or trash pits, debris piles, or stained areas for the VOCs used by the illegal drug operations and lead and mercury, unless there is clear evidence that mercury or lead was not used in the manufacturing of illegal drugs at the illegal drug operations.

(f) The decontamination specialist or owner of record shall delineate the horizontal and vertical extent of any VOCs, lead, or mercury detected in the soil samples relative to background concentrations or EPA residential risk based screening concentrations as contained in the document listed in R392-600-8. (g) If any of the compounds used by the illegal drug operation migrated into groundwater, the decontamination specialist or owner of record shall delineate the vertical and horizontal extent of the groundwater contamination relative to the UGWQS and relative to the maximum contaminant level of 700 micrograms per liter for acetone.

(h) After complete characterization of the release, the decontamination specialist or owner of record shall remediate contaminated soils to background or EPA residential risk based screening concentrations as contained in the document listed in R392 600 8, and contaminated groundwater to concentrations at or below the UGWQS and at or below 700 micrograms per liter for acetone.

 (i) All sampling and testing conducted under this section shall be performed in accordance with current EPA sampling and testing protocol.

(10) Procedures for areas not highly suggestive of contamination.

 (a) Porous materials with no evidence of staining or contamination may be cleaned by HEPA vacuuming and one of the following methods:

(i) Steam cleaning: Hot water and detergent shall be injected into the porous materials under pressure to agitate and loosen any

contamination. The water and detergent solution shall then be extracted from the porous material by a wet vacuum.

(ii) Detergent and water solution: porous materials shall be washed in a washing machine with detergent and water for at least 15 minutes. The porous materials shall be rinsed with water. This procedure shall be repeated at least two additional times using new detergent solution and rinse water.

(b) All non-porous surfaces such as floors, walls, ceilings, mirrors, windows, doors, appliances, and non-fabric furniture shall be cleaned as outlined in subsection R392-600-5(12).

 (c) Doors or other openings to areas with no visible contamination shall be partitioned from all other areas with at least 4 mil plastic sheeting or equivalent after being cleaned to avoid recontamination.

(d) Spray on acoustical ceilings shall be left undisturbed, and shall be sampled and tested for asbestos and for contamination to determine whether ceilings meet the decontamination standards contained in R392 600 6(2) and (3), and if in need of removal, whether asbestos remediation protocols are applicable. If the materials exceed the standards, the decontamination specialist or owner of record shall properly remove and dispose of them.

 (e) All exposed concrete surfaces shall be thoroughly cleaned as outlined in subsection R392-600-5(12).

(11) Decontamination procedures for motor vehicles.

If an illegal drug operation is encountered in a motor vehicle, the decontamination specialist or owner of record shall conduct a Preliminary Assessment in the manner described in this rule to determine if the vehicle is contaminated. If it is determined that the motor vehicle is contaminated and the vehicle cannot be cleaned in a manner consistent with this rule, the motor vehicle may no longer be occupied. The vehicle shall also be properly disposed.

(12) Cleaning Procedure.

For all items, surfaces or materials that are identified as easily cleanable and for which the work plan indicates they will be decontaminated on site, the decontamination specialist or owner of record shall wash them with a detergent and water solution and then thoroughly rinse them. This procedure shall be repeated at least two additional times using new detergent solution and rinse water. The decontamination specialist or owner of record shall test all surfaces where decontamination on site has been attempted to verify compliance with the decontamination standards in R392-600-6(2) and R392-600-6(3).

(13) Waste Characterization and Disposal Procedures.

The Hazardous Waste Rules of R315 1 through R315 101, the Solid Waste Rules of R315 301 through R315 320 and the Illegal Drug Operations Decontamination Standards regulate the management and disposal of hazardous waste and contaminated debris generated during decontamination of an illegal drug operations. The decontamination specialist and owner of record shall comply with these rules and meet the following criteria.

(a) No waste, impacted materials or contaminated debris from the decontamination of illegal drug operations may be removed from the site or waste stream for recycling or reuse without the written approval of the local Health Department.

 (b) All items removed from the illegal drug operations and waste generated during decontamination work shall be properly disposed.

(c) All liquid waste, powders, pressurized cylinders and equipment used during the production of illegal drugs shall be properly characterized by sampling or testing prior to making a determination regarding disposal or the waste shall simply be considered hazardous waste and properly disposed, except the waste shall not be deemed to be household hazardous waste.

(d) All impacted materials and contaminated debris that are not determined by the decontamination specialist or owner of record to be a hazardous waste may be considered a solid waste and properly disposed.

 (e) All Infectious Waste shall be managed in accordance with Federal, State and local requirements.

(f) The disturbance, removal and disposal of asbestos must be done in compliance with all Federal, State, and local requirements including the requirements for Asbestos Certification, Asbestos Work Practices and Implementation of Toxic Substances Control Act, Utah Administrative Code R307-801.

(g) The removal and disposal of lead based paint must be done in compliance with all Federal, State, and local requirements including the requirements for Lead-Based Paint Accreditation, Certification and Work Practice Standards, Utah Administrative Code R307-840.

(h) The decontamination specialist and owner of record shall comply with all Federal, State, Municipal, County or City codes, ordinances and regulations pertaining to waste storage, manifesting, record keeping, waste transportation and disposal.

#### R392-600-6. Confirmation Sampling and Decontamination Standards.

(1) The decontamination specialist or owner of record shall take and test confirmation samples after decontamination to verify that concentrations are below the decontamination standards prior to the submittal of a final report. Samples are not required if a contaminated surface has been removed and replaced, unless there is evidence that the area has been re-contaminated. All decontaminated areas and materials, areas not highly suggestive of contamination, and surfaces that have not been removed shall be sampled for compliance with the standards in Table 1.

(2) If the decontamination standards are not achieved, the decontamination specialist or owner of record shall perform additional decontamination and re sample to confirm the surface or area meets the decontamination standards specified in Table 1.

#### TABLE 1

COMPOUND DECONTAMINATION STANDARD

Red Phosphorus	— Removal of stained material or — cleaned as specified in this rule such — that there is no remaining visible — residue.
Iodine Crystals	<ul> <li>Removal of stained material or</li> <li>cleaned as specified in this rule such</li> <li>that there is no remaining visible</li> <li>residue.</li> </ul>
Methamphetamine	<u>Less than or equal to 0.1 microgram</u> <u>Methamphetamine per 100 square</u> <u>centimeters</u>
Ephedrine	Less than or equal to 0.1 microgram Ephedrine per 100 square centimeters
<del>Pseudoephedrine</del>	<u>Less than or equal to 0.1 microgram</u> <u>Pseudoephedrine per 100 square</u> <u>centimeters</u>
VOCc in Air	loss than on equal to 1 ppm

Corrosives Surface pH between 6 and 8

Ecstasy Less than or equal to 0.1 microgram Ecstasy per 100 square centimeters

(3) The decontamination specialist or owner of record shall also conduct sampling and testing for all of the metals listed in Table 2 unless there is clear evidence that these metals were not used in the illegal drug operations. If Table 2 contaminants are present, the decontamination specialist or owner of record shall decontaminate the affected areas and sample until they meet the decontamination standards in Table 2.

#### TABLE 2

COMPOUND	DECONTAMINATION STANDARD
Lead	Less than or equal to 4.3 micrograms Lead per 100 square centimeters
Mercury	Less than or equal to 3.0 micrograms Mercury per cubic meter of air

(4) Confirmation sampling procedures.

(a) All sample locations shall be photographed.

(b) All samples shall be obtained from areas representative of the materials or surfaces being tested. Samples shall be collected from materials or surfaces using wipe samples and shall be biased toward areas where contamination is suspected or confirmed or was known to be present prior to decontamination.

(c) All samples shall be obtained, preserved, and handled and maintained under chain of custody protocol in accordance with industry standards for the types of samples and analytical testing to be conducted.

(d) The individual conducting the sampling shall wear a new pair of gloves to obtain each sample.

 (e) All reusable sampling equipment shall be decontaminated prior to sampling.

(f) All testing equipment shall be properly equipped and ealibrated for the types of compounds to be analyzed.

(g) Cotton gauze, 3" x 3" 12 ply, in sterile packages, shall be used for all wipe sampling. The cotton gauze shall be wetted with analytical grade methanol for the wipe sampling. The cotton gauze shall be blotted or wiped at least five times in two perpendicular directions within each sampling area.

(h) After sampling, each wipe sample shall be placed in a new clean sample container and capped tightly. Recommended containers are 50 mL polypropylene disposable centrifuge tubes or 40 mL VOA glass vials. Plastic bags shall not be used. The sample container shall be properly labeled with at least the site or project identification number, date, time, and actual sample location. The sample container shall be refrigerated until delivered to an analytical laboratory.

(i) Each sample shall be analyzed for methamphetamine, ephedrine, pseudoephedrine, and eestasy depending upon the type of illegal drug operations using NIOSH Manual of Analytical Method (NMAM) 9106 (or the proposed 9106 method if it is not yet approved) or equivalent method approved by the Utah Department of Health.

 (5) Confirmation sampling from areas highly suggestive of contamination.

 (a) Samples collected from areas highly suggestive of contamination shall be by grab samples that are not combined with other samples. (b) Three 10 cm. x 10 cm. areas (100 square centimeters) shall be wipe sampled from each room of the property where illegal drug operations occurred, hazardous materials were stored and where staining or contamination are or were present. The three samples shall be obtained from a nonporous section of the floor, one wall, and the ceiling in each room or any other location where contamination is suspected.

(c) Three 10 cm. x 10 cm. areas (100 square centimeters) shall be wipe sampled from different areas of the ventilation system, unless the system serves more than one unit or structure. If the system serves more than one unit or structure, samples shall be collected from a representative distribution of the system as well as the corresponding areas that it serves until the contamination is delineated, decontaminated, and determined to be below the decontamination standards established in this rule.

(d) If there is a kitchen, three 10 cm. x 10 cm. areas (100 square centimeters) shall be wipe sampled from the surfaces most likely to be contaminated including the counter top, sink, or stove top, and from the floor in front of the stove top or any other location where contamination is suspected.

(e) If there is a bathroom, three 10 cm. x 10 cm. areas (100 square centimeters) shall be wipe sampled from the surfaces most likely to be contaminated including the counter top, sink, toilet, or the shower/bath tub and any other location where contamination is suspected.

(f) If there are any appliances, one 10 cm. x 10 cm. area (100 square centimeters) shall be wipe sampled from the exposed portion of each appliance. If multiple appliances are present, each wipe sample may be a composite of up to three 100 square centimeter areas on three separate appliances, provided that the surfaces most likely to be contaminated are tested.

(g) If there is any other enclosed space where illegal drug operations occurred, hazardous materials were stored, or where staining or contamination is present, three 10 cm. x 10 cm. areas (100 square centimeters) shall be wipe sampled from the surfaces most likely to be contaminated.

(h) Each wipe sample shall be placed in a new clean sample container and capped tightly. Recommended containers are 50 mL polypropylene disposable centrifuge tubes or 40 mL VOA glass vials. Plastic bags shall not be used.

(6) Confirmation sampling from areas not highly suggestive of contamination.

Samples shall be collected in a manner consistent with the confirmation sampling described in Section R392 600 6(5). The samples may be combined together to form one sample per room or sampling area.

(7) VOC sampling and testing procedures.

(a) A properly calibrated PID or FID capable of detecting VOCs shall be used for testing. The background concentration of VOCs shall be obtained by testing three exterior areas outside the areas highly suggestive of contamination and in areas with no known or suspected sources of VOCs. All VOC readings shall be recorded for each sample location.

(b) At least three locations in areas highly suggestive of contamination shall be tested for VOC readings. The testing equipment probe shall be held in the sample location for at least 30 seconds to obtain a reading.

(c) All accessible plumbing traps shall be tested for VOCs by holding the testing equipment probe in the plumbing pipe above the trap for at least 60 seconds.

UTAH STATE BULLETIN, February 1, 2009, Vol. 2009, No. 3

(8) Testing procedures for corrosives.

(a) Surface pH measurements shall be made using deionized water and pH test strips with a visual indication for a pH between 6 and 8. The pH reading shall be recorded for each sample location.

(b) For horizontal surfaces, deionized water shall be applied to the surface and allowed to stand for at least three minutes. The pH test strip shall then be placed in the water for a minimum of 30 seconds and read.

(c) For vertical surfaces, a cotton gauze, 3" x 3" 12 ply, in sterile packages, shall be wetted with deionized water and wiped over a 10 cm. x 10 cm. area at least five times in two perpendicular directions. The cotton gauze shall then be placed into a clean sample container and covered with clean deionized water. The cotton gauze and water shall stand in the container for at least three minutes prior to testing. The pH test strip shall then be placed in the water for a minimum of 30 seconds and read.

(d) pH testing shall be conducted on at least three locations in each room within the areas highly suggestive of contamination.

(9) Lead Sampling and Testing Procedures.

(a) Unless there is clear evidence that lead was not used in the manufacturing of methamphetamine, or ecstasy at the illegal drug operations, lead sampling shall be conducted as follows:

(i) Cotton gauze, 3" x 3" 12-ply, in sterile packages shall be used for wipe sampling. The cotton gauze shall be wetted with analytical grade 3 per cent nanograde nitric acid for the wipe sampling. The cotton gauze shall be blotted or wiped at least five times in two perpendicular directions within each sampling area.

(ii) Three 10 cm. x 10 cm. areas (100 square centimeters) shall be sampled in each room within the areas highly suggestive of contamination; and

(b) After sampling, each wipe sample shall be placed in a new clean sample container and capped tightly. The sample container shall be properly labeled with at least the site or project identification number, date, time, and actual sample location. The sample container shall be delivered to an analytical laboratory that uses EPA Method 6010B or an equivalent method approved by the Utah Department of Health.

 (c) The sample shall be analyzed for lead using EPA Method 6010B or equivalent.

(10) Mercury Sampling and Testing Procedures.

(a) A properly calibrated mercury vapor analyzer shall be used for evaluating the decontaminated areas for the presence of mercury. All mercury readings shall be recorded for each sample location.

(b) At least three locations in each room within the areas highly suggestive of contamination shall be tested for mercury vapor readings. The testing equipment probe shall be held in the sample location for at least 30 seconds to obtain a reading.

(c) All accessible plumbing traps shall be tested for mercury by holding the testing equipment probe in the plumbing pipe above the trap for at least 60 seconds.

(11) Septic tank sampling and testing procedures.

(a) All sampling and testing shall be performed in accordance with current EPA sampling and testing protocol.

(b) The liquid in the septic tank shall be sampled with a new clean bailer or similar equipment.

(c) The liquid shall be decanted or poured with minimal turbulence into three new VOA vials properly prepared by the analytical laboratory.

(d) The VOA vials shall be filled so that there are no air bubbles in the sealed container. If air bubbles are present, the vial must be emptied and refilled. (i) The sample vials shall be properly labeled with at least the date, time, and sample location.

 — (ii) The sample vials shall be refrigerated until delivered to the analytical laboratory.

(iii) The sample shall be analyzed using EPA Method 8260 or equivalent.

(12) Confirmation sampling by Local Health Departments.

The local health department may also conduct confirmation sampling after decontamination is completed and after the final report is submitted to verify that the property has been decontaminated to the standards outlined in this rule.

#### R392-600-7. Final Report.

(1) A final report shall be:

(a) prepared by the decontamination specialist or owner of record upon completion of the decontamination activities;

 (b) submitted to the owner of the decontaminated property and the local health department of the county in which the property is located; and

 (c) retained by the decontamination specialist and owner of record for a minimum of three years.

(2) The final report shall include the following information and documentation:

 (a) complete identifying information of the property, such as street address, mailing address, owner of record, legal description, county tax or parcel identification number, or vehicle identification number if a mobile home or motorized vehicle;

 (b) the name and certification number of the decontamination specialist who performed the decontamination services on the property;

 (c) a detailed description of the decontamination activities conducted at the property, including any cleaning performed in areas not highly suggestive of contamination;

(d) a description of all deviations from the approved work plan;

(e) photographs documenting the decontamination services and showing each of the sample locations,

(f) a drawing or sketch of the areas highly suggestive of contamination that depicts the sample locations and areas that were decontaminated;

(g) a description of the sampling procedure used for each sample;

(h) a copy of the testing results from testing all samples, including testing for VOCs, corrosives, and if applicable, lead and mercury, and testing performed by an analytical laboratory;

(i) a written discussion interpreting the test results for all analytical testing on all samples;

(j) a copy of any asbestos sampling and testing results;

(k) a copy of the analytical laboratory test quality assurance data on all samples and a copy of the chain of custody protocol documents;

(1) a summary of the waste characterization work, any waste sampling and testing results, and transportation and disposal documents, including bills of lading, weight tickets, and manifests for all materials removed from the property;

 (m) a summary of the decontamination specialist or owner of record's observation and testing of the property for evidence of burn areas, burn or trash pits, debris piles, or stained areas;

 (n) a written discussion and tables summarizing the confirmation sample results with a comparison to the decontamination standards outlined in this rule; and (o) an affidavit from the decontamination specialist and owner of record that the property has been decontaminated to the standards outlined in this rule.

(3) All information required to be included in the final report shall be keyed to or contain a reference to the appropriate subsection of this rule.

#### R392-600-8. Reference.

The document: U.S. Environmental Protection Agency. Region
 9: Superfund Preliminary Remediation Goals (PRG) Table, October
 2004, is adopted by reference.]

**R392-600.** Illegal Drug Activity Decontamination Standards. **R392-600-1.** Authority and Purpose.

(1) This rule is authorized under Section 19-6-906.

(2) This rule establishes minimum standards, procedures, and responsibilities for local health departments, certified decontamination specialists (CDS), and owners of record regarding property contaminated by illegal drug activity. It regulates the decontamination and the disposal of materials removed from contaminated properties.

#### R392-600-2. Definitions.

<u>The definitions found in Title 19, Chapter 6, Part 9 apply to this</u> rule. In addition:

(1) "Background concentration" means the level of a contaminant in soil, groundwater or other media up gradient from an illegal drug activity that has not been affected by the illegal drug activity.

(2) "Certified decontamination specialist" or "CDS" means an individual who has met the standards for certification as a decontamination specialist and has a currently valid certificate issued by the Solid and Hazardous Waste Control Board, as defined under Utah Code Subsection 19-6-906(2).

(3) "Chain-of-custody protocol" means a procedure used to document each person who has had custody or control of an environmental sample from its source to the certified laboratory, and the time of possession of each person.

(4) "Combustible" means vapor concentration from a liquid that has a flash point greater than 100 degrees F.

(5) "Composite Sample" means a sample of equal weights collected from up to four defined areas, then bulked and mixed in the laboratory to be analyzed as a single sample.

(6) "Confirmation sampling" means collecting samples during a preliminary assessment or upon completion of decontamination activities and having the samples analyzed by a certified laboratory to determine the level of contamination.

(7) "Contaminant" means a hazardous material.

(8) "Contamination" or "contaminated" means polluted by hazardous materials that cause property to be unfit for human habitation or use due to immediate or long-term health hazards.

(9) "Corrosive" means a material or substance having a pH less than or equal to 2 and greater than or equal to 12.

(10) "Decontamination" means assessment, treatment, or removal of contamination to reduce concentrations of contaminants below the decontamination standards.

(11) "Decontamination standards" means the levels or concentrations of contaminants provided in R392-600-7(2).

(12) "Discrete" means a single sample collected from a single, defined area at a given time and location.

(13) "Disposed of properly", "proper disposal", "dispose of them properly" and variations of them means to handle, transport, label,

store, or discard in accordance with all applicable laws, including the requirements of this rule and the transfer of material to a facility licensed to receive it.

(14) "Easily cleanable" means an object and its surface that can be cleaned by detergent solution applied to its surface in a way that would reasonably be expected to remove dirt from the object when rinsed and to be able to do so without damaging the object or its surface finish.

(15) "EPA" means the United States Environmental Protection Agency.

(16) "FID" means flame ionization detector.

(17) "Flammable" means vapor concentration from a liquid that has a flash point less than 100 degree F.

(18) "Fixture" means an item that is attached to real property or to a structure on real property in such a manner that it is commonly considered to be part of the real property.

(19) "Hazardous materials" has the same meaning as "hazardous or dangerous materials" as defined in Utah Code Section 58-37d-3, and includes any illegally manufactured controlled substance.

(20) "Hazardous waste" means toxic materials described in 40 CFR 261.3 that the owner of record or retained CDS intends to discard or must discard as part of the decontamination work.

(21) "HEPA" means high-efficiency particulate air and indicates the efficiency of an air filter or air filtration system.

(22) "HVAC system" means the heating ventilation and air conditioning system and includes all conditioned air ducts, diffusers, vents, registers, cold air returns and air handlers.

(23) "Illegal drug activity" means any activity, including production, use, storage, or distribution of materials, compounds, or mixtures associated with the use or production of illegal controlled substances.

(24) "Impacted soil" means soil that contains concentrations of a contaminant above background or EPA residential Risk Based Screening Concentrations as contained in the document listed in R392-600-9.

(25) "LEL/O2" means lower explosive limit/oxygen.

(26) "MSDS sheet" means Material Safety Data Sheet provided by the manufacturer supplying the chemical and that meets OSHA Hazard Communication Standard in Subpart Z, Toxic and Hazardous Substances, 29 CFR 1910.1200.

(27) "Negative pressure enclosure" means an air-tight enclosure using a local exhaust and HEPA filtration system to maintain a lower air pressure in the work area than in any adjacent area and to generate a constant flow of air from the adjacent areas into the work area.

(28) "Non-structural component" means a part of a structure that is not a structural component, such as a carpet, a partition wall, a cabinet, a window, a door, or a fixture.

(29) "Non-porous" means resistant to penetration of liquids, gases, powders and includes non-permeable substance or materials that are sealed such as: concrete, wood, tile, vinyl painted drywall, appliances, bathtubs, toilets, mirrors, windows, counter-tops, sinks, metal, glass, plastic, and pipes.

(30) "Onsite Wastewater System" means an underground wastewater disposal system for domestic wastewater which is regulated by R317-6.

(31) "Owner of record" means (a) the owner of property as shown on the records of the county recorder in the county where the property is located; and (b) may include an individual, employee, financial institution, company, corporation, or other entity. (32) "Personal property" means clothing, bedding, furniture, electronic equipment, and other items that are not considered a part of the building.

(33) "Personal protective equipment" means clothing such as suits, gloves, hats, boots or apparatus such as facemasks or respirators all designed to prevent inhalation, absorption, or ingestion of hazardous chemicals.

(34) "PID" means photo ionization detector.

(35) "Porous" means that the item is easily penetrated or permeated by gases, liquids, or powders such as: carpets, cardboard, draperies, bedding, mattresses, fabric covered furniture, pillows, blankets, towels, clothing, or any other material that is worn; and drop ceiling or other fiber-board ceiling panels, cork paneling, unpainted drywall, or any other material that is not properly sealed.

(36) "Preliminary assessment" means an evaluation of a property to define all areas that are potentially contaminated and determine the extent of contamination as provided in Section 4.

(37) "Property" means: (a) any property, site, structure, part of a structure, or the grounds, surrounding a structure; and (b) includes, but is not limited to single-family residences, outbuildings, garages, units of multiplexes, condominiums, apartment buildings, warehouses, hotels, motels, boats, motor vehicles, trailers, manufactured housing, shops, or booths.

(38) "Retained CDS" means a CDS who is retained by the owner of record to perform assessment, planning, decontamination, confirmation, and reporting activities described in this rule.

(39) "Sample location" means a discrete place where an environmental sample is or will be obtained.

(40) "Structural component" means a portion of a structure which, if removed, would cause the structure to become unstable or subject to partial or total collapse, or a concrete floor.

 (41) "Toxic" means a hazardous material in sufficient concentrations to cause local or systemic detrimental effects to people.
 (42) "UGWQS" means the Utah Ground Water Quality Standards

established in R317-6.

(43) "VOA" means volatile organic analyte.

(44) "VOCs" means volatile organic compounds or organic chemicals that can evaporate at ambient temperatures.

(45) "Waste" means refuse, garbage, or other discarded material, either solid or liquid.

#### R392-600-3. Reporting Requirements

(1) Upon receiving a report of a property contaminated by illegal drug activity from a law enforcement agency, the local health department shall, as required by Subsection 19-6-903(3), conduct an investigation to determine if reasonable evidence exists that the property is contaminated.

(2) Upon receiving a report of a property contaminated by illegal drug activity from a CDS or a Licensed Environmental Health Scientist, a local health department may conduct an investigation to determine whether reasonable evidence exists to consider the property contaminated.

(3) If the local health department determines that a property is contaminated from illegal drug activity, either by its own investigation or based on a report from a CDS or a Licensed Environmental Health Scientist, the local health department shall:

 (a) notify the owner of record, and if applicable, any legal tenant, that the property is contaminated, and of the requirements for compliance with this rule;

(b) place the property on a list of contaminated properties available to the public as required by Section 19-6-903; and (c) remove any property it has placed on its contaminated properties list within 24 hours of receipt of a final report required by Section 19-6-903(4)(c).

(4) With local health department or retained CDS written approval, the owner of record or resident may remove contaminated items from the property if the owner of record or the resident requests from the owner of record or the retained CDS before the owner of record or retained CDS submits the work plan to the local health department. Such approval shall contain language advising the owner of record or resident of the possible health effects associated with contaminated property and proper methods for decontamination of the contaminated property.

#### R392-600-4. Preliminary Assessment.

(1) If a local health department has determined that a property is contaminated, the owner of record or the retained CDS shall, prior to conducting any decontamination work, perform a preliminary assessment as required by this section.

(2) If a fire, an explosion, or other condition appears to have compromised the structural integrity of the property, the owner of record or the retained CDS shall obtain a structural assessment from a person qualified to conduct a structural assessment.

(3) To conduct the preliminary assessment, the owner of record or the retained CDS shall:

(a) request and review copies of any law enforcement, state agency or other report regarding illegal drug activity or suspected illegal drug activity at the property;

(b) evaluate all information obtained regarding the nature and extent of damage and contamination;

(c) determine the method of illegal drug manufacturing used if applicable;

(d) determine the chemicals involved in illegal drug activity, if applicable;

(e) determine specific locations where processing and illegal drug activity took place or was suspected and where hazardous materials were stored and disposed, if applicable:

(f) use all available information to determine contaminated areas; (g) develop procedures to safely enter the property in order to conduct a preliminary assessment;

(h) wear appropriate personal protective equipment for the conditions assessed;

(i) visually inspect all portions of the property for evidence of illegal drug activity, including areas outside of any impacted structure to document where stained materials or surfaces are visible, drug production took place, hazardous materials were stored, and the location of burn pits or trash or debris piles;

(j) determine whether the property contains an onsite wastewater system and if the the system is contaminated as a result of the illegal drug activity;

(k) determine the locations of the HVAC system components;

(1) conduct and document appropriate testing for corrosives, flammables, combustibles, and toxic atmospheres during the initial entry to the contaminated portion of the property using appropriate instruments such as a LEL/O2 meter, pH paper, PID, FID, or equivalent equipment, if it is a known production site or if visual inspection indicates further testing is necessary;

(m) follow the procedures outlined in the confirmation sampling section of R392-600-7, if methamphetamine sampling is conducted; and

(n) if decontamination is not anticipated due to the lack of supporting evidence of contamination, the owner of record or the

retained CDS shall, using the methodology specified in this rule, collect a minimum of four samples, with at least one sample coming from the cold air return, to demonstrate that the property does not exceed the decontamination standard.

(4) If the preliminary assessment and sampling does not reveal the presence of contamination above the decontamination standards specified in this rule, the owner of record or the retained CDS may request that the property be removed from the list of contaminated properties as specified in Section 19-6-903, provided that:

(a) the owner of record or the retained CDS submits to the local health department a final report documenting that the preliminary assessment established that the property does not exceed the decontamination standard; and

(b) the local health department determines that the assessment and conclusions contained in the final report establish that no further decontamination work is necessary.

(5) If the preliminary assessment reveals the presence of contamination that exceeds the decontamination standards set forth in this rule, and the owner of record desires to have the property removed from the contaminated property list established in Utah Code Section 19-6-903, the owner of record or the retained CDS shall comply with the decontamination and reporting requirements of this rule and Title 19, Chapter 6, Part 9.

(6) The owner of record shall keep the contaminated portions of the property secure against unauthorized access until the work plan has been submitted, any required permit is issued, and the property has been decontaminated to the standards established in this rule.

#### R392-600-5. Work Plan.

(1) Prior to conducting any decontamination of the property, the owner of record or the retained CDS shall submit a written work plan, to the local health department for review.

(2) The written work plan must indicate by signature the approval of the owner of record and the retained CDS, if the owner of record retained a CDS, and shall contain:

(a) complete identifying information of the property, including an exterior photograph, the street address where property is located, the mailing address of the owner record, the name of the owner of record, and the county tax or parcel identification number if the property is real property or vehicle identification number if the property is a vehicle;

(b) if applicable, the certification information, including number and expiration date, of the CDS who will be performing decontamination services on the contaminated portion of the property;

(c) photographs of the areas that the owner of record or the retained CDS plans to decontaminate, including any exterior portions of the property and any disturbed landscaped areas;

(d) a description of the areas the owner of record or the retained CDS plans to decontaminate, including any information that may be available regarding locations where illegal drug activity may have occurred;

(e) a description of areas that the owner of record or the retained CDS does not plan to decontaminate, including reasons for making that determination:

(f) a description of the contaminants that may be present on the property:

(g) if applicable, results of any testing conducted for corrosive, flammable, combustible, and toxic atmospheres during the initial entry in the contaminated portion of the property;

(h) a description of the personal protective equipment the owner of record or CDS will wear while in or on the contaminated portion of the property; (i) a description of the personnel decontamination procedures the owner of record or the retained CDS will employ to prevent the spread of contamination;

(j) the health and safety procedures the owner of record or the retained CDS will follow while conducting decontamination activities; and

(k) a detailed summary of the decontamination activities the owner of record or the retained CDS shall perform based on the findings and conclusions of the Preliminary Assessment. The summary shall include:

(i) all surfaces, materials, or articles the owner of record or the retained CDS shall remove:

(ii) all surfaces, materials, and articles the owner of record or the retained CDS shall decontaminate on-site;

 (iii) all procedures the owner of record or retained CDS shall employ in the decontamination process, including removal procedures;

(iv) an MSDS for the components of any decontamination chemicals or solutions;

(v) all locations where the owner of record or the retained CDS will decontaminate items taken from the premises;

(vi) all containment and negative pressure enclosure plans;

(vii) the name and contact information of any subcontractor who may perform any of the planned work on the property;

(viii) the shoring plan, if a structural assessment determined that shoring is necessary, including a written description or drawing that shows the structural supports required to safely occupy the building during decontamination;

(ix) a complete description of the proposed post-decontamination confirmation sampling locations, parameters, techniques, and quality assurance measures;

(x) the names of all individuals who will collect samples and the certified laboratory that will perform the testing;

(xi) a description of disposal procedures and the anticipated disposal facility; and

(xii) a schedule outlining time frames for steps necessary to complete the decontamination process.

(3) The owner of record or the retained CDS involved in executing the work plan shall retain the work plan for a minimum of three years after having completed the decontamination of the property and the requesting the property's removal from the contaminatedproperties list.

(4) The owner of record or the retained CDS shall key, or contain a reference to, all information required to be included in the work plan to the appropriate subsection of this rule. (5) If the owner of record or the retained CDS desires to materially deviate from the written work plan, the owner of record or the retained CDS must revise the written work plan and submit it to the local health department for review prior to implementation. The revised written work plan must indicate by signature the approval of the owner of record and the retained CDS if the owner of record retained a CDS.

#### **R392-600-6.** Decontamination Requirements.

(1) The owner of record and the retained CDS shall comply with all applicable federal, state, and local law in decontaminating the property. The retained CDS shall comply with all requirements of R311-500 Illegal Drug Operations Site Reporting and Decontamination Act, Decontamination Specialist Certification Program.

(2) The provisions of this rule do not prohibit any method of decontamination not specifically prescribed by this rule that the local health department has determined

(a) the proposed method is at least the equivalent of the methods described in this rule in effectiveness and safety; and

(b) the substances used and the method of use comply with EPA regulations promulgated pursuant to 15 U.S.C. 53, Subsections 2605 (a) (3) and (4).

(3) The owner of record or the retained CDS shall be present on the property during all decontamination activities.

(4) The owner of record or the retained CDS shall partition areas being decontaminated from the remainder of the structure by placing 4-mil plastic sheeting or equivalent in doorways and other openings before beginning decontamination.

(5) The owner of record or the retained CDS shall decontaminate all non-porous structural components on-site or dispose of them properly.

(6) Non-porous fixtures and structural components.

All non-porous surfaces of personal property, structural components, and non-structural components identified in the work plan as non-porous and easily cleanable must be decontaminated by either:

(a) Chemical Neutralization-- the owner of record or the retained CDS using chemical neutralization solutions that comply with the EPA regulations promulgated pursuant to 15 U.S.C. 53, Subsections 2605 (a) (3) and (4); or

(b) Detergent Washing--the owner of record or the retained CDS shall:

(i) wash the identified surfaces, items, or materials with a detergent and water solution and thoroughly rinse them; and

(ii) repeat this procedure at least two additional times using new detergent solution and rinse water.

(7) Appliance Decontamination.

The owner of record or the retained CDS shall remove and properly dispose of all appliances, unless the owner of record or the retained CDS demonstrates based on confirmation sampling that the appliance, including all internal surfaces, is decontaminated according to the standards of this rule.

(8) HVAC Decontamination.

The owner of record or the retained CDS shall:

(a) Shutoff and lock out the air handler unit before beginning work on the HVAC system;

(b) Remove and decontaminate air diffusers as outlined in this rule or dispose of properly;

(c) Connect a fan-powered HEPA filter collection machine to the duct work to draw air through the duct work from the structure toward and through the HEPA filter collection machine;

(d) Insert tools such as air lances, mechanical agitators, or rotary brushes into the ducts through openings to facilitate the removal of methamphetamine contaminated materials;

(e) Adequately decontaminate or properly dispose of all tools once they have been used;

(f) Decontaminate all components of the air handler as required in Subsection (8). If there are interior surfaces of air handler units or ductwork that cannot be decontaminated and confirmed to be decontaminated in a manner consistent with this rule, the owner or retained CDS shall remove and dispose of them properly;

(g) Remove and properly dispose of all porous linings or filters in the ventilation system; and

(h) Seal off all openings of the ventilation system with at least 4-mil plastic sheeting, or other barrier of equivalent strength and effectiveness, to prevent recontamination until the contaminated portion of the property meets the decontamination standards. (9) Porous Materials.

(a) Non-Structural Components: The owner of record or the retained CDS shall remove and properly dispose of porous non-structural components that cannot be decontaminated.

(b) Structural Components. The owner of record or the retained CDS shall:

(i) decontaminate all porous structural components by either:
 (A) Chemical Neutralization-- the owner of record or the retained CDS using chemical neutralization solutions that comply with the EPA regulations promulgated pursuant to 15 U.S.C. 53, Subsections 2605 (a) (3) and (4); or

(B) Detergent Washing--the owner of record or the retained CDS shall:

(I) wash the identified surfaces, items, or materials with a detergent and water solution and thoroughly rinse them; and

(II) repeat this procedure at least two additional times using new detergent solution and rinse water; and

(ii) encapsulate the structural component in place by sealing it with a paint or sealer approved by the local health department.

(c) Launderable Items: Porous materials and items of personal property of the type that can be washed in a clothes washing machine with detergent and water may be laundered with detergent and water in a clothes washing machine on at least a medium agitation setting for the full wash cycle. The porous materials shall be rinsed with water. This procedure shall be repeated at least two additional times using new detergent solution and rinse water. The washing machine must be run with only water and detergent through an additional cycle prior to being used for any other purpose.

(c) The local health department or retained CDS may approve the removal of personal property that has particular sentimental or heirloom value to the owners if the removal of the personal property will not pose undue risk to the owners of the personal property or to others. If the local health department or retained CDS approves the removal of personal property, the owner of record or the retained CDS shall decontaminate the items in compliance with this rule.

(10) Plumbing.

Onsite wastewater system, sewer, and soil.

(a) If indicated by the preliminary assessment, the owner of record or the retained CDS shall decontaminate all parts of the plumbing and onsite wastewater system or remove and dispose of it properly.

(b) If the dwelling is connected to an on-site wastewater system, the owner of record or the retained CDS shall cause a sample of the material in the wastewater system tank to be obtained and tested for VOC concentrations, unless the results of the preliminary assessment indicate that contamination was unlikely to have occurred.

(c) If VOCs are found in any component of the wastewater system at concentrations exceeding the UGWQS or exceeding 700 micrograms per liter for acetone, the following applies:

(i) The owner of record or the retained CDS shall remediate the impacted soils to background concentrations or to EPA residential riskbased screening concentrations as contained in the document listed in R392-600-9 and shall remediate any groundwater that does not meet UGWQS to concentrations below the UGWQS and below 700 micrograms per liter for acetone.

(ii) The owner of record or the retained CDS shall oversee the proper disposal of the contents of the on-site wastewater system tank and ensure that the tank used to pump, hold, and transport the waste, is rinsed and the rinsate is properly disposed. (d) The owner of record or the retained CDS shall notify the Utah Department of Environmental Quality, Division of Water Quality, if contaminants were released into the soil or groundwater as a result of illegal drug activity or decontamination work.

(11) Burn Areas, Trash Piles and Bulk Wastes.

The owner of record or the retained CDS shall remove, and properly dispose of all bulk wastes, burn areas, and trash or debris piles or pits remaining from the illegal drug activity. The owner or record or the retained CDS shall remediate contaminated soils to background or EPA residential risk-based screening concentrations as contained in the document listed in R392-600-9, and contaminated groundwater to concentrations at or below the UGWQS and at or below 700 micrograms per liter for acetone.

(12) Vehicles.

If the owner of record or the retained CDS determines that a motor vehicle is contaminated and the vehicle cannot be decontaminated in a manner consistent with this rule, the motor vehicle shall be disposed of properly.

(13) Waste Characterization and Disposal.

The owner of record or the retained CDS shall:

(a) comply with Hazardous Waste Rules of R315-1 through R315-101, the Solid Waste Rules of R315-301 through R315-320;

(b) not remove from the site, not place in the waste stream, not place for recycling, and not reuse waste, impacted materials or contaminated debris;

(c) properly dispose of all contaminated items, all items that the owner of record or the retained CDS suspect are contaminated but have not tested, and all waste generated during decontamination work;

(d) decontaminate or properly dispose of all liquid waste, powders, pressurized cylinders and equipment used during illegal drug activity; and

 (e) identify all materials and debris that are not a hazardous waste and properly dispose of them.

(14) If the owner of record or the retained CDS cannot test an item of personal property or a fixture for contamination and cannot decontaminate the item or fixture, the owner of record or retained CDS shall properly dispose of the item as if it were contaminated with hazardous waste.

## R392-600-7. Decontamination Standards and Confirmation Sampling.

(1) The owner of record or the retained CDS shall obtain confirmation samples after decontamination to verify that concentrations are below the decontamination standards prior to the submittal of a final report. Samples are not required if a contaminated surface has been removed and replaced, unless there is evidence that the area may have been re-contaminated. All decontaminated areas, materials, and surfaces that have not been removed shall be sampled for compliance with the standards in Table 1.

(2) If the decontamination standards are not achieved in any area of the property, the owner of record or the retained CDS shall repeat the decontamination procedures until all areas of the property comply with the decontamination standards specified in Tables 1 and 2.

#### TABLE 1

TOXIC SUBSTANCES DECONTAMINATION STANDARD

SUBSTANCE LIMIT

Red Phosphorus	<u>Stained material must be cleaned and</u>
	decontaminated or removed as specified

	<u>in this rule such that there is no</u>
	remaining visible residue.
<u>Iodine Staining</u>	Stained material must be cleaned and
	decontaminated or removed as specified
	in this rule such that there is no
-	remaining visible residue.
Methamphetamine	<u>Less than or equal to 1.0 microgram per</u>
-	100 square centimeters for a discrete
-	sample or less than or equal to
	1.0 microgram, regardless of total area
	sampled, for a composite sample.
Corrosives	Surface pH less than, or equal to 2,
	and greater than or equal to 12.

(3) The owner of record or the retained CDS shall conduct sampling and testing for all of the metals listed in Table 2 if there is clear evidence that these metals were involved in the illegal drug activity.

#### TABLE 2

#### METALS DECONTAMINATION STANDARD

Less than or equal to 4.3 micrograms
Lead per 100 square centimeters
Less than or equal to 3.0 micrograms Mercury per cubic meter of air

(4) Confirmation sampling procedures.

The owner of record or the retained CDS shall:

(a) Photograph all sample locations in such a way that the location is easily identifiable and include the photographs with a description of each photograph in the final report.

(b) Obtain all samples from areas representative of the materials or surfaces being sampled or decontaminated. The owner of record or the CDS shall bias samples toward areas where contamination is suspected or confirmed or was known to be present prior to decontamination:

(c) Collect discrete samples from contaminated areas. The owner of record or the CDS shall conduct composite sampling if approved by the local health department. The local health department may choose not to allow any composite sampling but may approve composite sampling only if evidence suggests that the contamination is dispersed throughout a given area and the composite sample will accurately represent the conditions in the drug activity premises. The total result of the composite sample determines the level of contamination regardless of the number of areas sampled and without dividing the result by the total number of samples taken.

(d) Obtain, preserve, handle, and maintain all samples under chain-of-custody protocol in accordance with industry standards for the types of samples and analytical testing conducted.

(e) Decontaminate all reusable sampling equipment prior to using it to collect another sample.

(f) Properly equip and calibrate all testing equipment for the types of compounds being analyzed.

(5) Sample collection method.

<u>The owner of record or the retained CDS conducting the sampling</u> shall adhere to the following:

(a) Attach a disposable template to the sampling area, being careful not to touch the area within the template. The sample area shall be 100 square centimeters in a 10 centimeter by 10 centimeter

configuration if possible. The configuration of the template may vary to accommodate the sample area. An outline of the template may be drawn on the sample area:.

(b) Use a new template for each sample location;

(c) Use a pair of single-use latex or nitrile gloves to collect each sample. Vinyl gloves shall not be used:

(d) For all sampling use cotton gauze, either 12-ply, 3 inches by 3 inches or 8-ply, 4 inches by 4 inches from unopened, uncontaminated packages until used on the premises;

(e) Fold the sample media in half twice and wet with 2-3 milliliters of 99-100% isopropyl alcohol, or methanol, then lightly squeeze out the excess liquid;

(f) Press firmly on the sample media, but not excessively, with fingers being careful to not touch the sample surface; and

(g) Perform wipe samples using the perpendicular method as described below:

(i) Wipe the entire sample area with five overlapping side-to-side horizontal passes beginning at the top and progressing to the bottom in a "Z" pattern. The entire sample area shall be completely wiped once. A blotting technique in a "Z" pattern may be used for rough areas. When using the blotting technique, blot five times on each horizontal pass.

(ii) Without allowing the sample media to touch any other surface, reverse the fold in the sample media so that the collection side is facing inward.

(iii) Using the fresh side of the same sample media, wipe the area again with five overlapping top-to-bottom vertical passes beginning at the left side and progressing to the right in an "N" pattern. The entire sample area shall be completely wiped once. If blotting, blot five times on each vertical pass.

(iv) Fold the gauze again and seal each wipe sample in a clean, new, air-tight, disposable sample container. Recommended containers are 50 milliliter polypropylene disposable centrifuge tubes or 40 millimeter VOA glass vials. Samples shall not be placed directly in plastic bags. Label each vial to correspond with field notes, detailing sample location, date, and time.

(v) Submit one sample media blank for every batch of 15 samples collected, or portion thereof, per day, per location. Prepare each blank by following the steps outlined in Subsection(iv).

(vi) Submit all samples, blanks, and three unopened sample media used in that property's sample collection to a certified laboratory for analysis for the presence and quantity of methamphetamine. The certified laboratory must be one certified by the Utah Department of Health under Rule 444-14 for methamphetamine testing. The laboratory's reporting limit must be at least five times lower than the applicable decontamination level and the laboratory must have calibration standards at or below the reporting limit.

(6) Special Procedures for Composite Samples.

In collecting composite samples, the owner of record or the retained CDS shall follow the same procedure outlined in Subsection (4) with the following exceptions:

(a) The owner of record or the retained CDS shall not include more than four surfaces in a composite sample.

(b) The owner of record or the retained CDS shall only include similar surfaces in the same room in a single composite sample.

(c) A separate and new sample media shall be used for each area sampled.

(d) The same template may be used for all areas from which a composite sample is taken.

(e) A single pair of gloves may be used to collect each sample that will be part of a composite sample. A new pair of gloves shall be used for each composite sample.

(f) The owner of record or retained CDS shall place all individual samples that comprise the composite sample in one sample container.

(7) Sample Collection Locations.

The owner of record or the retained CDS shall:

(a) Wipe sample four discrete sample areas or one composite area of four 10 centimeters by 10 centimeter areas (100 square centimeters) from each room:

(i) for preassessment sampling, where illegal drug activities are suspected to have occurred; and

(ii) for post decontamination confirmation sampling, where decontamination activities were preformed.

(b) obtain the four samples from four separate nonporous surfaces of each room;

(c) collect samples from randomly chosen locations;

(d) if present, sample from painted drywall, sealed wood, or metal surfaces, but glass, unpainted drywall, unsealed wood, and tile are not suitable sample surfaces if painted drywall, sealed wood, or metal surfaces are available;

(e) in addition to the room samples, sample four discrete locations or four 10 centimeter by 10 centimeter areas (100 square centimeters) to represent a composite sample from different areas of the HVAC system; however, if the HVAC system serves more than one unit or structure, the owner of record or the retained CDS shall progressively collect from the distribution system as well as the corresponding areas that it serves until the contamination is determined to be below the decontamination standards established in this rule;

(f) if appliances are present, sample one discrete sample area from each appliance on the exposed surface of each appliance, and if multiple appliances are present, take a composite sample of up to four 10 centimeters by 10 centimeter areas (100 square centimeters); and

(g) in other enclosed spaces where illegal drug activities are suspected to have occurred, wipe sample four discrete sample areas or one composite area from the surfaces most likely to be contaminated.

(8) VOC sampling and testing procedures, if indicated.

The owner of record or the retained CDS shall:

(a) use a properly calibrated PID or FID capable of detecting VOCs to test for VOCs;

(b) record readings for each sample location;

(c) test three exterior areas outside the contaminated areas and in areas with no known or suspected sources of VOCs to determine the background concentration of VOCs;

(d) test at least three locations in contaminated areas for VOC readings, holding the testing equipment probe in the sample location for at least 30 seconds to obtain a reading; and

(e) test all accessible plumbing traps for VOCs by holding the testing equipment probe in the plumbing pipe above the trap for at least 60 seconds.

(9) Corrosives testing procedures, if indicated.

The owner of record or the retained CDS shall measure surface pH on horizontal surfaces of at least three locations in each room within the contaminated areas using deionized water and pH test strips as follows:

(a) use pH test strips capable of providing a visual indication and measuring the allowable limits in Table 1:

(b) record the pH reading for each sample location; and

(c) apply deionized water to the surface and allow the deionized water to stand for at least three minutes, then place the pH test strip in the water for a minimum of 30 seconds before reading.

(10) Lead sampling and testing procedures, if indicated.

The owner of record or the retained CDS shall:

(a) use cotton gauze either 12-ply, 3 inches by 3 inches from unopened, uncontaminated packages until used on the premises.

(b) wet the sample media with analytical grade 3 percent nanograde nitric acid:

(c) blot or wipe using the perpendicular method described in Subsections(5)(g)(i) through (iv);

(d) sample four 10 centimeter by 10 centimeter areas, 100 square centimeters, in each room within the contaminated area; and

(e) deliver the sample container to a certified laboratory that uses EPA Method 6010B or an equivalent method approved by the Utah Department of Health.

(11) Mercury sampling and testing procedures, if indicated. The owner of record or the retained CDS shall:

(a) use a properly calibrated mercury vapor analyzer to evaluate the decontaminated areas for the presence of mercury;

(b) record all mercury readings for each sample area:

(c) test at least three locations in each room suspected of being contaminated, holding the testing equipment probe in the sample location for at least 30 seconds to obtain a reading; and

(d) test all accessible plumbing traps for mercury by holding the testing equipment probe in the plumbing pipe above the trap for at least 60 seconds.

(12) Onsite wastewater system sampling and testing procedures.

The owner of record or the retained CDS shall:

(a) sample the liquid in the septic tank with a new clean bailer or similar equipment;

(b) decant or pour the liquid with minimal turbulence into three new VOA vials properly prepared by the certified laboratory; and

(c) fill the VOA vials so that there are no air bubbles in the sealed container, but if air bubbles are present, empty the vial and refill;

(d) properly label the sample vials properly with the date, time, and sample location; and

(e) The laboratory shall analyze the sample using EPA Method 8260 or equivalent.

(13) Confirmation sampling by local health departments.

The local health department may conduct confirmation sampling after decontamination is completed to verify that the property has been decontaminated to the standards outlined in this rule.

#### R392-600-8. Final Report.

(1) The owner of record or the retained CDS shall prepare a final report upon completion of decontamination activities and submit the report to the local health department of the county in which the property is located for review.

(2) The owner of record and, if a CDS was retained, the retained CDS shall retain the report for a minimum of three years. (3) The final report shall include the following information and documentation:

(a) complete identifying information as required for work plan;
 (b) if applicable, the name and certification number of the CDS

who performed the decontamination activities on the property;

(c) a detailed description of the decontamination activities conducted on the property;

(d) a description of all deviations from the work plan;

(e) photographs showing each of the sample locations,

(f) a drawing or sketch of the property, clearly labeling all sample locations.

(g) a copy of all test results performed by a certified laboratory and, if applicable, test results for VOCs, corrosives, and mercury; (h) a written discussion interpreting the test results for all

(ii) a written discussion interpreting the test results for an analytical testing on all samples;

(i) a copy of the analytical laboratory test quality assurance data on all samples submitted to a laboratory and a copy of the chain-of-custody protocol documents:

(j) a summary of the waste characterization work, any waste sampling and testing results, and transportation and disposal documents, including bills of lading, weight tickets, and manifests for all materials removed from the property;

(k) a written discussion and tables summarizing the confirmation sample results with a comparison to the decontamination standards outlined in this rule; and

(1) an affidavit from the owner of record, or retained CDS, if one was retained, confirming that the property has been decontaminated to the standards outlined in this rule.

(4) The owner of record or the retained CDS submitting the final report shall key all required information to, or contain a reference to, the appropriate subsection of this rule.

#### R392-600-9. Reference.

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The document: U.S. Environmental Protection Agency. Region 9: Superfund Preliminary Remediation Goals (PRG) Table, October 2008, is adopted by reference.

KEY: illegal drug operation, methamphetamine decontamination

Date of Enactment or Last Substantive Amendment: [May 2, 2005]2009

Authorizing, and Implemented or Interpreted Law: 19-9-906

# Insurance, Administration **R590-126-4**

**Prohibited Policy Provisions** 

#### NOTICE OF PROPOSED RULE

(Amendment) DAR FILE NO.: 32272 FILED: 01/05/2009, 13:25

#### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsection R590-126-4(2)(d) was deleted from this rule on 04/09/2007 and by mistake was added back into the rule on 07/30/2007. The purpose of this amendment is to once again delete Subsection R590-126-4(2)(d).

SUMMARY OF THE RULE OR CHANGE: The only change being made to this rule is the elimination of Subsection R590-126-4(2)(d) which states that "Any preexisting condition elimination period must be reduced by any applicable creditable coverage."

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201, 31A-2-202, 31A-23a-412, 31A-22-605, 31A-22-623, 31A-22-626, 31A-23a-402, and 31A-26-301

#### ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: This change will have no effect on the department or the state's budget since the department has been regulating as though it was not a part of the law since April 2007.

LOCAL GOVERNMENTS: The change to this rule will have no effect on local government since the rule deals solely with the relationship between the department and its health licensees.
 SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The change to this rule will have no effect on small businesses since the department has been regulating as though the subsection being deleted has not been a part of the law since April 2007.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The change to this rule will have no effect on businesses or consumers since the department has been regulating as though the subsection being deleted here had not been a part of the law since April 2007.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses as a result of this change. D Kent Michie, Commissioner

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 at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2009

AUTHORIZED BY: Jilene Whitby, Information Specialist

#### **R590.** Insurance, Administration. **R590-126.** Accident and Health Insurance Standards. **R590-126-4.** Prohibited Policy Provisions.

(1) Probationary periods.

(a) A policy shall not contain provisions establishing a probationary period during which no coverage is provided under the policy, subject to the further exception that a policy may specify a

probationary period not to exceed six months for specified diseases or conditions and losses resulting from disease or condition related to:

- (i) adenoids;
- (ii) appendix;
- (iii) disorder of reproductive organs;
- (iv) hernia;
- (v) tonsils; and
- (vi) varicose veins.

(b) The six-month period in Subsection (1)(a) may not be applicable where such specified diseases or conditions are treated on an emergency basis.

(c) Accident policies may not contain probationary or waiting periods.

(d) A probationary or waiting period for a specified disease policy shall not exceed 30 days.

(2) Preexisting conditions.

(a) Except as provided in Subsections (b) and (c), a policy shall not exclude coverage for a loss due to a preexisting condition for a period greater than 12 months following the issuance of the policy or certificate where the application or enrollment form for the insurance does not seek disclosure of prior illness, disease or physical conditions or prior medical care and treatment and the preexisting condition is not specifically excluded by the terms of the policy or certificate.

(b) A specified disease policy shall not exclude coverage for a loss due to a preexisting condition for a period greater than six months following the issuance of the policy or certificate, unless the preexisting condition is specifically excluded.

(c) A hospital confinement indemnity policy shall not exclude a preexisting condition for a period greater than 12 months following the effective date of coverage of an insured person unless the preexisting condition is specifically and expressly excluded.[

# (d) Any preexisting condition elimination period must be reduced by any applicable creditable coverage.]

(3) Hospital indemnity. Policies providing hospital confinement indemnity coverage shall not contain provisions excluding coverage because of confinement in a hospital operated by the federal government.

(4) Limitations or exclusions. A policy shall not limit or exclude coverage or benefits by type of illness, accident, treatment or medical condition, except as follows:

- (a) abortion;
- (b) acupuncture and acupressure services;

(c) administrative charges for completing insurance forms, duplication services, interest, finance charges, or other administrative charges, unless otherwise required by law;

- (d) administrative exams and services;
- (e) alcoholism and drug addictions;

(f) allergy tests and treatments;

- (g) aviation;
- (h) axillary hyperhidrosis;
- (i) benefits provided under:
- (i) Medicare or other governmental program, except Medicaid;
- (ii) state or federal worker's compensation; or
- (iii) employer's liability or occupational disease law.

(j) cardiopulmonary fitness training, exercise equipment, and membership fees to a spa or health club;

(k) charges for appointments scheduled and not kept;

(l) chiropractic;

(m) complementary and alternative medicine;

(n) corrective lenses, and examination for the prescription or fitting thereof, but policies may not exclude required lens implants following cataract surgery;

(o) cosmetic surgery; reversal, revision, repair, complications, or treatment related to a non-covered cosmetic surgery. This exclusion does not apply to reconstructive surgery when the service is incidental to or follows surgery resulting from trauma, infection or other diseases of the involved part; or reconstructive surgery because of congenital disease or anomaly of a covered dependent child that has resulted in a functional defect;

(p) custodial care;

(q) dental care or treatment, except dental plans;

(r) dietary products, except as required by R590-194;

(s) educational and nutritional training, except as required by R590-200;

(t) experimental and/or investigational services;

(u) felony, riot or insurrection, when the insured is a voluntary participant;

(v) foot care in connection with corns, calluses, flat feet, fallen arches, weak feet, chronic foot strain or symptomatic complaints of the feet, including orthotics. The exclusion of routine foot care does not apply to cutting or removal of corns, calluses, or nails when provided to a person who has a systemic disease, such as diabetes with peripheral neuropathy or circulatory insufficiency, of such severity that unskilled performance of the procedure would be hazardous;

(w) gastric or intestinal bypass services including lap banding, gastric stapling, and other similar procedures to facilitate weight loss; the reversal, or revision of such procedures; or services required for the treatment of complications from such procedures;

(x) gene therapy;

(y) genetic testing;

(z) hearing aids, and examination for the prescription or fitting thereof;

(aa) illegal activities, limited to losses related directly to the insured's voluntary participation;

(bb) incarceration, with respect to disability income policies;

(cc) infertility services, except as required by R590-76;

(dd) interscholastic sports, with respect to short-term nonrenewable policies;

(ee) mental or emotional disorders;

(ff) motor vehicle no-fault law, except when the covered person is required by law to have no-fault coverage, the exclusion applies to charges up to the minimum coverage required by law whether or not such coverage is in effect;

(gg) nuclear release;

(hh) preexisting conditions or diseases as allowed under Subsection R590-126-4(2), except for coverage of congenital anomalies as required by Section 31A-22-610;

(ii) pregnancy, except for complications of pregnancy;

(jj) refractive eye surgery;

(kk) rehabilitation therapy services (physical, speech, and occupational), unless required to correct an impairment caused by a covered accident or illness;

(ll) respite care;

(mm) rest cures;

(nn) routine physical examinations;

(oo) service in the armed forces or units auxiliary to it;

(pp) services rendered by employees of hospitals, laboratories or other institutions;

(qq) services performed by a member of the covered person's immediate family;

(rr) services for which no charge is normally made in the absence of insurance;

(ss) sexual dysfunction;

(tt) shipping and handling, unless otherwise required by law;

(uu) suicide, sane or insane, attempted suicide, or intentionally self-inflicted injury;

(vv) telephone/electronic consultations;

(ww) territorial limitations outside the United States;

(xx) terrorism, including acts of terrorism;

(yy) transplants;

(zz) transportation;

(aaa) treatment provided in a government hospital, except for hospital indemnity policies;

(bbb) war or act of war, whether declared or undeclared; or

(ccc) others as may be approved by the commissioner.

(5) Waivers. This rule shall not impair or limit the use of waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases, physical condition or extra hazardous activity. Where waivers are required as a condition of issuance, renewal or reinstatement, signed acceptance by the insured is required.

(6) Commissioner authority. Policy provisions precluded in this section shall not be construed as a limitation on the authority of the commissioner to prohibit other policy provisions that in the opinion of the commissioner are unjust, unfair or unfairly discriminatory to the policyholder, beneficiary or a person insured under the policy.

#### **KEY:** health insurance

Date of Enactment or Last Substantive Amendment: [July 30, 2007]2009

Notice of Continuation: January 11, 2007

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-2-202; 31A-21-201; 31A-22-605; 31A-22-623; 31A-22-626; 31A-23a-402; 31A-26-301

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### Insurance, Administration **R590-136**

### (Changed to R592-11)

Title Insurance Agents' Annual Reports

#### NOTICE OF PROPOSED RULE

(Amendment) DAR FILE NO.: 32316 FILED: 01/15/2009, 16:06

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being changed in order to make it a Title and Escrow Commission rule by changing the rule number, changing the contents of the forms required by the rule, and requiring that reports be filed electronically.

SUMMARY OF THE RULE OR CHANGE: The rule number is being changed from Rule R590-136 to Rule R592-11. Section R592-11-1 adds an additional authority, Section 31A-2-404, putting the rule under the authority of the Title Commission. Section R592-11-2 combines the Purpose and Scope sections. Section R592-11-3 adds the definition of "Title Insurance"

Producer". Section R592-11-4 changes the content requirements of the Producer Annual Report. Section R592-11-5 now requires the Controlled Business Report to be filed April 30. Section R592-11-6 requires both forms to be filed electronically with the department. Two new sections were added to the rule, a penalty section under R592-11-7, and an enforcement section under R592-11-8.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-404, 31A-23a-413, and 31A-23a-503

#### ANTICIPATED COST OR SAVINGS TO:

THE STATE BUDGET: The changes to this rule will have no fiscal impact on the Insurance Department nor the state's budget. There is no change in the number of filings made or in the fees paid to the department.

✤ LOCAL GOVERNMENTS: The changes to this rule deal solely with the relationship between the department and their title insurance licensees. It will have no impact on local governments.

SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The rule will have minimal fiscal impact because these reports are currently required.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule will have minimal fiscal impact because these reports are currently required.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule will have minimal fiscal impact because these reports are currently required. D. Kent Michie, Commissioner

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 at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2009

AUTHORIZED BY: Jilene Whitby, Information Specialist

#### [R590]R592-11. Insurance, [Administration]Title and Escrow Commission.

[R590-136]R592-11. Title Insurance [Agents']Producer Annual and Controlled Business Reports.

#### [<del>R590-136-1</del>]<u>R592-11-1</u>. Authority.

This rule is promulgated [by the commissioner ]pursuant to:

(1) Section 31A-2-404(2)(a), which requires the Title and Escrow Commission (Commission) to make rules related to title insurance;

(2) Section 31A-23a-413. [that]which requires the annual filing of a report by each title insurance producer, as defined in R592-11-3, containing a verified statement of the producer's financial condition, transactions, and affairs; [by title agents] and

(3) Subsection 31A-23a-503(8), [that]which requires the [commissioner to prescribe the forms for these] annual filing[s] of a controlled business report.

#### [R590-136-2]R592-11-2. Purpose and Scope.

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

#### [R590-136-3]R592-11-3. Definition.

For the purpose of this rule <u>the Commission adopts the definitions</u> as set forth in Sections 31A-1-301 and 31A-2-204 and the following:[, "agent" shall mean:]

(1) <u>"Title insurance producer"[an agency as defined in Subsection</u> 31A-23a-102(5)] includes:

(a) a title insurance agency as defined in 31A-1-301(6);

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

(c) an attorney licensed to practice law in Utah who is also an individual title producer not designated to a title insurance agency.

# [R590-136-4]R592-11-4. [Financial Condition, Transactions and Affairs]Title Insurance Producer Annual Report.

(1) <u>Title insurance producers, as defined in R592-11-3, shall file a</u> <u>Title Insurance Producer Annual Report containing the information</u> <u>shown in subsection 2 below.</u>

[Title insurance agents shall file-]

(2) A Title Insurance Producer Annual Report shall consist of:

(a) a balance sheet and an income and expense statement prepared and presented in conformity with generally accepted accounting principles:[-and a reserve fund report required by Subsection 31A-23-204(2). The reserve fund report shall include the following:

(a) gross income received from title insurance business;

(b) deposit required, 1% of gross income received from title insurance business;

(c) all deposits made and dates of deposits;

 (d) reserve fund account number and depository institution name and address; (e) balance after last deposit;

(f) copies of the account statements; and

(g) reporting period.

(2) The title insurance agent shall file a report that identifies ]
 (b) the name and address of each financial institution where a title or escrow trust account is maintained;

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

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

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

(iii) a copy of the commissioner's approval of equivalent financial protection; and[other equivalent] approved by the commissioner[, that satisfies the requirement of Subsection 31A-23a-204(2).]:

(d) the name, address, and percentage of ownership of each owner.

(3) <u>A title insurance producer, as defined in R592-11-3, shall file</u> <u>a Title Insurance Producer Annual Report[The reports required by this</u> <del>rule shall be verified and filed with the commissioner by</del>] <u>not later than</u> April 30 of each year.

(4) <u>The Title Insurance Producer Annual Report period shall be</u> the preceding calendar year.

(5) A[The reports] Title Insurance Producer Annual Report will be considered[required are] protected data if the producer submitting the report requests classification as a protected record in accordance with Sections 63G-2-305 and 63G-2-309. [Access shall be restricted to the title insurance agent and the Insurance Department.]

#### [R590-136-5]R592-11-5. Controlled Business Report.

(1) [Pursuant to Subsection 31A-23a 503(8)(a) each]A title insurance [agent]producer, as defined in R592-11-3, shall file an annual Controlled Business Report not later than April 30 of each year.

(2) The Controlled Business Report period shall be the preceding calendar year and shall contain the information required in Subsection 31A-23a-503(8)(a). [report the names and addresses of any persons owning a financial interest in the title insurance agent as of the last day of the calendar year, who are known or reasonably believed by the title insurance agent to be producers of title business, and the proportion of the title insurance agent's gross operating revenues that are attributable to controlled business during the preceding calendar year. The report shall be filed by April 30 of each year.]

(3) A[The controlled business report] Controlled Business Report is a public record upon filing.

# **R592-11-6.** Electronic Filing of Title Insurance Producer Annual Report and Controlled Business Report.

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

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

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

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

(b) Controlled Business Report form.

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

#### R592-11-7. Penalties.

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

#### R592-11-8. Enforcement Date.

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

#### [R590-136-6]R592-11-9. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

#### KEY: title insurance[-law]

Date of Enactment or Last Substantive Amendment: [November 1, 1996]2009

Notice of Continuation: June 27, 2006

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

Insurance, Administration

### R590-187 (Changed to R592-10)

Assessment of Title Insurance Agencies and Title Insurers for Costs Related to Regulation of Title Insurance

#### NOTICE OF PROPOSED RULE

(Amendment) DAR FILE No.: 32317 FILED: 01/15/2009, 16:20

#### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule number is being changed to put the rule under the jurisdiction of the Title and Escrow Commission (Commission).

SUMMARY OF THE RULE OR CHANGE: The rules number is changed from R590-187 to R592-10, making it a Commission rule. Section R592-10-1 adds Section 31A-2-404 to the authority section, putting the rule under the jurisdiction of the Commission and requiring them to determine the costs and expenses of the title assessment. Section R592-10-2 combines the purpose and scope sections. The purpose and scope are expanded to require the mailing address of each title office and to establish the calculation method for the assessment. Section R592-10-3 changes the definition of

"office". Section R592-10-4 is reformatted. Section R592-10-5 changes the name of the Branch Office Report to Office Report and requires it be filed electronically with the department. Section R592-10-6 is new and describes the method of calculating the title assessment. Section R592-10-8 requires payment of assessment by the date on the invoice and in the manner required by the department's fee rule, Rule R590-102.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-404 and 31A-23a-415

#### ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: This rule will reduce the work of the department because the assessment is to be paid electronically. It does not make any change to the fees coming into the department.

✤ LOCAL GOVERNMENTS: This rule deals with the relationship between the department and its title insurance licensees. It will have no impact on local governments.

SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The rule will eliminate mailing costs when making assessment payments. The changes will not affect the amount of the assessment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes to the rule will create no additional costs to small businesses because the changes in this rule are procedural and not substantive. Since the cost savings to title agencies and producers is so minor, consumers will not be affected.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal impact on businesses. D. Kent Michie, Commissioner

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 at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2009

AUTHORIZED BY: Jilene Whitby, Information Specialist

#### [R590]R592. Insurance, [Administration]<u>Title and Escrow</u> <u>Commission</u>.

[<del>R590-187</del>]<u>R592-10</u>. [<u>Assessment of]Title Insurance Regulation</u> <u>Assessment for</u> Title Insurance Agencies and Title Insurers [<del>for</del> <u>Costs Related to Regulation of Title Insurance</u>].

[<del>**R**590-187-1</del>]<u>**R**592-10-1</u>. Authority.

This rule is promulgated by the <u>Title and Escrow Commission</u> (<u>Commission</u>][eommissioner] pursuant to Subsections [<del>31A-2-201(3)</del>]: (1) 31A-2-404(2)(d) which requires the Commission to determine

by rule the assessment required by 31A-23a-415; and (2) 31A-23a-415(2)(d) which requires the Commission to

establish the amount of costs and expenses that will be covered by the assessment.

#### [R590-187-2]R592-10-2. Purpose and Scope.

(1) The purposes of this rule [is]are to:

[(1)](a) [to-]establish the <u>categories of costs</u> and expenses incurred by the department in administering, investigating and enforcing the provisions of Title 31A, Chapter 23a, Parts IV and V related to the marketing of title insurance <u>and the audits of title</u> <u>agencies</u>;

[(2)](b) [to]require the reporting by a title insurance agency and a title insurer of the mailing address and physical location of each office in each county where the title agency or title insurer maintains an office[determine a filing date for each title insurance agency or insurer to report to the commissioner the number of counties in which a title insurance agency or a title insurer maintains offices];

[(3)](c) [to establish a deadline for the payment of the assessment;]establish a calculation method for the calculation of the number of title insurance agency or title insurer offices; and

[(4)](d) [to-]determine the premium year used in calculating the assessment of title insurers.[

#### R590-187-3. Scope.]

(2) This rule applies to all title insurers[5] and title insurance agencies.

#### [R590-187-4]R592-10-3. Definitions.

(1) For the purpose of the rule the [commissioner]Commission adopts the definitions as set forth in Sections 31A-1-301, 31A-2-402, and the following:

] [(2)](a) "[Branch]Office" means each physical location of a title insurance agency or a title insurer in a county[local or area office of the headquarters of an agency or company]. Office includes any physical location that is open and available to the public.

#### [R590-187-5]R592-10-4. Costs and Expenses.

[(1)-]The amount of costs and expenses that will be covered by the assessment imposed by 31A-23a-415 for any fiscal year in which an assessment exists:

 (1) will be for a Market Conduct Examiner I as determined by the department's budget as approved by the Utah State Legislature, including any approved salary increases or increases in benefits; and
 (2) will include the following expenses:

- (a) [<del>consist of the</del>]salary and state paid benefits;
- (b) travel expenses, including daily vehicle expenses;
- (c) computer hardware and software expenses;

(d) e-commerce expenses;[ and]

(e) wireless communications expenses: and

(f) training expenses[ for a Market Conduct Examiner I as determined by the department's budget as approved by the Utah State Legislature and would include any salary increases or increases in benefits].

#### [R590-187-6]R592-10-5. [Reporting of Counties]Office Report.

(1) A title insurance agency and <u>a</u> title insurer shall [deliver to the commissioner,]submit a completed Office Report Form not later than 30 days after the date a change described below occurs in a county where the title insurance agency or title insurer maintains an office:[a Branch Office Report within 30 days of]

(a) the opening or closing of [any]an office;[,]

(b) [of any]a change of address of an office;[,] or

(c) a change in [branch]the manager of an office.

(2) [Branch Office Report form is available from the department, or from the department's web page. This form shall be utilized in reporting the office information required by this rule.]An Office Report Form shall be submitted electronically via email to licensing.uid@utah.gov.

 (3) The department's Office Report Form, which is available on the department's website, shall be used to report changes in offices.
 (a) An actual copy of the form may be used or may be adapted

to a particular word processing system.

(b) If adapted, the content, size, font, and format must be similar.

#### <u>R592-10-6.</u> Calculation Method for the Calculation of the Number of Title Insurance Agency Offices.

(1) All offices reported in accordance with Section R592-10-5 will be included in the calculation of the title insurance assessment.

(2) An annual assessment calculation for a title insurance agency or title insurer that is calculated using incorrect numbers of offices because the number of offices was incorrectly reported will not be recalculated.

(3) A title insurance agency or title insurer found to have improperly reported their offices may be subject to penalties in accordance with Section R592-10-9.

#### [<del>R590-187-7</del>]<u>R592-10-7</u>. <u>Premium Year for Title Insurer</u> Assessment.

(1) The title insurance assessment shall be calculated using direct premiums written during the preceding calendar year.

(2) The direct premiums written shall be taken from the insurer's annual statements for that year.

#### [R590-187-8]R592-10-8. Assessment Payment[-Deadline].

(1) An annual assessment shall be paid by the due date on the invoice.

(2) Payments shall be made in accordance with R590-102, Insurance Department Fee Payment Rule.

[----Payment.

(1) Checks shall be made payable to the Utah Insurance Department. A check that is dishonored in the process of the collection will not constitute payment of the fee for which it was issued and any action taken pursuant to the fee payment will be negated. Any late fees or penalties will apply until proper payment is made. Tender of a check to the department, that is subsequently dishonored, is a violation of this rule.

(2) Cash payments. The department is not responsible for unreceipted cash that is lost or miss delivered.

(3) Electronic payments.

(a) Credit Card. Credit cards may be used to pay any fee due to the department. Credit card payments that are dishonored will not constitute payment of the fee and any action taken based on the payment will be negated. Late fees and other penalties, resulting from the negated action, will apply until proper payment is made. A credit card payment that is dishonored is a violation of this rule.

(b) Automated clearinghouse (ACH). Payers or purchasers desiring to use this method must contact the department for the proper routing and transit information. Payments that are made in error to, or which are received by another agency or that are not deposited into the department's account will not constitute a legal remittance of the fee and any action taken based on such tender will be deemed to not meet obligations under this rule. Late fees and other penalties resulting from the negated action will apply until proper payment is made. An ACH payment that is dishonored is a violation of this rule.

#### R592-10-9. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.

#### [R590-187-9]R592-10-10. Enforcement Date.

The commissioner will begin enforcing [the revised provisions of ]this rule 45 days from the rule's effective date.

#### [R590-187-10]R592-10-11. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, that invalidity will not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

#### **KEY: title insurance**

## Date of Enactment or Last Substantive Amendment: [January 8, 2004]2009

Notice of Continuation: July 29, 2008

Authorizing, and Implemented or Interpreted Law: 31A-2-201; 31A-23a-415

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### Labor Commission, Adjudication R602-2-2

Guidelines for Utilization of Medical Panel

#### NOTICE OF PROPOSED RULE

(Amendment) DAR FILE NO.: 32276 FILED: 01/06/2009, 12:51

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule change is to reverse a recent change to this rule. The recent change added the modifier "expert" to the type of medical opinion that may warrant appointment of a medical panel. This rule change removes the modifier "expert" from the type of medical opinion that may warrant appointment of a medical panel.

SUMMARY OF THE RULE OR CHANGE: This rule change removes the modifier "expert" from the type of medical opinions that can support appointment of a medical panel.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 34A-1-301 et seq. and 63G-4-102 et seq.

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The proposed amendment reverses a rule change recently enacted and never implemented. It will have no cost or savings to the state budget because current practice will remain the same.

✤ LOCAL GOVERNMENTS: This proposed amendment reverses a rule change recently enacted and never implemented. It will have no cost or savings to the local government because current practice will remain the same.

SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This proposed amendment reverses a rule change recently enacted and never implemented. It will have no cost or savings to the local government because current practice will remain the same.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This change maintains long-standing Commission practice of accepting conflicting medical opinions as a basis for referring workers' compensation medical issues to impartial medical panels. Consequently it will impose no compliance costs on affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change merely removes the unnecessary modifier "expert" from the Commission's rule, thereby maintaining long-standing Commission practice. The change will have no fiscal impact on businesses. Sherrie Hayashi, Commissioner

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO: Richard M. Lajeunesse at the above address, by phone at 801-536-7928, by FAX at 801-530-6333, or by Internet E-mail at rlajeunesse@utah.gov INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2009

AUTHORIZED BY: Sherrie Hayashi, Commissioner

#### R602. Labor Commission, Adjudication.

# R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.

#### R602-2-2. Guidelines for Utilization of Medical Panel.

Pursuant to Section 34A-2-601, the Commission adopts the following guidelines in determining the necessity of submitting a case to a medical panel:

A. A panel will be utilized by the Administrative Law Judge where one or more significant medical issues may be involved. Generally a significant medical issue must be shown by conflicting medical reports. Significant medical issues are involved when there are:

1. Conflicting [expert\_]medical opinions related to causation of the injury or disease;

2. Conflicting [expert-]medical opinion of permanent physical impairment which vary more than 5% of the whole person,

3. Conflicting [expert]medical opinions as to the temporary total cutoff date which vary more than 90 days;

4. Conflicting [expert-]medical opinions related to a claim of permanent total disability, and/or

5. Medical expenses in controversy amounting to more than \$10,000.

B. A hearing on objections to the panel report may be scheduled if there is a proffer of conflicting medical testimony showing a need to clarify the medical panel report. Where there is a proffer of new written conflicting medical evidence, the Administrative Law Judge may, in lieu of a hearing, re-submit the new evidence to the panel for consideration and clarification.

C. Any expenses of the study and report of a medical panel or medical consultant and of their appearance at a hearing, as well as any expenses for further medical examination or evaluation, as directed by the Administrative Law Judge, shall be paid from the Uninsured Employers' Fund, as directed by Section 34A-2-601.

# KEY: workers' compensation, administrative procedures, hearings, settlements

Date of Enactment or Last Substantive Amendment: [February7, 2008]2009

Notice of Continuation: August 15, 2007

Authorizing, and Implemented or Interpreted Law: 34A-1-301 et seq.; 63G-4-102 et seq.

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### Labor Commission, Adjudication **R602-7** Adjudication of Discrimination Claims

#### NOTICE OF PROPOSED RULE

(New Rule) DAR FILE NO.: 32277 FILED: 01/06/2009, 12:54

#### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish specific rules of procedure for adjudication of employment discrimination disputes by the Labor Commission's Adjudication Division. In the past, the Division has followed the general procedures established by the Utah Antidiscrimination Act and the Utah Administrative Procedures Act. As necessary and appropriate, the Division has also borrowed and relied on the procedures outlined for adjudication of workers' compensation cases in the Commission's Rule R602-2. However, the above-referenced sources do not address all the procedural issues that arise in employment discrimination cases. For that reason, the Division has developed this Rule R602-7, which is specific to such discrimination cases.

SUMMARY OF THE RULE OR CHANGE: The proposed rule identifies the Commission's statutory authority for promulgating this rule and specifies the applicability of the rule. It defines terms, establishes procedures for scheduling conferences, and regulates discovery. The rule describes the course and conduct of evidentiary hearings, as well as requests for Commission or Appeals Board review of decisions issued by administrative law judges.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-1-304, Subsection 34A-5-107(13), and Section 63G-4-102 et seq.

#### ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The procedures established by this rule are consistent with the Adjudication Division's current practice. The Commission does not anticipate that the rule will result in any cost or savings in the Adjudication Division's expenses in conducting the employment discrimination proceedings that are the subject of this rule. The same is true with respect to the state's expenses in participating in such proceedings in its capacity as an employer and litigant. Because the rule does not significantly change any existing procedures, the state as a litigant will not incur any additional costs or savings.

✤ LOCAL GOVERNMENTS: The Commission does not anticipate that the rule will result in any cost or savings to local governments. Because the rule does not significantly change any existing procedures, local governments in their capacities as employers and litigants will not incur any additional costs or savings.

✤ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The Commission does not anticipate that the rule will result in any cost or savings to small businesses or persons other than businesses. Because the rule does not significantly change any existing procedures, small businesses and other litigants in the employment discrimination proceedings that are the subject of this rule will not incur any additional costs or savings. COMPLIANCE COSTS FOR AFFECTED PERSONS: The objective of this rule is to streamline the process for adjudicating employment discrimination complaints. Substantially all the provisions of the rule are currently being applied in practice. Consequently, the Commission does not anticipate any additional compliance costs resulting from this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is designed to establish efficient and fair methods for adjudication of employment discrimination complaints before the Commission. As already noted, these procedures have been followed in actual practice in the past, but have not been formally incorporated into a rule. The Commission does not anticipate any negative fiscal impact on businesses as a result of this rule. To the contrary, the rule will provide clarity to these adjudicative proceedings that should tend to simplify them, thereby reducing costs to all litigants, including businesses. Sherrie Hayashi, Commissioner

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Richard M. Lajeunesse at the above address, by phone at 801-536-7928, by FAX at 801-530-6333, or by Internet E-mail at rlajeunesse@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2009

AUTHORIZED BY: Sherrie Hayashi, Commissioner

#### R602. Labor Commission, Adjudication. R602-7. Adjudication of Discrimination Claims. R602-7-1. Statutory Authority.

Section 34A-5-107(5)(c) provides a right for a person filing a charge of discrimination with the Utah Antidiscrimination and Labor Division to file a written request to the Division of Adjudication for an evidentiary hearing to review de novo a determination and order issued by the Utah Antidiscrimination and Labor Division. Section 34A-5-107(13) authorizes the Labor Commission to establish rules governing these proceedings.

#### R602-7-2. Applicability of Rule.

The provisions of R602-7 pertaining to requests for hearing pursuant Section 34A-5-107 (5) (c) supersede the Administrative Rules contained in R602-2, R602-3, R602-4, R602-5, R602-6 and R602-8 as to any actions brought pursuant to Section 34A-5-107 (5) (c).

#### <u>R602-7-3.</u> Adjudication of Actions Commenced Pursuant to Section 34A-5-107(5)(c).

1. Pleadings and Discovery.

a. Definitions.

i. "Commission" means the Labor Commission.

ii. "Division" means the Division of Adjudication within the Labor Commission.

iii. "Request for De Novo Review" pursuant to Section 34A-5-107(5)(c) means a written request filed with the Commission and directed to the Division requesting de novo review of a specific Determination and Order issued by the Utah Antidiscrimination and Labor Division and shall include the following:

A. the name, mailing address and telephone number of the party seeking de novo review and of their attorney, if applicable.

B. the name, mailing address and telephone number of the opposing parties and of their attorney if applicable.

<u>C. the date the Determination and Order was issued by the Utah Antidiscrimination Division.</u>

D. a request for relief, specifying the type and extent of relief requested, and a statement of facts supporting the requested relief.

<u>E.</u> a copy of the initial Charge of Discrimination filed with the Utah Antidiscrimination Division and a copy of the Determination and Order.

iv. "Petitioner" means the charging party in the original case resulting in the Determination and Order issued by the Utah Antidiscrimination and Labor Division.

v. "Respondent" means the respondent in the original case resulting in the Determination and Order issued by the Utah Antidiscrimination and Labor Division.

b. Scheduling Conference.

Upon receipt of the Request for De Novo Review the Division will schedule a scheduling conference to be attended by the parties and/or their attorneys. Following the scheduling conference the Division will issue a Scheduling Order containing deadlines and requirements for the filing of Petitioner's Statement, deadlines and requirements for the filing of Respondent's Answer, discovery deadlines, motion deadlines and any other deadlines deemed appropriate for the orderly administration of the case as determined by the administrative law judge assigned to the case.

c. Discovery.

i.(A) Required disclosures; Discovery methods.

I. Initial disclosures. Except in cases exempt under subdivision (c)(i)(A)(II) and except as otherwise stipulated or directed by order, a party shall, without awaiting a discovery request, provide to other parties:

Aa. the name and, if known, the address and telephone number of each individual likely to have discoverable information supporting its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

Bb. a copy of, or a description by category and location of, all discoverable documents, data compilations, electronically stored information, and tangible things in the possession, custody, or control of the party supporting its claims or defenses, unless solely for impeachment;

Cc. a computation of any category of damages claimed by the disclosing party, making available for inspection and copying all discoverable documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

Dd. Unless otherwise stipulated by the parties or ordered by the administrative law judge, the disclosures required by subdivision (c)(i)(A)(I) shall be made within 14 days after the disclosure meeting of the parties under subdivision (c)(i)(E). A party shall make initial disclosures based on the information then reasonably available and is not excused from making disclosures because the party has not fully completed the investigation of the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made disclosures.

II. Disclosure of expert testimony.

Aa. A party shall disclose to other parties the identity of any person who may be used at hearing to present expert opinion evidence.

Bb. Unless otherwise stipulated by the parties or ordered by the administrative law judge, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness or party. The report shall contain the subject matter on which the expert is expected to testify; the substance of the facts and opinions to which the expert is expected to testify; a summary of the grounds for each opinion; the qualifications of the witness.

III. Prehearing disclosures. A party shall provide to other parties the following information regarding the evidence that it may present at hearing other than solely for impeachment:

Aa. the name and, if not previously provided, the address and telephone number of each witness, separately identifying witnesses the party expects to present and witnesses the party may call if the need arises;

Bb. an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Cc. Disclosures required by subdivision (c)(i)(A)(III) shall be made at least 30 days before hearing.

IV. Form of disclosures. Unless otherwise stipulated by the parties or ordered by the administrative law judge, all disclosures shall be made in writing, signed and served.

V. Methods to discover additional matter. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

B. Discovery scope and limits. Unless otherwise limited by order of the administrative law judge in accordance with these rules, the scope of discovery is as follows:

I. In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

II. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. The party shall expressly make any claim that the source is not reasonably accessible, describing the source, the nature and extent of the burden, the nature of the information not provided, and any other information that will enable other parties to assess the claim. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the administrative law judge may order discovery from such sources if the requesting party shows good cause, considering the limitations of subsection (c)(i)(B)(III). The administrative law judge may specify conditions for the discovery.

III. Limitations. The frequency or extent of use of the discovery methods set forth in Subdivision (c)(i)(A)(V) shall be limited by the administrative law judge if it determines that:

Aa. the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive:

Bb. the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

Cc. the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The administrative law judge may act upon his or her own initiative after reasonable notice or pursuant to a motion under Subdivision (c)(i)(C).

IV. Hearing preparation: Materials.

(Aa) Subject to the provisions of Subdivision (c)(i)(B)(V) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under Subdivision (c)(i)(B)(I) of this rule and prepared in anticipation of litigation or for hearing by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

Bb. A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order. The provisions of Rule 37(a)(4) U. R. C.P. apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (a) a written statement signed or otherwise adopted or approved by the person making it, or (b) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

V. Hearing preparation: Experts.

A party may depose any person who has been identified as an expert whose opinions may be presented at hearing.

VI. Claims of Privilege or Protection of Hearing Preparation Materials.

Aa. Information withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as hearing preparation material,

the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

Bb. Information produced. If information is produced in discovery that is subject to a claim of privilege or of protection as hearing-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the administrative law judge under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

C. Protective orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without action by the administrative law judge, and for good cause shown, the administrative law judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

I. that the discovery not be had;

II. that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

III. that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

IV. that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

V. If the motion for a protective order is denied in whole or in part, the administrative law judge may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) U. R. C. P. apply to the award of expenses incurred in relation to the motion.

D. Supplementation of responses. A party who has made a disclosure or responded to a request for discovery with a response is under a duty to supplement the disclosure or response to include information thereafter acquired if ordered by the administrative law judge or in the following circumstances:

I. A party is under a duty to supplement at appropriate intervals disclosures if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required the duty extends both to information contained in the report and to information provided through a deposition of the expert.

II. A party is under a duty reseasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

E. Disclosure Meeting. The following applies to all cases.

I. Within thirty (30) days of the date of the scheduling order the parties shall meet in person or by telephone to discuss the nature and basis of their claims and defenses, to discuss the possibilities for settlement of the action, to make or arrange for the disclosures required by this rule, to discuss any issues relating to preserving discoverable information and to develop a stipulated discovery plan. Respondent's counsel shall schedule the meeting. The attorneys of record shall be present at the meeting and shall attempt in good faith to agree upon the disclosure plan.

II. The plan shall include:

Aa. what changes should be made in the form or requirement for disclosures under subdivision (c)(i)(A);

Bb. the subjects on which discovery may be needed;

Cc. any issues relating to preservation, disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

Dd. any issues relating to claims of privilege or of protection as hearing-preparation material;

III. The discovery plan of the parties shall only be filed with the Division as an attachment to any discovery motion.

F. Signing of discovery requests, responses, and objections.

I. Every request for discovery or response or objection thereto made by a party shall be signed by at least one attorney of record or by the party if the party is not represented, whose address shall be stated. The signature of the attorney or party constitutes a certification that the person has read the request, response, or objection and that to the best of the person's knowledge, information, and belief formed after reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

II. If a certification is made in violation of the rule, the administrative law judge, upon motion or upon his or her own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney fee.

G. Filing. A party shall only file disclosures or requests for discovery with the Division as an exhibit to a discovery motion. ii. Subpoenas.

Subpoenas may only be issued by the administrative law judge assigned to the case or the presiding judge if the assigned administrative law judge is unavailable. Commission subpoena forms shall be used in all discovery proceedings. Subpoenas shall be issued at least seven business days prior to a scheduled hearing or appearance unless good cause is shown for a shorter period. Witness fees and costs shall be paid by the party requesting the subpoena pursuant to Utah Code Section 34A-1-302(c).

iii. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties. iv. Sanctions. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah Rules of Civil Procedure.

d. Notices

i. Orders and notices mailed by the Division to the last address of record provided by a party is deemed served on that party.

ii. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

#### R602-7-4. Hearings.

1. Evidentiary hearings shall be conducted formally in accordance with Utah Code Section 63G-4-206. The petitioner shall have the burden of proving the claim of discrimination by a preponderance of substantial evidence. After the close of the proceedings, the administrative law judge will issue an order pursuant to Utah Code Section 63G-4-208.

2. In those cases where the Utah Antidiscrimination and Labor Division in its Determination and Order made a reasonable cause finding, the Utah Antidiscrimination and Labor Division shall be given an opportunity at the evidentiary hearing to briefly outline the basis of its Determination. The presentation by the Utah Antidiscrimination and Labor Division shall not be considered evidence by the administrative law judge in issuing an order.

#### R602-7-5. Motions for Review.

<u>1. Any party to an adjudicative proceeding may obtain review</u> of an Order issued by an administrative law judge by filing a written request for review with the Division in accordance with the provisions of Utah Code Subsection 34A-5-107 (11) and 63G-4-301. Unless a request for review is properly filed, the administrative law judge's order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. Thereafter, the administrative law judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary:

b. Amend or modify the prior order by a Supplemental Order, or

c. Refer the entire case for review.

2. If the administrative law judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

#### R602-7-6. Request for Reconsideration.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provision of Utah Code Section 63G-4-302. Any petitioner for judicial review of final agency action shall be governed by the provisions of Utah Code Section 63G-4-401.

# KEY: discrimination, administrative procedure, hearings, settlements

Date of Enactment or Last Substantive Amendment: 2009 Authorizing, Implemented or Interpreted Law: 34A-5-107; 63G-4-102 et seq.

# Labor Commission, Adjudication R602-8

Adjudication of Utah Occupational Safety and Health Citation Claims

### NOTICE OF PROPOSED RULE

(New Rule) DAR FILE NO.: 32278 FILED: 01/06/2009, 12:57

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish specific rules of procedure for adjudication of occupational safety and health disputes by the Labor Commission's Adjudication Division. In the past, the Division has followed the general procedures established by the Utah Occupational Safety and Health Act and the Utah Administrative Procedures Act. As necessary and appropriate, the Division has also borrowed and relied on the procedures outlined for adjudication of workers' compensation cases in the Commission's Rule R602-2. However, the above-referenced sources do not address all the procedural issues that arise in occupational safety and health cases. For that reason, the Division has developed this Rule R602-8, which is specific to such cases.

SUMMARY OF THE RULE OR CHANGE: The proposed rule identifies the Commission's statutory authority for promulgating this rule and specifies the applicability of the rule. It defines terms, establishes procedures for scheduling conferences, and regulates discovery. The rule describes the course and conduct of evidentiary hearings, as well as requests for Commission or Appeals Board review of decisions issued by administrative law judges.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34A-1-304, Subsections 34A-6-104(1)(c) and 34A-6-301(7)(a), and Section 63G-4-102 et seq.

#### ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The procedures established by this rule are consistent with the Adjudication Division's current practice. The Commission does not anticipate that the rule will result in any cost or savings in the Adjudication Division's expenses in conducting the occupational safety and health proceedings that are the subject of this rule. The same is true with respect to the state's expenses in participating in such proceedings in its capacity as a litigant. Because the rule does not significantly change any existing procedures, the state as a litigant will not incur any additional costs or savings.

✤ LOCAL GOVERNMENTS: The Commission does not anticipate that the rule will result in any cost or savings to local governments. Because the rule does not significantly change any existing procedures, local governments in their capacities as litigants will not incur any additional costs or savings.

✤ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The Commission does not anticipate that the rule will result in any cost or savings to small businesses or persons other than businesses. Because the rule does not significantly change any existing procedures, small businesses involved in litigating occupational safety and health disputes that are the subject of this rule will not incur any additional costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The objective of this rule is to streamline the process for adjudicating occupational safety and health cases. Substantially all the provisions of the rule are currently being applied in practice. Consequently, the Commission does not anticipate any additional compliance costs resulting from this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is designed to establish efficient and fair methods for adjudication of occupational safety and health cases before the Commission. As already noted, these procedures have been followed in actual practice in the past, but have not been formally incorporated into a rule. The Commission does not anticipate any negative fiscal impact on businesses as a result of this rule. To the contrary, the rule will provide clarity to these adjudicative proceedings that should tend to simplify them, thereby reducing costs to all litigants, including businesses. Sherrie Hayashi, Commissioner

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO: Richard M. Lajeunesse at the above address, by phone at 801-536-7928, by FAX at 801-530-6333, or by Internet E-mail at rlajeunesse@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2009

AUTHORIZED BY: Sherrie Hayashi, Commissioner

#### R602. Labor Commission, Adjudication.

#### <u>R602-8. Adjudication of Utah Occupational Safety and Health</u> <u>Citation Claims.</u>

R602-8-1. Statutory Authority.

Section 34A-6-105, Section 34A-6-303 and Section 34A-6-304 provide that an administrative law judge from the Division of Adjudication shall hear and determine timely filed contests of citations issued by Utah Occupational Safety and Health. Sections 34A-1-304, 34A-6-104(1)(c) and 34A-6-301(7)(a) authorize the Labor Commission to promulgate rules governing these proceedings. The provisions of R602-8 pertaining to requests for hearing pursuant to Section 34A-6-105, Section 34A-6-303 and Section 34A-6-304 supersede the Administrative Rules contained in R602-2, R602-3, R602-4, R602-5, R602-6 and R602-7 as to any actions brought pursuant to Section 34A-6-105, Section 34A-6-303 and Section 34A-6-304.

#### R602-8-3. Adjudication of Actions Commenced Pursuant to Section 34A-6-105, Section 34A-6-303 and Section 34A-6-304.

Pleadings and Discovery.

a. Definitions.

i. "Commission" means the Labor Commission.

ii. "Division" means the Division of Adjudication within the Labor Commission.

iii. "Notice of Contest" pursuant to Section 34A-6-303 means a written request filed with the Commission and directed to the Division requesting an evidentiary hearing on a citation issued by the Utah Occupational Safety and Health Division and shall include the following:

A. the name, mailing address and telephone number of the party filing the Notice of Contest and that of their attorney, if applicable.

B. the date and number of the citation issued by the Utah Occupational Safety and Health Division.

C. An admission or denial of the specific facts alleged in support of each violation alleged in the citation and a statement of agreement or disagreement with each proposed penalty set forth in the citation.

D. Any affirmative defenses relied on by the cited party and specific facts in support of the affirmative defenses.

E. A request for relief, specifying the type and extent of relief requested, and a statement of facts supporting the requested relief.

F. A statement requesting or declining an informal conference with the Administrator of Utah Occupational Safety and Health Division.

G. A copy of the citation issued by Utah Occupational Safety and Health Division.

iv. "Petitioner" means Utah Occupational Safety and Health Division.

v. "Respondent" means the person or entity cited by Utah Occupational Safety and Health Division.

b. Scheduling Conference.

Upon receipt of the Notice of Contest the Division will schedule a scheduling conference to be attended by the parties and/or their attorneys. Following the scheduling conference the Division will issue a Scheduling Order containing deadlines and requirements for the litigation including discovery deadlines, motion deadlines and any other deadlines deemed appropriate for the orderly administration of the case as determined by the administrative law judge assigned to the case.

c. Discovery.

i.(A) Required disclosures; Discovery methods.

I. Initial disclosures. Except in cases exempt under subdivision (c)(i)(A)(II) and except as otherwise stipulated or directed by order, a party shall, without awaiting a discovery request, provide to other parties:

Aa. the name and, if known, the address and telephone number of each individual likely to have discoverable information supporting its claims or defenses, unless solely for impeachment, identifying the subjects of the information; Bb. a copy of, or a description by category and location of, all discoverable documents, data compilations, electronically stored information, and tangible things in the possession, custody, or control of the party supporting its claims or defenses, unless solely for impeachment;

Cc. a computation of any category of fines or penalties claimed by the disclosing party, making available for inspection and copying all discoverable documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

Dd. The disclosures required by subdivision (c)(i)(A)(I) shall be made within 14 days after the disclosure meeting of the parties under subdivision (c)(i)(E). A party shall make initial disclosures based on the information then reasonably available and is not excused from making disclosures because the party has not fully completed the investigation of the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made disclosures.

II. Disclosure of expert testimony.

Aa. A party shall disclose to other parties the identity of any person who may be used at hearing to present expert opinion evidence.

Bb. Unless otherwise stipulated by the parties or ordered by the Administrative law judge, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness or party. The report shall contain the subject matter on which the expert is expected to testify; the substance of the facts and opinions to which the expert is expected to testify; a summary of the grounds for each opinion; the qualifications of the witness.

III. Prehearing disclosures. A party shall provide to other parties the following information regarding the evidence that it may present at hearing other than solely for impeachment:

Aa. the name and, if not previously provided, the address and telephone number of each witness, separately identifying witnesses the party expects to present and witnesses the party may call if the need arises;

Bb. an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Cc. Disclosures required by subdivision (c)(i)(A)(III) shall be made at least 30 days before hearing.

IV. Form of disclosures. Unless otherwise stipulated by the parties or ordered by the administrative law judge, all disclosures shall be made in writing, signed and served.

V. Methods to discover additional matter. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

B. Discovery scope and limits. Unless otherwise limited by order of the administrative law judge in accordance with these rules, the scope of discovery is as follows:

I. In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

II. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. The party shall expressly make any claim that the source is not reasonably accessible, describing the source, the nature and extent of the burden, the nature of the information not provided, and any other information that will enable other parties to assess the claim. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the administrative law judge may order discovery from such sources if the requesting party shows good cause, considering the limitations of subsection (c)(i)(B)(III). The administrative law judge may specify conditions for the discovery.

III. Limitations. The frequency or extent of use of the discovery methods set forth in Subdivision (c)(i)(A)(V) shall be limited by the administrative law judge if it determines that:

Aa. the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive:

Bb. the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

Cc. the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The administrative law judge may act upon his or her own initiative after reasonable notice or pursuant to a motion under Subdivision (c)(i)(C).

IV. Hearing preparation: Materials.

Aa. Subject to the provisions of Subdivision (c)(i)(B)(V) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under Subdivision (c)(i)(B)(I) of this rule and prepared in anticipation of litigation or for hearing by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

Bb. A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order. The provisions of Rule 37(a)(4) U. R. C. P. apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (a) a written statement signed or otherwise adopted or approved by the person making it, or (b) a stenographic, mechanical, electrical, or other recording, or a transcription thereof.

which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

V. Hearing preparation: Experts.

Aa. A party may depose any person who has been identified as an expert whose opinions may be presented at hearing.

VI. Claims of Privilege or Protection of Hearing Preparation Materials.

Aa. Information withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as hearing preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

Bb. Information produced. If information is produced in discovery that is subject to a claim of privilege or of protection as hearing-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the administrative law judge under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

C. Protective orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without action by the administrative law judge, and for good cause shown, the administrative law judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

I. that the discovery not be had;

II. that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

III. that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

IV. that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

V. If the motion for a protective order is denied in whole or in part, the administrative law judge may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) U. R. C. P. apply to the award of expenses incurred in relation to the motion.

D. Supplementation of responses. A party who has made a disclosure or responded to a request for discovery with a response is under a duty to supplement the disclosure or response to include information thereafter acquired if ordered by the administrative law judge or in the following circumstances:

I. A party is under a duty to supplement at appropriate intervals disclosures if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required the duty extends both to information contained in the report and to information provided through a deposition of the expert. II. A party is under a duty reseasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

E. Disclosure Meeting. The following applies to all cases.

I. Within thirty (30) days of the date of the scheduling order the parties shall meet in person or by telephone to discuss the nature and basis of their claims and defenses, to discuss the possibilities for settlement of the action, to make or arrange for the disclosures required by this rule, to discuss any issues relating to preserving discoverable information and to develop a stipulated discovery plan. Petitioner's counsel shall schedule the meeting. The attorneys of record shall be present at the meeting and shall attempt in good faith to agree upon the disclosure plan.

II. The plan shall include:

Aa. what changes should be made in the form for disclosures under subdivision (c)(i)(A);

Bb. the subjects on which discovery may be needed;

Cc. any issues relating to preservation, disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

Dd. any issues relating to claims of privilege or of protection as hearing-preparation material;

III. The discovery plan of the parties shall only be filed with the Division as an attachment to any discovery motion.

F. Signing of discovery requests, responses, and objections.

I. Every request for discovery or response or objection thereto made by a party shall be signed by at least one attorney of record or by the party if the party is not represented, whose address shall be stated. The signature of the attorney or party constitutes a certification that the person has read the request, response, or objection and that to the best of the person's knowledge, information, and belief formed after reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

II. If a certification is made in violation of the rule, the administrative law judge, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney fee.

G. Filing. A party shall only file disclosures or requests for discovery with the Division as an exhibit to a discovery motion.

ii. Subpoenas. Subpoenas may only be issued by the administrative law judge assigned to the case or the presiding judge if the assigned administrative law judge is unavailable. Commission subpoena forms shall be used in all discovery proceedings. Subpoenas shall be issued at least seven business days prior to a

scheduled hearing or appearance unless good cause is shown for a shorter period. Witness fees and costs shall be paid by the party requesting the subpoena pursuant to Utah Code Section 34A-1-302 (c).

iii. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

iv. Sanctions. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah Rules of Civil Procedure.

#### 2. Notices

a. Orders and notices mailed by the Division to the last address of record provided by a party is deemed served on that party.

b. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

#### R602-8-4. Hearings.

Evidentiary hearing shall be conducted formally in accordance with Utah Code § 63G-4-206. Petitioner shall have the burden of proving the factual and legal sufficiency of the citation and penalty by a preponderance of substantial evidence. After the close of the proceedings, the administrative law judge will issue an order pursuant to Utah Code Section 63G-4-208.

#### R602-8-5. Motions for Review.

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an administrative law judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Utah Code §§ 34A-6-304 and 63G-4-301. Unless a request for review is properly filed, the administrative law judge's order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. Thereafter, the administrative law judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary:

b. Amend or modify the prior order by a Supplemental Order, or

c. Refer the entire case for review.

2. If the administrative law judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

#### **R602-8-6.** Request for Reconsideration.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provision of Utah Code Section 63G-4-302. Any petitioner for judicial review of final agency action shall be governed by the provisions of Utah Code Section 63G-4-401.

# **KEY:** occupational safety and health, administrative procedures, hearings, settlements

Date of Enactment or Last Substantive Amendment: 2009 Authorizing, and Implemented or Interpreted Law: 34A-6-105, 34A-6-303; 34A-6-304; 63G-4-102 et seq.

### Natural Resources, Wildlife Resources R657-17-4

General Deer Permits and Tags

#### NOTICE OF PROPOSED RULE

(Amendment) DAR FILE NO.: 32300 FILED: 01/13/2009, 09:58

#### 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 big game program, which directly affects the Lifetime Hunting and Fishing License program.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to the above listed rule: 1) change the application process to an online/paperless process, and 2) make technical corrections for consistency and accuracy.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-19-17.5

#### ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The reason for this rule amendment is to maintain consistency with all Division of Wildlife Resources (DWR) application processes, so the amendment does not create a cost or savings impact to the state budget or DWR's budget. Although there may be some additional programming costs the amendments will not create any cost or savings impact to the state budget or DWR's budget. Any additional work will be carried out with existing budget.

LOCAL GOVERNMENTS: Since this amendment simply addresses a change in the process by which a lifetime license holder selects their region, this filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.
 SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Since Lifetime Licenses are no longer available for purchase, DWR determines that this amendment does not create a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment requires a lifetime license holder to complete an online survey in order to obtain their deer tag. A phone number has been established to help those lifetime license holders who simply cannot access a computer so DWR determines that there are no additional compliance costs for affected persons associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses. Michael R. Styler, Executive Director

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 at the above address, 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 TO THE ADDRESS ABOVE NO LATER THAN  $5:00 \ PM$  on 03/03/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2009

AUTHORIZED BY: James F Karpowitz, Director

#### R657. Natural Resources, Wildlife Resources. R657-17. Lifetime Hunting and Fishing License. R657-17-4. General Deer Permits and Tags.

(1)(a) The division shall send a reminder postcard to each lifetime licensee, who is eligible to hunt big game, prior to the beginning of the annual bucks, bulls and once-in-a-lifetime application period as prescribed in the proclamation of the Wildlife Board for taking big game.

(b) The lifetime licensee shall, prior to the end of the annual bucks, bulls and once-in-a-lifetime application period[÷

(i)] complete and submit an online Lifetime Questionnaire through the division's web site[<del>; or</del>

(ii) complete and submit a paper Lifetime Questionnaire to the address indicated on the questionnaire.

(iii) Blank questionnaires are available online at the division's web site or from any division office].

(2)(a) Except as provided in Subsection (e) and Subsection (f), the division may not issue a permit to any lifetime licensee who was given reasonable notice of the deadline as provided in Subsection (1)(b) and fails to submit a complete and accurate Lifetime Questionnaire to the division.

(b) If an error is found [on the Lifetime Questionnaire, submitted online or through the mail, the lifetime licensee may receive a correction letter. Corrections by the lifetime licensee can only be made using the personalized and numbered correction letter. Corrections must be mailed to the address on the correction letter and received no later than the date indicated on the letter. The opportunity to correct an error is not guaranteed.

(c) ]The division reserves the right to:

 $(i)\ \mbox{contact}$  the lifetime licensee to correct the error; or

(ii) correct the lifetime licensee's choice of general deer permits without sending a correction letter.

(d) If the division is unable to contact the lifetime licensee and correct the error, the lifetime licensee may not receive a permit, except as provided in Subsection (f).

(e) The director or his designee may issue a permit to a lifetime licensee who did not receive reasonable notice of the deadline as provided in Subsection (1)(a).

(f) If a lifetime licensee fails to submit a Lifetime Questionnaire by the deadline as provided in Subsection (1)(b), the lifetime licensee may obtain an available general deer permit on the date these permits are made available over-the-counter to the general public.

(3) As used in this section "reasonable notice" means that a reminder[-posteard] was sent within a reasonable time before the deadline as provided in Subsection (1)(b) to the most recent address given to the division by the lifetime licensee.

(4) Lifetime licensees shall receive a letter from the division confirming the information received on the Lifetime Questionnaire.

(5) Lifetime licensees must notify the division of any change of mailing address, residency, address, telephone number, physical description, or driver's license number.

(6)(a) Lifetime licensees may apply for or obtain general deer preference points or permits through the big game general buck deer drawing as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game, provided the lifetime licensee waives their choice of general deer permits as provided in Subsection R657-17-3(2) and the region in which the lifetime licensee chooses to hunt.

(b) If a lifetime licensee applies for and does not obtain a general deer permit through the big game general buck deer drawing, the lifetime licensee may only obtain an available general deer permit on the date these permits are made available over-the-counter to the general public.

#### KEY: wildlife, game laws, hunting and fishing licenses Date of Enactment or Last Substantive Change: [August 7, 2007]2009

Notice of Continuation: November 21, 2005

Authorizing, and Implemented or Interpreted Law: 23-19-17.5; 23-19-40; 23-19-11

Natural Resources, Wildlife Resources **R657-38** 

**Dedicated Hunter Program** 

NOTICE OF PROPOSED RULE (Amendment) DAR FILE NO.: 32309 FILED: 01/15/2009, 11:58

#### **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 of Wildlife Resoures' (DWR) Dedicated Hunter Program.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to the above listed rule: 1) require the completion of the dedicated hunter program orientation course; 2) remove the individual listing of suspensions that disqualify an applicant from joining the dedicated hunter program and replaces them with a suspension guideline and criteria; 3) require dedicated hunters to choose a region for the general season archery buck deer hunt; 4) require an online dedicated hunter certificate of registration application process; 5) allow for the acceptance of group applications; 6) allow for the issuance of dedicated hunter loyalty points to unsuccessful applicants; 7) increase the number of dedicated hunter service hours from twenty-four to forty; 8) replace the requirement to attend a regional advisory committee meeting with an online wildlife conservation and ethics course; 9) require participants to complete all service hours prior to October 1 of the third-year in the program; and 10) make technical corrections for consistency and accuracy.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

#### ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: These amendments can be implemented with relatively few programming changes and thus DWR determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

✤ LOCAL GOVERNMENTS: Since these amendments will impact individual participants in the dedicated hunter program and not the local governments, this should have no effect on them. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

✤ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This amendment requires the participant to provide forty hours of service to the division and if the participant chooses to buy the hours instead of working there could be a potential to generate a cost impact to them. Therefore, the division determines that the amendments have the potential to generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments are program changes that will create additional costs for those who wish to participate in the program. Participation is voluntary and the rule amendments do not create a cost or savings impact to individuals who do not participate in the dedicated hunter program.

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. Michael R. Styler, Executive Director

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 at the above address, 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 TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2009

AUTHORIZED BY: James F Karpowitz, Director

#### R657. Natural Resources, Wildlife Resources. R657-38. Dedicated Hunter Program. R657-38-1. Purpose and Authority.

(1) Under the authority of Section 23-14-18, this rule provides the standards and requirements for qualified deer hunters to participate in the Dedicated Hunter Program by obtaining a certificate of registration.

(2) The Dedicated Hunter Program provides the opportunity for participants to:

(a) increase the opportunity for recreational general deer hunting, while the division regulates harvest;

(b) increase participation in wildlife management decisions;

(c) increase participation in wildlife conservation projects that are beneficial to wildlife conservation and the division; and

(d) [attend]complete the wildlife conservation [courses]and ethics course about hunter ethics, public input processes and[the division's] wildlife conservation philosophies and strategies.

#### R657-38-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Dedicated Hunter <u>Program Orientation course</u>" means a course of instruction provided by the division outlining the organization, structure and requirements of the Dedicated Hunter <u>Program.</u>

(b) "Dedicated Hunter Permit" means a general buck deer permit issued to a[-dedicated hunter] participant in the Dedicated Hunter Program, which authorizes the participant to hunt general archery, general [any weapon]muzzleloader and general [muzzleloader]any weapon in the region specified on the permit.[

(b) "Hunt area" means an area prescribed by the Wildlife Board where general archery, general any weapon or general muzzleloader deer hunting is open to permit holders for taking deer.]

(c) "[Limited Entry]Dedicated Hunter<u>Limited Entry</u> Permit" means a limited entry deer permit or limited entry elk permit, for use in an area selected by the Division, which shall be offered through the Dedicated Hunter Program Drawing.

(d) "<u>Hunt area</u>" means an area prescribed by the Wildlife Board where general archery, general muzzleloader and general any weapon deer hunting is open to permit holders for taking deer.

(e) "Participant" means a person who has remitted the appropriate fee and has been issued a certificate of registration for the Dedicated Hunter Program.

([e]f) "Program" means the Dedicated Hunter Program, a program administered by the division as provided in this rule.

([f]g) "Program harvest" means tagging a deer with a Dedicated Hunter Permit or [Limited Entry]Dedicated Hunter Limited Entry Deer Permit, or failing to return the Dedicated Hunter Permit or [Limited Entry]Dedicated Hunter\_Limited Entry Deer Permit with an attached, unused tag, while enrolled in the program.

([g]h) "Program requirements" mean the [Wildlife Conservation Course as provided in Section R657-38-7, the Wildlife Conservation Project as provided in Section R657-38-8, the Regional Advisory Council meeting]Dedicated Hunter Program orientation course as provided in Section R657-38-9, the wildlife conservation and ethics course as provided in Section R657-38-10, wildlife conservation projects as provided in Section R657-38-11, and returning an unused Dedicated Hunter Permit and attached tag as provided in Subsection R657-38-[44]13(1).

([h]i) "Wildlife conservation and Ethics course" means a course of instruction provided by the division on hunter ethics, public input processes and wildlife conservation philosophies and strategies.

([i]j) "Wildlife conservation project" means a project designed by the division, or any other individual or entity and pre-approved by the division, that provides wildlife habitat protection or enhancement[<u>on public or private lands</u>], improves hunting or fishing access, or other conservation projects or activities that benefit wildlife or directly benefits the division.

 $([\underline{j}]\underline{k})$  "Wildlife conservation project manager" means an employee of the division, or person approved by the division, responsible for supervising a wildlife conservation project and participating volunteers, and maintaining and reporting records of service hours to the division.

#### R657-38-3. Certificate of Registration Required.

(1)(a) To participate in the program a person must apply for, obtain and sign a certificate of registration issued by the division.

(b) No more than ten thousand certificates of registration for the program may be in effect at any given time.

(c) Certificates of registration are issued [on a first-come, firstserved basis at]through a division [offices]drawing.

(d) Each prospective participant must submit an <u>online</u> application provided by the division [and provide evidence of having completed a wildlife conservation]after completing the Dedicated <u>Hunter Program Orientation</u> course before the division may issue the certificate of registration for the program.

(e) A certificate of registration to participate in the program shall only be issued during the[-bucks, bulls and once in a lifetime] application period as prescribed in the proclamation of the Wildlife board for taking big game.

(2) The division may deny issuing a dedicated hunter certificate of registration to a person for any of the following reasons:

(a) The application is incomplete or contains false information[;].

(b) The person, at the time of application, is under a judicial or administrative order suspending any wildlife hunting or fishing privilege within Utah or elsewhere;

(c)[-The person, in the previous five years prior to applying for the program, has been convicted of, entered a plea in abeyance to, or entered into a diversion agreement for violating any provision of:

(i) 23-20-3 Unlawful Possession or Taking Involving Big Game:

(ii) 23-20-3.5 Unlawful Taking While Trespassing;

(iii) 23-20-4 Wanton Destruction;

(iv) 23-20-8 Wasting;

(v) 23-20-14 Trespass;

(vi) 23-20-30 Failure to Tag Violations;

(vii) 23-19-1 or 23-23-10 License Violations involving Big Game;

(viii) 23-19-5 Counterfeiting Licenses;

(ix) 23-20-23 Aiding and Assisting in any of the above violations;

(x) 76-10-505 or 76-10-508 Firearms Safety Violations;

(xi) 77-7-22 Failure to Comply With a Wildlife Citation;

(xii) R657 5 11 or R657 5 12 Unlawful Possession of a Firearm by an Archer or Muzzleloader:

(xiii) R657-5-14 Spotlighting With a Weapon;

(xiv) R657-5-15 Use of Aircraft to Locate Big Game;

(xv) R657-5-18 Hunting on a Detached Tag; or

(xvi) R657 5 30 through R657 5 36 Waiting Period Violations involving Big Game:

(d) The person has violated the terms of any certificate of registration issued by the division or an associated agreement.

([e]<u>d</u>) The person has ever had a dedicated hunter certificate of registration suspended by the division.

(3) Prospective participants who have been under any wildlife suspension may not apply for the program until:

(a) their suspension period has ended; and

(b) an additional length of time equivalent to the original suspension has passed.

(4) Each certificate of registration is valid for three consecutive general deer hunting seasons<u>, except as provided in subsections (13)</u> and (14).

(5)(a) Any person who is 12 years of age or older may obtain a certificate of registration. A person 11 years of age may obtain a certificate of registration if the date of that person's 12th birthday is before the end of the any weapon general buck deer hunt in the year the certificate of registration is issued. A person may not use a permit to hunt big game before their 12th birthday.

(b) Any person who is 17 years of age or younger before the beginning date of the annual general archery deer hunt shall pay the youth participant fees.

(c) Any person who is 18 years of age or older on or before the beginning date of the annual general archery deer hunt shall pay the adult participant fees.

(6) A certificate of registration authorizes the participant an opportunity to receive annually a Dedicated Hunter Permit to hunt during the general archery, general [any weapon]muzzleloader and general [muzzleloader]any weapon deer hunts. The Dedicated Hunter Permit may be used during the dates and within the hunt area boundaries established by the Wildlife Board.

(7)(a) Except as provided in Subsections (b), R657-38-[40]12(3)(a), and R657-38-[40]12(6), a participant using a Dedicated Hunter Permit may take two deer within three years of enrollment, and only one deer in any one year as provided in Rule R657-5.

(b) Participants entering or re-entering the Dedicated Hunter Program shall be subject to any changes subsequently made in this rule during the three-year term of enrollment, <u>unless a variance is</u> <u>authorized by the division</u>.

(c) The harvest of an antlerless deer using a Dedicated Hunter Permit, as authorized under specific hunt choice areas during the general archery deer hunt, shall be considered a program harvest. (8) The certificate of registration must be signed by the participant. The certificate of registration is not valid without the required signature.

(9) The participant and holder of the certificate of registration must have a valid Dedicated Hunter Permit in possession while hunting. A participant is not required to have the Dedicated Hunter Certificate of Registration in possession while hunting.

(10) The division may issue a duplicate Dedicated Hunter Certificate of Registration pursuant to Section 23-19-10.

(11) Certificates of registration are not transferable and shall expire at the end of a participant's third <u>consecutive</u> general deer hunting season.

(12)(a) The program requirements set forth in Sections R657-38-[7, R657-38-8,]10, and R657-38-[9]11 may be waived annually if the participant provides evidence of leaving the state for a minimum period of one year during the enrollment period[for the Dedicated Hunter Certificate of Registration] for religious or educational purposes.

(b) If the participant requests that the program requirements be waived in accordance with Subsection (a), and the request is granted, the participant shall not receive a Dedicated Hunter Permit for the year in which the program requirements were waived.

(13)(a) A participant who is a member of the United States Armed Forces or public health or public safety organization and who is mobilized or deployed on order in the interest of national defense or emergency may request that their enrollment in the program be suspended for the period of their mobilization or deployment.

(14)(a) A participant who is a member of the United States Armed Forces or public health or public safety organization and who is mobilized or deployed on order in the interest of national defense or emergency may request that the requirements set forth in Sections R657-38-[7,]10, R657-38-[8, R657-38-9,]11, and[R657-38-11] be extended or satisfied as provided in Subsections (b) through ([e]d).

(b) The program requirement set forth in Section R657-38-[7]10 may be extended to the second or third year of their program enrollment.

 (c) The program requirement set forth in Section R657-38-8 may be considered satisfied by a participant that is prevented from completing the requirement due to the mobilization or deployment.
 (d) The program requirement set forth in Section R657-38-9 may be:]

(i) extended to the third year in the program if the participant is currently in the second year of the program; and

(ii) waived in the third year of the program if the participant remains mobilized or deployed and is unable to reasonably meet the requirement.

([e]c) The program requirement set forth in Section R657-38-11 may be considered satisfied by a participant that is prevented from completing the requirement due to the mobilization or deployment.

<u>(d)</u> A participant must provide evidence of the mobilization or deployment.

(15) A refund for the Dedicated Hunter Certificate of Registration may not be issued, except as provided in Section 23-19-38.2. Any refund will be issued pro rata based on the number of hunting seasons actually participated in during the three-year enrollment period.

#### R657-38-4. [Certificate of Registration Surrender]Dedicated Hunter Drawing.

[(1)(a) A participant who has obtained a Dedicated Hunter Certificate of Registration may surrender the certificate of registration to a division office provided the participant does not have two program harvests.

(b) A participant who surrenders the Dedicated Hunter Certificate of Registration may not re-enter the program until the participant's initial certificate of registration has expired.

(2) The division may not issue a refund, except as provided in Section 23-19-38 and Section R657-38-3(15).]

(1) Applications are available through the division's Internet site.

(2) A person may not submit more than one application in the Dedicated Hunter drawing in any one year.

(3)(a) Applications must be submitted online by the date prescribed in the bucks, bulls and once-in-a-lifetime proclamation of the Wildlife Board for taking big game.

(b) If an error is found on an application, the applicant may be contacted for correction.

(4) Only a resident may apply for or obtain a resident certificate of registration and only a nonresident may apply for or obtain a nonresident certificate of registration.

(5) To apply for a resident certificate of registration, a person must establish residency at the time of purchase.

(6) The posting date of the drawing shall be considered the purchase date of a certificate of registration.

(7) Applicants shall be notified by mail and e-mail of drawing results by the date published in the bucks, bulls and once-in-a-lifetime proclamation of the Wildlife Board for taking big game.

(8) Group applications are accepted. Up to four applicants may apply as a group.

(9)(a) An applicant may withdraw their application for the Dedicated Hunter Program drawing by the date published in the bucks, bulls and once-in-a-lifetime proclamation of the Wildlife Board for taking big game.

(b) Handling fees will not be refunded.

(10) An applicant may withdraw and resubmit their application for the Dedicated Hunter Program certificate of registration drawing by the date published in the bucks, bulls and once-in-a-lifetime proclamation of the Wildlife Board for taking big game.

#### R657-38-5. [Certificate of Registration Suspension.]Dedicated Hunter Application Fees.

[(1) The division may suspend a Dedicated Hunter Certificate of Registration pursuant to Section 23-19-9 and R657-26.

 (2) A certificate of registration may be suspended if the participant fraudulently:

(a) submits a time sheet for service hours; or

(b) signs the roll at the regional advisory council meetings.

(3) A]The handling fees and certificate of registration [may be suspended if the participant is convicted of, enters a plea in abeyance to, or enters into a diversion agreement for committing any offense listed in Section R657-38-3(2)(c)]fees must be paid pursuant to Rule R657-42-8(5).[

(4) A certificate of registration is invalid if the participant's big game hunting privileges are suspended in any jurisdiction during the participant's enrollment in the program.

 (5) A Dedicated Hunter Permit is invalid if a participant's certificate of registration is suspended.

#### R657-38-6. Dedicated Hunter Application Refunds.

(1) The handling fees are nonrefundable.

(2) Unsuccessful applicants will not be charged for a certificate of registration.

#### R657-38-7. Dedicated Hunter Loyalty Point System.

(1) Loyalty points are used in the dedicated hunter drawing to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.

(2)(a) A loyalty point is awarded for:

(i) each valid unsuccessful application;

(ii) each valid application when applying only for a loyalty point in the dedicated hunter drawing.

(iii) each applicant who successfully completes a three-year enrollment in the dedicated hunter program.

(3)(a) A person may not apply in the drawing for both a loyalty point and a certificate of registration.

(b) A person may not apply for a loyalty point if that person is ineligible to apply for a certificate of registration.

(c) Loyalty points shall not be used when obtaining remaining certificates of registration after the dedicated hunter drawing.

(4) Loyalty points are forfeited if a person obtains a certificate of registration through the drawing.

(5)(a) Loyalty points are not transferable.

(b) Loyalty points shall only be applied to the Dedicated Hunter drawing.

(c) A person may not have more than one loyalty point at any time.

(d) Loyalty points are only valid through the end of the following application period.

(6) Loyalty points are averaged and rounded down when two or more applicants apply together on a group application.

(7)(a) Loyalty points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain copies of electronic applications from 2009 to the current Dedicated Hunter drawing for the purpose of researching loyalty point records.

(c) Any requests for researching an applicant's loyalty point records must be requested within the time frames provided in Subsection (b).

(d) Any loyalty points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may eliminate any loyalty points earned that are obtained by fraud or misrepresentation.

#### R657-38-8. Dedicated Hunter Permits.

(1)(a) Participants may hunt during the general archery, general [any weapon and general-]muzzleloader and general any weapon deer hunts within the hunt area and during the season dates prescribed in the proclamation of the Wildlife Board for taking big game.

(b) The division may exclude multiple season opportunities on specific <u>deer management</u> units due to extenuating circumstances on that specific unit.

(2)(a) Participants must designate a regional hunt choice [upon joining the program]during the Dedicated Hunter application period.

(b) The regional hunt choice shall remain in effect <u>for the</u> <u>duration of the Dedicated Hunter certificate of registration</u>, unless otherwise changed in writing by the participant by the [application deadline for the big game drawing, which is published in the proclamation of the Wildlife Board for taking big game]last business day in January.

(3)(a) Participants must notify the division of any change of mailing address in order to receive a Dedicated Hunter Permit by mail.

(b) A participant who enters the program as a resident and becomes a nonresident, or claims residency outside of Utah shall be issued a nonresident permit at no additional charge for the remainder of the three-year enrollment period.

(c) A participant who enters the program as a nonresident and becomes a resident, or claims residency in Utah, shall be issued a resident <u>permit</u> with no reimbursement of the higher nonresident fee for the remainder of the three-year enrollment period.

(4)(a) Dedicated Hunter permits may be issued through the mail by June 1 of each year and again three weeks prior to the beginning of the general archery deer hunt, and only upon evidence that the participant has completed all program requirements and possesses a Utah hunting or combination license.

(b) Participants completing program requirements after June 1 may obtain their Dedicated Hunter Permit over-the-counter from any division office.

(5) A Dedicated Hunter Permit may not be issued to any participant who:

(a) does not [perform]complete the program requirements;

(b) violates the terms of this rule or the Dedicated Hunter Certificate of Registration;

(c) does not possess a current Utah hunting or combination license.

(6)(a) The division may issue a duplicate Dedicated Hunter Permit pursuant to Section 23-19-10.

(b) If a participant's unused Dedicated Hunter Permit and tag is destroyed, lost, or stolen a participant may complete an affidavit verifying the permit was destroyed, lost, or stolen in order to obtain a duplicate. A fee to duplicate the permit and tag may apply.

(c) A duplicate Dedicated Hunter Permit shall not be issued after the closing date of the general any weapon buck deer hunt[<del>,</del>]. [h]<u>H</u>owever, a participant may complete an affidavit and submit [a <del>copy of</del>]the affidavit for program reporting purposes as required in Section R657-38-[9]<u>13</u>(1).

(7)(a) A participant may exchange or surrender a Dedicated Hunter Permit in accordance with Rule R657-42 provided annual program requirements are completed.

(b) A participant may not exchange <u>or surrender</u> a Dedicated Hunter Permit for any other buck deer permit once the general archery deer hunt has begun, except:

(i) a participant may exchange a Dedicated Hunter Permit for a Dedicated Hunter Permit in any other available area prior to the opening of the general muzzleloader buck deer hunt.

([c) A participant may not surrender a Dedicated Hunter Permit for any other buck deer permit once the general archery deer hunt has begun, except:

<u>(i)ii</u>) a participant may surrender a Dedicated Hunter Permit after the opening of the buck deer archery hunt, provided the Division can verify that the permit was never in the participant's possession.

(9)(a) Lifetime license holders may participate in the program.

(b) Upon signing the certificate of registration, the lifetime license holder agrees to forego any rights to receive a <u>lifetime</u> <u>license</u> buck deer permit for the general archery, general [any weapon]muzzleloader or general [muzzleloader]any weapon deer hunts as provided in Section 23-19-17.5.

(c) A refund or credit is not issued for the <u>lifetime license</u> general archery, general [<u>any weapon]muzzleloader</u> or general [<u>muzzleloader</u>]any weapon permit.

#### R657-38-[7. Wildlife Conservation]9. Dedicated Hunter <u>Program Orientation</u> Course.

(1)(a) The division shall provide an annual [wildlife conservation]Dedicated Hunter Program Orientation course.

(b) Prior to [entering or re-entering]applying for the program, and obtaining a certificate of registration, a prospective participant must complete the [wildlife conservation course within the current year in which the prospective participant is entering or re-entering the program.]Dedicated Hunter Program orientation course.

(2) The [wildlife\_conservation]Dedicated Hunter Program Orientation course shall explain the program to give a prospective participant a reasonable understanding of the program[-as-well-ashunter ethics, the division's Regional Advisory Council and Wildlife Board].

(3) The Dedicated Hunter Program Orientation course is available through the division's Internet site.

(4)(a) Evidence of completion of the Dedicated Hunter Program Orientation course shall be provided to the prospective participant upon completion of the Dedicated Hunter Program Orientation course.

(b) Certificates of registration shall not be issued without the prospective participant having completed the Dedicated Hunter Program Orientation course.

(c) The division shall keep a record of all participants who complete the Dedicated Hunter Program Orientation course.

#### R657-38-10. Wildlife Conservation and Ethics Course.

(1) Prior to obtaining the first Dedicated Hunter permit while in the program, a participant must complete the wildlife conservation and ethics course.

(2) The wildlife conservation and ethics course shall explain <u>hunter ethics</u>, <u>public input</u> processes, and wildlife conservation philosophies and strategies.

(3) The wildlife conservation <u>and ethics</u> course is available through the division's Internet site[<del>, and a limited number of</del> <del>classroom courses may be available, as scheduled by division</del> <del>offices</del>].

(4)[<del>(a)</del> Evidence of completion of the wildlife conservation course shall be provided to the prospective participant upon completion of the wildlife conservation course.

(b) Certificates of registration shall not be issued without verification of the prospective participant having completed the wildlife conservation course.

(e)] The division shall keep a record of all participants who complete the wildlife conservation <u>and ethics</u> course.

#### R657-38-[8-]11. Wildlife Conservation Projects.

(1) Each participant in the program shall provide a total of [24]40 hours of service as a volunteer on a wildlife conservation project as provided in Subsections (a) and (b), or pay the approved fee for each hour not completed as provided in Subsection (c).

(a) A participant must provide no fewer than [eight]sixteen hours of service before obtaining the first Dedicated Hunter Permit.

(b) A participant must provide [the remaining balance]an additional sixteen hours of service[-hours] prior to receiving the second Dedicated Hunter Permit.

(c) <u>A participant must provide the remaining balance of hours</u> of service prior to October 1 of the third-year in the program to be eligible for a loyalty point.

(d) Residents may not purchase more than [46]30 of the [24]40 total required service hours. Nonresidents may purchase all of the [24]40 total required service hours[-

(d) The division may, upon request, approve a person who is physically unable to provide service by working on a wildlife conservation project to provide other forms of service].

(e) Goods or services <u>may be provided to the division in lieu of</u> <u>hours of service.</u>

(f) Goods or services provided to the division for wildlife conservation projects by a participant may be, at the discretion of the [wildlife conservation project manager]division, substituted for service hours based upon current market values for the goods or services, and using the approved hourly service buyout rate when applying the credit.

(g) If a participant fails to complete all third year required service hours by October 1 after having been issued permits in years one and two, the value of the final hours must be paid in full prior to applying in any division drawings.

(2) Wildlife conservation projects shall be designed by the division, or any other individual or entity and shall be pre-approved by the division.

(3)(a) Wildlife conservation projects may occur anytime during the year as determined by the division.

(b) The division shall publicize the dates, times, locations and description of approved wildlife conservation projects and activities [at]on the division[-offices]'s Internet site.

(4)(a) Service hours completed in any given year may be carried over to the following years, however excess service hours shall not be carried over to any year outside of the three-year enrollment period.

(b) Dedicated Hunter permits issued to participants [who fail to make the deadline, two]within three weeks prior to the opening date of the general archery deer hunt annually, shall be issued [only as an ]over-the-counter [transaction-]at division offices.

(5) A participant must request a receipt from the wildlife conservation project manager [for service hours worked at the completion of the project, or upon showing evidence that the]showing service hours worked [are completed]on the wildlife conservation project.

(6)(a) If a participant fails to fulfill the wildlife conservation project[service] requirement in any year of participation, as required under Subsection (4), the participant shall not be issued a Dedicated Hunter Permit for that year.

(b) The participant may obtain a Dedicated Hunter Permit for subsequent years upon completion of the wildlife conservation project program requirements due or payment of the fee in lieu thereof.

(7) The wildlife conservation project manager shall keep a record of all participants who attend the wildlife conservation project and the number of <u>service</u> hours worked.

#### R657-38-[9. Regional Advisory Council.

(1) Prior to obtaining a second Dedicated Hunter Permit while in the program, a participant must attend one regional advisory council meeting.

 (2) A participant may request a receipt from the division for attending the regional advisory council meeting. (3) The division shall keep a record of all participants who attend and sign the roll at the regional advisory council meetings.

#### R657-38-10.]12. Obtaining Other Permits.

(1)[(a)] Participants may not apply for or obtain general buck deer permits or preference points issued by the division through the big game drawing, license agents, over-the-counter sales, or the Internet during the three-year period of enrollment in the program.

[(b) In the initial sign-up year for the program, if the participant previously applied for a general buck deer permit through the big game drawing, a participant must withdraw that permit application prior to the application withdrawal date as published in the proclamation of the Wildlife Board for taking big game.

(i) Upon withdrawal, the general buck deer permit fee may be refunded by the division in May, but the handling fee shall not be refunded.

(ii) If the participant fails to withdraw the general buck deer application and the permit is drawn, the] <u>Any</u> general deer permit obtained [through the drawing]in addition to the Dedicated Hunter <u>permit</u> becomes invalid and must be surrendered prior to the beginning date of the general archery deer hunt. A refund may not be issued pursuant to Section 23-19-38.

(2) Participants may not apply for or obtain general landowner buck deer permits as provided under Rule R657-43.

(3)(a) Participants may apply for or obtain any other non general season buck deer permit as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

(i) harvest of a deer with a permit obtained pursuant to Subsection (a) shall not be considered a program harvest.

(ii) participants are not required to complete program requirements prior to obtaining a permit pursuant to Subsection (a).

(b) Participants may apply for or obtain a Dedicated Hunter Limited Entry Permit as provided under Section R657-38-[<del>12.</del>]<u>14.</u>

(c) If the participant obtains any other buck deer permit, or Dedicated Hunter Limited Entry buck deer permit, the Dedicated Hunter Permit becomes invalid and the participant must surrender the Dedicated Hunter Permit prior to the opening day of the general archery deer hunt. A refund may not be issued pursuant to Section 23-19-38.

(d) If the participant obtains any other buck deer permit, or a Dedicated Hunter Limited Entry Permit, the participant may use the permit only in the prescribed area during the season dates listed on the permit.

(e) Participants who obtain a cooperative wildlife management unit <u>deer</u> permit may hunt only within those areas identified on the permit and only during the dates determined by the cooperative wildlife management unit landowner or operator.

(4) [The]Participants must have a valid permit [must be on the person]in their possession while hunting.

(5) Obtaining any other buck deer permit does not authorize a participant to take an additional deer.

(6)(a) Participants may apply for or obtain antlerless deer permits as provided in Rule R657-5 and the Antlerless Addendum to the proclamation of the Wildlife Board for taking big game.

(b) Antlerless permits do not count against the number of permits issued pursuant to this program.

(c) [Antlerless h]Harvest of [a]an antlerless deer as provided in the Antlerless Addendum to the proclamation of the Wildlife Board for taking big game shall not be considered a program harvest.

#### R657-38-[11.]13. Reporting Requirements.

(1)(a) A participant must return the unused Dedicated Hunter Permit and attached tag, or an affidavit as provided in Section R657-38-[6]8(6)(c), to a division office annually by the [application deadline for the big game drawing, which is published in the proclamation of the Wildlife Board for taking big game. ]last business day in January to be eligible for the Dedicated Hunter Limited Entry Permit drawing.

(b) The division shall credit a program harvest to any participant who fails to return the unused Dedicated Hunter Permit and attached tag, or an affidavit as provided in Section R657-38-[6]8(6)(c), by the [application deadline for the big game]last business day in January to be eligible for the Dedicated Hunter Limited Entry Permit drawing.

(i) An unused Dedicated Hunter Permit and attached tag, or an affidavit as provided in Subsection R657-38-[6]8(6)(c), returned after the [application deadline for the big game drawing]last business day in January, will be accepted and the credited program harvest removed. However, the participant will not be eligible for the Dedicated Hunter Limited Entry Permit drawing.

(ii) A participant who returns an unused Dedicated Hunter Permit after [the application deadline for the big game drawing,]March 15, and who is credited with a second program harvest, is only eligible to obtain a Dedicated Hunter Permit for an available region if permits remain after the big game drawing and must obtain the Dedicated Hunter Permit over-the-counter at a division office.

(iii) If there are no permits remaining after the big game drawing, additional Dedicated Hunter permits shall not be issued.

(2)(a) The division may contact participants to gather annual harvest information and hunting activity information.

(b) Participants are expected to provide harvest information and hunting activity information if contacted by the division.

(3)(a) A participant may specify a change to their regional hunt choice for a Dedicated Hunter Permit by submitting a request in writing to the division by the [application deadline for the big game drawing]last business day in January.

(b) If a change is not specified pursuant to Subsection (a), the regional hunt choice selected initially or in the prior year shall [be assigned]remain in effect.

#### R657-38-[<del>12.]14.</del> [Limited Entry-]Dedicated Hunter Program Limited Entry Drawing.

(1) Any unfilled Dedicated Hunter Permit with an unused attached tag, returned to the Division by the [application deadline for the big game drawing, which is published in the proclamation of the Wildlife Board for taking big game]last business day in January, may qualify the participant to be entered into the Dedicated Hunter Program Limited Entry Drawing provided:

(a) the participant is currently enrolled in the program;

(b) the participant has returned the Dedicated Hunter Permit and unused, attached tag, or an affidavit as provided in Section R657-38-[6]8(6)(c): and

(c) the participant is 14 years of age or older, or if the participant is 13 years of age and will have their 14th birthday in the calendar year for which the permit is issued.

(2)(a) One limited entry deer permit and one limited entry elk permit shall be offered through the drawing for each 250 permits received by the Division in accordance with Subsection (1).

(b) The eligible participants and limited entry permits shall be randomly drawn.

(c) The successful participant must meet all program requirements by June 1 for the current year in which the permit is valid before the issuance of the permit.

(d) If the successful participant fails to fulfill program requirements by June 1, the permit may be issued to the next participant on the alternate drawing list as provided in Rule R657-42.

(3)[-The drawing results may be posted at division offices and on the division Internet address on the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

<u>(4)</u>](a) The successful participant shall be notified by <u>certified</u> mail.

(b) The successful participant must submit the appropriate limited entry <u>permit</u> fee within ten business days of the date on the notification letter.

(c) If the successful participant fails to submit the required limited entry permit fee, the permit may be issued to the next participant[<del>, who would have drawn the permit, in accordance with</del>] <u>on the alternate drawing list as provided in</u> Rule R657-42.

(5)(a) The [Limited Entry]Dedicated Hunter Limited Entry Permit allows the recipient to take only the species for which the permit is issued.

(b) The species that may be taken shall be printed on the permit.

(c) The species may be taken in the area and during the season specified on the permit.

(d) The species may be taken only with the weapon specified on the permit.

(e) The recipient of a limited entry deer or elk permit is subject to all of the provisions of Title 23, Wildlife Resources Code, and the rules and proclamations of the Wildlife Board for taking and pursuing wildlife.

(f) Bonus points shall not be awarded or utilized when applying for or obtaining [Limited Entry]Dedicated HunterLimited Entry permits.

(g) Any participant who obtains a [Limited Entry-]Dedicated Hunter<u>Limited Entry</u> Permit is not subject to the waiting periods set forth in Rule R657-5 and the proclamation of the Wildlife Board for taking big game.

#### R657-38-15. Certificate of Registration Surrender.

(1)(a) A participant who has obtained a Dedicated Hunter certificate of registration may surrender the certificate of registration to a division office provided the participant does not have two program harvests.

(b) A participant who surrenders the Dedicated Hunter certificate of registration may not re-enter the program until the participant's initial certificate of registration has expired.

(2) The division may not issue a refund, except as provided in Section 23-19-38 and Section R657-38-3(15).

#### R657-38-16. Certificate of Registration Suspension.

(1) The division may suspend a Dedicated Hunter certificate of registration pursuant to Section 23-19-9 and R657-26.

(2) A certificate of registration may be suspended if the participant fraudulently:

(a) submits a time sheet for service hours; or

(b) completes a wildlife conservation and ethics course.

(3) A certificate of registration may be suspended if the participant is under a judicial or administrative suspension order

suspending any wildlife hunting or fishing privilege within Utah or elsewhere.

(4) A certificate of registration is invalid if the participant's big game hunting privileges are suspended in any jurisdiction during the participant's enrollment in the program.

(5) A Dedicated Hunter permit is invalid if a participant's certificate of registration is suspended.

#### KEY: wildlife, hunting, recreation, wildlife conservation Date of Enactment or Last Substantive Amendment: [August 7, 2007]2009

Notice of Continuation: November 21, 2005

Authorizing, and Implemented or Interpreted Law: 23-14-18

• ——— •

Natural Resources, Wildlife Resources

# R657-44-3

Damage to Cultivated Crops, Fences, or Irrigation Equipment by Big Game Animals

#### NOTICE OF PROPOSED RULE

(Amendment) DAR FILE NO.: 32299 FILED: 01/13/2009, 09:55

#### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to depredation and mitigation permits.

SUMMARY OF THE RULE OR CHANGE: The proposed revision to the above listed rule authorizes a mitigation permit voucher for antlerless deer to take one or two deer as determined by DWR.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-16-2, 23-16-3, 13-16-3.1, 23-16-3.2, and 23-16-4

#### ANTICIPATED COST OR SAVINGS TO:

 THE STATE BUDGET: This amendment allows the removal of one or two antlerless deer as determined by DWR in depredation situations, as such DWR determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.
 LOCAL GOVERNMENTS: Since this amendment only allows for the taking of one or two antlerless deer as determined by DWR with a mitigation voucher, this should have little to no effect on the local government. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments. ✤ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This amendment allows for the taking of one or two antlerless deer as determined by DWR with a mitigation voucher in depredation situations. Since this amendment requires the same purchase of a mitigation voucher, it does not increase the cost to each sportsmen. Therefore, the amendments do not have the potential to generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that these amendments will not create additional costs for mitigation voucher holders. The fee is the same, the only difference is two antlerless deer may be taken in situations approved by DWR.

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. Michael R. Styler, Executive Director

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 at the above address, 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 TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2009

AUTHORIZED BY: James F Karpowitz, Director

#### R657. Natural Resources, Wildlife Resources. R657-44. Big Game Depredation.

**R657-44-3.** Damage to Cultivated Crops, Fences, or Irrigation Equipment by Big Game Animals.

(1) If big game animals are damaging cultivated crops on cleared and planted land, or fences or irrigation equipment on private land, the landowner or lessee shall immediately, upon discovery of big game damage, request that the division take action by notifying a division representative in the appropriate regional office pursuant to Section 23-16-3(1).

(2) Notification may be made:

(a) orally to expedite a field investigation; or

(b) in writing to a division representative in the appropriate division regional office.

(3)(a) The regional supervisor or division representative shall contact the landowner or lessee within 72 hours after receiving notification to determine the nature of the damage and take

appropriate action for the extent of the damage experienced or expected during the damage incident period.

(b) The division shall consider the big game population management objectives as established in the wildlife unit management plan approved by the Wildlife Board.

(c) Division action shall include:

(i) removing the big game animals causing depredation; or

(ii) implementing a depredation mitigation plan pursuant to Sections 23-16-3(2)(b) through 23-16-3(2)(f) and approved in writing by the landowner or lessee.

(4)(a) The division mitigation plan may incorporate any of the following measures:

(i) sending a division representative onto the premises to control or remove the big game animals, including:

(A) herding;

(B) capture and relocation;

(C) temporary or permanent fencing; or

(D) removal, as authorized by the division director or the division director's designee;

(ii) recommending to the Wildlife Board an antlerless big game hunt in the next big game season framework;

(iii) scheduling a depredation hunter pool hunt in accordance with Sections R657-44-7, R657-44-8, or R657-44-9;

(iv) issuing mitigation permits to the landowner or lessee for the harvest of big game animals causing depredation during a general or special season hunt authorized by the Wildlife Board, of which:

(A) the hunting area for big game animals may include a buffer zone established by the division that surrounds, or is adjacent to, the lands where depredation is occurring;

(B) the landowner or lessee may retain no more than five antlerless deer, five doe pronghorn, and two antlerless elk;

(C) each qualified recipient of a mitigation permit will receive from the division a Mitigation Permit Hunting License that satisfies the hunting license requirements in R657-44-11(c) to obtain the mitigation permit.

(D) the Mitigation Permit Hunting License does not authorize the holder to hunt small game; nor does it qualify the holder to apply for or obtain a cougar, bear, turkey, or other big game permit.

(v) issuing big game mitigation permit vouchers for use on the landowner's or lessee's private land during a general or special hunt authorized by the Wildlife Board.

(A) mitigation permit voucher for antlerless deer may authorize the take of one or two deer as determined by the division.

(b) The mitigation plan may describe how the division will assess and compensate for damage pursuant to Section 23-16-4.

(c) The landowner or lessee and the division may agree upon a combination of mitigation measures to be used pursuant to Subsections (4)(a)(i) through (4)(a)(v), and a payment of damage pursuant to Section 23-16-4.

(d) The agreement pursuant to Subsection (4)(c) must be made before a claim for damage is filed and the mitigation measures are taken.

(5) Vouchers may be issued in accordance with Subsection (4)(a)(v) to:

(a) the landowner or lessee; or

(b) a landowner association that:

(i) applies in writing to the division;

(ii) provides a map of the association lands;

(iii) provides signatures of the landowners in the association; and

(iv) designates an association representative to act as liaison with the division.

(6) In determining appropriate mitigation, the division shall consider the landowner's or lessee's revenue pursuant to Subsections 23-16-3(2)(f) and 23-16-4(3)(b).

(7) Mitigation permits or vouchers may be withheld from persons who have violated this rule, any other wildlife rule, the Wildlife Resources Code, or are otherwise ineligible to receive a permit.

(8)(a) The options provided in Subsections (4)(a)(i) through (4)(a)(v) are for antlerless animals only.

(b) Deer and pronghorn hunts may be August 1 through December 31, and elk hunts may be August 1 through January 31.

(9)(a) The division director may approve mitigation permits or mitigation permit vouchers issued for antlered animals.

(b) A mitigation permit may be issued to the landowner or lessee to take big game for personal use, provided the division and the landowner or lessee desire the animals to be permanently removed.

(c) A mitigation permit voucher may be issued to the landowner or lessee, provided:

(i) the division has determined that the big game animals in the geographic area significantly contribute to the wildlife management units;

(ii) the landowner or lessee agrees to perpetuate the animals on their land; and

(iii) the damage, or expected damage, to the cultivated crop is comparable with the expected value of the mitigation permit voucher on that private land within the wildlife unit.

(10)(a) If the landowner or lessee and the division are unable to agree on the assessed damage, they shall designate a third party pursuant to Subsection 23-16-4(3)(d).

(b) Additional compensation shall be paid above the value of any mitigation permits or vouchers granted to the landowner or lessee if the damage exceeds the value of the mitigation permits or vouchers.

(11)(a) The landowner or lessee may revoke approval of the mitigation plan agreed to pursuant to Subsection (4)(c).

(b) If the landowner or lessee revokes the mitigation plan, the landowner or lessee must request that the division take action pursuant to Section 23-16-3(1)(a).

(c) Any subsequent request for action shall start a new 72-hour time limit as specified in Section 23-16-3(2)(a).

(12) The expiration of the damage incident period does not preclude the landowner or lessee from making future claims.

(13) The division may enter into a conservation lease with the landowner or lessee of private land pursuant to Section 23-16-3(5).

#### KEY: wildlife, big game, depredation

Date of Enactment or Last Substantive Amendment: [August 7, 2007]2009

Notice of Continuation: June 20, 2007

Authorizing, and Implemented or Interpreted Law: 23-16-2; 23-16-3; 23-16-3.5

# Natural Resources, Wildlife Resources R657-55-4

Obtaining Authority to Distribute Wildlife Convention Permit Series

#### NOTICE OF PROPOSED RULE

(Amendment) DAR FILE NO.: 32297 FILED: 01/13/2009, 09:49

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council and Wildlife Board meetings conducted annually for taking public input and reviewing the Division of Wildlife Resources' (DWR) rule pursuant to convention permits.

SUMMARY OF THE RULE OR CHANGE: The proposed revisions to the above listed rule: 1) add a process to allow a conservation organization to withdraw from the convention, and 2) allow the co-conservation organizations the opportunity to assume the contract.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

#### ANTICIPATED COST OR SAVINGS TO:

THE STATE BUDGET: This amendment adds a process to administratively handle a conservation organization's withdrawal from the conference. 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: Since this amendment adds a division process to address the withdrawal of a conservation organization from the convention, this should have little to no effect on the local government. This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments. ✤ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This amendment allows DWR to administratively handle the withdrawal of a conservation organization from the wildlife convention and therefore, it does not have the potential to increase the cost to individuals. Therefore, this amendment does not have the potential to generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that this amendment will not create additional costs for people attending and participating in the annual convention. Therefore, the rule amendment does not create a cost or savings impact to individuals.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule does not create an impact on businesses. Michael R. Styler, Executive Director

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 at the above address, 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 TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2009

AUTHORIZED BY: James F Karpowitz, Director

#### **R657.** Natural Resources, Wildlife Resources. **R657-55.** Wildlife Convention Permits.

**R657-55-4.** Obtaining Authority to Distribute Wildlife Convention Permit Series.

(1) The wildlife convention permit series is issued for a period of five years as provided in Section R657-55-1(4).

(2) The wildlife convention permit series is available to eligible conservation organizations for distribution through a drawing or other random selection process held at a wildlife convention in Utah open to the public.

(3) Conservation organizations may apply for the wildlife convention permit series by sending an application to the division July 1 through August 1, 2005.

(4) Each application must include:

(a) the name, address and telephone number of the conservation organization;

(b) a description of the conservation organization's mission statement;

(c) the name of the president or other individual responsible for the administrative operations of the conservation organization; and

(d) a detailed business plan describing how the wildlife convention will take place and how the wildlife convention permit drawing procedures will be carried out.

(5) An incomplete or incorrect application may be rejected.

(6) The division shall recommend to the Wildlife Board which conservation organization may receive the wildlife convention permit series based on:

(a) the business plan for the convention and drawing procedures contained in the application; and

(b) the conservation organization's, including its constituent entities, ability, including past performance in marketing conservation permits under Rule R657-41, to effectively plan and complete the wildlife convention.

(7) The Wildlife Board shall make the final assignment of the wildlife convention permit series based on the:

(a) division's recommendation;

(b) benefit to protected wildlife;

(c) historical contribution of the organization, including its constituent entities, to the conservation of wildlife; and

(d) previous performance of the conservation organization, including its constituent entities.

(8) The conservation organization receiving the wildlife convention permit series must:

(a) require each applicant to verify they possess a current Utah hunting or combination license before allowing them to apply for a convention permit[-]:

(b) select successful applicants for the wildlife convention permits by drawing or other random selection process in accordance with law, provisions of this rule, proclamation, and order of the Wildlife Board;

(c) allow applicants to apply for the wildlife convention permits without purchasing admission to the wildlife convention;

(d) notify the division of the successful applicant of each wildlife convention permit within 10 days of the applicant's selection;

(e) maintain records demonstrating that the drawing was conducted fairly; and

(f) submit to wildlife convention permit series audits by a division-appointed auditor upon division request.

(9) The division shall issue the appropriate wildlife convention permit to the designated successful applicant after:

(a) completion of the random selection process;

(b) verification of the recipient being found eligible for the permit; and

(c) payment of the appropriate permit fee is received by the division.

(10) The division and the conservation organization receiving the wildlife convention permit series shall enter into a contract, including the provisions outlined in this rule.

(11) If the conservation organization awarded the wildlife convention permit series withdraws before the end of the 5 year period, any remaining co-participants with the conservation organization may be given an opportunity to assume the contract and to distribute the convention permit series consistent with the contract and this rule for the remaining years left in the 5 year period, provided:

(a) The original contracted conservation organization submits a certified letter to the division identifying that it will no longer be participating in the convention.

(b) The partner or successor conservation organization files an application with the division as provided in subsection 4 for the remaining period.

(c) The successor conservation organization submits its application request at least 60 days prior to the next scheduled convention so that the wildlife board can evaluate the request under the criteria in this section.

(d) The Wildlife Board authorizes the successor conservation organization to assume the contract and complete the balance of the 5 year convention permit period.

(12) The division may suspend or terminate the conservation organization's authority to distribute wildlife convention permits at any time during the five year award term for:

(a) violating any of the requirements set forth in this rule or the contract; or

(b) failing to bring or organize a wildlife convention in Utah, as described in the business plan under R657-55-4(4)(d), in any given year.

**KEY:** wildlife, wildlife permits

Date of Enactment or Last Substantive Change: August 21, 2008

Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19

### Natural Resources, Wildlife Resources R657-60-2

Definitions

NOTICE OF PROPOSED RULE

(Amendment) DAR FILE NO.: 32298 FILED: 01/13/2009, 09:52

#### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is proposed to define procedures and regulations designed to prevent and control the spread of aquatic invasive species within the State of Utah.

SUMMARY OF THE RULE OR CHANGE: This rule sets the guidelines and regulations designed to prevent and control the spread of Dreissena mussels in Utah. This amendment adds Electric Lake, Utah; Jumbo Reservoir, Colorado; and Tarryall Reservoir, Colorado.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-27-401, 23-14-18, and 23-14-19

#### ANTICIPATED COST OR SAVINGS TO:

♦ THE STATE BUDGET: The Division of Wildlife Resources (DWR) determines that these amendments do create a cost impact to the state budget or DWR's budget. The 2008 General Legislative Session appropriated \$2,500,000 dollars to aid in the implementation costs associated with this rule.

✤ LOCAL GOVERNMENTS: This rule does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

✤ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule may create a cost impact to boat owners and other water enthusiasts in Utah in that if Dreissena Mussels are found in Utah the cost to decontaminate boats and other conveyances will be at the expense of the owner.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DWR determines that this rule may create a cost impact to individuals who own water vessels and boat in infested waters because they would be required to decontaminate the conveyance.

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. Michael R. Styler, Executive Director

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 at the above address, 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 TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 03/03/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2009

AUTHORIZED BY: James F Karpowitz, Director

#### R657. Natural Resources, Wildlife Resources. R657-60. Aquatic Invasive Species Interdiction. R657-60-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and 23-27-101.

(2) In addition:

(a) "Conveyance" means a terrestrial or aquatic vehicle, including a vessel, or a vehicle part that may carry or contain a Dreissena mussel.

(b) "Decontaminate" means to:

(i) Self-decontaminate equipment or a conveyance that has been in an infested water in the previous 30 days by:

(A) removing all plants, fish, mussels and mud from the equipment or conveyance;

(B) draining all water from the equipment or conveyance, including water held in ballast tanks, bilges, livewells, and motors; and

(C) drying the equipment or conveyance for no less than 7 days in June, July and August;18 days in September, October, November, March, April and May; 30 days in December, January and February; or expose the equipment or conveyance to sub-freezing temperatures for 72 consecutive hours; or

(ii) Professionally decontaminate equipment or a conveyance that has been in an infested water in the previous 30 days by:

(A) Using a professional decontamination service approved by the division to apply scalding water (140 degrees Fahrenheit) to completely wash the equipment or conveyance and flush any areas where water is held, including ballast tanks, bilges, livewells, and motors.

(c) "Dreissena mussel" means a mussel of the genus Dreissena at any life stage, including a zebra mussel, a quagga mussel and a Conrad's false mussel.

(d) "Controlling entity" means the owner, operator, or manager of a water body, facility, or a water supply system.

(e) "Equipment" means an article, tool, implement, or device capable of carrying or containing water or Dreissena mussel.

(f) "Facility" means a structure that is located within or adjacent to a water body.

(g) "Infested water" includes all the following:

(i) Electric Lake, Utah;

([i]ii) Grand Lake, Colorado;

([iii]iii) Jumbo Reservoir, Colorado;

(iv) lower Colorado River between Lake Mead and the Gulf of California;

([iii]v) Lake Granby, Colorado;

([iv]vi) Lake Mead in Nevada and Arizona;

([+]vii) Lake Mohave in Nevada and Arizona;

([vi]viii) Lake Havasu in California and Arizona;

([vii]ix) Lake Pueblo in Colorado;

([viii]x) Lake Pleasant in Arizona;

([ix]xi) San Justo Reservoir in California;

([**\***]<u>xii</u>) Southern California inland waters in Orange, Riverside, San Diego, Imperial, and San Bernardino counties;

([<del>xi</del>]xiii) Shadow Mountain Reservoir, Colorado;

([<del>xii</del>]<u>xiv</u>) Tarryall Reservoir, Colorado;

(xv) Willow Creek Reservoir; Colorado;

 $([\frac{xiii}]xvi)$  coastal and inland waters east of the 100th Meridian in North America; and

([xiv]xvii) other waters established by the Wildlife Board and published on the DWR website.

(h) "Vessel" means every type of watercraft used or capable of being used as a means of transportation on water.

(i) "Water body" means natural or impounded surface water, including a stream, river, spring, lake, reservoir, pond, wetland, tank, and fountain.

(j) "Water supply system" means a system that treats, conveys, or distributes water for irrigation, industrial, wastewater treatment, or culinary use, including a pump, canal, ditch or, pipeline.

(i) "Water supply system" does not included a water body.

KEY: fish, wildlife, wildlife law

Date of Enactment or Last Substantive Amendment: [2008]2009 Authorizing, and Implemented or Interpreted Law: 23-27-401; 23-14-18; 23-14-19

### Public Safety, Fire Marshal **R710-3** Assisted Living Facilities

#### NOTICE OF PROPOSED RULE

(Amendment) DAR FILE NO.: 32304 FILED: 01/14/2009, 07:57

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Fire Prevention Board met on 01/12/2009, in a regularly scheduled Board meeting and voted by majority to make some amendments to Rule R710-3. This was for the purpose of correcting the placement of one amendment, adding definitions, and establishing the requirements for clients in Residential Treatment/Support Assisted Living Facilities to exit the facility unassisted in a certain time period.

SUMMARY OF THE RULE OR CHANGE: The proposed rule amendments to Rule R710-3 are as follows: 1) in Subsection R710-3-2(2.5), the Board proposes to add the definition of Compromised Ambulatory Capacity and define the Utah Administrative Code; 2) in Subsection R710-3-3(3.1.4), the Board proposes to move the allowance to not be fire sprinklered in a group home under certain conditions to Subsection R710-3-3(3.4.6.1) in the rule so it applies in the correct subsection of the rule; and 3) in Subsections R710-3-3(3.4.9) and (3.4.9.1), the Board proposes to establish requirements for the clients to exit the facility unassisted in a certain time period or make some changes to accommodate the client to accomplish the task of exiting in two minutes or less.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-7-204

#### ANTICIPATED COST OR SAVINGS TO:

THE STATE BUDGET: There would be a small aggregate anticipated savings to the state budget as it defines and establishes a measurable standard to exiting requirements for those clients in a residential treatment/support assisted living facility. It would shorten the process of measurement.

✤ LOCAL GOVERNMENTS: There would be a small aggregate anticipated savings to local government as it defines and establishes a measurable standard to exiting requirements for those clients in a residential treatment/support assisted living facility. It would shorten the process of measurement.

✤ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The only aggregate anticipated cost to small businesses would be if a client could not exit the facility unassisted in two minutes or less, and the small business could not facilitate an acceptable alternative or make accommodations, the client would be required to be moved from the facility.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for a group home provider would be the cost for one to one staff to resident ratio, the installation of an automatic fire sprinkler system or move the client from the facility if accommodations could not be made to ensure the client can exit the facility unassisted in two minutes or less.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The only fiscal impact seen to group home providers would be if a client could not be exited from the group home unassisted in two minutes or less, and an alternative accommodation could not be made, either the group home would need to install an automatic fire sprinkler system, have one to one staff to client ratio or the client moved out of the facility. Scott T. Duncan, Commissioner

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 at the above address, by phone at 801-284-6352, by FAX at 801-284-6351, or by Internet E-mail at bhallada@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN  $5:00 \ PM$  on 03/03/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 03/10/2009

AUTHORIZED BY: Ron L. Morris, Utah State Fire Marshal

#### **R710.** Public Safety, Fire Marshal. **R710-3.** Assisted Living Facilities. **R710-3-2.** Definitions.

2.1 "Ambulatory" means a person who is capable of achieving mobility sufficient to exit without the physical assistance of another person. An equivalency to "Ambulatory" may be approved under the conditions stated in Sections 3.2.9, 3.3.8 or 3.4.9.

2.2 "Assisted Living Facility" means:

2.2.1 a Type 1 Assisted Living Facility, which is a residential facility subject to licensure by the Utah Department of Health, that provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the physical assistance of another person.

2.2.2 a Type 2 Assisted Living Facility, which is a residential facility subject to licensure by the Utah Department of Health, that provides an array of coordinated supportive personal and health care services to residents who meet the definition of semi-independent.

2.2.3 a Residential Treatment/Support Assisted Living Facility, which creates a group living environment for four or more residents contracted by the Division of Services to [p]People with [d]Disabilities and subject to licensure by the Utah Department of Human Services, and provides a protected living arrangement for ambulatory, non-restrained persons who are capable of achieving mobility sufficient to exit the facility without the physical assistance of another person.

2.2.4 Assisted Living Facilities shall be classified by size as follows:

2.2.4.1 "Type 1, 2, and Residential Treatment/Support Limited Capacity Facility" means an assisted living facility accommodating five or less residents, excluding staff.

2.2.4.2 "Type 1, 2, and Residential Treatment/Support Small Facility" means an assisted living facility accommodating at least six and not more than 16 residents, excluding staff.

2.2.4.3 "Type 1, 2, and Residential Treatment/Support Large Facility" means an assisted living facility accommodating more than sixteen residents, excluding staff.

2.3 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

2.4 "Board" means Utah Fire Prevention Board.

<u>2.5</u> "Compromised Ambulatory Capacity" means physical or mental incapacitations that inhibit a person's ability to exit a facility unassisted.

2.[5]6 "IBC" means International Building Code.

2.[6]7 "ICC" means International Code Council, Inc.

2.[7]8 "IFC" means International Fire Code.

2.[8]<u>9</u> "Licensing Authority" means the Utah Department of Health or the Utah Department of Human Services.

2.[9]10 "Semi-independent" means a person who is:

 $2.[9]\underline{10}.1$  physically disabled but able to direct his or her own care; or

2.[9]10.2 cognitively impaired or physically disabled but able to evacuate from the facility with the physical assistance of one person.

2.[10]11 "SFM" means State Fire Marshal.

2.12 "UAC" means Utah Administrative Code.

#### **R710-3-3.** Amendments and Additions.

3.1 General Requirements

3.1.1 All facilities shall be inspected annually and obtain a certificate of fire clearance signed by the AHJ.

3.1.2 All facility administrators shall develop emergency plans and preparedness as required in IFC, Chapter 4.

3.1.3 IFC, Chapter 9, Sections 907.3.1.2 and 907.3.1.8 is deleted.

[3.1.4 IFC, Chapter 9, Section 903.2.7 is amended to add the following: Exception: Group R-4 fire areas not more than 4500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system. This Exception does not apply to Type II Limited Capacity Assisted Living Facilities.

3.2.1 Type I Limited Capacity Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-3, and maintained in accordance with the IBC and IFC.

3.2.2 Type I Limited Capacity Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.2.3 Residents in Type I Limited Capacity Assisted Living Facilities shall be housed on the first story only, unless an approved outside exit leading to the ground level is provided from any upper or lower level. Split entry/split level type homes in which stairs to the lower and upper level are equal or nearly equal, may have residents housed on both levels when approved by the AHJ.

3.2.4 In Type I Limited Capacity Assisted Living Facilities, resident rooms on the ground level, shall have escape or rescue windows as required in IFC, Chapter 10, Section 1025.

3.2.5 In Type I Limited Capacity Assisted Living Facilities an approved independent smoke detector shall be installed and maintained by location as required in IFC, Chapter 9, Section 907.2.10.1.2.

3.2.6 Type I Small Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the IBC and IFC.

3.2.7 Type I Small Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.2.8 Type I Large Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-1, and maintained in accordance with the IBC and IFC.

3.2.8.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.2.9 In a Type I Assisted Living Facility, non-ambulatory persons are permitted after receiving approval for a variance from the Utah Department of Health as allowed in Utah Administrative Code, R432-2-18.

3.3 Type II Assisted Living Facilities

3.3.1 Type II Limited Capacity Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the IBC and IFC.

3.3.2 Type II Limited Capacity Assisted Living Facilities shall have an approved automatic fire extinguishing system installed in compliance with the IBC and IFC, or provide a staff to a resident ratio of one to one on a 24 hour basis.

3.3.3 Type II Small Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-1, and maintained in accordance with the IBC and IFC.

3.3.3.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.3.4 Type II Small Assisted Living Facilities shall have a minimum corridor width of six feet.

3.3.4.1 Type II Small Assisted Living Facilities licensed before November 16, 2004, shall have a minimum corridor width of six feet or a path of egress that is acceptable to the AHJ.

3.3.5 Type II Large Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-2, and maintained in accordance with the IBC and IFC.

3.3.5.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.3.6 In Type II Assisted Living Facilities, where the clinical needs of the patients require specialized security, approved access controlled egress doors may be installed when all of the following are met:

3.3.6.1 The controlled egress doors shall unlock upon activation of the automatic fire sprinkler system or the automatic fire detection system.

3.3.6.2 The facility staff can unlock the controlled egress doors by either sensor or keypad.

3.3.6.3 The controlled egress doors shall unlock upon loss of power.

3.3.6.4 The secure area or unit with controlled egress doors shall be located at the level of exit discharge in Type V construction.

3.3.7 In Type II Assisted Living Facilities, where the clinical needs of the patients require approved, listed delayed egress locks, they shall be installed on doors as allowed in IBC, Section 1008.1.8.6. Section 1008.1.8.6(3) is deleted. The secure area or unit with delayed egress locks shall be located at the level of exit discharge in Type V construction.

3.3.8 In a Type II Assisted Living Facility, non-ambulatory persons are permitted after receiving approval for a variance from the Utah Department of Health as allowed in Utah Administrative Code, R432-2-18.

3.4 Residential Treatment/Support Assisted Living Facilities

3.4.1 Residential Treatment/Support Limited Capacity Assisted Living Facility shall be constructed in accordance with IBC, Residential Group R-3, and maintained in accordance with the IBC and IFC.

3.4.2 Residential Treatment/Support Limited Capacity Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.4.3 Residents in Residential Treatment/Support Limited Capacity Assisted Living Facilities shall be housed on the first story only, unless an approved outside exit leading to the ground level is provided from any upper or lower level. Split entry/split level type homes in which stairs to the lower and upper level are equal or nearly equal, may have residents housed on both levels when approved by the AHJ.

3.4.4 In Residential Treatment/Support Limited Capacity Assisted Living Facilities, resident rooms on the ground level, shall have escape or rescue windows as required in IBC, Chapter 10, Section 1026.

3.4.5 In Residential Treatment/Support Limited Capacity Assisted Living Facilities an approved independent smoke detector shall be installed and maintained by location as required in IFC, Chapter 9, Section 907.2.10.1.2.

3.4.6 Residential Treatment/Support Small Assisted Living Facilities shall be constructed in accordance with IBC, Residential Group R-4, and maintained in accordance with the IBC and IFC.

3.4.6.1 IFC, Chapter 9, Section 903.2.7 is amended to add the following: Exception: Residential Treatment/Support Assisted Living Facility classified as Group R-4, not more than 4500 gross square feet, and not containing more than 16 ambulatory, non-restrained residents, is allowed provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring.

3.4.7 Residential Treatment/Support Small Assisted Living Facility required exits shall not be secured with dead bolts, chains, or hasps. Deadbolts that are interconnected with the latch, and

provide simultaneous retraction of both the deadbolt and the latch, by the turning of the latch, is permitted.

3.4.8 Residential Treatment/Support Large Assisted Living Facilities shall be constructed in accordance with IBC, Institutional Group I-1, and maintained in accordance with the IBC and IFC.

3.4.8.1 An automatic fire sprinkler system shall be provided throughout buildings classified as Group I. Listed quick response or residential sprinkler heads shall be installed in patient or resident sleeping areas.

3.4.9 In a Residential Treatment/Support Assisted Living Facility, [non-ambulatory persons]residents with compromised ambulatory capacity that can demonstrate the ability to exit the facility unassisted in two minutes or less, and meet [are permitted after meeting] the requirements listed in Utah Administrative Code, R501-2-11, Emergency Plans, [and receiving] may receive approval from the Office of Licensing, Utah Department of Human Services, to remain in the facility as a resident.

3.4.9.1 In those facilities where the Office of Licensing, Department of Human Services, determines that the resident cannot exit the facility unassisted in two minutes or less, the facility management shall complete one of the following:

<u>3.4.9.1.1 Make accommodations, changes or enact an</u> emergency plan that guarantees the exiting of the resident in two minutes or less.

<u>3.4.9.1.2</u> Provide a staff to resident ratio of one to one on a 24 hour basis.

3.4.9.1.3 Install an approved automatic fire sprinkler system. 3.4.9.1.4 Move the resident from the facility.

#### **KEY:** assisted living facilities

Date of Enactment or Last Substantive Amendment: [January 9, 2007] March 10, 2009

Notice of Continuation: June 4, 2007

Authorizing, and Implemented or Interpreted Law: 53-7-204

End of the Notices of Proposed Rules Section

### NOTICES OF 120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a PROPOSED RULE, a 120-DAY RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the 120-DAY RULE including the name of a contact person, justification for filing a 120-DAY RULE, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text  $(\cdots )$  indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A 120-DAY RULE is effective for 120 days or until it is superseded by a permanent rule.

Because 120-DAY RULES are effective immediately, the law does not require a public comment period. However, when an agency files a 120-DAY RULE, it usually files a PROPOSED RULE at the same time, to make the requirements permanent. Comment may be made on the proposed rule. Emergency or 120-DAY RULES are governed by Section 63G-3-304; and Section R15-4-8.

### Career Service Review Board, Administration **R137-1-2** Definitions

#### NOTICE OF 120-DAY (EMERGENCY) RULE DAR FILE NO.: 32286

FILED: 01/07/2009, 13:11

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this emergency rule is to comply with the State's four 10-hour day work schedule.

SUMMARY OF THE RULE OR CHANGE: This change eliminates Fridays as a defined work day. (DAR NOTE: A corresponding amendment is under DAR No. 32287 in this issue, February 1, 2009, of the Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19a-203

#### ANTICIPATED COST OR SAVINGS TO:

THE STATE BUDGET: None--Changing the days during the week that Career Service Review Board (CSRB) filings and decisions will be issued will have no fiscal impact whatsoever on operating costs.

✤ LOCAL GOVERNMENTS: None--The CSRB has no interaction with local governments.

✤ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Employees will simply be unable to file on Fridays. This will generate no costs for them, and will in fact result in an actual extension of time for them to file with the CSRB. COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Employees will simply be unable to file on Fridays. This will generate no costs for them, and will in fact result in an actual extension of time for them to file with the CSRB.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will have no impact on the CSRB's operations. As stated, it simply sets forth the days that filings and decisions will be issued. Robert W. Thompson, Administrator

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

The reason for the change is the Governor's Executive Order that changed the State's work schedule to four 10-hour work days. Since many grievances and decisions on those grievances are required to be filed within proscribed days, the section defining working days to include Fridays must be changed to be in compliance with law. Specifically, Section R137-1-2 needs to be changed to exclude Friday as a working day. (DAR NOTE: The executive order is number 2008-0006, issued 07/31/2008: Launching the Working 4 Utah Initiative.)

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

CAREER SERVICE REVIEW BOARD ADMINISTRATION Room 1120 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:

Robert W. Thompson at the above address, by phone at 801-538-3047, by FAX at 801-538-3139, or by Internet E-mail at bthompson@utah.gov

UTAH STATE BULLETIN, February 1, 2009, Vol. 2009, No. 3

THIS RULE IS EFFECTIVE ON: 01/08/2009

AUTHORIZED BY: Robert W. Thompson, Administrator

#### R137. Career Service Review Board, Administration. R137-1. Grievance Procedure Rules. R137-1-2. Definitions.

Terms defined in Section 63<u>G</u>-4[<del>6b</del>]-[<u>2</u>]<u>103</u> of the Utah Administrative Procedures Act (UAPA) are incorporated by reference within this rule. In addition, other terms which are used in this rule are defined below:

"Abandonment of Grievance" means either the voluntary withdrawal of a grievance or the failure by an employee to properly pursue a grievance through these grievance procedures.

"Administrative Review of the File" means an informal adjudicative proceeding according to Subsection 67-19a-403(2)(b)(ii).

"Administrator" means the incumbent in the position defined at Section 67-19a-101(1).

"Affidavit" means a signed and sworn statement offered for consideration in connection with a grievance proceeding.

"Appeal" means a formal request to a higher level of review of an unacceptable lower level decision.

"Appellant" means the party that is advancing an evidentiary level grievance decision to the appellate level before the board at Step 6.

"Appointing Authority" means the officer, board, commission, person or group of persons authorized to make appointments on personnel/human resource management matters in their respective agency.

"Board" means the entity defined at Section 67-19a-101(2), and refers to the five-member, gubernatorial-appointed entity at Sections 67-19a-201 and 67-19a-202.

"Burden of Moving Forward" means a party's obligation to present evidence on a particular issue at a particular time. The burden of moving forward may shift back and forth between the parties based on certain legal principles.

"Burden of Proof" means the obligation to prove affirmatively a fact or set of facts at issue between two parties. If proven, the opposing party then has a burden of proving any affirmative defense.

"CSRB" and "CSRB Office" mean the agency of state government that statutorily administers these grievance procedures according to Sections 67-19a-101 through 67-19a-408.

"Closing Statement" means a party's final summation of evidence and argument, which is presented at the conclusion of the hearing.

"Consolidation" means the combining of two or more grievances involving the same controversy for purposes of holding a joint hearing, proceeding, or administrative review.

"Continuance" means an authorized postponement or adjournment of a hearing until a later date, whether the date is specified or not.

"Declaratory Order" means a ruling that is explanatory in purpose; it is designed to clarify what before was uncertain or doubtful. A declaratory order constitutes a declaration of rights between parties to a dispute and is binding as to both present and future rights. It is an administrative interpretation or explanation of a right, statute, order or other legal matter under a statute, rule, or an order. "Default" means an omission of or untimely failure to take or perform a required act in the processing of a grievance. It is the failure to discharge an obligation which results in a forfeiture.

"Deposition" means a form of discovery in which testimony of a witness is given under oath, subject to cross-examination, and recorded in writing, prior to the hearing.

"Discovery" means the prehearing process whereby one party may obtain from the opposing party, or from other individuals or entities, information regarding the witnesses to be called, the documents and exhibits to be used at the hearing, and the facts and information about the case.

"Evidentiary Hearing" means a proceeding of relative formality, though much less formal than a trial, in which witnesses are heard and evidence is presented and considered. Specific issues of fact and of law are tried. Afterwards, ultimate conclusions of fact and of law are set forth in a written decision or order.

"Excusable Neglect" means the exercise of due diligence by a reasonably prudent person and constitutes a failure to take proper steps at the proper time, not in consequence of the person's own carelessness, inattention, or willful disregard in the processing of a grievance, but in consequence of some unexpected or unavoidable hindrance or accident.

"File" means to submit a document, grievance, petition, or other paper to the CSRB Office as prescribed by these rules. The term "file" includes faxing and E-mailing.

"Filing Date" means the day that a document, grievance, petition, or other paper is recorded as having been received by the CSRB Office.

"Grievance Procedures" mean the grievance and appeal procedures codified at Sections 67-19a-101 through 67-19a-408 and promulgated through this rule.

"Grievant" means the person or party advancing one or more issues as a petitioner through these grievance procedures to the evidentiary/step 5 level. However, at the appellate/step 6 level one party is designated as the appellant, the other as respondent.

"Group Grievance" means a grievance submitted and signed by two or more aggrieved employees. The term does not include "class action."

"Hearing" means the opportunity to be heard in an administrative proceeding.

"Hearing Officer" means an impartial trier of facts appointed by the CSRB administrator and assigned to hear a particular grievance case at the evidentiary/step 5 level.

"Hearsay Evidence" means evidence not based upon a witness's personal knowledge as a direct observer of an event. Rather, hearsay evidence stems from the repetition of what a witness heard another person say. Hearsay's value rests upon the credibility of the declarant. Hearsay is a statement made outside of the hearing that is offered as evidence of the truth of matters asserted in the hearing.

"Issuance" means the date on which a decision, order or ruling is signed and dated; it is not the date of mailing, or the date of the mailing certificate, nor the postal date. Date of issuance is the date specified according to Subsection  $63\underline{G}$ -4[ $\underline{6b}$ ]-[ $\underline{14}$ ]401(3)(a), of the UAPA.

"Joint Hearing" means the uniting of two or more grievances involving the same, similar, or related circumstances or issues to conduct a single hearing; also see "Consolidation."

"Jurisdiction" means the legal right and authority to hear and decide issues and controversies.

"Jurisdictional Hearing" means a hearing conducted by the administrator (or hearing officer who sits by designation to represent the administrator in these hearings) to determine timeliness, standing, jurisdiction, direct harm, and eligibility to advance a grievance issue to the evidentiary/step 5 level.

"Management Representative" means a person of managerial or supervisory status who is not subject to exclusion. Legal counsel is not included within the meaning of the term.

"Motion" means a request offered verbally or in writing for a ruling or to take some action.

"Notice" and "Notification" mean a proper written notice to the parties involved in a grievance procedural hearing or conference, setting forth date, time, location, and the issue to be considered.

"Pleadings" mean the formal written allegations of the parties that set forth their respective claims and defenses.

"Pro Se" means in one's own behalf. A person is represented pro se in an administrative proceeding when acting without legal counsel or other representation.

"Quash" means to cancel, annul, or vacate a subpoena.

"Relevant" means directly applying to the matter in question; pertinent, germane. It is evidence that tends to make the existence of any facts more probable or certain than they would be without the evidence; and tending to prove the precise fact at issue.

"Remand" means to send back, as for further deliberation and judgment, to the presiding official or other tribunal from which a case was appealed.

"Respondent" means the party against whom an appeal is made at the appellate/step 6 level.

"Standard of Proof" means the evidentiary standard, which in CSRB adjudications is the substantial evidence standard.

"Stay" means a temporary suspension of a case or of some designated proceeding within the case.

"Submit" means to commit to the discretion of another; to present for determination.

"Subpoena" means a formal legal document issued under authority to compel the appearance of a witness at an administrative proceeding, the disobedience of which may be punishable as a contempt of court.

"Subpoena Duces Tecum" means a formal legal document issued under authority to compel specific documents, books, writings, papers, or other items.

"Substantial Evidence" means evidence possessing something of substance and relevant consequence, and which furnishes substantial basis of fact from which issues tendered can be reasonable resolved. It is evidence that a reasonable mind might accept as adequate to support a conclusion, but is less than a preponderance.

"Summary Judgment" means a ruling made upon motion by a party or the presiding official when there is no dispute as to either material fact or inferences to be drawn from undisputed facts, or if only a question of law is involved. The motion may be directed toward all or part of a claim or defense.

"Transcript" means an official verbatim written record of an adjudicative proceeding or any part thereof, which has been recorded and subsequently transcribed by a certified court reporter.

"UAPA" means the Utah Administrative Procedures Act found at Sections  $63\underline{G}$ -4[ $\underline{6b}$ ]-1 $\underline{02}$  through  $63\underline{G}$ -4[ $\underline{6b}$ ]-[ $\underline{21}$ ]503.

"Withdraw" means to recall or retract a grievance from further consideration under these grievance procedures.

"Witness Fee" means an appearance fee and may also include a mileage rate established by statutory provision pursuant to Section 21-5-4.

"Working Days" means for purposes of the time periods for filing a grievance, advancing an appeal or responding to an employee's grievance or appeal, all days except [for]Fridays, Saturdays, Sundays and recognized State holidays.

#### **KEY:** grievance procedures

Date of Enactment or Last Substantive Amendment: January 8, 2009

Notice of Continuation: August 4, 2006

Authorizing, and Implemented or Interpreted Law: 34A-5-106: 67-19-30; 67-19-31; 67-19-32; 67-19a et seq.; 63<u>C</u>-4[<del>6b</del>] et seq.

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## Career Service Review Board, Administration **R137-1-22**

The Board's Appellate/Step 6 Procedures

#### NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE No.: 32288

FILED: 01/08/2009, 10:03

#### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This emergency rule establishes party responsible for transcription productions costs.

SUMMARY OF THE RULE OR CHANGE: This filing requires appellants to be responsible for entire transcription production costs. (DAR NOTE: A corresponding amendment is under DAR No. 32290 in this issue, February 1, 2009, of the Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19a-203 and Subsection 67-19a-407(1)

ANTICIPATED COST OR SAVINGS TO:

THE STATE BUDGET: This change will produce a \$3,000 -\$4,000 annual saving for the CSRB.

 LOCAL GOVERNMENTS: None--The CSRB has no interaction with local governments.

✤ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Individuals or state departments appealing evidentiary/Step 5 decisions will now be required to pay all transcription production costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Individuals or state departments appealing evidentiary/Step 5 decisions will now be required to pay all transcription production costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As set forth above, this amendment will result in a cost saving to the CSRB of \$3,000 to \$4,000, annually. It is necessitated by legislative budgetary cuts imposed during the fiscal year 2009 interim session. Robert W. Thompson, Administrator

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent budget reduction because of budget restraints or federal requirements.

Budget constraints necessitate that transcription production costs no longer be shared with the Career Service Review Board (CSRB). This amendment will result in a cost savings of between 1% and 2% of total agency expenses.

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

CAREER SERVICE REVIEW BOARD ADMINISTRATION Room 1120 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:

Robert W. Thompson at the above address, by phone at 801-538-3047, by FAX at 801-538-3139, or by Internet E-mail at bthompson@utah.gov

THIS RULE IS EFFECTIVE ON: 01/08/2009

AUTHORIZED BY: Robert W. Thompson, Administrator

#### **R137.** Career Service Review Board, Administration. **R137-1.** Grievance Procedure Rules.

**R137-1-22.** The Board's Appellate/Step 6 Procedures.

(1) Transcript Production. The party appealing the CSRB hearing officer's evidentiary/step 5 decision to the board at the appellate/step 6 level shall order transcription of the evidentiary/step 5 hearing from the court reporting firm within ten working days upon receipt of acknowledgment of the appeal from the administrator.

(a) [The a]Appellants shall <u>be responsible for all transcription</u> production costs[share an equal fee payment with the CSRB Office to the court reporting firm. Transcript production cost sharing applies equally only to the appellant and to the CSRB Office]. The CSRB Office receives the transcript original; the appellant receives a transcript copy.

(b) The respondent may inquire of the CSRB Office about obtaining a transcript copy, or may directly purchase a copy from the court reporting firm.

(2) Briefs. An appeal hearing before the board at step 6 is based upon the evidentiary record previously established by the CSRB hearing officer during the evidentiary/step 5 hearing. No additional or new evidence is permitted unless compelled by the board. (a) The appellant in an appellate/step 6 proceeding must obtain the transcript of the evidentiary/step 5 hearing. After receipt of the transcript, the appellant has 30 calendar days to file an original and six copies of a brief with the administrator. Additionally, the respondent must be provided with a copy of the appellant's brief.

(b) After receiving a copy of the appellant's brief, the respondent then has 30 calendar days to file an original and six copies of a brief with the administrator. The appellant may file an original and six copies of a reply brief which addresses the respondent's brief.

(c) After receiving both parties' briefs, the administrator distributes the briefs and the CSRB hearing officer's evidentiary/step 5 decision to the board members.

(d) Each party is responsible for filing its original and six copies with the CSRB Office and for exchanging a copy with the opposing party.

(e) Briefs shall be date-stamped upon their receipt in the CSRB Office.

(f) The time frame for receiving briefs shall be modified or waived only for good cause as determined by the CSRB chair or vice-chair, or the administrator.

(3) Rules of Procedure. The following rules are applicable to appeal hearings before the board at the appellate/step 6 level:

(a) Dismissal of Appeal. Upon a motion by either party or upon its own motion, the board may dismiss any appeal prior to holding a formal appeal hearing if the appeal is clearly moot, without merit, improperly filed, untimely filed, or outside the scope of the board's authority.

(b) Notice. The board shall distribute written notice of the date, time, place, and issues for hearing to the aggrieved employee, to the employee's counsel or representative, to the appropriate agency official, to the agency's counsel or representative, and to the agency's management representative, at least five working days before the date set for the hearing.

(c) Compelling Evidence. The board may compel evidence in the conduct of its appeal hearings, according to Subsection 67-19a-202(3).

(d) Oral Argument/Time Limitation. The board grants up to 20 to 25 minutes to each party for oral argument. The board may grant additional time when deemed appropriate.

(e) Oral Argument Set Aside. If the board determines that oral argument is unnecessary, the parties shall be notified. However, the parties' representatives may be expected to appear before the board at the date, time, and place noticed to answer any questions raised by the board members.

(f) Argument or Memoranda. The board may require the parties to offer oral argument or submit written memoranda of law.

(4) The Board's Standards of Review. The board's standards of review based upon the following criteria:

(a) The board shall first make a determination of whether the factual findings of the CSRB hearing officer are reasonable and rational according to the substantial evidence standard. When the board determines that the factual findings of the CSRB hearing officer are not reasonable and rational based on the evidentiary/step 5 record as a whole, then the board may, in its discretion, correct the factual findings, and also make new or additional factual findings.

(b) Once the board has either determined that the factual findings of the CSRB hearing officer are reasonable and rational or has corrected the factual findings based upon the evidentiary/step 5

record as a whole, the board must then determine whether the CSRB hearing officer has correctly applied the relevant policies, rules, and statutes according to the correctness standard, with no deference being granted to the evidentiary/step 5 decision of the CSRB hearing officer.

(c) Finally, the board must determine whether the decision of the CSRB hearing officer, including the totality of the sanctions imposed by the agency, is reasonable and rational based upon the ultimate factual findings and correct application of relevant policies, rules, and statutes determined according to the above provisions.

(5) Appeal Hearing Record. The proceeding before the board shall be recorded by a certified court reporter, or in exceptional circumstances by a recording machine.

(6) Appellate Review. Upon a party's application for review of the CSRB hearing officer's evidentiary/step 5 decision, the board's appellate/step 6 decision is based upon a review of the record, including briefs and oral arguments presented at step 6, and no further evidentiary hearing will be held unless otherwise ordered by the board. Section  $63\underline{G}-4[\underline{6b}]-[\underline{10}]\underline{208}$  of the UAPA is incorporated by reference.

(7) Remand. Until the board's decision is final, the board may remand the case to the original CSRB hearing officer to take additional evidence or to resolve any further evidentiary issues of fact or law with instructions or may make any other appropriate disposition of the appeal.

(8) Distribution of Appellate Decisions. The board's decision and order is issued on the date that it is signed and dated by the CSRB chair, vice-chair or another board member. After the board's appellate/step 6 decision is issued, it is distributed according to R137-1-8(3).

(a) The board's appellate decision shall be distributed to the aggrieved employee, the employee's counsel or representative, the appropriate agency official, the agency's counsel or representative, and to the agency's management representative. The board's appellate decision shall be final in terms of administrative review under these grievance procedures. The board may, at its discretion, release to the parties its determination orally prior to issuance of its official written decision.

(b) The board's appellate decision is binding on the agency that is a party to the appeal unless its decision and ruling is overturned, vacated, or modified resulting from an appeal to the Utah Court of Appeals.

(c) The board may affirm, reverse, adopt, modify, supplement, amend, or vacate the CSRB hearing officer's decision, either in whole or in part.

(9) Rehearings. The board does not permit rehearings.

(10) Reconsideration.

(a) Reconsideration requests of the board's appellate/step 6 decisions will be conducted pursuant to the provisions of Section 63G-4[6b]-[13]302.

(b) Any request for reconsideration of a previously issued decision by the board is subject to the following conditions:

(i) Reconsideration requests must contain specific reasons why a reconsideration is warranted with respect to the board's factual findings and legal conclusions.

(ii) The board has discretion to decide whether it may reconsider any previously adjudicated matter.

(iii) The board only grants a reconsideration if appropriate justification is offered.

(iv) When the board agrees to the petitioner's request, the board's reconsideration response is in writing, with no further hearing or proceeding on the record, unless the board reopens the record or remands the case to the evidentiary/step 5 level.

(v) Any appeal from a board-issued reconsideration to the Utah Court of Appeals must be filed according to Section  $63\underline{G}$ -4[ $\underline{6b}$ ]-[14]401(3)(a)of the UAPA.

(11) An Appeal to the Utah Court of Appeals.

To appeal to the Utah Court of Appeals, a party must file with the court within 30 calendar days from the date of issuance of the board's decision and final agency action according to Sections 63G-4[6b]-[14]401 and 63G-4[6b]-[146]403 of the UAPA, which are incorporated by reference. The dates of mailing, postmarking and receipt are not applicable to filing with the court.

(12) Transcript Fee. The party petitioning the Utah Court of Appeals for a review must bear all costs of transcript production for the appellate/step 6 proceeding. The CSRB Office may not share any cost for a transcript or transcription of the appeal hearing. The petitioning party should provide a copy of the appeal hearing's transcript to the responding party when an appellate/step 6 proceeding is transcribed.

**KEY:** grievance procedures

Date of Enactment or last Substantive Amendment: January 8, 2009

Notice of Continuation: August 4, 2006 Authorizing, and Implemented or Interpreted Law: 34A-5-106; 67-19-30; 67-19-31; 67-19-32; 67-19a et seq.; 63<u>G</u>-4[6<del>b</del>] et seq.

Human Services, Services for People with Disabilities

## R539-5-8

#### Limitation

#### NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE No.: 32308 FILED: 01/15/2009, 11:26

#### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This emergency rule limits Self-Administered Services for each Person to no more than \$50,000 for a State Fiscal year.

SUMMARY OF THE RULE OR CHANGE: The amount allowed for direct services is limited to no more than \$50,000 for each fiscal year. If a Self-Administered Services program exceeds this amount, the method of service delivery must change to either a contracted provider service delivery method or a combination of Self-Administered Services and provider service delivery method. If it is determined by the Division that a provider method is not possible, the Division Director may grant a waiver to the cost limit for a Self-Administered method of service delivery. STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 63A-5-102(3) and (6)

ANTICIPATED COST OR SAVINGS TO:

THE STATE BUDGET: Savings to the state budget will be approximately \$50,000. This change will allow more services to be provided within the existing budget.

✤ LOCAL GOVERNMENTS: There is no cost or savings to local governments because local governments do not provide these services and there are no contracts with local governments to provide these services.

✤ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There is some potential that small businesses who are contracted by the Division to provide services may receive additional requests to support persons who exceed the \$50,000 limitation.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because this rule does not affect the services provided, it only affects who provides the service.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Small businesses who contract with the Department may be asked to provide more services to eligible persons. Lisa-Michele Church, Executive Director

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

Regular rulemaking would cause the program to obligate additional money that needs to be limited to meet budget restrictions.

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

HUMAN SERVICES SERVICES FOR PEOPLE WITH DISABILITIES Room 411 120 N 200 W SALT LAKE CITY UT 84103-1500, or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO: Steven Bradford at the above address, by phone at 801-538-4197, by FAX at 801-538-4279, or by Internet E-mail at sbradford@utah.gov

THIS RULE IS EFFECTIVE ON: 01/15/2009

AUTHORIZED BY: Alan Ormsby, Director

#### R539. Human Services, Services for People with Disabilities. R539-5. Self-Administered Services.

#### R539-5-8. Limitation.

(1) The amount allowed for direct services is limited to no more than \$50,000 for each fiscal year. If a Self-Administered Services program exceeds this amount the method of service delivery must change to either a contracted provider service delivery method or a combination of Self-Administered Services and provider service delivery method. If it is determined by the Division that a provider method is not possible, the Division Director can grant a waiver to the cost limit for a Self-Administered method of service delivery.

KEY: disabilities, self-administered services

Date of Enactment or Last Substantive Amendment: January 15, 2009

Authorizing, and Implemented or Interpreted Law: 62A-5-102; 62A-5-103

End of the Notices of 120-Day (Emergency) Rules Section

### FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by Section 63G-3-305.

Agriculture and Food, Regulatory Services **R70-630** 

Water Vending Machine

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION DAR FILE NO.: 32289 FILED: 01/08/2009, 11:54

# 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: Promulgated under authority of Section 4-5-2 and Section 4-5-17 for the regulation of Water Vending Machine as a source of food. Food vending machines are places where food is offered for sale. The Department of Agriculture and Food is authorized to make rules to assure that these foods are safe for the consumer.

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 were received supporting or opposing this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R70-630 is a necessary and useful tool to protect food and public health. Therefore, this rule should be continued. No opposing comments were received.

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, Richard W Clark, or Kyle Stephens at the above address, by phone at 801-538-7103, 801-538-7150, or 801-538-7102, by FAX at 801-538-7126, 801-538-7126, or 801-538-7126, or by Internet E-mail at kmathews@utah.gov, RICHARDWCLARK@utah.gov, or kylestephens@utah.gov

AUTHORIZED BY: Leonard M. Blackham, Commissioner

EFFECTIVE: 01/08/2009

Education, Administration

# R277-437

**Student Enrollment Options** 

#### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION DAR FILE NO.: 32265 FILED: 01/05/2009, 13:12

#### 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 53A-2-210 directs the Utah State Board of Education to provide a formula by rule for resident students who attend school districts under open enrollment.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to provide standards and a formula as required by state law for school districts to follow when administering open enrollment to Utah resident 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 at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

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

EFFECTIVE: 01/05/2009

## Education, Administration **R277-486** Professional Staff Cost Program

#### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION DAR FILE No.: 32266 FILED: 01/05/2009, 13:14

#### 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-17a-107(2) requires the State Board of Education to enact rules which require a certain percentage of a district's/charter school's professional staff to be certified in the area in which they teach in order for the district to receive full funding under the state statutory schedule.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides standards for districts to receive funding based on licensed professional staff as required by state law. 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 at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

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

EFFECTIVE: 01/05/2009

# Education, Administration R277-524

**Paraprofessional Qualifications** 

#### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION DAR FILE NO.: 32267

FILED: 01/05/2009, 13:14

# 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-1-401(3) authorizes the Utah State Board of Education (Board) to adopt rules in accordance with its responsibilities. Subsection 53A-1-402(1)(a)(i) 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. No Child Left Behind (NCLB) Pub. L. 107-110, Title 1, Sec. 1119 requires that each local education agency receiving assistance under this part shall ensure that all paraprofessionals shall be appropriately qualified.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to provide standards for paraprofessionals to be appropriately qualified consistent with state and federal law. 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 at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

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

EFFECTIVE: 01/05/2009

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# Education, Administration R277-724

Criteria for Sponsors Recruiting Day Care Facilities in the Child and Adult Care Food Program

#### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 32268 FILED: 01/05/2009, 13:15

# 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-1-402(3) authorizes the Utah State Board of Education to administer and distribute funds made available through programs of the federal government.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to provide eligibility criteria which is necessary for new sponsors to recruit participants for child care centers and day care homes in unserved areas. The Utah State Office of Education administers the federal Child Nutrition Program in Utah. 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 at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

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

EFFECTIVE: 01/05/2009

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## Education, Administration **R277-735**

**Corrections Education Programs** 

#### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION DAR FILE NO.: 32269

FILED: 01/05/2009, 13:15

# 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 53A-1-403.5 makes the Utah State Board of Education directly responsible for the education of inmates in custody.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to provide necessary operation standards and procedures for inmates in corrections education programs that are the responsibility of the public school system/Utah State Board of Education. 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 at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

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

EFFECTIVE: 01/05/2009

### Education, Rehabilitation **R280-201**

**USOR ADA Complaint Procedure** 

#### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION DAR FILE NO.: 32270

FILED: 01/05/2009, 13:17

# 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 enacted pursuant to 28 CFR 35.107, 1992 edition, which requires the adoption, definition, and publication of complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans with Disabilities Act (ADA), 28 CFR 35, 1992 edition.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to provide the Utah State Office of Rehabilitation procedure for filing complaints under federal ADA law. Therefore, this rule should be continued.

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

EDUCATION REHABILITATION 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 at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

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

EFFECTIVE: 01/05/2009

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Education, Rehabilitation **R280-202** 

USOE Procedures for Individuals with the Most Severe Disabilities

#### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 32271

FILED: 01/05/2009, 13:17

# 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: Pub. L. 102-569, Title VI-C, October 1992, directs state agencies to define for themselves individuals with the most severe disabilities, and Section 53A-24-103 directs that the Utah State Office of Rehabilitation shall be under the policy direction of the Utah State Board of Education.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to define persons with the most severe disabilities for purposes of providing services and determining order of selection for services according to federal and state law. Therefore, this rule should be continued.

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

EDUCATION REHABILITATION 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 at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at carol.lear@schools.utah.gov

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

EFFECTIVE: 01/05/2009

# Environmental Quality, Air Quality **R307-121**

General Requirements: Clean Air and Efficient Vehicle Tax Credit

> FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION DAR FILE NO.: 32275 FILED: 01/06/2009, 06:53

# 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 59-7-605 and 59-10-1009 authorize an income tax credit for those purchasing a new vehicle that uses clean fuels and for those who retrofit a vehicle to use clean fuels. Rule R307-121 sets forth conditions for eligibility and the process of application for corporate and individual income tax credits.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Rule R307-121 has been amended twice since the last five-year review: June 2008 under DAR No. 31389, and October 2008 under DAR No. 31928. Comments where received on the June 2008 amendment and are summarized below. No other comments COMMENT 1 (from John Mitton, where received. NaturalDrive Partners): The Division of Air Quality should consider extending the grant and loan program, as well as the alternative fuel tax credits to include not only vehicles which have valid EPA certifications of conformity, but also to vehicles which have been granted Testing Exemptions from EPA. RESPONSE 1: The intent of this program is to provide an incentive for taxpayers to convert their vehicles to use a cleaner burning fuel or to buy a vehicle that was built by an original equipment manufacturer (OEM) to run on a cleaner burning fuel. To demonstrate that the converted vehicle is cleaner than before the conversion, Sections 59-7-605 and 59-10-1009 require one of the following as proof of certification: a certification of the conversion equipment by the federal Environmental Protection Agency, a certification of the conversion equipment by a state whose certification standards are recognized by the board, testing the motor vehicle before and after installation of the conversion equipment in accordance with 40 CFR Part 86, and any other test or standard recognized by board rule. As required in the Utah Code, the testing exemption would not qualify under any of COMMENT 2 (from John Mitton, these categories. NaturalDrive Partners): The Division of Air Quality might also consider mirroring the Federal statute in providing that the seller of the vehicle or conversion could capture the tax credit in the event the buyer is a non-taxpaying entity. This would provide immediate assistance to, for example, a municipality which is converting a fleet to an alternative fuel, as opposed to the current provision which would likely provide some assistance in the future resale value of the vehicle. RESPONSE 2: Subsections 59-7-605(3) and 59-10-1009(3) only extend this tax credit to a claimant, estate, or trust that has purchased the vehicle. This would require a change to the Utah Code that would allow others to claim the tax credit. In addition, the Grant and Loan Program was created to allow non-taxpaying entities a way of offsetting the cost of buying alternative fuel vehicles. COMMENT 3 (Kathy Van Dame, Wasatch Clean Air Coalition): There seems to be some inconsistencies between Rule R307-121 and Subsections R307-123-4(4)(a) and (b). RESPONSE 3: The Division of Air Quality agreed and changed the language in Rule R307-123 to match the language in Rule R307-121.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Rule R307-121 is authorized by Sections 59-7-605 and 59-10-1009. Therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY AIR QUALITY 150 N 1950 W SALT LAKE CITY UT 84116-3085, or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO: Kimberly Kreykes at the above address, by phone at 801-536-4042, by FAX at 801-536-4099, or by Internet E-mail at kkreykes@utah.gov

AUTHORIZED BY: Bryce Bird, Planning Branch Manager

EFFECTIVE: 01/06/2009

Natural Resources, Parks and Recreation **R651-411** 

**OHV Use in State Parks** 

#### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION DAR FILE NO.: 32301 FILED: 01/13/2009, 11:02

#### 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 41-22-10 allows the board to appoint and seek recommendations from the Off-Highway Vehicle Advisory Council representing the various off-highway vehicles (OHV), conservation, and other appropriate interests. Section 63-11-17 allows the board of Parks and Recreation to make rules governing the use of the state park system; protect state parks and their natural and cultural resources from misuse or damage, including watersheds, plants, wildlife, and park amenities; and provide for public safety and preserve the peace within state parks. Part of this includes closing or partially closing state parks or establishing use or access restrictions within the state parks.

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

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to define terms used by the recreating public for OHV use in the State of Utah; and lists designated ares for OHV use within state parks. It also makes the OHV user responsible for any accidents or problems while using OHVs in state parks. Therefore, this rule should be continued.

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

NATURAL RESOURCES PARKS AND RECREATION Room 116 1594 W NORTH TEMPLE SALT LAKE CITY UT 84116-3154, or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO: Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@utah.gov

AUTHORIZED BY: Mark Forbes, Deputy Director (Legislation)

EFFECTIVE: 01/13/2009

Public Service Commission, Administration

R746-350

Application to Discontinue Telecommunications Service

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 32306 FILED: 01/14/2009, 15:53

#### 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 54-4-1 provides that the Public Service Commission (PSC) shall have the power to regulate utilities and to supervise their business operations. Section 54-3-1 requires that the terms and conditions of the provision of service be just and reasonable. Section 54-8b-18 enables the PSC to use the proceedings on an Exiting Provider's application to resolve disputes between the exiting provider and a possible replacement provider to facilitate the migration of the exiting provider's customers to alternative telecommunication services that may be available or any other requirements associated with a change in service. 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 were received since the rule was proposed in 2003. There was a nonsubstantive change in 2004 to correct internal subsection references and use of more common terminology.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule continues to be necessary so that PSC may require companies to provide notice of their intent to curtail services or exit the market. The rule outlines the steps companies must take to inform the Commission, customers, other telecommunications carriers, and the public in general of the change in their operations in Utah's telecommunications services markets.

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: Sheri Bintz at the above address, by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

AUTHORIZED BY: Sandy Mooy, Legal Counsel

EFFECTIVE: 01/14/2009

Dublic Convice Commission

Public Service Commission, Administration

### R746-365

Intercarrier Service Quality

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 32283 FILED: 01/06/2009, 16:05

#### 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 54-4-1 gives the commission authority to regulate every public utility. Section 54-4-4 requires the commission to take action to set the rates to be charged by public utilities. Section 54-4-7 directs the commission to regulate the equipment and services and rules of public utilities in providing service. Section 54-4-12 requires the commission to establish connections and joint rates and division of costs between telephone companies. Section 54-8b-2.2 requires the commission to establish rules to facilitate competitive provision of telecommunication services. 47 U.S.C. Sections 251 and 252 require state commissions to set interconnection terms between telephone companies.

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 received since the five-year review in 2005.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule needs to be continued because it provides guidelines to ensure that telecommunications corporations will engineer, design, equip and provision an efficient public telecommunications network with attendant operational support systems and joint network planning processes.

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: Sheri Bintz at the above address, by phone at 801-530-6714, by FAX at 801-530-6796, or by Internet E-mail at sbintz@utah.gov

AUTHORIZED BY: Sandy Mooy, Legal Counsel

EFFECTIVE: 01/06/2009

Regents (Board Of), University of Utah, Museum of Natural History (Utah) **R807-1** 

Curation of Collections from State

Lands

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 32284 FILED: 01/06/2009, 17:14

#### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS

AUTHORIZE OR REQUIRE THE RULE: Subsections 53B-17-603(2) and 53B-17-603(4)(b) require the Museum to make rules to ensure the adequate curation of all archeological and paleontological collections collected from state lands, including the selection of appropriate curation facilities/repositories.

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 University of Utah has not received any written comments concerning this rule in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Museum is required by statute to promulgate (and, therefore, continue) rules that assure adequate curation and selection of curation facilities.

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

REGENTS (BOARD OF) UNIVERSITY OF UTAH, MUSEUM OF NATURAL HISTORY (UTAH) Room 302 GEORGE THOMAS BLDG 1390 E PRESIDENTS CIR SALT LAKE CITY UT 84112-0050, or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO: Robert W. Payne at the above address, by phone at 801-585-7002, by FAX at 801-585-7007, or by Internet E-mail at robert.payne@legal.utah.edu

AUTHORIZED BY: Ann Hanniball, Assistant Director

EFFECTIVE: 01/06/2009

# Transportation, Motor Carrier **R909-3**

Standards for Utah School Buses

#### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 32274 FILED: 01/05/2009, 17:00

# NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized under Section 41-6a-1304 which requires the Department to establish rules pertaining to the standards for school buses.

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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 were received pertaining to this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule should be continued to allow the Department of Transportation to set standards for school buses in order to protect the school children they carry from harm, as well as the traveling public from ill-maintained buses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT: TRANSPORTATION MOTOR CARRIER 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: Maureen Short at the above address, by phone at 801-965-4026, by FAX at 801-965-4338, or by Internet E-mail at maureenshort@utah.gov

AUTHORIZED BY: John R. Njord, Executive Director

EFFECTIVE: 01/05/2009

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

### NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. Statute permits an agency to make a rule effective "on any date specified by the agency that is no fewer than seven calendar days after the close of the public comment period . . . , nor more than 120 days after the publication date." Subsection 63G-3-301(9).

Abbreviations AMD = Amendment No. 32146 (AMD): R277-911. Secondary Career and CPR = Change in Proposed Rule Technical Education. NEW = New Rule Published: December 1, 2008 R&R = Repeal and Reenact Effective: January 7, 2009 REP = Repeal Commerce Environmental Quality Solid and Hazardous Waste Real Estate No. 32115 (AMD): R162-2-2. Licensing Procedure. No. 32137 (AMD): R315-1-1. Definitions. Published: November 15, 2008 Published: December 1, 2008 Effective: January 15, 2009 Effective: January 8, 2009 Securities No. 32138 (AMD): R315-2. General Requirements -No. 32039 (AMD): R164-15-2. Notice Filings for Rule Identification and Listing of Hazardous Waste. 506 Offerings. Published: December 1, 2008 Published: November 1, 2008 Effective: January 15, 2009 Effective: January 12, 2009 Water Quality No. 31650 (CPR): R317-2. Standards of Quality for Waters of the State. Education Administration Published: December 1, 2008 No. 32139 (AMD): R277-109-1. Definitions. Effective: January 12, 2009 Published: December 1, 2008 Effective: January 7, 2009 No. 31650 (AMD): R317-2. Standards of Quality for Waters of the State. No. 32140 (AMD): R277-110-1. Definitions. Published: July 15, 2008 Published: December 1, 2008 Effective: January 12, 2009 Effective: January 7, 2009 No. 32141 (NEW): R277-495. Required Policies for **Health** Electronic Devices in Public Schools. Health Systems Improvement, Emergency Medical Published: December 1, 2008 Services Effective: January 7, 2009 No. 31919 (AMD): R426-8-4. Application and Award Formula. No. 32142 (AMD): R277-502. Educator Licensing and Published: September 15, 2008 Effective: January 13, 2009 Data Retention. Published: December 1, 2008 Effective: January 7, 2009 Center for Health Data, Health Care Statistics No. 32118 (AMD): R428-12. Health Data Authority No. 32143 (AMD): R277-518. Applied Technology Survey of Enrollees in Health Maintenance Education Licenses. Organizations and Preferred Provider Organizations. Published: December 1, 2008 Published: December 1, 2008 Effective: January 7, 2009 Effective: January 8, 2009 No. 32144 (AMD): R277-520-1. Definitions. Epidemiology and Laboratory Services, Laboratory Published: December 1, 2008 Improvement Effective: January 7, 2009 No. 31910 (AMD): R444-14. Rule for the Certification of Environmental Laboratories. Published: September 15, 2008 No. 32145 (NEW): R277-527. International Guest Teachers. Effective: January 12, 2009 Published: December 1, 2008 Effective: January 7, 2009

UTAH STATE BULLETIN, February 1, 2009, Vol. 2009, No. 3

Natural Resources

Wildlife Resources No. 32129 (AMD): R657-13. Taking Fish and Crayfish. Published: December 1, 2008 Effective: January 7, 2009

No. 32081 (AMD): R657-60-2. Definitions. Published: November 15, 2008 Effective: January 7, 2009

#### **Transportation**

Administration

No. 31961 (AMD): R907-64. Longitudinal and Wireless Access to Interstate Highway Rights-of-Way for Installation of Telecommunications Facilities. Published: October 15, 2008 Effective: January 12, 2009

Program Development

No. 32076 (NEW): R926-11. Rules for Permitting of Eligible Vehicles for a Clean Fuel Special Group License Plate On or After January 1, 2009. Published: November 15, 2008 Effective: January 5, 2009 Preconstruction No. 32000 (AMD): R930-3. Highway Noise Abatement. Published: November 1, 2008 Effective: January 12, 2009

Transportation Commission

Administration No. 31920 (NEW): R940-3. Procedures for Transportation Infrastructure Loan Fund Assistance. Published: September 15, 2008 Effective: January 12, 2009

Workforce Services

Employment Development No. 32114 (AMD): R986-200-240. Additional Payments Available Under Certain Circumstances. Published: November 15, 2008 Effective: January 6, 2009

End of the Notices of Rule Effective Dates Section

### **RULES INDEX** BY AGENCY (CODE NUMBER) AND **BY KEYWORD (SUBJECT)**

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2009, including notices of effective date received through January 15, 2009, the effective dates of which are no later than February 1, 2009. The Rules Index is published in the Utah State Bulletin and in the annual Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

DAR NOTE: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (http://www.rules.utah.gov/).

	CPR = Change in proposed rule EMR = Emergency rule (120 day) NEW = New rule EXD = Expired	R R 5`	J						
CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE				
Agriculture and	Agriculture and Food								
<u>Regulatory Serv</u> R70-630	<u>ices</u> Water Vending Machine	32289	5YR	01/08/2009	2009-3/83				
Alcoholic Beverage Control									
Administration R81-1	Scope, Definitions, and General Provisions	32222	NSC	01/22/2009	Not Printed				
Career Service Review Board									
Administration									

32286

32288

EMR

EMR

01/08/2009

01/08/2009

2009-3/77

2009-3/79

### RULES INDEX - BY AGENCY (CODE NUMBER)

#### ABBREVIATIONS

UTAH STATE BULLETIN, February 1, 2009, Vol. 2009, No. 3	

The Board's Appellate/Step 6 Procedures

Definitions

R137-1-2

R137-1-22

AMD = Amendment

### NSC = Nonsubstantive rule change

	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Commerce					
<u>Occupational an</u> R156-40-302d	<u>d Professional Licensing</u> Time Limitation for TRT applicants	32236	NSC	01/22/2009	Not Printed
R156-46a-	Qualifications for Licensure - Examination	32235	NSC	01/22/2009	Not Printed
302c R156-56	Requirements Utah Uniform Building Standard Act Rules	32001	AMD	01/01/2009	2008-21/9
<u>Real Estate</u> R162-2-2	Licensing Procedure	32115	AMD	01/08/2009	2008-22/19
R162-103	Appraisal Education Requirements	31998	AMD	01/01/2009	2008-21/23
<u>Securities</u> R164-15-2	Notice Filings for Rule 506 Offerings	32039	AMD	01/12/2009	2008-21/28
Community and	d Culture				
Arts and Museur R210-100	ns, Museum Services Certified Local Museum Designation	32108	NEW	01/01/2009	2008-22/21
<u>History</u> R212-1	Adjudicative Proceedings	32243	NSC	01/22/2009	Not Printed
R212-6	State Register for Historic Resources and Archaeological Sites	32244	NSC	01/22/2009	Not Printed
Crime Victim R	eparations				
Administration R270-1-14	Essential Personal Property	32180	AMD	01/21/2009	2008-24/3
R270-1-14	Medical Awards	31950	CPR	01/21/2009	2008-24/37
R270-1-19	Crime Victim Reparations Adjudicative	32196	NSC	01/12/2009	Not Printed
R270-3	Proceedings ADA Complaint Procedure	32197	NSC	01/12/2009	Not Printed
Education					
Administration R277-109-1	Definitions	22420		01/07/2000	2008 22/2
R277-109-1 R277-110-1	Definitions Definitions	32139 32140	AMD AMD	01/07/2009 01/07/2009	2008-23/2 2008-23/2
R277-437	Student Enrollment Options	32265	5YR	01/05/2009	2008-23/2
R277-464-4	Oversight Monitoring, Evaluation and Reports	32203	NSC	01/22/2009	Not Printed
R277-486	Professional Staff Cost Program	32266	5YR	01/05/2009	2009-3/84
R277-494-3	Requirements for Payment and Participation	32220	NSC	01/22/2009	Not Printed
R277-495	Integral to the Schedule Required Policies for Electronic Devices in Public Schools	32141	NEW	01/07/2009	2008-23/3
R277-502	Educator Licensing and Data Retention	32142	AMD	01/07/2009	2008-23/5
R277-518	Applied Technology Education Licenses	32143	AMD	01/07/2009	2008-23/7
R277-520-1	Definitions	32144	AMD	01/07/2009	2008-23/9
R277-524	Paraprofessional Qualifications	32267	5YR	01/05/2009	2009-3/84
R277-527	International Guest Teachers	32145	NEW	01/07/2009	2008-23/11
R277-609-1	Definitions	32221	NSC	01/22/2009	Not Printed
R277-724	Criteria for Sponsors Recruiting Day Care Facilities in the Child and Adult Care Food Program	32268	5YR	01/05/2009	2009-3/85
R277-735	Corrections Education Programs	32269	5YR	01/05/2009	2009-3/85
R277-911	Secondary Career and Technical Education	32146	AMD	01/07/2009	2008-23/12

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Rehabilitation		22270	EVD	04/05/2000	2000 2/20
R280-201 R280-202	USOR ADA Complaint Procedure USOE Procedures for Individuals with the Most	32270 32271	5YR 5YR	01/05/2009 01/05/2009	2009-3/86 2009-3/86
R200-202	Severe Disabilities	52271	JIK	01/05/2009	2009-3/80
Environmental	Quality				
<u>Air Quality</u> R307-121	General Requirements: Clean Fuel Vehicle	31928	AMD	01/01/2009	2008-19/25
	Tax Credits				
R307-121	General Requirements: Clean Air and Efficient Vehicle Tax Credit	32275	5YR	01/06/2009	2009-3/87
Drinking Water					
R309-700	Financial Assistance: State Drinking Water Project Revolving Loan Program	32028	AMD	01/28/2009	2008-21/34
R309-705	Financial Assistance: Federal Drinking Water Project Revolving Loan Program	32029	AMD	01/28/2009	2008-21/40
Solid and Hazard		00407		04/45/0000	
R315-1-1	Definitions	32137		01/15/2009	2008-23/17
R315-2	General Requirements - Identification and Listing of Hazardous Waste	32138	AMD	01/15/2009	2008-23/19
R315-15-13	Registration and Permitting of Used Oil Handlers	32231	NSC	01/22/2009	Not Printed
<u>Water Quality</u> R317-2	Standards of Quality for Waters of the State	31650	CPR	01/12/2009	2008-23/28
R317-2	Standards of Quality for Waters of the State	31650	AMD	01/12/2009	2008-14/30
<u>Children's Health</u> R382-10	<u>n Insurance Program</u> Eligibility	32185	AMD	01/22/2009	2008-24/7
	ancing, Coverage and Reimbursement Policy				
R414-1-5	Incorporations by Reference	32102	AMD	01/01/2009	2008-22/22
R414-9	Federally Qualified Health Centers	32325	5YR	01/26/2009	Not Printed
R414-58 R414-301-4	Children's Organ Transplants Safeguarding Information	32324 32252	5YR NSC	01/26/2009 01/22/2009	Not Printed Not Printed
R414-301-4	Application, Eligibility Determinations and	32232	AMD	01/22/2009	2008-24/9
	Improper Medical Assistance				
R414-310	Medicaid Primary Care Network Demonstration Waiver	32186	AMD	01/22/2009	2008-24/13
R414-320	Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver	32187	AMD	01/22/2009	2008-24/15
R426-8-4	Improvement, Emergency Medical Services Application and Award Formula	31919	AMD	01/13/2009	2008-18/29
		31919 32118	AMD AMD	01/13/2009 01/08/2009	2008-18/29 2008-23/21
<u>Center for Health</u> R428-12	Application and Award Formula <u>n Data, Health Care Statistics</u> Health Data Authority Survey of Enrollees in Health Maintenance Organizations and				
<u>Center for Health</u> R428-12 <u>Epidemiology an</u>	Application and Award Formula <u>n Data, Health Care Statistics</u> Health Data Authority Survey of Enrollees in Health Maintenance Organizations and Preferred Provider Organizations <u>Id Laboratory Services, Laboratory Improvement</u> Rule for the Certification of Environmental Laboratories	32118	AMD	01/08/2009	2008-23/21

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Human Service	PS				
<u>Administration</u> R495-888	Department of Human Services Related Parties Conflict Investigation Procedure	32154	NEW	01/21/2009	2008-24/18
Administration, / R497-100	Administrative Hearings Adjudicative Proceedings	32181	AMD	01/21/2009	2008-24/21
Administration, /	Administrative Services, Licensing General Provisions	32190	NSC	01/12/2009	Not Printed
R501-4-7	Administrative Hearing	32191	NSC	01/12/2009	Not Printed
R501-12-8	Safety	32192	NSC	01/12/2009	Not Printed
R501-14	Background Screening	32193	NSC	01/12/2009	Not Printed
<u>Child and Famil</u> R512-309	<u>y Services</u> Out-of-Home Services, Foster Parent Reimbursement of Motor Vehicle Insurance Coverage for Youth in Foster Care	32182	NEW	01/21/2009	2008-24/24
<u>Substance Abus</u> R523-1-5	se and Mental Health Fee for Service	32183	AMD	01/22/2009	2008-24/26
Recovery Servic R527-5	ces Release of Information	32159	R&R	01/21/2009	2008-24/27
<u>Services for Pec</u> R539-5-8	ople with Disabilities Limitation	32308	EMR	01/15/2009	2009-3/81
Insurance					
Title and Escrov R592-13	<u>v Commission</u> Minimum Charges for Escrow Services	32167	NEW	01/22/2009	2008-24/31
Labor Commis	sion				
Industrial Accide R612-4-2	ents Premium Rates for the Uninsured Employers' Fund and the Employers' Reinsurance Fund	32054	AMD	01/01/2009	2008-21/66
Occupational Sa R614-1-4	a <u>fety and Health</u> Incorporation of Federal Standards	32216	NSC	01/13/2009	Not Printed
Natural Resour	ces				
Parks and Recre					
R651-411	OHV Use in State Parks	32301	5YR	01/13/2009	2009-3/88
<u>Wildlife Resourc</u> R657-13		32129	AMD	01/07/2009	2008-23/23
R657-13 R657-60-2	Taking Fish and Crayfish Definitions	32129 32081	AMD	01/07/2009	2008-23/23 2008-22/28
Public Safety					
-	gations and Technical Services, Criminal Identificati	on			
R722-310	Regulation of Bail Bond Recovery and	32088	AMD	01/01/2009	2008-22/34
R722-900	Enforcement Agents Review and Challenge of Criminal Record	32208	NSC	01/12/2009	Not Printed
Public Service	Commission				
Administration					

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R746-365	Intercarrier Service Quality	32283	5YR	01/06/2009	2009-3/89
	1.00				
Regents (Board					
University of Uta R807-1	<u>ah, Museum of Natural History (Utah)</u> Curation of Collections from State Lands	32284	5YR	01/06/2009	2009-3/89
1007-1	Curation of Collections norm State Lands	52204	511	01/00/2009	2009-5/09
Tax Commissio	on				
Auditing					
R865-4D-2	Clean Special Fuel Certificate, Refund	32035	AMD	01/01/2009	2008-21/76
	Procedures for Undyed Diesel Fuel Used Off- Highway or to Operate a Power Take-Off Unit,				
	and Sales Tax Liability Pursuant to Utah Code				
	Ann. Sections 59-13-301 and 59-13-304	22024		04/04/0000	0000 04/70
R865-12L-6	Place of Transaction Pursuant to Utah Code Ann. Section 59-12-207	32034	AMD	01/01/2009	2008-21/78
R865-12L-12	Leases and Rentals Pursuant to Utah Code	32032	AMD	01/01/2009	2008-21/79
R865-12L-13	Ann. Section 59-12-204 Repairmen and Servicemen Pursuant to Utah	32015	AMD	01/01/2009	2008-21/79
1003-122-13	Code Ann. Section 59-12-204	52015	AND	01/01/2003	2000-21/13
R865-19S-12	Filing of Returns Pursuant to Utah Code Ann.	32008	AMD	01/01/2009	2008-21/80
R865-19S-27	Sections 59-12-107 and 59-12-118 Retail Sales Defined Pursuant to Utah Code	32017	AMD	01/01/2009	2008-21/81
	Ann. Sections 59-12-102 and 59-12-103(1)(g)			0.4.10.4.100.000	
R865-19S-29	Wholesale Sale Defined Pursuant to Utah Code Ann. Section 59-12-102	32030	AMD	01/01/2009	2008-21/82
R865-19S-90	Telephone Service Pursuant to Utah Code	32007	AMD	01/01/2009	2008-21/83
R865-19S-92	Ann. Section 59-12-103 Computer software and Other Related	32016	AMD	01/01/2009	2008-21/84
1000 100 02	Transactions Pursuant to Utah Code Ann.	02010	/ WID	01/01/2000	2000 21/04
DOCE 100 110	Section 59-12-103	22042		01/01/2000	2009 21/95
R865-19S-113	Sales Tax Obligations of Jeep, Snowmobile, Aircraft, and Boat Tour Operators, River	32012	AMD	01/01/2009	2008-21/85
	Runners, Outfitters, and Other Sellers				
	Providing Similar Services Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-107				
R865-19S-119	Certain Transactions Involving Food and	32013	AMD	01/01/2009	2008-21/86
	Lodging Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104				
R865-21U-3	Liability of Retailers Pursuant to Utah Code	32033	AMD	01/01/2009	2008-21/87
	Ann. Section 59-12-107	00040		04/04/0000	0000 04/07
R865-21U-15	Automobile, Construction Equipment and Other Merchandise Purchased from Out-Of-State	32010	AMD	01/01/2009	2008-21/87
	Vendors Pursuant to Utah Code Ann. Sections				
	59-12-103 and 59-12-107				
Motor Vehicle	Aircraft De sisteration Durauant to Litely Code	22045		04/04/0000	0000 04/00
R873-22M-20	Aircraft Registration Pursuant to Utah Code Ann. Sections 72-10-102, 72-10-109 through	32045	AMD	01/01/2009	2008-21/88
	72-10-112				
R873-22M-23	Registration Information Update for Vintage Vehicle Special Group License Plates Pursuant	32037	AMD	01/01/2009	2008-21/89
	to Utah Code Ann. Section 41-1a-1209				
Property Tax					
R884-24P-27	Standards for Assessment Level and	32063	AMD	01/01/2009	2008-21/90
	Uniformity of Performance Pursuant to Utah Code Ann. Sections 59-2-704 and 59-2-704.5				
R884-24P-47	Uniform Tax on Aircraft Pursuant to Utah Code	32036	AMD	01/01/2009	2008-21/92
	Ann. Sections 59-2-404, 59-2-1005, 59-2-1302, and 59-2-1303				
R884-24P-53	2008 Valuation Guides for Valuation of Land	32044	AMD	01/01/2009	2008-21/93
	Subject to the Farmland Assessment Act				
R884-24P-70	Pursuant to Utah Code Ann. Section 59-2-515 Real Property Appraisal Requirements for	32052	AMD	01/01/2009	2008-21/97
	County Assessors Pursuant to Utah Code Ann.				
	Sections 59-2-303.1 and 59-2-919.1				

CODE		FILE		EFFECTIVE	BULLETIN
REFERENCE	TITLE	NUMBER	ACTION	DATE	ISSUE/PAGE
Transportation					
Administration R907-3	Administrative Procedure	32217	NSC	01/12/2009	Not Printed
R907-64	Longitudinal and Wireless Access to Interstate Highway Rights-of-Way for Installation of	31961	AMD	01/12/2009	2008-20/25
R907-66	Telecommunications Facilities Incorporation and Use of Federal Acquisition Regulations on Federal-Aid and State- Financed Transportation Projects	32213	NSC	01/12/2009	Not Printed
Motor Carrier					
R909-3	Standards for Utah School Buses (5YR EXTENSION)	32264	NSC	01/05/2009	Not Printed
R909-3	Standards for Utah School Buses	32274	5YR	01/05/2009	2009-3/90
R909-19	Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification	32215	NSC	01/12/2009	Not Printed
<u>Program Develo</u> R926-11	<u>pment</u> Rules for Permitting of Eligible Vehicles for a Clean Fuel Special Group License Plate On or After January 1, 2009	32076	NEW	01/05/2009	2008-22/39
Preconstruction R930-3	Highway Noise Abatement	32000	AMD	01/12/2009	2008-21/98
Transportation	Commission				
Administration					
R940-3	Procedures for Transportation Infrastructure Loan Fund Assistance	31920	NEW	01/12/2009	2008-18/62
Workforce Serv	vices				
Administration R982-101	Americans with Disabilities Complaint Procedure	32237	NSC	01/22/2009	Not Printed
R982-201	Government Records Access and Management Act	32238	NSC	01/22/2009	Not Printed
Employment De	velopment				
R986-100	Employment Support Programs	32239	NSC	01/22/2009	Not Printed
R986-200-240	Additional Payments Available Under Certain Circumstances	32114	AMD	01/06/2009	2008-22/41
R986-500-502	General Provisions	32240	NSC	01/22/2009	Not Printed
<u>Unemployment l</u> R994-204-402	nsurance Procedure for Issuing a Safe Haven Determination	32242	NSC	01/22/2009	Not Printed

### **RULES INDEX - BY KEYWORD (SUBJECT)**

#### ABBREVIATIONS

AMD = Amendment CPR = Change in proposed rule EMR = Emergency rule (120 day)

- NEW = New rule
- EXD = Expired

- NSC = Nonsubstantive rule change
- REP = Repeal
- R&R = Repeal and reenact
- 5YR = Five-Year Review

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>accessing records</u> Human Services, Recovery Services	32159	R527-5	R&R	01/21/2009	2008-24/27
activities Education, Administration	32220	R277-494-3	NSC	01/22/2009	Not Printed
<u>ADA complaint procedures</u> Crime Victim Reparations, Administration	32197	R270-3	NSC	01/12/2009	Not Printed
adjudicative proceedings Community and Culture, History	32243	R212-1	NSC	01/22/2009	Not Printed
administrative procedures Community and Culture, History	32243	R212-1	NSC	01/22/2009	Not Printed
Crime Victim Reparations, Administration	32196	R270-2	NSC	01/12/2009	Not Printed
Human Services, Administration,	32130	R497-100	AMD	01/21/2009	2008-24/21
Administrative Hearings					
Transportation, Administration	32217	R907-3	NSC	01/12/2009	Not Printed
adoption assistance Workforce Services, Employment Development	32240	R986-500-502	NSC	01/22/2009	Not Printed
air pollution					
Environmental Quality, Air Quality	31928	R307-121	AMD	01/01/2009	2008-19/25
	32275	R307-121	5YR	01/06/2009	2009-3/87
aircraft					
Tax Commission, Motor Vehicle	32045	R873-22M-20	AMD	01/01/2009	2008-21/88
	32037	R873-22M-23	AMD	01/01/2009	2008-21/89
alcoholic beverages Alcoholic Beverage Control, Administration	32222	R81-1	NSC	01/22/2009	Not Printed
alternative fuels					
Environmental Quality, Air Quality	31928	R307-121	AMD	01/01/2009	2008-19/25
	32275	R307-121	5YR	01/06/2009	2009-3/87
appellate procedures Crime Victim Reparations, Administration	32196	R270-2	NSC	01/12/2009	Not Printed
application Health, Health Care Financing, Coverage and Reimbursement Policy	32184	R414-308	AMD	01/26/2009	2008-24/9
appraisals					
Tax Commission, Property Tax	32063	R884-24P-27	AMD	01/01/2009	2008-21/90
	32036	R884-24P-47	AMD	01/01/2009	2008-21/92
	32044	R884-24P-53	AMD	01/01/2009	2008-21/93
	32052	R884-24P-70	AMD	01/01/2009	2008-21/97
archaeological resources Regents (Board Of), University of Utah, Museum of Natural History (Utah)	32284	R807-1	5YR	01/06/2009	2009-3/89

<u>KEYWORD</u> AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
assignments Education, Administration	32144	R277-520-1	AMD	01/07/2009	2008-23/9
<b>background screening</b> Human Services, Administration, Administrative Services, Licensing	32193	R501-14	NSC	01/12/2009	Not Printed
bail bond enforcement agent Public Safety, Criminal Investigations and Technical Services, Criminal Identification	32088	R722-310	AMD	01/01/2009	2008-22/34
bail bond recovery agent Public Safety, Criminal Investigations and Technical Services, Criminal Identification	32088	R722-310	AMD	01/01/2009	2008-22/34
<u>barrier</u> Transportation, Preconstruction	32000	R930-3	AMD	01/12/2009	2008-21/98
<u>bed allocations</u> Human Services, Substance Abuse and Mental Health	32183	R523-1-5	AMD	01/22/2009	2008-24/26
bonuses Transportation, Administration	32213	R907-66	NSC	01/12/2009	Not Printed
building codes Commerce, Occupational and Professional Licensing	32001	R156-56	AMD	01/01/2009	2008-21/9
building inspections Commerce, Occupational and Professional Licensing	32001	R156-56	AMD	01/01/2009	2008-21/9
<u>C plate</u> Transportation, Program Development	32076	R926-11	NEW	01/05/2009	2008-22/39
career and technical education Education, Administration	32143 32146	R277-518 R277-911	AMD AMD	01/07/2009 01/07/2009	2008-23/7 2008-23/12
<u>certifications</u> Transportation, Motor Carrier	32215	R909-19	NSC	01/12/2009	Not Printed
<u>certified local inspector</u> Human Services, Administration, Administrative Services, Licensing	32191	R501-4-7	NSC	01/12/2009	Not Printed
<u>certified local museums</u> Community and Culture, Arts and Museums, Museum Services	32108	R210-100	NEW	01/01/2009	2008-22/21
<u>charities</u> Tax Commission, Auditing	32008 32017 32030 32007	R865-19S-12 R865-19S-27 R865-19S-29 R865-19S-90	AMD AMD AMD AMD	01/01/2009 01/01/2009 01/01/2009 01/01/2009	2008-21/80 2008-21/81 2008-21/82 2008-21/83
	32016 32012 32013	R865-19S-92 R865-19S-113 R865-19S-119	AMD AMD AMD	01/01/2009 01/01/2009 01/01/2009	2008-21/84 2008-21/85 2008-21/86

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>child welfare</u> Human Services, Child and Family Services	32182	R512-309	NEW	01/21/2009	2008-24/24
<u>children's health benefits</u> Health, Children's Health Insurance Program	32185	R382-10	AMD	01/22/2009	2008-24/7
CHIP Health, Health Care Financing, Coverage and Reimbursement Policy	32187	R414-320	AMD	01/22/2009	2008-24/15
<u>clean fuel</u> Transportation, Program Development	32076	R926-11	NEW	01/05/2009	2008-22/39
<u>clients rights</u> Health, Health Care Financing, Coverage and Reimbursement Policy	32252	R414-301-4	NSC	01/22/2009	Not Printed
<u>co-curricular</u> Education, Administration	32220	R277-494-3	NSC	01/22/2009	Not Printed
<u>collections</u> Tax Commission, Auditing	32034 32032 32015	R865-12L-6 R865-12L-12 R865-12L-13	AMD AMD AMD	01/01/2009 01/01/2009 01/01/2009	2008-21/78 2008-21/79 2008-21/79
<u>complaints</u> Education, Rehabilitation Workforce Services, Administration	32270 32237	R280-201 R982-101	5YR NSC	01/05/2009 01/22/2009	2009-3/86 Not Printed
conflict Human Services, Administration	32154	R495-888	NEW	01/21/2009	2008-24/18
<u>contractors</u> Commerce, Occupational and Professional Licensing	32001	R156-56	AMD	01/01/2009	2008-21/9
<u>contracts</u> Transportation, Administration	32213	R907-66	NSC	01/12/2009	Not Printed
<u>covered-at-work</u> Health, Health Care Financing, Coverage and Reimbursement Policy	32186	R414-310	AMD	01/22/2009	2008-24/13
<u>credit enhancements</u> Environmental Quality, Drinking Water	32028	R309-700	AMD	01/28/2009	2008-21/34
<u>criminal records</u> Public Safety, Criminal Investigations and Technical Services, Criminal Identification	32208	R722-900	NSC	01/12/2009	Not Printed
<u>curation</u> Regents (Board Of), University of Utah, Museum of Natural History (Utah)	32284	R807-1	5YR	01/06/2009	2009-3/89
<u>custody</u> Education, Administration	32269	R277-735	5YR	01/05/2009	2009-3/85

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>demonstration</u> Health, Health Care Financing, Coverage and Reimbursement Policy	32186	R414-310	AMD	01/22/2009	2008-24/13
disabilities Human Services, Services for People with Disabilities	32308	R539-5-8	EMR	01/15/2009	2009-3/81
Workforce Services, Administration	32237	R982-101	NSC	01/22/2009	Not Printed
disabled persons		<b>Baaa</b> <i>i</i>	- 10		
Education, Rehabilitation	32270 32271	R280-201 R280-202	5YR 5YR	01/05/2009 01/05/2009	2009-3/86 2009-3/86
disciplinary actions Education, Administration	32221	R277-609-1	NSC	01/22/2009	Not Printed
disruptive students Education, Administration	32221	R277-609-1	NSC	01/22/2009	Not Printed
<u>due process</u> Human Services, Substance Abuse and Mental Health	32183	R523-1-5	AMD	01/22/2009	2008-24/26
education Commerce, Real Estate	31998	R162-103	AMD	01/01/2009	2008-21/23
educator licensing Education, Administration	32142	R277-502	AMD	01/07/2009	2008-23/5
	32143	R277-518	AMD	01/07/2009	2008-23/7
educators					
Education, Administration	32140 32144	R277-110-1 R277-520-1	AMD AMD	01/07/2009 01/07/2009	2008-23/2 2008-23/9
	52144	NZ11-320-1	AIVID	01/07/2009	2000-23/9
electronic devices Education, Administration	32141	R277-495	NEW	01/07/2009	2008-23/3
eligibility Health, Health Care Financing, Coverage and Reimbursement Policy	32184	R414-308	AMD	01/26/2009	2008-24/9
emergency medical services Health, Health Systems Improvement, Emergency Medical Services	31919	R426-8-4	AMD	01/13/2009	2008-18/29
employment support procedures Workforce Services, Employment Development	32239	R986-100	NSC	01/22/2009	Not Printed
employment tests Workforce Services, Unemployment Insurance	32242	R994-204-402	NSC	01/22/2009	Not Printed
enrollment options Education, Administration	32265	R277-437	5YR	01/05/2009	2009-3/83
escrow insurance Insurance, Title and Escrow Commission	32167	R592-13	NEW	01/22/2009	2008-24/31

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
exiting provider Public Service Commission, Administration	32306	R746-350	5YR	01/14/2009	2009-3/88
extracurricular Education, Administration	32220	R277-494-3	NSC	01/22/2009	Not Printed
facilities Education, Administration	32268	R277-724	5YR	01/05/2009	2009-3/85
<u>facility</u> Health, Health Care Financing, Coverage and Reimbursement Policy	32325	R414-9	5YR	01/26/2009	Not Printed
family employment program Workforce Services, Employment Development	32114	R986-200-240	AMD	01/06/2009	2008-22/41
<u>fees</u> Human Services, Substance Abuse and Mental Health	32183	R523-1-5	AMD	01/22/2009	2008-24/26
<u>financial assistance</u> Environmental Quality, Drinking Water	32029	R309-705	AMD	01/28/2009	2008-21/40
<u>fingerprinting</u> Human Services, Administration, Administrative Services, Licensing	32193	R501-14	NSC	01/12/2009	Not Printed
<u>fish</u> Natural Resources, Wildlife Resources	32129 32081	R657-13 R657-60-2	AMD AMD	01/07/2009 01/07/2009	2008-23/23 2008-22/28
<u>fishing</u> Natural Resources, Wildlife Resources	32129	R657-13	AMD	01/07/2009	2008-23/23
food inspection Agriculture and Food, Regulatory Services	32289	R70-630	5YR	01/08/2009	2009-3/83
food programs Education, Administration	32268	R277-724	5YR	01/05/2009	2009-3/85
<u>foster care</u> Human Services, Administration, Administrative Services, Licensing Human Services, Child and Family Services	32192 32182	R501-12-8 R512-309	NSC NEW	01/12/2009 01/21/2009	Not Printed 2008-24/24
<u>fuel</u> Tax Commission, Auditing	32035	R865-4D-2	AMD	01/01/2009	2008-21/76
GRAMA compliance Human Services, Recovery Services	32159	R527-5	R&R	01/21/2009	2008-24/27
<u>grievance procedures</u> Career Service Review Board, Administration	32286 32288	R137-1-2 R137-1-22	EMR EMR	01/08/2009 01/08/2009	2009-3/77 2009-3/79
<u>hardship grants</u> Environmental Quality, Drinking Water	32028	R309-700	AMD	01/28/2009	2008-21/34

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>hazardous waste</u> Environmental Quality, Solid and Hazardous Waste	32137	R315-1-1	AMD	01/15/2009	2008-23/17
Hazardous waste	32138	R315-2	AMD	01/15/2009	2008-23/19
	32231	R315-15-13	NSC	01/22/2009	Not Printed
<u>health care quality</u> Health, Center for Health Data, Health Care Statistics	32118	R428-12	AMD	01/08/2009	2008-23/21
<u>health maintenance organization</u> Health, Center for Health Data, Health Care Statistics	32118	R428-12	AMD	01/08/2009	2008-23/21
<u>hearing aids</u> Commerce, Occupational and Professional Licensing	32235	R156-46a-302c	NSC	01/22/2009	Not Printed
<u>hearing instrument intern</u> Commerce, Occupational and Professional Licensing	32235	R156-46a-302c	NSC	01/22/2009	Not Printed
<u>hearing instrument specialist</u> Commerce, Occupational and Professional Licensing	32235	R156-46a-302c	NSC	01/22/2009	Not Printed
highways Transportation, Preconstruction	32000	R930-3	AMD	01/12/2009	2008-21/98
historic sites Community and Culture, History	32244	R212-6	NSC	01/22/2009	Not Printed
<u>housing finance</u> Housing Corporation (Utah), Administration	32211	R460-7-2	NSC	01/12/2009	Not Printed
<u>human services</u> Human Services, Administration, Administrative Services, Licensing	32190	R501-1	NSC	01/12/2009	Not Printed
	32191	R501-4-7	NSC	01/12/2009	Not Printed
	32192	R501-12-8	NSC	01/12/2009	Not Printed
hybrid vehicles Transportation, Program Development	32076	R926-11	NEW	01/05/2009	2008-22/39
independent contractor Workforce Services, Unemployment Insurance	32242	R994-204-402	NSC	01/22/2009	Not Printed
infrastructure assistance Transportation Commission, Administration	31920	R940-3	NEW	01/12/2009	2008-18/62
inmates Education, Administration	32269	R277-735	5YR	01/05/2009	2009-3/85
interconnection Public Service Commission, Administration	32283	R746-365	5YR	01/06/2009	2009-3/89
<u>interest buy-downs</u> Environmental Quality, Drinking Water	32028	R309-700	AMD	01/28/2009	2008-21/34

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>international guest teachers</u> Education, Administration	32145	R277-527	NEW	01/07/2009	2008-23/11
interstate highway systems Transportation, Administration	31961	R907-64	AMD	01/12/2009	2008-20/25
<u>investigations</u> Human Services, Administration	32154	R495-888	NEW	01/21/2009	2008-24/18
laboratories Health, Epidemiology and Laboratory Services, Laboratory Improvement	31910	R444-14	AMD	01/12/2009	2008-18/42
license Public Safety, Criminal Investigations and Technical Services, Criminal Identification	32088	R722-310	AMD	01/01/2009	2008-22/34
license plates Tax Commission, Motor Vehicle	32045 32037	R873-22M-20 R873-22M-23	AMD AMD	01/01/2009 01/01/2009	2008-21/88 2008-21/89
licenses Education, Administration	32144	R277-520-1	AMD	01/07/2009	2008-23/9
licensing Commerce, Occupational and Professional Licensing	32236	R156-40-302d	NSC	01/22/2009	Not Printed
	32235 32001	R156-46a-302c R156-56	NSC AMD	01/22/2009 01/01/2009	Not Printed 2008-21/9
Human Services, Administration, Administrative Services, Licensing	32190	R501-1	NSC	01/12/2009	Not Printed
	32191	R501-4-7	NSC	01/12/2009	Not Printed
	32192 32193	R501-12-8 R501-14	NSC NSC	01/12/2009 01/12/2009	Not Printed Not Printed
loans					
Environmental Quality, Drinking Water	32028 32029	R309-700 R309-705	AMD AMD	01/28/2009 01/28/2009	2008-21/34 2008-21/40
<u>Medicaid</u> Health, Health Care Financing, Coverage and Reimbursement Policy	32102	R414-1-5	AMD	01/01/2009	2008-22/22
and Reimbursement Policy	32325	R414-9	5YR	01/26/2009	Not Printed
	32252	R414-301-4	NSC	01/22/2009	Not Printed
	32184	R414-308	AMD	01/26/2009	2008-24/9
	32186	R414-310	AMD	01/22/2009	2008-24/13
	32187	R414-320	AMD	01/22/2009	2008-24/15
motor vehicles Environmental Quality, Air Quality	31928	R307-121	AMD	01/01/2009	2008-19/25
Environmental Quanty, All Quanty	32275	R307-121	5YR	01/06/2009	2008-19/25
	52215	1307-121	JIK	01/00/2009	2009-3/07
Tax Commission, Motor Vehicle	32045	R873-22M-20	AMD	01/01/2009	2008-21/88

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>museum</u> Regents (Board Of), University of Utah, Museum of Natural History (Utah)	32284	R807-1	5YR	01/06/2009	2009-3/89
<u>museum services</u> Community and Culture, Arts and Museums, Museum Services	32108	R210-100	NEW	01/01/2009	2008-22/21
<u>museums</u> Community and Culture, Arts and Museums, Museum Services	32108	R210-100	NEW	01/01/2009	2008-22/21
<u>mutual funds</u> Commerce, Securities	32039	R164-15-2	AMD	01/12/2009	2008-21/28
national register Community and Culture, History	32244	R212-6	NSC	01/22/2009	Not Printed
NCLB Education, Administration	32267	R277-524	5YR	01/05/2009	2009-3/84
off-highway vehicles Natural Resources, Parks and Recreation	32301	R651-411	5YR	01/13/2009	2009-3/88
one-time signing bonuses Education, Administration	32139	R277-109-1	AMD	01/07/2009	2008-23/2
organ transplants Health, Health Care Financing, Coverage and Reimbursement Policy	32324	R414-58	5YR	01/26/2009	Not Printed
<u>paleontological resources</u> Regents (Board Of), University of Utah, Museum of Natural History (Utah)	32284	R807-1	5YR	01/06/2009	2009-3/89
paraprofessional qualifications Education, Administration	32267	R277-524	5YR	01/05/2009	2009-3/84
PCN Health, Health Care Financing, Coverage and Reimbursement Policy	32187	R414-320	AMD	01/22/2009	2008-24/15
<u>performance measurement</u> Health, Center for Health Data, Health Care Statistics	32118	R428-12	AMD	01/08/2009	2008-23/21
personal property					
Tax Commission, Property Tax	32063	R884-24P-27		01/01/2009	2008-21/90
	32036 32044	R884-24P-47	AMD AMD	01/01/2009	2008-21/92
	32044 32052	R884-24P-53 R884-24P-70	AMD	01/01/2009 01/01/2009	2008-21/93 2008-21/97
<b>policy</b> Education, Administration	32141	R277-495	NEW	01/07/2009	2008-23/3
preferred provider organization Health, Center for Health Data, Health Care Statistics	32118	R428-12	AMD	01/08/2009	2008-23/21

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<b>primary care</b> Health, Health Care Financing, Coverage and Reimbursement Policy	32186	R414-310	AMD	01/22/2009	2008-24/13
professional competency Education, Administration	32142	R277-502	AMD	01/07/2009	2008-23/5
professional education Education, Administration	32143	R277-518	AMD	01/07/2009	2008-23/7
<u>professional staff</u> Education, Administration	32266	R277-486	5YR	01/05/2009	2009-3/84
prohibited items and devices Human Services, Substance Abuse and Mental Health	32183	R523-1-5	AMD	01/22/2009	2008-24/26
<u>property tax</u> Tax Commission, Property Tax	32063 32036	R884-24P-27 R884-24P-47	AMD AMD	01/01/2009 01/01/2009	2008-21/90 2008-21/92
	32044 32052	R884-24P-70	AMD AMD	01/01/2009 01/01/2009	2008-21/93 2008-21/97
<u>public assistance programs</u> Health, Health Care Financing, Coverage and Reimbursement Policy	32184	R414-308	AMD	01/26/2009	2008-24/9
<u>public education</u> Education, Administration	32265 32269	R277-437 R277-735	5YR 5YR	01/05/2009 01/05/2009	2009-3/83 2009-3/85
<u>public utilities</u> Public Service Commission, Administration	32283	R746-365	5YR	01/06/2009	2009-3/89
rates Labor Commission, Industrial Accidents	32054	R612-4-2	AMD	01/01/2009	2008-21/66
<u>real estate appraisals</u> Commerce, Real Estate	31998	R162-103	AMD	01/01/2009	2008-21/23
real estate business Commerce, Real Estate	32115	R162-2-2	AMD	01/08/2009	2008-22/19
record requests Human Services, Recovery Services	32159	R527-5	R&R	01/21/2009	2008-24/27
records Workforce Services, Administration	32238	R982-201	NSC	01/22/2009	Not Printed
<u>records fees</u> Human Services, Recovery Services	32159	R527-5	R&R	01/21/2009	2008-24/27
<u>recreation therapy</u> Commerce, Occupational and Professional Licensing	32236	R156-40-302d	NSC	01/22/2009	Not Printed
<u>recreational therapy</u> Commerce, Occupational and Professional Licensing	32236	R156-40-302d	NSC	01/22/2009	Not Printed

<u>KEYWORD</u> AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
<u>rehabilitation</u>					
Education, Rehabilitation	32271	R280-202	5YR	01/05/2009	2009-3/86
reimbursement Health, Health Care Financing, Coverage	32325	R414-9	5YR	01/26/2009	Not Printed
and Reimbursement Policy	52525	11414-5	511	01/20/2003	Not I finted
Transportation, Administration	32213	R907-66	NSC	01/12/2009	Not Printed
<u>related parties</u> Human Services, Administration	32154	R495-888	NEW	01/21/2009	2008-24/18
numan Services, Auministration	52154	R495-000		01/21/2009	2000-24/10
<u>religious activities</u> Tax Commission, Auditing	32008	R865-19S-12	AMD	01/01/2009	2008-21/80
-	32017	R865-19S-27	AMD	01/01/2009	2008-21/81
	32030	R865-19S-29	AMD	01/01/2009	2008-21/82
	32007	R865-19S-90	AMD	01/01/2009	2008-21/83
	32016	R865-19S-92	AMD	01/01/2009	2008-21/84
	32010	R865-19S-113	AMD	01/01/2009	2008-21/85
	32012	R865-19S-119	AMD	01/01/2009	2008-21/86
	52015	1000-190-119	AND	01/01/2003	2000-21/00
replacement provider Public Service Commission, Administration	32306	R746-350	5YR	01/14/2009	2009-3/88
restaurants	32034	R865-12L-6	AMD	01/01/2009	2008-21/78
Tax Commission, Auditing	32034	R865-12L-0	AMD		
	32032 32015	R865-12L-12	AMD	01/01/2009 01/01/2009	2008-21/79 2008-21/79
right of work					
<u>right-of-way</u> Transportation, Administration	31961	R907-64	AMD	01/12/2009	2008-20/25
safety	32216	R614-1-4	NSC	01/13/2009	Not Printed
Labor Commission, Occupational Safety and Health	52210	K014-1-4	NSC	01/13/2009	Not Finted
Transportation, Motor Carrier	32264	R909-3	NSC	01/05/2009	Not Printed
	32274	R909-3	5YR	01/05/2009	2009-3/90
<u>safety regulations</u> Transportation, Motor Carrier	32215	R909-19	NSC	01/12/2009	Not Printed
	02210		1100	01,12,2000	
<u>salary adjustments</u> Education, Administration	32140	R277-110-1	AMD	01/07/2009	2008-23/2
sales tax					
Tax Commission, Auditing	32034	R865-12L-6	AMD	01/01/2009	2008-21/78
	32032	R865-12L-12	AMD	01/01/2009	2008-21/79
	32015	R865-12L-13	AMD	01/01/2009	2008-21/79
	32008	R865-19S-12	AMD	01/01/2009	2008-21/80
	32017	R865-19S-27	AMD	01/01/2009	2008-21/81
	32030	R865-19S-29	AMD	01/01/2009	2008-21/82
	32007	R865-19S-90	AMD	01/01/2009	2008-21/83
	32016	R865-19S-92	AMD	01/01/2009	2008-21/84

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
	32013	R865-19S-119	AMD	01/01/2009	2008-21/86
<u>school buses</u>					
Transportation, Motor Carrier	32264	R909-3	NSC	01/05/2009	Not Printed
	32274	R909-3	5YR	01/05/2009	2009-3/90
<u>SDWA</u>					
Environmental Quality, Drinking Water	32029	R309-705	AMD	01/28/2009	2008-21/40
securities	00000			04/40/0000	0000 01/00
Commerce, Securities	32039	R164-15-2	AMD	01/12/2009	2008-21/28
securities regulation Commerce, Securities	32039	R164-15-2	AMD	01/12/2009	2008-21/28
Commerce, Securities	32039	R 104-15-2	AIVID	01/12/2009	2000-21/20
<u>self-administered services</u> Human Services, Services for People with	32308	R539-5-8	EMR	01/15/2009	2009-3/81
Disabilities	52500	11333-3-0		01/15/2009	2003-3/01
services		_			
Public Service Commission, Administration	32306	R746-350	5YR	01/14/2009	2009-3/88
social services					
Human Services, Administration, Administrative Hearings	32181	R497-100	AMD	01/21/2009	2008-24/21
special fuel					
Tax Commission, Auditing	32035	R865-4D-2	AMD	01/01/2009	2008-21/76
state register					
Community and Culture, History	32244	R212-6	NSC	01/22/2009	Not Printed
student participation					
Education, Administration	32220	R277-494-3	NSC	01/22/2009	Not Printed
students at risk		_			
Education, Administration	32219	R277-464-4	NSC	01/22/2009	Not Printed
tax credits	0.4.000	B007 404		04/04/0000	0000 40/05
Environmental Quality, Air Quality	31928	R307-121	AMD	01/01/2009	2008-19/25
	32275	R307-121	5YR	01/06/2009	2009-3/87
<u>tax exemptions</u> Tax Commission, Auditing	32008	R865-19S-12	AMD	01/01/2000	2009 21/90
Tax Commission, Auditing	32008	R865-19S-12	AMD	01/01/2009	2008-21/80
				01/01/2009	2008-21/81
	32030	R865-19S-29		01/01/2009	2008-21/82
	32007	R865-19S-90		01/01/2009	2008-21/83
	32016	R865-19S-92	AMD	01/01/2009	2008-21/84
	32012	R865-19S-113	AMD	01/01/2009	2008-21/85
	32013	R865-19S-119	AMD	01/01/2009	2008-21/86
taxation	00005			04/04/0500	0000 01/75
Tax Commission, Auditing	32035	R865-4D-2	AMD	01/01/2009	2008-21/76
	32034	R865-12L-6	AMD	01/01/2009	2008-21/78
	32032	R865-12L-12	AMD	01/01/2009	2008-21/79
	32015	R865-12L-13	AMD	01/01/2009	2008-21/79

KEYWORD AGENCY	FILE NUMBER 32033	CODE REFERENCE R865-21U-3	ACTION AMD	EFFECTIVE DATE 01/01/2009	BULLETIN ISSUE/PAGE 2008-21/87
	32033		AMD		
Tax Commission, Motor Vehicle	32010	R865-21U-15 R873-22M-20	AMD	01/01/2009 01/01/2009	2008-21/87 2008-21/88
	32045 32037	R873-22M-20	AMD	01/01/2009	2008-21/88
Tax Commission, Property Tax	32063	R884-24P-27	AMD	01/01/2009	2008-21/89
Tax Commission, Property Tax	32003	R884-24P-47	AMD	01/01/2009	2008-21/90
	32030	R884-24P-53	AMD	01/01/2009	2008-21/92
	32052	R884-24P-70	AMD	01/01/2009	2008-21/93
telecommunications					
Public Service Commission, Administration	32306	R746-350	5YR	01/14/2009	2009-3/88
	32283	R746-365	5YR	01/06/2009	2009-3/89
title Insurance, Title and Escrow Commission	32167	R592-13	NEW	01/22/2009	2008-24/31
<u>towing</u> Transportation, Motor Carrier	32215	R909-19	NSC	01/12/2009	Not Printed
traffic noise abatement Transportation, Preconstruction	32000	R930-3	AMD	01/12/2009	2008-21/98
transportation					
Transportation, Administration	32213	R907-66	NSC	01/12/2009	Not Printed
Transportation, Preconstruction	32000	R930-3	AMD	01/12/2009	2008-21/98
Transportation Infrastructure Loan Fund Transportation Commission, Administration	31920	R940-3	NEW	01/12/2009	2008-18/62
trucks Transportation, Motor Carrier	32215	R909-19	NSC	01/12/2009	Not Printed
unemployment compensation Workforce Services, Unemployment Insurance	32242	R994-204-402	NSC	01/22/2009	Not Printed
<u>used oil</u> Environmental Quality, Solid and Hazardous Waste	32231	R315-15-13	NSC	01/22/2009	Not Printed
<u>user tax</u> Tax Commission, Auditing	32033	R865-21U-3	AMD	01/01/2009	2008-21/87
	32010	R865-21U-15	AMD	01/01/2009	2008-21/87
victim compensation					
Crime Victim Reparations, Administration	32180	R270-1-14	AMD	01/21/2009	2008-24/3
	31950	R270-1-19	CPR	01/21/2009	2008-24/37
victims of crime Crime Victim Reparations, Administration	32180	R270-1-14	AMD	01/21/2009	2008-24/3
	31950	R270-1-19	CPR	01/21/2009	2008-24/37
water pollution	04050	D047 0	000	04/40/0000	0000 00/00
water pollution Environmental Quality, Water Quality	31650 31650	R317-2 R317-2	CPR AMD	01/12/2009 01/12/2009	2008-23/28 2008-14/30

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
water quality standards					
Environmental Quality, Water Quality	31650	R317-2	CPR	01/12/2009	2008-23/28
	31650	R317-2	AMD	01/12/2009	2008-14/30
wildlife					
Natural Resources, Wildlife Resources	32129	R657-13	AMD	01/07/2009	2008-23/23
	32081	R657-60-2	AMD	01/07/2009	2008-22/28
<u>wildlife law</u> Natural Resources, Wildlife Resources	32129	R657-13	AMD	01/07/2009	2008-23/23
	32081	R657-60-2	AMD	01/07/2009	2008-22/28
workers' compensation Labor Commission, Industrial Accidents	32054	R612-4-2	AMD	01/01/2009	2008-21/66