

# UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT  
Filed February 18, 2009, 12:00 a.m. through March 2, 2009, 11:59 p.m.

Number 2009-6  
March 15, 2009

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

The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah State Government. The Department of Administrative Services, Division of Administrative Rules produces the *Bulletin* under authority of Section 63G-3-402, *Utah Code Annotated* 1953.

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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Printed in the United States of America

**Library of Congress Cataloging-in-Publication Data**

Utah state bulletin.

Semimonthly.

1. Delegated legislation--Utah--Periodicals. 2. Administrative procedure--Utah--Periodicals.

I. Utah. Office of Administrative Rules.

KFU440.A73S7

348.792'025--DDC

85-643197

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## EDITOR'S NOTES

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### **Error In the Filing for Rule R392-600 (DAR No. 32318) in the February 1, 2009, Issue of the Bulletin**

On 01/15/2009, the Division of Epidemiology and Laboratory Services, Environmental Services (Division) filed a repeal and reenactment (R&R) to Rule R392-600, "Illegal Drug Operations Decontamination Standards", under DAR No. 32318. This R&R was published in the February 1, 2009, issue of the *Utah State Bulletin* (2009-3, pg. 30). The text of the new (reenacted) rule clearly indicates a newly added incorporated reference under Section R392-600-9. Due to a filing error, this information was omitted from the published rule analysis.

The rule analysis should have reflected that the R&R to Rule R392-600 adds the incorporation of "U.S. Environmental Protection Agency. Region 9: Superfund Preliminary Remediation Goals (PRG) Table, October 2008". A copy of the table is available for viewing at the Division or at the Division of Administrative Rules.

The Division of Administrative Rules regrets any misunderstanding or inconvenience caused by this error.

*Questions regarding this issue may be addressed to Nancy Lancaster, Division of Administrative Rules, 4120 State Office Building, Salt Lake City, UT 84114; telephone: 801-538-3218; FAX: 801-538-3777; or email: nllancaster@utah.gov.*

**End of the Editor's Notes Section**

# SPECIAL NOTICES

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## Health Health Care Financing, Coverage and Reimbursement Policy

### Notice for April 2009 Medicaid Rate Changes

Effective April 1, 2009, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies, potential adjustments to existing codes, and nursing home rate changes to case mix components consistent with adopted payment methodology. It is not anticipated that these rate changes will have a substantial fiscal impact. All rate changes are posted to the web and can be viewed at:  
<http://health.utah.gov/medicaid/stplan/bcrp.htm>

**End of the Special Notices Section**



## NOTICES OF PROPOSED RULES

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A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between February 18, 2009, 12:00 a.m., and March 2, 2009, 11:59 p.m. are included in this, the March 15, 2009, issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least April 14, 2009. 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 July 13, 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.

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

Agriculture and Food, Marketing and Development  
**R65-7**  
**(Changed to R52-7)**  
Horse Racing

**NOTICE OF PROPOSED RULE**  
(Amendment)  
DAR FILE NO.: 32401  
FILED: 02/24/2009, 15:53

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to move this rule to a new title number and to change the number of horses for a qualified race from five to two.

SUMMARY OF THE RULE OR CHANGE: There are two changes to the rule being proposed at this time, it involves reducing the number of horses for a qualified race from the current number of five to a number of two. This change is being made at the request of the horse racing industry. Then the second change is to move the rule to a new title, R52. Agriculture and Food, Horse Racing Commission (Utah).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 4, Chapter 38

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There is no cost or savings as a result of these changes to the rule. It only reduces the minimum number of horses required for an official race.
- ❖ LOCAL GOVERNMENTS: There is no cost or savings to local government because local government does not have horse racing jurisdiction.
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There could be an increase in revenue as a result of more races.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no additional cost for horse owners.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There could be an increase in revenue for local businesses as a result of reducing the minimum number of horses per race. The horse racing industry requested the agency to make these changes to the administrative rule to potentially allow for more race meets. This is a relatively small industry and it has declined over the years, nonetheless it is important to have sanctioned races that increase the value of the breeding stock for the racing industry. Leonard M. Blackham, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
AGRICULTURE AND FOOD  
MARKETING AND DEVELOPMENT  
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 or Kyle Stephens at the above address, by phone at 801-538-7103 or 801-538-7102, by FAX at 801-538-7126 or 801-538-7126, or by Internet E-mail at kmathews@utah.gov or kylestephens@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 04/14/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2009

AUTHORIZED BY: Leonard M. Blackham, Commissioner

~~[R65]R52. Agriculture and Food, [Marketing and Development]Horse Racing Commission (Utah).~~

~~[R65]R52-7. Horse Racing.~~

~~[R65]R52-7-1. Authority.~~

Promulgated under authority of Section 4-38-4.

~~[R65]R52-7-2. Definitions.~~

.....

43. "Post Time" means the advertised time for the arrival of the horses at the start of the race.

44. "Protest" means a written complaint, signed by the protester, against any horse which has started in a race and shall be made to the Stewards within 48 hours after the running of the race, except as noted in Subsection R[65]52-7-10(8).

45. "Race Meeting" means the entire period of time not to exceed 20 calendar days separating any race days for which an organization license has been granted to a person by the Commission to hold horse racing.

.....

~~[R65]R52-7-3. Commission Powers and Jurisdiction.~~

.....

~~[R65]R52-7-4. Racing Organization.~~

1. Allocation Of Racing Dates. The Commission shall allocate racing dates for the conduct of horse race meetings within this State for such time periods and at such racing locations as the Commission determines will best serve the interests of the people of the State of Utah in accordance with the Utah Horse Act. Upon a finding by the Commission that the allocation of racing dates for any year is completed, the racing dates so allocated shall be subject to reconsideration or amendment only for conditions unforeseen at the time of allocation.

2. Application For License And Days To Conduct A Horse Race Meeting. Every person who intends to conduct a horse race meeting shall file such application with the Commission no later than August 1 of the preceding calendar year. Any prospective applicant for license and days to conduct a horse race meeting failing to timely file the

application for license may be disqualified and its application for license refused summarily by the Commission.

3. Commission May Demand Information. The Commission may require any racing organization or prospective racing organization to furnish the Commission with a detailed proposal and disclosures as to its proposed racing program, purse, program, financial projections, racing officials, principals or shareholders, plants, premises, facility, finances, lease arrangements, agreements, contracts, and such other information as the Commission may require to determine the eligibility and qualification of the organization to conduct a race meeting; all in addition to that required in the application form set forth in Subsection R[65]52-7-4(4) and as required by Section 4-38-4.

.....

**[R65]R52-7-5. Occupation Licensing and Registration.**

1. Occupation Licenses. No person required to be licensed shall participate in a race meeting without their holding a valid license authorizing that participation. Licenses shall be obtained prior to the time such persons engage in their vocations upon such racetrack grounds at any time during the calendar year for which the organization license has been issued.

A. A person whose occupation requires acting in any capacity within any area of an enclosure shall pay the required fee and procure the appropriate license or licenses.

B. A person acting in any of the following capacities shall pay the required fee and procure the appropriate license or licenses: (A list of all required fees shall be available at the Utah Department of Agriculture and Food.)

1. Owner/Trainer Combination
2. Owner
3. Trainer
4. Assistant Trainer
5. Jockey
6. Veterinarian
7. Jockey Room Attendant
8. Paddock Attendant
9. Pony Rider
10. Concessionaire
11. Valet
12. Groom

C. A person whose license-identification badge is lost or destroyed shall procure a replacement license-identification badge and shall pay the required fee.

D. The date of payment of all required fees as recorded by the Commission shall be the effective date of issuance of a continuous occupation license or registration shall expire on December 31 of the year in which it is issued. A license renewal shall be on an annual basis beginning January 1.

E. All license applicants may be required to provide two complete sets of fingerprints on forms provided by or acceptable to the Commission and pay the required fee for processing the fingerprint cards through State and Federal Law Enforcement Agencies. If the fingerprints are of a quality not acceptable for processing, the licensee may be required to be reprinted.

F. All applicants for occupation licenses must be a minimum of 16 years of age. However, this shall not preclude dependent children under the age of 16 from working for their parents or guardian if said parents or guardian are licensed as a trainer or assistant trainer and permission has been obtained from the organization licensee. A trainer

or his authorized representative signing a Test Barn Sample Tag must be licensed and a minimum of 18 years of age.

2. Employment Of Unlicensed Person. No organization, owner, trainer or other licensee acting as an employer within the enclosure at an authorized race meeting shall employ or harbor within the enclosure any person required to be licensed by the Commission until such organization, owner, trainer, or other employer determines that such person required to be licensed has been issued a valid license by the Commission. No organization shall permit any owner, trainer, or jockey to own, train, or ride on its premises during a recognized race meeting unless such owner, trainer, or jockey has received a license to do so from the Commission. The organization or prospective employer may demand for inspection the license of any person participating or attempting to participate at its meeting, and the organization may demand for inspection the documents relating to any horse on its grounds.

3. Notice Of Termination. Any organization, owner, trainer, or other licensee acting as an employer within the enclosure at an authorized race meeting shall be responsible for the immediate notification to the Commission and the organization conducting the race meeting of a termination of employment of a licensee. The employer shall make every effort to obtain the license badge from the employee and deliver the license badge to the Commission.

4. Application For License. An applicant for license shall apply in writing on the application forms furnished by the Commission.

5. License Identification Badge Requirements. The license identification badge may consist of the following information concerning the licensee:

- A. Full Name
- B. Permanent Address
- C. License Capacity
- D. Date of Issue
- E. Passport-Type Color Photograph
- F. Social Security Number
- G. Date of Birth

All license identification badges may be color coded as to capacity of occupation and eligibility for access to restricted areas. All license holders, except jockeys riding in a race, must wear a current identification badge while present in restricted areas of the enclosure or as otherwise specified in Subsection R[65]52-7-5(1).

6. Honoring Official Credentials. Credentials issued by the Commission may be honored for admission at all gates and entrances and to all places within the enclosure. Automobiles with vehicle decals issued by the Commission to its members and employees shall be permitted ingress and egress at any point. Credentials issued by the National Association of State Racing Commissioners to its members, past members, and staff shall be honored by the organization for admission into the public enclosure when presented therefore by such persons.

7. License Subject To Conditions And Agreements.

A. Every license is subject to the conditions and agreements contained in the application therefore and to the Statutes and Rules.

B. Every license issued to a licensee by the Commission remains the property of the Commission.

C. Possession of a license does not, as such, confer any right upon the holder thereof to employment at or participation in a race.

D. The Commission may restrict, limit, place conditions on, or endorse for additional occupational classes, any license, R[65]52-7-5(9).

8. **Changes In Application Information.** Each licensee or applicant for license shall file with the Commission his permanent and his current mailing address and shall report in writing to the Commission any and all changes in application information.

9. **Grounds For Denial, Refusal, Suspension Or Revocation Of License.** The Commission, in addition to any other valid ground or reason, may deny, refuse to issue, suspend or revoke an occupation license for any person:

A. Who has been convicted of a felony of this State, any other state, or the United States of America; or

B. Who has been convicted of violating any law regarding gambling or controlled dangerous substance of this State, any other state, or of the United States of America; or

C. Who is unqualified to perform the duties required of the applicant; or

D. Who fails to disclose or states falsely any information required in the application; or

E. Who has been found guilty of a violation of any provision of the Utah Horse Act or of the Rules and Regulations of the Commission; or

F. Whose license for any racing occupation or activity requiring a license has been or is currently suspended, revoked, refused or denied for just cause in any other competent racing jurisdiction; or

G. Who has been or is currently excluded from any racing enclosure by a competent racing jurisdiction.

10. **Examinations.** The Commission may require the applicant for any license to demonstrate his knowledge, qualifications, and proficiency for the license applied for by such examination as the Commission may direct.

11. **Refusal Without Prejudice.** A refusal to issue a license (as distinguished from a denial of a license) to an applicant by the Commission at any race meeting is without prejudice; and the applicant so refused may reapply for a license at any subsequent or other race meeting, or he may appeal such refusal to the Commission for hearing upon his qualifications and fitness for the license.

12. **Hearing After Denial Of License.** Any person who has had his license denied may petition the Commission to reopen the case and reconsider its decision upon a sufficient showing that there is now available evidence which could not, with the exercise of reasonable diligence, have been previously presented to the Commission. Any such petition must be filed with the Commission no later than 30 days after the effective date of the Commission's decision in the matter. Any person who has been denied a license by the Commission may not refile a similar application for license until one year from the effective date of the decision to deny the license.

13. **Financial Responsibility Of Applicants.** Applicants for license as horse owner or trainer must submit satisfactory evidence of their financial ability to care for and maintain the horses owned and/or trained by them when such evidence is requested by the Commission.

14. **Physical Examination.** The Commission or the Stewards may require that any jockey be examined at any time, and the Commission or the Stewards may refuse to allow any jockey to ride until he has successfully passed such examination.

15. **Qualifications For Jockey.** No person under 16 years of age shall be granted a jockey's license. A person who has never ridden in a race at a recognized meeting shall not be granted a license as jockey unless he has satisfactorily worked a horse from the starting gate in company, before the Stewards or their representatives. Upon the recommendation of the Stewards, the Commission may issue a jockey's license granting permission to such person for the purpose of riding in

not more than four races to establish the qualifications and ability of such person for the license. Subsequently, the Stewards may recommend the granting of a jockey's license.

16. **Jockey Agent.** A jockey agent is the authorized representative of a jockey if he is registered with the Stewards and licensed by the Commission as the Jockey's representative. No jockey agent shall represent more than two jockeys at the same time.

17. **Workers' Compensation Act Compliance.** No person may be licensed as a trainer, owner, or in any other capacity in which such person acts as the employer of any other licensee at any authorized race meeting, unless his liability for Workers' Compensation has been secured in accordance with the Workers' Compensation Act of the State of Utah and until evidence of such security for liability is provided the Commission. Should any such required security for liability for Workers' Compensation be canceled or terminated, any license held by such person shall be automatically suspended and shall be grounds for revocation of the license. If a license applicant certifies that he has no employees that would subject him to liability for Workers' Compensation, he may be licensed, but only for the period he has no employees.

18. **Program Trainer Prohibited.** No licensed trainer, for the purpose of avoiding his responsibilities or insurance requirements as set forth in these Rules, shall place any horse in the care or attendance of any other trainer.

19. **Qualifications For License As Horse Owner.** No person may be licensed as a horse owner who is not the owner of record of a properly registered race horse which he intends to race in Utah and which is in the care of a licensed trainer, or who does not have an interest in such race horse as a part owner or lessee, or who is not the responsible managing owner of a corporation, syndicate or partnership which is the legal owner of such horse.

20. **Horse Ownership By Lease.** Horses may be raced under lease provided a completed Utah Horse Commission, breed registry, approved pari-mutuel or other lease form acceptable to the Commission, is attached to the Registration Certificate and on file with the Commission. The lessor(s) and lessee must be licensed as horse owners. No lessor shall execute a lease for the purpose of avoiding insurance requirements.

21. **Statements Of Corporation, Partnership, Syndicate Or Other Association Or Entity.** All organizational documents of a corporation, partnership, syndicate or other association or entity, and the relative proportion of ownership interest, the terms of sales with contingencies, arrangements, or leases, shall be filed with the Horsemen's Bookkeeper of the organization and with the Commission. The above-said documents shall declare to whom winnings are payable, in whose names the horses shall be run, and the name of the licensed person who assumes all responsibilities as the owner. The part owner of any horse shall not assign his share or any part of it without the written consent of the other partners, and such consent shall be filed with the Horsemen's Bookkeeper and the Commission. A person or persons conducting racing operations as a corporation, partnership, syndicate or other association or entity shall register the information required by Rules in this Article and pay the required fee(s) for the appropriate entity.

22. **Stable Name Registration.** A person or persons electing to conduct racing operations by use of a stable name shall register the stable name and shall pay the required fee.

A. The applicant must disclose the identity or identities of all persons comprising the stable name.

B. Changes in identities must be reported immediately to and approval obtained from the Commission.

C. No person shall register more than one stable name at the same time nor use his real name for racing purposes so long as he has a registered stable name.

D. Any person who has registered under a stable name may cancel the stable name after he has given written notice to the Commission.

E. A stable name may be changed by registering a new stable name and by paying the required Fee.

F. No person shall register a stable name which has been registered by any other person with any organization conducting a recognized race meeting.

G. A stable name shall be clearly distinguishable from that of another registered stable name.

H. The stable name, and the name of the owner or managing owner, shall be published in the official program. If the stable name consists of more than one person, the official program will list the name of the managing owner along with the phrase "et al."

I. If a partnership, corporation, syndicate, or other association or entity is involved in the identity comprising a stable name, the rules covering a partnership, corporation, syndicate or other association or entity must be complied with and the usual fees paid therefore in addition to the fees for the registration of a stable name.

23. Ownership Licensing Required. The ownership licensing procedures required by the Commission must be completed prior to the horse starting in a race and shall include all registrations, statements and payment of fees.

24. Knowledge Of Rules. Every licensee, in order to maintain their qualifications for any license held by them, shall be familiar with and knowledgeable of the rules, including all amendments. Every licensee is presumed to know the rules.

25. Certain Prohibited Licenses. Commission-licensed jockeys, veterinarians, organizations' security personnel, vendors, and such other licensees designated by the stewards with approval of the Commission, shall not hold any other license. The Commission may refuse to issue a license to a person whose spouse holds a license and which, in the opinion of the Commission, would create a conflict of interest.

**[R65]R52-7-6. Racing Officials and Commission Racing Personnel.**

.....

**[R65]R52-7-7. Entries and Declarations.**

1. Control Over Entries And Declarations. All entries and declarations are under the supervision of the Stewards or their designee; and they, without notice, may refuse the entries any person or the transfer of entries.

2. Racing Secretary To Establish Conditions. The racing secretary may establish the conditions for any race, the allowances or handicaps to be established for specific races, the procedures for the acceptance of entries and declarations, and such other conditions as are necessary to provide and conduct the organization's race meeting. The racing secretary is responsible for the receipt of entries and declarations for all races. The racing secretary, employees of their department, or racing officials shall not disclose any pertinent information concerning entries which have been submitted until all entries are closed. After an entry to a race for which conditions have been published has been accepted by the racing secretary or their delegate, no condition of such race shall be changed, amended or altered, nor shall any new condition for such race be imposed.

3. Entries. No horse shall be entered in more than one race on the same day. No person shall enter or attempt to enter a horse for a race unless such entry is a bona fide entry made with the intention that such horse is to compete in the race for which entry is made except, if racing conditions permit, for entry back in finals or consolations involving physically disabled or dead qualifiers for purse payment purposes. Entries shall be in writing on the entry card provided by the organization and must be signed by the trainer or assistant trainer of the horse. Entries made by telephone are valid properly confirmed by the track when signing the entry card. No horse shall be allowed to start unless the entry card has been signed by the trainer or his assistant trainer.

4. Determining Eligibility. Determination of a horse's eligibility, penalty or penalties and the right to allowance or allowances for all races shall be from the date of the horse's last race unless the conditions specify otherwise. The trainer is responsible for the eligibility of his horse and to properly enter his horse in condition. In the event the records of the Racing Secretary or the appropriate breed registry do not reflect the horse's most recent starts, the trainer or owner shall accurately provide such information. If a horse is not eligible under the first condition of any race, he cannot be eligible under subsequent conditions. If the conditions specify nonwinners of a certain amount, it means that the horse has not won a race in which the winner's share was the specified amount or more. If the conditions specify nonearners of a stated amount, it means that the horse has not earned that stated amount in any total number of races regardless of the horse's placing.

5. Entries Survive With Transfer. All entries and rights of entry are valid and survive when a horse is sold with his engagements duly transferred. If a partnership agreement is properly filed with the Horsemen's Bookkeeper, subscriptions, entries and rights of entry survive in the remaining partners. Unless written notice to the contrary is filed with the stewards, the entries, rights of entry, and engagements remain with the horse and are transferred therewith to the new owner. No entry or right of entry shall become void on the death of the nominator unless the conditions of the race state otherwise.

6. Horses Ineligible To Start In A Race. In addition to any other valid ground or reason, a horse is ineligible to start any race if:

A. Such horse is not registered by The Jockey Club if a Thoroughbred; the American Quarter Horse Association if a Quarter Horse; the Appaloosa Horse Club if an Appaloosa; the Arabian Horse Club Registry of America if an Arabian; the American Paint Horse Association if a Paint; the Pinto Horse Association of America, Inc., if a Pinto; or any successors to any of the foregoing or other registry recognized by the Commission.

B. The Certificate of Foal Registration, eligibility papers, or other registration issued by the official registry for such horse is not on file with the racing secretary one hour prior to post time for the race in which the horse is scheduled to race.

C. Such horse has been entered or raced at any recognized race meeting under any name or designation other than the name or designation duly assigned by and registered with the official registry.

D. The Win Certificate, Certificate of Foal Registration, eligibility papers or other registration issued by the official registry has been materially altered, erased, removed, or forged.

E. Such horse is ineligible to enter said race, is not duly entered for such race, or remains ineligible to time of starting.

F. The trainer of such horse has not completed the prescribed licensing procedures required by the Commission before entry and the ownership of such horse has not completed the prescribed licensing procedures prior to the horse starting or the horse is in the care of an unlicensed trainer.

G. Such horse is owned in whole or in part or trained by any person who is suspended or ineligible for a license or ineligible to participate under the rules of any Turf Governing Authority or Stud Book Registry.

H. Such horse is a suspended horse.

I. Such horse is on the stewards' list, starter's list, or the veterinarian's list.

J. Except with permission of the stewards and identifier, the identification markings of the horse do not agree with identification as set forth on the registration certificate to the extent that a correction is required from the appropriate breed registry.

K. Except with the permission of the stewards, a horse has not been lip tattooed by a Commission approved tattooer.

L. The entry of a horse is not in the name of his true owner.

M. The horse has drawn into the field or has started in a race on the same day.

N. Its age as determined by an examination of its teeth by the official veterinarian does not correspond to the age shown on its registration certificate, such determination by tooth examination to be made in accordance with the current "Official Guide for Determining the Age of the Horse" as adopted by the American Association of Equine Practitioners.

7. Horses Ineligible To Enter Or Start. Any horse ineligible to be entered for a race or ineligible to start in any race which is entered or competes in such race, may be scratched or disqualified; and the stewards may discipline any person responsible.

8. Registration Certificate To Reflect Correct Ownership. Every certificate of registration, eligibility certificate or lease agreement filed with the organization and its racing secretary to establish the eligibility of a horse to be entered for any race shall accurately reflect the correct and true ownership of such horse, and the name of the owner which is printed on the official program for such horse shall conform to the ownership as declared on the certificate of registration or eligibility certificate. A stable name may be registered for such owner or ownership with the Commission. In the event ownership is by syndicate, corporation, partnership or other association or entity, the name of the owner which is printed on the official program for such shall be the responsible managing owner, officer, or partner who assumes all responsibilities as the owner.

9. Alteration Or Forgery Of Certificate Of Registration. No person shall alter or forge any win sheet, certificate of registration, certificate of eligibility, or any other document of ownership or registration, nor willfully forge or alter the signature of any person required on any such document or entry card.

10. Declarations And Scratches. Any trainer or assistant trainer of a horse which has been entered in a race who does not wish such horse to participate in the draw must declare his horse from the race prior to the close of entries. Any trainer or assistant trainer of a horse which has been drawn into or is also eligible for a race who does not wish such horse to start in the race, must scratch his horse from the race prior to the designated scratch time. The declaration or scratch of a horse from a race is irrevocable.

11. Deadline For Arrival Of Entered Horses. All horses scheduled to compete in a race must be present within the enclosure no later than 30 minutes prior to their scheduled race without stewards' approval. Horses not within the enclosure by their deadline may be scratched and the trainer subject to fine and/or suspension.

12. Refund Of Fees. If a horse is declared or scratched from a race, the owner of such horse shall not be entitled to a refund of any nomination, sustaining and penalty payments, entry fees, or organization charges paid or remaining due at the time of the

declaration or scratch. In the event any race is not run, declared off, or canceled for any reason, the owners of such horses that remain eligible at the time the race is declared off or canceled shall be entitled to a complete refund of all the above payments and fees less monies specified in written race conditions for advertising and promotion.

13. Release Of Certificates. Any certificate of registration or document of ownership filed with the racing secretary to establish eligibility to enter a race shall be released only to the trainer of record of the horse. However, the trainer may authorize in a form provided by the racing secretary the release of the certificate to the owner named on the certificate or his authorized agent. Any disputes concerning the rights to the registration certificates shall be decided by the stewards.

14. Nomination Races. Prior to the closing of nominations, the organization shall file with the Commission a copy of the nomination blank and all advertisements for races to be run during a race meeting. For all races which nominations close no earlier than 72 hours before post time, the organization shall furnish the Commission and the owners of horses previously made eligible by compliance with the conditions of such race, with a list of all horses nominated and which remain eligible. The list shall be distributed within 15 days after the due date of each payment and shall include the horse's name, the owner's name and the total amount of payments and gross purse to date, including any added monies, applicable interest, supplementary payments, and deduction for advertising and administrative expenses. The organization shall deposit all monies for a nomination race in an escrow account according to procedures approved by the Commission.

15. Limitations On Field And Number Of Races. No race with less than ~~five~~two horses entered and run, ~~[or three horses ultimately participating,]~~ shall be ~~[-run,]~~ approved by the UHRC ~~[with the exception of a trial or the finals for a nomination race]~~. No more than 20 races may be run on a race day, except with permission of the Commission. A race day may be canceled if less than 75 horses have been entered on the day's program, with the exception of days on which trials or finals for a nomination race are scheduled.

16. Agreement Upon Entry. No entry shall be accepted in any race except upon the condition that all disputes, claims, and objections arising out of the racing or with respect to the interpretation of Commission and track rules or conditions of any race shall be decided by the Board of Stewards at the race meet; or, upon appeal, decided by the Commission.

17. Selection Of Entered Horses. The manner of selecting post positions of horses shall be determined by the stewards. The selection shall be by lot and shall be made by one of the stewards or their designee and a horseman, in public, at the close of entries. If the number of entries to any race is in excess of the number of horses which may, because of track limitations, be permitted to start in any one race, the race may be split; or four horses not drawing into the field may be placed on an also eligible list.

18. Preferred List Of Horses. The racing secretary may maintain a list of entered horses eliminated from starting by a surplus of entries, and these horses shall constitute a preferred list and have preference. The manner in which the preferred list shall be maintained and all rules governing such list shall be the responsibility of the Racing Secretary. Such rules must be submitted to the Commission 30 days prior to the commencement of the meet and are subject to approval by the Commission.

**~~[R65]~~R52-7-8. Veterinarian Practices, Medication and Testing Procedures.**

1. Veterinary Practices - Treatment Restricted. Within the time period of 24 hours prior to the post time for the first race of the week

until four hours after the last race of the week, no person other than Utah licensed veterinarians or animal technicians under direct supervision of a licensed veterinarian who have obtained a license from the Commission shall administer to any horse within the enclosure any veterinary treatment or any medicine, medication, or other substance recognized as a medication, except for recognized feed supplements or oral tonics or substances approved by the Official Veterinarian.

2. Veterinarians Under Supervision Of Official Veterinarian. Veterinarians licensed by the Commission and practicing at an authorized meeting are under the supervision of the Official Veterinarian and the Stewards. The Official Veterinarian shall recommend to the Stewards or the Commission the discipline to be imposed upon a veterinarian who violates the Rules, and he or she may sit with the Stewards in any hearing before the Stewards concerning such discipline or violation.

3. Veterinarian Report. Every veterinarian who treats any horse within the enclosure for any contagious or communicable disease shall immediately report to the official veterinarian in writing on a form approved by the Commission. The form shall include the name and location of the horse treated, the name of the trainer, the time of treatment, the probable diagnosis, and the medication administered. Each practicing veterinarian shall be responsible for maintaining treatment records on all horses to which they administer treatment during a given race meeting. These records shall be available to the Commission upon subpoena when required. Any such record and any report of treatment as described above is confidential; and its content shall not be disclosed except in a proceeding before the stewards or the Commission, or in the exercise of the Commission's jurisdiction.

4. Drugs Or Medication. Except as authorized by the provisions of this Article, no drug or medication shall be administered to any horse prior to or during any race. Presence of any drug or its metabolites or analog, or any substance foreign to the natural horse found in the testing sample of a horse participating in a Commission-sanctioned race shall result in disqualification by the Stewards. When a horse is disqualified because of an infraction of this Rule, the owner or owners of such horse shall not participate in any portion of the purse or stakes; and any trophy or other award shall be returned. (See Drugs and Medications Exceptions, Section R67-7-13.)

5. Racing Soundness Examination. Each horse entered to race may be subject to a veterinary examination by the official veterinarian or his authorized representative for racing soundness and health on race day.

6. Positive Lab Reports. A finding by a licensed laboratory that a test sample taken from a horse contains a drug or its metabolites or analog, or any substance foreign to the natural horse shall be prima facie evidence that such has been administered to the horse either internally or externally in violation of these rules. It is presumed that the sample of urine, saliva, blood or other acceptable specimen tested by the approved laboratory to which it is sent is taken from the horse in question; its integrity is preserved; that all procedures of same collection and preservation, transfer to the laboratory, and analyses of the sample are correct and accurate; and that the report received from the laboratory pertains to the sample taken from the horse in question and correctly reflects the condition of the horse during the race in which he was entered, with the burden on the trainer, assistant trainer or other responsible party to prove otherwise at any hearing in regard to the matter conducted by the stewards or the Commission.

7. Intent Of Medication Rules. It shall be the intent of these rules to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and the racing participants

through the prohibition or control of all drugs, medication, and substances foreign to the natural horse.

8. Power To Have Tested. As a safeguard against the use of drugs, medication, and substances foreign to the natural horse, a urine or other acceptable sample shall be taken under the direction of the official veterinarian from the winner of every race and from such other horses as the stewards or the Commission may designate.

9. Pre-Race Testing. The stewards may require any horse entered to race to submit to a blood or other pre-race test, and no horse is eligible to start in a race until the owner or trainer complies with the required testing procedure.

10. Equipment For Official Testing. Organizations shall provide the equipment, necessary supplies and services prescribed by the Commission and the official veterinarian for the taking of or administration of blood, urine, saliva or other tests.

11. Taking Of Samples. Blood, urine, saliva or other samples shall be taken under the direction of the official veterinarian or persons appointed or assigned by the official veterinarian for taking samples. All samples shall be taken in a detention area approved by the Commission, unless the Official Veterinarian approves otherwise. Each horse shall be cooled out for a minimum of 30 minutes after entry into the test barn before a sample is to be taken. The taking of any test samples shall be witnessed, confirmed or acknowledged by the trainer of the horse being tested or his authorized representative or employee, and may be witnessed by the owner, trainer, or other licensed person designated by them. Samples shall be sent to racing laboratories approved and designated by the Commission, in such manner as the Commission or its designee may direct. All required samples shall be in the custody of the official veterinarian, his/her assistants or other persons approved by the official veterinarian from the time they are taken until they are delivered for shipment to the testing laboratory. No person shall tamper with, adulterate, add to, break the seal of, remove or otherwise attempt to so alter or violate any sample required to be taken by this Article, except for the addition of preservatives or substances necessarily added by the Commission-approved laboratory for preservation of the sample or in the process of analysis.

The Commission has the authority to direct the approved laboratory to retain and preserve samples for future analysis.

The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no chemical substance has been administered in violation of these Rules to the horse earning such purse money.

12. Laboratories Approved By The Commission. Only laboratories approved by the Commission may be used in obtaining analysis reports on urine, or other specimens, taken from the winners or other designated horses of each race meeting. The Commission and the Board of Stewards shall receive reports directly from the laboratory.

13. Split Samples. As determined by the official veterinarian, when sample quantity permits, each test sample shall be divided into two portions so that one portion shall be used for the initial testing for unknown substances. If the Trainer or owner so requests in writing to the stewards within 48 hours of notice of positive lab report on the test sample of his horse, the second sample shall be sent for further testing to a drug testing laboratory designated and approved by the commission. Nothing in this rule shall prevent the commission or executive director from ordering first use of both sample portions for testing purposes. The results of said split sampling may not prevent the disqualification of the horse as per R~~65~~52-7-8-4 and ~~65~~R52-7-8-6. All costs for transportation and testing of the second sample portion shall be the responsibility of the requesting person. The official

veterinarian shall have overall supervision and responsibility for the freezing, storage and safeguarding of the second sample portion.

14. **Facilitating The Taking Of Urine Samples.** When a horse has been in the test barn more than 1-1/2 hours, a diuretic may be administered by the Official Veterinarian for the purpose of facilitating the collection of a urine sample with permission of the stewards and the trainer or the trainer's authorized test barn representative. The cost of administration of the diuretic is the responsibility of the trainer. Prior to the administration of a diuretic, a blood sample may be taken from the horse.

15. **Postmortem Examination.** Every horse which dies or suffers a breakdown on the racetrack in training or in competition within any enclosure licensed by the Commission and is destroyed, may undergo, at a time and place acceptable to the official veterinarian, a postmortem examination to the extent reasonably necessary to determine the injury or sickness which resulted in euthanasia or natural death. Any other horse which expires within any enclosure may be required by the official veterinarian to undergo a postmortem examination.

A. The postmortem examination required under this rule will be conducted by a licensed veterinarian employed by the owner or his trainer in consultation with the official veterinarian, who may be present at such postmortem examination.

B. Test samples may be obtained from the carcass upon which the postmortem examination is conducted and shall be sent to a laboratory approved by the Commission for testing for foreign substances or their metabolites and natural substances at abnormal levels. When practical, samples shall be procured prior to euthanasia.

C. The owner of the deceased horse shall make payment of any charges due the veterinarian employed by him to conduct the postmortem examination.

D. A record of such postmortem shall be filed with the official veterinarian by the owner's veterinarian within 72 hours of the death and shall be submitted on a form supplied by the Commission.

E. Each owner and trainer accepts the responsibility for the postmortem examination provided herein as a requisite for maintaining the occupation license issued by the Commission.

#### **[R65]R52-7-9. Running the Race.**

1. **Jockeys To Report.** Every jockey engaged to ride in a race shall report to the jockey room at least one hour before post time of the first race and shall weigh out at the appointed time unless excused by the stewards. After reporting, a jockey shall not leave the jockey room until all of their riding engagements have been fulfilled and/or unless excused by the stewards.

2. **Entrance To Jockey Room Prohibited.** Except with permission of the stewards or the Commission, no person shall be permitted entrance into the jockey room from one hour before post time for the first race until after the last race other than jockeys, their attendants, racing officials and security officers on duty, and organization employees performing required duties.

3. **Weighing Out.** All jockeys taking part in a race must be weighed out by the Clerk of Scales no more than one hour preceding the time designated for the race. Any overweight in excess of one pound shall be declared by the jockey to the Clerk of Scales, who shall report such overweight and any change in jockeys to the Stewards for immediate public announcement. A jockey's weight includes the riding costume, racing saddle and pad; but shall not include the jockey's safety helmet, whip, the horse's bridle or other regularly approved racing tack. A jockey must be neat in appearance and must wear a conventional riding costume.

4. **Unruly Horses In The Paddock.** If a horse is so unruly in the saddling paddock that the identifier cannot read the tattoo number and properly identify the horse; or if the trainer or their assistant is uncooperative in the effort to identify the horse, then the horse may be scratched by order of the stewards.

5. **Use Of Equipment.** No bridle shall weigh more than two pounds, nor shall any whip weigh more than one pound or be more than 31 inches in length. No whip shall be used unless it shall have affixed to the end thereof a leather "popper." All whips are subject to inspection and approval by the stewards. Blinkers are not to be placed on the horse until after the horse has been identified by the official identifier, except with permission of the stewards.

6. **Prohibited Use Of Equipment.** Jockeys are prohibited from whipping a horse excessively, brutally, or upon the head, except when necessary to control the horse. No mechanical or electrical devices or appliances other than the ordinary whip shall be possessed by any individual or used on any horse at any time a race meeting, whether in a race or otherwise.

7. **Responsibility For Weight.** The jockey, trainer and owner shall be responsible for the weight carried by the horse after the jockey has been weighed out for the race by the clerk of scales. The trainer or owner may substitute a jockey when the engaged jockey reports an overweight in excess of two pounds.

8. **Safety Equipment Required.** All persons, when mounted on a race horse within the enclosure or riding in a race, shall wear a properly fastened safety helmet and flak jacket. The Commission or the stewards may require any other person to wear such helmet and jacket when mounted on a horse within the enclosure. All safety helmets and flak jackets so required are subject to approval of the stewards or Commission.

9. **Display Of Colors And Post Position Numbers.** In a race, each horse shall carry a conspicuous saddle cloth number and a head number, and the jockey shall wear colors and a numbered helmet cover corresponding to the number of the horse which are furnished by the organization licensee.

10. **Deposit Of Jockey Fee.** The minimum jockey mount fee for a losing mount in the race must be on deposit with the horsemen's bookkeeper, prior to the time for weighing out, and failure to have such minimum fee on deposit is cause for disciplinary action and cause for the stewards to scratch the horse for which such fee is to be deposited. The organization assumes the obligation to pay the jockey fee when earned by the engaged jockey. The jockey fee shall be considered earned when the jockey is weighed out by the clerk of scales, unless, in the opinion of the stewards, such jockey capable of riding elect to take themselves off the mount without proper cause.

11. **Requirements For Horse, Trainer, And Jockey.** Every horse must be in the paddock at the time appointed by the stewards before post time for their race. Every horse must be saddled in the paddock stall designated by the paddock judge unless special permission is granted by the stewards to saddle elsewhere. Each trainer or their assistant trainer having the care and custody of such horse shall be present in the paddock to supervise the saddling of the horse and shall give such instructions as may be necessary to assure the best performance of the horse. Every jockey participating in a race shall give their best effort in order to facilitate the best performance of their horse.

12. **Failure To Fulfill Jockey Engagements.** No jockey engaged for a certain race or for a specified time may fail or refuse to abide by his or her agreement unless excused by the stewards.



13. Control And Parade Of Horses On The Track. The horses are under the control of the starter from the time they enter the track until dispatched at the start of the race. All horses with jockey mounted shall parade and warm up carrying their weight and wearing their equipment from the paddock to the starting gate, as well as to the finish line. Any horse failing to do so may be scratched by the stewards. After passing the stands at least once, the horses may break formation and warm up until directed to proceed to the starting gate. In the event a jockey is injured during the parade to post or at the starting gate and must be replaced, the horse shall be returned to the paddock and resaddled with the replacement jockey's equipment. Such horse must carry the replacement jockey to the starting gate.

14. Start Of The Race. When the horses have reached the starting gate, they shall be placed in their starting gate stalls in the order stipulated by the starter. Except in cases of emergency, every horse shall be started by the starter from a starting gate approved by the Commission. The starter shall see that the horses are placed in their proper positions without unnecessary delay. Causes for any delay in the start shall immediately be reported to the stewards. If, when the starter dispatches the field, the doors at the front of the starting gate stall should not open properly due to a mechanical failure of malfunction of the starting gate, the stewards may declare such horse to be a nonstarter. Should a horse which is not previously scratched not be in the starting gate stall thereby causing such horse to be left when the field is dispatched by the starter, such horse shall be declared a nonstarter by the stewards.

15. Leaving The Race Course. Should a horse leave the course while moving from the paddock to starting gate, he shall return to the course at the nearest practical point to that at which he left the course, and shall complete his parade to the starting gate from the point at which he left the course. However, should such horse leave the course to the extent that he is out of the direct line of sight of the stewards, or if such horse cannot be returned to the course within a reasonable amount of time, the stewards shall scratch the horse. Any horse which leaves the course or loses its jockey during the running of a race shall be disqualified and may be placed last, or the horse may be unplaced.

16. Riding Rules. In a straightaway race, every horse must maintain position as nearly as possible in the lane in which he starts. If a horse is ridden, drifts, or swerves out of their lane in such a manner that he interferes with or impedes another horse, it is a foul. Every jockey shall be responsible for making his best effort to control and guide his mount in such a way as not to cause a foul. The stewards shall take cognizance of riding which results in a foul, irrespective of whether an objection is lodged; and if in the opinion of the stewards a foul is committed as a result of a jockey not making his best effort to control and guide their mount to avoid a foul, whether intentionally or through carelessness or incompetence, such jockey may be penalized at the discretion of the stewards.

17. Stewards To Determine Fouls And Extent Of Disqualification. The stewards shall determine the extent of interference in cases of fouls or riding infractions. They may disqualify the offending horse and place it behind such other horses as in their judgment it interfered with, or they may place it last. The stewards may determine that a horse shall be unplaced.

18. Careless Riding. A jockey shall not ride carelessly or willfully so as to permit his or her mount to interfere with or impede any other horse in the race. A jockey shall not willfully strike at another horse or jockey so as to impede, interfere with, or injure the other horse or jockey. If a jockey rides in a manner contrary to this rule, the horse may be disqualified and/or the jockey may be fined and/or suspended, or otherwise disciplined.

19. Ramifications Of A Disqualification. When a horse is disqualified by the stewards, every horse in the race owned wholly or in part by the same owner, or trained by the same trainer, may be disqualified. When a horse is disqualified for interference in a time trial race, it shall receive the time of the horse it is placed behind plus 0.01 of a second penalty, or more exact measurement if photo finish equipment permits, and shall be eligible to qualify for the finals or consolations of the race on the basis of the assigned time.

20. Dead Heat. When a race results in a dead heat, the heat shall not be run off. The purse distribution due the horses involved in the dead heat shall be divided equally between them. All prizes or trophies for which a duplicate is not awardable shall be drawn for by lot.

21. Returning To The Finish After The Race. After the race, the jockey shall return their horse to the finish and before dismounting, salute the stewards. No person shall assist a jockey in removing from their horse the equipment that is to be included in the jockey's weight except by permission of the stewards. No person shall throw any covering over any horse at the place of dismounting until the jockey has removed the equipment that is to be included in his weight.

22. Objection - Inquiry Concerning Interference. Before the race has been declared official, a jockey, trainer or their assistant trainer, owner or their authorized agent of the horse, who has reasonable grounds to believe that their horse was interfered with or impeded or otherwise hindered during the running of a race, or that any riding rule was violated by any jockey or horse during the running of the race, may immediately make a claim of interference or foul with the stewards or their delegate. The stewards shall thereupon hold an inquiry into the running of the race; however, the stewards may upon their own motion conduct an inquiry into the running of a race. Any claim of foul, objection, and/or inquiry shall be immediately announced to the public.

23. Official Order Of Finish. When satisfied that the order of finish is correct, that all jockeys unless excused have been properly weighed in, and that the race has been properly run in accordance with the rules of the Commission, the Stewards shall declare that the order of finish is official; and it shall be announced to the public, confirmed, and the official order of finish posted for the race.

24. Time Trial Qualifiers. When two or more time trial contestants have the same qualifying time, to a degree of .01 of a second, or more exact measurement if photo finish equipment permits, for fewer positions in the finals or consolation necessary for all contestants, then a draw by lot will be conducted in accordance with Subsection R[65]52-7-7(17). However, no contestant may draw into a finals or consolation instead of a contestant which out finished such contestant. When scheduled races are trial heats for futurities or stakes races electronically timed from the starting gates, no organization licensee shall move the starting gates or allow the starting gates to be moved until all trial heats are complete, except in an emergency as determined by the stewards.

#### **[R65]R52-7-10. Objections and Protests; Hearing and Appeals.**

1. Stewards To Make Inquiry Or Investigation. The stewards shall make diligent inquiry or investigation into any complaint, objection or protest made either upon their own motion, by any Racing Official, or by any other person empowered by this Article to make such complaint, protest or objection.

2. Objections. Objections to the participation of a horse entered in any race shall be made to the stewards in writing and signed by the objector. Except for claim of foul or interference, an objection to a horse entered in a race shall be made not later than two hours prior to the scheduled post time for the first race on the day which the questioned horse is entered. Any such objection shall set forth the

specific reason or grounds for the objection in such detail so as to establish probable cause for the objection. The stewards upon their own motion may consider an objection until such time as the horse becomes a starter. An objection concerning claim of foul in a race may be lodged verbally to the stewards before the race results are declared official.

3. Grounds For Objections. An objection to a horse which is entered in a race shall be made on the following grounds or reasons:

A. A misstatement, error or omission in the entry under which a horse is to run.

B. That the horse which is entered to run is not the horse it is represented to be at the time of entry, or that the age is erroneously given.

C. That the horse is not qualified to enter under the conditions specified for the race, or that the allowances are improperly claimed or not entitled the horse, or that the weight to be carried is incorrect under the conditions of the race.

D. That the horse is owned in whole or in part, or leased by a person ineligible to participate in racing or otherwise ineligible to run a race as provided in these Rules.

E. That reasonable grounds exist whereby a horse was interfered with or impeded or otherwise hindered by another horse or jockey during the running of a race.

4. Horse Subject To Objection. The stewards may scratch from the race any horse which is the subject of an objection if they have reasonable cause to believe that the objection is valid.

5. Protests. A protest against any horse which has started in a race shall be made to the stewards in writing, signed by the protestor, within 48 hours of the race, except as noted in Subsection R[65]52-7-10(8). Any such protest shall set forth the specific reason or reasons for the protest in such detail as to establish probable cause for protest. The stewards upon their own motion may consider a protest at any time.

6. Grounds For Protest. A protest may be made upon the following grounds:

A. Any ground for objection set forth in R[65]52-1-10(3).

B. That the order of finish as officially determined by the stewards was incorrect due to oversight or errors in the numbers designated to the horses which started in the race.

C. That a jockey, trainer or owner of a horse which started in the race was ineligible to participate in racing as provided in these rules.

D. That the weight carried by a horse was improper by reason of fraud or willful misconduct.

E. That an unfair advantage was gained in violation of the rules.

7. Persons Empowered To File Objection Or Protest. A jockey, trainer, owner or authorized agent of the horse which is entered or is a starter in a race is empowered to file an objection or protest against any other horse in such race upon the grounds set forth in this Article for objections and protests.

8. No Limitation On Time To File When Fraud Alleged. Notwithstanding any other provision in this Article, the time limitation on the filing of protests shall not apply in any case in which fraud or willful misconduct is alleged, provided that the stewards are satisfied that the allegations are bona fide and susceptible to verification.

9. Frivolous Or Inaccurate Objection Or Protest. No person shall knowingly file a frivolous, inaccurate, false, or untruthful objection or protest; nor shall any person present his objection or protest to the stewards in a disrespectful or undignified manner.

10. Horse To Be Disqualified On Valid Protest. If a protest against a horse which has run in a race is declared valid, that horse may be disqualified. A horse so disqualified which was a starter in the said race, may be placed last in the order of finish or may be unplaced. The

stewards or the Commission may order any purse, award or prize for any race withheld from distribution pending the determination of the protest(s). In the event any purse, award or prize has been distributed to a person on behalf of a horse which by protest or other reason is disqualified or determined not to be entitled to such purse, award or prize, the stewards or the Commission may order such purse, award or prize returned and redistributed to the rightful person. Any person who fails to comply with an order to return any purse, award or prize previously distributed shall be suspended until its return.

11. Notification Of And Representation At Hearing. Adequate notice of hearing shall be given to every summoned person in accordance with the procedures set forth in Subsection R[65]52-7-3(6). Every person alleged to have committed a rule violation or who is called to testify before the stewards is entitled at the persons expense to have counsel present evidence and witnesses on his behalf and to cross-examine other witnesses at the hearing.

12. Testimony And Evidence At Hearing. Every person called to a hearing before the stewards for a rule violation shall be allowed to present testimony, produce witnesses, cross-examine witnesses, and present documentary evidence in accordance with the rules of privilege recognized by law.

13. Duty Of Disclosure. It is the duty and obligation of every licensee to make full disclosure at a hearing before the Commission or before the stewards of any knowledge he or she possesses of a violation of any racing law or of the rules of the Commission. No person may refuse to testify at any hearing on any relevant matter except in the proper exercise of a legal privilege, nor shall any person testify falsely.

14. Failure To Appear. Any licensee or summoned person who fails to appear before the stewards or the Commission after they have been ordered personally or in writing to do so, may be suspended pending appearance before the stewards or the Commission. Nonappearance of a summoned person after adequate notice may be construed as a waiver of right to be present at a hearing.

15. Record Of Hearing. All hearings before the stewards or Commission shall be recorded. That portion at a hearing constituting deliberations in executive session need not be recorded. A written transcript or a copy of the tape recording shall be made available to any person alleged to have committed a violation of the Act or the rules upon written request and payment of appropriate reimbursement cost(s) for transcription or reproduction.

16. Vote On Steward's Decision. A majority vote shall decide any question to which the authority of the stewards extends. If a vote is not unanimous, the dissent steward shall provide a written record to the Commission of the reasons for such dissent within 72 hours of the vote.

17. Rulings By The Stewards. Any ruling or order issued by the stewards shall specify the full name of the licensee or person subject to the ruling or order; most recent address on file with the Commission; date of birth; social security number; statement of the offense charged including any rule number; date of ruling; fine and/or suspension imposed or other action taken; changes in the order of finish and purse distribution in a race, when appropriate; and any other information deemed necessary by the stewards or the Commission. Any member of a Board of Stewards may, after consultation with and by mutual agreement of the other stewards, issue an Order or Notice signed by one steward on behalf of the Board of Stewards. Subsequently, an Order containing all three stewards' signatures shall be made part of the official record.

18. Summary Suspension Of Occupation Licensee. If the stewards or the Commission find that the public health, safety, or welfare require emergency action and incorporates such finding to that effect in any Order, summary suspension may be ordered pending

proceedings for revocation or other action, which proceedings shall be promptly initiated and held as provided in Subsection R[65]52-7-10(19).

19. Duration Of Suspension Or Revocation. Unless execution of an order of suspension or revocation is stayed by the Commission or a court of competent jurisdiction, a person's occupation license, suspended or revoked, shall remain suspended or revoked until the final determination has been made pursuant to the provisions of Section R[65]52-7-5.

20. Grounds For Appeal From Decision Of The Stewards. Any decision of the stewards, except decisions regarding disqualifications for interference during the running of a race, may be appealed to the Commission; and such decision may be overruled if it is found by a preponderance of evidence that:

A. The stewards mistakenly interpreted the law; or

B. The Appellant produces new evidence of a convincing nature which, if found to be true, would require the overruling of the decision; or

C. The best interests of racing and the State may be better served.

21. Appeal From Decision Of The Stewards. The Commission shall review hearings of any case referred to the Commission by the stewards or appealed to the Commission from the decisions of the stewards except as otherwise provided in this Article. Upon every appealable decision of the stewards, the person subject to the decision or Order shall be made aware of his right to an appeal before the Commission and the necessary procedures thereof. Appeals shall be made no later than 72 hours or the third calendar day from the date of the rendering of the decision of the stewards unless the Commission for good cause extends the time for filing not to exceed 30 days from said rendering date. The appeal shall be in writing, signed by the appellant; shall contain his full name, present mailing address, and present phone number; and shall set forth the facts and any new evidence the appellant believes to be grounds for an appeal before the Commission. Action on such a hearing request must commence by the Commission within 30 days of the filing of the appeal. An appeal shall not affect a decision of the stewards until the appeal has been sustained or dismissed or a stay order issued.

22. Appointment Of Hearing Examiners. When directed by the Commission, any qualified person(s) may sit as a hearing examiner(s) for the taking of evidence in any matter pending before the Commission. Any such hearing examiner shall report to the Commission Findings of Fact and Conclusions of Law, and the Commission shall determine the matter as if such evidence had been presented to the full Commission.

23. Hearings On Agreement. Persons aggrieved as of the result of a stewards' ruling in a preliminary or trial race may request a hearing before the executive director of the Commission to review same. If all interested parties waive the right to receive ten day notice of hearing, such a hearing may be heard on a day certain within seven days after the preliminary or trial race in question. All such appeals shall be heard on days set by the executive director of the Commission or anyone acting in his stead.

24. Temporary Stay Order. The Executive Director may, upon consultation with the direction of a minimum of three Commissioners, issue or deny a temporary stay order to stay execution of any ruling, order or decision of the stewards except stewards' decisions regarding disqualifications for interference during the running of a race. Any application for a temporary stay shall be in writing, signed by the appellant; shall contain his full name, present mailing address, and present phone number; shall set forth the facts and any evidence to justify the issuance of the stay; and shall be filed with the Office of the

Commission as specified in Subsection R[65]52-7-3(7). The granting of a temporary stay order shall carry no presumption that the stayed decision of the stewards is or may be invalid, and a temporary stay order may be dissolved at any time by further order of the executive director upon consultation with and the direction of a minimum of three Commissioners.

25. Appearance At Hearing Upon Appeal. The Commission shall notify the Appellant and the stewards of the date, time and location of its hearing in the matter upon appeal. The burden shall be on the appellant to provide the facts necessary to sustain the appeal.

26. Complaints Against Officials. Any complaint against a racing official other than a steward shall be made to the stewards in writing and signed by the complainant. All such complaints shall be reported to the Commission by the stewards, together with a report of the action taken or the recommendation of the stewards. Complaints against any stewards shall be made in writing to the executive director of the Commission and signed by the complainant.

27. Rulings On Admissibility And Evidence. In all hearings, the chairperson, chief steward or such other person as may be designated, shall make rulings on admissibility and introduction of evidence. Such a ruling shall prevail; except when a Commission member or a steward requests a poll of the panel, and the ruling overturned by majority vote.

#### **R[65]52-7-11. General Conduct.**

1. Conditions Of Meeting Binding Upon Licensees. The Commission, recognizing the necessity for an organization to comply with the requirements of its license and to fulfill its obligation to the public and the State of Utah with the best possible uninterrupted services in the comparatively short licensed period, herein provides that all organizations, officials, horsemen, owners, trainers, jockeys, grooms, farriers, organization employees, and all licensees who have accepted directly or indirectly, with reasonable advance notice, the conditions defined by these rules under which said organization engages and plans to conduct such race meeting, shall be bound thereby.

2. Trainer Responsibility. The trainer is presumed to know the "Rules of Racing" and is responsible for the condition, soundness, and eligibility of the horses he enters in a race. Should the chemical analysis, urine or otherwise, taken from a horse under his supervision show the presence of any drug or medication of any kind or substance, whether drug or otherwise, regardless of the time it may have been administered, it shall be taken as prima facie evidence that the same was administered by or with the knowledge of the trainer or person or persons under his supervision having care or custody of such horse. At the discretion of the stewards or Commission, the trainer and all other persons shown to have had care or custody of such horse may be fined or suspended or both. Under the provisions of this rule, the trainer is also responsible for any puncture mark on any horse he enters in a race, found by the stewards upon recommendation of the official veterinarian to evidence injection by syringe. If the trainer cannot be present on race day, he shall designate an assistant trainer. Such designation shall be made prior to time of entry, unless otherwise approved by the stewards. Failure to fully disclose the actual trainer of a horse participating in an approved race shall be grounds to disqualify the horse, and subject the actual trainer to possible disciplinary action by the stewards or the Commission. Designation of an assistant trainer shall not relieve the trainer's absolute responsibility for the conditions and eligibility of the horse, but shall place the assistant trainer under such absolute responsibility also. Willful failure on the part of the trainer to be present at, or refusal to allow the taking of any specimen, or any act or threat to prevent or otherwise interfere therewith shall be

cause for disqualification of the horse involved; and the matter shall be referred to the stewards for further action.

3. Altering Sex Of Horse. Any alteration to the sex of a horse from the sex as recorded on the Certificate of Foal Registration or other official registration Certificate of such horse shall be immediately reported by the trainer to the racing secretary and the official horse identifier if such horse is registered to race at any race meeting.

4. Official Workouts And Schooling Races. No trainer shall permit a horse in his charge to be taken on to the track for training or a workout except during hours designated by the organization. A trainer desiring to engage a horse in a workout or schooling race shall, prior to such workout or race, identify the horse by registered name and tattoo number when requested to do so by the stewards or their authorized representative.

5. Intoxication. No licensee, employee of the organization or its concessionaires, shall be under the influence of intoxicating liquor, the combined influence of intoxicating liquor and any controlled dangerous substance, or under the influence of any narcotic or other drug while within the enclosure. No person shall in any manner or at any time disturb the peace or make themselves obnoxious on the enclosure of an organization.

6. Firearms. No person shall possess any firearm within the enclosure unless he is a fully qualified peace officer as defined in the laws of the State of Utah, or is acting in accordance with Title 53, Chapter 5, Part 7, Concealed Weapons Act and Title 76, chapter 10, Part 5, Utah Code. A person carrying a concealed weapon may be asked to show a valid, current concealed weapons permit before being allowed to enter the facility.

7. Financial Responsibility. No licensee shall willfully and deliberately fail or refuse to pay any monies when due for any service, supplies or fees connected with his operations as a licensee; nor shall he falsely deny any such amount due or the validity of the complaint thereof with the purpose of hindering or delaying or defrauding the person to whom such indebtedness is due. A commission authorized license may be suspended pending settlement of the financial obligation. Any financial responsibility complaint against a licensee shall be in writing, signed by the complainant, and accompanied by documentation of the services, supplies or fees alleged to be due, or by a judgment from a court.

8. Checks. No licensee shall write, issue, make or present a bad check in payment for any license fee, fine, nomination or entry fee or other fees, or for any service or supplies. The fact that such check is returned to the payee by the bank as refused is a ground for suspension pending satisfactory redemption of the returned check.

9. Gratuity To Starter Or Assistant Starter. No person shall offer or give money or other gratuity to any starter or assistant starter, nor shall any starter or assistant starter receive money or other compensation, gratuity or reward, in connection with the running of any race or races except compensation received from an organization for official duties.

10. Possession Of Contraband. No person other than a veterinarian or an animal technician licensed by the Commission shall have in his possession within the enclosure during sanctioned meetings any prohibited substance, or any hypodermic syringe or hypodermic needle or similar instrument which may be used for injection except as provided in Subsection R[65]52-7-8(1). No person shall have in his or her possession within the enclosure during any recognized meeting any

device other than the ordinary whip which can be used for the purpose of stimulating or depressing the horse or affecting its speed at any time. The stewards may permit the possession of drugs or appliances by a licensee for personal medical needs under such conditions as the stewards may impose.

11. Bribes. No person shall give, or offer or promise to give, or attempt to give or offer any money, bribe or thing of value to any owner, trainer, jockey, agent, or any other person participating in the conduct of a race meeting in any capacity, with the intention, understanding or agreement that such owner, trainer, jockey, agent or other person shall not use his best efforts to win a race or so conduct himself in such race that any other participant in such race shall be assisted or enabled to win such race; nor shall any trainer, jockey, owner, agent or other person participating at any race meeting accept, offer to accept, or agree to accept any money, bribe or thing of value with the intention, understanding or agreement that he will not use his best efforts to win a race or to so conduct himself that any other horse or horses entered in such race shall thereby be assisted or enabled to win such race.

12. Trainer's Duty To Ensure Licensed Participation. No trainer shall have in his custody within the enclosure of any race meeting any horse owned in whole or in part by any person who is not licensed as a horse owner by the Commission unless such owner has filed an application for license as a horse owner with the Commission and the same is pending before the Commission; nor shall any trainer have in his employ within the enclosure any groom, stable employee, stable agent, or other person required to be licensed, unless such person has a valid license. All changes of commissioned licensed personnel shall be reported immediately to the Commission.

13. Conduct Detrimental To Horse Racing. No licensee shall engage in any conduct prohibited by law and by the rules of the Commission, nor shall any licensee engage in any conduct which by its nature is unsportsmanlike or detrimental to the best interest of horse racing.

14. Denial Of Access To Private Property. Nothing contained in these rules shall be deemed, expressly or implicitly, to prevent an organization from exercising the right to deny access to or to remove any person from the organization's premises or property for just cause.

15. Tricks/Schemes. No person shall falsify, conceal, or cover up by trick, scheme, or device a material fact; or make any false, fictitious, or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry regarding the prior racing record, pedigree, identity, or ownership of a registered animal in any matter related to the breeding, buying selling, or racing of such animal.

16. Prearranging The Outcome Of A Race. No licensed or unlicensed person may attempt or conspire to prearrange the outcome of a race.

**[R65]R52-7-12. Fire Prevention and Security.**

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**[R65]R52-7-13. Drugs and Medication Exceptions and Illegal Practices.**

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**KEY: horses****Date of Enactment or Last Substantive Amendment:** [~~June 9, 2003~~2009]**Notice of Continuation:** August 29, 2006**Authorizing, and Implemented or Interpreted Law:** 4-38-4

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**Alcoholic Beverage Control,  
Administration  
R81-1-6  
Violation Schedule**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 32414

FILED: 02/26/2009, 15:45

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The proposed amendments to this rule are being made at the request of Alcohol Beverage Control (ABC) staff members, the Attorney General's office, and Representatives Curtis Oda and James Dunnigan. First, ABC staff and the Attorney General's office are asking to change how penalties are assessed on the second and subsequent violations of the Liquor Act. The rule, as written, makes it difficult to negotiate violation settlements because the penalties for many cases are doubled by the broad language of the rule. Representatives Oda and Dunnigan have asked that it be made a mitigating circumstance if a violation is the result of a "sting" operation by law enforcement officers. The representatives have also asked that the rule include language that any substantive changes to the violation grid go through the rulemaking process.

**SUMMARY OF THE RULE OR CHANGE:** Subsection R81-1-6(4) outlines how penalties for a violation will be determined. There are many different violations that fall within each penalty range. As now written, for second and subsequent offenses the rule requires that "any" type of violation in that penalty range bumps the penalty to a higher level. The proposed amendment changes the word "any" to "the same" type of penalty. This means that if a licensee has a second violation, the penalty will not be increased unless the second violation is exactly the same as the first. The proposed amendment to Subsection R81-1-6(5)(v) adds a provision that it can be considered a mitigating circumstance if a violation comes as a result of a police "sting" operation and not as a result of a complaint or observed misconduct on the part of the licensee. The proposed amendment to Subsection R81-1-6(6) states that the department will send any substantive changes to the violation grid through the rulemaking process.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 32A-1-107

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** None--The changes to this rule will not cost or save the state any money. It will make it easier to negotiate licensee settlements of violations of the Liquor Act.
- ❖ **LOCAL GOVERNMENTS:** None--If local governments adjudicate violations of the Liquor Act, they are not bound by this rule.
- ❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Many Department of Alcohol Beverage Control (DABC) licensees have fewer than 50 employees. The proposals to this rule could positively affect them if they have a second or subsequent violation of the Liquor Act in that their penalty will not be increased to a higher level unless the violation is of exactly the same type as the prior violation(s). It is not possible to assess the exact amount of savings since the savings are determined by whether or not there are violations of the law. There will be no savings or costs to persons other than DABC licensees.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Implementing the amendments in this proposal will have no compliance costs to DABC licensees. The proposal simply establishes new rules for how violations of the law are handled.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** After reviewing these rule amendments, it appears there will be no negative fiscal impact on businesses. In fact, the amendments will in many cases decrease the otherwise increased penalties charged licensees who have had more than one violation of the Utah Liquor Act.  
Dennis R. Kellen, Director

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

ALCOHOLIC BEVERAGE CONTROL  
ADMINISTRATION  
1625 S 900 W  
SALT LAKE CITY UT 84104-1630, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@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 04/14/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2009

AUTHORIZED BY: Dennis R. Kellen, Director

**R81. Alcoholic Beverage Control, Administration.  
R81-1. Scope, Definitions, and General Provisions.  
R81-1-6. Violation Schedule.**

(1) Authority. This rule is pursuant to Sections 32A-1-107(1)(c)(i), 32A-1-107(1)(e), 32A-1-107(4)(b), 32A-1-119(5), (6) and (7). These provisions authorize the commission to establish criteria and

procedures for imposing sanctions against licensees and permittees and their officers, employees and agents who violate statutes and commission rules relating to alcoholic beverages. For purposes of this rule, holders of certificates of approval are also considered licensees. The commission may revoke or suspend the licenses or permits, and may impose a fine against a licensee or permittee in addition to or in lieu of a suspension. The commission also may impose a fine against an officer, employee or agent of a licensee or permittee. Violations are adjudicated under procedures contained in Section 32A-1-119 and disciplinary hearing Section R81-1-7.

(2) General Purpose. This rule establishes a schedule setting forth a range of penalties which may be imposed by the commission for violations of the alcoholic beverage laws. It shall be used by department decision officers in processing violations, and by presiding officers in charging violations, in assisting parties in settlement negotiations, and in recommending penalties for violations. The schedule shall be used by the commission in rendering its final decisions as to appropriate penalties for violations.

(3) Application of Rule.

(a) This rule governs violations committed by all commission licensees and permittees and their officers, employees and agents except single event permittees. Violations by single event permittees and their employees and agents are processed under Section 32A-7-106.

(b) This rule does not apply to situations where a licensee or permittee fails to maintain the minimum qualifications provided by law for holding a license or permit. These might include failure to maintain a bond or insurance, or a conviction for a criminal offense that disqualifies the licensee or permittee from holding the license or permit. These are fundamental licensing and permitting requirements and failure to maintain them may result in immediate suspension or forfeiture of the license or permit. Thus, they are not processed in accordance with the Administrative Procedures Act, Title 63G, Chapter 4 or Section R81-1-7. They are administered by issuance of an order to show cause requiring the licensee or permittee to provide the commission with proof of qualification to maintain their license or permit.

(c) If a licensee or permittee has not received a letter of admonishment, as defined in Sections R81-1-2 and R81-1-7(2)(b), or been found by the commission to be in violation of Utah statutes or commission rules for a period of 36 consecutive months, its violation record shall be expunged for purposes of determining future penalties sought. The expungement period shall run from the date the last offense was finally adjudicated by the commission.

(d) In addition to the penalty classifications contained in this rule, the commission may:

(i) upon revocation of a license or permit, take action to forfeit the bond of any licensee or permittee;

(ii) prohibit an officer, employee or agent of a licensee or permittee from serving, selling, distributing, manufacturing, wholesaling, warehousing, or handling alcoholic beverages in the course of employment with any commission licensee or permittee for a period determined by the commission;

(iii) order the removal of a manufacturer's, supplier's or importer's products from the department's sales list and a suspension of the department's purchase of those products for a period determined by the commission if the manufacturer, supplier, or importer directly committed the violation, or solicited, requested, commanded encouraged, or intentionally aided another to engage in the violation.

(iv) require a licensee to have a written responsible alcohol service plan as provided in R81-1-24.

(e) When the commission imposes a fine or administrative costs, it shall establish a date on which the payment is due. Failure of a licensee or permittee or its officer, employee or agent to make payment on or before that date shall result in the immediate suspension of the license or permit or the suspension of the employment of the officer, employee or agent to serve, sell, distribute, manufacture, wholesale, warehouse or handle alcoholic beverages with any licensee or permittee until payment is made. Failure of a licensee or permittee to pay a fine or administrative costs within 30 days of the initial date established by the commission shall result in the issuance of an order to show cause why the license or permit should not be revoked and the licensee's or permittee's compliance bond forfeited. The commission shall consider the order to show cause at its next regularly scheduled meeting.

(f) Violations of any local ordinance are handled by each individual local jurisdiction.

(4) Penalty Schedule. The department and commission shall follow these penalty range guidelines:

(a) Minor Violations. Violations of this category are lesser in nature and relate to basic compliance with the laws and rules. If not corrected, they are sufficient cause for action. Penalty range: Verbal warning from law enforcement or department compliance officer(s) to revocation of the license or permit and/or up to a \$25,000 fine. A record of any letter of admonishment shall be included in the licensee's or permittee's and the officer's, employee's or agent's violation file at the department to establish a violation history.

(i) First occurrence involving a minor violation: the penalty shall range from a verbal warning from law enforcement or department compliance officer(s), which is documented to a letter of admonishment to the licensee or permittee and the officer, employee or agent involved. Law enforcement or department compliance officer(s) shall notify management of the licensee or permittee when verbal warnings are given.

(ii) Second occurrence of ~~any~~ the same type of minor violation: a written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a \$100 to \$500 fine for the licensee or permittee, and a letter of admonishment to a \$25 fine for the officer, employee or agent.

(iii) Third occurrence of ~~any~~ the same type of minor violation: a one to five day suspension of the license or permit and employment of the officer, employee or agent, and/or a \$200 to \$500 fine for the licensee or permittee and up to a \$50 fine for the officer, employee or agent.

(iv) More than three occurrences of ~~any~~ the same type of minor violation: a six day suspension to revocation of the license or permit and a six to ten day suspension of the employment of the officer, employee or agent, and/or a \$500 to \$25,000 fine for the licensee or permittee and up to a \$75 fine for the officer, employee or agent.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the monetary penalties for each of the charges in their respective categories. If other minor violations are discovered during the same investigation, a verbal warning shall be given for each violation on a first occurrence. If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(b) Moderate Violations. Violations of this category demonstrate a general disregard for the laws or rules. Although the gravity of the acts are not viewed in the same light as in the serious and grave categories, they are still sufficient cause for action. Penalty range: Written investigation report from law enforcement or department

compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a letter of admonishment to revocation of the license or permit and/or up to a \$25,000 fine.

(i) First occurrence involving a moderate violation: a written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a letter of admonishment to a \$1000 fine for the licensee or permittee, and a letter of admonishment to a \$50 fine for the officer, employee or agent.

(ii) Second occurrence of ~~any~~the same type of moderate violation: a three to ten day suspension of the license or permit and a three to ten day suspension of the employment of the officer, employee or agent, and/or a \$500 to \$1000 fine for the licensee or permittee and up to a \$75 fine for the officer, employee or agent.

(iii) Third occurrence of ~~any~~the same type of moderate violation: a ten to 20 day suspension of the license or permit and a ten to 20 day suspension of the employment of the officer, employee or agent, and/or a \$1000 to \$2000 fine for the licensee or permittee and up to a \$100 fine for the officer, employee or agent.

(iv) More than three occurrences of ~~any~~the same type of moderate violation: a 15 day suspension to revocation of the license or permit and a 15 to 30 day suspension of the employment of the officer, employee or agent, and/or a \$2000 to \$25,000 fine for the licensee or permittee and up to a \$150 fine for the officer, employee or agent.

(v) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(vi) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(c) Serious Violations. Violations of this category directly or indirectly affect or potentially affect the public safety, health and welfare, or may involve minors. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a five day suspension to revocation of the license or permit and/or up to a \$25,000 fine.

(i) First occurrence involving a serious violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a five to 30 day suspension of the license or permit and a five to 30 day suspension of the employment of the officer, employee or agent, and/or a \$500 to \$3000 fine for the licensee or permittee and up to a \$100 fine for the officer, employee or agent.

(ii) Second occurrence of ~~any~~the same type of serious violation: a ten to 90 day suspension of the license or permit and a ten to 90 day suspension of the employment of the officer, employee or agent, and/or a \$1000 to \$9000 fine for the licensee or permittee and up to a \$150 fine for the officer, employee or agent.

(iii) More than two occurrences of ~~any~~the same type of serious violation: a 15 day suspension to revocation of the license or permit and a 15 to 120 day suspension of the employment of the officer, employee or agent, and/or a \$9000 to \$25,000 fine for the licensee or permittee and up to a \$500 fine for the officer, employee or agent.

(iv) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(v) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(d) Grave Violations. Violations of this category pose or potentially pose, a grave risk to public safety, health and welfare, or may involve lewd acts prohibited by title 32A, fraud, deceit, willful concealment or misrepresentation of the facts, exclusion of competitors' products, unlawful tied house trade practices, commercial bribery, interfering or refusing to cooperate with authorized officials in the discharge of their duties, unlawful importations, or industry supplying liquor to persons other than the department and military installations. Penalty range: Written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department on the first occurrence. The penalty shall range from a ten day suspension to revocation of the license or permit and/or up to a \$25,000 fine.

(i) First occurrence involving a grave violation: written investigation report from law enforcement or department compliance officer(s) shall be forwarded to the department. The penalty shall range from a ten day suspension to revocation of the license or permit and a 10 to 120 day suspension of the employment of the officer, employee or agent, and/or a \$1000 to \$25,000 fine to the licensee or permittee and up to a \$300 fine for the officer, employee or agent.

(ii) More than one occurrence of ~~any~~the same type of grave violation: a fifteen day suspension to revocation of the license or permit, and a 15 to 180 day suspension of the employment of the officer, employee or agent and/or a \$3000 to \$25,000 fine for the licensee or permittee and up to a \$500 fine for the officer, employee or agent.

(iii) If more than one violation is charged during the same investigation, the penalty shall be the sum of the days of suspension and/or the sum of the monetary penalties for each of the charges in their respective categories.

(iv) If the same type of violation is reported more than once during the same investigation, the violations shall be charged as a single occurrence.

(e) The following table summarizes the penalty ranges contained in this section of the rule for licensees and permittees.

Violation Degree and Frequency	Warning Verbal/Written	Fine \$ Amount	Suspension No. of Days	Revoke License
Minor				
1st	X	X		
2nd		100 to 500		
3rd		200 to 500	1 to 5	
Over 3		500 to 25,000	6 to	X
Moderate				
1st	X	to 1,000		
2nd		500 to 1,000	3 to 10	
3rd		1,000 to 2,000	10 to 20	
Over 3		2,000 to 25,000	15 to	X
Serious				
1st		500 to 3,000	5 to 30	
2nd		1,000 to 9,000	10 to 90	
Over 2		9,000 to 25,000	15 to	X
Grave				
1st		1,000 to 25,000	10 to	X
Over 1		3,000 to 25,000	15 to	X

(f) The following table summarizes the penalty ranges contained in this section of the rule for officers, employees or agents of licensees and permittees.

TABLE

Violation Degree and Frequency	Warning Verbal/Written	Fine \$ Amount	Suspension No. of Days
Minor			
1st	X	X	
2nd		X	
3rd		to 50	1 to 5
Over 3		to 75	6 to 10
Moderate			
1st	X	to 50	
2nd		to 75	3 to 10
3rd		to 100	10 to 20
Over 3		to 150	15 to 30
Serious			
1st		to 100	5 to 30
2nd		to 150	10 to 90
Over 2		to 500	15 to 120
Grave			
1st		to 300	10 to 120
Over 1		to 500	15 to 180

(5) Aggravating and Mitigating Circumstances. The commission and presiding officers may adjust penalties within penalty ranges based upon aggravating or mitigating circumstances.

(a) Examples of mitigating circumstances are:

- (i) no prior violation history[-];
- (ii) good faith effort to prevent a violation[-];
- (iii) existence of written policies governing employee conduct[-];

and

- (iv) extraordinary cooperation in the violation investigation that shows the licensee or permittee and the officer, employee or agent of the licensee or permittee accepts responsibility[-]; and

(v) there was no evidence that the investigation was based on complaints received or on observed misconduct of others, but was based solely on the investigating authority creating the opportunity for a violation.

(b) Examples of aggravating circumstances are:

- (i) prior warnings about compliance problems[-];
- (ii) prior violation history[-];
- (iii) lack of written policies governing employee conduct[-];
- (iv) multiple violations during the course of the investigation[-];
- (v) efforts to conceal a violation[-];
- (vi) intentional nature of the violation[-];
- (vii) the violation involved more than one patron or employee[-];
- (viii) the violation involved a minor and, if so, the age of the minor[-]; and

(ix) whether the violation resulted in injury or death.

(6) Violation Grid. Any proposed substantive change to the violation grid that would establish or adjust the degree of seriousness of a violation shall require rulemaking in compliance with title 63G-3, the Utah Administrative Rulemaking Act. A violation grid describing each violation of the alcoholic beverage control laws, the statutory and rule reference, and the degree of seriousness of each violation is available for public inspection in the department's administrative office. A copy will be provided upon request at reproduction cost. It is entitled

"Alcoholic Beverage Control Commission Violation Grid" (2007 edition) and is incorporated by reference as part of this rule.

**KEY: alcoholic beverages**

**Date of Enactment or Last Substantive Amendment: [~~October 23, 2008~~2009]**

**Notice of Continuation: August 31, 2006**

**Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-1-119(5)(c); 32A-1-702; 32-1-703; 32A-1-704; 32A-1-807; 32A-3-103(1)(a); 32A-4-103(1)(a); 32A-4-106(1)(a); 32A-4-203(1)(a); 32A-4-304(1)(a); 32A-4-307(1)(a); 32A-4-401(1)(a); 32A-5-103(1)(a); 32A-6-103(2)(a); 32A-7-103(2)(a); 32A-7-106(5); 32A-8-103(1)(a); 32A-8-503(1)(a); 32A-9-103(1)(a); 32A-10-203(1)(a); 32A-10-206(14); 32A-10-303(1)(a); 32A-10-306(5); 32A-11-103(1)(a)**



**Commerce, Occupational and  
 Professional Licensing**  
**R156-37-609a**  
**Controlled Substance Database -  
 Reporting Procedure and Format for  
 Submission to the Database for  
 Pharmacies and Pharmacy Groups  
 Selected by the Division for the Real  
 Time Pilot Program**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 32411

FILED: 02/26/2009, 11:26

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division is filing amendments to implement the data reporting rules for the Controlled Substance Database Real Time Reporting Pilot Program.

SUMMARY OF THE RULE OR CHANGE: Section R156-37-609a is amended to provide additional modes of electronic data transfer including email, compact discs, secured Internet transfer or FTP (File Transfer Protocol) site transfer. New Subsection R156-37-609a(5) allows any pharmacy or pharmacy group within the state of Utah to participate in the pilot program as long as the participant is able to submit the data based upon information available at the time of dispensing to the ultimate user. Information would be transferred at the time the prescription is picked up (dispensed to) the customer and not at the time it was poured and packaged.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 58-1-106(1)(a), 58-37-6(1)(a), and 58-37-7.5(7)



## ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$50 to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. The Division has been told by IT staff that any of the changes needed within the current database configuration can occur under the current budget and does not require additional monies to the Division.

❖ **LOCAL GOVERNMENTS:** The only effect on local government would be if the government ran a pharmacy or pharmacy group that chooses to enter into the pilot program.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Most non-chain pharmacies fall under the category of small business. Those pharmacies wishing to participate in this voluntary pilot program would need to have software that would track and record the data at the time the patient picks up the medication rather than most current systems which are based on downloading data based on the time the prescription is filled. Implementation of these proposed amendments will help those interested and able to participate in a daily reporting to the Controlled Substance Database. This is a voluntary system so those who do not have a system that will report pick up time do not have to make any changes in their system and simply would not need to participate. If the program ever becomes mandatory, some pharmacies would incur the cost of changes to their computer system to save and transfer information at the time the patient picks up the medication. It is unknown what those costs would be.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Most non-chain pharmacies fall under the category of small business. Those pharmacies wishing to participate in this voluntary pilot program would need to have software that would track and record the data at the time the patient picks up the medication rather than most current systems which are based on downloading data based on the time the prescription is filled. Implementation of these proposed amendments will help those interested and able to participate in a daily reporting to the Controlled Substance Database. This is a voluntary system so those who do not have a system that will report pick up time do not have to make any changes in their system and simply would not need to participate. If the program ever becomes mandatory, some pharmacies would incur the cost of changes to their computer system to save and transfer information at the time the patient picks up the medication. It is unknown what those costs would be.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** No fiscal impact to businesses is anticipated with this rule filing, which further clarifies provisions regarding methods of transferring data into the Controlled Substance Database, as well as the time frames and formats for such transfer of data. Francine A. Giani, Executive Director

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

COMMERCE  
OCCUPATIONAL AND PROFESSIONAL LICENSING  
HEBER M WELLS BLDG  
160 E 300 S

SALT LAKE CITY UT 84111-2316, or  
at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2009

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 3/24/2009 at 9:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 402 (fourth floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2009

AUTHORIZED BY: F. David Stanley, Director

**R156. Commerce, Occupational and Professional Licensing.  
R156-37. Utah Controlled Substances Act Rules.  
R156-37-609a. Controlled Substance Database - Reporting Procedure and Format for Submission to the Database for Pharmacies and Pharmacy Groups Selected by the Division for the Real Time Pilot Program.**

(1) In accordance with Subsection 58-37-7.8(8), the information required under Section 58-37-7.5 shall be submitted to the Division's database manager by licensees designated by the Division to participate in the real time reporting pilot program in the following format:

(a) electronic data via telephone modem~~[using the software provided by the Division or software approved by the Division];~~ and

(b) electronic data stored on floppy disk or compact discs (CD)~~;~~~~[using the real time data transmission system established by the Division.]~~

(c) electronic data sent via electronic mail (e-mail) if encrypted and approved by the database manager;

(d) electronic data sent via a secured internet transfer methods, including, but not limited to, FTP site transfer and HyperSend; or

(e) any other electronic method preapproved by the database manager.

(2) Each pharmacy or pharmacy group shall enter and submit data required under Section 58-37-7.5 ~~[as soon as the data is available to the pharmacy or pharmacy group]~~ on a daily basis each day that the pharmacy or pharmacy group is open for business or the data reporting entity of the pharmacy or pharmacy group is open for business.

(3) The format for submission to the database shall be in accordance with the uniform formatting developed by the American Society for Automation in Pharmacy System (ASAP). The Division may approve alternative formats.

(4) The pharmacist-in-charge of each reporting pharmacy or pharmacy group shall be responsible for compliance with this rule.

(5) In accordance with Subsection 58-37-7.8(1)(a)(i), the pilot area is designated as the entire state of Utah. Any pharmacy or pharmacy group that submits information to the database based upon

information available at the time of dispensing to the ultimate user is eligible and may participate in the Real Time Pilot Program.

**KEY: controlled substances, licensing**

**Date of Enactment or Last Substantive Amendment:**  
~~September 9, 2008~~2009

**Notice of Continuation: March 15, 2007**

**Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-37-6(1)(a); 58-37-7.5(7)**

◆ ————— ◆

## Commerce, Occupational and Professional Licensing

### R156-54

## Radiology Technologist and Radiology Practical Technician Licensing Act Rules

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32412

FILED: 02/26/2009, 11:29

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The Division and the Radiology Technologist Licensing Board are proposing amendments to increase the passing score on examinations required for licensure for radiology practical technicians. The current minimum scores have been in place for at least 10 years and it is felt that the low passing score does not adequately test the knowledge and training of an examinee.

**SUMMARY OF THE RULE OR CHANGE:** Throughout the rule, the term "rules" has been replaced by "rule" where applicable. In Section R156-54-302b regarding examination requirements for radiology practical technicians, the minimum passing examination score for the ARRT (American Registry of Radiologic Technologists) is being increased from 65% to 75% and the minimum passing score for the ARRT Bone Densitometry Equipment Operations Examination is being increased from 59% to 75%.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-54-1 and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

**ANTICIPATED COST OR SAVINGS TO:**

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

❖ **LOCAL GOVERNMENTS:** The proposed amendments only apply to applicants for licensure as a radiology practical technician; therefore, no costs or savings are anticipated for local governments.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** The proposed amendments will only apply to applicants for licensure as a radiology practical technician and in most cases no small business pays the licensing fees for this type of applicants. Therefore, no costs or savings are anticipated for small businesses. Given the proposed higher minimum passing score required on examinations required for licensure as a radiology practical technician, it may be that fewer applicants will pass the required examination the first time and may need to retake the examination at a cost of \$100. Based on examination figures from applicants who have taken the respective examinations in 2008, 205 individuals were scheduled for the examinations. At the current passing score of 65% on the Limited Scope examination, 56 individuals failed the examination the first time. If the passing rate is raised to 75% as proposed, 76 individuals would have failed the examination. Based on the 2008 examination numbers, the Division anticipates that as a result of increasing the minimum passing score about 10% of persons taking the examinations will need to take the examination more than one time. However, it is anticipated the public will benefit from the proposed amendments in having better qualified licensees as a result of the increase in the examination minimum passing score.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** The proposed amendments will only apply to applicants for licensure as a radiology practical technician. Given the proposed higher minimum passing score required on examinations required for licensure as a radiology practical technician, it may be that fewer applicants will pass the required examination the first time and may need to retake the examination at a cost of \$100. Based on examination figures from applicants who have taken the respective examinations in 2008, 205 individuals were scheduled for the examinations. At the current passing score of 65% on the Limited Scope examination, 56 individuals failed the examination the first time. If the passing rate is raised to 75% as proposed, 76 individuals would have failed the examination. Based on the 2008 examination numbers, the Division anticipates that as a result of increasing the minimum passing score about 10% of persons taking the examinations will need to take the examination more than one time. However, it is anticipated the public will benefit from the proposed amendments in having better qualified licensees as a result of the increase in the examination minimum passing score.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This proposed rule change requires a higher score on the required examination for radiology practical technicians. Businesses that hire radiology practical technicians could see additional costs if their employees do not pass the examination at the higher level and have to retake the exam, but any such costs should be outweighed by the benefit to the public in receiving services from better qualified providers. No other fiscal impact to businesses is anticipated. Francine A. Giani, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Clyde Ormond at the above address, by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@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 04/14/2009

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 4/02/2009 at 1:00 PM, Heber Wells Bldg, 160 E 300 S, Conference Room 475 (fourth floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2009

AUTHORIZED BY: F. David Stanley, Director

**R156. Commerce, Occupational and Professional Licensing.**  
**R156-54. Radiology Technologist and Radiology Practical Technician Licensing Act Rule[s].**  
**R156-54-101. Title.**

Th[ese]is rule[s-are] is known as the "Radiology Technologist and Radiology Practical Technician Licensing Act Rule[s]."

**R156-54-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 54, as used in Title 58, Chapters 1 and 54 or th[ese]is rule[s]:

(1) "ARRT" means the American Registry of Radiologic Technologists.

(2) "Practice as a radiology practical technician" means using radiological equipment limited to specific radiographic procedures on specific parts of the human anatomy as contained in the American Registry of Radiologic Technologists (ARRT) "Content Specifications for the Examination for the Limited Scope of Practice in Radiography", effective January 2006, which is hereby incorporated by reference.

(3) "Supervision", "general supervision" or "direct supervision" as used in Subsections 58-54-2(5), (6) and (7) and Section 58-54-8 means that the supervising radiologist or radiology practitioner shall be available for consultation while the radiology technologist or the radiology practical technician is performing any radiographic procedures. Consultation may be in person, by telephone, by radio or any other means of direct verbal communication. The supervising radiologist or radiology practitioner shall be responsible for the radiographic procedures performed by the radiology technologist or the radiology practical technician.

(4) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 54, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-54-502.

**R156-54-103. Authority - Purpose.**

Th[ese]is rule[s-are] is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 54.

**R156-54-302b. Examination Requirements - Radiology Practical Technician.**

In accordance with Subsection 58-54-5(3), the examination requirement for licensure as a radiology practical technician requires passing:

(1) the ARRT Limited Scope of Practice in Radiography Examination with a minimum score of [65]75% for the following:

- (a) core; and
- (b) one or more of the following sections:
  - (i) chest;
  - (ii) extremities;
  - (iii) skull/sinuses;
  - (iv) spine; and
  - (v) podiatric; or

(2) the ARRT Bone Densitometry Equipment Operators Examination (BDEO) with a minimum score of [59]75%.

**KEY: licensing, radiology technologists, radiology practical technicians**

**Date of Enactment or Last Substantive Amendment: [July 31, 2006]2009**

**Notice of Continuation: January 9, 2007**

**Authorizing, and Implemented or Interpreted Law: 58-54-1; 58-1-106(1)(a); 58-1-202(1)(a)**

Commerce, Real Estate  
**R162-105**  
Scope of Authority

**NOTICE OF PROPOSED RULE**  
(Amendment)

DAR FILE NO.: 32396  
FILED: 02/23/2009, 11:50

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The method for awarding experience points to appraiser trainees is outdated and does not reflect the current practice of appraisal professionals. This rule updates the standards to reflect current market practice.

SUMMARY OF THE RULE OR CHANGE: The rule modifies the types of activities that must be performed by appraiser trainees to qualify for experience points, outlines the value of each of the activities, and makes other technical changes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2b-8(2)(d)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There is no impact to the state budget because the Division's workload will remain the same.
- ❖ LOCAL GOVERNMENTS: There is no impact to local government budgets, other than a potential savings to local governments who employ appraiser trainees since some of their experience previously performed will now be given credit. The credit will permit the local governments to license their trainees sooner.
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There is no impact to small businesses, other than a potential savings to small businesses who employ appraiser trainees since some of their experience previously performed will now be given credit. The credit will permit the small businesses to license their trainees sooner.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Trainees will be able to obtain more credit toward licensure than is currently possible under the rule. The additional credit will allow the trainees to license more quickly.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this rule filing which updates the standards for trainee experience to reflect current market practices. Francine Giani, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mark Steinagel at the above address, by phone at 801-530-6744, by FAX at 801-530-6749, or by Internet E-mail at msteinagel@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 04/14/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2009

AUTHORIZED BY: Mark Steinagel, Director

**R162. Commerce, Real Estate.**

**R162-105. Scope of Authority.**

**R162-105-1. Scope of Authority.**

105.1 Transaction value. "Transaction value" means:

105.1.1 For loans or other extensions of credit, the amount of the loan or extension of credit;

105.1.2 For sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and

105.1.3 For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

105.2 State-Licensed Appraisers. In federally-related transactions, the Utah Real Estate Appraiser Licensing Act and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and related federal regulations allow State-Licensed Appraisers to perform the appraisal of non-complex one to four residential units having a transaction value of less than \$1,000,000 and complex one to four residential units having a transaction value of less than \$250,000.

105.2.1 Subject to the transaction value limits in Section 105.2, State-Licensed Appraisers may also perform appraisals in federally-related transactions of vacant or unimproved land that is utilized for one to four family purposes, or for which the highest and best use is 1-4 family purposes, so long as net income capitalization analysis is not required by the terms of the assignment.

105.2.2 State-Licensed Appraisers may not perform appraisals of subdivisions in federally-related transactions for which a development analysis/appraisal is necessary or for which discounted cash flow analysis is required by the terms of the assignment.

105.3 Trainees.

105.3.1 For the purposes of these rules, "trainee" means a person who is working under the direct supervision of a [~~State Licensed or~~] State-Certified Appraiser to earn points for licensure.

105.3.2 Appraisal-related duties by unlicensed persons. Unlicensed persons who have not qualified as trainees as provided in Subsection 105.3.3 may perform only clerical duties in connection with an appraisal. For the purposes of this rule, appraisal-related clerical duties include typing an appraiser's research notes or an appraiser's report, taking photographs of properties, and obtaining copies of public records. Only those persons who have properly qualified as trainees as provided in Subsection 105.3.3 may perform the following appraisal-related duties: participating in property inspections, measuring or assisting in the measurement of properties, performing appraisal-related calculations, participating in the selection of comparables for an appraisal assignment, making adjustments to comparables, and drafting or assisting in the drafting of an appraisal report. The supervising appraiser shall be responsible to determine the point at which a trainee is competent to participate in each of these activities.

105.3.2.1 A trainee may not solicit an assignment or accept an assignment on behalf of anyone other than the trainee's supervisor or the supervisor's appraisal firm. All engagement letters shall be addressed to the supervisor or the supervisor's appraisal firm, not to the trainee. In all appraisal assignments, the supervisor shall delegate only such duties as are appropriate to the trainee and shall directly supervise the trainee in the performance of those duties.

105.3.3 In order to become a trainee, the person must have successfully completed 75 classroom hours of State-approved education in subjects related to real estate appraisal, including the Uniform Standards of Professional Appraisal Practice (USPAP), must have passed the final examination in all courses[~~the USPAP course~~], and must file a notification with the Division as provided in Subsection 105.3.3.1. The education required by this Subsection must have been completed within the 5 years preceding the filing of the notification required by Subsection 105.3.3.1.

105.3.3.1 Trainee Notification. Prior to performing any of the appraisal-related activities for which points will be claimed toward licensure, a trainee must file with the Division a notification in the form required by the Division. In addition to any identifying information about the trainee required by the Division, the notification shall contain the name and business address of the appraiser(s) who will supervise the trainee in the performance of the appraisal-related duties, and shall be signed by the supervisor. The notification shall also contain the course names, course provider names, and course completion dates for the 75 hours of education required by Subsection 105.3.3. The original course completion certificates shall be submitted to the Division with the notification.

105.3.3.2 Except as provided in Subsection 105.3.3.3, no experience points will be granted toward licensure for trainee experience that is claimed to have been earned prior to the date the notification was filed with the Division.

105.3.3.3 Until ~~September 10, 2009~~ five years after the effective date of this rule, points that were earned prior to ~~September 10, 2004~~ the effective date of this rule may be claimed and will be awarded to applicants who are able to document those points on the forms required by the Division, notwithstanding the fact that the points were earned prior to the date a trainee notification was filed with the Division.

105.3.4 Supervising Appraisers. A trainee may have more than one supervising appraiser. ~~Effective January 1, 2008, a~~ A supervising appraiser may supervise a maximum of three trainees at one time.

105.3.5 Residential Property Inspections. A trainee, including a trainee who was previously a state-registered appraiser, must be accompanied by a supervising ~~[State Licensed Appraiser,]~~ State-Certified ~~[Residential]~~ Appraiser, ~~or State-Certified General Appraiser~~ on all inspections of residential property until the trainee has performed 100 inspections of residential properties in which both the interior and the exterior of the properties are inspected. All reports in appraisals in which a trainee participated in the inspection of the subject property shall comply with the requirements of Section 106.9.

105.3.6 Non-Residential Property Inspections. A trainee, including a trainee who was previously a state-registered appraiser, must be accompanied by a supervising State-Certified General Appraiser on all inspections of non-residential property until the trainee has performed 20 inspections of non-residential properties in which both the interior and the exterior of the properties are inspected. All reports in appraisals in which a trainee participated in the inspection of the subject property shall comply with the requirements of Section 106.9.

105.3.7 Points for Licensure. ~~[A trainee may accumulate experience points for each duty listed below at the rate of 33.3% of the total points awarded from the Appraisal Experience Points Schedule under Section 104-18.1 or 104-18.2, not to exceed the maximum number of points awarded for each property. Trainee experience must be earned in at least three of the following categories. No more than one-third of the experience points submitted toward licensure may come from any one of the following categories:~~

- ~~— (a) participation in selecting comparables for an appraisal assignment - 33.3% of total points~~
- ~~— (b) participation in making adjustments to comparables - 33.3% of total points~~
- ~~— (c) drafting appraisal reports - 33.3% of total points~~
- ~~— (d) as provided in Sections 105.3.5 and 105.3.6, inspecting a property that is the subject of an appraisal or that may be used as a comparable in an appraisal, and measuring the property - 33.3% of total points as long as both an interior and exterior inspection of the~~

~~property is performed. No points will be granted for inspections that do not include both an interior and an exterior inspection.]~~ A trainee may accumulate experience points for each duty listed below with the respective percentages, not to exceed the maximum number of points awarded by the Appraisal Experience Point Schedule under Section 104-15.1 and 104-15.2. No more than one-third of the experience points submitted toward licensure may come from any one of the following categories:

- (a) participation in highest and best use analysis - 10% of total points;
- (b) participation in neighborhood description and analysis - 10% of total points;
- (c) as provided in Sections 105.3.5 and 105.3.6, inspecting the interior and exterior, including measurement of the exterior of a property that is the subject of an appraisal and inspection of the exterior of a property that may be used as a comparable in an appraisal. No points will be granted for inspections that do not include both an interior and exterior inspection of the subject property - 20% of total points;
- (d) participation in land value estimate - 20% of total points;
- (e) participation in sales comparison property selection and analysis - 30% of total points;
- (f) participation in cost analysis - 20% of total points;
- (g) participation in income analysis - 30% of total points;
- (h) participation in the final reconciliation of value - 10% of total points;
- (i) participation in report preparation - 20% of total points.

105.3.8 Credit will be given for appraisal experience earned only within five years immediately preceding the licensure or certification application. ~~[Applicants who believe the Experience Points Schedules do not adequately reflect their experience may refer to Section 104-17.]~~

105.3.9 All trainees are prohibited from signing an appraisal report or discussing an appraisal assignment with anyone other than the appraiser responsible for the assignment, state enforcement agencies and such third parties as may be authorized by due process of law, or a duly authorized professional peer review committee.

105.3.10 A ~~[state licensed or]~~ state-certified appraiser who supervises a trainee shall be responsible for the training and direct supervision of the trainee.

105.3.10.1 Direct supervision shall consist of critical observation and direction of all aspects of the appraisal process and accepting full responsibility for the appraisal and the contents of the appraisal report. The supervising appraiser shall be responsible to personally inspect each residential property that is appraised with a trainee until the trainee has performed 100 residential inspections as provided in Subsection 105.3.5 and 20 non-residential inspections as provided in Subsection 105.3.6. The supervising appraiser must actively supervise those inspections and the resulting appraisals.

105.3.11 A supervising appraiser shall require the trainee to maintain a log in a form satisfactory to the Board which shall contain, at a minimum, the following information for each appraisal.

- (a) Type of property;
- (b) Address of appraised property;
- (c) Description of work performed;
- (d) Number of work hours ~~;~~ and points claimed;
- (e) Signature and state ~~[license]~~ certification number of the supervising appraiser; and
- (f) Client name ~~[and address]~~.

105.3.12 The trainee shall maintain a separate appraisal log for each supervising appraiser.

105.4. Trainee Status after Revocation, Surrender, Denial, or Suspension of License or Certification.

105.4.1 Trainee Status after Revocation, Surrender, or Denial of License or Certification. Unless otherwise ordered by the Board, an appraiser whose appraiser certification or license has been revoked by the Board, whose application for renewal of a certification or license has been denied by the Board, or who has surrendered a certification or license as a result of an investigation by the Division, may not serve as a trainee for a period of four years after the date of the revocation, denial, or surrender, nor may a licensed or certified appraiser employ or supervise the former appraiser in the performance of the activities permitted trainees for that same period of time.

105.4.2 Trainee Status while License or Certification is Suspended. Unless otherwise ordered by the Board, any appraiser whose appraiser license or certificate has been suspended by the Board as a result of an investigation by the Division may not serve as a trainee during the period of suspension. While an appraiser is suspended, a licensed or certified appraiser may not employ or supervise the suspended appraiser in the performance of the activities permitted trainees.

**KEY: real estate appraisals**

**Date of Enactment or Last Substantive Amendment:** [~~October 25, 2006~~2009]

**Notice of Continuation:** November 10, 2008

**Authorizing, and Implemented or Interpreted Law:** 61-2b-6(1)(I)

◆ ————— ◆

## Commerce, Real Estate R162-211 Adjusted Licensing Terms

### NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 32422

FILED: 03/02/2009, 16:01

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Congress passed the SAFE Mortgage License Act, which became effective on 07/30/2008. It includes significant changes to state-issued mortgage licenses. Utah needs to adjust its terms of licensure from a two-year rolling renewal to a one-year calendar renewal. Without this rule, the Division will continue issuing two-year licenses that will likely need to be adjusted part way through the term of licensure. This rule will allow the Division to issue licenses that comply with the Congressional mandate, as well as recognize the full terms of licensure received with a license. A previous emergency rule contained precisely the same language. This rule makes permanent the emergency rule. (DAR NOTE: The corresponding 120-day (emergency) rule was published under DAR No. 32200 in the January 1, 2009, Bulletin (2009-1/pg. 54), and was effective 12/08/2008.)

SUMMARY OF THE RULE OR CHANGE: This rule makes permanent an emergency rule adopted by the Division to bring Utah into compliance with the federal SAFE Act. The rule transitions all licensees onto a one-year calendar license renewal cycle by adjusting terms of licensure to be more or less than two years, in accordance with the authority granted under Subsection 61-2c-205(1). By taking 25 months to transition, the Division will be causing the least amount of impact on mortgage licensees.

Many licensees will be granted a license term beyond 2 years, while others will be granted a license between 12 and 24 months, rather than a full 24 months.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2c-205(1)(b)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be minimal costs to the state budget since the fee amounts will not be changed. Many licensees will gain a slightly longer term of licensure for no additional fee, while others will experience a shortened term of licensure for the same fee cost.

❖ LOCAL GOVERNMENTS: Local governments will experience no cost or savings to implement this act because they do not pay mortgage licensing fees.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Small mortgage companies should recognize a cost savings, since the average licensee will gain a slightly longer term of licensure than is currently granted for the existing fee.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Many licensees will benefit by a longer term of licensure without any additional fee. Other licensees will have a shorter licensing term than is currently required. They will have to renew, and pay the costs associated with renewal, sooner than is currently required.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated by this rule filing beyond those addressed by Congress in passing the SAFE Mortgage Licensing Act, and as indicated in the rule summary. Francine Giani, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Mark Steinagel at the above address, by phone at 801-530-6744, by FAX at 801-530-6749, or by Internet E-mail at msteinagel@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 04/14/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2009

AUTHORIZED BY: Mark Steinagel, Director

**NOTICE OF PROPOSED RULE**

(Amendment)  
DAR FILE No.: 32417  
FILED: 03/02/2009, 14:31

**R162. Commerce, Real Estate.**

**R162-211. Adjusted License Terms.**

**R162-211-1. Adjusted License Terms to Comply with Nationwide Mortgage Licensing System.**

(1) Notwithstanding other provisions in R162, Sections R162-201 through R162-210, licensing terms for a license issued under the authority of Title 61, Chapter 2c, and rules made by the Division shall be adjusted according to the following schedule:

(a)(i) An applicant for license renewal whose license expires between January 1, 2008, and December 31, 2008, and who applies for and qualifies for renewal under Title 61, Chapter 2c, and rules made by the Division shall be issued a license for a term that expires December 31, 2010.

(ii) An applicant between January 1, 2008, and December 31, 2008, and who applies for and qualifies for licensure under Title 61, Chapter 2c, and rules made by the Division shall be issued a license for a term that expires December 31, 2010.

(iii) The Division shall issue a new license with the new expiration date to a licensee who was issued a mortgage license during 2008 prior to the enactment of this rule.

(b) An applicant for license renewal whose license expires between January 1, 2009, and December 31, 2009, and who applies for and qualifies for renewal under Title 61, Chapter 2c, and rules made by the Division shall be issued a license for a term that expires December 31, 2010.

(c) An applicant for licensure who applies for licensure between January 1, 2009, and December 31, 2009, and who qualifies for licensure under Title 61, Chapter 2c, and rules made by the Division shall be issued a license for a term that expires December 31, 2010.

(d) An applicant for licensure who applies for licensure between January 1, 2010, and December 31, 2010, shall comply with the procedures for licensure under Title 61, Chapter 2c, and rules made by the Division existing at time of licensure or license renewal.

(2) This rule does not affect any provisions under Rules R162-201 through R162-210 regarding licensee discipline.

**KEY: mortgage renewal license term**

**Date of Enactment or Last Substantive Amendment: 2009**

**Authorizing, and Implemented or Interpreted Law: 61-2c-205(1)(b)**



Education, Administration  
**R277-433**  
Disposal of Textbooks in the Public  
Schools

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to allow school districts to work directly with each other in compiling and distributing a list of available useable textbooks each year enabling a more effective and efficient process.

**SUMMARY OF THE RULE OR CHANGE:** The amendment allows school districts to communicate directly with each other in sharing or disposing of textbooks.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53A-12-207

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. Allowing school districts to communicate with each other directly and electronically streamlines the process.

❖ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. School districts will be able to dispose of textbooks in a more effective and efficient manner.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** There are no anticipated costs or savings to small businesses AND persons other than businesses. The rule and amendment only apply to school districts.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. School districts will be able to dispose of textbooks in a more effective and efficient manner.

**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 04/14/2009.**

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2009

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

**R277. Education, Administration.**

**R277-433. Disposal of Textbooks in the Public Schools.**

**R277-433-2. Authority and Purpose.**

A. This rule is authorized by [~~Article X, Section 3 of the~~]Utah Constitution, Article X, Section 3 which places general control and supervision of the public school system under the Board and by Section 53A-12-207[~~, U.C.A. 1953,~~] which requires the USOE to make rules providing for the disposal or reuse of textbooks in the public schools.

B. The purpose of this rule is to [~~facilitate~~]provide procedures for school district and charter school policies for the reuse or disposal of textbooks in the public schools.

**R277-433-3. School District and Charter School Policies on Disposal [~~Procedure~~]of Textbooks.**

A. [~~Public school districts shall notify the USOE in writing by April 1 of each year of their intent to dispose of useable textbooks~~]School districts and charter schools shall develop policies regarding the reuse or disposal of textbooks.

B. [~~The USOE shall compile and distribute to all public school districts a list of available useable textbooks by June 1 of each year.~~]School district and charter school policies shall provide procedures for notification to other school districts and charter schools of available textbooks and timelines for disposal of textbooks.

C. [~~A school district or a school that desires to obtain books from another school district shall notify the district that owns the books within four months of the publication and distribution of the books available list.~~

~~D. School[s and school districts are responsible] districts and charter school policies shall provide procedures for negotiating the exchange of the textbooks.~~

**R277-433-4. Final Disposal of Textbooks.**

~~If a school district does not receive timely notice, as defined above, of another district's interest in available books, the local district may dispose of the books consistent with district policy.~~

**KEY:** textbooks

**Date of Enactment or Last Substantive Amendment:** [~~1991~~]2009

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

**Authorizing, and Implemented or Interpreted Law:** Art X Sec 3; 53A-12-207

Education, Administration

**R277-701-7**

Waivers or Exceptions for Student Requirements

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 32418

FILED: 03/02/2009, 14:31

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to include U.S. Department of Education guidelines to clarify scholarship eligibility.

**SUMMARY OF THE RULE OR CHANGE:** The amendment provides clarification to the waiver or exception for student requirements section of the rule.

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

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. The amendment merely provides clarification and does not change the manner in which the Program will be administered.

❖ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. The Program is administered through the Utah State Office of Education (USOE).

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** There are no anticipated costs or savings to small businesses AND persons other than businesses. The Scholarship grant is provided by the U.S. Department of Education and administered by the USOE. Small businesses are not involved in the process.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs because of this amendment. The Program will not be administered in any different way. The amendment merely provides clarification.

**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 04/14/2009.



THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2009

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

**R277. Education, Administration.**

**R277-701. Robert C. Byrd Honors Scholarship Program.**

**R277-701-7. Waivers or Exceptions for Student Requirements.**

A. A scholarship recipient may be allowed, based on prior approval for unusual circumstances to interrupt or postpone, the recipient's use of the scholarship for a period not to exceed 12 months, after the first full year of college is completed.

B. A scholarship recipient shall complete and submit a waiver request form, available from the USOE or through the USOE website, with attached required documentation.

(1) A recipient shall request the postponement or interruption from the USOE in writing at least eight weeks in advance of the beginning of the postponement/interruption.

(2) The USOE may consider a written request for a postponement/interruption with less than the eight week notice:

- (a) for good cause, and
- (b) so long as the funds are not lost or sacrificed.
- (3) Unusual circumstances shall be limited to:

- (a) military enlistment;
- (b) religious or charitable service;
- (c) a foreign study opportunity; or
- (d) personal or family emergency or significant change of circumstances.

(4) The USOE may ask the student for a written explanation or documentation or both of the student's unusual circumstances.

(5) A scholarship recipient who desires to change his enrollment status from full-time to part-time shall satisfy the requirements of a postponement/interruption.

C. A scholarship recipient may be allowed, based on prior approval for exceptional circumstances, to extend an approved 12-month postponement/interruption of the scholarship award. Exceptional circumstances shall be limited to:

- (1) extended religious or charitable service;
- (2) extended military service; or
- (3) an extended personal or family emergency or health crisis necessitating the recipient's extended delay of his education.

(4) There shall be a presumption that personal and family emergencies can be resolved in less than 12 months; scholarship recipients shall be required to provide written justification and documentation of compelling circumstances to justify a scholarship postponement/interruption of longer than 12 months.

(5) All long-term postponement/interruptions shall be requested in writing from the USOE at least eight weeks in advance of the beginning of the postponement/interruption and shall include documentation of the necessity for the extended delay.

D. A recipient who is denied a postponement/interruption for unusual or exceptional circumstances may appeal the decision to the USOE Assistant Superintendent for Curriculum. The decision of the Assistant Superintendent is the final administrative decision.

**KEY: scholarships**

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

**Authorizing, and Implemented or Interpreted Laws: Art X, Sec 3; 53A-1-401(3); 34 CFR 654**

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**Education, Administration**  
**R277-710**  
**International Baccalaureate Programs**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 32419

FILED: 03/02/2009, 14:32

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is amended to provide for fifty percent of the total funds designated for International Baccalaureate (IB) Programs to be distributed equally to authorized IB programs within the state; to provide for the remaining fifty percent allocation to be distributed equally to authorized IB programs where students scored a grade of 4 or higher on IB exams, and to clarify that candidate IB programs shall not be eligible for state funding.

**SUMMARY OF THE RULE OR CHANGE:** The amended rule adds charter schools throughout the rule and provides specific language regarding IB eligibility and distribution of funds.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 53A-17a-120

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** There are no anticipated costs or savings to the state budget. Monies have been appropriated specifically for IB programs for distribution consistent with this rule.

❖ **LOCAL GOVERNMENTS:** There are no anticipated costs or savings to local government. Authorized IB programs will receive funding appropriated specifically for IB programs.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** There are no anticipated costs or savings to small businesses AND persons other than businesses. The rule and rule amendment apply to public school districts and schools.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There are no compliance costs for affected persons. Authorized IB programs will receive funding.

**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 04/14/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2009

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

**R277. Education, Administration.**

**R277-710. International Baccalaureate Programs.**

**R277-710-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which provides for the Board to have general supervision and control over public schools and by Section 53A-17a-120 which directs the Board to adopt rules for the expenditure of funds appropriated for accelerated learning programs, Section 53A-1-402(1) which allows the Board to adopt minimum standards for access to programs, SB 2, Section 31, Intent Language which directs \$100,000 of the 2008-09 appropriation for accelerated learning programs to International Baccalaureate programs, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify the procedures and standards [schools/]school districts/charter schools shall follow to qualify for state funds for the IB Program.

**R277-710-3. Eligibility.**

A. All school districts/charter schools are eligible to apply to the International Baccalaureate Organization to participate in the IB Program which may include the Diploma Program, the Middle Years Program and the Primary Years Program.

B. School districts/charter schools who participate in IB Programs have primary responsibility for identifying students who are eligible to participate in IB classes.

C. Each student participating in the IB Program shall have a current student education/occupation plan (SEOP) on file at the participating school, required under Section 53A-1a-106(2)(b).

**R277-710-4. Student Tuition, Fees and Credit for IB Programs.**

A. Tuition may not be charged to high school students for participation in the IB Program, consistent with Section 53A-15-101(6)(b)(iii).

B. All student costs related to IB classes, which may include consumables, lab fees, copying, and material costs, as well as textbooks required for the course, are subject to fee waiver consistent with R277-407.

C. The school district/charter school shall be responsible for these waivers.

D. A student shall receive high school credit for IB classes that are consistent with the school district/charter school policies, and

R277-705, Secondary School Completion and Diplomas, for awarding credit.

**R277-710-5. Use of and Distribution of IB Funds.**

A. School district/charter school use of state funds for the IB Program shall be limited to the following:

- (1) to offset the costs of funding smaller IB classes;
- (2) to fund workshops or training within or outside the school district/charter school to begin implementing, or coordinating an IB Program;
- (3) to purchase any of the following for library, laboratory, or direct classroom use:
  - (a) needed supplemental texts;
  - (b) student curriculum guides;
  - (c) materials; and
  - (d) equipment;
- (4) to pay an IB teacher providing direct student IB instruction;
- (5) to aid in staff development which may include:
  - (a) teacher stipends for tuition and lodging expenses connected with the pursuit of additional training on specified IB curriculum taught by the teacher
  - (b) to pay the costs for student exams; and
  - (c) to assist with costs of distance learning programs, equipment or instructors which increase the IB options in a school.
- (6) other uses approved in writing by the USOE consistent with the law and purposes of this rule.

B. Funds allocated to school districts/charter schools for IB Programs or credit shall not be used for any other program.

C. Funds shall be distributed on the basis of the following:

- (1) [~~50~~]Fifty percent of the total funds designated for the IB shall be equally distributed [~~according to the number of IB semester hours successfully completed by students registered through the school district in the prior year compared to the state total of completed IB credits~~] among all authorized IB programs in the state.
- (2) The remaining [~~50~~]fifty percent allocation shall be distributed [~~equally~~] to IB high schools where students scored a grade of 4 or higher on IB exams, resulting in a fixed amount of dollars per exam passed. [

~~D. All candidate IB and approved IB schools shall be equally eligible for funding.]~~

**KEY: international baccalaureate**

**Date of Enactment or Last Substantive Amendment: [August 7, 2008]2009**

**Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53A-17a-120; 53A-1-402(1)(c); 53A-1-401(3)**

◆ ————— ◆  
**Environmental Quality, Drinking Water**

**R309-510**

**Facility Design and Operation:  
Minimum Sizing Requirements**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 32406

FILED: 02/26/2009, 10:26

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to address the conditions for which a reduction of requirements may be granted and the method of determining a value.

SUMMARY OF THE RULE OR CHANGE: This amendment clears up misgivings concerning what type of data is acceptable for a reduction of required source capacity, water right, and peak instantaneous demands; and establishes a number (90th percentile of readings) as a final value.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--Since this amendment only clarifies this portion of the rule, and the reduced quantity for either source capacity, water right, or peak instantaneous demands will not increase workload or require additional personnel or other funds from the state budget.

❖ LOCAL GOVERNMENTS: Little to None--Most, if not all, well functioning Public Water Systems operated by local government currently meet or exceed the minimum sizing requirements. This change will only impact those non-community type systems where water usage is less than required by rule. In these cases, after submission of acceptable data, these systems should be able to expand the number of service connections without adding new source capacity, water right, or increased piping.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Little to None--This change will only impact those non-community type systems where water usage is less than required by rule. In these cases, after submission of acceptable data, these systems should be able to expand the number of service connections without adding new source capacity, water right, or increased piping.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Little to None--This change will only impact those non-community type systems where water usage is less than required by rule. In these cases, after submission of acceptable data, these systems should be able to expand the number of service connections without adding new source capacity, water right, or increased piping. By expanding the number of service connections, cost of water service to individuals served by these systems should actually be reduced.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department agrees that the proposed changes to this rule will have little to no detrimental impact on existing water systems or to new public water systems. William Sinclair, Acting Executive Director

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

**ENVIRONMENTAL QUALITY  
DRINKING WATER**  
150 N 1950 W  
SALT LAKE CITY UT 84116-3085, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Bill Birkes at the above address, by phone at 801-536-4201, by FAX at 801-536-4211, or by Internet E-mail at bbirkes@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 04/14/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2009

AUTHORIZED BY: Ken Bousfield, Director

**R309. Environmental Quality, Drinking Water.**

**R309-510. Facility Design and Operation: Minimum Sizing Requirements.**

**R309-510-5. Reduction of Requirements.**

If acceptable data are presented, certain number of days of peak day demand to establish minimum source capacity; certain number of years of annual demand to establish minimum water right requirements; and certain number of readings of peak hourly demand to establish minimum peak instantaneous demand; [at or above the 90% confidence level,] showing that the requirements made herein are excessive for a given project, the requirements may be appropriately reduced to the 90th percentile of readings, on a case by case basis by the Executive Secretary. In the case of Recreational Home Developments, in order to qualify for a quantity reduction, not only must the actual water consumption be less than quantities required by rule [~~with the confidence level indicated above~~] but enforceable policy restrictions must have been approved which prevent the use of such dwellings as a permanent domicile and these restrictions shall have been consistently enforced. The Executive Secretary may reconsider any reduced minimums if the nature and use of the system changes.

**R309-510-7. Source Sizing.**

(1) Peak Day Demand and Average Yearly Demand.

Sources shall legally and physically meet water demands under two separate conditions. First, they shall meet the anticipated water demand on the day of highest water consumption. This is referred to as the peak day demand. Second, they shall also be able to provide one year's supply of water, the average yearly demand.

(2) Estimated Indoor Use.

In the absence of firm water use data, Tables 510-1 and 510-2 shall be used to estimate the peak day demand and average yearly demand for indoor water use.

TABLE 510-1  
Source Demand for Indoor Use

Type of Connection	Peak Day Demand	Average Yearly Demand
Year-round use		
Residential	800 gpd/conn	146,000 gal./conn
ERC	800 gpd/ERC	146,000 gal./ERC
Seasonal/Non-residential use		
Modern Recreation Camp	60 gpd/person	(see note 1)
Semi-Developed Camp		
a. with pit privies	5 gpd/person	(see note 1)
b. with flush toilets	20 gpd/person	(see note 1)
Hotel, Motel, and Resort	150 gpd/unit	(see note 1)
Labor Camp	50 gpd/person	(see note 1)
Recreational Vehicle Park	100 gpd/pad	(see note 1)

Roadway Rest Stop	7 gpd/vehicle	(see note 1)
Recreational Home Development	400 gpd/conn	(see note 1)

Note 1. Annual demand shall be based on the number of days the system will be open during the year times the peak day demand unless data acceptable to the Division, with a confidence level of 90% or greater showing a lesser annual consumption, can be presented.

TABLE 510-2  
Source Demand for Individual Establishments<sup>(a)</sup>  
(Indoor Use)

Type of Establishment	Peak Day Demand (gpd)
Airports	
a. per passenger	3
b. per employee	15
Boarding Houses	
a. for each resident boarder and employee	50
b. for each nonresident boarders	10
Bowling Alleys, per alley	
a. with snack bar	100
b. with no snack bar	85
Churches, per person	5
Country Clubs	
a. per resident member	100
b. per nonresident member present	25
c. per employee	15
Dentist's Office	
a. per chair	200
b. per staff member	35
Doctor's Office	
a. per patient	10
b. per staff member	35
Fairgrounds, per person	1
Fire Stations, per person	
a. with full-time employees and food prep.	70
b. with no full-time employees and no food prep.	5
Gyms	
a. per participant	25
b. per spectator	4
Hairdresser	
a. per chair	50
b. per operator	35
Hospitals, per bed space	250
Industrial Buildings, per 8 hour shift, per employee (exclusive of industrial waste)	
a. with showers	35
b. with no showers	15
Launderette, per washer	580
Movie Theaters	
a. auditorium, per seat	5
b. drive-in, per car space	10
Nursing Homes, per bed space	280
Office Buildings and Business Establishments, per shift, per employee (sanitary wastes only)	
a. with cafeteria	25
b. with no cafeteria	15
Picnic Parks, per person (toilet wastes only)	5
Restaurants	
a. ordinary restaurants (not 24 hour service)	35 per seat
b. 24 hour service	50 per seat
c. single service customer utensils only	2 per customer
d. or, per customer served (includes toilet and kitchen wastes)	10
Rooming House, per person	40
Schools, per person	
a. boarding	75
b. day, without cafeteria, gym or showers	15
c. day, with cafeteria, but no gym or showers	20
d. day, with cafeteria, gym and showers	25
Service Stations <sup>(b)</sup> , per vehicle served	10
Skating Rink, Dance Halls, etc., per person	
a. no kitchen wastes	10
b. Additional for kitchen wastes	3

Ski Areas, per person (no kitchen wastes)	10
Stores	
a. per public toilet room	500
b. per employee	11
Swimming Pools and Bathhouses <sup>(c)</sup> , per person	10
Taverns, Bars, Cocktail Lounges, per seat	20
Visitor Centers, per visitor	5

NOTES FOR TABLE 510-2:

1. Source capacity must at least equal the peak day demand of the system. Estimate this by assuming the facility is used to its maximum.
2. Generally, storage volume must at least equal one average day's demand.
3. Peak instantaneous demands may be estimated by fixture unit analysis as per Appendix E of the 2006~~[200]~~ International Plumbing Code.
  - (a) When more than one use will occur, the multiple use shall be considered in determining total demand. Small industrial plants maintaining a cafeteria and/or showers and club houses or motels maintaining swimming pools and/or laundries are typical examples of multiple uses. Uses other than those listed above shall be considered in relation to established demands from known or similar installations.
  - (b) or 250 gpd per pump,
  - (c)  $20 \times \{ \text{Water Area (Ft}^2) / 30 \} + \text{Deck Area (Ft}^2)$

(3) Estimated Outdoor Use.

In the absence of firm water use data, Table 510-3 shall be used to estimate the peak day demand and average yearly demand for outdoor water use. The following procedure shall be used:

(a) Determine the location of the water system on the map entitled Irrigated Crop Consumptive Use Zones and Normal Annual Effective Precipitation, Utah as prepared by the Soil Conservation Service (available from the Division). Find the numbered zone, one through six, in which the water system is located (if located in an area described "non-arable" find nearest numbered zone).

(b) Determine the net number of acres which may be irrigated. This is generally done by starting with the gross acreage, then subtract out any area of roadway, driveway, sidewalk or patio pavements along with housing foundation footprints that can be reasonably expected for lots within a new subdivision or which is representative of existing lots.

Before any other land area which may be considered "non-irrigated" (e.g. steep slopes, wooded areas, etc.) is subtracted from the gross area, the Division shall be consulted and agree that the land in question will not be irrigated.

(c) Refer to Table 510-3 to determine peak day demand and average yearly demand for outdoor use.

(d) The results of the indoor use and outdoor use tables shall be added together and source(s) shall be legally and physically capable of meeting this combined demand.

TABLE 510-3  
Source Demand for Irrigation  
(Outdoor Use)

Map Zone	Peak Day Demand (gpm/irrigated acre)	Average Yearly Demand (AF/irrigated acre)
1	2.26	1.17
2	2.80	1.23
3	3.39	1.66
4	3.96	1.87
5	4.52	2.69
6	4.90	3.26

(4) Accounting for Variations in Source Yield.

The design engineer shall consider whether flow from the source(s) may vary. Where flow varies, as is the case for most springs, the minimum flowrate shall be used in determining the number of

connections which may be supported by the source(s). Where historical records are sufficient, and where peak flows from the source(s) correspond with peak demand periods, the Executive Secretary may grant an exception to this requirement.

**R309-510-8. Storage Sizing.**

(1) General.

Each storage facility shall provide:

- (a) equalization storage volume, to satisfy ~~average~~peak day demands for water for indoor use as well as outdoor use,
- (b) fire suppression storage volume, if the water system is equipped with fire hydrants and intended to provide fire suppression water, and
- (c) emergency storage, if deemed appropriate by the water supplier or the Executive Secretary, to meet demands in the event of an unexpected emergency situation such as a line break or a treatment plant failures.

(2) Equalization Storage.

(a) All public drinking water systems shall be provided with equalization storage. The amount of equalization storage which must be provided varies with the nature of the water system, the extent of outdoor use and the location of the system.

(b) Required equalization storage for indoor use is provided in Table 510-4. Storage requirements for non-community systems not listed in this table shall be determined by calculating the average day demands from the information given in Table 510-2.

TABLE 510-4  
Storage Volume for Indoor Use

Type	Volume Required (gallons)
<b>Community Systems</b>	
Residential;	
per single resident service connection	400
Non-Residential [Residential];	
per Equivalent Residential Connection (ERC)	400
<b>Non-Community Systems</b>	
Modern Recreation Camp; per person	30
Semi-Developed Camp; per person	
a. with Pit Privies	2.5
b. with Flush Toilets	10
Hotel, Motel and Resort; per unit	75
Labor Camp; per unit	25
Recreational Vehicle Park; per pad	50
Roadway Rest Stop; per vehicle	3.5
Recreational Home Development; per connection	400

(c) Where the drinking water system provides water for outdoor use, such as the irrigation of lawns and gardens, the equalization storage volumes estimated in Table 510-5 shall be added to the indoor volumes estimated in Table 510-4. The procedure for determining the map zone and irrigated acreage for using Table 510-5 is outlined in Section R309-510-7(3).

TABLE 510-5  
Storage Volume for Outdoor Use

Map Zone	Volume Required (gallons/irrigated acre)
1	1,782
2	1,873
3	2,528
4	2,848
5	4,081
6	4,964

(3) Fire Suppression Storage.

Fire suppression storage shall be required if the water system is intended to provide fire fighting water as evidenced by fire hydrants connected to the piping. The design engineer shall consult with the local fire suppression authority regarding needed fire flows in the area under consideration. This information shall be provided to the Division. Where no local fire suppression authority exists, needed fire suppression storage shall be assumed to be 120,000 gallons (1000 gpm for 2 hours).

(4) Emergency Storage.

Emergency storage shall be considered during the design process. The amount of emergency storage shall be based upon an assessment of risk and the desired degree of system dependability. The Executive Secretary may require emergency storage when it is warranted to protect public health and welfare.

**R309-510-9. Distribution System Sizing.**

(1) General Requirements.

The distribution system shall be designed to insure that minimum water pressures as required in R309-105-9 exist at all points within the system. If the distribution system is equipped with fire hydrants, the Division will require a letter from the local fire authority stating the fire flow and duration required of the area to insure the system shall be designed to provide minimum pressures as required in R309-105-9 to exist at all points within the system when needed fire flows are imposed upon the peak day demand flows of the system.

(2) Indoor Use, Estimated Peak Instantaneous Demand.

(a) For community water systems and large non-community systems, the peak instantaneous demand for each pipeline shall be assumed for indoor use as:

$$Q = 10.8 \times N^{0.64}$$

where N equals the total number of ERC's, and Q equals the total flow (gpm) delivered to the total connections served by that pipeline.

For Recreational Vehicle Parks, the peak instantaneous flow for indoor use shall be based on the following:

TABLE 510-6

Peak Instantaneous Demand for Recreational Vehicle Parks

Number of Connections	Formula
0 to 59	Q = 4N
60 to 239	Q = 80 + 20N <sup>0.5</sup>
240 or greater	Q = 1.6N

NOTES FOR TABLE 510-6:

Q is total peak instantaneous demand (gpm) and N is the maximum number of connections. However, if the only water use is via service buildings the peak instantaneous demand shall be calculated for the number of fixture units as presented in Appendix E of the ~~2006~~2009 International Plumbing Code.

(b) For small non-community water systems the peak instantaneous demand to be estimated for indoor use shall be calculated on a per-building basis for the number of fixture units as presented in Appendix E of the ~~2006~~2009 International Plumbing Code.

(3) Outdoor Use, Estimated Peak Instantaneous Demand.

Peak instantaneous demand to be estimated for outdoor use is given in Table 510-7. The procedure for determining the map zone and irrigated acreage for using Table 510-7 is outlined in Section R309-510-7(3).

TABLE 510-7

Peak Instantaneous Demand for Outdoor Use

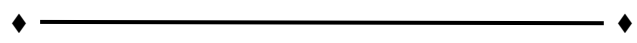
Map Zone	Peak Instantaneous Demand (gpm/irrigated acre)
1	4.52
2	5.60
3	6.78
4	7.92
5	9.04
6	9.80

(4) Fire Flows.

(a) Distribution systems shall be designed to deliver needed fire flows if fire hydrants are provided. The design engineer shall consult with the local fire suppression authority regarding needed fire flows in the area under consideration. This information shall be provided to the Division. Where no local fire suppression authority exists, needed fire flows shall be assumed to be 1000 gpm unless the local planning commission provides a letter indicating that the system will not be required to provide any fire flows, in which case fire hydrants will not be allowed to be installed on any mains.

(b) If a distribution system is equipped with fire hydrants, the system shall be designed to insure that minimum pressures required by R309-105-9 exist at all points within the system when fire flows are added to the peak day demand of the system. Refer to Section R309-510-7 for information on determining the peak day demand of the system.

**KEY: drinking water, minimum sizing, water conservation**  
**Date of Enactment or Last Substantive Amendment: April, 2009[~~March 8, 2006~~]**  
**Notice of Continuation: April 2, 2007**  
**Authorizing, and Implemented or Interpreted Law: 19-4-104**



**Environmental Quality, Drinking Water**  
**R309-520**  
**Facility Design and Operation:**  
**Disinfection**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE No.: 32407  
 FILED: 02/26/2009, 10:28

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to add ultraviolet light as a fourth allowable primary disinfectant and to correct a reference for ozone under Section R309-520-11.

**SUMMARY OF THE RULE OR CHANGE:** This amendment adds ultraviolet light as a fourth allowable primary disinfectant and corrects a reference for ozone under Section R309-520-11 to Part 4, Section 4.3.7 in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 2007 edition.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: None--Since this amendment only adds ultraviolet light as an additional allowable primary disinfectant, there is no anticipated cost or savings to the state budget.
- ❖ LOCAL GOVERNMENTS: None--Since this amendment only adds ultraviolet light as an additional allowable primary disinfectant, there is no anticipated cost or savings to public drinking water systems managed by local governments.
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Since this amendment only adds ultraviolet light as an additional allowable primary disinfectant, there is no anticipated cost or savings to small businesses such as consulting engineering companies.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Since this amendment only adds ultraviolet light as an additional allowable primary disinfectant, there is no anticipated cost or savings to individual consumers of water from public water systems.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department agrees that the proposed changes to this rule will have little to no detrimental impact on existing water systems or to new public water systems. William Sinclair, Acting Executive Director.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 ENVIRONMENTAL QUALITY  
 DRINKING WATER  
 150 N 1950 W  
 SALT LAKE CITY UT 84116-3085, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 Bill Birkes at the above address, by phone at 801-536-4201, by FAX at 801-536-4211, or by Internet E-mail at [bbirkes@utah.gov](mailto:bbirkes@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 04/14/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2009

AUTHORIZED BY: Ken Bousfield, Director

**R309. Environmental Quality, Drinking Water.**  
**R309-520. Facility Design and Operation: Disinfection.**  
**R309-520-5. Allowable Primary Disinfectants.**

Primary disinfection is defined as the means for providing adequate levels of inactivation of pathogenic micro organisms within the treatment process. Its effectiveness is measured through the "CT" values. Only ~~four~~<sup>three</sup> disinfectants; chlorine (gaseous and liquid hypochlorites), ozone, ultraviolet light, and chlorine dioxide are allowable for primary disinfection.

**R309-520-11. Ozone.**

Proposals for use of ozone disinfection shall be discussed with the Division prior to the preparation of final plans and specifications.

Part 4, Section 4.3.7, Ozone [Interim Standard - Ozonation, page xxxi], in the Recommended Standards for Water Works (commonly known as "Ten State Standards"), 2007 edition is hereby incorporated by reference and shall govern the design and operation of disinfection facilities utilizing ozone. This document is published by the Great Lakes-Upper Mississippi River Board of Public Health and Environmental Managers. A copy is available in the office of the Division for reference.

**KEY: drinking water, primary disinfectants, secondary disinfectants, operation and maintenance**

**Date of Enactment or Last Substantive Amendment: April, 2009 [August 15, 2009]**

**Notice of Continuation: March 13, 2007**

**Authorizing, and Implemented or Interpreted Law: 19-4-104**



**Environmental Quality, Drinking Water  
R309-525-11  
Chemical Addition**

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 32408

FILED: 02/26/2009, 10:29

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to add a line to Section R309-525-11 allowing the overflow from a day tank to discharge to a spill containment area rather than drain by gravity back to the bulk storage tank.

**SUMMARY OF THE RULE OR CHANGE:** This amendment adds a line to Section R309-525-11 allowing the overflow from a day tank to discharge to a spill containment area rather than drain by gravity back to the bulk storage tank.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-4-104

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** None--Since this amendment addresses conditions that generally exist at today's water treatment plants, there is no cost to the state budget as a result of this proposed amendment.

❖ **LOCAL GOVERNMENTS:** None--Since this amendment addresses conditions that generally exist at today's water treatment plants, there is no cost to the existing water systems owned and operated by local government as a result of this proposed amendment.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** None--Since this amendment addresses conditions that generally exist at today's water treatment plants, there is no

cost to small businesses, especially consulting engineering companies as a result of this proposed amendment.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--Since this amendment addresses conditions that generally exist at today's water treatment plants, there is no cost to consumers of water systems as a result of this proposed amendment.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The department agrees that the proposed additions to this rule will have little to no detrimental impact on existing water systems or to new public water systems. William Sinclair, Acting Executive Director

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

ENVIRONMENTAL QUALITY  
DRINKING WATER  
150 N 1950 W  
SALT LAKE CITY UT 84116-3085, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**  
Bill Birkes at the above address, by phone at 801-536-4201, by FAX at 801-536-4211, or by Internet E-mail at bbirkes@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 04/14/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2009

AUTHORIZED BY: Ken Bousfield, Director

**R309. Environmental Quality, Drinking Water.  
R309-525. Facility Design and Operation: Conventional Surface Water Treatment.  
R309-525-11. Chemical Addition.**

.....

(8) Feeder Appurtenances.

(a) Liquid Chemical Solution Pumps.

Positive displacement type solution feed pumps shall be used to feed liquid chemicals, but shall not be used to feed chemical slurries. Pumps must be sized to match or exceed maximum head conditions found at the point of injection. All liquid chemical feeders shall be provided with devices approved by the Utah Plumbing Code which will prevent the siphoning of liquid chemical through the pump.

(b) Solution Tanks.

(i) A means consistent with the nature of the chemical solution shall be provided in a solution tank to maintain a uniform strength of solution. Continuous agitation shall be provided to maintain slurries in suspension.

(ii) Means shall be provided to measure the solution level in the tank.

(iii) Chemical solutions shall be kept covered. Large tanks with access openings shall have the openings curbed and fitted with tight overhanging covers.

(iv) Subsurface locations are discouraged, but when used for solution tanks shall:

(A) be free from sources of possible contamination, and

(B) assure positive drainage for ground waters, accumulated water, chemical spills and overflows.

(v) Overflow pipes, when provided, shall:

(A) have a free fall discharge, and

(B) be located where noticeable.

(vi) Acid storage tanks shall be vented to the outside atmosphere, but not through vents in common with day tanks.

(vii) Each tank shall be provided with a valved drain, protected against backflow in accordance with R309-525-11(10)(b) and R309-525-11(10)(c).

(viii) Solution tanks shall be located and protective curbing provided so that chemicals from equipment failure, spillage or accidental drainage shall not enter the water in conduits, treatment or storage basins.

(ix) When polymers are used, storage tanks shall be located away from heat sources and direct sunlight.

(c) Day Tanks.

(i) Day tanks shall be provided where dilution of liquid chemical is required prior to feeding.

(ii) Day tanks shall meet all the requirements of R309-525-11(9)(b).

(iii) Certain chemicals, such as polymers, become unstable after hydration, therefore, day tanks shall hold no more than a thirty hour supply unless manufacturer's recommendations allow for longer periods.

(iv) Day tanks shall be scale-mounted, or have a calibrated gauge painted or mounted on the side if liquid levels cannot be observed in a gauge tube or through translucent sidewalls of the tank. In opaque tanks, a gauge rod extending above a referenced point at the top of the tank, attached to a float may be used. The ratio of the cross-sectional area of the tank to its height must be such that unit readings are meaningful in relation to the total amount of chemical fed during a day.

(v) Hand pumps may be provided for transfer from a carboy or drum. A top rack may be used to permit withdrawal into a bucket from a spigot. Where motor-driven transfer pumps are provided a liquid level limit switch and an overflow from the day tank, which will drain by gravity back into the bulk storage tank, must be provided, unless spill containment is provided for both bulk and day tanks.

(vi) A means which is consistent with the nature of the chemical solution shall be provided to maintain uniform strength of solution in a day tank. continuous agitation shall be provided to maintain chemical slurries in suspension.

(vii) Tanks shall be properly labeled to designate the chemical contained.

(d) Feed Lines.

(i) Feed lines shall be as short as possible in length of run, and be:

(A) of durable, corrosion resistant material,

(B) easily accessible throughout the entire length,

(C) protected against freezing, and

(D) readily cleanable.

(ii) Feed lines shall slope upward from the chemical source to the feeder when conveying gases.

(iii) Lines shall be designed with due consideration of scale forming or solids depositing properties of the water, chemical, solution or mixture conveyed.

(9) Make up Water Supply and Protection.

(a) In Plant Water Supply.

In plant water supply shall be:

(i) Ample in supply, adequate in pressure, and of a quality equal to or better than the water at the point of application.

(ii) Provided with means for measurement when preparing specific solution concentrations by dilution.

(iii) Properly protected against backflow.

(b) Cross-Connection Control.

Cross-connection control shall be provided to assure that:

(i) The make-up waterlines discharging to solution tanks shall be properly protected from backflow as required by the Utah Plumbing Code.

(ii) Liquid chemical solutions cannot be siphoned through solution feeders into the process units as required in R309-525-11(9)(c).

(iii) No direct connection exists between any sewer and the drain or overflow from the feeder, solution chamber or tank by providing that all pipes terminate at least six inches or two pipe diameters, whichever is greater, above the overflow rim of a receiving sump, conduit or waste receptacle.

(iv) Pre- and post-chlorination systems must be independent to prevent possible siphoning of partially treated water into the clear well. The water supply to each eductor shall have a separate shut-off valve. No master shut off valve will be allowed.

(c) Liquid Chemical Feeders, Siphon Control.

Liquid chemical feeders shall be such that chemical solutions cannot be siphoned into the process units, by:

(i) Assuring positive pressure at the point of discharge,

(ii) Providing vacuum relief,

(iii) Providing a suitable air gap, or

(iv) Other suitable means or combinations as necessary.

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**KEY: drinking water, flocculation, sedimentation, filtration**  
**Date of Enactment or Last Substantive Amendment: April, 2009~~December 9, 2002~~**

**Notice of Continuation: April 2, 2007**

**Authorizing, and Implemented or Interpreted Law: 19-4-104**

◆ ————— ◆

## Environmental Quality, Drinking Water

# R309-530-6

## Slow Sand Filtration

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 32409

FILED: 02/26/2009, 10:30

### RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to correct a mistake in the filtration rate for slow sand filtration.



**SUMMARY OF THE RULE OR CHANGE:** This amendment corrects a mistake in the filtration rate from 0.01 gpm/sf to 0.1 gpm/sf for slow sand filtration.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-4-104

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** None--Since this amendment only corrects an error in the numerical value expressed in rule (the expression in brackets is incorrect), there is no cost to the state budget as a result of this proposed amendment.

❖ **LOCAL GOVERNMENTS:** None--Since this amendment only corrects an error in the numerical value expressed in rule (the expression in brackets is incorrect), there is no cost to existing water systems owned by local government as a result of this proposed amendment.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** None--Since this amendment only corrects an error in the numerical value expressed in rule (the expression in brackets is incorrect), there is no cost to small businesses such as consulting engineering companies as a result of this proposed amendment.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--Since this amendment only corrects an error in the numerical value expressed in rule (the expression in brackets is incorrect), there is no cost to consumers of water systems as a result of this proposed amendment.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The department agrees that the proposed change to this rule will have little to no detrimental impact on existing water systems or to new public water systems. William Sinclair, Acting Executive Director.

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

**ENVIRONMENTAL QUALITY  
DRINKING WATER  
150 N 1950 W  
SALT LAKE CITY UT 84116-3085, or  
at the Division of Administrative Rules.**

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Bill Birkes at the above address, by phone at 801-536-4201, by FAX at 801-536-4211, or by Internet E-mail at [bbirkes@utah.gov](mailto:bbirkes@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 04/14/2009.**

**THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2009**

**AUTHORIZED BY: Ken Bousfield, Director**

### **R309. Environmental Quality, Drinking Water.**

#### **R309-530. Facility Design and Operation: Alternative Surface Water Treatment Methods.**

##### **R309-530-6. Slow Sand Filtration.**

###### **(1) Acceptability.**

Slow sand filtration means a process involving passage of raw water through a bed of sand at low velocity resulting in substantial particle removal by physical and biological mechanisms. The acceptability of slow sand filters as a substitute for "conventional surface water treatment" facilities (detailed in R309-525) shall be determined by the Executive Secretary based on suitability of the source water and demand characteristics of the system.

###### **(2) Source Water Quality.**

The Executive Secretary may impose design requirements in addition to those listed herein, in allowing this process. The following shall be considered, among other factors, in determining whether slow sand filtration will be acceptable:

(a) Source water turbidity must be low and consistent. Slow Sand Filtration shall be utilized only when the source waters have turbidity less than 50 NTU and color less than 30 units (see R309-515-5(2)(a)).

(b) The nature of the turbidity particles shall be considered. Turbidity must not be attributable to colloidal clay.

(c) The nature and extent of algae growths in the raw water shall be considered. Algae must not be a species considered as filter and screen-clogging algae as indicated in "Standard Methods for the Examination of Water and Wastewater" prepared and published jointly by American Public Health Association, American Water Works Association, and Water Environment Federation. High concentrations of algae in the raw water can cause short filter runs; the amount of algae, expressed as the concentration of chlorophyll "a" in the raw water shall not exceed 0.005 mg/l.

###### **(3) Pilot Plant Studies.**

The Executive Secretary shall allow the use of Slow Sand Filtration only when the supplier's engineering studies show that the slow sand facility can consistently produce an effluent meeting the quality requirements of rule R309-200. The Executive Secretary should be consulted prior to the detailed design of a slow sand facility.

###### **(4) Operation.**

Effluent from a Slow Sand Filtration facility shall not be introduced into a public water supply until an active biological mat has been created on the filter.

###### **(5) Design requirements.**

The following design parameters shall apply to each Slow Sand Filtration plant:

(a) At least three filter units shall be provided. Where only three units are provided, any two shall be capable of meeting the plant's design capacity (normally the projected "peak daily flow") at the approved filtration rate. Where more than three filter units are provided, the filters shall be capable of meeting the plant design capacity at the approved filtration rate with any one filter removed from service.

(b) All filters shall be protected to prevent freezing. If covered by a structure, enough headroom shall exist to permit normal movement by operating personnel for scraping and sand removal operations. There shall be adequate manholes and access ports for the handling of sand. An overflow at the maximum filter water level shall be provided.

(c) The permissible rates of filtration shall be determined by the quality of the source water and shall be determined by experimental data derived during pilot studies conducted on the source water.

Filtration rates of 0.03 gpm/sf to 0.1~~[0.04]~~ gpm/sf shall be acceptable (equivalent to two to six million gallons per day per acre). Somewhat higher rates may be acceptable when demonstrated to the satisfaction of the Executive Secretary.

(d) Each filter unit shall be equipped with a main drain and an adequate number of lateral underdrains to collect the filtered water. The underdrains shall be so spaced that the maximum velocity of the water flow in the underdrain will not exceed 0.75 fps. The maximum spacing of the laterals shall not exceed three feet if pipe laterals are used.

(e) Filter sand shall be placed on graded gravel layers for an initial filter sand depth of 30 inches. A minimum of 24 inches of filter sand shall be present, even after scraping. The effective size of the filter sand shall be between 0.30 mm and 0.45 mm in diameter. The filter sand uniformity coefficient shall not exceed 2.5. Further, the sand shall thoroughly washed and found to be clean and free from foreign matter.

(f) A three-inch layer of well rounded sand shall be used as a supporting media for filter sand. It shall have an effective size of 0.8 mm to 2.0 mm in diameter and the uniformity coefficient shall not be greater than 1.7.

(g) A supporting gravel media shall be provided. It shall consist of hard, durable, rounded silica particles and shall not include flat or elongated particles. The coarsest gravel shall be 2.5 inches in size when the gravel rests directly on the strainer system, and must extend above the top of the perforated laterals. Not less than four layers of gravel shall be provided in accordance with the following size and depth distribution when used with perforated laterals:

TABLE 530-1

Size	Depth
2 1/2 to 1 1/2 inches	5 to 8 inches
1 1/2 to 3/4 inches	3 to 5 inches
3/4 to 1/2 inches	3 to 5 inches
1/2 to 3/16 inches	2 to 3 inches
3/16 to 3/32 inches	2 to 3 inches

Reduction of gravel depths may be considered upon justification to the Executive Secretary when proprietary filter bottoms are specified.

(h) Slow sand filters shall be designed to provide a depth of at least three to five feet of water over the sand.

(i) Each filter shall be equipped with: a loss of head gauge; an orifice, venturi meter, or other suitable metering device installed on each filter to control the rate of filtration; and an effluent pipe designed to maintain the water level above the top of the filter sand.

(j) Disinfection of the effluent of Slow Sand Filtration plants will be required.

(k) A filter-to-waste provision shall be included.

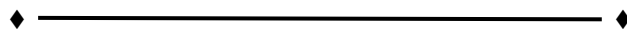
(l) Electrical power shall be available at the plant site.

**KEY: drinking water, direct filtration, slow sand filtration, membrane technology**

**Date of Enactment or Last Substantive Amendment: April, 2009~~December 9, 2002~~**

**Notice of Continuation: April 2, 2007**

**Authorizing, and Implemented or Interpreted Law: 19-4-104**



## Environmental Quality, Drinking Water **R309-545-15** Venting

### NOTICE OF PROPOSED RULE (Amendment)

DAR FILE No.: 32410

FILED: 02/26/2009, 10:31

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to add a minimum downturn dimension to the requirement that a vent be downturned and at the same time remove the upper dimension for the discharge end above the earthen cover.

**SUMMARY OF THE RULE OR CHANGE:** This amendment adds a minimum downturn dimension of 2 inches below any opening to the requirement that a vent be downturned and at the same time removes the upper dimension of 36 inches for the discharge end above the earthen cover.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 19-4-104

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** None--This amendment only clarifies this portion of rule and the change will not increase workload or require additional personnel or other funds from the state budget.

❖ **LOCAL GOVERNMENTS:** Little to None--This amendment only clarifies this portion of rule and the change should not increase the cost to water systems owned and operated by local government.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** None--This amendment only clarifies this portion of rule and the change will not increase workload or require additional personnel or other funds from small businesses such as consulting engineering companies.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** None--This amendment only clarifies this portion of rule and the change will not impact the cost of service to consumers of public water systems.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The department agrees that the proposed changes to this rule will have little to no detrimental impact on existing water system or to new public water systems. William Sinclair, Acting Executive Director

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

ENVIRONMENTAL QUALITY  
DRINKING WATER  
150 N 1950 W  
SALT LAKE CITY UT 84116-3085, or  
at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

Bill Birkes at the above address, by phone at 801-536-4201, by FAX at 801-536-4211, or by Internet E-mail at bbirkes@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 04/14/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2009

AUTHORIZED BY: Ken Bousfield, Director

**R309. Environmental Quality, Drinking Water.****R309-545. Facility Design and Operation: Drinking Water Storage Tanks.****R309-545-15. Venting.**

Drinking water storage structures shall be vented. Overflows shall not be considered as vents. Vents provided on drinking water storage reservoirs shall:

## (1) Inverted Vent.

Be downturned a minimum of two inches below any opening or shielded to prevent the entrance of surface water and rainwater.

## (2) Open Discharge.

On buried structures, have the discharge a minimum of 24 [~~to 36~~] inches above the earthen covering.

## (3) Blockage.

Be located and sized so as to avoid blockage during winter conditions.

## (4) Pests.

Exclude birds and animals.

## (5) Dust.

Exclude insects and dust, as much as this function can be made compatible with effective venting.

## (6) Screen.

Be fitted with No. 14 mesh or finer non-corrodible screen.

## (7) Screen Protector.

Be fitted with additional heavy gage screen or substantial covering which will protect the No. 14 mesh screen against vandalism and, further, discourage purposeful attempts to contaminate the reservoir.

**KEY: drinking water, storage tanks, access, overflow and drains**

**Date of Enactment or Last Substantive Amendment: April, 2009** [~~March 8, 2006~~]

**Notice of Continuation: April 2, 2007**

**Authorizing, and Implemented or Interpreted Law: 19-4-104**



Health, Epidemiology and Laboratory  
Services, Environmental Services

**R392-303**

Public Geothermal Pools and Bathing  
Places

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE No.: 32393

FILED: 02/19/2009, 15:45

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule makes allowances for the special circumstances inherent with the design, construction and operation of geothermal pools and natural bathing places. Geothermal pools are currently regulated by Rule R392-302 (Design, Construction and Operation of Public Pools). However, these pools cannot meet the standards of this rule. At local health department discretion, some have been permitted, and others have not been permitted. This rule is an attempt to respond to public concerns about this variable regulation and to adopt a rule that geothermal pools can comply with and to protect the public health.

**SUMMARY OF THE RULE OR CHANGE:** The rule makes special allowance for geothermal pools that are not provided for in Rule R392-302 (Design, Construction and Operation of Public Pools) but contains many provisions that require compliance with Rule R392-302 under circumstances where geothermal pools and natural bathing places do not need special provisions. The rule does not require a construction change to existing pools and does not require the upgrade of an entire pool if one aspect of the pool is upgraded. The rule allows public geothermal pools to use natural geothermal water source rather than water from a public drinking water supply. The rule, however, requires testing of the water and determining the possible health effects of bathing in it. The rule allows flow-through and bather load to be used as the only methods of pool water contamination control (allows pools to operate without filtration or disinfection) but requires notification to bathers of that fact and the potential risk. Higher turnover rates are required in geothermal pools than other public pools but the requirement can be decreased, or increased, by the local health department, based on bacterial tests. The rule allows natural walls, floors, water depth, and floor slopes of natural bathing places that would not be allowed under the public pool rule but the rule provides for the safety of bathers by other means such as notifications, roping off areas, and barriers. The rule requires bacteriological monitoring but makes an allowance for higher levels of bacterial contamination than other public pools. Bather notification is required when the bacterial level exceeds that allowed in other public pools. The rule allows local health departments to require operators to admit fewer bathers in a pool if bacterial levels are consistently high and requires the closing of a pool if maximum levels are exceeded.

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

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** There will be no impact on the state budget as the local health departments are charged with the responsibility of inspecting public pools.

❖ **LOCAL GOVERNMENTS:** Local health departments have been extensively consulted about this rule. There may be some

costs associated with adopting the new standards for inspection of these pools. These should be one-time costs, and relatively small. Where local health departments have not insisted that geothermal pools be permitted under a rule where compliance was impossible, there may be some new revenue from permit fees to offset costs for inspections.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Under the existing rule, no geothermal facility could achieve compliance. Many operators of geothermal pools have been consulted and all known pool operations have been given an opportunity to comment as the new rule was being developed. There will be costs for compliance, but attempts have been made to minimize those costs without inappropriate risks to public health. There are approximately eight geothermal facilities with an average of three pools per facility in the state that will be affected by this rule. These facilities will have to pay for sampling fees, source analysis, flow meters, permits, and new signs. The initial total aggregate annual cost to these facilities to be compliant with the requirements of the new rule is estimated to be \$2,460 per facility, or (8 x \$2,460) \$19,680 aggregate cost (Sampling fee: \$300; Source analysis: \$300; Flow meter: 3 x \$400 = \$1,200; Signs: 12 x \$30 = \$360; Permit: \$100 per pool, 3 x 100 = \$300). The estimated ongoing costs would amount to \$660 per year (\$300 sampling + \$300 permit + 1/5 x \$300 source analysis = \$660), or (8 x 660 = \$5,280) \$5,280/year aggregate costs.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** All geothermal pools will be required to have a flow meter to measure flow through of water. The minimum cost of a low end flow meter is approximately \$400, plus installation. High end flow meters can cost up to \$2,000, plus installation. All geothermal pools would have initial (and every five years) costs for water analysis of their source water. This cost should be less than \$300 per water source. There may also be ongoing water quality analysis costs associated with the permit. It is estimated that these would not be more than \$300 per year. Pools will have to acquire notification signs with an estimated number of 12 signs per facility. The cost of a sign is approximately \$30 - \$40 per sign. This would result in a cost of \$360 - \$480 per facility. Pools that come forward to be permitted for the first time will be required to pay permit fees of approximately \$100 per pool.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule has been extensively reviewed by the regulated businesses and strikes a balance that protects the public health without adopting standards that are unnecessarily complicated or expensive for regulated businesses. 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 04/14/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

**R392. Health, Epidemiology and Laboratory Services, Environmental Services.**

**R392-303. Public Geothermal Pools and Bathing Places.**

**R392-303-1. Authority and Purpose.**

This rule is authorized under Section 26-15-2. It establishes minimum standards for the design, construction, operation and maintenance of public geothermal pools and public geothermal bathing places.

**R392-303-2. Definitions.**

The following definitions apply in this rule.

(1) "Bather load" means the number of persons allowed by the operator to use a geothermal pool or geothermal bathing place at any one time or specified period of time.

(2) "Department" means the Utah Department of Health.

(3) "Executive Director" means the Executive Director of the Utah Department of Health, or his designated representative.

(4) "Flow-through" means water that is fed by a continuous supply into a pool or bathing place that causes an equal rate of flow to discharge from the pool or bathing place to waste.

(5) "Geothermal bathing place" means a natural bathing place or semi-artificial bathing place with an impoundment of geothermal water.

(6) "Geothermal pool" means a man-made basin, chamber, receptacle, tank, or tub which is filled with geothermal water or a mixture of geothermal and non-geothermal water that creates an artificial body of water.

(7) "Geothermal water" means ground water that is heated in the earth by the earth's interior.

(8) "Living unit" means one or more rooms or spaces that are, or can be, occupied by an individual, group of individuals, or a family, temporarily or permanently for residential or overnight lodging purposes. Living units include motel and hotel rooms, condominium units, travel trailers, recreational vehicles, mobile homes, single family homes, and individual units in a multiple unit housing complex.

(9) "Local Health Officer" means the health officer of the local health department having jurisdiction, or his designated representative.

(10) "Natural bathing place" means a lake, pond, river, stream, swimming hole, or hot springs which has not been modified by man.

(11) "Semi-artificial bathing place" means a natural bathing place that has been modified by man.

**R392-303-3. General Requirements.**

(1) This rule applies to geothermal pools and geothermal bathing places that:

(a) are partially or completely filled with geothermal water that has a source temperature of at least 70 degrees Fahrenheit, 21.1 degrees Celsius; and

(b) are offered to the public for bathing or recreation.

(2) This rule does not apply to an unsupervised geothermal bathing place that the owner explicitly or tacitly allows anyone at any time to use without a fee.

(3) This rule does not apply to a geothermal pool or geothermal bathing place that is used only by a single household or only by a single group of multiple living units of four or fewer households.

(4) Except as otherwise stated in this rule, geothermal pools and geothermal bathing places, are exempt from the requirements of R392-302.

(5) This rule does not require an owner or operator to modify any portion of an existing geothermal pool facility or existing geothermal bathing place. If an owner or operator modifies any system or part of a geothermal pool or geothermal bathing place, the modified system or part must meet the requirements of this rule. However, if the Executive Director or the Local Health Officer determines that any facility is dangerous, unsafe, unsanitary, or a nuisance or menace to life, health or property, the Executive Director or the Local Health Officer may order modification consistent with the requirements of this rule.

**R392-303-4. Drinking Water Supply.**

(1) The owner of a geothermal pool or geothermal bathing place shall assure that all plumbing fixtures including drinking fountains, lavatories and showers at the public geothermal pool or geothermal bathing place facility are connected to a drinking water system that meets the requirements for drinking water established by the Utah Department of Environmental Quality.

(2) The owner of a geothermal pool or geothermal bathing place shall protect the connected drinking water system against back flow of contamination or back flow of water from the geothermal water source.

**R392-303-5. Geothermal Water Quality.**

(1)(a) The owner of a geothermal pool or geothermal bathing place shall install a tap or sampling point that provides the operator with the ability to sample the geothermal source water before it enters the geothermal pool or geothermal bathing place impoundment.

(b) If it is impractical to directly sample the geothermal water, the operator may sample water directly from the pool or impoundment. However, at least sixteen hours must have passed since any person has been in the pool and the sample shall be taken as close to the geothermal source water inlet as practical.

(2) The operator of a geothermal pool or geothermal bathing place shall collect samples of the geothermal source water and of any other water source used to fill the pool that is not approved for drinking water by Utah Division of Drinking Water. The operator shall submit the samples for analysis to a laboratory certified under R444-14. The operator shall have the analysis performed initially and every five years thereafter to determine the levels of constituents listed in Table 1. If a geothermal pool or geothermal bathing place is in existence prior to the adoption of this rule, the owner of the facility shall submit to the local health department the results of

initial source water tests within six months after the adoption of the rule. The permit applicant of a newly permitted public geothermal pool or geothermal bathing place shall submit the results of the initial source water analyses to the local health department with his application for a permit. The operator shall submit five-year samples to the local health department within six months prior to the end of the five year period.

(3) If the geothermal source water analysis required in R392-303-5(2) reports that any constituents fails any of the standards in Table 1, the owner shall do one of the following:

(a) not use the source water;

(b) implement an ongoing treatment process approved by the Local Health Officer to provide source water that meets the requirements in Table 1; or

(c) at a minimum, post a caution sign outlined in R392-303-22, to notify swimmers that the water does not meet the EPA recommended drinking water standard and they swim at their own risk. The caution sign shall include the name of the constituent that does not meet the EPA standard and that there may be a health risk associated with bathing in water that contains high levels of the constituent. Based on research funded by or guidelines issued by a competent authority, including the Centers for Disease Control and Prevention, the Environmental Protection Agency, or the World Health Organization, the Local Health Officer may require the operator to post the maximum recommended bathing period or to implement other recommended restrictions.

TABLE 1

Geothermal Source Water Constituents

Constituent	Maximum	Minimum
pH	8.0	7.0
Fluoride	4.0 milligrams per liter	None
Nitrate	10 milligrams per liter	None
Nitrite	1 milligrams per liter	None
Antimony	0.006 milligrams per liter	None
Arsenic	0.010 milligrams per liter	None
Barium	2 milligrams per liter	None
Beryllium	0.004 milligrams per liter	None
Cadmium	0.005 milligrams per liter	None
Chromium	0.1 milligrams per liter	None
Copper	1.3 milligrams per liter	None
Cyanide (as free cyanide)	0.2 milligrams per liter	None
Lead	0.015 milligrams per liter	None
Mercury	0.002 milligrams per liter	None
Selenium	0.05 milligrams per liter	None
Thallium	0.002 milligrams per liter	None

**R392-303-6. General Safety Requirements.**

(1) Geothermal pools shall meet the requirements of R392-302-11.

(2) Head-first entry is not permitted at a geothermal bathing place except where the operator has demonstrated to the local health officer that the water depth and underwater obstructions at the entire geothermal bathing place pose no greater risk than at a diving-permitted section of a swimming pool as allowed in R392-302-11. Diving with a self-contained underwater breathing apparatus (SCUBA) is allowed at geothermal bathing places. Where head-first entry is not permitted, the operator shall place a sign that states "NO HEAD-FIRST ENTRY" in accordance with R392-303-22, 23 and 24.

(3) Geothermal pools and geothermal bathing places shall meet the following sections of R392-302:

(a) R392-302-14 Fencing, however the local health officer may grant exceptions to the height requirements for barriers in consideration of natural features for geothermal bathing places;

(b) R392-302-22 Safety Requirements and Lifesaving Equipment, except that a geothermal bathing place under 5 feet, 1.52 meters, deep is only required to meet R392-302-22(3);

(c) R392-302-23 Lighting, Ventilation and Electrical Requirements; and

(d) R392-302-30 Supervision of Bathers subsections 1 through 7.

#### **R392-303-7. Bather Facilities.**

Geothermal pools and geothermal bathing places shall meet the following sections of R392-302:

(1) R392-302-24 Dressing Rooms

(2) R392-302-25 Toilets and Showers

(3) R392-302-26 Visitors and Spectator Areas

#### **R392-303-8. Construction Materials.**

(1) Geothermal pools shall meet the requirements of R392-302-6.

(2) The owner or operator of a geothermal bathing place shall notify bathers of and protect them from safety hazards by methods such as altering surfaces or structures, barricading or roping off problem areas, and posting warning signs.

#### **R392-303-9. Bather Load.**

(1) Geothermal pools and geothermal bathing places shall meet the bather load requirements in R392-302-7.

(2) If a geothermal pool or geothermal bathing place is unable to meet bacteriological water quality by other means, the Local Health Officer may require the owner or operator to reduce the allowed bather load in order to meet the requirements R392-303-19.

#### **R392-303-10. Design Detail and Structural Stability.**

(1) With the exception of the provisions listed in R392-302-8(3) and R392-302-8(5), geothermal pools shall meet the provisions of R392-302-8.

(2) The owner shall submit plans for a new geothermal pool or a geothermal bathing place or the renovation or the remodeling of a geothermal pool or a geothermal bathing place to the local health department for approval based upon compliance to this rule. Renovation or remodeling includes the replacement or modification of equipment that may affect the ability of a geothermal pool or a geothermal bathing place to meet the safety and water quality standards of this rule.

(3) Geothermal bathing places used only for SCUBA diving or snorkeling are exempt from requirements of R392-303-11 through 15 and the clarity requirement in R392-303-19 if each patron signs a document acknowledging that the patron has read the list of inherent physical and environmental dangers that the geothermal bathing place has not complied with in R392-303-11 through 15 and 19, and to which the patron is exposed upon entering or using the geothermal bathing place.

#### **R392-303-11. Depths and Floor Slopes.**

(1) Geothermal pools shall meet the requirements of R392-302-9.

(2) The owner of a geothermal bathing place shall protect bathers from uneven bottoms, sudden changes in depth, and other

bottom anomalies by altering the pool bottom, posting signs about the dangers, providing barriers around hazards, or roping off areas.

#### **R392-303-12. Walls.**

(1) Geothermal pools shall meet the requirements of R392-302-10.

(2) The owner of a geothermal bathing place shall protect bathers from uneven walls, submerged projections, or submerged ledges by methods such as posting signs notifying patrons of the dangers, providing barriers around hazards, or roping off areas.

#### **R392-303-13. Ladders, Recessed Steps, and Stairs.**

(1) Geothermal pools shall meet the requirements of R392-302-12.

(2) The owner of a geothermal bathing place shall provide a means of entrance into and exit from the water that include handholds and steps where needed to provide for bather safety.

#### **R392-303-14. Decks and Walkways.**

(1) Geothermal pools shall meet the requirements of R392-302-13.

(2) The owner of a geothermal bathing place shall provide safe walkways leading to the bathing place that are free of trip hazards and provide handholds where there are ramps or steps.

#### **R392-303-15. Depth Markings and Safety Ropes.**

(1) Geothermal pools shall meet the requirements of R392-302-15.

(2) The owner of a geothermal bathing place shall protect bathers from unexpected deep water by means such as posting pool depth signs, providing barriers around deep areas, or roping off areas.

#### **R392-303-16. Circulation Systems.**

(1) Geothermal pools that transport source, pool, or discharge water through pipes shall meet the requirements of R392-302-16 for piping, pipe labeling, velocity in pipes, adequate space in equipment areas, valves, and air induction systems. Geothermal pools shall meet the requirements of R392-302-16 for normal water level and vacuum cleaning systems.

(2) The owner or operator of a geothermal pool or geothermal bathing place shall maintain flow-through 24 hours a day during the operating season, except for periods of maintenance. If the pool is drained and cleaned each day prior to use, flow-through is only required during the period that the geothermal pool is in use.

(3) A geothermal pool or geothermal bathing place with a volume greater than 3,000 gallons, 11,355 liters, shall have a flow-through rate greater than or equal to one-fourth the pool volume every hour. A geothermal pool or geothermal bathing place with a volume less than or equal to 3,000 gallons, 11,355 liters, shall have a flow-through rate greater than or equal to the pool volume every 30 minutes.

(a) If the results of any three of the last five E. Coli or fecal coliform samples taken from the pool exceed 63 per 50 milliliters, the Local Health Officer may require an increased rate of flow-through independent of or in addition to a bather load reduction as provided in R392-303-9(2).

(b) The Local Health Officer may approve a reduced flow rate if the owner or operator of the geothermal pool or geothermal bathing place can demonstrate that the required bacteriological level can be maintained at the reduced flow rate.

(c) If the operator of a geothermal bathing place is unable to control the flow-through rate, the operator may meet the bacteriologic water quality standards in section R392-303-19 by controlling bather load.

(4) A geothermal pool that has pumped flow shall meet the inlet requirements of R392-302-17. Geothermal bathing places and geothermal pools that have gravity flow inlets, shall either meet the requirements of R392-302-17 or the owner or operator of the pool shall demonstrate to the local health department that the inlet system provides uniform distribution of fresh water throughout the pool. A demonstration of uniform distribution includes computer simulation or a dye test witnessed by a representative of the local health department.

(5) A geothermal pool shall have a drain that allows complete emptying of the pool. Geothermal pool and geothermal bathing place submerged drain grates and covers shall meet the requirements of R392-302-18. Geothermal pool and geothermal bathing place submerged drains shall meet the anti-entrapment requirements of R392-302-18.

(6) A geothermal pool shall have overflow gutters or skimming devices that meet the applicable requirements of R392-302-19.

(7) Geothermal pools and geothermal bathing places shall have an accurate rate-of-flow indicator, reading in gallons per minute. If the rate-of-flow indicator is manufactured by a third party, it shall be properly installed and located according to the manufacturer's recommendations. If a field-fabricated rate-of-flow indicator such as a calibrated weir or flume is used, it shall be designed and calibrated under the direction of a licensed professional engineer. The rate-of-flow indicator must be located in a place and positioned where it can be easily read by the operator as required in R392-303-21(2). The Local Health Officer may exempt a geothermal pool or geothermal bathing place from the requirement for a rate-of-flow indicator if the rate of flow is not adjustable or if there is no practical way to measure flow

(8) Each geothermal pool and geothermal bathing place shall have a temperature measuring device that continuously measures the temperature of the pool at the warmest point. The device shall be accurate to within one degree Fahrenheit (0.6 degrees Celsius). The operator shall calibrate the thermometer in accordance with the manufacturer's specifications as necessary to ensure its accuracy.

#### **R392-303-17. Filtration.**

The owner of a flow-through geothermal pool or geothermal bathing place is not required to filter the water in the pool or bathing place, except as may be necessary to meet safety and water quality requirements. Filters shall meet the requirements of R392-302-20.

#### **R392-303-18. Disinfectant and Chemical Feeders.**

Chemical feeders or disinfectant residuals are not required in geothermal pools or geothermal bathing places, except as may be necessary to meet water quality requirements. If the operator uses any chemical, the operator shall meet the requirements of R392-302-21 for that particular chemical.

#### **R392-303-19. Quality of Water.**

(1) The water in a geothermal pool or geothermal bathing place must have sufficient clarity at all times so that a black disc 6 inches, 15.24 centimeters, in diameter, is readily visible if placed on a white field at the deepest point of the pool (or at 12 feet, 3.66 meters, deep for pools over 12 feet, 3.66 meters, deep). The owner or operator shall close the pool or bathing place immediately if this requirement

is not met. A soaking tub or similar fixture with a volume of 70 gallons or less is exempt from the clarity requirements of this subsection.

(2) The local health department or, if the Local Health Officer chooses, the owner or operator of a geothermal pool or geothermal bathing place shall collect bacteriological samples of the pool water at least twice per month at least one week apart or as otherwise directed by the Local Health Officer. The Local Health Officer shall choose or approve the dates and times that the samples are collected. The Local Health Officer shall choose dates and times when a representative level of bacteria would likely be found. The local health department or the operator, as required by local health department, shall submit the bacteriological samples to a laboratory approved by under R444-14 to perform E. coli or fecal coliform testing.

(a) The local health department or operator, as required by local health department, shall have the laboratory analyze the sample for either E. coli or fecal coliform.

(b) If the operator submits the sample as required by local health department, the operator shall require the laboratory to report sample results within five working days to the local health department and operator.

(3) If the E. coli or fecal coliform levels are found to be greater than the maximum level of 63 per 50 milliliters, the owner or operator shall close the pool until sample results show the level is below 63.

(4) If E. coli or fecal coliform levels are greater than one per 50 milliliters, the pool operator shall post the level found as required in R392-303-22.

(5) The owner or operator of a geothermal pool or geothermal bathing place should maintain the pool water temperature at a maximum of 104 degrees Fahrenheit, 40 degrees Celsius. A geothermal pool or geothermal bathing place that exceeds 104 degrees Fahrenheit, 40 degrees Celsius, at the minimum required turnover rate shall have, and employ when necessary, a method of temperature reduction in the pool or bathing place that maintains the minimum flow-through rate required under R392-303-16(3). An approved method of temperature reduction may include methods such as the introduction of cool water from a source approved by the Local Health Officer, the direct cooling of the geothermal source water, and diversion of the geothermal source water to allow it to cool prior to entering the pool or impoundment. The temperature reduction method shall be capable of reducing the temperature of the pool within 2 hours of activation from the maximum anticipated temperature to below 104 degrees Fahrenheit, 40 degrees Celsius. If the temperature of the source water or cooling rate of the pool is difficult to control, a temperature drift of up to four degrees Fahrenheit, 2.2 degrees Celsius, may be allowed by the Local Health Officer if the owner or operator has activated the temperature reduction measure. The owner or operator of a geothermal pool or geothermal bathing place shall not permit bathers to use the pool if the temperature is above 108 degrees Fahrenheit, 42.2 degrees Celsius, except the owner may allow a bather to use a soaking tub or similar fixture with a volume of 70 gallons or less and a water temperature less than or equal to 110 degrees Fahrenheit, 43.3 degrees Celsius.

#### **R392-303-20. Cleaning Pools.**

(1) The owner or operator of a geothermal pool shall remove any visible dirt on the bottom of the pool at least once every 24

hours or more frequently as needed to keep the pool free of dirt and debris.

(2) The owner or operator of a geothermal pool or geothermal bathing place shall clean the water surface of the pool as often as needed to keep the pool free of scum or floating matter.

(3) The owner or operator of a geothermal pool shall keep pool surfaces, decks, handrails, floors, walls, and ceilings of rooms enclosing pools, dressing rooms and equipment rooms clean, sanitary, and in good repair. The owner or operator of a geothermal bathing place shall keep handholds, handrails, entrance points, walkways, dressing rooms, and equipment rooms clean and in good repair.

#### **R392-303-21. Supervision of Pools and Bathing Places.**

(1) Geothermal pools and geothermal bathing places shall meet the requirements of R392-302-29(1).

(2) The operator of a geothermal pool or geothermal bathing place shall record the flow-through rate and pool temperature prior to opening the pool or bathing place each day. To verify bather load, the operator shall record the number of patrons at the geothermal bathing place or pool every four hours that the geothermal bathing place or pool is open for use or shall record the time of day that each user checks in. If a pool uses disinfection or filtration, the operator shall keep the disinfection and filtration records required in R392-302-29. The Local Health Officer may alter the requirement for the frequency of record keeping if an increased or decreased frequency is more reasonable considering the likelihood of a change in the values recorded. The owner or operator shall make the records required by this section available for inspection by representatives of the local health department and shall retain the records for at least three years.

#### **R392-303-22. Caution Sign Content.**

(1)(a) The operator of a geothermal pool or a geothermal bathing place in which the requirements of Table 6 in R392-302-27 are not met for disinfectant residual shall post a caution sign with the following bulleted points:

-WATER IN THIS POOL CONTAINS NO DISINFECTANT  
-BATHING IN THIS POOL MAY INCREASE YOUR RISK OF INFECTIOUS DISEASE

-PERSONS SUFFERING FROM A COMMUNICABLE DISEASE TRANSMISSIBLE BY WATER SHALL NOT ENTER THE WATER

-KEEP POOL WATER OUT OF YOUR MOUTH AND NOSE.

(b) The operator shall post an additional sign or an addition to the sign required by this section that describes the results of the sample using a changeable element such as a "white board" or attachable digits. The sign shall state:

-THE MOST RECENT BACTERIAL RESULT OF WATER FROM THIS POOL WAS (the changeable element shall be placed at this point with the most recent fecal coliform or E. coli count per 50 milliliters posted). FOR COMPARISON, A NON-GEOTHERMAL POOL CANNOT EXCEED 1

(c) If ozone or ultraviolet light is used to treat the water, the following statement may be added to the sign; the statement shall be verbatim and state the method of treatment:

-TREATED WITH (UV LIGHT or OZONE or UV LIGHT AND OZONE if both are used)-PROVIDES SHORT-TERM DISINFECTION ONLY.

(2) If a geothermal pool or geothermal bathing place is operated at a temperature greater than or equal to 100 degrees Fahrenheit, 37.8 degrees Celsius, the operator shall post a separate caution sign that includes the following bulleted points:

-POOL WATER MAY EXCEED 100 DEGREES F. (37.8 DEGREES C.)

-CONSULT A PHYSICIAN IF YOU: ARE ELDERLY OR PREGNANT; HAVE HEART DISEASE, DIABETES, OR HIGH BLOOD PRESSURE; OR USE PRESCRIPTION MEDICATION

-DO NOT USE POOL IF ALONE OR UNDER THE INFLUENCE OF ANY IMPAIRING SUBSTANCE

-DO NOT USE POOL FOR MORE THAN 15 MINUTES AT A TIME

-CHILDREN UNDER 5 ARE PROHIBITED; CHILDREN UNDER 14 MUST BE WITH A PERSON OVER 18 YEARS

(3) Except at a geothermal pool or a geothermal bathing place where head-first entry is permitted, the operator shall post a warning sign that states, "NO HEAD-FIRST ENTRY" in accordance with R392-303-23 and 24.

(4) If the geothermal pool or bathing place source water fails any of the standards found in Table 1, the operator shall post a warning sign that states the following:

-POOL WATER DOES NOT MEET EPA DRINKING WATER STANDARDS FOR (the failed constituent or constituents listed in Table 1).

-(The analytical result of each failed constituent and the value of the Table 1 standard that has not been met.) For example: ARSENIC IN THE POOL IS 35 PARTS PER BILLION; EPA STANDARDS ALLOW ONLY 10.

-THERE MAY BE HEALTH RISKS ASSOCIATED WITH BATHING IN THIS WATER.

- USE AT YOUR OWN RISK

#### **R392-303-23. Caution Sign Placement.**

(1) The operator of a geothermal pool or geothermal bathing place shall post caution and warning signs that meet the requirements of this rule in conspicuous locations that are in the line of sight of a persons using the premises and readily visible so that all persons are alerted to potential hazards and informed before using the geothermal pool or geothermal bathing place.

(a) The operator shall place the caution sign required in subsection R392-303-22(1) at the reception or sales counter and no more than 10 feet from where a person checks in or pays for the use of the pool. The sign shall be visible to potential customers before they pay for entry or pass the reception or sales counter. If there are multiple geothermal pools or geothermal bathing places at the facility, the operator shall display on the caution sign at the reception or sales counter the bacterial count of the geothermal pool or geothermal bathing place in the facility that had the highest level of E. coli or fecal coliform found in the most recent sampling event. The operator shall post an additional sign required in R392-303-22(1) at each pool or bathing place. The operator shall post the sign in a location and position readily visible and within ten feet, 3 meters, of at least one point at the water's edge. The operator shall display on the additional sign the most recent E. coli or fecal coliform count of the particular geothermal pool or geothermal bathing place.

(b) The operator shall place any caution sign required in subsection R392-303-22(2) either:



(i) next to the sign required in subsection R392-303-22(1) if the pool or all pools may exceed 100 degrees Fahrenheit, 37.8 degrees Celsius; or

(ii) within 10 feet of the entrance or entrances to each pool that is operated at a temperature greater than or equal to 100 degrees Fahrenheit, 37.8 degrees Celsius.

(c) The operator shall place any warning sign required in subsection R392-303-22(3) either:

(i) next to the sign(s) required in subsection R392-303-22(1) if the pool or all pools do not permit head-first entry; or

(ii) within 10 feet of the entrance or entrances to each pool that does not permit head-first entry.

(d) The operator shall place any warning sign required in subsection R392-303-22(4) either:

(i) next to the sign(s) required in subsection R392-303-22(1); or

(ii) within 10 feet of the entrance or entrances to each pool.

(2) In lieu of meeting the signage requirements listed in R392-303-22 and 23(1), the operator may have the patron sign a document that contains the same language as required for the signs required in R392-303-22. The signature is to acknowledge that the patron has received the information. The document shall disclose the most recent bacteriologic analysis results. The operator shall make a copy of the document available to each patron upon request. The operator shall retain the disclosure documents for at least one year and make them available for inspection by public health officials.

#### **R392-303-24. Caution Sign Format Requirements.**

(1) The caution sign required by R392-303-22(1) and R392-303-22(2) shall meet the following requirements:

(a) The signs shall be at least 24 inches, 61 centimeters, by 18 inches, 46 centimeters, on a white background. If the sign is larger than 24 inches, 61 centimeters, by 18 inches, 46 centimeters, the sizes of the other elements of the sign shall be proportionally larger.

(b) All lettering shall be in a sans serif font proportional thickness to height so as to be easily readable. Acceptable fonts are arial bold, folio medium, franklin gothic, helvetica, helvetica bold, meta bold, news gothic bold, poster gothic, and universe. In addition, the letters shall be:

(i) black in color;

(ii) capital letters; and

(iii) adequately spaced and not crowded.

(c) There must be a panel at the top of the sign. The background of the panel shall be safety yellow in color and shall:

(i) be at least 3.3 centimeters, high and 44 centimeters wide, including a black line border that is 0.16 centimeters wide surrounding the safety yellow background;

(ii) have the word "CAUTION" in capital letters that are two centimeters high; and

(iii) have an internationally recognized safety alert symbol that is two centimeters high and placed immediately to the left of the word "CAUTION".

(d) The safety alert symbol shall be black with a yellow field.

(e) The word "CAUTION" and the symbol shall be vertically and horizontally centered within the yellow panel.

(f) The letters in the body of the sign shall be legible, at least one centimeter high, and clearly visible.

(g) The body of the sign required in subsection R392-303-22(1) shall list the bulleted statements required in that section.

(h) The body of the sign required in subsection R392-303-22(2) shall list the bulleted statements required in that section.

(2) The warning sign required by R392-303-22(3) and R392-303-22(4) shall meet the following requirements:

(a) The signs shall be at least 17 inches, 43 centimeters, by 11 inches, 28 centimeters, on a white background. If the sign is larger than 17 inches, 43 centimeters, by 11 inches, 28 centimeters, the sizes of the other elements of the sign shall be proportionally larger.

(b) All lettering shall be in a sans serif font proportional thickness to height so as to be easily readable. Acceptable fonts are arial, arial bold, folio medium, franklin gothic, helvetica, helvetica bold, meta bold, news gothic bold, poster gothic, and universe. In addition, the letters shall be:

(i) black in color;

(ii) capital letters; and

(iii) adequately spaced and not crowded.

(c) There must be a panel at the top of the sign. The background of the panel shall be safety orange in color and shall:

(i) be at least 3.3 centimeters, high and 41 centimeters wide, including a black line border that is 0.16 centimeters wide surrounding the safety orange background;

(ii) have the word "WARNING" in capital letters that are two centimeters high; and

(iii) have an internationally recognized safety alert symbol that is two centimeters high and placed immediately to the left of the word "WARNING".

(d) The safety alert symbol shall be black with a safety orange field.

(e) The word "WARNING" and the symbol shall be vertically and horizontally centered within the orange panel.

(f) The letters in the body of the sign shall be legible, at least one inch (2.54 centimeters) high, and clearly visible

(g) The body of the sign required in subsection R392-303-22(3) shall display the text "NO HEAD-FIRST ENTRY". The text on the body shall be centered vertically and horizontally in the space below the orange panel with "NO HEAD-FIRST" on one line and "ENTRY" on the line below.

(h) The body of the sign required in subsection R392-303-22(4) shall list the bulleted statements required in that section.

#### **R392-303-25. Enforcement and Penalties.**

A person who violates a provision of this rule is subject to a Class B misdemeanor on the first offense or a Class A misdemeanor on the second offense within one year or a civil penalty of up to \$5,000 for each offense as provided in Section 26-23-6.

**KEY: geothermal pools, geothermal natural bathing places, hot springs, geothermal spas**

**Date of Enactment or Last Substantive Amendment: 2009**  
**Authorizing, Implemented, or Interpreted Law: 26-15-2**



Health, Health Systems Improvement,  
Child Care Licensing  
**R430-100**  
Child Care Centers

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE No.: 32416

FILED: 03/02/2009, 11:14

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change makes minor adjustments to correct errors and omissions in the current rule.

SUMMARY OF THE RULE OR CHANGE: The change makes numbering and other corrections to the rule which include: defining the terms "protective cushioning", "sleep equipment", and "volunteers"; changing the requirement to "disinfect" to "sanitize"; clarifying the requirement for children to play in an enclosed area when outdoors; clarifying how required protective cushioning is measured for swings; clarifying the requirements for volunteers, including when they are included in the caregiver to child ratio; removing the requirement for immunization records for school age children; extending the time allowed for new employees to obtain a TB test; clarifying the documentation of parent approval when the facility provides medication; and clarifying when rules apply to both infants and toddlers.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 39

## ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The Division does not anticipate any cost or savings to the state budget because the rule changes do not affect the caseloads of the state workers who regulate child care programs using this administrative rule, and the state does not own any child care programs.

❖ LOCAL GOVERNMENTS: Some local governments may operate a child care program. In reviewing the proposed rule changes with our Advisory Committee, the committee did not identify any changes in costs or savings to child care programs that would result from the rule changes. Therefore, the Division does not anticipate either a cost or a savings to those local governments who operate a child care program.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: All child care programs are small businesses. In reviewing the proposed rule changes with our Advisory Committee, the committee did not identify any changes in costs or savings to child care programs that would result from the rule changes. Therefore, the Division does not anticipate either a cost or a savings to the small business owners who operate a child care program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There would be no costs because none of the proposed rule changes require child care providers (the affected persons) to spend additional money to comply with the rules as revised in this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes have been reviewed with the Child Care Advisory Committee, which includes representatives from the regulated businesses. No increased fiscal impact was anticipated by that group. It also

appears to me that changes and clarifications will not have a fiscal impact. David N. Sundwall, MD, Executive Director

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

HEALTH  
HEALTH SYSTEMS IMPROVEMENT,  
CHILD CARE LICENSING  
CANNON HEALTH BLDG  
288 N 1460 W  
SALT LAKE CITY UT 84116-3231, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Teresa Whiting at the above address, by phone at 801-538-6320, by FAX at 801-538-6325, or by Internet E-mail at TWHITING@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 04/14/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2009

AUTHORIZED BY: David N. Sundwall, Executive Director

**R430. Health, Health Systems Improvement, Child Care Licensing.****R430-100. Child Care Centers.****R430-100-2. Definitions.**

(1) "Accredited College" means a college accredited by an agency recognized by the United States Department of Education as a valid accrediting agency.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Body fluids" means blood, urine, feces, vomit, mucous, saliva, and breast milk.

(4) "Caregiver" means an employee or volunteer who provides direct care to children.

(5) "CPSC" means the Consumer Product Safety Commission.

(6) "Department" means the Utah Department of Health.

(7) "Designated Play Surface" means a flat surface on a piece of stationary play equipment that a child could stand, walk, sit, or climb on, and is at least 2" by 2" in size.

(8) "Direct Supervision" for infants, toddlers, and preschoolers means the caregiver can see and hear all of the children in his or her assigned group, and is near enough to intervene when necessary. "Direct Supervision" for school age children means the caregiver must be able to hear school age children and must be near enough to intervene when necessary. [

~~(9) "Disinfect" means to eliminate most germs from inanimate surfaces through the use of chemicals registered with the U.S. Environmental Protection Agency as disinfectants in the manner described on the label, or through physical agents such as heat.]~~

[(10)](9) "Emotional Abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.

~~(44)~~(10) "Group" means the children assigned to one or two caregivers, occupying an individual classroom or an area defined by furniture or another partition within a room.

~~(42)~~(11) "Health Care Provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.

~~(43)~~(12) "Inaccessible to Children" means either locked, such as in a locked room, cupboard or drawer, or with a child safety lock, or in a location that a child can not get to.

~~(44)~~(13) "Infant" means a child aged birth through 11 months of age.

~~(45)~~(14) "Infectious Disease" means an illness that is capable of being spread from one person to another.

~~(46)~~(15) "Licensee" means the legally responsible person or persons holding a valid Department of Health child care license.

~~(47)~~(16) "Over-the-Counter Medication" means medication that can be purchased without a written prescription from a health care provider. This includes herbal remedies.

~~(48)~~(17) "Parent" means the parent or legal guardian of a child in care.

~~(49)~~(18) "Person" means an individual or a business entity.

~~(20)~~(19) "Physical Abuse" means causing nonaccidental physical harm to a child.

~~(21)~~(20) "Play Equipment Platform" means a flat surface on a piece of stationary play equipment intended for more than one user to stand on, and upon which the users can move freely.

~~(22)~~(21) "Preschooler" means a child aged 2 through 4, and 5 year olds who have not yet started kindergarten.

~~(23)~~(22) "Protective Barrier" means an enclosing structure such as bars, lattice, or a solid panel, around an elevated play equipment platform that is intended to prevent a child from either accidentally or deliberately passing through the barrier.

(23) "Protective cushioning" means cushioning material that meets American Society for Testing and Materials Specification F 1292. For example, sand, pea gravel, engineered wood fibers, shredded tires, or unitary cushioning material, such as rubber mats or poured rubber-like material.

(24) "Provider" means the licensee or a staff member to whom the licensee has delegated a duty under this rule.

(25) "Sanitize" means to remove soil and small amounts of certain bacteria from a surface or object with a chemical agent.

(26) "School Age" means kindergarten and older age children.

(27) "Sexual Abuse" means abuse as defined in Utah Code, Section 76-5-404.1.(1)(2).

(28) "Sexually Explicit Material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5a-2(8).

(29) "Sleeping Equipment" means a cot, mat, crib, bassinet, porta-crib, or play pen.

~~(29)~~(30) "Stationary Play Equipment" means equipment such as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when children use it. Stationary play equipment does not include:

- (a) a sandbox;
- (b) a stationary circular tricycle;
- (c) a sensory table; or
- (d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.

~~(30)~~(31) "Toddler" means a child aged 12 months but less than 24 months.

~~(31)~~(32) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(33) "Volunteer" means a person who provides care to a child but does not receive direct or indirect compensation for doing so.

#### **R430-100-3. License Required.**

A person or persons must be licensed as a child care center under this rule if:

(1) they provide care in [lieu of care ordinarily provided by a parent, for four or more hours per day]the absence of the child's parent;

(2) they provide care in a place other than the provider's home or the child's home;

(3) they provide care for five or more children, for four or more hours per day;

(4) they provide care for each individual child for less than 24 hours per day;

(5) [the program has a regularly scheduled, ongoing enrollment]the program is open to children on an ongoing basis for four or more weeks in a year; and

(6) they provide care for direct or indirect compensation.

#### **R430-100-4. ~~Indoor Environment~~Facility.**

(1) The licensee shall ensure that any building or playground structure constructed prior to 1978 which has peeling, flaking, chalking, or failing paint is tested for lead based paint. If lead based paint is found, the licensee shall contact the local health department and follow all required procedures for the removal of the lead based paint.

(2) There shall be one working toilet and one working sink for every fifteen children in the center, excluding diapered children.

(3) School age children shall have privacy when using the bathroom.

(4) For buildings constructed after 1 July 1997 there shall be a working hand washing sink in each classroom.

(5) Each area where infants or toddlers are cared for shall meet one of the following criteria:

(a) There shall be two working sinks in the room. One sink shall be used exclusively for the preparation of food and bottles and hand washing prior to food preparation, and the other sink shall be used exclusively for hand washing after diapering and non-food activities.

(b) There shall be one working sink in the room which is used exclusively for hand washing, and all bottle and food preparation shall be done in the kitchen and brought to the infant and toddler area by a non-diapering staff member.

(6) Infant and toddler areas shall not be used as access to other areas or rooms.

(7) All rooms and occupied areas in the building shall be ventilated by windows that open and have screens or by mechanical ventilation.

(8) The provider shall maintain the indoor temperature between 65 and 82 degrees Fahrenheit.

(9) The provider shall maintain adequate light intensity for the safety of children and the type of activity being conducted by keeping lighting equipment in good working condition.

(10) Windows, glass doors, and glass mirrors within 36 inches from the floor or ground shall be made of safety glass, or have a protective guard.

(11) There shall be at least 35 square feet of indoor space for each child, including the licensee's and employees' children who are not counted in the caregiver to child ratios.

(12) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used:

- (a) by children;
- (b) for the care of children; or
- (c) to store classroom materials.

(13) Bathrooms, closets, staff lockers, hallways, corridors, lobbies, kitchens, or staff offices are not included when calculating indoor space for children's use.

#### **R430-100-5. Cleaning and Maintenance.**

(1) The provider shall maintain a clean and sanitary environment.

(2) The provider shall clean and ~~[disinfect]~~ sanitize bathroom surfaces daily, including toilets, sinks, faucets, and counters.

(3) The provider shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other vermin.

(4) The provider shall maintain ceilings, walls, floor coverings, draperies, blinds, furniture, fixtures, and equipment in good repair to prevent injury to children.

(5) The provider shall maintain entrances, exits, steps and outside walkways in a safe condition, and free of ice, snow, and other hazards.

#### **R430-100-6. Outdoor Environment.**

(1) There shall be an outdoor play area for children that is safely accessible to children.

(2) The outdoor play area shall have at least 40 square feet of space for each child using the playground at the same time as other children.

(3) The outdoor play area shall accommodate at least 33 percent of the licensed capacity at one time or shall be at least 1600 square feet.

(4) The outdoor play area shall be enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high. When children play outdoors, they must play in the enclosed play area except during off-site activities described in Section R430-100-20(5).

(5) There shall be no gaps in fences greater than 5 inches at any point, nor shall gaps between the bottom of the fence and the ground be more than 5 inches.

(6) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter anywhere in the outdoor play area where children's feet cannot touch the ground.[]

~~—(7) If there is a swimming pool on the premises that is not emptied after each use:~~

~~—(a) the provider shall ensure that the pool is enclosed within a fence or other solid barrier at least six feet high that is kept locked whenever the pool is not in use;~~

~~—(b) the provider shall maintain the pool in a safe manner;~~

~~—(c) the provider shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool; and~~

~~—(d) If the pool is over four feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another~~

~~agency that the licensee can demonstrate to the Department to be equivalent to Red Cross certification, any time children have access to the pool.]~~

~~[(8)](7) When in use, t[F]he outdoor play area shall be free of trash, animal excrement, harmful plants, objects, or substances, and standing water.[]~~

~~—(9) If wading pools are used:~~

~~—(a) a caregiver must be at the pool supervising children whenever there is water in the pool;~~

~~—(b) diapered children must wear swim diapers or rubber pants while in the pool; and~~

~~—(c) the pool shall be emptied and disinfected after each use by a separate group of children.]~~

~~[(40)](8) The outdoor play area shall have a shaded area to protect children from excessive sun and heat.~~

~~[(44)](9) An outdoor source of drinking water, such as a drinking fountain, individually labeled water bottles, or a pitcher of water and individual cups that are taken outside, shall be available to children whenever the outside temperature is 75 degrees or higher.[]~~

~~—(12) There shall be no trampolines in the outdoor play area.]~~

~~[(43)](10) All outdoor play equipment and areas shall comply with the following safety standards by the dates specified in Table 4.~~

(a) All stationary play equipment used by infants and toddlers shall meet the following requirements:

(i) There shall be no designated play surface that exceeds 3 feet in height.

(ii) If the height of a designated play surface or climbing bar on a piece of equipment, excluding swings, is greater than 18 inches, it shall have use zones that meet the following criteria:

(A) The use zone shall extend a minimum of 3 feet in all directions from the perimeter of each piece of equipment.

(B) Use zones may overlap if two pieces of equipment are positioned adjacent to one another, with a minimum of 3 feet between the perimeters of the two pieces of equipment.

(C) The use zone in front of a slide may not overlap the use zone of any other piece of equipment.

(iii) The use zone in the front and rear of all swings shall extend a minimum distance of twice the height from the swing seat to the pivot point of the swing, and shall not overlap the use zone of any other piece of equipment.

(iv) The use zone for the sides of a single-axis swing shall extend a minimum of 3 feet from the perimeter of the structure, and may overlap the use zone of a separate adjacent piece of equipment.

(v) The use zone of a multi-axis swing shall extend a minimum distance of 3 feet plus the length of the suspending members, and shall never overlap the use zone of another piece of equipment.

(vi) The use zone for merry-go-rounds shall never overlap the use zone of another piece of equipment.

(vii) The use zone for spring rockers shall extend a minimum of 3 feet from the at-rest perimeter of the equipment.

(viii) Swings shall have enclosed seats.

(b) All stationary play equipment used by preschoolers or school age children shall meet the following requirements for use zones:

(i) If the height of a designated play surface or climbing bar on a piece of equipment, excluding swings, is greater than 20 inches, it shall have use zones that meet the following criteria:

(A) The use zone shall extend a minimum of 6 feet in all directions from the perimeter of each piece of equipment.

(B) The use zones of two pieces of equipment that are positioned adjacent to one another may overlap if the designated

play surfaces of each structure are no more than 30 inches above the protective surfacing underneath the equipment. In such cases, there shall be a minimum of 6 feet between the adjacent pieces of equipment.

(C) There shall be a minimum use zone of 9 feet between adjacent pieces of equipment if the designated play surface of one or both pieces of equipment is more than 30 inches above the protective surfacing underneath the equipment.

(ii) The use zone in the front and rear of a single-axis swing shall extend a minimum distance of twice the height of the pivot point of the swing, and may not overlap the use zone of any other piece of equipment.

(iii) The use zone for the sides of a single-axis swing shall extend a minimum of 6 feet from the perimeter of the structure, and may overlap the use zone of a separate piece of equipment.

(iv) The use zone of a multi-axis swing shall extend a minimum distance of 6 feet plus the length of the suspending members, and shall never overlap the use zone of another piece of equipment.

(v) The use zone for merry-go-rounds shall never overlap the use zone of another piece of equipment.

(vi) The use zone for spring rockers shall extend a minimum of 6 feet from the at-rest perimeter of the equipment.

(c) Two-year-olds may play on infant and toddler play equipment.

(d) Protective cushioning is required in all use zones.

(e) If sand, gravel, or shredded tires are used as protective cushioning, the depth of the material shall meet the CPSC guidelines in Table 1. The provider shall ensure that the material is periodically checked for compaction, and if compacted, shall loosen the material to the depth listed in Table 1. If the material cannot be loosened due to extreme weather conditions, the provider shall not allow children to play on the equipment until the material can be loosened to the required depth.

TABLE 1  
Depths of Protective Cushioning Required  
for Sand, Gravel, and Shredded Tires

[Highest Designated Play Surface or Climbing Bar, Climbing Bar, or Swing Pivot Point	Fine Sand		Coarse Sand		Shredded Tires	
	Sand	Gravel	Gravel	Gravel	Gravel	Tires
4' high or less	6"	6"	6"	6"	6"	6"
Over 4' up to 5'	6"	6"	6"	6"	6"	6"
Over 5' up to 6'	12"	12"	6"	12"	6"	6"
Over 6' up to 7'	12"	not allowed	9"	not allowed	6"	6"
Over 7' up to 8'	12"	not allowed	12"	not allowed	6"	6"
Over 8' up to 9'	12"	not allowed	12"	not allowed	6"	6"
Over 9' up to 10'	not allowed	not allowed	12"	not allowed	6"	6"
Over 10' up to 11'	not allowed	not allowed	not allowed	not allowed	6"	6"
Over 11' up to 12'	not allowed	not allowed	not allowed	not allowed	6"	6"

Over 7' up to 8'	12"	not allowed	12"	not allowed	6"	6"
Over 8' up to 9'	12"	not allowed	12"	not allowed	6"	6"
Over 9' up to 10'	not allowed	not allowed	12"	not allowed	6"	6"
Over 10' up to 11'	not allowed	not allowed	not allowed	not allowed	6"	6"
Over 11' up to 12'	not allowed	not allowed	not allowed	not allowed	6"	6"

(f) If shredded wood products are used as protective cushioning, the depth of the shredded wood shall meet the CPSC guidelines in Table 2.

TABLE 2  
Depths of Protective Cushioning Required  
for Shredded Wood Products

[Highest Designated Play Surface, Climbing Bar, or Swing Pivot Point	Engineered Wood		Double Shredded	
	Wood Fibers	Chips	Bark	Mulch
4' high or less	6"	6"	6"	6"
Over 4' up to 5'	6"	6"	6"	6"
Over 5' up to 6'	6"	6"	6"	6"
Over 6' up to 7'	9"	6"	9"	9"
Over 7' up to 8'	12"	9"	9"	9"
Over 8' up to 9'	12"	9"	9"	9"
Over 9' up to 10'	12"	9"	9"	9"
Over 10' up to 11'	12"	12"	12"	12"
Over 11'	12"	not allowed	not allowed	not allowed

(g) If wood products are used as cushioning material:  
(i) the providers shall maintain documentation from the manufacturer verifying that the material meets ASTM Specification F 1292, which is adopted by reference; and

(ii) there shall be adequate drainage under the material.

(h) If a unitary cushioning material, such as rubber mats or poured rubber-like material is used as protective cushioning:

(i) the licensee shall ensure that the material meets the standard established in ASTM Specification F 1292. The provider shall maintain documentation from the manufacturer that the material meets these specifications.

(ii) the licensee shall ensure that the cushioning material is securely installed, so that it cannot become displaced when children jump, run, walk, land, or move on it, or be moved by children picking it up.

(i) Stationary play equipment that has a designated play surface less than the height specified in Table 3, and that does not have moving parts children sit or stand on, may be placed on grass, but shall not be placed on concrete, asphalt, dirt, or any other hard surface.

TABLE 3  
Heights of Designated Play Surfaces  
That May Be Placed on Grass

INFANTS and TODDLERS Less than 18"	PRESCHOOLERS Less than 20"	SCHOOL AGE Less than 30"
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(j) On stationary play equipment used by infants and toddlers, protective barriers shall be provided on all play equipment platforms that are over 18 inches above the ground. The bottom of the protective barrier shall be less than 3-1/2 inches above the surface of the platform, and there shall be no openings greater than 3-1/2 inches in the barrier. The top of the protective barrier shall be at least 24 inches above the surface of the platform.

(k) On stationary play equipment used by preschoolers, protective barriers shall be provided on all play equipment platforms that are over 30 inches above the ground. The bottom of the protective barrier shall be less than 3-1/2 inches above the surface of the platform, and there shall be no openings greater than 3-1/2 inches in the barrier. The top of the protective barrier shall be at least 29 inches above the surface of the platform.

(l) On stationary play equipment used by school age children, protective barriers shall be provided on all play equipment platforms that are over 48 inches above the ground. The bottom of the protective barrier shall be less than 3-1/2 inches above the surface of the platform, and there shall be no openings greater than 3-1/2 inches in the barrier. The top of the protective barrier shall be at least 38 inches above the surface of the platform.

(m) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on any piece of stationary play equipment, or within or adjacent to the use zone of any piece of stationary play equipment.

(n) There shall be no protrusion or strangulation hazards in or adjacent to the use zone of any piece of stationary play equipment.

(o) There shall be no crush, shearing, or sharp edge hazards in or adjacent to the use zone of any piece of stationary play equipment.

(p) There shall be no tripping hazards, such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

TABLE 4  
Phase-in Schedule for Stationary Play Equipment Rules

By December 2007:	R430-100-6[ <del>(13)</del> ] (10) (a) (viii) R430-100-6(13) (d-h)
By December 2008:	R430-100-6[ <del>(13)</del> ] (10) (i), unless equipment is installed in concrete or asphalt footings. R430-100-6[ <del>(13)</del> ] (10) (n)
By December 2009:	R430-100-6[ <del>(13)</del> ] (10) (a) (i) R430-100-6[ <del>(13)</del> ] (10) (i), when equipment is installed in concrete or asphalt footings.
By December 2010:	R430-100-6[ <del>(13)</del> ] (10) (j-1) R430-100-6[ <del>(13)</del> ] (10) (m) R430-100-6[ <del>(13)</del> ] (10) (o)
By December 2011:	R430-100-6[ <del>(13)</del> ] (10) (a) (ii-vii), R430-100-6(10) (b), and R430-100-6(13) (c) R430-100-6[ <del>(13)</del> ] (10) (p)

(14) The provider shall maintain playgrounds and playground equipment to protect children's safety.

#### R430-100-7. Personnel.

(1) The center must have a director who is at least 21 years of age and who has one of the following educational credentials:

(a) an associates, bachelors, or graduate degree from an accredited college and successful completion of at least 12 semester credit hours of early childhood development courses;

(b) valid proof of a level 8, 9, or 10 Utah Early Childhood Career Ladder certification issued by the Utah Office of Child Care or the Utah Child Care Professional Development Institute;

(c) a currently valid national certification such as a Certified Childcare Professional (CCP) issued by the National Child Care Association, a Child Development Associate (CDA) issued by the Council for Early Childhood Professional Recognition, or other credential that the licensee demonstrates as equivalent to the Department; or

(d) a currently valid National Administrator Credential (NAC) issued by the National Child Care Association, plus one of the following:

(i) valid proof of successful completion of 12 semester credit hours of early childhood development courses from an accredited college; or

(ii) valid proof of completion of the following six Utah Early Childhood Career Ladder courses offered through Child Care Resource and Referral: Child Development Ages and Stages, Learning in the Early Years, A Great Place for Kids, Strong and Smart, Learning to Get Along, and Advanced Child Development.

(e) Center directors who used only the National Administrator Credential (NAC) to meet the director qualifications prior to 1 July 2006 have until 30 June 2011 to obtain the required additional training in early childhood development.

(2) All caregivers shall be at least 18 years of age.

(3) All assistant caregivers shall be at least 16 years of age, and shall work under the immediate supervision of a caregiver who is at least 18 years of age.

(4) Assistant caregivers may be included in caregiver to child ratios, but shall not be left unsupervised with ~~children~~ any child in care.

(5) Assistant caregivers shall meet all of the caregiver requirements under this rule, except the caregiver age requirement of 18 years.

(6) A volunteer may be included in the provider to child ratio only if the volunteer meets all of the caregiver requirements of this rule.

(7) Whenever there are more than 8 children at the center, there shall be at least two caregivers present who can demonstrate the English literacy skills needed to care for children and respond to emergencies. If there is only one caregiver present because there are 8 or fewer children at the center, that caregiver must be able to demonstrate the English literacy skills needed to care for children and respond to emergencies.

(8) Each new director, assistant director, caregiver, assistant caregiver, and volunteer shall receive orientation training prior to assuming caregiving duties. Orientation training shall be documented in the caregiver's file and shall include the following topics:

(a) job description and duties;

(b) the center's written policies and procedures;

(c) the center's emergency and disaster plan;

(d) ~~[child care licensing rules for:~~  
~~(i) Supervision and Ratios. R430-100-11;~~  
~~(ii) Injury Prevention. R430-100-12;~~  
~~(iii) Parent Notification and Child Security. R430-100-13;~~  
~~(iv) Child Health. 430-100-14;~~  
~~(v) Child Nutrition. R430-100-15;~~  
~~(vi) Infection Control. R430-100-16;~~  
~~(vii) Medications. R430-100-17;~~  
~~(viii) Napping. R430-100-18;~~  
~~(ix) Child Discipline. R430-100-19;~~  
~~(x) Activities. R430-100-20;~~  
~~(xi) Transportation, R430-100-21, if the center provides transportation;~~  
~~(xii) Animals, R430-100-22, if the center permits animals;~~  
~~(xiii) Diapering, R430-100-23, if the center diapers children;~~  
~~and~~  
~~(xiv) Infant and Toddler Care, R430-100-24, if the center cares for infants or toddlers.]~~  
the current child care licensing rules found in Sections R430-100-11 through 24;

(e) introduction and orientation to the children assigned to the caregiver;

(f) a review of the information in the health assessment for each child in their assigned group;

(g) procedure for releasing children to authorized individuals only;

(h) proper clean up of body fluids;

(i) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(j) obtaining assistance in emergencies, as specified in the center's emergency and disaster plan.

(k) If the center provides infant or toddler care, new caregiver orientation training topics shall also include:

(i) preventing shaken baby syndrome and coping with crying babies; and

(ii) preventing sudden infant death syndrome.

~~[(8)9] The following individuals[center director and all caregivers]~~ shall complete a minimum of 20 hours of child care training each year, based on the center's license date[-];

~~(a) the director;~~

~~(b) the assistant director, if the center has one;~~

~~(c) all caregivers;~~

~~(d) all substitutes who work an average of 10 hours a week or more, as averaged over any three month period; and~~

~~(e) all volunteers that the provider includes in the provider to child ratio.~~

~~[(\*)](10) Documentation of annual training shall be kept in each caregiver's file, and shall include the name of the training organization, the date, the training topic, and the total hours or minutes of training.~~

~~[(\*)](11) Caregivers who begin employment partway through the license year shall complete a proportionate number of training hours based on the number of months worked prior to the center's relicensure date.~~

~~[(\*)](12) Annual training hours shall include the following topics:~~

~~[(i) a review of all of the current child care licensing rules for:~~

~~(A) Supervision and Ratios. R430-100-11;~~

~~(B) Injury Prevention. R430-100-12;~~

~~(C) Parent Notification and Child Security. R430-100-13;~~

~~(D) Child Health. 430-100-14;~~

~~(E) Child Nutrition. R430-100-15;~~

~~(F) Infection Control. R430-100-16;~~

~~(G) Medications. R430-100-17;~~

~~(H) Napping. R430-100-18;~~

~~(I) Child Discipline. R430-100-19;~~

~~(J) Activities. R430-100-20;~~

~~(K) Transportation, R430-100-21, if the center provides transportation;~~

~~(L) Animals, R430-100-22, if the center permits animals;~~

~~(M) Diapering, R430-100-23, if the center diapers children; and~~

~~(N) Infant and Toddler Care, R430-100-24, if the center cares for infants or toddlers.]~~

(a) the current child care licensing rules found in Sections R430-100-11 through 24;

~~[(\*\*)](b) a review of the center's written policies and procedures and emergency and disaster plans, including any updates;~~

~~[(\*\*)](c) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;~~

~~[(\*\*)](d) principles of child growth and development, including development of the brain; and~~

~~[(\*\*)](e) positive guidance.~~

~~[(\*)](13) If the center provides infant or toddler care, annual training topics for the center director and all infant and toddler caregivers shall also include:~~

~~[(\*)](a) preventing shaken baby syndrome and coping with crying babies; and~~

~~[(\*\*)](b) preventing sudden infant death syndrome.~~

~~[(\*)](14) A minimum of 10 hours of the required annual in-service training shall be face-to-face instruction.~~

#### **R430-100-9. Records.**

(1) The provider shall maintain the following general records on-site for review by the Department:

(a) documentation of the previous 12 months of fire and disaster drills as specified in R430-10(11)(12)(13)(14);

(b) current animal vaccination records as required in R430-100-22(3);

(c) a six week record of child attendance, including sign-in and sign-out records;

(d) all current variances granted by the Department;

(e) a current local health department inspection;

(f) a current local fire department inspection;

(g) if the licensee has been licensed for one year or longer, the most recent "Request for Annual Renewal of CBS/MIS Criminal History Information for Child Care" listing the licensee and all current providers, caregivers, volunteers, directors, owners, and members of the governing body; and

(h) if the licensee has been licensed for one year or longer, the most recent criminal background "Disclosure and Consent Statement" listing the licensee and all current providers, caregivers, volunteers, directors, owners, and members of the governing body.

~~[(h) records for each currently enrolled child, including the following:]~~

(2) The provider shall maintain the following records for each currently enrolled child on-site for review by the Department:

~~[(\*)](a) an admission form containing the following information for each child:~~

~~[(\*)](i) name;~~

~~[(\*)](ii) date of birth;~~

~~[(C)](iii)~~ date of enrollment;  
~~[(D)](iv)~~ the parent's name, address, and phone number, including a daytime phone number;  
~~[(E)](v)~~ the names of people authorized by the parent to pick up the child;  
~~[(F)](vi)~~ the name, address and phone number of a person to be contacted in the event of an emergency if the provider is unable to contact the parent;  
~~[(G)](vii)~~ if available, the name, address, and phone number of an out of area/state emergency contact person for the child~~[-if available];~~ and  
~~[(H)](viii)~~ current emergency medical treatment and emergency medical transportation releases with the parent's signature;  
~~[(i)](b)~~ a current annual health assessment form as required in R430-100-14(5);  
~~[(j)](c)~~ for each infant, toddler, and preschooler, current immunization records or documentation of a legally valid exemption, as specified in R430-100-14(4);  
~~[(k)](d)~~ a transportation permission form, if the center provides transportation services;  
~~[(l)](e)~~ a six week record of medication permission forms, and a six week record of medications actually administered; and  
~~[(m)](f)~~ a six week record of incident, accident, and injury reports; and  
~~[(n)](g)~~ a six week record of eating, sleeping, and diaper changes as required in R430-100-23(12) R430-100-24(15)~~[-and]-~~ ~~[(o)](i)~~ records for each staff member, including the following:  
~~(3) The provider shall ensure that information in children's files is not released without written parental permission.~~  
~~(4) The provider shall maintain the following records for each staff member on-site for review by the Department:~~  
~~[(p)](a)~~ date of initial employment;  
~~[(q)](b)~~ results of initial TB screening;  
~~[(r)](c)~~ approved initial "CBS/MIS Consent and Release of Liability for Child Care" form;  
~~[(s)](iv)~~ the most recent "Disclosure Statement" for a criminal background check, if the employee has worked at the facility since the last license renewal;  
~~[(t)](d)~~ a six week record of days~~[-and hours]~~ worked, and the times worked each day;  
~~[(u)](e)~~ orientation training documentation for caregivers, and for volunteers who work at the center at least once each month;  
~~[(v)](f)~~ annual training documentation for ~~[caregivers]~~ all providers and substitutes who work an average of 10 hours or more a week, as averaged over any three month period; and  
~~[(w)](g)~~ current first aid and CPR certification, if applicable as required in R430-100-10(2), R430-100-20(5)(d), and R430-100-21(2).  
~~(2) The provider shall ensure that information in children's files is not released without written parental permission.]~~

#### **R430-100-10. Emergency Preparedness.**

(1) The provider shall post the center's street address and emergency numbers, including ambulance, fire, police, and poison control, near each telephone in the center.  
 (2) At least one person at the facility at all times when children are in care shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification.

(3) The center shall maintain at least one readily available first aid kit, and a second first aid kit for field trips if the center takes children on field trips. The first aid kit shall include the following items:  
 (a) disposable gloves;  
 (b) assorted sizes of bandaids;  
 (c) gauze pads and roll;  
 (d) adhesive tape;  
 (e) antiseptic or a topical antibiotic;  
 (f) tweezers; and  
 (g) scissors.  
 (4) Each first aid kit shall be in a closed container, readily accessible to staff but inaccessible to children.  
 (5) The provider shall have a written emergency and disaster plan which shall include at least the following:  
 (a) procedures for responding to medical emergencies and serious injuries that require treatment by a health care provider;  
 (b) procedures for responding to fire, earthquake, flood, power failure, and water failure;  
 (c) the location of and procedure for emergency shut off of gas, electricity, and water;  
~~[(d)](d)~~ an emergency exit plan;  
~~[(e)](d)~~ an emergency relocation site where children may be housed if the center is uninhabitable;  
~~[(f)](e)~~ a means of posting the relocation site address in a conspicuous location that can be seen even if the center is closed;  
~~[(g)](f)~~ the transportation route and means of getting staff and children to the emergency relocation site;  
~~[(h)](g)~~ a means of accounting for each child's presence in route to and at the relocation site;  
~~[(i)](h)~~ a means of accessing children's emergency contact information and emergency releases; including contact information for an out of area/state emergency contact person for the child, if available;  
~~[(j)](i)~~ provisions for emergency supplies, including at least food, water, a first aid kit, diapers if the center cares for diapered children, and a cell phone;  
~~[(k)](i)~~ procedures for ensuring adequate supervision of children during emergency situations, including while at the center's emergency relocation site; and  
~~[(l)](k)~~ staff assignments for specific tasks during an emergency.  
 (6) The provider shall ensure that the emergency and disaster plan is followed in the event of an emergency.  
 (7) The provider shall review the emergency and disaster plan annually, and update it as needed. The provider shall note the date of reviews and updates to the plan on the plan.  
 (8) The emergency and disaster plan shall be available for immediate review by staff, parents, and the Department during business hours.  
~~[(9)](9)~~ The provider shall post emergency exit plans in conspicuous locations in each area or classroom occupied by children or staff. The emergency exit plan shall identify the reader's location within the building, and shall show the exit paths and the locations of the fire extinguishers and fire alarm pulls.]  
~~[(10)](9)~~ The provider shall conduct fire evacuation drills monthly. Drills shall include complete exit of all children and staff from the building.  
~~[(11)](10)~~ The provider shall document all fire drills, including:



- (a) the date and time of the drill;
- (b) the number of children participating;
- (c) the name of the person supervising the drill;
- (d) the total time to complete the evacuation; and
- (e) any problems encountered.

~~[(42)](11)~~ The provider shall conduct drills for disasters other than fires at least once every six months.

~~[(43)](12)~~ The provider shall document all disaster drills, including:

- (a) the type of disaster, such as earthquake, flood, prolonged power outage, tornado;
- (b) the date and time of the drill;
- (c) the number of children participating;
- (d) the name of the person supervising the drill; and
- (e) any problems encountered.

~~[(44)](13)~~ The center shall vary the days and times on which fire and other disaster drills are held.

#### **R430-100-12. Injury Prevention.**

(1) The provider shall ensure that the building, grounds, toys, and equipment are maintained and used in a safe manner to prevent injury to children.

(2) The provider shall ensure that the indoor environment is free of tripping hazards such as unsecured flooring or cords.

(3) Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that children could pull down on themselves.

(4) The following items shall be inaccessible to children:

(a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a locked cabinet or area, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;

(b) tobacco, alcohol, illegal substances, and sexually explicit material;

(c) when in use, portable space heaters, fireplaces, and wood burning stoves;

(d) toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials;

(e) poisonous plants;

(f) matches or cigarette lighters;

(g) open flames;

(h) sharp objects, edges, corners, or points which could cut or puncture skin;

(i) for children age 4 and under, ~~[strings]~~ropes and cords long enough to encircle a child's neck, such as those found on ~~[pull toys;~~ ]window blinds[;] or drapery cords;

(j) for children age 4 and under, plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(k) for children age ~~[3]~~2 and under, toys or other items with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches, or objects with removable parts that have a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches.

(5) The provider shall store all toxic or hazardous chemicals in a container labeled with its contents.

(6) Electrical outlets and surge protectors accessible to children age four and younger shall have protective caps or safety devices when not in use.

(7) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(8) High chairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(9) Indoor stationary gross motor play equipment, such as slides and climbers, accessible to children under age 3 shall not have a designated play surface that exceeds 3 feet in height.

(a) If such equipment has an elevated designated play surface less than 18 inches in height, ~~[it shall be surrounded by cushioning materials, such as mats at least 1 inch thick, in a 3 foot use zone]~~it shall not be placed on a hard surface, such as wood, tile, linoleum, or concrete, and shall have a three foot use zone.

(b) If such equipment has an elevated designated play surface that is 18 inches to 3 feet in height, it shall be surrounded by mats at least 2 inches thick, or cushioning that meets ASTM Standard F1292, in a three foot use zone.

(10) Indoor stationary gross motor play equipment, such as slides and climbers, accessible to children age 3 and older shall not have a designated play surface that exceeds 5-1/2 feet in height.

(a) If such equipment has an elevated designated play surface less than 3 feet in height, it shall be surrounded by protective cushioning material, such as mats at least 1 inch thick, in a six foot use zone.

(b) If such equipment has an elevated designated play surface that is 3 feet to 5-1/2 feet in height, it shall be surrounded by cushioning that meets ASTM Standard F1292, in a six foot use zone.

(11) There shall be no trampolines ~~[in the indoor play area]~~on the premises that are accessible to any child in care.

(12) If there is a swimming pool on the premises that is not emptied after each use:

(a) the provider shall ensure that the pool is enclosed within a fence or other solid barrier at least six feet high that is kept locked whenever the pool is not in use;

(b) the provider shall maintain the pool in a safe manner;

(c) the provider shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool; and

(d) If the pool is over four feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the licensee can demonstrate to the Department to be equivalent to Red Cross certification, any time children have access to the pool.

(13) If wading pools are used:

(a) a caregiver must be at the pool supervising children whenever there is water in the pool;

(b) diapered children must wear swim diapers or rubber pants while in the pool; and

(c) the pool shall be emptied and sanitized after each use by a separate group of children.

#### **R430-100-14. Child Health.**

(1) No child may be subjected to physical, emotional, or sexual abuse while in care.

(2) All staff shall follow the reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation found in Utah Code, Section 62A-4a-403 and 62A-4a-411.

(3) The use of tobacco, alcohol, illegal substances, or sexually explicit material on the premises or in center vehicles is prohibited any time that children are in care.

(4) The provider shall not admit any ~~[child]~~infant, toddler, or preschooler to the center without documentation of:

(a) proof of current immunizations, as required by Utah law;

(b) proof of receiving at least one dose of each required vaccine prior to enrollment, and a written schedule to receive all subsequent required vaccinations; or

(c) written documentation of an immunization exemption due to personal, medical or religious reasons.

(5) The provider shall not admit any child to the center without a signed health assessment completed by the parent which shall include:

- (a) allergies;
  - (b) food sensitivities;
  - (c) acute and chronic medical conditions;
  - (d) instructions for special or non-routine daily health care;
  - (e) current medications; and,
  - (f) any other special health instructions for the caregiver.
- (6) The provider shall ensure that each child's health assessment is reviewed, updated, and signed or initialed by the parent at least annually.

#### **R430-100-15. Child Nutrition.**

(1) If food service is provided:

(a) The provider shall ensure that the center's meal service complies with local health department food service regulations.

(b) Foods served by centers not currently participating and in good standing with the USDA Child and Adult Care Food Program (CACFP) shall comply with the nutritional requirements of the CACFP. The licensee shall either use standard Department-approved menus, menus provided by the CACFP, or menus approved by a registered dietician. Dietitian approval shall be noted and dated on the menus, and shall be current within the past 5 years.

(c) Centers not currently participating and in good standing with the CACFP shall keep a six week record of foods served at each meal or snack.

(d) The provider shall post the current week's menu for parent review.

(2) The provider shall offer meals or snacks at least once every three hours.

(3) The provider shall serve children's food on dishes, napkins, or sanitary high chair trays, except for individual serving size items, such as crackers, if they are placed directly in the children's hands. The provider shall not place food on a bare table.

(4) The provider shall post a list of children's food allergies and sensitivities in the food preparation area, and shall ensure that caregivers who serve food to children are aware of this information for the children in their assigned group.

(5) The provider shall ensure that food and drink brought in by parents for an individual child's use is labeled with the child's ~~full~~ name, and refrigerated if needed.

#### **R430-100-16. Infection Control.**

(1) Staff shall wash their hands thoroughly ~~for at least 20 seconds~~ with liquid soap and warm running water at the following times:

- (a) before handling or preparing food or bottles;
- (b) before and after eating meals and snacks or feeding children;
- (c) before and after diapering a child;
- (d) after using the toilet or helping a child use the toilet;
- (e) before administering medication;
- (f) after coming into contact with body fluids, including breast milk;
- (g) after playing with or handling animals;
- (h) when coming in from outdoors; and
- (i) after cleaning or taking out garbage.

(2) The provider shall ensure that children wash their hands thoroughly ~~for at least 20 seconds~~ with liquid soap and warm running water at the following times:

- (a) before and after eating meals and snacks;
- (b) after using the toilet;
- (c) after coming into contact with body fluids;
- (d) after playing with animals; and
- (e) when coming in from outdoors.

(3) Only single use towels from a covered dispenser or an electric hand-drying device may be used to dry hands.

(4) The provider shall ensure that toilet paper is accessible to children, and that it is kept on a dispenser.

(5) The provider shall post handwashing procedures at each handwashing sink, and they shall be followed.

(6) Caregivers shall teach children proper hand washing techniques and shall oversee hand washing whenever possible.

(7) Personal hygiene items such as toothbrushes, or combs and hair accessories that are not sanitized between each use, shall not be shared by children or used by staff on more than one child, and shall be stored so that they do not touch each other.

(8) The provider shall clean and sanitize all washable toys and materials weekly, or more often if necessary.

(9) Stuffed animals, cloth dolls, and dress-up clothes must be machine washable. Pillows must be machine washable, or have removable covers that are machine washable. The provider shall wash stuffed animals, cloth dolls, dress-up clothes, and pillows or covers weekly.

(10) If water play tables or tubs are used, they shall be washed and sanitized daily, and children shall wash their hands prior to engaging in the activity.

(11) The licensee shall ensure that all employees are tested for tuberculosis (TB) within ~~two weeks~~ 30 days of hire by an acceptable skin testing method and follow-up.

(12) If the TB test is positive, the caregiver shall provide documentation from a health care provider detailing:

- (a) the reason for the positive reaction;
- (b) whether or not the person is contagious; and
- (c) if needed, how the person is being treated.

(13) Persons with contagious TB shall not work or volunteer in the center.

(14) An employee having a medical condition which contraindicates a TB test must provide documentation from a health care provider indicating they are exempt from testing, with an associated time frame, if applicable. The provider shall maintain this documentation in the employee's file.

(15) Children's clothing shall be changed promptly if they have a toileting accident.

(16) Children's clothing which is wet or soiled from body fluids:

- (a) shall not be rinsed or washed at the center; and
- (b) shall be placed in a leakproof container, labeled with the child's name, and returned to the parent.

(17) If the center uses a potty chair[s], the provider shall clean and ~~disinfect them~~ sanitize the chair after each use.

(18) Staff who prepare food in the kitchen shall not change diapers or assist in toileting children.

(19) The center shall have a portable body fluid clean up kit.

(a) All staff shall know the location of the kit and how to use it.

(b) The provider shall use the kit to clean up spills of body fluids.

(c) The provider shall restock the kit as needed.

(20) The center shall not care for children who are ill with an infectious disease, except when a child shows signs of illness after arriving at the center.

(21) The provider shall separate children who develop signs of an infectious disease after arriving at the center from the other children in a safe, supervised location.

(22) The provider shall contact the parents of children who are ill with an infectious disease and ask them to immediately pick up their child. If the provider cannot reach the parent, the provider shall contact the individuals listed as emergency contacts for the child and ask them to pick up the child.

(23) The provider shall notify the local health department, on the day of discovery, of any reportable infectious diseases among children or caregivers, or any sudden or extraordinary occurrence of a serious or unusual illness, as required by the local health department.

(24) The provider shall post a parent notice at the center when any staff or child has an infectious disease or parasite.

(a) The provider shall post the notice in a conspicuous location where it can be seen by all parents.

(b) The provider shall post and date the notice the same day the disease or parasite is discovered, and the notice shall remain posted for at least 5 days.

#### **R430-100-17. Medications.**

(1) If medications are given, they shall be administered to children only by a provider trained in the administration of medications.

(2) All over-the-counter medications provided by parents and all prescription medications shall:

- (a) be labeled with the child's full name;
- (b) be kept in the original or pharmacy container;
- (c) have the original label; and,
- (d) have child-safety caps.

(3) All non-refrigerated medications shall be inaccessible to children and stored in a container or area that is locked, such as a locked room, cupboard, drawer, or a lockbox. The provider shall store all refrigerated medications in a ~~covered container with a tight fitting lid~~ leakproof container.

(4) The provider shall have a written medication permission form completed and signed by the parent prior to administering any over-the-counter or prescription medication to a child. The permission form must include:

- (a) the name of the medication;
- (b) written instructions for administration; including:
  - (i) the dosage;
  - (ii) the method of administration;
  - (iii) the times and dates to be administered; and
  - (iv) the disease or condition being treated; and
- (c) the parent signature and the date signed.

(5) If the provider keeps over-the-counter medication at the center that is not brought in by a parent for their child's use, the medication shall not be administered to any child without prior parental consent for each instance it is given. The consent must be either:

- (a) prior written consent; or

(b) oral consent for which a provider documents in writing the date and time of the consent, and which the parent or person picking up the child signs upon picking up the child.

(6) If the provider chooses not to administer medication as instructed by the parent, the provider shall notify the parent of their refusal to administer the medication prior to the time the medication needs to be given.

(7) When administering medication, the provider administering the medication shall:

- (a) wash their hands;
- (b) check the medication label to confirm the child's name;
- (c) compare the instructions on the parent release form with the directions on the prescription label or product package to ensure that a child is not given a dosage larger than that recommended by the health care provider or the manufacturer;
- (d) administer the medication; and
- (e) immediately record the following information:
  - (i) the date, time, and dosage of the medication given;
  - (ii) the signature or initials of the provider who administered the medication; and,
  - (iii) any errors in administration or adverse reactions.

(8) The provider shall report any adverse reaction to a medication or error in administration to the parent immediately upon recognizing the error or reaction, or after notifying emergency personnel if the reaction is life threatening.

(9) The provider shall not keep medications at the center for children who are no longer enrolled.

#### **R430-100-18. Napping.**

(1) The center shall provide children with a daily opportunity for rest or sleep in an environment that provides subdued lighting, a low noise level, and freedom from distractions.

(2) Scheduled nap times shall not exceed two hours daily.

(3) A separate crib, cot, ~~or mat~~, or other sleeping equipment shall be used for each child during nap times.

(4) Mats and mattresses used for napping shall be at least 2 inches thick and shall have a smooth, waterproof surface.

(5) The provider shall maintain sleeping equipment in good repair.

(6) If sleeping equipment is clearly assigned to and used by an individual child, the provider must clean and ~~disinfect~~ sanitize it as needed, but at least weekly.

(7) If sleeping equipment is not clearly assigned to and used by an individual child, the provider must clean and ~~disinfect~~ sanitize it prior to each use.

(8) The provider must either store sleeping equipment so that the surfaces children sleep on do not touch each other, or else clean and ~~disinfect~~ sanitize sleeping equipment prior to each use.

(9) A sheet and blanket or acceptable alternative shall be used by each child during nap time. These items shall be:

- (a) clearly assigned to one child;
- (b) stored separately from other children's when not in use; and,

(c) laundered as needed, but at least once a week, and prior to use by another child.

(10) The provider shall space cribs, cots, and mats a minimum of 2 feet apart when in use, to allow for adequate ventilation, easy access, and ease of exiting.

(11) Cots and mats may not block exits.

**R430-100-20. Activities.**

(1) The provider shall post a daily schedule for preschool and school-age groups. The daily schedule shall include, at a minimum, meal, snack, nap/rest, and outdoor play times.

(2) Daily activities shall include outdoor play if weather permits.

(3) The provider shall offer activities to support each child's healthy physical, social-emotional, and cognitive-language development. The provider shall post a current activity plan for parent review listing these activities in preschool and school age groups.

(4) The provider shall make the toys and equipment needed to carry out the activity plan accessible to children.

(5) If off-site activities are offered:

(a) the provider shall obtain written parental consent for each activity in advance;

(b) caregivers shall take written emergency information and releases with them for each child in the group, which shall include:

(i) the child's name;

(ii) the parent's name and phone number;

(iii) the name and phone number of a person to notify in the event of an emergency if the parent cannot be contacted;

(iv) the names of people authorized by the parents to pick up the child; and

(v) current emergency medical treatment and emergency medical transportation releases;

(c) the provider shall maintain required caregiver to child ratios and direct supervision during the activity;

(d) at least one caregiver present shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification;

~~(e) caregivers shall take a first aid kit with them;~~

~~(f)~~ children shall wear or carry with them the name and phone number of the center, but children's names shall not be used on name tags, t-shirts, or other identifiers; and

~~(g)~~ caregivers shall provide a way for children to wash their hands as specified in R430-100-16(2). If there is no source of running water, caregivers and children may clean their hands with wet wipes and hand sanitizer.

(6) If swimming activities are offered, caregivers shall remain with the children during the activity, and lifeguards and pool personnel shall not count toward the caregiver to child ratio.

**R430-100-23. Diapering.**

If the center diapers children, the following applies:

(1) Caregivers shall change children's diapers at a diaper changing station. Diapers shall not be changed on surfaces used for any other purpose.

(2) Each diapering station shall be equipped with railings to prevent a child from falling when being diapered.

(3) Caregivers shall not leave children unattended on the diapering surface.

(4) The diapering surface shall be smooth, waterproof, and in good repair.

(5) The provider shall post diapering procedures at each diapering station and ensure that they are followed.

(6) Caregivers shall clean and ~~disinfect~~ sanitize the diapering surface after each diaper change.

(7) Caregivers shall wash their hands before and after each diaper change.

(8) Caregivers shall place soiled disposable diapers in a container that has a plastic lining and a tightly fitting lid.

(9) The provider shall daily clean and ~~disinfect~~ sanitize containers where soiled diapers are placed.

(10) If cloth diapers are used:

(a) they shall not be rinsed at the center; and

(b) after a diaper change, the caregiver shall place the cloth diaper directly into a leakproof container that is inaccessible to children and labeled with the child's name, or a leakproof diapering service container.

(11) Caregivers shall change children's diapers promptly when they are wet or soiled, and shall check diapers at least once every two hours.

(12) Caregivers shall keep a written record daily for each infant and toddler documenting their diaper changes. The record shall be completed within an hour of each diaper change, and shall include the child's name, the time of the diaper change, and whether the diaper was dry, wet, soiled, or both.

(13) Care givers whose designated responsibility includes the care of diapered children shall not prepare food for children or staff outside of the classroom area used by the diapered children.

**R430-100-24. Infant and Toddler Care.**

If the center cares for infants or toddlers, the following applies:

(1) The provider shall not mix infants and toddlers with older children, unless there are 8 or fewer children present at the center.

(2) Infants and toddlers shall not use outdoor play areas at the same time as older children.

(3) If an infant is not able to sit upright and hold their own bottle, a caregiver shall hold the infant during bottle feeding. Bottles shall not be propped.

(4) The provider shall clean and sanitize high chair trays prior to each use.

(5) The provider shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter. The provider shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(6) Baby food, ~~infant~~ formula, and breast milk ~~for infants~~ that is brought from home for an individual child's use must be:

(a) labeled with the child's name;

(b) labeled with the date and time of preparation or opening of the container, such as a jar of baby food;

(c) kept refrigerated if needed; and

(d) discarded within 24 hours of preparation or opening, except that powdered formula or dry foods which are opened, but are not mixed, are not considered prepared.

(7) ~~Infant~~ formula and milk, including breast milk, shall be discarded after feeding, or within two hours of initiating a feeding.

(8) To prevent burns, heated bottles shall be ~~thoroughly~~ shaken and tested for temperature before being fed to children.

(9) Pacifiers, bottles, and non-disposable drinking cups shall be labeled with each child's name, and shall not be shared.

(10) Only one infant or toddler shall occupy any one piece of equipment at any time, unless the equipment has individual seats for more than one child.

(11) Infants shall sleep in equipment designed for sleep such as a crib, bassinet, porta-crib or play pen. Infants shall not be placed to sleep on mats or cots, or in bouncers, swings, car seats, or other similar pieces of equipment.

(12) ~~Infant~~ cribs must:

(a) have tight fitting mattresses;

(b) have slats spaced no more than 2-3/8 inches apart;  
 (c) have at least 20 inches from the top of the mattress to the top of the crib rail; and

(d) not have strings, cords, ropes, or other entanglement hazards strung across the crib rails.

(13) Infants shall not be placed on their stomachs for sleeping, unless there is documentation from a health care provider for treatment of a medical condition.

(14) Each infant and toddler shall follow their own pattern of sleeping and eating.

(15) Caregivers shall keep a written record daily for each infant documenting their eating and sleeping patterns. The record shall be completed within an hour of each feeding or nap, and shall include the child's name, the food and beverages eaten, and the times the child slept.

(16) ~~Infant w/~~Walkers with wheels are prohibited.

(17) Infants and toddlers shall not have access to objects made of styrofoam.

(18) Caregivers shall respond as promptly as possible to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness.

(19) Awake infants and toddlers shall receive positive physical stimulation and positive verbal interaction with a caregiver at least once every 20 minutes.

(20) Awake infants and toddlers shall not be confined for more than 30 minutes in one piece of equipment, such as swings, high chairs, cribs, play pens, or other similar pieces of equipment.

(21) Mobile infants and toddlers shall have freedom of movement in a safe area.

(22) To stimulate their healthy development, there shall be safe toys accessible to infants and toddlers. There shall be enough toys for each child in the group to be engaged in play with toys.

(23) All toys used by infants and toddlers shall be cleaned and sanitized:

- (a) weekly;
- (b) after being put in a child's mouth; and
- (c) after being contaminated by body fluids.

**KEY: child care facilities, child care, child care centers**  
**Date of Enactment or Last Substantive Amendment: ~~December 30, 2006~~2009**  
**Notice of Continuation: August 13, 2007**  
**Authorizing, and Implemented or Interpreted Law: 26-39**

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**Human Resource Management,  
 Administration  
 R477-12-3  
 Reduction in Force**

**NOTICE OF PROPOSED RULE**  
 (Amendment)  
 DAR FILE NO.: 32424  
 FILED: 03/02/2009, 16:20

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** These changes are the result of S.B. 126 being passed on 02/18/2009 in the 2009 General Session, and signed by the Governor on 03/02/2009. The amendments revise the method applied to determine retention points giving primary consideration to proficiency and secondary consideration to seniority.

**SUMMARY OF THE RULE OR CHANGE:** The amendments in Section R477-12-3 clarify when and how a Reduction in Force (RIF) can take place. Subsection R477-12-3(1) is amended to change approval of a workforce adjustment plan to the agency head after Department of Human Resource Management (DHRM) review and clarifies the hearing process. Amendments to Subsection R477-12-3(3) revise the calculation of retention points. (DAR NOTE: A corresponding 120-day (emergency) rule is published under DAR No. 32427 is this issue, March 15, 2009, of the Bulletin and was effective 03/02/2009.)

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 67-19-6 and 67-19-18

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ❖ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no fiscal impact on local governments.
- ❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will not likely be measurable costs to executive branch agencies in order to comply with this rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Rules published by DHRM have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This Act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business. Jeff Herring, Executive Director

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

HUMAN RESOURCE MANAGEMENT  
 ADMINISTRATION  
 Room 2120 STATE OFFICE BLDG  
 450 N MAIN ST  
 SALT LAKE CITY UT 84114-1201, or  
 at the Division of Administrative Rules.

## DIRECT QUESTIONS REGARDING THIS RULE TO:

J.J. Acker or Michael Tribe at the above address, by phone at 801-537-9096 or 801-538-3627, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at jacker@utah.gov or miketribe@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 04/14/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2009

AUTHORIZED BY: Jeff Herring, Executive Director

**R477. Human Resource Management, Administration.****R477-12. Separations.****R477-12-3. Reduction in Force.**

Reductions in force (RIF) ~~[shall be required when there are inadequate funds, a change of workload, or lack of work. Reductions in force shall be governed by DHRM business practices, standards and the following rules:]~~ required by inadequate funds, a change of workload, or lack of work shall be governed by DHRM rules and business practices.

(1) When staff will be reduced in one or more categories of work, agency management shall develop a work force adjustment plan (WFAP). A career service employee shall only be given formal written notification of separation after a WFAP has been reviewed ~~[and approved]~~ by the Executive Director, DHRM, or designee ~~and approved by Agency Head or designee~~. The following items shall be ~~[considered]~~ addressed in ~~[developing]~~ the ~~[work force adjustment plan]~~ WFAP:

- (a) the categories of work to be eliminated, including positions impacted through bumping, as determined by management;
- (b) a decision by agency management allowing or disallowing bumping;
- (c) specifications of measures taken to facilitate the placement of affected employees through normal attrition, retirement, reassignment, relocation, and movement to vacant positions for which the employee qualifies;
- (d) job-related criteria as identified in Subsection R477-12-3(3)(a) used for determining retention points; and
- (e) a list of all affected employees showing the retention points for each employee.

## (2) Eligibility for RIF.

(a) Only career service employees who have been identified in an approved WFAP and given an opportunity ~~[for a hearing with]~~ to be heard by the agency head or designee may be RIF'd.

(b) An employee covered by USERRA ~~[and in a leave without pay status must]~~ shall be identified, assigned retention points, and notified of the RIF ~~[of the previous position]~~ in the same manner as a career service employee.

(3) Retention points shall be ~~[calculated for all affected employees within a category of work as follows:]~~ determined for all affected employees within a category of work by giving appropriate consideration for proficiency and seniority with proficiency being the primary factor.

~~[a] Seniority shall be determined by the length of total state career service, which commenced in a competitive career service position for which the probationary period was successfully completed.~~

~~—(i) For part time work, length of service shall be determined in proportion to hours actually worked.~~

~~—(ii) Exempt service time subsequent to attaining career service tenure with no break in service shall also be counted for purposes of seniority.~~

~~—(iii) In the event of ties in retention points, the amount of time employed in the affected agency or department serves as the tie breaker.~~

~~—(b) Length of state service shall be measured in years and additional days shown as a fraction of a year.~~

~~—(c) Time spent in a leave without pay status for service in the uniformed services covered under USERRA shall be counted for purposes of seniority.~~

~~—(d) Any time spent in leave without pay status, to include worker's compensation leave, may not be counted for purposes of seniority.~~

~~—(e) An employee within a category of work, including employees covered under USERRA in a leave without pay status, shall be assigned a job proficiency rating. The job proficiency rating shall be an average of the last three annual performance evaluation ratings under Subsection R477-10-1(1)(c). If employees have had fewer than three annual performance evaluations, the proficiency ratings shall be an average of all ratings received as of that time.~~

~~—(f) The numeric values of each employee's job proficiency rating and that employee's actual length of service shall be added together to produce the retention points.~~

~~—(g) Retention points shall be calculated for an employee covered under USERRA and in a leave without pay status in the same manner as for current employees in the affected class. If there are no performance evaluation ratings for an employee covered under USERRA, no proficiency rating shall be included in the retention points.~~

(a) Performance evaluations and performance information for the past three years may be taken into account for assessing job proficiency. The following job-related criteria may be considered:

- (i) quality of work;
- (ii) productivity;
- (iii) skills demonstrated through work performance; or
- (iv) other factors that relate to employee performance or conduct.

(b) Seniority shall be determined by the length of most recent continuous career service, which commenced in a competitive career service position for which the probationary period was successfully completed.

(i) Exempt service time subsequent to attaining career service tenure with no break in service shall be counted for purposes of seniority.

(c) In each WFAP, agency management shall develop the criteria they will use for determining retention points.

(i) Agency Management shall consult with Executive Director, DHRM or designee.

(ii) Agency plans shall comply with current DHRM business practices.

(4) The order of separation shall be:

- (a) temporary employees;
- (b) probationary employees; then

(c) career service employees with the lowest retention points ~~[are released first. In the event of ties in retention points, the amount of seniority in the affected agency serves as the tie breaker].~~

(5) An employee, including one covered under USERRA ~~[in a leave without pay status]~~, who is separated due to a ~~[reduction in force]~~ RIF shall be given formal written notification of separation,

allowing for a minimum of 20 working days prior to the effective date of the RIF.

(6) ~~Appeals.~~

~~(a) An employee notified of separation due to a [reduction in force] RIF may appeal to the agency head [for an administrative review] by submitting a written notice of appeal within 20 working days after the receipt of written notification of separation.~~

~~(b) The employee may appeal the decision of the agency head according to the appeals procedure of the Career Service Review Board.~~

(7) Reappointment of RIF'd individual.

(a) A RIF'd individual is eligible for reappointment into a half time or greater career service position for which he qualifies in a salary range comparable to or less than the last career service position held, for a period of one year following the date of separation. Section R477-4-4 applies for selection of individuals from the reappointment register.

(i) The Executive Director, DHRM, shall maintain a reappointment register and shall make the final determination on whether an eligible RIF'd individual meets the job requirements for position vacancies.

(ii) A RIF'd individual shall remain on the state reappointment register for one year from the date of separation, unless reappointed sooner.

(b) During a statewide mandated freeze on hiring wherein the Governor disallows increases in each agency's budgeted FTEs, eligibility for the reappointment register shall be extended for the entire length of time covered by a freeze.

(c) When determining comparable salary ranges in cases of RIF eligibility, a comparison of the previous career service salary range to the current career service salary range maximum step is required. A RIF'd individual shall have RIF rights to any vacant position for which he qualifies. The basis for comparison shall be:

(i) The current salary range of a vacant position if it is equal to or lesser than the individual's previous salary range, or;

(ii) If the maximum step of the position previously held by the RIF'd individual has moved upward, the new range shall be used.

(d) A RIF'd individual who is reappointed to a career service position shall not be required to serve a probationary period. The RIF'd individual shall enjoy all the rights and privileges of a regular career service employee.

(e) At agency discretion, an individual reappointed from a reappointment register may buy back part or all accumulated annual and converted sick leave that was cashed out when RIF'd.

(8) Appeal rights of RIF'd individual. An individual whose name is on the reappointment register as a result of a reduction in force may use the grievance procedure regarding their reappointment rights.

(9) A career service employee in an exempt position. Any career service employee accepting an exempt position without a break in service, who is later not retained by the appointing officer, unless discharged for cause under these rules, shall be placed on the reappointment register.

(a) The Executive Director, DHRM, shall maintain a reappointment register for this purpose. An individual on this register shall:

(i) be appointed to any half time or greater career service position for which the individual qualifies in a salary range comparable to the individual's last position in the career service, provided an opening exists; or

(ii) be appointed to any lesser career service position for which the individual qualifies, pending the opening of a position at the last career service salary range held.

(b) The Executive Director, DHRM, shall make the final determination on whether an eligible individual meets the job requirements for position vacancies.

(c) The individual shall declare a desire to remain on the reappointment register upon inquiry by DHRM.

(d) Prior to termination and in lieu of placement on the reappointment register, management may reassign an employee to a vacant career service position consistent with Subsection R477-12-3(7)(c) for which he qualifies.

**KEY: administrative procedures, employees' rights, grievances, retirement**

**Date of Enactment or Last Substantive Amendment:** ~~July 1, 2008~~ **2009**

**Notice of Continuation:** June 9, 2007

**Authorizing, and Implemented or Interpreted Law:** 67-19-6; 67-19-17; 67-19-18

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## Human Services, Recovery Services R527-3 Definitions

### NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 32385

FILED: 02/19/2009, 10:25

### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** The purpose of this amendment is to add an authority and purpose statement to the rule and two new definitions for terms used commonly by the Office of Recovery Services.

**SUMMARY OF THE RULE OR CHANGE:** Section R527-3-1 was changed to the Authority and Purpose. The subsequent section was renumbered accordingly. Two new definitions were added to the new Section R527-3-2.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 62A-1-111, 62A-11-103, 62A-11-107, 62A-11-303, 62A-11-401, and 78B-14-102

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** There are no anticipated costs or savings due to the amendment of this rule because the changes do not affect the current procedures of the office.

❖ **LOCAL GOVERNMENTS:** Administrative rules of the Office of Recovery Services/Child Support Services (ORS/CSS) do not affect or apply to local government; therefore, there are no anticipated costs or savings for any local government due to this amendment.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** This rule has never had any impact on small businesses and the change to the rule does not create or cause an impact to small business as the changes do not affect the current procedures of the office.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule amendment does not create or cause compliance costs that would impact any person.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule has never had any impact on businesses and the change to the rule does not create or cause an impact to business. Lisa-Michelle Church, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

LeAnn Wilber at the above address, by phone at 801-536-8950, by FAX at 801-536-8833, or by Internet E-mail at lwilber@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/08/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 07/13/2009

AUTHORIZED BY: Mark Brasher, Director

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

### **R527-3. Definitions.**

#### **R527-3-1. Authority and Purpose.**

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111 and 62A-11-107.

2. The purpose of this rule is to identify the terms and definitions used by the Office of Recovery Services/Child Support Services not currently defined by law.

#### **R527-3-2. Definitions.**

1. Terms used in this title, R527, are defined in Section 62A-11-103, 62A-11-303, 62A-11-401, and 78B-14-102. In addition, the following terms are defined:

2. "ORS" means the Office of Recovery Services.
3. "ORSIS" means the Office of Recovery Services Computer Information System.
4. "BMC" means the Bureau of Medical Collections.
5. "CIC" means the Bureau for Children in Care.
6. "CSS" means Child Support Services.
7. "MSS" means Management Support Services.
8. "CSU" means the Customer Service Unit.
9. "BFS" means the Bureau of Financial Services.
10. "BET" means the Bureau of Electronic Technology.
11. "OT" means the Office of Technology.
12. "IV-D agency" refers to the state agency that administers a child support program under Title IV-D of the Social Security Act.

13. "IV-D recipient" refers to a person who receives IV-D services.

14. "IV-A" refers to Title IV-A of the Social Security Act.

15. "IV-A agency" refers to the state agency that administers a public entitlement program under Title IV-A of the Social Security Act.

16. "IV-A recipient" refers to a person who receives IV-A benefits.

17. "UIFSA" refers to Title 78B, Chapter 14 (Uniform Interstate Family Support Act) which replaces "URESAs", Title 77, Chapter 31 (Uniform Reciprocal Enforcement of Support Act).

18. "AFDC" refers to the former Aid to Families with dependent children program.

19. "FEP" refers to the Family Employment Program which is funded by "TANF" (Federal Temporary Assistance for Needy Families).

20. "Pass-through payment" as used in R527-40-1(3) refers to the first \$50 of the current support that ORS collected for a month in which the custodial parent received AFDC. The IV-A agency paid this amount to the AFDC household prior to March, 1997.

21. "IRS" refers to the Internal Revenue Service.

22. "TPL" means Third Party Liability.

23. "CP" means custodial parent.

24. "NCP" means non-custodial parent.

#### **KEY: child support, welfare**

**Date of Enactment or Last Substantive Amendment:** ~~March 19, 2003~~ **2009**

**Notice of Continuation:** September 4, 2007

**Authorizing, and Implemented or Interpreted Law:** 62A-1-111; 62A-11-103; 62A-11-107; 62A-11-303; 62A-11-401; 78B-14-102



## Human Services, Recovery Services **R527-10**

### Disclosure of Information to the Office of Recovery Services

#### **NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 32386

FILED: 02/19/2009, 10:33

#### **RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add a purpose and authority section and renumbers all the following sections.

SUMMARY OF THE RULE OR CHANGE: Section R527-10-1 was changed to the Authority and Purpose. The subsequent sections were renumbered accordingly.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-1-111, Subsection 62A-11-104.1(2), and Section 62A-11-107

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The proposed changes to the rule are only to add the authority and purpose of the rule and do not



affect the current procedures. There is no anticipated change in cost or savings to the state budget due to this amendment.

❖ LOCAL GOVERNMENTS: Administrative rules of the Office of Recovery Services/Child Support Services (ORS/CSS) do not affect or apply to local government; therefore, there are no anticipated costs or savings for any local government due to this amendment.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Because the proposed amendment does not affect the current procedures, there will be no financial impact for small businesses due to this amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the proposed amendment does not affect the current procedures, there will be no financial impact for affected persons due to this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Passage of this proposed amended rule will have no fiscal impact on local business. Lisa-Michelle Church, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

LeAnn Wilber at the above address, by phone at 801-536-8950, by FAX at 801-536-8833, or by Internet E-mail at [lwilber@utah.gov](mailto:lwilber@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/06/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 07/13/2009

AUTHORIZED BY: Mark Brasher, Director

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

**R527-10. Disclosure of Information to the Office of Recovery Services.**

**R527-10-1. Authority and Purpose.**

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111 and 62A-11-107.

2. The purpose of this rule is to meet the rulemaking requirement in Section 62A-11-104.1(2) that the office specify the type of health insurance and financial record information required to be disclosed under that section.

**R527-10-2. Disclosure of Health Insurance Information.**

~~[Section 62A-11-104.1(2) requires the office to specify the type of health insurance information required to be disclosed under that~~

~~section.]~~ Upon written request by the office, the following health insurance information shall be provided:

1. the availability of health and dental insurance to the employee;
2. the health insurance company name, address, and telephone number;
3. the policy number;
4. the names of those covered and their relationship to the employee;
5. the effective dates of coverage;
6. premium and co-payment amounts, deductibles, and exclusions; and
7. claims history for 24 months prior to the date of request by the office.

**R527-10-[2]3. Disclosure of Financial Information to the Office of Recovery Services.**

~~[Section 62A-11-104.1(2) requires the office to specify the type of financial information required to be disclosed under that section.]~~

Upon written request by the office, the following documents and financial record information regarding the individual named in the request shall be provided:

1. savings account and checking account numbers and balances;
2. type of loan, loan amount and balance owing;
3. current or last known address;
4. social security number;
5. employer and salary, if known;
6. loan application;
7. all names listed on the account and the signature card;
8. terms of accessibility to the account;
9. former names and aliases;
10. all accounts for that person with the bank, including certificates of deposit, money market accounts, treasury bonds, etc., numbers, names, and amounts;
11. security on loans;
12. account statements;
13. transaction slips;
14. checks deposited or cashed;
15. checks written on account;
16. trusts; and
17. applications to open an account.

**KEY: child support, financial information, health insurance**

**Date of Enactment or Last Substantive Amendment: ~~[May 18, 1995]~~2009**

**Notice of Continuation: January 6, 2005**

**Authorizing, and Implemented or Interpreted Law: 62A-1-111; 62A-11-104.1(2); 62A-11-107**

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Human Services, Recovery Services

**R527-38**

Unenforceable Cases

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 32387

FILED: 02/19/2009, 10:37

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add a purpose and authority section and renumber the following section.

SUMMARY OF THE RULE OR CHANGE: Section R527-38-1 was changed to Authority and Purpose. The subsequent section was renumbered accordingly.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 45 CFR 303.11 and Sections 62A-1-111 and 62A-11-107

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The proposed changes to the rule are only to add the authority and purpose of the rule and do not affect the current procedures. There is no anticipated change in cost or savings due to this amendment.
- ❖ LOCAL GOVERNMENTS: Administrative rules of the Office of Recovery Services/Child Support Services (ORS/CSS) do not affect or apply to local government; therefore, there are no anticipated costs or savings for any local government due to this amendment.
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Because the proposed amendment does not affect the current procedures, there will be no financial impact for small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the proposed amendment does not affect the current procedures, there will be no financial impact to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Passage of this proposed amended rule will have no fiscal impact on local business. Lisa-Michelle Church, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

LeAnn Wilber at the above address, by phone at 801-536-8950, by FAX at 801-536-8833, or by Internet E-mail at [lwilber@utah.gov](mailto:lwilber@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/06/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 07/13/2009

AUTHORIZED BY: Mark Brasher, Director

**R527. Human Services, Recovery Services.****R527-38. Unenforceable Cases.****R527-38-1. Authority and Purpose.**

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111 and 62A-11-107.

2. The purpose of this rule is to establish the criteria which a support case must satisfy to be categorized as unenforceable pursuant to 45 CFR 303.11.

**R527-38-2. Unenforceable Case Criteria.**

1. ~~[This rule establishes the criteria which a support case must satisfy to be categorized as unenforceable.]~~ All of the following criteria must be met for a support case to be categorized as unenforceable:

- a. The case is currently not a paying case; in that payments shall not have been posted to the case during the last 12 months; and payments are not expected to be posted in the near future.
- b. No federal offset money has been received by the Office of Recovery Services (ORS) during the last two years.
- c. No state tax money shall have been received by ORS within the most recent two years.
- d. ORS shall have collected \$1,000 or less on the case over the last two years by methods other than federal offset or state tax.
- e. There are no financial institution accounts belonging to the non-custodial parent that can be attached.
- f. No executable assets belonging to the non-custodial parent have been identified.
- g. A credit bureau report has been accessed within the past six months indicating income or asset information is unavailable.
- h. If the matter concerns a Title IV-E case, all of the children identified as being part of the case shall have been emancipated or parental rights shall have been terminated.

**KEY: child support**

**Date of Enactment or Last Substantive Amendment:** ~~[August 5, 2004]~~ 2009

**Authorizing, and Implemented or Interpreted Law:** 45 CFR 303.11; 62A-1-111; 62A-11-107

**Human Services, Recovery Services****R527-39****Applicant/Recipient Cooperation****NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 32388

FILED: 02/19/2009, 10:42

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment to add a purpose and authority section and renumber the following sections.

SUMMARY OF THE RULE OR CHANGE: Section R527-39-1 was changed to Authority and Purpose. The former "Definitions" section was divided into two sections: "Definitions" and

"Cooperation Requirements" to more accurately reflect the content. All sections were renumbered due to these changes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-1-111, 62A-11-104, 62A-11-107, 62A-11-307.2, 63G-4-203, and 63G-4-302

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The proposed changes to the rule are only to add the authority and purpose of the rule and do not affect the current procedures. There is no anticipated change in cost or savings due to this amendment.

❖ LOCAL GOVERNMENTS: Administrative rules of the Office of Recovery Services/Child Support Services (ORS/CSS) do not affect or apply to local government; therefore, there are no anticipated costs or savings for any local government due to this amendment.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Because the proposed amendment does not affect the current procedures, there will be no financial impact for small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the proposed amendment does not affect the current procedures, there will be no financial impact for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Passage of this proposed amended rule will have no fiscal impact on local business. Lisa Michelle Church, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

LeAnn Wilber at the above address, by phone at 801-536-8950, by FAX at 801-536-8833, or by Internet E-mail at [lwilber@utah.gov](mailto:lwilber@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/06/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 07/13/2009

AUTHORIZED BY: Mark Brasher, Director

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

**R527-39. Applicant/Recipient Cooperation.**

**R527-39-1. Authority and Purpose.**

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111 and 62A-11-107.

2. The purpose of this rule is to define the terminology related to client cooperation as required for eligibility for IV-A or Medicaid assistance, to identify the cooperation requirements, and to describe the review process available to a client if the client disagrees with the office's assessment that the client is or is not cooperating as required.

**R527-39-2. Definitions.**

1. IV-A recipient means any individual who has been determined eligible for financial assistance under title IV-A of the Social Security Act.

2. Non-IV-A Medicaid recipient means any individual who has been determined eligible for or is receiving Medicaid under title XIX of the Social Security Act but has not been determined eligible for, or is not receiving, financial assistance under title IV-A of the Social Security Act.

3. IV-A agency means the State agency that has the responsibility for administration of, or supervising the administration of, the State plan under title IV-A of the Social Security Act.

4. Medicaid agency means the State agency that has the responsibility for administration of, or supervising the administration of, the State plan under title XIX of the Social Security Act.

**R527-39-3. Cooperation Requirements.**

~~[5]-~~1. An applicant/recipient of IV-A or Non-IV-A Medicaid services, with some Medicaid program exceptions, must cooperate with the Office of Recovery Services/Child Support Services (ORS/CSS) in:

- a. identifying and locating the parent of a child for whom aid is claimed;
- b. establishing the paternity of a child born out of wedlock for whom aid is claimed;
- c. establishing an order for child support;
- d. obtaining support payments for the recipient and for a child for whom aid is claimed unless a Good Cause determination has been made by the IV-A or Medicaid agency, or the Non-IV-A Medicaid applicant/recipient has declined child support services;
- e. obtaining any other payments or property due the recipient or the child; and
- f. obtaining and enforcing the provisions of an order for medical support.

~~[6]-~~2. The applicant/recipient must cooperate with ORS/CSS with specific actions that are necessary for the achievement of the objectives listed above, as follows:

- a. appearing at the ORS/CSS office to provide verbal or written information, or documentary evidence, known to, possessed by, or reasonably obtainable by the recipient;
- b. participating at judicial or other hearings or proceedings;
- c. providing information;
- d. turning over to ORS/CSS any support payments received from the obligor after the Assignment of Collection of Support Payments has been made.
- e. complying with a judicial or administrative order for genetic testing.

**R527-39-[2]4. Request for Review.**

1. When ORS/CSS notifies a IV-A or Non-IV-A Medicaid applicant/recipient that she/he is not cooperating in a case, the applicant/recipient may contest the determination by requesting that ORS/CSS conduct an office administrative review. Such a review shall not be subject to the provisions of the Utah Administrative Procedures Act (UAPA), or be considered an adjudicative proceeding under

Section 63G-4-203 and Rule R527-200. The applicant/recipient may choose instead to request an adjudicative proceeding under UAPA, or petition the district court to review the noncooperation determination and issue a judicial order based on its findings. If an administrative review is requested, the senior agent designated to conduct the review shall examine the case record, talk to the agent assigned to the case, consult with the team manager, and consider any new information the applicant/recipient provides to determine whether she/he has or has not met the cooperation requirements listed in Section 62A-11-307.2 or is not able to meet the requirements and is cooperating in good faith.

2. If a IV-A or Non-IV-A Medicaid applicant/recipient disagrees with the results of an administrative review conducted by an ORS/CSS senior agent, she/he may request that an ORS/CSS Presiding Officer conduct an adjudicative proceeding, or the applicant/recipient may petition the district court to review the initial noncooperation determination and the results of the administrative review, and issue a judicial order based on its findings.

3. If a IV-A or Non-IV-A Medicaid applicant/recipient disagrees with the Decision and Order issued by an ORS/CSS Presiding Officer after the close of an adjudicative proceeding, she/he may request reconsideration within 20 days after the date the Decision and Order is issued as provided in Sections 63G-4-302 and R527-200-14, or petition the district court to review the Decision and Order and issue a judicial order based on its findings.

**KEY: child support**

**Date of Enactment or Last Substantive Amendment:** ~~April 21, 2003~~ **2009**

**Notice of Continuation:** January 10, 2008

**Authorizing, and Implemented or Interpreted Law:** 62A-1-111; 62A-11-104(~~41~~); 62A-11-107; 62A-11-307.2; 63G-4-203; 63G-4-302



## Human Services, Recovery Services **R527-258** Enforcing Child Support When the Obligor is an Ex-Prisoner or in a Treatment Program.

**NOTICE OF PROPOSED RULE**

(Amendment)

DAR FILE NO.: 32390

FILED: 02/19/2009, 10:52

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is: 1) to clarify that the obligor must have been incarcerated for 30 days or more to be eligible for the IV-A debt forgiveness program and that the obligor may only utilize this program one time; and 2) to establish that the office will collect current support and \$1 toward the past-due support for the first six months after the obligor has been released. The criteria and procedures for the obligor in a treatment program have been amended to be the same as the criteria and procedures for the incarcerated obligor.

SUMMARY OF THE RULE OR CHANGE: The changes were made to Section R527-258-2 to clarify that the obligor incarceration must be for 30 days or more and that the office will only collect \$1 towards the obligor's arrearages. Changes were made to Section R527-258-3 to clarify that the obligor may only take advantage of this program one-time. Changes were made in Section R527-258-4 to add a new title and make it consistent with Subsection R527-258-4(2), that the obligor in a treatment program must be in the program for 30 days or more, that the office will collect \$1 toward the obligor's arrears, as well as add a provision to enforce medical insurance when ordered, if appropriate. Section 527-258-5 was added with a new title, as well as to clarify that the obligor in a treatment program may only take advantage of this program one time. A subsection was also added to indicate that the office will use income withholding to enforce the child support and arrearage that may be owed. Also, that full enforcement will take place, if the obligor fails to make the full agreed payments under this agreement. Another subsection was added to keep the consistency with the prisoner sections of the law, which state that the obligor must make all twelve payments to participate in the program and receive forgiveness. Payments will be assessed by the office.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-11-107, Subsection 62A-11-320(1), and Section 78B-12-212

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There are no anticipated costs or savings to the state because the changes to the rule are for clarification purposes. The office has been and is still required to provide the same services pursuant to federal regulations and state law.

❖ LOCAL GOVERNMENTS: There are no anticipated costs to the local government because Administrative rules of the Office of Recovery Services (ORS) do not affect or apply to local government.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There are not anticipated costs for small business because the changes affect the internal procedures of the ORS/CSS (Child Support Services) and provide clarification to the child support staff.

COMPLIANCE COSTS FOR AFFECTED PERSONS: ORS cannot provide firm figures because there is no way of knowing how many obligors' will have their support debts forgiven and what portion of each obligor's debt will be forgiven.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Passage of this proposed rule will have little or no fiscal impact on local businesses. Lisa-Michelle Church, Executive Director

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

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

## DIRECT QUESTIONS REGARDING THIS RULE TO:

LeAnn Wilber at the above address, by phone at 801-536-8950, by FAX at 801-536-8833, or by Internet E-mail at [lwilber@utah.gov](mailto:lwilber@utah.gov)

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/06/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 07/13/2009

AUTHORIZED BY: Mark Brasher, Director

**R527. Human Services, Recovery Services.****R527-258. Enforcing Child Support When the Obligor is an Ex-Prisoner or in a Treatment Program.****R527-258-2. ~~Non-~~Collection from Ex-Prisoners.**

1. If the obligor ~~is~~has been incarcerated for thirty days or more and notifies the Office of Recovery Services/Child Support Services (ORS/CSS) or the office is made aware of the release within 30 days of the release date, ~~no collection or enforcement action will be taken to collect~~the office will only collect current support and one dollar toward the past-due support debt for six months after the incarceration release date.

2. The ORS/CSS will enforce a support order that requires the obligor to provide medical insurance coverage for the children, if appropriate.

**R527-258-3. Enforcing Child Support When the Obligor is an Ex-Prisoner.**

1. The federal title IV-A past-due support debt which accrued while the obligor was incarcerated may be forgiven one time, if the obligor makes both the full monthly current support payment and the full monthly assessed payment toward the past-due support debt for twelve consecutive months. The twelve consecutive month period begins when the obligor is released and they have contacted the office to make payment arrangements within the allotted 30 days.

2. The office will use the federal income withholding notice and procedures to enforce and collect the current support and an arrears payment, when appropriate. The office will use the federal National Medical Support Notice and procedures to enforce insurance coverage for the children, if appropriate.

a. If the obligor does not make the full payment in each of the first six months, additional collection or enforcement action may be taken.

b. If the obligor makes the full required payment each month for twelve consecutive months, the remaining IV-A support debt that accrued during the most recent period of incarceration shall be forgiven. IV-A debt forgiveness due to incarceration will only occur one time per obligor.

3. If the obligor owes IV-A arrears only, s/he must make twelve consecutive payments to the office based on an assessed amount determined by ORS/CSS.

4. The obligor's arrearage payment shall be reassessed by the office if his/her financial situation changes during the twelve-month period.

**R527-258-4. ~~Enforcement of Child Support for~~Collection from Obligor in Treatment Programs.**

1. If the obligor is in a licensed mental health or substance abuse treatment program for thirty days or more, ~~no collection or enforcement action will be taken to collect~~the office will only collect current support and one dollar towards the past-due support debt for the duration of the in-patient treatment or up to six months of out-patient treatment.

2. If the obligor is in an in-patient treatment program and notifies ORS/CSS or the office is made aware of the release within 30 days of the release date, ~~no collection or enforcement action will be taken to collect~~the office will only collect current support and one dollar toward the past-due support debt for six months after the in-patient program release date.

3. The ORS/CSS will enforce a support order that requires the obligor to provide medical insurance coverage for the children, if appropriate.

**R527-258-5. Enforcing Child Support When the Obligor Is in a Treatment Program.**

1. The federal title IV-A past-due support debt which accrued while the obligor was in an in-patient treatment program may be forgiven one time, if the full monthly current support payment and the full monthly assessed payment toward the past-due support debt have been made for twelve consecutive months. The twelve consecutive month period begins when the obligor has been released from an in-patient treatment program and s/he has contacted the office to make payment arrangements within the allotted 30 days.

~~3~~2. The office will use the federal income withholding notice and procedures to enforce and collect the current support and an arrears payment, when appropriate. The office will use the federal National Medical Support Notice and procedures to enforce insurance coverage for the children, if appropriate.

a. If the obligor does not make the full payment in each of the first six months, additional collection or enforcement action may be taken.

b. If the obligor makes the full required payment each month for twelve consecutive months, ~~up to six months of~~the remaining IV-A support debt that accrued during the most recent treatment period shall be forgiven. IV-A debt forgiveness due to participation in an in-patient or out-patient treatment program will only occur one time per obligor.

3. If the obligor owes IV-A arrears only, s/he must make twelve consecutive payments to the office based on an assessed amount determined by ORS/CSS.

4. The obligor's arrearage payment shall be reassessed by the office if his/her financial situation changes during the twelve-month period.

**KEY: administrative law, child support**

**Date of Enactment or Last Substantive Amendment:** ~~May 14, 2008~~2009

**Notice of Continuation:** August 22, 2007

**Authorizing, and Implemented or Interpreted Law:** 78B-12-212; 62A-11-107; 62A-11-320(1)

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Human Services, Recovery Services  
**R527-394**  
 Posting Bond or Security

**NOTICE OF PROPOSED RULE**  
 (Amendment)

DAR FILE No.: 32391  
 FILED: 02/19/2009, 10:56

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add a purpose and authority section and renumber the following section.

SUMMARY OF THE RULE OR CHANGE: Section R527-394-1 was changed to Authority and Purpose. The subsequent section was renumbered accordingly. In the "Criteria" section, a reference to 45 CFR 303.104 was removed as this information is now included in the "Authority and Purpose" section. The word "must" was replaced with "may" to allow the office and its appointed Attorney General representation discretion in determining appropriate case actions on a case-by-case basis.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-1-111, 62A-11-107, and 62A-11-321, and 45 CFR 303.104

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: The proposed changes to the rule are only to add the authority and purpose of the rule and do not affect the current procedures. There is no anticipated change in cost or savings due to this amendment.
- ❖ LOCAL GOVERNMENTS: Administrative rules of the Office of Recovery Services/Child Support Services (ORS/CSS) do not affect or apply to local government; therefore, there are no anticipated costs or savings for any local government due to this amendment.
- ❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Because the proposed amendment does not affect the current procedures, there will be no financial impact for small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the proposed amendment does not affect the current procedures, there will be no financial impact to affected persons

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Passage of this proposed amended rule will have no fiscal impact on local business. Lisa-Michelle Church, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

LeAnn Wilber at the above address, by phone at 801-536-8950, by FAX at 801-536-8833, or by Internet E-mail at lwilber@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/06/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 07/13/2009

AUTHORIZED BY: Mark Brasher, Director

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

**R527-394. Posting Bond or Security.**

**R527-394-1. Authority and Purpose.**

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111 and 62A-11-107.

2. The purpose of this rule is to meet the requirements of 45 CFR 303.104 that the office develops guidelines to determine whether posting bond or security is appropriate on a support case.

**R527-394-2. Criteria.**

[According to Federal regulation, 45 CFR 303.104, t]The Office of Recovery Services [~~must~~]may petition the court to require the obligor to post bond or provide other security for the payment of a support debt if:

1. the Office determines the obligor has or has had the ability to pay but has failed or refused to pay, and;
2. the obligor has the ability to provide bond or security and to pay court ordered child support, and;
3. the Office determines that income withholding and garnishment are not viable or cost effective methods of collecting the support obligation, and;
4. the obligor has not made a payment during the period of 90 days prior to the time of a petition to the court in accordance with section (1) above, and;
5. the circumstances of the case include one of the following conditions:
  - a. the obligor is self-employed, voluntarily unemployed or underemployed, or receives income-in-kind, or;
  - b. the obligor realizes income from seasonal or other irregular employment or from commissions, or;
  - c. there is reason to believe that the obligor is preparing to leave the state.

**KEY: child support, bonding requirements**

**Date of Enactment or Last Substantive Amendment:** ~~1990~~2009

**Notice of Continuation:** May 12, 2005

**Authorizing, and Implemented or Interpreted Law:** 62A-1-111; 62A-11-107; 62A-11-321; 45 CFR 303.104



**Insurance, Administration**  
**R590-175-3**  
**General Requirements**

**NOTICE OF PROPOSED RULE**  
 (Amendment)

DAR FILE NO.: 32415  
 FILED: 02/26/2009, 16:21

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being updated to comply with changes made to H.B. 342 during the 2008 Legislative Session; to change the mental health benefits to comply with the Mental Health Parity and Addiction Equity Act of 2008 for large employer groups, small employer groups, and individual; and to roll back benefits to what they were prior to the changes made in the rule prior to 2008 due to insurers inability to administer the mental health benefit. (DAR NOTE: H.B. 342 (2008) is found at Chapter 345, Laws of Utah 2008, and was effective 05/05/2008).

**SUMMARY OF THE RULE OR CHANGE:** The substantive changes to the rule are as follows: 1) reducing the annual maximum benefit on the Basic Health Care Plan from \$300,000 to \$250,000; 2) the out-of-pocket maximum will go from \$5,000, to not more than \$5,000; 3) a major medical deductible for family has been limited to the amount of the deductible to not more than three times the individual deductible; 4) the annual prescription deductible per individual has increased from \$500 to \$1,000 and a family deductible of three times that amount has been added; 5) copayments have been changed to an amount not less than \$25 for office visits and \$150 for emergency room visit; 6) cost sharing for substance abuse services has been included in the mental health benefits with coinsurance expenses and inpatient and outpatient visit limitations; and 7) in compliance with the Mental Health Parity and Addiction Equity Act of 2008 for large employer groups, small employer groups, and individual policies, the benefits have been rolled back to what they were prior to 2008 due to insurers inability to administer the current mental health benefit.

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Sections 31A-2-201 and 31A-22-613.5

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** Due to the changes made in this rule, most health insurers will need to refile some of their forms. This will increase the department's workload but will not require us to hire additional help, nor will it increase our revenues.
- ❖ **LOCAL GOVERNMENTS:** Local governments will not be affected by these changes because this rule deals solely with the relationship between the department and their licensed health insurers.
- ❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** Currently insurers, which are large employers, are administering the benefits as proposed in the changes to this

rule. Individuals will pay twice as much for their prescription deductible and families three times that amount.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** Most insurers will need to make changes to some of their policy and advertising forms and have them reprinted and the costs associated with that. Large employer groups will probably see an increase in their premiums due to the addition of the federal mental health benefits. This cost will differ between employer groups. Individuals and families in these groups will also be affected by the increase in prescription deductibles and out of pocket maximums. Costs will differ from insured to insured based upon their use of these benefits.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** The changes to this rule are already being complied with by the insurance industry. Insurance companies will incur the cost associated with changes that will need to be made to some of their insurance forms and advertisements and most large employer groups will see an increase in their premium due to the addition of mental health coverage. 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](mailto: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 04/14/2009.**

**THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2009**

**AUTHORIZED BY: Jilene Whitby, Information Specialist**

**R590. Insurance, Administration.**

**R590-175. Basic Health Care Plan Rule.**

**R590-175-3. General Requirements.**

(1) Each insurer who is required to offer a health care plan under the open enrollment provisions of Chapter 30 shall file with the department at least one basic health care plan which is specified by the insurer as complying with the provisions of this rule and which must be offered for sale to anyone qualifying for open enrollment under Chapter 30.

(2) The basic health care plan shall not be designed or marketed in a manner that tends to discourage its purchase by anyone under the open enrollment provisions of Chapter 30.

(3) A plan having actuarial equivalence may be considered, at the sole discretion of the commissioner.

(4) Each insurer must use the language in this rule to present covered services, limitations and exclusions.

(5) A plan offered in compliance with the open enrollment provisions of Chapter 30 must contain at least the benefits set forth in the Basic Health Care Plan as adopted by the commissioner.

(6) The basic health care plan is to be offered as a package, in its entirety, and is mutually exclusive of and not comparable on a line by line basis to an insurer's other plans.

(7) If the basic health care plan is offered by a preferred provider organization, PPO, the benefit levels shown in the plan are for contracting providers; benefit levels for non-contracting providers' services may be reduced in accordance with Section 31A-22-617.

(8) Each insurer is to include its usual contracting provisions in its basic health care plan including submission of claims, coordination of benefits, eligibility and coverage termination, grievance procedures general terms and conditions, etc.

(9) Each insurer who is required to offer a group conversion plan under Subsection 31A-33-723 shall file with the department at least one basic health care plan that complies with the provisions of this rule and must be offered for sale to anyone qualifying for conversion.

(10) The form to follow for the Basic Health Care Plan is as follows:

TABLE  
BASIC HEALTH CARE PLAN

1. MAXIMUM BENEFIT. The maximum benefit per person for the entire period for which this policy coverage is in effect shall be \$1,000,000.

2. ANNUAL MAXIMUM BENEFIT. The maximum annual benefit per person shall not be less than \$250,000[~~\$300,000~~].

3. OUT OF POCKET MAXIMUM PER PERSON. The annual out of pocket maximum per person not to exceed[~~shall be~~] \$5,000, including any deductibles, copayments or coinsurances in the plan, for family coverage, not to exceed three times the per person out-of-pocket maximum.

4. PREEXISTING CONDITION LIMITATION.

(a) Any preexisting condition limitation shall be in compliance with Utah Code Subsection 31A-22-605.1(4); and

(b) Any waiting period shall not exceed 12 months, or 18 months in the case of a late enrollee, with credit for prior coverage when applicable.

5. GENERAL COST-SHARING FOR MEDICAL BENEFITS.

[~~(a)~~] Cost-sharing shall be based on eligible expenses. [~~+~~]

[~~(b)~~] The cost-sharing features of the plan shall be the following:

(a) [~~(i)~~] Annual Deductible.

(i) [~~(A)~~] The A major medical deductible of [~~may~~] not [~~be~~] less than \$1,500 per person, for family coverage not to exceed three times the per person deductible for major medical expenses; and

(ii) an [~~(B)~~] annual deductible for prescription benefits [~~may~~] not to exceed \$1000 [~~be less than \$500~~] per person, for family coverage not to exceed three times the per person deductible.

(b) [~~(i)~~] Copayment and Coinsurance.

(i) (A) A copayment [~~is~~] of not less than \$25 per visit for office visits, including preventive care services; and [~~is~~]

(B) A copayment [~~is~~] of not less than \$150 per visit to the emergency room; or [~~is~~]

(ii) [~~(i)~~] Coinsurance. A coinsurance of not [~~for all covered services~~

other than prescriptions, the person shall pay not less than 20% coinsurance per visit for office services [~~visits~~] and 20% per emergency room visits.

6. PREVENTIVE SERVICES. Preventive services covered under a managed care plan shall not be subject to the annual deductible. Covered preventive services shall consist of at least the following:

(a) childhood immunizations in accordance with guidelines as recommended by the Centers for Disease Control, as directed and modified from time to time;

(b) well-baby care through age five in accordance with guidelines recommended by the American Academy of Pediatrics, as directed and modified from time to time;

(c) for adults and adolescents, age, sex and risk appropriate preventive and screening services in accordance with Classification A guidelines recommended by the U.S. Preventive Services Task Force, as directed and modified from time to time.

7. COST SHARING FOR PRESCRIPTION DRUGS. Benefits for prescription drugs, other than self injectable drugs, except insulin, shall be subject to either:

(a) a copayment of not more than:

(i) the lesser of the cost of the prescription drug or \$15 for the lowest level of cost for prescription[~~first tier of~~] drugs;

(ii) the lesser of the cost of the prescription drug or \$25 for the second level of cost for prescription[~~or \$30 for the middle tier of~~] drugs; and

(iii) the lesser of the cost of the prescription drug or \$35 for the highest level of cost for prescription[~~or \$60 for the highest tier of~~] drugs; or

(b) a coinsurance of not less than:

(i) the lesser of the cost of the prescription drug or 25% for the lowest level of cost for prescription[~~first tier drugs~~];

(ii) the lesser of the cost of the prescription drug or 40% for the second level of cost for prescription[~~middle tier~~] drugs; and

(iii) the lesser of the cost of the prescription drug or 60% for the highest level of cost for prescription[~~the highest tier of~~] drugs.

8. COST SHARING FOR MENTAL HEALTH BENEFITS AND/OR SUBSTANCE ABUSE SERVICES.

Benefits for mental health and substance abuse services shall provide:

(i) for individual policies:

(A) coinsurance of 50% of eligible expenses;

(B) inpatient services limited to 10 days annually per person; and  
(C) benefits for outpatient services limited to 20 visits annually per person;

(ii) small employer group policies shall be subject to Sections 31A-22-625 and 31A-22-715; and

(iii) large employer group policies shall be subject to the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008.

[Benefits for mental health services will be provided only on conversion policies issued from group health plans offering mental health benefits and at the same level of the group policy.]

**KEY: insurance**

**Date of Enactment or Last Substantive Amendment: [February 8, 2008]2009**

**Notice of Continuation: November 8, 2005**

**Authorizing, and Implemented or Interpreted Law: 31A-22-613.5**

Judicial Performance Evaluation  
Commission, Administration  
**R597-1**  
General Provisions

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE NO.: 32423

FILED: 03/02/2009, 16:04

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule is to provide detail and guidance to the Commission in implementing Section 78A-12-101 et seq., the Judicial Performance Evaluation Commission Act.



SUMMARY OF THE RULE OR CHANGE: This new rule articulates the Act's purpose and intent, as well as relevant definitions.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 78A-12-101 through 78A-12-206

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This rule only lays out general provisions, including the purpose and intent of the Act and definitions. Therefore, the rule has no associated costs.

❖ LOCAL GOVERNMENTS: Because the Commission does not evaluate local government and has no authority with respect to local government, there is no anticipated cost or savings to local government.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Because the Commission does not evaluate small businesses or persons other than businesses and has no authority with respect to small businesses or persons other than businesses, there is no anticipated cost or savings to either small businesses or persons other than businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule does not articulate any requirements that have costs associated with them. Consequently, there are no compliance costs or affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Commission has no authority with respect to businesses. Small businesses are not involved in the judicial performance evaluation process. Therefore, there is no fiscal impact on businesses. V. Lowry Snow, Commission Chair

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

JUDICIAL PERFORMANCE EVALUATION  
COMMISSION  
ADMINISTRATION  
Room B-330 SENATE BUILDING  
420 N STATE ST  
SENATE BUILDING B-330  
SALT LAKE CITY UT 84114, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Joanne C. Slotnik at the above address, by phone at 801-538-1652, by FAX at 801-538-1024, or by Internet E-mail at jslotnik@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 04/14/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2009

AUTHORIZED BY: V. Lowry Snow, Chair

**R597. Judicial Performance Evaluation Commission, Administration.**

**R597-1. General Provisions.**

**R597-1-1. Purpose and Intent.**

(1) The commission adopts these rules to describe how it intends to conduct judicial performance evaluations.

(2) The purpose of this rule is to ensure that:

(a) voters have information about the judges standing for retention election;

(b) judges have notice of the standards against which they will be evaluated; and

(c) the commission has the time necessary to fully develop the program mandated by Utah Code Ann. 78A-12-101 et seq.

(3) These rules are subject to modification pending the outcome of the 2009 pilot programs.

**R597-1-2. Definitions.**

(1) Closed case.

(a) For purposes of administering a survey to a litigant, a case is "closed":

(i) in a trial court, on the date on which the court enters an order from which an appeal of right may be taken;

(ii) in an appellate court, on the date on which the remittitur is issued.

(b) For purposes of administering a survey to a juror, a case is "closed" when the verdict is rendered or the jury is dismissed.

(c) For purposes of administering a survey to a witness, a case is "closed" when the witness is excused.

(2) Evaluation cycle. "Evaluation cycle" means a time period during which a judge is evaluated. Judges not on the supreme court are subject to two evaluations cycles over a six-year judicial term. Justices of the supreme court are subject to three evaluation cycles over a ten-year judicial term.

(3) Raw data. "Raw data" means factual information that has been gathered for evaluative purposes but not analyzed or interpreted.

(4) Summary data. "Summary data" means information that has been processed and condensed into a form that is usable by the general public.

(5) Survey. "Survey" means the aggregate of questionnaires, each targeting a separate classification of survey respondents, which together are used to assess judicial performance.

(6) Surveyor. "Surveyor" means the organization or individual awarded a contract through procedures established by the state procurement code to survey respondents regarding judicial performance.

**KEY: performance evaluations, judicial performance evaluations, judiciary, judges**

**Date of enactment or Last Substantive Amendment: 2009 Authorizing, and Implemented or Interpreted Law: 78A-12**



Judicial Performance Evaluation  
Commission, Administration  
**R597-3**  
Judicial Performance Evaluations

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE No.: 32421

FILED: 03/02/2009, 15:16

**RULE ANALYSIS**

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule is to provide detail and guidance to the Commission in implementing Section 78A-12-101 et seq., the Judicial Performance Evaluation Commission Act.

SUMMARY OF THE RULE OR CHANGE: This rule articulates the evaluation cycles on which the performance of every state court judge will be evaluated. It also articulates the protocols for surveying the respondent groups identified by statute.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 78A-12-101 through 78A-12-206

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The rule explains the timing of evaluation cycles and the conditions under which surveys will be conducted. The rule does not depart from the substance of the previous Judicial Council rule on the same subject. For the attorney survey, court personnel must identify lawyers who have appeared before each judge being evaluated. For the juror survey, bailiffs must oversee the distribution and collection of surveys. The costs of these de minimis activities will continue to be handled by the Administrative Office of the Courts. All other costs related to the survey will be assumed by the Commission, using monies allocated in conjunction with the passage of S.B. 105 in 2008. (DAR NOTE: S.B. 105 (2008) is found at Chapter 248, Laws of Utah 2008, and was effective 05/05/2008.)

❖ LOCAL GOVERNMENTS: Because the Commission has no authority with respect to local government, there is no anticipated cost or savings to local government.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Because the Commission has no authority with respect to small businesses and persons other than businesses, there is no anticipated cost or savings to either small businesses or persons other than businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The de minimis cost of clerks periodically generating lists of attorneys who have appeared before judges subject to evaluation and bailiffs distributing/collecting juror surveys will be handled as in the past, by the agency that employs the clerk or bailiff. This rule is analogous to the Judicial Council rule governing the same matters. Any other compliance costs will be borne by the Commission.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Commission has no authority relative to businesses. Businesses are not involved in the judicial evaluation process. V. Lowry Snow, Commission Chair

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

JUDICIAL PERFORMANCE EVALUATION  
COMMISSION  
ADMINISTRATION  
Room B-330 SENATE BUILDING  
420 N STATE ST  
SENATE BUILDING B-330  
SALT LAKE CITY UT 84114, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Joanne C. Slotnik at the above address, by phone at 801-538-1652, by FAX at 801-538-1024, or by Internet E-mail at jslotnik@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 04/14/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2009

AUTHORIZED BY: V. Lowry Snow, Chair

**R597. Judicial Performance Evaluation Commission, Administration.**

**R597-3. Judicial Performance Evaluations.**

**R597-3-1. Evaluation Cycles.**

(1) For judges not serving on the supreme court:

(a) The mid-term evaluation cycle. The mid-term evaluation cycle begins upon the appointment of the judge or on the first Monday in January following the retention election of the judge and ends 2 1/2 years later, on June 30th of the third year preceding the year of the judge's next retention election.

(b) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the judge's next retention election.

(2) For justices serving on the supreme court:

(a) The initial evaluation cycle. The initial evaluation cycle begins upon the appointment of the justice or on the first Monday in January following the retention election of the justice and ends 2 1/2 years later, on June 30th of the seventh year preceding the year of the justice's next retention election.

(b) The mid-term evaluation cycle. The mid-term evaluation cycle begins the day after the initial evaluation cycle is finished and ends four years later, on June 30th of the third year preceding the year of the justice's next retention election.

(c) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the justice's next retention election.

(3) Transition Evaluation Cycles

(a) For judges standing for retention election in 2012:

(i) The mid-term evaluation cycle shall be conducted in 2009, ending on December 31, 2009.

(ii) The retention evaluation cycle for surveys of attorneys and jurors shall begin on January 1, 2010, and end on June 30, 2011, for attorneys and jurors.

(iii) The retention evaluation cycle for all pilot program categories shall begin no later than July 1, 2010, and end on June 30, 2011.

(b) For judges not on the supreme court standing for retention election in 2014:

(i) The mid-term evaluation cycle for surveys of attorneys and jurors shall begin in 2009 and finish on June 30, 2011.

(ii) The mid-term evaluation cycle for all pilot program categories shall begin no later than July 1, 2010, and end on June 30, 2011.

(iii) The retention evaluation cycle will be as described in R597-3-1(1)(b), supra.

(c) For supreme court justices standing for retention election in 2014:

(i) The mid-term evaluation cycle for surveys of attorneys shall begin in 2009 and end on June 30, 2011.

(ii) The mid-term evaluation cycle for relevant pilot programs categories shall begin no later than July 1, 2010, and end on June 30, 2011.

(iii) The retention evaluation cycle shall be as described in R597-3-1(2)(b)-(c).

(d) For supreme court justices standing for retention election in 2016:

(i) The initial evaluation cycle shall be combined with the mid-term evaluation, beginning in 2009 and ending on June 30, 2013.

(ii) The combined initial/mid-term evaluation cycle for surveys of attorneys shall begin in 2009 and end on June 30, 2013.

(iii) The combined initial/mid-term evaluation cycle for relevant pilot programs categories shall begin no later than July 1, 2010.

(iv) The retention evaluation cycle shall be as described in R597-3-1(2)(c).

### **R597-3-2. Survey.**

(1) General provisions.

(a) All surveys shall be conducted according to the evaluation cycles described in R597-3-1, supra.

(b) The commission shall distribute the survey questionnaires upon which the judge shall be evaluated to each judge at the beginning of the survey cycle. Within a single evaluation cycle, all survey questions shall remain the same.

(c) In 2010, the commission shall finalize survey questionnaires and implementation procedures for each respondent classification.

(2) Respondent Classifications

(a) Attorneys

(i) Identification of survey respondents. Within 10 business days of the end of the evaluation cycle, the clerk for the judge or the Administrative Office of the Courts shall identify as potential respondents all attorneys who have appeared before the judge who is being evaluated at a minimum of one hearing or trial during the evaluation cycle.

(ii) Number of survey respondents. For each judge who is the subject of a survey, the surveyor shall identify 180 potential respondents or all attorneys appearing before the judge, whichever is less.

(iii) Sampling. The surveyor shall make a random selection of respondents and shall otherwise design the survey to comply with generally-accepted principles of surveying.

(iv) Distribution of surveys. Surveys shall be distributed by the third-party contractor engaged by the commission to conduct the survey.

(b) Jurors

(i) Identification and number of survey respondents. All jurors rendering a verdict in a case and all jurors with at least three hours of trial time with the judge shall be given a juror questionnaire.

(ii) Distribution of surveys. Prior to the jury being dismissed, the bailiff or clerk in charge of the jury shall distribute questionnaires and comment cards to the jurors. The bailiff or clerk shall mail the completed questionnaires in sealed envelopes to the surveyor. The bailiff or clerk shall deliver comment cards that the jurors have sealed in separate envelopes directly to the judge.

(c) Court Staff

(i) Identification of survey respondents. Court staff who have worked with the judge shall include, where applicable:

(A) court clerks;

(B) bailiffs;

(C) law clerks;

(D) probation and intake officers;

(E) courthouse staff;

(F) Administrative Office of the Courts staff.

(ii) Pilot program. The commission shall run a pilot program in 2009 to evaluate the methodology, content, and administrative feasibility of surveying court staff.

(d) Litigants

(i) Identification of survey respondents. A litigant is a party to a cause of action before a judge who is being evaluated.

(A) The following categories of litigants may be surveyed:

(I) any competent person 14 years of age or older;

(II) the parent, guardian, or legal custodian of any minor;

(III) the designated representative of a corporate or like entity.

(B) The representative of the prosecuting entity in a criminal case shall be surveyed as an attorney. Prosecutor responses to the judicial temperament part of the survey shall be reported in both the attorney and litigant portions of the judicial evaluation report.

(ii) Pilot Program. The commission shall run a pilot program in 2009 to evaluate the methodology, content, and administrative feasibility of surveying litigants.

(e) Witnesses

(i) Identification of survey respondents. A witness is anyone not surveyed as a litigant who testifies in court before a judge who is being evaluated. Any witness who is competent and who is 14 years of age or older is qualified as a witness survey respondent.

(ii) Pilot Program. The commission shall run a pilot program in 2009 to evaluate the methodology, content, and administrative feasibility of surveying witnesses.

### **KEY: judicial performance evaluations, judges, evaluation cycles, surveys**

**Date of enactment or Last Substantive Amendment: 2009**

**Authorizing, and Implemented or Interpreted Law: 78A-12**



Natural Resources, Wildlife Resources  
**R657-62**  
 Drawing Application Procedures

**NOTICE OF PROPOSED RULE**

(New Rule)

DAR FILE No.: 32420

FILED: 03/02/2009, 14:43

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This rule is being established to set forth the procedures and requirements for completing and filing applications to receive the following hunting permits and/or certificates of registration: Dedicated Hunter, limited-entry deer, limited-entry elk, limited-entry pronghorn, once-in-a-lifetime species, public cooperative wildlife management unit species, general season deer and youth elk, bear, antlerless big game, sandhill crane, sharp-tail and sage grouse, swan, cougar, sportsman, and turkey.

**SUMMARY OF THE RULE OR CHANGE:** This rule takes all of the permit application processes currently in place from Rules R657-5, R657-6, R657-9, R657-10, R657-33, and R657-54, and combines them into one rule. All drawing procedures will be removed from the individual specie rules.

**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 new rule does not change the process currently in place by rule, it only organizes all of the drawing procedures into one rule, therefore, the Division of Wildlife Resources (DWR) determines that these amendments will not create any cost or savings impact to the state budget or DWR's budget, since the changes will not increase workload and can be carried out with existing budget.

❖ **LOCAL GOVERNMENTS:** Since this new rule only moves criteria that have already been set by rule into one inclusive rule and does not include any additional requirements, this filing does not create any direct cost or savings impact to local governments since they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** This new rule will place all current drawing application requirements into the same rule and will not have the requirements filed in multiple rules; since there are no additional requirements being added, it will not generate a cost or saving impact to other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** DWR determines that this new rule will not create a cost or savings impact to individuals who participate in hunting in Utah.

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

do not create an impact on businesses. 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 04/14/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2009

AUTHORIZED BY: James F Karpowitz, Director

**R657. Natural Resources, Wildlife Resources.**

**R657-62. Drawing Application Procedures.**

**R657-62-1. Purpose and Authority.**

(1) Under authority of Sections 23-14-18 and 23-14-19, the Wildlife Board has established this rule for drawing applications and procedures.

(2) Specific season dates, bag and possession limits, areas open, number of permits and other administrative details that may change annually are published in the respective proclamations of the Wildlife Board.

**R657-62-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Application" means a form required by the Division which must be completed by a person and submitted to the Division in order to apply for a hunting permit.

(b) "Immediate family" means the landowner's lessee, or the landowner's or lessee's spouse, children, son-in-law, daughter-in-law, father, mother, father-in-law, mother-in-law, brother, sister, brother-in-law, sister-in-law, stepchildren, and grandchildren.

(c) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on an executed contract for sale of eligible property.

(d) "Limited entry hunt" means any hunt listed in the hunt tables published by the Wildlife Board and is identified as a premium limited entry hunt or limited entry hunt. "Limited entry hunt" does not include cougar pursuit or bear pursuit.

(e) "Limited entry permit" means any permit obtained for a limited entry hunt, including conservation permits, convention permits and sportsman permits.

(f)(i) "Valid application" means an application:

(A) for a permit to take a species for which the applicant is eligible to possess;

(B) for a permit to take a species regardless of estimated permit numbers; and

(C) containing sufficient information, as determined by the division, to process the application, including personal information, hunt information, and sufficient payment.

(ii) Applications missing any of the items in Subsection (i) may be considered valid if the application is timely corrected through the application correction process.

(g) "Waiting period" means a specified period of time that a person who has obtained a permit must wait before applying for the same permit type.

(h) "Once-in-a-lifetime hunt" means any hunt listed in the hunt tables published by the Wildlife Board and is identified as once-in-a-lifetime, and does not include general or limited entry hunts.

(i) "Once-in-a-lifetime permit" means any permit obtained for a once-in-a-lifetime hunt by any means, including conservation permits, sportsman permits, cooperative wildlife management unit permits and limited entry landowner permits.

#### **R657-62-3. Scope of Rule.**

(1) This rule sets forth the procedures and requirements for completing and filing applications to receive the following hunting permits and/or certificates of registrations:

- (a) Dedicated Hunter certificate of registrations;
- (b) limited-entry deer;
- (c) limited-entry elk;
- (d) limited-entry pronghorn;
- (e) once-in-a-lifetime;
- (f) public cooperative wildlife management unit;
- (g) general season deer and youth elk;
- (h) bear;
- (i) antlerless big game;
- (j) sandhill crane;
- (k) sharp-tail and sage grouse;
- (l) swan
- (m) cougar;
- (n) sportsman; and
- (o) turkey.

#### **R657-62-4. Residency Restrictions.**

(1) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit.

(2)(a) To apply for a resident permit, a person must be a resident at the time of purchase.

(b) The posting date of the drawing shall be considered the purchase date of a permit issued through a drawing.

#### **R657-62-5. Hunting on Private Lands.**

(1) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. The division does not guarantee access and cannot restore lost opportunity, bonus points, or permit fees when access is denied. Hunters should contact private landowners for permission to access their land prior to applying for a permit. The Division does not have the names of landowners where hunts occur.

#### **R657-62-6. Applications.**

(1)(a) Applications are available at the division's internet address, and must be completed and submitted online by the date prescribed in the respective proclamation of the Wildlife Board.

(b) The permit fees and handling fees must be paid with a valid debit or credit card.

(c) Any license or permit issued to a person is invalid where full payment is not remitted to and received by the division.

(d) A person who applies for or obtains a permit must notify the division of any change in mailing address, residency, telephone number, and physical description.

#### **R657-62-7. Group Applications.**

(1) When applying as a group all applicants in the group with valid applications and eligible to possess the permit applied for shall receive a permit where the group is successful in the drawing.

(2) Group members must apply for the same hunt choices.

(3) When applying as a group, if the permit quota available is not large enough to accommodate the group size, the group application will not be considered.

#### **R657-62-8. Bonus Point System.**

(1) Bonus points are used to improve odds for drawing permits.

(2)(a) A bonus point is awarded for:

(i) each valid unsuccessful application when applying for limited-entry permits; or

(ii) each valid application when applying for bonus points.

(b) Bonus points are awarded by species for:

(i) limited-entry deer including cooperative wildlife management unit buck deer and management buck deer;

(ii) limited-entry elk including cooperative wildlife management unit bull elk and management bull elk;

(iii) limited-entry pronghorn including cooperative wildlife management unit buck pronghorn;

(iv) once-in-a-lifetime species including cooperative wildlife management units;

(v) bear;

(vi) antlerless moose;

(vii) cougar; and

(viii) turkey

(3)(a) A person may not apply in the drawing for both a permit and a bonus point for the same species.

(b) A person may not apply for a bonus point if that person is ineligible to apply for a permit for the respective species.

(c) Group applications will not be accepted when applying for bonus points.

(d) A person may apply for bonus points only during the applicable drawing application for each species.

(4)(a) Fifty percent of the permits for each hunt unit will be reserved for applicants with the greatest number of bonus points.

(b) Based on the applicant's first choice, the reserved permits will be designated by a random drawing number to eligible applicants with the greatest number of bonus points for each species.

(c) If reserved permits remain, the reserved permits will be designated by a random number to eligible applicants with the next greatest number of bonus points for each species.

(d) The procedure in Subsection (c) will continue until all reserved permits are issued or no applications for that species remain.

(e) Any reserved permits remaining and any applicants who are not selected for reserved permits will be returned to the applicable drawing.

(5)(a) Each applicant receives a random drawing number for:

(i) each species applied for; and

(ii) each bonus point for that species.

(6) Bonus points are forfeited if a person obtains a permit through the drawing for that bonus point species including any permit obtained after the drawing.

(7) Bonus points are not forfeited if:

(a) a person is successful in obtaining a conservation permit, convention permit or sportsman permit;

(b) a person obtains a landowner or a cooperative wildlife management unit permit from a landowner; or

(c) a person obtains a poaching-reported reward permit.

(8) Bonus points are not transferable.

(9) Bonus points are averaged and rounded down when two or more applicants apply together on a group application.

(10)(a) Bonus points are tracked using social security numbers or division-issued customer identification numbers.

(b) The division shall retain electronic copies of applications from 1996 to the current drawings for the purpose of researching bonus point records.

(c) Any requests for researching an applicant's bonus point records must be submitted within the time frames provided in Subsection (b).

(d) Any bonus points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may void or otherwise eliminate any bonus point obtained by fraud, deceit, misrepresentation, or in violation of law.

#### **R657-62-9. Preference Points.**

(1) Preference points are used in the applicable drawings to ensure that applicants who are unsuccessful in the drawing will have first preference in the next year's drawing.

(2)(a) A preference point is awarded for:

(i) each valid, unsuccessful application of the first-choice hunt when applying for a general buck deer permit; or

(ii) each valid unsuccessful application when applying for an antlerless deer, antlerless elk, or doe pronghorn permit; or

(iii) each valid application when applying only for a preference point in the applicable drawings.

(b) Preference points are awarded by species for:

(i) general buck deer;

(ii) antlerless deer;

(iii) antlerless elk; and

(iv) doe pronghorn.

(3)(a) A person may not apply in the drawing for both a preference point and a permit for the species listed in (2)(b).

(b) A person may not apply for a preference point if that person is ineligible to apply for a permit.

(c) Preference points shall not be used when obtaining remaining permits.

(4) General buck deer preference points are forfeited if a person obtains a first-choice hunt general buck deer permit.

(5) an antlerless deer permit, an antlerless elk permit or doe pronghorn permit through the drawing.

(6) Preference points are not transferable.

(7) Preference points are averaged and rounded down when two or more applicants apply together on a group application.

(8)(a) Preference points are tracked using social security numbers or customer identification numbers.

(b) The division shall retain copies of electronic applications from 2000 to the current applicable drawings for the purpose of researching preference point records.

(c) Any requests for researching an applicant's preference point records must be submitted within the time frames provided in Subsection (b).

(d) Any preference points on the division's records shall not be researched beyond the time frames provided in Subsection (b).

(e) The division may eliminate any preference point obtained by fraud, deceit, misrepresentation, or in violation of law.

#### **R657-62-10. Corrections, Withdrawals and Resubmitting Applications.**

(1)(a) If an error is found on the application, the applicant may be contacted for correction.

(b) The division reserves the right to correct or reject applications.

(2)(a) An applicant may withdraw their application from the permit drawing by the date published in the respective proclamation of the Wildlife Board.

(b) An applicant may resubmit their application, after withdrawing a previous application, for the permit drawing by the date published in the respective proclamation of the Wildlife Board.

(c) Handling fees, hunting or combination license fees and donations will not be refunded. Resubmitted applications will incur a handling fee.

(3) To withdraw an entire group application, all applicants must withdraw their individual applications.

#### **R657-62-11. Drawing Results.**

Applicants will be notified by mail or e-mail of drawing results by the date prescribed in the respective proclamation of the Wildlife Board.

#### **R657-62-12. License, Permit and Handling Fees.**

(1) Unsuccessful applicants will not be charged for a permit or certificate of registration.

(2) The handling fees and hunting or combination license fees are nonrefundable.

(3) All license, permit and handling fees must be paid with a valid debit or credit card.

#### **R657-62-13. Permits Remaining After the Drawing.**

(1) Any permits remaining after the drawing are available on the date published in the respective proclamation on a first-come, first-served basis from division offices, participating license agents and through the division's internet site.

#### **R657-62-14. Waiting Periods for Permits Obtained After the Drawing.**

(1) Waiting periods do not apply to the purchase of remaining permits sold over the counter

(2) However, waiting periods are incurred as a result of purchasing remaining permits after the drawing. Therefore, if a remaining permit is purchased in the current year, waiting periods will be in effect when applying in the drawing in following years.

#### **R657-62-15. Dedicated Hunter Certificates of Registration.**

(1) Dedicated Hunter Certificates of Registration shall be issued pursuant to Rule R657-38.

#### **R657-62-16. Lifetime License Permits.**

(1) Lifetime License permits shall be issued pursuant to Rule R657-17.

**R657-62-17. Big Game.**(1) Permit Applications

(a) Limited entry, Cooperative Wildlife Management Unit, Once-in-a-Lifetime, Management Bull Elk, Management Buck Deer, General Buck Deer, and Youth General Any Bull Elk permit applications.

(i) A person must possess or obtain a valid hunting or combination license to apply for or obtain a big game permit.

(ii) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Rule R657-5.

(iii) A person may obtain only one permit per species of big game, including limited entry, cooperative wildlife management unit, once-in-a-lifetime, conservation, landowner and general permits, except antlerless permits as provided in the Antlerless Addendum and permits as provided in Rule R657-42.

(b) A resident may apply in the big game drawing for the following permits:

(i) only one of the following:

(A) buck deer - limited entry and cooperative wildlife management unit;

(B) bull elk - limited entry and cooperative wildlife management unit; or

(C) buck pronghorn - limited entry and cooperative wildlife management unit; and

(ii) only one once-in-a-lifetime permit, including once-in-a-lifetime cooperative wildlife management unit permits.

(c) A nonresident may apply in the big game drawing for the following permits:

(i) all of the following:

(A) buck deer -limited entry;

(B) bull elk - limited entry;

(C) buck pronghorn - limited entry; and

(D) all once-in-a-lifetime species.

(ii) Nonresidents may not apply for cooperative management units through the big game drawing.

(d) A resident or nonresident may apply in the big game drawing by region for:

(i) a statewide general archery buck deer permit; or

(ii) for general any weapon buck deer; or

(iii) for general muzzleloader buck deer.

(2) Youth

(a) For purposes of this section "youth" means any person 18 years of age or younger on the opening day of the general archery buck deer season.

(b) Youth applicants who apply for a general buck deer permit

(i) will automatically be considered in the youth drawing based upon their birth date.

(ii) 20% of general buck deer permits in each region are reserved for youth hunters.

(iii) may not apply as part of any group

(iv) Preference points shall be used when applying.

(c) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the general buck deer drawing.

(3) Drawing Order

(a) Permits for the big game drawing shall be drawn in the following order:

(i) limited entry, cooperative wildlife management unit and management buck deer;

(ii) limited entry, cooperative wildlife management unit and management bull elk;

(iii) limited entry and cooperative wildlife management unit buck pronghorn;

(iv) once-in-a-lifetime;

(v) youth general buck deer;

(vi) general buck deer and general buck/bull combo;

(vii) youth general any bull elk.

(b) Any person who draws one of the following permits is not eligible to draw a once-in-a-lifetime permit:

(i) limited entry, Cooperative Wildlife Management unit or management buck deer;

(ii) limited entry, Cooperative Wildlife Management unit or management bull elk; or

(iii) a limited entry or Cooperative Wildlife Management unit buck pronghorn.

(c) If any permits listed in Subsection (a)(i) through (a)(iii) remain after the big game drawing after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(4) Groups(a) Limited Entry

(i) Up to four people may apply together for limited entry deer, elk or pronghorn; or resident cooperative wildlife management unit permits.

(b) Group applications are not accepted for management buck deer or bull elk permits.

(c) Group applications are not accepted for Once-in-a-lifetime permits.

(d) General season

(i) Up to ten people may apply together for general deer permits

(ii) Up to two youth may apply together for youth general any bull elk permits.

(5) Waiting Periods(a) Deer waiting period.

(i) Any person who draws or obtains a limited entry, management or cooperative wildlife management unit buck deer permit through the big game drawing process, may not apply for or receive any of these permits again for a period of two seasons.

(ii) A waiting period does not apply to:

(A) general archery, general any weapon, general muzzleloader, conservation, poaching-reported reward permits; and dedicated hunter limited entry deer permits; or

(B) cooperative wildlife management unit or limited entry landowner buck deer permits obtained through the landowner.

(b) Elk waiting period.

(i) Any person who draws or obtains a limited entry, management or cooperative wildlife management unit bull elk permit through the big game drawing, may not apply for or receive any of these permits for a period of five seasons.

(ii) A waiting period does not apply to:

(A) general archery, general any weapon, general muzzleloader, conservation, poaching-reported reward permits; and dedicated hunter limited entry elk permits; or

(B) cooperative wildlife management unit or limited entry landowner bull elk permits obtained through the landowner.

(c) Pronghorn waiting period.

(i) Any person who draws or obtains a buck pronghorn or cooperative wildlife management unit buck pronghorn permit through the big game drawing may not apply for or receive any of these permits thereafter for a period of two seasons.

(d) Once-in-a-lifetime species waiting period.

(i) Any person who draws or obtains a permit for any bull moose, bison, Rocky Mountain bighorn sheep, desert bighorn sheep or Rocky Mountain goat may not apply for or receive an once-in-a-lifetime permit for the same species in the big game drawing or sportsman permit drawing.

(ii) A person who has been convicted of unlawfully taking a once-in-a-lifetime species may not apply for or obtain a permit for that species.

(e) Cooperative Wildlife Management Unit and landowner permits.

(i) Waiting periods and once-in-a-lifetime restrictions do not apply to purchasing limited entry landowner or cooperative wildlife management unit permits obtained through a landowner, except as provided in Subsection (ii).

(ii) Waiting periods are incurred and applied for the purpose of applying in the big game drawing as a result of obtaining a cooperative wildlife management unit bull moose permit through a landowner.

#### **R657-62-18. Black Bear.**

(1) Permit Applications.

(a) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain a limited entry bear permit.

(b) A person may not apply for or obtain more than one bear permit within the same calendar year, except as provided in Subsection R657-33-26(4).

(c) Limited entry bear permits are valid only for the hunt unit and for the specified season designated on the permit.

(d)(i) Applicants may select up to three hunt unit choices when applying for limited entry bear permits. Hunt unit choices must be listed in order of preference.

(ii) Applicants must specify in the application whether they want a limited entry bear permit or a limited entry bear archery permit.

(e) Any person obtaining a limited entry bear archery permit must also obtain a certificate of registration if intending to use bait as provided in Section R657-33-14.

(f) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah State Code 23-19-22.5, 23-19-11 and 23-20-20.

(2) Group applications are not accepted.

(3) Waiting periods.

(a) Any person who draws or purchases a bear permit valid for the current season, may not apply for a permit thereafter for a period of two seasons.

#### **R657-62-19. Antlerless Species.**

(1) Permit Applications.

(a) A person must possess or obtain a valid hunting or combination license in order to apply for or obtain an antlerless permit.

(b) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Rule R657-5.

(c) A person may apply in the drawing for and draw the following permits, except as provided in Subsection (d):

(i) antlerless deer;

(ii) antlerless elk;

(iii) doe pronghorn; and

(iv) antlerless moose, if available.

(d) Any person who has obtained a buck pronghorn permit or a bull moose permit may not apply in the same year for a doe pronghorn permit or antlerless moose permit, respectively, except for permits remaining after the drawing as provided in R657-62-13.

(e) Applicants may select up to five hunt choices when applying for antlerless deer, antlerless elk and antlerless pronghorn.

(f) Applicants may select up to two hunt choices when applying for antlerless moose.

(g) Hunt unit choices must be listed in order of preference.

(h) A person may not submit more than one application in the antlerless drawing per species.

(2) Youth applications.

(a) For purposes of this section, "youth" means any person 18 years of age or younger on the opening day of the general archery buck deer season.

(b) Twenty percent of the antlerless deer, elk and doe pronghorn permits are reserved for youth hunters.

(c) Youth applicants who apply for an antlerless deer, elk, or doe pronghorn permit as provided in this Subsection, will automatically be considered in the youth drawing based upon their birth date.

(3) Drawing Order

(a) Permits are drawn in the order listed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime proclamation of the Wildlife Board for taking big game.

(b) Any reserved permits remaining and any youth applicants who were not selected for reserved permits shall be returned to the antlerless drawing.

(c) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(4) Group Applications

(a) Up to four hunters can apply together for antlerless deer, antlerless elk and doe pronghorn

(b) Group applications are not accepted for antlerless moose.

(c) Youth hunters who wish to participate in the youth drawing must not apply as a group.

(5) Waiting Periods

(a) Antlerless moose waiting period.

(i) Any person who draws or obtains an antlerless moose permit or a cooperative wildlife management unit antlerless moose permit through the antlerless drawing process, may not apply for or receive an antlerless moose permit thereafter for a period of five seasons.

(ii) A waiting period does not apply to cooperative wildlife management unit antlerless moose permits obtained through the landowner.

#### **R657-62-20. Sandhill Crane.**

(1) Permit applications.

(a) A person may obtain only one Sandhill Crane permit each year.

(b) A person may not apply more than once annually.



(c) A hunting or combination license may be purchased before applying, or the hunting or combination license will be issued upon successful drawing results.

(d) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(e) Applicants may select up to four hunt choices. Hunt unit choices must be listed in order of preference.

(2) Group Applications

(a) Up to four people may apply together.

(3) Waiting Periods do not apply.

**R657-62-21. Sharp-Tailed and Sage Grouse.**

(1) Permit applications.

(a) A hunting or combination license may be purchased before applying, or the hunting or combination license will be issued upon successful drawing results.

(b) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(c) Applicants may select up to four hunt choices. Hunt unit choices must be listed in order of preference.

(2) Group applications.

(a) Up to four people may apply together.

(3) Waiting Periods do not apply.

**R657-62-22. Swan.**

(1) Permit applications.

(a) A person may obtain only one swan permit each year.

(i) A person may not apply more than once annually.

(b) A Utah hunting or combination license may be purchased before applying, or the hunting or combination license will be issued to the applicant upon successfully drawing a permit.

(c) The division shall issue no more than the number of swan permits authorized by the U.S. Fish and Wildlife Service each year.

(i) The division may withhold up to 1% of the authorized number of swan permits each year to correct division errors, which may occur during the drawing process.

(ii) Division errors may be corrected using the withheld swan permits in accordance with the Division Error Remedy Rule R657-50.

(iii) Withheld swan permits shall be used to correct division errors reported to or discovered by the division on or before the fifth day preceding the opening day of the swan hunt.

(iv) Withheld swan permits remaining after correcting any division errors shall be issued prior to the opening day of the swan hunt to the next person on the alternate drawing list.

(d) A person must complete a one-time orientation course before applying for a swan permit, except as provided under Subsection R657-9-7(3)(b).

(i) Remaining swan permits available for sale shall be issued only to persons having previously completed the orientation course.

(e) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-24, 23-19-11 and 23-20-20.

(2) Groups

(a) Up to four people may apply together.

(3) Waiting period does not apply.

**R657-62-23. Cougar.**

(1) Permit Applications

(a) A person must possess or obtain a valid hunting or combination license to apply for or obtain a cougar limited entry permit.

(b) A person may not apply for or obtain more than one cougar permit for the same year.

(c) Limited entry cougar permits are valid only for the limited entry management unit and for the specified season provided in the hunt tables of the proclamation of the Wildlife Board for taking cougar.

(d) Applicants may select up to three management unit choices when applying for limited entry cougar permits. Management unit choices must be listed in order of preference.

(e) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation shall be done allowing cross-over usage of remaining resident and nonresident permit quotas.

(f) Any limited entry cougar permit purchased after the season opens is not valid until seven days after the date of purchase.

(g) Applicants must meet all age requirements, proof of hunter education requirements and youth restrictions as provided in Utah Code 23-19-22.5, 23-19-11 and 23-20-20.

(2) Group applications are not accepted.

(3) Waiting periods.

(a) Any person who draws or purchases a limited entry cougar permit valid for the current season may not apply for a permit thereafter for a period of three seasons.

(b) Waiting periods are not incurred as a result of purchasing cougar harvest objective permits.

**R657-62-24. Sportsman.**

(1) Sportsman applications.

(a) One sportsman permit is offered to residents for each of the following species:

(i) desert bighorn (ram);

(ii) bison (hunter's choice);

(iii) buck deer;

(iv) bull elk;

(v) Rocky Mountain bighorn (ram);

(vi) Rocky Mountain goat (hunter's choice);

(vii) bull moose;

(viii) buck pronghorn;

(ix) black bear;

(x) cougar; and

(xi) wild turkey.

(b) Bonus points shall not be awarded or utilized when applying for or obtaining sportsman permits.

(2) Group applications are not accepted.

(3) Waiting Periods.

(a) Any person who applies for or obtains a Sportsman Permit is subject to all waiting periods and exceptions as applicable to the species pursuant to rule R657-41.

(b) Once-in-lifetime waiting periods are applicable when applying for a sportsman permit.

(c) Limited Entry waiting periods are applicable when applying for a Sportsman permit.

**R657-62-25. Turkey.**

(1) Turkey applications.

(a) A person must possess a valid hunting or combination license in order to apply for or obtain a wild turkey permit.

(b) A person may obtain only one wild turkey permit each year, except a person may obtain wild turkey conservation permits in addition to obtaining one limited entry or remaining wild turkey permit.

(c) A person may not apply for wild turkey more than once annually.

(d) Applicants may select up to five hunt choices when applying for limited entry turkey permits. Hunt unit choices must be listed in order of preference.

(e) A turkey permit allows a person, using any legal weapon as provided in Section R657-54-7, to take one bearded turkey within the area and season specified on the permit.

(2) Group Applications are not accepted.

(3) Waiting period does not apply.

(4) Youth permits

(a) Up to 15 percent of the limited entry permits authorized for taking Merriam's and Rio Grande turkeys are available to youth hunters.

(b) For purposes of this section "youth" means any person who is 18 years of age or younger on the posting date of the wild turkey drawing.

(c) Youth who apply for a turkey permit will automatically be considered in the youth permit drawing based on their birth date.

(d) Bonus points shall be used when applying for youth turkey permits.

(5) Landowner turkey permits shall be issued pursuant to rule R657-54.

**KEY: wildlife, permits**

**Date of Enactment or Last Substantive Amendment: 2009 Authorizing, and Implemented or Interpreted Law: 23-14-18; 23-14-19**

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**End of the Notices of Proposed Rules Section**

## NOTICES OF CHANGES IN PROPOSED RULES

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After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [~~example~~]). A row of dots in the text between paragraphs (. . . . .) indicates that unaffected text, either whole sections or subsections, was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends April 14, 2009. At its option, the agency may hold public hearings.

From the end of the waiting period through July 13, 2009, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by Section 63G-3-303; and Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

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

**Commerce, Occupational and  
Professional Licensing  
R156-31b  
Nurse Practice Act Rule**

**NOTICE OF CHANGE IN PROPOSED RULE**

DAR File No.: 32212  
Filed: 03/02/2009, 15:19

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** Following a public hearing held by the Division on 01/08/2009 and additional written comments received, the Division and the Nursing Board are proposing additional amendments to this rule.

**SUMMARY OF THE RULE OR CHANGE:** Subsections R156-31b-102(2) and (5)(c) are changed to remove the language that limited the recognized accrediting bodies and added the more inclusive federal government agency. In Section R156-31b-601, amendments are made to recognize any regional or national accrediting body recognized by the U.S. Department of Education. Also in Subsection R156-31b-601(3), the percent of funding derived from sources that are not derived from funds provided under Title IV, HEA (Health Education Act) program funds, or student fees is decreased to 10% for proprietary schools which is the requirement established by the U.S. Department of Education. In Section R156-31b-802, updated information with respect to a "train the trainer" program. In Section R156-31b-803, The Medication Aide-Certified (MA-C) model curriculum adopted by the 2007 Delegate Assembly of the National Council of State Boards of Nursing is adopted and incorporated by reference as the model curriculum that must be followed by associations or facilities who want to offer the MA-C training. The previously listed modules are being deleted. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the January 1, 2009, issue of the Utah State Bulletin, on page 13. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 58-31b-101 and Subsections 58-5-106(1)(a) and 58-1-202(1)(a)

**THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL:** Deletes the "Accredited Institutions of Postsecondary Education", 2006-2007 edition, published by the American Council on Education; and adds the "Medication Assistant-Certified (MA-C) Model Curriculum", adopted by the National Council of State Boards of Nursing's Delegate Assembly on August 9, 2007

**ANTICIPATED COST OR SAVINGS TO:**

❖ **THE STATE BUDGET:** No additional costs are anticipated to the Division beyond those previously identified in the original rule filing. A state school desiring to offer the MA-C training program will need to follow the model curriculum and have the necessary human and fiscal resources necessary to offer the program. The cost to operate an MA-C training program is unknown at this time. However, the schools who have indicated an interest in offering a program currently offer the certified nurse assistant program and can use the same facilities, supplies and faculty currently involved in the aide program so the costs should be minimal.

❖ **LOCAL GOVERNMENTS:** The Division anticipates there should be little or no effect on local government as a result of these additional proposed amendments. Local governments do not operate nursing education programs and few operate any kind of health care facilities. However, if a local government ran a regulated facility, the use of an MA-C may save money because the MA-C could administer medications under the supervision of a nurse and the facility would not be required to hire another nurse to administer medications.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** A regulated facility may use the MA-C in addition to existing staff, thus lessening the burden on the nurses. Given there is a shortage of nurses throughout the state, the utilization of an MA-C under appropriate nurse supervision could save facilities personnel costs. If a regulated facility chooses to cover the costs of the training and examination as a benefit to their staff or as a recruitment/retention incentive, the facility would be responsible for those costs. Otherwise, the MA-C would be responsible to pay the costs incurred to become certified. It is estimated that the cost of the MA-C training and examination will be similar to that of the certified nurse assistant. Training programs offered within educational institutions and associations/organizations charge between \$280 and \$400 for the course. The examination is estimated to cost between \$58 and \$70 per applicant. By allowing a parent educational institution to be regionally or nationally accredited by an accrediting body recognized by the U.S. Department of Education and the nurse accrediting body, more proprietary schools would qualify to seek approval to begin a nursing education program in Utah. Although the training and examination to become a MA-C will cost approximately \$360 - \$470, the ability to utilize this type of provider to help with the administration of medications will more than offset any of the certification costs.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** As indicated above, the MA-C training and examination is expected to cost between \$360 - \$470 per person. The Division's MA-C application fee is \$89 and the 2-year renewal fee is \$42. However, a person certified as an MA-C is expected to make at least \$1.00/hour more than a certified nursing assistant. Hence the costs could be recouped within a 2-month period of time.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** This rule filing implements H.B. 399 passed during the 2008 Legislative Session regarding MA-C. The implementation of the MA-C provisions create no

fiscal impact to businesses beyond those anticipated by the Legislature in passing H.B. 399; such costs are addressed in the original proposed amendment rule filing. The rule change now recognizes a parent academic institution accredited by the U.S. Department of Education, thus allowing more schools to qualify for approval as a nursing education program. No fiscal impact to businesses is anticipated from this change. Francine A. Giani, Executive Director (DAR NOTE: H.B. 399 (2008) is found at Chapter 214, Laws of Utah 2008, and was effective 05/05/2008.)

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 04/14/2009.

THIS RULE MAY BECOME EFFECTIVE ON: 04/21/2009

AUTHORIZED BY: F. David Stanley, Director

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

### **R156-31b. Nurse Practice Act Rule.**

#### **R156-31b-102. Definitions.**

In addition to the definitions in Title 58, Chapters 1 and 31b, as defined or used in this rule:

(1) "Academic year", as used in Section R156-31b-601, means three quarters or two semesters or 900 clock hours. A quarter is defined to be equal to ten weeks and a semester is defined to be equal to 14 or 15 weeks.

(2) "Affiliated with an institution of higher education", as used in Subsection 58-31b-601(1), means the general and science education courses required as part of a nursing education program are provided by an educational institution which is approved by the Board of Regents or an equivalent governmental agency in another state or a private educational institution which is regionally accredited by an accrediting board recognized by the ~~[Council for Higher Education Accreditation of the American Council on Education]~~ U.S. Department of Education; and the nursing program and the institution of higher education are affiliated with each other as evidenced by a written contract or memorandum of understanding.

(3) "APRN" means an advanced practice registered nurse.

(4) "APRN-CRNA" means an advanced practice registered nurse specializing and certified as a certified registered nurse anesthetist.

(5) "Approved continuing education" in Subsection R156-31b-303(3) means:

(a) continuing education that has been approved by a professional nationally recognized approver of health related continuing education;

(b) nursing education courses taken from an approved education program as defined in Subsection R156-31b-102(6); and

(c) health related course work taken from an educational institution accredited by a regional or national institutional accrediting body ~~[identified in the "Accredited Institutions of Postsecondary Education", 2006-2007 edition, published by the American Council on Education]~~ recognized by the U.S. Department of Education.

(6) "Approved education program" as defined in Subsection 58-31b-102(3) is further defined to include any nursing education program located within the state of Utah which meets the standards established in Sections R156-31b-601, 602 and 603; and any nursing education program located outside of Utah which meets the standards established in Section R156-31b-607.

(7) "CCNE" means the Commission on Collegiate Nursing Education.

(8) "CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

(9) "COA", as used in this rule, means the Council of Accreditation of Nurse Anesthesia Education Programs.

(10) "Clinical preceptor", as used in Section R156-31b-608, means an individual who is employed by a clinical health care facility and is chosen by that agency, in collaboration with the Parent Nursing Education-Program, to provide direct, on-site supervision and direction to a nursing student who is engaged in a clinical rotation, and who is accountable to both the clinical agency and the supervisory clinical faculty member.

(11) "Comprehensive nursing assessment", as used in Section R156-31b-704, means an extensive data collection (initial and ongoing) for individuals, families, groups and communities addressing anticipated changes in patient conditions as well as emergent changes in patient's health status; recognizing alterations to previous patient conditions; synthesizing the biological, psychological, spiritual and social aspects of the patient's condition; evaluating the impact of nursing care; and using this broad and complete analysis to make independent decisions and identification of health care needs; plan nursing interventions, evaluate need for different interventions and the need to communicate and consult with other health team members.

(12) "Contact hour" means 60 minutes.

(13) "Delegatee", as used in Sections R156-31b-701 and 701a, means one or more competent persons receiving a delegation who acts in a complementary role to the delegating nurse, who has been trained appropriately for the task delegated, and whom the delegating nurse authorizes to perform a task that the delegates is not otherwise authorized to perform.

(14) "Delegation" means transferring to delegates the authority to perform a selected nursing task in a selected situation. The delegating nurse retains accountability for the delegation.

(15) "Delegator", as used in Sections R156-31b-701 and 701a, means the nurse making the delegation.

(16) "Diabetes medical management plan (DMMP)", as used in this rule, means an individualized plan that describes the health care services that the student is to receive at school. The plan is developed and signed by the student's parent or guardian and health

care team. It provides the school with information regarding how the student will manage diabetes at school on a daily basis. The DMMP shall be incorporated into and shall become a part of the student's IHP.

(17) "Direct supervision" is the supervision required in Subsection 58-31b-306(1)(a)(iii) and means:

(a) the person providing supervision shall be available on the premises at which the supervisee is engaged in practice; or

(b) if the supervisee is specializing in psychiatric mental health nursing, the supervisor may be remote from the supervisee if there is personal direct voice communication between the two prior to prescribing a prescription drug.

(18) "Disruptive behavior", as used in this rule, means conduct, whether verbal or physical, that is demeaning, outrageous, or malicious and that places at risk patient care or the process of delivering quality patient care. Disruptive behavior does not include criticism that is offered in good faith with the aim of improving patient care.

(19) "Equivalent to an approved practical nursing education program", as used in Subsection 58-31b-302(2)(e), means the applicant for licensure as an LPN by equivalency is currently enrolled in an RN education program with full approval status, and has completed course work which is equivalent to the course work of an NLNAC accredited practical nursing program.

(20) "Focused nursing assessment", as used in Section R156-31b-703, means an appraisal of an individual's status and situation at hand, contributing to the comprehensive assessment by the registered nurse, supporting ongoing data collection and deciding who needs to be informed of the information and when to inform.

(21) "Individualized healthcare plan (IHP)", as used in Section R156-31b-701a, means a plan for managing the health needs of a specific student, written and reviewed at least annually by a school nurse. The IHP is developed by a nurse working in a school setting in conjunction with the student and the student's parent or guardian to guide school personnel in the care of a student with medical needs. The plan shall be based on the student's practitioner's orders for the administration of medications or treatments for the student, or the student's DMMP.

(22) "Licensure by equivalency" as used in this rule means licensure as a licensed practical nurse after successful completion of course work in a registered nurse program which meets the criteria established in Sections R156-31b-601 and R156-31b-603.

(23) "LPN" means a licensed practical nurse.

(24) "MA-C" means a medication aide - certified.

(25) "Medication", as used in Sections R156-31b-701 and 701a, means any prescription or nonprescription drug as defined in Subsections 58-17b-102(39) and (61) of the Pharmacy Practice Act.

(26) "NLNAC" means the National League for Nursing Accrediting Commission.

(27) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

(28) "Non-approved education program" means any foreign nurse education program.

(29) "Nurse", as used in this rule, means an individual licensed under Title 58, Chapter 31b as a licensed practical nurse, registered nurse, advanced practice registered nurse, or advanced practice registered nurse-certified registered nurse anesthetist, or a certified nurse midwife licensed under Title 58, Chapter 44a.

(30) "Nurse accredited", as used in this rule, means accreditation issued by NLNAC, CCNE or COA.

(31) "Other specified health care professionals", as used in Subsection 58-31b-102(15), who may direct the licensed practical nurse means:

(a) advanced practice registered nurse;

(b) certified nurse midwife;

(c) chiropractic physician;

(d) dentist;

(e) osteopathic physician;

(f) physician assistant;

(g) podiatric physician;

(h) optometrist;

(i) naturopathic physician; or

(j) mental health therapist as defined in Subsection 58-60-102(5).

(32) "Parent academic institution", as used in this rule, means the educational institution which grants the academic degree or awards the certificate of completion.

(33) "Parent nursing education-program", as used in Section R156-31b-607, means a nationally accredited, Board of Nursing approved nursing education program that is providing nursing education (didactic, clinical or both) to a student and is responsible for the education program curriculum, and program and student policies.

(34) "Patient", as used in this rule, means a recipient of nursing care and includes students in a school setting or clients of a health care facility, clinic, or practitioner.

(35) "Patient surrogate", as used in Subsection R156-31b-502(1)(d), means an individual who has legal authority to act on behalf of the patient when the patient is unable to act or decide for himself, including a parent, foster parent, legal guardian, or a person designated in a power of attorney.

(36) "Psychiatric mental health nursing specialty", as used in Subsection 58-31b-302(4)(g), includes psychiatric mental health nurse specialists and psychiatric mental health nurse practitioners.

(37) "Practitioner", as used in Sections R156-31b-701 and 701a, means a person authorized by law to prescribe treatment, medication, or medical devices, and who acts within the scope of such authority.

(38) "RN" means a registered nurse.

(39) "School", as used in Section R156-31b-701a, means any private or public institution of primary or secondary education, including charter schools, pre-school, kindergarten, and special education programs.

(40) "Supervision", as used in this rule, means the provision of guidance and review by a licensed nurse for the accomplishment of a nursing task or activity, including the provision for the initial direction of the task, periodic inspection of the actual act of accomplishing the task or activity, and evaluation of the outcome.

(41) "Supervisory clinical faculty", as used in Section R156-31b-608, means one or more individuals employed by an approved nursing education program who meet the accreditation and Board of Nursing specific requirements to be a faculty member and are responsible for the overall clinical experiences of nursing students and may supervise and coordinate clinical preceptors who provide the actual direct clinical experience.

(42) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 31b, is further defined in Section R156-31b-502.

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**R156-31b-601. Standards for Parent Academic Institution Offering Nursing Education Program.**

In accordance with Subsection 58-31b-601(2), the minimum standards that a parent academic institution offering a nursing education program must meet to qualify graduates for licensure under this chapter are as follows.

(1) The parent academic institution shall be legally authorized by the State of Utah to provide a program of education beyond secondary education.

(2) The parent academic institution shall admit as students only persons having a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate.

(3) At least ~~20~~10 percent of the parent academic institution's revenue shall be from sources that are not derived from funds provided under title IV, HEA program funds or student fees, including tuition if a proprietary school.

(4) In addition to the standards established in Subsections (1), (2), and (3) above, a parent education institution offering a nursing education program leading toward licensure as an LPN shall:

(a) be accredited or preaccredited by a regional or national professional accrediting body approved by the ~~[Council for Higher Education Accreditation of the American Council on Education]~~U.S. Department of Education, and recognized by the nurse accrediting body from which the nursing program will seek nurse accreditation; and

(b) provide not less than one academic year program of study that leads to a certificate or recognized educational credential.

(5) In addition to the standards established in Subsections (1), (2), and (3) above, a parent education institution offering a nursing education program leading toward licensure as an RN shall:

(a) be accredited or preaccredited by a regional or national professional accrediting body approved by the ~~[Council for Higher Education Accreditation of the American Council on Education]~~U.S. Department of Education, and recognized by the nurse accrediting body from which the nursing program will seek nurse accreditation; and

(b) provide or require not less than a two academic year program of study that awards a minimum of an associate degree.

(6) In addition to the standards established in Subsections (1), (2), and (3) above, a parent education institution offering a nursing education program leading toward licensure as an APRN or APRN-CRNA shall:

(a) be accredited or preaccredited by a regional or national professional accrediting body approved by the ~~[Council for Higher Education Accreditation of the American Council on Education]~~U.S. Department of Education and recognized by the nurse accrediting body from which the nursing program will seek nurse accreditation;

(b) admit as students, only persons having completed at least an associate degree in nursing or baccalaureate degree in a related discipline; and

(c) provide or require not less than a two academic year program of study that awards a minimum of a master's degree.

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**R156-31b-802. Medication Aide - Certified - Approval of Training Programs.**

In accordance with Subsection 58-31b-601(3), the minimum standards for an MA-C training program to be approved by the

Division in collaboration with the Board and the process to obtain approval are established as follows.

(1) All training programs shall be approved by the Division in collaboration with the Board and shall obtain approval prior to implementing the program.

(2) Training programs may be offered by an educational institution, a health care facility, or a health care association.

(3) The program shall consist of a minimum of 60 clock hours of didactic (classroom) training which is consistent with the model curriculum in Section R156-31b-803, and at least 40 hours of practical training within a long-term care facility.

(4) The classroom instructor shall:

(a) have a current, active, unencumbered LPN, RN or APRN license or multistate privilege to practice nursing in Utah;

(b) be a faculty member of an approved nursing education program, or an approved certified nurse aide (CNA) instructor who has completed ~~[the Department of Health's]~~a "Train the Trainer" program recognized by the Utah Nurse Aide Registry; and

(c) have at least two years of clinical experience and at least one year of experience in long-term care in the past five years.

(5) The on-site practical training experience instructor shall be available at all times during the practical training experience and shall meet the following criteria:

(a) have a current, active, unencumbered LPN, RN or APRN license or multistate privilege to practice nursing in Utah;

(b)(i) be a faculty member of an approved nursing education program with at least one year of experience in long-term care nursing; or

(ii) be an approved CNA instructor who has completed ~~[the Department of Health's]~~a "Train the Trainer" program recognized by the Utah Nurse Aide Registry, with at least one year of experience in long-term care, and at least three months experience in the specific training facility;

(c) shall not delegate supervisory responsibilities when providing practical experience training to a student;

(d) the practical training instructor to student ratio shall be:

(i) 1:2 if the instructor is working one-on-one with the student to administer the medications; or

(ii) 1:8 if the instructor is supervising a student who is working one-on-one with the clinical facility's medication nurse.

(6) An entity desiring to be approved to provide an MA-C training program to qualify a person for certification as a medication aide shall:

(a) submit to the Division an application form prescribed by the Division;

(b) provide evidence of adequate and appropriate trainers and resources to provide the training program including a well-stocked clinical skills lab or the equivalent;

(c) submit a copy of the proposed training curriculum and an attestation that the proposed curriculum is consistent with the model curriculum in Section R156-31b-803;

(d) document minimal admission requirements including, but not limited to:

(i) an earned high school diploma or successful passage of the general educational development (GED) test;

(ii) current certification as a nursing aide, in good standing, from the Utah Nursing Assistant Registry, with at least 2,000 hours of experience within the two years prior to application to the training program, working as a certified nurse aide in a long-term care setting; and

(iii) current cardiopulmonary resuscitation (CPR) certification.

**R156-31b-803. Medication Aide - Certified - Model Curriculum.**

The model curriculum which must be followed by anyone who desires to offer a medication aide certification program is the "Medication Assistant-Certified (MA-C) Model Curriculum" adopted by the National Council of State Boards of Nursing's Delegate Assembly on August 9, 2007, which is hereby adopted and incorporated by reference. [Module 1: Medication Fundamentals, recommend 16 hours classroom instruction and four hours of skills lab.

- (1) Objectives — the learner will:
  - (a) describe the different documents on which medications can be ordered and recorded;
  - (b) detail the elements of a complete medication order for safe administration;
  - (c) discuss the various tasks to be performed for medications to be safely stored;
  - (d) identify conditions necessitating disposal of medications or questioning an incomplete medication order;
  - (e) state the ways to measure medications;
  - (f) state the different forms in which medications can be manufactured;
  - (g) recognize that the same medication may have different names;
  - (h) identify accepted abbreviations;
  - (i) recognize the abbreviations that should not be used;
  - (j) list the different effects medications can cause, locally and systemically;
  - (k) state the types of information that should be known about a specific medication prior to giving that medication;
    - (l) list the three safety checks of medication administration;
    - (m) identify the six rights of medication administration; and
    - (n) describe basic steps of medication preparation prior to administration.
- (2) Content Outline — medication orders, documentation, storage and disposal:
  - (a) medication prescription or order:
    - (i) recorded on patient record;
    - (ii) complete order must be signed, legible, and include the drug name, dose, route, time, and frequency;
    - (iii) MA-C should not take verbal or telephone orders; and
    - (iv) questioning an incomplete medication order;
  - (b) medication documentation system:
    - (i) documentation of orders onto agency's medication document;
    - (ii) medication administration record (MAR); and
    - (iii) controlled substance medication log;
  - (c) medication storage:
    - (i) storage area;
    - (ii) medication room;
    - (iii) medication cart; and
    - (iv) medication tray; and
  - (d) disposal of outdated, contaminated or unused medication.
- (3) Content Outline — mathematics, weights and measures:
  - (a) MA-C does not convert medications dosages; and
  - (b) systems of measurement:
    - (i) apothecaries' system;
    - (ii) metric system;
    - (iii) common household measures;
    - (iv) roman numerals — drams or grains;

- (v) weight is grain; and
- (vi) volume is minim.
- (4) Content Outline — forms of medication:
  - (a) liquid:
    - (i) aerosol;
    - (ii) inhalant;
    - (iii) drops;
    - (iv) elixir;
    - (v) spray;
    - (vi) solution;
    - (vii) suspension (needs mixing or shaking);
    - (viii) syrup; and
    - (ix) tincture; and
  - (b) solid and semi solids:
    - (i) capsules;
    - (ii) tablet (dissolve);
    - (iii) scored versus unscored;
    - (iv) caplets;
    - (v) time released;
    - (vi) covered with a special coating (not to be crushed);
    - (vii) lozenges (dissolve);
    - (viii) ointment;
    - (ix) paste;
    - (x) powder;
    - (xi) cream;
    - (xii) lotion; and
    - (xiii) linament.
- (5) Content Outline — medication basics:
  - (a) terminology:
    - (i) medication names:
      - (A) generic; and
      - (B) brand or trade name;
    - (b) abbreviations:
      - (i) use standardized abbreviations, acronyms and symbols; and
      - (ii) do not use abbreviations that should no longer be in use;
    - (c) dosage range;
    - (d) actions (how drug causes chemical changes in body);
    - (e) implications for administration (what medical conditions are treated by the drug);
    - (f) therapeutic effects (desired effect);
    - (g) side effects (reaction not part of main effect desired);
    - (h) precautions (anticipate or prepare for conditions that may change effect of drug);
      - (i) contraindications (condition making drug dangerous to use);
      - (j) allergic reactions (life threatening — anaphylaxis);
      - (k) adverse reactions (unpleasant or serious side effects, other than desired);
      - (l) tolerance (body adapts to drug and may be resistant or less effective);
    - (m) interactions:
      - (i) specific administration information such as do not take with grapefruit juice; and
      - (ii) certain classes of medications that should not be prescribed at the same time;
      - (n) additive (synergistic) or antagonist effect;
      - (o) idiosyncratic effect (drug has unusual effect); and
      - (p) paradoxical effect (drug works in opposite way).
  - (6) Content Outline — safety and rights of medication administration:
    - (a) three safety checks:



- ~~— (i) when removing the medication package from storage (drawer or shelf);~~
- ~~— (ii) when removing medication from the package or container it is kept in; and~~
- ~~— (iii) when returning the package to where it is stored; and~~
- ~~— (b) six rights of medication administration:~~
  - ~~— (i) right client;~~
  - ~~— (ii) right drug;~~
  - ~~— (iii) right dose;~~
  - ~~— (iv) right route;~~
  - ~~— (v) right time; and~~
  - ~~— (vi) right documentation.~~
- ~~— (7) Content Outline — preparation and actual medication administration:~~
  - ~~— (a) wash hands;~~
  - ~~— (b) review medications that require checking of pulse or blood pressure before administering;~~
  - ~~— (c) identify the patient;~~
  - ~~— (d) introduce yourself;~~
  - ~~— (e) explain what you are going to do;~~
  - ~~— (f) glove if necessary;~~
  - ~~— (g) position the client;~~
  - ~~— (h) do what you explained;~~
  - ~~— (i) wash your hands;~~
  - ~~— (j) special considerations; and~~
  - ~~— (k) document.~~
- ~~— Module 2: Safety, recommend six hours of classroom instruction and one hour of skills lab:~~
  - ~~— (1) Objectives — the learner will:~~
    - ~~— (a) identify information needed about the patient and the medication prior to medication administration;~~
    - ~~— (b) identify common causes of medication errors; and~~
    - ~~— (c) state what steps should be taken when a medication error occurs.~~
  - ~~— (2) Content Outline — prevention of medication errors:~~
    - ~~— (a) know the following before administering medications:~~
      - ~~— (i) name, generic and trade;~~
      - ~~— (ii) purpose;~~
      - ~~— (iii) effect;~~
      - ~~— (iv) length of time to take effect;~~
      - ~~— (v) side effects;~~
      - ~~— (vi) adverse effects;~~
      - ~~— (vii) interactions;~~
      - ~~— (viii) special instructions; and~~
      - ~~— (ix) where to get help.~~
  - ~~— (3) Content Outline — causes and reporting of medication errors:~~
    - ~~— (a) failure to follow prescriber's orders exactly;~~
    - ~~— (b) failure to follow manufacturer's specifications or directions for use;~~
    - ~~— (c) failure to follow accepted standards for medication administration;~~
    - ~~— (d) failure to listen to a patient's or family's concerns;~~
    - ~~— (e) notify the agency's nurse, supervisor, pharmacist, physician or other prescriber, according to the agency policy; and~~
    - ~~— (f) complete a medication error or incident report.~~
- ~~— Module 3: Communication and documentation, recommend six hours of classroom instruction and two hours of skills lab:~~
  - ~~— (1) Objectives — the learner will:~~
    - ~~— (a) discuss building relationships (review from CNA training);~~
- ~~— (b) state when the nurse must be notified of a change in the patient's normal condition;~~
- ~~— (c) discuss when the nurse should be notified about vital sign changes;~~
- ~~— (d) state when the nurse should be notified of a patient's pain;~~
- ~~— (e) identify other alterations or conditions that should be reported to the nurse;~~
- ~~— (f) state documentation requirements for medication administration; and~~
- ~~— (g) explain the responsibilities of the delegating nurse when delegating medication administration to the MA-C.~~
- ~~— (2) Content Outline — building relationships:~~
  - ~~— (a) review the communication process;~~
  - ~~— (b) review barriers to effective listening and communication;~~
  - ~~— (c) setting boundaries; and~~
  - ~~— (d) review team building.~~
- ~~— (3) Content Outline — reporting of symptoms or side effects:~~
  - ~~— (a) observe, monitor and report any change that is different from the patient's normal condition;~~
  - ~~— (b) notify the nurse as soon as possible with as much information as available; and~~
  - ~~— (c) record changes.~~
- ~~— (4) Content Outline — report any change from the patient's normal condition:~~
  - ~~— (a) temperature;~~
  - ~~— (b) pulse;~~
  - ~~— (c) respirations;~~
  - ~~— (d) blood pressure;~~
  - ~~— (e) observe and report complaints of pain; and~~
  - ~~— (f) other changes in condition such as urinary output, mental status, and activity.~~
- ~~— (5) Content Outline — documentation of medication administration:~~
  - ~~— (a) identifying initials and time on the medication administration record (MAR);~~
  - ~~— (b) circle and document the reasons that a patient may not take a medication; and~~
  - ~~— (c) prn medication, delegated by the licensed nurse, per facility or agency policy.~~
- ~~— (6) Content Outline — role of the delegating nurse:~~
  - ~~— (a) the nurse must determine the level of supervision, monitoring and accessibility he must provide for nursing assistive personnel;~~
  - ~~— (b) the nurse continues to have responsibility for the overall nursing care;~~
  - ~~— (c) to delegate effectively, nurses need to be able to rely on nursing assistive personnel's credentials and job descriptions, especially for a first-time assignment;~~
  - ~~— (d) nursing administration has the responsibility for validating credentials and qualifications of employees;~~
  - ~~— (e) both nurse and MA-C need the appropriate interpersonal and communication skills and organizational support to successfully resolve delegation issues; and~~
  - ~~— (f) trust is central to the working relationships between nurses and assistive personnel; good relationships have two-way communication, initiative, appreciation, and willingness to help each other.~~
- ~~— Module 4 — Medication administration, recommend 18 hours of classroom instruction and two hours of skills lab:~~
  - ~~— (1) Objectives — the learner will:~~

- ~~— (a) identify common methods of medication administration;~~
- ~~— (b) identify factors that may affect how the body uses medication; and~~
- ~~— (c) identify the classifications of medications, state common effects of medications on the body, and identify resource materials and professionals to contact for clarification of medication questions.~~
- ~~— (2) Content Outline— routes of administration:~~
  - ~~— (a) oral;~~
  - ~~— (b) buccal;~~
  - ~~— (c) sublingual;~~
  - ~~— (d) inhaler (metered dose);~~
  - ~~— (e) nebulizer;~~
  - ~~— (f) nasal;~~
  - ~~— (g) eye (ophthalmic);~~
  - ~~— (h) ear (otic);~~
  - ~~— (i) topical;~~
  - ~~— (j) dressings;~~
  - ~~— (k) soaks;~~
  - ~~— (l) transdermal such as patches; and~~
  - ~~— (m) suppositories, rectal and vaginal.~~
- ~~— (3) Content Outline— factors affecting how the body uses medication:~~
  - ~~— (a) age;~~
  - ~~— (b) size;~~
  - ~~— (c) family traits;~~
  - ~~— (d) diet;~~
  - ~~— (e) disease;~~
  - ~~— (f) psychological issues;~~
  - ~~— (g) gender and basic metabolic rate; and~~
  - ~~— (h) dosage.~~
- ~~— (4) Content Outline— classes of medications related to body systems and common actions:~~
  - ~~— (a) antimicrobials— control or prevent growth of bacteria, fungus, virus or other microorganisms;~~
    - ~~— (i) corrects an irregular, fast or slow heart rate;~~
    - ~~— (ii) prevents blood from clotting; and~~
    - ~~— (iii) lowers blood pressure;~~
  - ~~— (c) dermatological:~~
    - ~~— (i) antiinfective; and~~
    - ~~— (ii) anti-inflammatory;~~
  - ~~— (d) endocrine:~~
    - ~~— (i) antidiabetic;~~
    - ~~— (ii) reduces inflammation; and~~
    - ~~— (iii) hormones;~~
  - ~~— (e) gastrointestinal:~~
    - ~~— (i) promotes bowel movements;~~
    - ~~— (ii) antacids;~~
    - ~~— (iii) antidiarrheal; and~~
    - ~~— (iv) reduces gastric acid;~~
  - ~~— (f) musculoskeletal—relaxes muscles;~~
  - ~~— (g) neurological:~~
    - ~~— (i) prevents seizures;~~
    - ~~— (ii) relieves pain;~~
    - ~~— (iii) lowers body temperature;~~
    - ~~— (iv) anti-parkinsonian;~~
    - ~~— (v) antidepressants;~~
    - ~~— (vi) promotes sleep;~~
    - ~~— (vii) relieves anxiety;~~
    - ~~— (viii) antipsychotics; and~~
  - ~~— (ix) mood stabilizer;~~
  - ~~— (h) nutrients, vitamins, and minerals replace chemicals missing or low in the body;~~
  - ~~— (i) respiratory:~~
    - ~~— (i) decreases mucus production;~~
    - ~~— (ii) bronchodilation;~~
    - ~~— (iii) cough depressant or expectorant; and~~
    - ~~— (iv) decongestant;~~
  - ~~— (j) sensory:~~
    - ~~— (i) antiglaucoma;~~
    - ~~— (ii) artificial tears; and~~
    - ~~— (iii) earwax emulsifiers; and~~
  - ~~— (k) urinary—increases water loss through kidneys.~~
- ~~— (5) Content Outline— location of resources and references:~~
  - ~~— (a) nurse;~~
  - ~~— (b) pharmacist;~~
  - ~~— (c) physician;~~
  - ~~— (d) package or drug insert; and~~
  - ~~— (e) drug reference manuals.~~
- ~~— Module 5— Ethical and Legal, recommend four hours classroom instruction and one hour skills lab:~~
  - ~~— (1) Objectives— the learner will:~~
    - ~~— (a) identify when a delegated task should or should not be performed by the MA-C;~~
    - ~~— (b) recognize when and how to report errors;~~
    - ~~— (c) recognize what should be reported to the licensed nurse;~~
    - ~~— (d) distinguish between the tasks an MA-C can and cannot accept;~~
    - ~~— (e) define redelegation;~~
    - ~~— (f) identify skills that enhance the delegation process;~~
    - ~~— (g) describe the rights of the client;~~
    - ~~— (h) discuss the types of abuse that must be reported;~~
    - ~~— (i) describe examples of the types of legal problems that can occur;~~
    - ~~— (j) list the three steps to take before medication is safe to give; and~~
    - ~~— (k) recognize the numerous rights that must be followed before and after medication is administered.~~
  - ~~— (2) Content Outline— role of the MA-C:~~
    - ~~— (a) MA-C may perform a task involving administration of medications if:~~
      - ~~— (i) MA-C's assignment is to administer medications under the supervision of a licensed nurse in accordance with provisions of the Nurse Practice Act and Rule; and~~
      - ~~— (ii) the delegation is not prohibited by any provision of this act and rule;~~
    - ~~— (b) role of the MA-C includes medication administration as a delegated nursing function under nursing supervision.— The following shall not be delegated to an MA-C:~~
      - ~~— (i) conversion or calculation of medication dosage;~~
      - ~~— (ii) assessment of patient need for or response to medications;~~
      - ~~— (iii) nursing judgment regarding the administration of PRN medications; or~~
      - ~~— (iv) medications to be given via parenteral routes and through nasogastric, gastrostomy, or jejunostomy routes;~~
    - ~~— (c) MA-C shall not perform a task involving the administration of medications if:~~
      - ~~— (i) the medication administration requires an assessment of the patient's need for medication, a calculation of the dosage of the medication or the conversion of the dosage;~~

- ~~— (ii) the supervising nurse is unavailable to monitor the progress of the patient and the effect of the medication on the patient; or~~
  - ~~— (iii) the patient is not stable or has changing needs;~~
  - ~~— (d) any MA-C who has any reason to believe that he has made an error in the administration of medication shall follow facility policy and procedure to report the possible or known error to the appropriate superior and shall assist in completing any required documentation of the medication error; and~~
  - ~~— (e) medication administration policies;~~
  - ~~— (i) MA-C shall report to the supervising nurse:~~
    - ~~— (A) signs or symptoms that appear life-threatening;~~
    - ~~— (B) events that appear health threatening; and~~
    - ~~— (C) medications that produce no results or undesirable effects as reported by the patient;~~
    - ~~— (ii) a licensed nurse shall supervise an MA-C; and~~
    - ~~— (iii) a licensed nurse shall review periodically the following:~~
      - ~~— (A) authorized provider orders; and~~
      - ~~— (B) patient medication records.~~
  - ~~— (3) Content Outline—the responsibility of the MA-C when accepting delegation tasks:~~
    - ~~— (a) the MA-C has the responsibility not to accept a delegation that he knows is beyond his knowledge and skills;~~
    - ~~— (b) delegation is patient specific; having done a task for one patient does not automatically mean assistive personnel can do the task for all patients, additionally, delegation is also situation specific, doing a task for one patient in one situation does not mean the nursing assistive personnel may perform that task for this patient in all situations;~~
    - ~~— (c) a task delegated to assistive personnel cannot be redelegated by the nursing assistive personnel;~~
    - ~~— (d) the MA-C is expected to speak up and ask for training and assistance in performing the delegation, or request not to be delegated a particular task, function, or activity; and~~
    - ~~— (e) both nurse and MA-C need the appropriate interpersonal and communication skills and organizational support to successfully resolve delegation issues.~~
  - ~~— (4) Content Outline—rights of individuals:~~
    - ~~— (a) maintain confidentiality;~~
    - ~~— (b) respect patient's rights;~~
    - ~~— (c) respect patient's privacy;~~
    - ~~— (d) respect patient's individuality and autonomy;~~
    - ~~— (e) communicate respectfully;~~
    - ~~— (f) respect patient's wishes whenever possible;~~
    - ~~— (g) right to refuse medication; and~~
    - ~~— (h) right to be informed.~~
  - ~~— (5) Content Outline—specific legal and ethical issues:~~
    - ~~— (a) abuse or neglect:~~
      - ~~— (i) identify types of abuse:~~
        - ~~— (A) physical;~~
        - ~~— (B) verbal;~~
        - ~~— (C) psychological;~~
        - ~~— (D) sexual; and~~
        - ~~— (E) financial;~~
      - ~~— (ii) preventive measures; and~~
      - ~~— (iii) duty to report;~~
    - ~~— (b) exposure to medical malpractice, negligence claims, or lawsuits;~~
    - ~~— (c) fraud;~~
    - ~~— (d) theft; and~~
    - ~~— (e) diversion.~~
  - ~~— (6) Content Outline—safety and rights of medication administration:~~
    - ~~— (a) review the three safety checks; and~~
    - ~~— (b) review the six rights of medication administration.~~
- ~~Module 6 Practicum:~~
- ~~— (1) Objective—the learner will demonstrate safe administration of medications to patients in a clinical setting.~~
  - ~~— (2) Content Outline—forty hours of supervised clinical practicum, which should be progressive, where the instructor observes medication administration, and gradually, the instructor increases the number of patients to whom the student administers medications.]~~

**KEY: licensing, nurses****Date of Enactment or Last Substantive Amendment: 2009****Notice of Continuation: April 1, 2008****Authorizing, and Implemented or Interpreted Law: 58-31b-101; 58-1-106(1)(a); 58-1-202(1)(a)**

**End of the Notices of Changes in Proposed Rules Section**

## NOTICES OF 120-DAY (EMERGENCY) RULES

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An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

- (a) cause an imminent peril to the public health, safety, or welfare;
- (b) cause an imminent budget reduction because of budget restraints or federal requirements; or
- (c) place the agency in violation of federal or state law (Subsection 63G-3-304(1)).

As with a PROPOSED RULE, a 120-DAY RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the 120-DAY RULE including the name of a contact person, justification for filing a 120-DAY RULE, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (. . . .) indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A 120-DAY RULE is effective for 120 days or until it is superseded by a permanent rule.

Because 120-DAY RULES are effective immediately, the law does not require a public comment period. However, when an agency files a 120-DAY RULE, it usually files a PROPOSED RULE at the same time, to make the requirements permanent. 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.

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### Human Resource Management, Administration **R477-4-4** Order of Selection for Career Service Positions

#### NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE No.: 32426  
FILED: 03/02/2009, 16:25

#### RULE ANALYSIS

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** This change is the result of S.B. 126 being passed on 02/18/2009 in the 2009 General Session, and signed by the Governor on 03/02/2009.

**SUMMARY OF THE RULE OR CHANGE:** A reference is deleted which refers to Subsection R477-12-3(7), which was deleted in the filing of the emergency rule filing to Rule R477-12. These changes are the result of S.B. 126 (2009) being signed into law. (DAR NOTE: The 120-day (emergency) rule filing to Rule R477-12 is published under DAR No. 32427 in this issue, March 15, 2009, of the Bulletin, and was effective 03/02/2009.)

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 67-19-6 and Subsection 67-19-16(5)(b)

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ❖ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no fiscal impact on local governments.

❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will not likely be measurable costs to executive branch agencies in order to comply with this rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business. Jeff Herring, Executive Director

**EMERGENCY RULE REASON AND JUSTIFICATION:** REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

S.B. 126 (2009) became effective upon the Governor's signature on 03/02/2009.

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

HUMAN RESOURCE MANAGEMENT  
ADMINISTRATION  
Room 2120 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY UT 84114-1201, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Michael Tribe or J.J. Acker at the above address, by phone at 801-538-3627 or 801-537-9096, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at miketribe@utah.gov or jacker@utah.gov

THIS RULE IS EFFECTIVE ON: 03/02/2009

AUTHORIZED BY: Jeff Herring, Executive Director

**R477. Human Resource Management, Administration.**

**R477-4. Filling Positions.**

**R477-4-4. Order of Selection for Career Service Positions.**

(1) Prior to implementing the steps for order of selection, agencies may administer the following personnel actions:

- (a) reemployment of a veteran eligible under USERRA;
- (b) reassignment or transfer within an agency for the purposes of reasonable accommodation under the Americans with Disabilities Act;
- (c) fill a position as a result of return to work from long term disability or workers compensation at the same or lesser salary range;
- (d) reassignments made in order to avoid a reduction in force, or for reorganization or bumping purposes;
- (e) reassignments, management initiated career mobility, or other movement of qualified career service employees at the same or lesser salary range to better utilize skills or assist management in meeting the organization's mission;
- (f) reclassification.

(2) Agencies may carry out all the following steps for recruitment and selection of vacant career service positions concurrently. Appointing authorities shall make appointments according to the following order of selection which applies to all vacant career service positions:

(a) First, agencies shall make appointments from the statewide reappointment register [in compliance with Subsection R477-12-3(7)] with the names of individuals who meet the position qualifications.

(b) Second, agencies may make appointments within an agency through promotion or through transfer of a qualified career service employee, career mobility assignments to a higher salary range, or conversions from schedule A to schedule B as authorized by Subsection R477-5-1.(3).

(c) Third, agencies may make appointments from a list of qualified applicants certified as eligible for appointment to the position, or from another competitive process pre-approved by the Executive Director, DHRM.

**KEY: employment, fair employment practices, hiring practices**

**Date of Enactment or Last Substantive Amendment: March 2, 2009**

**Notice of Continuation: June 9, 2007**

**Authorizing, and Implemented or Interpreted Law: 67-19-6**

**Human Resource Management,  
Administration**

**R477-12-3**

**Reduction in Force**

**NOTICE OF 120-DAY (EMERGENCY) RULE**

DAR FILE No.: 32427

FILED: 03/02/2009, 16:35

**RULE ANALYSIS**

**PURPOSE OF THE RULE OR REASON FOR THE CHANGE:** These changes are the result of S.B. 126 being passed on 02/18/2009 in the 2009 General Session, and signed by the Governor on 03/02/2009.

**SUMMARY OF THE RULE OR CHANGE:** These changes are the result of S.B. 126 (2009) being passed, and signed by the Governor on 03/02/2009. The amendments eliminate the Reduction in Force (RIF) reappointment register and implement preferential consideration for career service employees who have been RIF'd and seek reemployment with the state. (DAR NOTE: A corresponding amendment is published under DAR No. 32424 in this issue, March 15, 2009, of the Bulletin.)

**STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE:** Section 67-19-6 and 67-19-18

**ANTICIPATED COST OR SAVINGS TO:**

- ❖ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ❖ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no fiscal impact on local governments.
- ❖ **SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on other persons.

**COMPLIANCE COSTS FOR AFFECTED PERSONS:** There will not likely be measurable costs to executive branch agencies in order to comply with this rule.

**COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:** Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business. Jeff Herring, Executive Director

**EMERGENCY RULE REASON AND JUSTIFICATION:** REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

S.B. 126 (2009) became effective upon the Governor's signature on 03/02/2009.

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

**ADMINISTRATION**

Room 2120 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY UT 84114-1201, or  
at the Division of Administrative Rules.

**DIRECT QUESTIONS REGARDING THIS RULE TO:**

Michael Tribe or J.J. Acker at the above address, by phone at 801-538-3627 or 801-537-9096, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at miketribe@utah.gov or jacker@utah.gov

THIS RULE IS EFFECTIVE ON: 03/02/2009

AUTHORIZED BY: Jeff Herring, Executive Director

**R477. Human Resource Management, Administration.****R477-12. Separations.****R477-12-3. Reduction in Force.**

Reductions in force shall be required when there are inadequate funds, a change of workload, or lack of work. Reductions in force shall be governed by DHRM business practices, standards and the following rules:

(1) When staff will be reduced in one or more categories of work, agency management shall develop a work force adjustment plan (WFAP). A career service employee shall only be given formal written notification of separation after a WFAP has been reviewed and approved by the Executive Director, DHRM, or designee. The following items shall be considered in developing the work force adjustment plan:

- (a) the categories of work to be eliminated, including positions impacted through bumping, as determined by management;
- (b) a decision by agency management allowing or disallowing bumping;
- (c) specifications of measures taken to facilitate the placement of affected employees through normal attrition, retirement, reassignment, relocation, and movement to vacant positions for which the employee qualifies;
- (d) a list of all affected employees showing the retention points for each employee.

**(2) Eligibility for RIF.**

(a) Only career service employees who have been identified in an approved WFAP and given an opportunity for a hearing with the agency head may be RIF'd.

(b) An employee covered by USERRA and in a leave without pay status must be identified, assigned retention points, and notified of the RIF of the previous position in the same manner as a career service employee.

(3) Retention points shall be calculated for all affected employees within a category of work as follows:

(a) Seniority shall be determined by the length of total state career service, which commenced in a competitive career service position for which the probationary period was successfully completed.

(i) For part-time work, length of service shall be determined in proportion to hours actually worked.

(ii) Exempt service time subsequent to attaining career service tenure with no break in service shall also be counted for purposes of seniority.

(iii) In the event of ties in retention points, the amount of time

employed in the affected agency or department serves as the tie breaker.

(b) Length of state service shall be measured in years and additional days shown as a fraction of a year.

(c) Time spent in a leave without pay status for service in the uniformed services covered under USERRA shall be counted for purposes of seniority.

(d) Any time spent in leave without pay status, to include worker's compensation leave, may not be counted for purposes of seniority.

(e) An employee within a category of work, including employees covered under USERRA in a leave without pay status, shall be assigned a job proficiency rating. The job proficiency rating shall be an average of the last three annual performance evaluation ratings under Subsection R477-10-1(1)(e). If employees have had fewer than three annual performance evaluations, the proficiency ratings shall be an average of all ratings received as of that time.

(f) The numeric values of each employee's job proficiency rating and that employee's actual length of service shall be added together to produce the retention points.

(g) Retention points shall be calculated for an employee covered under USERRA and in a leave without pay status in the same manner as for current employees in the affected class. If there are no performance evaluation ratings for an employee covered under USERRA, no proficiency rating shall be included in the retention points.

(4) The order of separation shall be:

- (a) temporary employees;
- (b) probationary employees;
- (c) career service employees with the lowest retention points are released first. In the event of ties in retention points, the amount of seniority in the affected agency serves as the tie breaker.

(5) An employee, including one covered under USERRA in a leave without pay status, who is separated due to a reduction in force shall be given formal written notification of separation, allowing for a minimum of 20 working days prior to the effective date of the RIF.

**(6) Appeals.**

(a) An employee notified of separation due to a reduction in force may appeal to the agency head for an administrative review by submitting a written notice of appeal within 20 working days after the receipt of written notification of separation.

(b) The employee may appeal the decision of the agency head according to the appeals procedure of the Career Service Review Board.

~~**(7) Reappointment of RIF'd individual.**~~

~~—(a) A RIF'd individual is eligible for reappointment into a half time or greater career service position for which he qualifies in a salary range comparable to or less than the last career service position held, for a period of one year following the date of separation. Section R477-4.4 applies for selection of individuals from the reappointment register.~~

~~—(i) The Executive Director, DHRM, shall maintain a reappointment register and shall make the final determination on whether an eligible RIF'd individual meets the job requirements for position vacancies.~~

~~—(ii) A RIF'd individual shall remain on the state reappointment register for one year from the date of separation, unless reappointed sooner.~~

~~—(b) During a statewide mandated freeze on hiring wherein the Governor disallows increases in each agency's budgeted FTEs, eligibility for the reappointment register shall be extended for the entire length of time covered by a freeze.~~

~~—(e) When determining comparable salary ranges in cases of RIF eligibility, a comparison of the previous career service salary range to the current career service salary range maximum step is required. A RIF'd individual shall have RIF rights to any vacant position for which he qualifies. The basis for comparison shall be:~~

~~—(i) The current salary range of a vacant position if it is equal to or lesser than the individual's previous salary range, or;~~

~~—(ii) If the maximum step of the position previously held by the RIF'd individual has moved upward, the new range shall be used.~~

~~—(d) A RIF'd individual who is reappointed to a career service position shall not be required to serve a probationary period. The RIF'd individual shall enjoy all the rights and privileges of a regular career service employee.~~

~~—(e) At agency discretion, an individual reappointed from a reappointment register may buy back part or all accumulated annual and converted sick leave that was cashed out when RIF'd.~~

~~—(8) Appeal rights of RIF'd individual. An individual whose name is on the reappointment register as a result of a reduction in force may use the grievance procedure regarding their reappointment rights.~~

~~—(9) A career service employee in an exempt position. Any career service employee accepting an exempt position without a break in service, who is later not retained by the appointing officer, unless discharged for cause under these rules, shall be placed on the reappointment register.~~

~~—(a) The Executive Director, DHRM, shall maintain a reappointment register for this purpose. An individual on this register shall:~~

~~—(i) be appointed to any half time or greater career service position for which the individual qualifies in a salary range comparable to the individual's last position in the career service, provided an opening exists; or~~

~~—(ii) be appointed to any lesser career service position for which the individual qualifies, pending the opening of a position at the last career service salary range held.~~

~~—(b) The Executive Director, DHRM, shall make the final determination on whether an eligible individual meets the job requirements for position vacancies.~~

~~—(c) The individual shall declare a desire to remain on the reappointment register upon inquiry by DHRM.~~

~~—(d) Prior to termination and in lieu of placement on the reappointment register, management may reassign an employee to a vacant career service position consistent with Subsection R477-12-3(7)(c) for which he qualifies.](7) A career service employee who is separated in a RIF shall be governed by the rules in place at the time of separation.~~

~~—(8) A career service employee who is separated in a RIF shall be given preferential consideration as outlined in DHRM business practices when applying for a career service position.~~

~~—(a) Preferential consideration shall end once the RIF'd individual accepts a career service position.~~

~~—(b) A RIF'd individual may be rehired under Section R477-4-7.~~

~~—(c) At agency discretion, an individual rehired to a career service position may buy back part or all accumulated annual and converted sick leave that was cashed out when RIF'd.~~

~~—(9) A career service employee accepting an exempt position without a break in service, who is later not retained by the appointing officer, unless discharged for cause under these rules, shall be given preferential consideration as outlined in Subsection R477-12-3(8).~~

~~—(10) The RIF'd individual shall request to receive preferential consideration on any career service position for which the individual applies, subject to DHRM verification.~~

~~In order to receive preferential consideration on a career service position, a RIF'd individual shall express a desire to receive it on each position for which the candidate applies.~~

~~—(11) Prior to termination and in lieu of a RIF, management may reassign an employee to a vacant career service position for which the employee qualifies under Section R477-4-6.~~

**KEY: administrative procedures, employees' rights, grievances, retirement**

**Date of Enactment or Last Substantive Amendment: March 2, 2009**

**Notice of Continuation: June 9, 2007**

**Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-17; 67-19-18**

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**End of the Notices of 120-Day (Emergency) Rules Section**

# FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

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Within five years of an administrative rule's original enactment or last five-year review, the 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.

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## Agriculture and Food, Animal Industry

### R58-20

#### Domesticated Elk Hunting Park

##### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 32397  
FILED: 02/23/2009, 17:17

##### 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: Section 4-39-106 authorizes the Department to make and enforce rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: 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 establishes and sets the standards for the licensing and operation of elk hunting parks. Therefore, this rule should be continued.

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

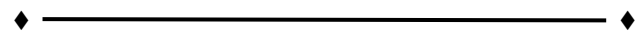
AGRICULTURE AND FOOD  
ANIMAL INDUSTRY  
350 N REDWOOD RD  
SALT LAKE CITY UT 84116-3034, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Kathleen Mathews, Terry Menlove, or Kyle Stephens at the above address, by phone at 801-538-7103, 801-538-7162, or 801-538-7102, by FAX at 801-538-7126, 801-538-7169, or 801-538-7126, or by Internet E-mail at [kmathews@utah.gov](mailto:kmathews@utah.gov), [tmenlove@utah.gov](mailto:tmenlove@utah.gov), or [kylestephens@utah.gov](mailto:kylestephens@utah.gov)

AUTHORIZED BY: Leonard M. Blackham, Commissioner

EFFECTIVE: 02/23/2009



## Commerce, Occupational and Professional Licensing

### R156-42a

#### Occupational Therapy Practice Act Rule

##### FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 32413  
FILED: 02/26/2009, 11:39

##### NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 42a, provides for the licensure of occupational therapists and occupational therapy assistants. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-42a-201(3) provides that the Occupational Therapy Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the division director. This rule was enacted to clarify the provisions of Title 58, Chapter 42a, with respect to occupational therapists and occupational therapy assistants.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the last time this rule was reviewed in 2004, it has been amended once in 2007. The Division has received no written comments with respect 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: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under



statutory authority provided in Title 58, Chapter 42a, with respect to occupational therapists and occupational therapy assistants. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

AUTHORIZED BY: F. David Stanley, Director

EFFECTIVE: 02/26/2009



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

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE NO.: 32398  
FILED: 02/24/2009, 07:45

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 46a, provides for the licensure of hearing instrument specialists and hearing instrument interns. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-46a-201(3)(a) provides that the Hearing Instrument Specialist Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the division director. This rule was enacted to clarify the provisions of Title 58, Chapter 46a, with respect to hearing instrument specialists and hearing instrument interns.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the last time this rule was reviewed in 2004, it has been amended two times.

The only written comment the Division has received with respect to this rule was a 11/24/2008 email from Hunter Finch wherein he notified the Division of an incorrect statutory citation in the rule. The Division corrected the error through a nonsubstantive rule filing on 12/22/2008.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 46a, with respect to hearing instrument specialists and hearing instrument interns. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Clyde Ormond at the above address, by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@utah.gov

AUTHORIZED BY: F. David Stanley, Director

EFFECTIVE: 02/24/2009



**Crime Victim Reparations,  
Administration  
R270-3**

**ADA Complaint Procedure**

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE NO.: 32394  
FILED: 02/19/2009, 17:56

**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 63M-7-506 details the duties of the Crime Victim Reparations Board and grants the Crime Victim Reparations Board authority to adopt rules to implement the Crime Victim Reparations Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments have been received since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule provides guidance for the Office of Crime Victim Reparations and its clients regarding complaints relating to the Americans with Disabilities Act. It is necessary to provide information to complainants regarding the complaint procedure and the information that needs to be submitted. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 CRIME VICTIM REPARATIONS  
 ADMINISTRATION  
 Room 200  
 350 E 500 S  
 SALT LAKE CITY UT 84111-3347, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 Ronald B Gordon at the above address, by phone at 801-238-2367, by FAX at 801-533-4127, or by Internet E-mail at [rbgordon@utah.gov](mailto:rbgordon@utah.gov)

AUTHORIZED BY: Ronald B Gordon, Director

EFFECTIVE: 02/19/2009

SUPPORTING OR OPPOSING THE RULE: No comments have been received since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule provides necessary information regarding the process of requesting records, the standards used in determining waiver requests, and the process regarding responses from the Office of Crime Victim Reparations. This facilitates records requests by members of the public. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:  
 CRIME VICTIM REPARATIONS  
 ADMINISTRATION  
 Room 200  
 350 E 500 S  
 SALT LAKE CITY UT 84111-3347, or  
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:  
 Ronald B Gordon at the above address, by phone at 801-238-2367, by FAX at 801-533-4127, or by Internet E-mail at [rbgordon@utah.gov](mailto:rbgordon@utah.gov)

AUTHORIZED BY: Ronald B Gordon, Director

EFFECTIVE: 02/19/2009



**Crime Victim Reparations,  
 Administration  
 R270-4  
 Government Records Access and  
 Management Act**

**FIVE YEAR NOTICE OF REVIEW AND  
 STATEMENT OF CONTINUATION**  
 DAR FILE No.: 32395  
 FILED: 02/19/2009, 18:07

**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 63M-7-506 details the duties of the Crime Victim Reparations Board and grants the Crime Victim Reparations Board authority to adopt rules to implement the Crime Victim Reparations Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS



**Insurance, Administration  
 R590-170  
 Fiduciary and Trust Account Obligations**

**FIVE YEAR NOTICE OF REVIEW AND  
 STATEMENT OF CONTINUATION**  
 DAR FILE No.: 32405  
 FILED: 02/25/2009, 16:37

**NOTICE OF REVIEW AND  
 STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 31A-2-201 gives the commissioner the authority to adopt rules for the implementation of Title 31A. Sections 31A-23a-406 and 31A-23a-409 do not have specific rulemaking authority. They deal with the title business and how the funds received by a title agent should be maintained. This is covered under Section R59-170-5 of the rule. Subsection 31A-23a-412(2)(b)(iii)(C) gives the commissioner the authority to require certain records to be kept regarding an insurance licensee's business. Section R590-170-7 of the rule specifies accounting records that are to be maintained by the licensee. Subsection 31A-25-305(1) gives the commissioner the authority to adopt rules

that will protect the integrity of a fiduciary account. The purpose of this rule is to set minimum standards that shall be followed for fiduciary and trust account obligations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has received no written comments regarding 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: This rule sets minimum standards to be followed by licensees who hold insurer's or insured's funds in a fiduciary capacity. It is critical that these minimum standards be maintained intact by continuing this rule to protect the funds of the payee held in trust by the licensee. Trust violations continue to occur, therefore the department needs the standards set by this rule to regulate the marketplace. Therefore, this rule should be continued.

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

INSURANCE  
ADMINISTRATION  
Room 3110 STATE OFFICE BLDG  
450 N MAIN ST  
SALT LAKE CITY UT 84114-1201, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby 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](mailto:jwhitby@utah.gov)

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 02/25/2009



Public Safety, Administration  
**R698-4**  
Certification of the Law Enforcement  
Agency of a Private College or  
University

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE No.: 32404  
FILED: 02/25/2009, 15:07

**NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53-13-103(1)(a) defines "Law enforcement officer" and subsection (b) lists

thirteen specific types. The eleventh (xi) type listed are members of law enforcement agencies established by private colleges or universities provided that they are appropriately "certified" by rule by the Commissioner of Public Safety. Rule R698-4 is the referenced rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received since the last five-year review of this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 53-13-103 and the presence of private university campus police continue to require this rule. Therefore, this rule should be continued.

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

PUBLIC SAFETY  
ADMINISTRATION  
CALVIN L RAMPTON COMPLEX  
4501 S 2700 W 1ST FLR  
SALT LAKE CITY UT 84119-5994, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Edward S. McConkie at the above address, by phone at 801-965-4791, by FAX at 801-965-4608, or by Internet E-mail at [edmconkie@utah.gov](mailto:edmconkie@utah.gov)

AUTHORIZED BY: Lance Davenport, Commissioner

EFFECTIVE: 02/25/2009



Tax Commission, Auditing  
**R865-7H**  
Environmental Assurance Fee

**FIVE YEAR NOTICE OF REVIEW AND  
STATEMENT OF CONTINUATION**

DAR FILE No.: 32392  
FILED: 02/19/2009, 11:14

**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: Section 19-6-410.5 establishes an Environmental Assurance Program and an Environmental Assurance Fee for owners and operators using petroleum storage tanks. This rule sets the environmental assurance fee on the first sale or use of petroleum products which shall be collected by the Utah State Tax Commission (USTC) and deposited in the Petroleum Storage Tank Trust Fund and requires the USTC to make rules to administer the fee.

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: Section R865-7H-1 sets the guidelines for owners or operators of tanks, including above-ground storage tanks, to obtain an exemption from the environmental assurance fee, if they do not participate in the Environmental Assurance Program. Section R865-7H-2 sets the guidelines for exemptions from the environmental assurance fee on packaged petroleum products, or bulk petroleum products which are brought into Utah and subsequently repackaged; provides guidelines for qualified individuals to obtain a refund of environmental assurance fees, no more often than on a monthly basis. Section R865-7H-3 sets guidelines for an exemption from the environmental assurance fee for petroleum products exported from a refinery directly out of state; or for petroleum products not stored in a tank covered by the Environmental Assurance Program which are subsequently exported from the state. The section also

explains that qualified individuals may apply for a refund of those fees paid, no more often than on a monthly basis. Therefore, this rule should be continued.

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

TAX COMMISSION  
AUDITING  
210 N 1950 W  
SALT LAKE CITY UT 84134, or  
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at [clee@utah.gov](mailto:clee@utah.gov)

AUTHORIZED BY: D'Arcy Dixon, Commissioner

EFFECTIVE: 02/19/2009

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**End of the Five-Year Notices of Review and Statements of Continuation Section**

## NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

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Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (Section 63G-3-305). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules. The extension permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed extensions for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date. The five-year review extension is governed by Subsection 63G-3-305(4) and (5).

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### Administrative Services

#### Facilities Construction and Management

No. 32399: R23-29. Across the Board Delegation.

ENACTED OR LAST REVIEWED: 03/10/2004 (No. 26991, 5YR, filed 03/10/2004 at 5:00 p.m., published 04/01/2004).

EXTENDED DUE DATE: 07/08/2009

**End of the Notices of Five-Year Review Extensions Section**

## NOTICES OF RULE EFFECTIVE DATES

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These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. 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).

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### Abbreviations

AMD = Amendment  
CPR = Change in Proposed Rule  
NEW = New Rule  
R&R = Repeal and Reenact  
REP = Repeal

### Administrative Services

#### Administration

No. 32204 (AMD): R13-3. Americans with Disabilities Act Grievance Procedures.  
Published: January 1, 2009  
Effective: February 26, 2009

### Agriculture and Food

#### Animal Industry

No. 32199 (AMD): R58-17. Aquaculture and Aquatic Animal Health.  
Published: January 1, 2009  
Effective: February 19, 2009

#### Plant Industry

No. 32031 (AMD): R68-2-3. Registration of Products.  
Published: November 1, 2008  
Effective: February 25, 2009

### Commerce

#### Occupational and Professional Licensing

No. 32241 (AMD): R156-1. General Rules of the Division of Occupational and Professional Licensing.  
Published: January 15, 2009  
Effective: February 24, 2009

#### Real Estate

No. 32248 (AMD): R162-6. Licensee Conduct.  
Published: January 15, 2009  
Effective: March 2, 2009

### Corrections

#### Administration

No. 31997 (AMD): R251-105. Applicant Qualifications for Employment with Department of Corrections.  
Published: November 1, 2008  
Effective: February 26, 2009

### Education

No. 32254 (AMD): R277-101. Public Participation in Utah State Board of Education Decisions.  
Published: January 15, 2009  
Effective: February 24, 2009

No. 32255 (NEW): R277-117. Utah State Board of Education Protected Documents.  
Published: January 15, 2009  
Effective: February 24, 2009

No. 32256 (AMD): R277-462. Comprehensive Counseling and Guidance Program.  
Published: January 15, 2009  
Effective: February 24, 2009

No. 32257 (AMD): R277-469. Instructional Materials Commission Operating Procedures.  
Published: January 15, 2009  
Effective: February 24, 2009

### Health

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

No. 32223 (AMD): R414-14-5. Service Coverage.  
Published: January 15, 2009  
Effective: February 24, 2009

No. 32224 (AMD): R414-21-2. Eligibility Requirements.  
Published: January 15, 2009  
Effective: February 24, 2009

No. 32225 (AMD): R414-52. Optometry Services.  
Published: January 15, 2009  
Effective: February 24, 2009

No. 32226 (AMD): R414-53. Eyeglasses Services.  
Published: January 15, 2009  
Effective: February 24, 2009

No. 32227 (AMD): R414-54. Speech-Language Pathology Services.  
Published: January 15, 2009  
Effective: February 24, 2009

No. 32228 (AMD): R414-59-4. Services for Individuals Eligible for Optional Services.  
Published: January 15, 2009  
Effective: February 24, 2009

No. 32229 (AMD): R414-99-2. Client Eligibility Requirements.  
 Published: January 15, 2009  
 Effective: February 24, 2009

No. 32230 (AMD): R414-200. Non-Traditional Medicaid Health Plan Services.  
 Published: January 15, 2009  
 Effective: February 24, 2009

Health Systems Improvement, Emergency Medical Services

No. 32084 (AMD): R426-5-4. Trauma Review Committee.  
 Published: November 15, 2008  
 Effective: February 24, 2009

Insurance

Administration

No. 32261 (NEW): R590-252. Use of Senior-Specific Certifications and Professional Designations.  
 Published: January 15, 2009  
 Effective: February 25, 2009

Labor Commission

Safety

No. 32259 (AMD): R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels.  
 Published: January 15, 2009  
 Effective: February 24, 2009

Pardons (Board Of)

Administration

No. 32067 (AMD): R671-201. Original Parole Grant Hearing Schedule and Notice.  
 Published: November 15, 2008  
 Effective: February 25, 2009

No. 32065 (AMD): R671-312. Commutation Hearings for Death Penalty Cases.  
 Published: November 15, 2008  
 Effective: February 25, 2009

No. 32066 (AMD): R671-405. Parole Termination.  
 Published: November 15, 2008  
 Effective: February 25, 2009

Public Safety

Driver License

No. 32202 (AMD): R708-7-10. Use of the Functional Ability Profile.  
 Published: January 1, 2009  
 Effective: February 19, 2009

Sports Authority (Utah)

Pete Suazo Utah Athletic Commission

No. 32188 (AMD): R859-1-301. Qualifications for Licensure.  
 Published: January 1, 2009  
 Effective: March 1, 2009

Transportation

Program Development

No. 32179 (AMD): R926-10. Tollway Development Agreements.  
 Published: December 15, 2008  
 Effective: February 19, 2009

**End of the Notices of Rule Effective Dates Section**

# RULES INDEX BY AGENCY (CODE NUMBER) AND BY KEYWORD (SUBJECT)

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The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2008, including notices of effective date received through March 2, 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/>).

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## RULES INDEX - BY AGENCY (CODE NUMBER)

### ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

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R33-6	Modification and Termination of Contracts for Supplies and Services	32344	5YR	01/29/2009	2009-4/55
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R156-44a	Nurse Midwife Practice Act Rules	32356	5YR	02/05/2009	2009-5/24
R156-46a	Hearing Instrument Specialist Licensing Act Rule	32398	5YR	02/24/2009	2009-6/91
R156-46a-302c	Qualifications for Licensure - Examination Requirements	32235	NSC	01/22/2009	Not Printed
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R865-19S-119	Certain Transactions Involving Food and Lodging Pursuant to Utah Code Ann. Sections 59-12-103 and 59-12-104	32013	AMD	01/01/2009	2008-21/86
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R884-24P-47	Uniform Tax on Aircraft Pursuant to Utah Code Ann. Sections 59-2-404, 59-2-1005, 59-2-1302, and 59-2-1303	32036	AMD	01/01/2009	2008-21/92
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**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

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	32052	R884-24P-70	AMD	01/01/2009	2008-21/97
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	32044	R884-24P-53	AMD	01/01/2009	2008-21/93
	32052	R884-24P-70	AMD	01/01/2009	2008-21/97
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<b><u>waste disposal</u></b> Environmental Quality, Solid and Hazardous Waste	32378	R315-320	5YR	02/17/2009	2009-5/29
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	31650	R317-2	AMD	01/12/2009	2008-14/30
<b><u>water quality standards</u></b> Environmental Quality, Water Quality	31650	R317-2	CPR	01/12/2009	2008-23/28
	31650	R317-2	AMD	01/12/2009	2008-14/30
<b><u>water rights</u></b> Natural Resources, Water Rights	32201	R655-14	AMD	02/10/2009	2009-1/35
<b><u>white-collar contests</u></b> Sports Authority (Utah), Pete Suazo Utah Athletic Commission	32188	R859-1-301	AMD	03/01/2009	2009-1/44
<b><u>wildlife</u></b> Natural Resources, Wildlife Resources	32129	R657-13	AMD	01/07/2009	2008-23/23
	32300	R657-17-4	AMD	03/10/2009	2009-3/61
	32309	R657-38	AMD	03/10/2009	2009-3/62
	32299	R657-44-3	AMD	03/10/2009	2009-3/69
	32297	R657-55-4	AMD	03/10/2009	2009-3/71
	32081	R657-60-2	AMD	01/07/2009	2008-22/28
	32298	R657-60-2	AMD	03/10/2009	2009-3/72
	32210	R657-61	AMD	02/09/2009	2009-1/40



<u>KEYWORD</u> <u>AGENCY</u>	<u>FILE</u> <u>NUMBER</u>	<u>CODE REFERENCE</u>	<u>ACTION</u>	<u>EFFECTIVE</u> <u>DATE</u>	<u>BULLETIN</u> <u>ISSUE/PAGE</u>
<b><u>wildlife conservation</u></b>					
Natural Resources, Wildlife Resources	32309	R657-38	AMD	03/10/2009	2009-3/62
<b><u>wildlife law</u></b>					
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
	32298	R657-60-2	AMD	03/10/2009	2009-3/72
<b><u>wildlife permits</u></b>					
Natural Resources, Wildlife Resources	32297	R657-55-4	AMD	03/10/2009	2009-3/71
<b><u>workers' compensation</u></b>					
Labor Commission, Adjudication	32276	R602-2-2	AMD	03/10/2009	2009-3/51
Labor Commission, Industrial Accidents	32054	R612-4-2	AMD	01/01/2009	2008-21/66